



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

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**Date:** August 9, 2022  
**To:** Interested Person  
**From:** Morgan Steele, 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 21-043023 EN AD**

#### **GENERAL INFORMATION**

**Applicants:** Nathaniel Rosemeyer & Eric Rystadt | Main Street Development  
5331 SW Macadam Ave #258 Pmb 208 | Portland, OR 97239

**Owners:** Main Street Development  
5331 SW Macadam Avenue, Suite 258 | Portland, OR 97239

Tong Qi  
1515 SW Skyline Blvd | Portland, OR 97221

**Applicant:** Mark Dane | Mark Dane Planning  
12725 SW Glenhaven Street | Portland, OR 97225  
503.332.7167 | [markdaneplanning@gmail.com](mailto:markdaneplanning@gmail.com)

**Site Address:** 1521 & 1515 SW Skyline Boulevard

**Legal Description:** LOT 4 TL 2400 & 2500, HIGHLANDS CREST  
**Tax Account No.:** R385700220, R385700200  
**State ID No.:** 1S1E06AC 02400, 1S1E06AC 2500  
**Quarter Section:** 3124 & 3224

**Neighborhood:** Sylvan-Highlands, contact Dave Malcolm at [djm.shna@gmail.com](mailto:djm.shna@gmail.com) and Rick Kneuen at [rkneuen@netscape.net](mailto:rkneuen@netscape.net)

**Business District:** None  
**District Coalition:** Neighbors West/Northwest, contact Darlene Urban Garrett at [darlene@nwnw.org](mailto:darlene@nwnw.org)

**Plan District:** Northwest Hills - Skyline  
**Other Designations:** *Southwest Hills Resource Protection Plan* – Resource Site 111, Canyon Headwaters; Landslide Hazard

**Zoning:** *Base Zone:* Residential 5,000 (R5)

*Overlay Zone:* Environmental Conservation (c), Scenic (s)

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

**Proposal:**

The applicant proposes to construct a new single-dwelling residence with associated utilities and driveway on the currently undeveloped project site. All development is proposed to be located within the resource area of the Environmental Conservation overlay zone. The subject site is in Southwest Portland and takes access from SW Skyline Boulevard via an access easement over the neighboring property. Because there is a small amount of work occurring on the neighboring property (1515 SW Skyline) it is included as part of the site for this review. The lot proposed for development is currently vacant and heavily vegetated with a mix of native trees as well as a native and invasive understory. A creek, which flows north to south, is located along the western portion of the property. The topography on the site is extremely steep, with a sharp decrease in grade beginning from the access drive and continuing north through the property.

The applicant proposes approximately 2,110 square feet of permanent disturbance and 1,258 square feet of temporary disturbance within the resource area of the Environmental Conservation overlay zone. In addition, 11 trees, totaling 198 inches diameter breast height (dbh,) are proposed for removal from the resource area of the Environmental Zone. As mitigation for permanent impacts to the Environmental Zone as well as restoration of temporary disturbance areas, the applicant proposes to plant 24 trees, 160 shrubs, and 100 groundcovers. Additionally, the applicant proposes to remove invasive species from the entirety of the site.

The majority of the subject site is located within the resource area of the Environmental Conservation overlay zone. Because there is work within an Environmental Zone, certain standards must be met to allow work to occur by right. In this case, the applicant is proposing disturbance that exceeds the maximum allowed, disturbance within 30 feet of a waterbody, and a front setback that exceeds the maximum allowed (33.430.140.A, .C, and .O). For these reasons, Environmental Review is required. Further, multiple base zone standards are not being met by the proposal including *Main Entrances* (33.110.230), *Length of Street Facing Garage Wall* (33.110.253.D), and *Street Lot Line Setbacks (for garages)* (33.110.253.E); therefore, an Adjustment Review is also required.

**Relevant Approval Criteria:**

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

- ❖ **33.430.250.E – Other Development**
- ❖ **33.805.040 – Adjustments**

## ANALYSIS

**Site and Vicinity:** The 0.26-acre subject site is an undeveloped lot located in Southwest Portland. The property is bordered by SW Skyline Boulevard to the south, an asphalt driveway to the east and to the west and north is wooded area surrounding residential homes. A creek, which originates in the southcentral portion of the property, flows north along the western property line before leaving the site at its midway point. The topography on the site is extremely steep, with a sharp decrease in grade beginning from the access drive and continuing north through the property.

