



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

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Date: December 22, 2022
To: Interested Person
From: Timothy Novak, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

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

CASE FILE NUMBER: LU 21-088142 EN

GENERAL INFORMATION

Applicant: Peter Karp | PLI Systems, Inc
3045 SE 61st Court | Hillsboro, OR 97123

Representative: Joe Bettis | Turnstone Environmental Consultants
18000 NW Lucy Reeder Road | Portland, OR 97231
503.283.5338 | joe@turnstoneenvironmental.com

Owners: E Gary Servais Living Trust
690 Winding Way SE | Salem, OR 97302

Matthew & Amy Tackett-Nelson
6242 SW Burlingame Avenue | Portland, OR 97239

Irene & Roger Hediger
6238 SW Burlingame Avenue | Portland, OR 97239-2633

Deborah Rosas
6244 SW Burlingame Avenue | Portland, OR 97239-2633

Tamara Miller & Charles Roberts
7001 Seaview Ave NW #160-814 | Seattle, WA 98117

Site Address: 6238, 6240, 6242, 6244, 6246, and 6250 SW Burlingame Avenue

Legal Description: BLOCK 51 LOT 12-15 TL 5500, BURLINGAME; BLOCK 51 LOT 12-15 TL 5400, BURLINGAME; BLOCK 51 LOT 11 EXC NWLY 10', BURLINGAME; BLOCK 51 LOT 12&13 TL 4200, BURLINGAME; BLOCK 51 LOT 13&14 TL 4400, BURLINGAME; BLOCK 51 LOT 13 TL 51, BURLINGAME

Tax Account No.: R119105790, R119105816, R119105828, R119105830, R119105840, R119105846

State ID No.: 1S1E16DC 05500, 1S1E16DC 05400, 1S1E16DC 04100, 1S1E16DC 04200, 1S1E16DC 04400, 1S1E16DC 04300

Quarter Section: 3628

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

Business District: NONE

District Coalition: Office of Community & Civic Life, contact at CivicLife@PortlandOregon.gov

Plan District: NONE

Other Designations: Landslide Hazard; *Southwest Hills Resource Protection Plan* – Resource Site #115, George Himes Park

Zoning: *Base Zone:* Residential 7,000 (R7)
Overlay Zones: Environmental Conservation (c), Environmental Protection (p), Constrained Sites (z)

Case Type: EN – Environmental Review

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant requests Environmental Review for the installation of a proposed drainage network system needed to remediate an active landslide located across multiple properties in Southwest Portland. The proposed remediation consists of a network of subsurface drainage pipes that will capture both subsurface and overland stormwater and transport it to an appropriate discharge location near an existing creek. The proposed drainage installation will be conducted on behalf of the residents of 6238, 6240, 6242, 6244, 6246, and 6250 Southwest Burlingame Avenue in Portland's Hillsdale Neighborhood.

The landslide remediation work was given emergency exemption (33.430.080.B) to commence outside of the required Environmental Review land use process due to the immediate need to address the failing slope. The installation of the drainage network began in the Fall of 2021 and was put on hold during the Winter of 2021 due to heavy rains affecting the already compromised hillside. The remainder of the work was completed in September of 2022. The installation of the drainage network required impacts to natural resources including the removal of two native bigleaf maples and one unidentified deciduous tree, ranging in diameter from 8 to 13 inches, permanent disturbance from the overland stormwater line and rip-rap at the outfall of approximately 70 square feet, and temporary disturbance in the Environmental Zone of approximately 3,799 square feet, 1,376 of which is in the resource area. To mitigate for these impacts, the applicant proposes to plant the slope where the landslide occurred with native trees, shrubs, and groundcovers and where the majority of the temporary impacts took place. Additional seeding of all temporary disturbance areas, if not already completed during the work to install the drainage system, will be required. To further mitigate for impacts for permanent disturbance and tree removal, the applicant is proposing to remove invasive ivy that is in contact with trees as well as the invasive laurel that is plentiful on the site, especially in the vicinity of the creekbed.

The application for this review was submitted September 17, 2021. On October 1, 2022 the Environmental Zones Map Correction Project became effective and increased the amount of environmental zoning on the affected sites to include the majority of the landslide's body. Prior to October 1, 2022, a portion of the work area to repair the site and stabilize the slope was in the resource area of the Environmental Conservation overlay zone. Because the remediation work required disturbance within an Environmental Zone, certain standards must be met to allow work to occur by right. In this case, the applicant proposed disturbance in the resource area that exceeded the maximum allowed by 33.430.140.A. and the tree removal conducted in the resource area does not meet 33.430.140.J. The outfall for the drainage system also appears to be the second on site, with the existing catch basins in the shared driveway being collected and deposited into a drainage outlet structure about 15 feet from the new outfall. Per 33.430.180.H in place at the time that the application was received, only one 4-inch outfall is allowed on a site (*as of October 1, 2022*,

the standard was amended to increase the allowed diameter to six inches). For these reasons, Environmental Review is 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.A - Environmental Review Approval Criteria for** 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 composed of portions of five taxlots in the West Hills of Southwest Portland. Across SW Burlingame Avenue, to the south, are the grounds of Ida B Wells High School. To the north is a wooded gully, with houses facing Capitol Highway on the opposite north slope of the gully. There is a drainageway at bottom of the gully. SW Terwilliger Boulevard is past the east end of the drainageway, about 500 feet from the subject site. The forested, steep slopes of George Himes Park are located on the far side of SW Terwilliger Boulevard, followed by SW Barbur Boulevard and Interstate 5. At this point, the development intensity notably increases, and canopy coverage greatly decreases all the way to the Willamette River, about 5,000 feet east of the subject site.

Per the applicant’s narrative (Exhibit A.10, page 4), *“The subject properties include a mix of open habitats, mature forest, and developed areas. Much of the proposed [now existing] drainage network will encompass an area where ground water emergences are present and saturated soils are present year around.”* Per the Geotechnical Report associated with the permit to install the drainage system (Exhibit G.3), *“Elevations across the site range from about 525 ft at SW Burlingame Ave to 445 ft at the creek. This unnamed creek at the toe of the landslide flows towards the east....The evidence of past landsliding includes hummocky terrain and numerous trees that have been tilted uniformly from ground movement. Other trees in the steepest areas show a bowed-trunk growth pattern, an indication of gradual surficial slope creep. Smaller slumps are evident within the larger landslide mass. At the base of the slope, ... a minor secondary scarp is evident, indicating slumping of the lower-slope towards the creek.”*

These excerpts help to describe the site in the full context of the circumstances that have led to this review.

Zoning: The zoning at the project area includes the single-dwelling Residential 7,000 (R7) base zone designation with Constrained Sites (z) and Environmental Conservation (c) zone overlays (see zoning on Exhibit B).

The R7 base zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 4,200 square feet. Newly created lots must have a minimum density of 1 lot per 7,000 square feet of site area.

The Constrained Sites overlay zone reduces that development potential on lots that have certain development constraints. Under some circumstances, up to four dwelling units are allowed per lot in the R7, R5 and R2.5 zones. The development constraints make the lots in this overlay unsuitable for three or more dwelling units.

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 side is mapped within the *