The site consists predominantly of a mixed forest with a canopy of big leaf maple (*Acer macrophyllum*) and Douglas fir (*Pseudotsuga menziesii*). Other tree species include Western red cedar (*Thuja plicata*) and sweet cherry (*Prunus avium*). The understory is mainly invasive English ivy (*Hedera helix*) which is both climbing into the trees and covering the ground; sword fern (*Polystichum munitum*) is also present within the understory.

**Zoning:** The zoning designation on the project site includes the Residential 5,000 base zone with Environmental Conservation (c) overlay zones. The project is also within the Northwest Hills Plan District- Skyline Subdistrict (see zoning on Exhibit B).

The Residential 5,000 base zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 3,000 square feet. Newly created lots must have a maximum density of 1 lot per 5,000 square feet of site area. Adjustments to multiple base zone standards are being considered as part of this Adjustment 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.

The Northwest Hills Plan District protects sites with sensitive and highly valued resources and functional values. The plan district also promotes the orderly development of the Skyline subdistrict while assuring that adequate services are available to support development. These regulations provide the higher level of protection necessary for the plan district area. The regulations of this Plan District do not apply directly to this proposal.

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. Because this proposal occurs adjacent to an identified View Corridor (SD 23-21), the regulations of this overlay zone have been considered for this review.

**Environmental Resources:** 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.

The site is described in the *Southwest Hills Resource Protection Plan* as Resource Site 111 – Canyon Headwaters. According to the Plan, this site has high visual quality affecting the estimated 125,000 commuters traveling in the canyon per day. The canyon has distinct knolls, ravines and canyon walls that rise 300 feet above the roadway. The more distant hills at the west end, north along Skyline Road, rise to 1,000 feet. Resources identified within Resource Site 111 and generally found at the subject site include:

**Resources:** cultural, scenic, open space, intermittent creeks, groundwater, wildlife habitat and corridor, and forest.

**Impact Analysis and Mitigation Plan:** The following discusses development alternatives that were considered by the applicant. The following additionally describes the proposed construction management plan, unavoidable impacts, and mitigation proposal.

**Development Alternatives:** The applicant provided an alternatives analysis included in the application case file (Exhibit A.1) and, for the sake of brevity, is summarized below.

Alternative 1: This alternative explored placing the residence within the transition area at the front of the lot with frontage on SW Skyline Boulevard. This alternative was ruled out due to proximity to the stream, significant tree removal, and impact to the City-designated Scenic Corridor of SW Skyline Boulevard.

Alternative 2: This alternative moved the residence away from SW Skyline Boulevard to the northeast corner of the site. However, the building footprint and placement and design of the residence resulted in too large of impacts to trees and overall site disturbance. Including being placed closer to the creek. As a result, this alternative was deemed too impactful and eliminated from consideration.

Alternative 3 (Preferred Alternative): This alternative considered an alternate building location, footprint, and design that reduced the permanent disturbance from the originally proposed 3,002 square feet to 2,110 square feet and preserved a 24-inch dbh Douglas fir. The Preferred Alternative provides residential development consistent with the

project purpose and the City's goal of providing housing opportunities for individual households while minimizing the overall disturbance area and locating the development to minimize impacts to resources and their functional values. There is no other location on the site to place the residence that would 1) be further from the creek, 2) reduce the amount of disturbance, and 3) remove less trees.

**Construction Management Plan:** The applicant proposes the following best management practices (BMPs) to reduce potential project-associated environmental impacts to natural resources during development and mitigation activities:

- Designated equipment and material staging areas
- Sediment fencing at the edge of all disturbance areas to prevent soils from entering the creek.
- Tree protection fencing at the edge of all disturbance areas to ensure trees to remain are adequately protected.

**Unavoidable Impacts:** A total of 11 trees, totaling 197 inches diameter breast height (dbh) are to be removed in association with the residential development. Further, the applicant proposes 2,110 square feet of permanent and 1,258 square feet of temporary disturbance in the Environmental Conservation overlay zone as part of this proposal. Elements of temporary disturbance include construction of the single-dwelling residence as well as installation of one, 4-inch stormwater outfall. Permanent disturbance includes the building and stormwater outfall footprint.

**Mitigation Plan:** The Mitigation Plan includes a total of 8,000 square feet of restoration/revegetation within the Environmental Conservation overlay zone. These areas will be revegetated with native species from the *Portland Plant List*. All told, the revegetation will include the installation of 24 trees, 160 shrubs, and over 100 groundcover plants. Additionally, the applicant proposes to remove invasive species from the entirety of the site including the English ivy that is growing on numerous trees onsite.

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

- ❖ LU 21-024184 EN –Environmental Review for construction of a new, single-dwelling residence within the Environmental Zone – Withdrawn.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed on February 18, 2022. The following Bureaus responded with no issues or concerns with full responses being found in the E Exhibits:

- Water Bureau
- Fire Bureau
- Urban Forestry
- PBOT
- Life Safety
- Site Development
- BES

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on February 18, 2022. Written responses have been received from notified property owners in response to the proposal. Responses have been summarized and are provided below and have been combined where similar; full responses can be found in Exhibits F.1 through F.7.

**1. Neighbor 1:** I live across SW Skyline Boulevard from the proposed development at 1530 SW Skyline Boulevard. The site is very steep and contains the main drainageway for the hillside above. The drainageway travels under Skyline in an old culvert and exists onto my property and then continues down onto adjacent properties. I am concerned that any likely erosion will compromise this natural drainageway and help create landslides during wet weather. The City should consider denying this application.

**Planner Response:** The applicant provided a Construction Management Plan (Exhibit C.3) that includes Best Management Practices such as placing sediment fence at the limits of construction disturbance to prevent the movement of soils off-site. Also, at the time of building permit, the applicant's site plans will be checked for compliance with the City's official Erosion Control Manual (Title 10) to ensure all appropriate erosion and sediment control

practices are being followed. The applicant also provided a Landslide Hazard Study to comply with applicable regulations of Title 24.70.030, *Hazards* to ensure the proposed development is compatible with the soils onsite.

**2. Neighbor 2:** Concerning the standards for development of the lot in question as regarding the environmental overlay, it is noted that the development plans do not meet those standards. To that end, I would be disinclined to accept any approval of those plans until the standards are met. In addition, I would hope the developers, once plan standards have been met, if they have been met, would continue to apply the proposed mitigation efforts, as they sound like a good idea regardless.

**Planner Response:** The purpose of an Environmental Review is to allow for flexible development on sites where development standards cannot be met. For an application to be approved, the applicant must demonstrate how the proposal meets applicable approval criteria. These criteria ensure that the avoidance of impacts has first been considered and when avoidance is not possible, impacts are appropriately mitigated for. The applicant's proposed mitigation for impacts will be a condition of approval for this review.

**3. Neighbors 3, 4, & 5:** After discussion with my family, we would like to object to the proposal due to a few reasons.

1. Disruption to our environment
2. Permanent disturbance of 3,002 square feet of land could affect the hilly area of our property causing landslide
3. Affecting the home value negatively.

**Planner Response:** As shown below, the applicant is meeting the necessary approval criteria for the Environmental Review including mitigating for impacts to resources. Additionally, the applicant explored alternative building locations, footprints, and designs that reduced the permanent disturbance from the originally proposed 3,002 square feet to 2,110 square feet. Lastly, the approval criteria necessary for approval of this review does not require the applicant to consider the proposed development's impact on the monetary value of surrounding homes.

**4. Neighbors 6 & 7:** I am an adjoining property owner on the northeast side of 1521 SW Skyline Boulevard, Portland, OR 97221 (the "Property") and write to comment on the above noted Type II proposal for the Property. In the second paragraph of the Proposal portion on page 2, "the applicant proposes to remove invasive species from the entirety of the site." The Property has invasive plant species (e.g., English Ivy, English Holly, English Hawthorne, etc.) everywhere and throughout the entire Property. I urge BDS to require the applicant to remove all invasive plant species from the Property as a condition of approval of this Type II proposal. Doing so will improve the Property's environmental condition and ecosystem.

**Planner Response:** The conditions of approval (Condition C) require the applicant to remove invasive species from the entirety of the site including cutting the growth currently choking a large portion of the trees onsite.

## 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.

### 33.805.040 Approval Criteria for Adjustment Review

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.

**Findings:** The approval criteria applicable to the proposed development include those found Section 33.430.250.E and 33.805.040. The applicant has provided findings for these approval criteria and BDS Land Use Services staff revised these findings or added conditions, where necessary to meet the approval criteria.

**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 base zone allows a maximum building coverage of 3,200 square feet. The proposed building coverage for the new, single-dwelling residence is 1,723 square feet.

The proposed development includes a single-dwelling residence, stormwater facility, stormwater outfall, and mitigation for impacts to the Environmental Conservation overlay zone. The primary use (household living) and its associated components are all elements that are allowed by right within the Residential 5,000 base zone (see Table 110-1).

The development disturbance has minimized the loss of resources and functional values compared with a site plan that includes more extensive building coverage that would be permitted or allowed in the base zone without a land use review in the absence of the Environmental Zones, *and this criterion is met.*

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

**Findings:** This criterion requires the applicant to demonstrate alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values located onsite. According to the *Southwest Hills Resource Protection Plan* this site is mapped as Resource Site 111 – Canyon Headwaters. Resources features and functional values identified within Resource Site 111 and generally found at the subject site include cultural, scenic, open space, intermittent creeks, groundwater, wildlife habitat and corridor, and forest.

The applicant provided an alternatives analysis (Exhibit A.1) that explored three alternatives including the Preferred Alternative for the residential development. Alternatives 1 and 2 were rejected on the grounds of being too impactful to resources, specifically waterbodies and trees. Alternative 1 was deemed too impactful even though most of the residence would have been placed within the transition area. Alternative 2 also resulted in greater impacts including disturbance area, closeness to the creek, and tree removal and therefore was also rejected. For the preferred alternative (Alternative 3), the applicant moved the residence closer to the existing driveway, reduced the footprint, and altered the design thereby decreasing impacts to the Environmental Zone while still accomplishing the project purpose of providing a single-dwelling residence within residentially zoned lands.

While the preferred alternative requires permanent disturbance and tree removal within the resource area of the Environmental Conservation overlay zone, it also allows for the mitigation and restoration of a large portion of the site within the Environmental Zones outside of development. As shown on Exhibit C.4, the remainder of the site area, outside of permanent disturbance, will be restored by planting native vegetation and removing invasive species. The Preferred Alternative not only satisfies the project purpose, but it also minimizes impacts, to the greatest extent practicable, to identified resources and functional values.

For the reasons stated above, *this criterion is met.*

**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. These criteria further require

that no long-term impacts to resources result from the development outside of approved permanent disturbance areas.

Erosion control measures, including sediment fence at the edge of disturbance areas, will prevent mud and debris from entering the portion of the site to remain undisturbed during project construction – specifically, the creek. Further, tree protection fencing will be used in tandem with sediment fencing to ensure trees that are to remain will be adequately protected. Contractors will be instructed to remain within limits of disturbance defined by the tree protection/sediment fencing. Given these construction management measures, it is anticipated that there will be no short-term significant detrimental impacts to resources and functional values in areas designated to be left undisturbed.

With conditions to ensure compliance with the above referenced construction management measures, *this criterion can be met by the proposal.*

**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 Mitigation Plan is summarized on page 4 of this report.

In summary, 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 large portions of the undeveloped site, covering approximately 8,000 square feet of area.
- ❖ Invasive species will be removed from the entire site.
- ❖ A minimum of four felled trees will be turned into habitat features such as downed large wood, brush piles, and/or snags.

Further, the proposed Mitigation Plan will be installed and maintained under the regulations outlined in Section 33.248.040.A-D (Landscaping and Screening). To confirm installation of the required plantings, the applicant will be required to have the plantings inspected upon installation. Then, to confirm establishment of the required plantings, the applicant will be required to submit two monitoring and maintenance reports over a two-year monitoring period to document survival and replacement.

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

**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**

**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 and the applicant owns the proposed onsite mitigation area.

*These criteria are met.*

**33.805.040 Adjustment Review**

Through this Adjustment Review, the applicant is requesting to modify three separate base zone development standards: Main Entrances (33.110.230), Length of Street Facing Garage Wall (33.110.253.D), and Street Lot Line Setbacks (for garages) (33.110.253.E). The Purpose Statement for each standard is copied below.

**33.110.010 Purpose**

The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood.

### **3.110.230 Main Entrances in R10 through R2.5 Zones**

A. Purpose. These standards:

- Together with the street-facing facade and garage standards, ensure that there is a physical and visual connection between the living area of the residence and the street;
- Enhance public safety for residents and visitors and provide opportunities for community interaction;
- Ensure that the pedestrian entrance is visible or clearly identifiable from the street by its orientation or articulation; and
- Ensure that pedestrians can easily find the main entrance, and so establish how to enter the residence.
- Ensure a connection to the public realm for development on lots fronting both private and public streets by making the pedestrian entrance visible or clearly identifiable from the public street

### **33.110.253 Additional Standards for Garages**

A. Purpose. These standards:

- Together with the window and main entrance standards, ensure that there is a physical and visual connection between the living area of the residence and the street;
- Ensure that the location and amount of the living area of the residence, as seen from the street, is more prominent than the garage;
- Prevent garages from obscuring the main entrance from the street and ensure that the main entrance for pedestrians, rather than automobiles, is the prominent entrance;
- Provide for a more pleasant pedestrian environment by preventing garages and vehicle areas from dominating views of the neighborhood from the sidewalk; and
- Enhance public safety by preventing garages from blocking views of the street from inside the residence.

#### **A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and**

**Findings:** The applicant is requesting Adjustments that better preserve the integrity of the site by lessening the need to remove multiple trees along a Scenic Corridor and eliminating the need for a second access onto SW Skyline Boulevard. The proposed Adjustments enable the residence to be placed in a manner that would continue to meet the applicable purpose statements. The proposed Adjustments would allow the main entrance to be seen and accessed from the driveway. And while 62% of the length of the structure is street-facing garage wall and is in front of the longest dwelling unit wall, the residence will be shielded from public views by being placed in the northeast corner of the site.

Further, the location of the house, accessing the existing driveway, effectively camouflages the proposed home from the street frontage on Skyline. While not included in the Scenic Resource overlay zone, placing the residence in the northeast corner of the site more effectively meets the standard for the Main Entrances because the main entrance will be oriented to the shared driveway where all vehicle and pedestrian access will occur. It also eliminates the need for a new driveway on SW Skyline Boulevard, an arterial street. Combined, the Adjustments will enhance the ability of the applicant to meet the desired character of the area, through lower impacts.

Considering, the applicant has demonstrated the proposed Adjustments will equally or better meet the purpose of the Development Standards to be modified, *this criterion is met.*

#### **B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the desired character of the area; and**

**Findings:** The placement of the house, and the proposed access off the existing driveway, effectively camouflages the proposed residence from the street frontage of SW Skyline. This placement, requiring the requested Adjustments, preserves the character of the area by preserving trees along the City-designated Scenic Corridor of SW Skyline Boulevard. *This criterion is met.*



**C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and**

**Findings:** The purpose of the multiple Adjustments is to effectively shift the “front” of the residence from SW Skyline Boulevard to the existing driveway from which the residence will be accessed, thus avoiding impacts to waterbodies and trees along SW Skyline Boulevard. Due to the nature of the parcel (topography, natural resources, etc.) and its access being taken from an existing driveway, the cumulative effect of the Adjustments do not detract from the overall purpose of the base zone (copied above). *This criterion is met*

**D. City-designated scenic resources and historic resources are preserved; and**

**Findings:** Technically, no Scenic or Historic Resources exists on the subject site; however, the Scenic Resource overlay zone is located on parcels to the east and west that abut the subject site. The placement of the house in the northeast corner of the lot, and the necessary Adjustments, preserve trees and views along the road, which is consistent with the purpose of the City-designated scenic corridor along SW Skyline Boulevard. *This criterion is met.*

**E. Any impacts resulting from the adjustment are mitigated to the extent practical; and**

**Findings:** The purpose of the requested Adjustments is to reduce impacts to the parcel and it’s natural and scenic resources. Impacts resulting from placement of the residence in the northeast corner of the site, which necessitates the Adjustments, are being adequately mitigated for, as discussed above, with the installation of native trees, shrubs, and groundcovers and the removal of invasive species throughout the entirety of the lot. *This criterion is met.*

**F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;**

**Findings:** The purpose of the requested Adjustments is to create as few impacts as possible by building away from the creek, avoiding a second driveway along SW Skyline Boulevard, and impacting fewer trees and vegetation. To the extent that approval criterion 33.430.250.E.2 is met (addressed above), *this criterion is also met.*

## DEVELOPMENT STANDARDS

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

## CONCLUSIONS

The applicant proposes to develop the residentially zoned vacant lot with one, single-dwelling residence. The applicant considered alternative locations and designs to determine that the proposed building location and design were practicable and would minimize impacts to the resource area of the Environmental Zones. Although it was unavoidable to impact the Environmental Zones, the applicant proposes extensive mitigation plantings to compensate for impacts to resources and functional values. The applicant and the above findings have shown that the proposal meets the applicable approval criteria with conditions. Therefore, this proposal should be approved, subject to the following conditions.

## ADMINISTRATIVE DECISION

**Approval of an Adjustment Review for:**

- Main entrance facing away from the street (33.110.230);
- Garage wall facing the street that exceeds maximum length (33.110.253.D);
- A garage wall located closer to the lot line than the longest facing wall of the dwelling unit (33.110.253.E)

**Approval of an Environmental Review for:**

- Temporary and permanent disturbance for new residential construction;
- Removal of 11 native trees;
- Installation of a stormwater planter; and

- Installation of one 4-inch stormwater outfall

all within the Environmental Conservation overlay zone, and in substantial conformance with Exhibits C.2 to C.6, as approved and signed by the City of Portland Bureau of Development Services on **August 04, 2022**. Approval is subject to the following conditions:

- A. A BDS Building Permit is required for this project.** The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc.). Plans shall include the following statement, ***"Any field changes shall be in substantial conformance with approved LU 21-043023 EN AD Exhibits C.2 to C.6."***
- B.** Sediment fencing and tree protection fencing shall be placed along the Limits of Construction Disturbance line, as depicted on Exhibits C.4, Construction Management Plan, to separate approved construction areas from areas to remain undisturbed.
1. No mechanized construction vehicles are permitted outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence.
- C.** The building Permit review shall include inspection of a mitigation plan for a total of 24 trees, 160 shrubs, 100 groundcovers, and 4 habitat features (LWD/Snag/brush pile), and removal of invasive species from the undisturbed areas of the site (including cutting ivy on all affected trees), in substantial conformance with Exhibit C.3, 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 replaced with conifers.
1. Permit plans shall show:
    - a. Permit plans shall show the general location of the trees, shrubs and ground covers required by this condition to be planted in the mitigation area and labeled as "new required landscaping". The plans shall include a "typical," scalable planting layout for each planting zone, and shall illustrate a naturalistic arrangement of plants and should include a planting table listing the species, quantity, spacing and sizes of plants to be planted.
    - b. The applicant shall indicate on the plans selection of either tagging plants for identification or accompanying the BDS inspector for an on-site inspection.
  2. Plantings shall be installed between October 1 and March 31 (the planting season).
  3. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from the entire site, using handheld equipment.
  4. If plantings are installed prior to completion of construction, a temporary orange, 4-foot high construction fence shall be placed to protect plantings from construction activities.
  5. All mitigation and restoration shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector; or the applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.
  6. After removing invasives, installing the required mitigation plantings and placing the large wood debris/snags, the applicant shall request inspection of mitigation plantings and final the BDS Site Development Permit.
- D. The landowner shall monitor the required plantings** for two years to ensure survival and replacement as described below. The landowner is responsible for ongoing survival of required plantings beyond the designated two-year monitoring period. The landowner shall:
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. Submit two 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 Exhibits C.3, Mitigation Plan, showing the location and direction of photos.
- e. An estimate of percent cover of invasive species (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: Morgan Steele**

Decision rendered by:  on August 4, 2022  
By authority of the Director of the Bureau of Development Services

**Decision mailed: August 9, 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 May 7, 2021, and was determined to be complete on November 1, 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 May 7, 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 waived the 120-day review period, as stated with Exhibit A.8 Unless further extended by the applicant, **the 120 days will expire on: November 1, 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 August 23, 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 **August 23, 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 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. Applicant's Original Narrative, May 2021
  2. Applicant's Revised Site Plans, February 2022
  3. Arborist Report
  4. Landslide Hazard Study
  5. Drainage Basin Report
  6. Storm Report
  7. Access Easement
  8. Response to Incomplete Items
  9. Alternative House Location
  10. 120-Day Extension Request
  11. Legal Lot Document
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Existing Conditions Site Plan
  2. Storm Drain & Utilities Site Plan (attached)
  3. Mitigation Site Plan (attached)
  4. Construction Management Site Plan
  5. Disturbance Areas Site Plan
  6. Site Grading & Erosion Control Plan
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Bureau of Transportation
  3. Life Safety
  4. Water Bureau
  5. Fire Bureau
  6. Site Development Review Section of BDS
  7. Bureau of Parks, Forestry Division
- F. Correspondence:
  1. Bob Evenson, 02.24.2022, Not in support of application
  2. Kurt Dahlke, 03.06.2022, Would like the proposal to meet standards and conduct the proposed mitigation
  3. Jennifer Schwartz, 03.10.2022, Not in support of application
  4. Annie Wong, 03.10.2022, Not in support of application
  5. Aaron Cain, 03.10.2022, Not in support of application
  6. Dave Malcom, 03.11.2022, Requests invasive species removal be made a condition of approval
  7. Tong Qi, 03.11.2022, Requests invasive species removal be made a condition of approval
- G. Other:
  1. Original LU Application
  2. Incomplete Letter

**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).**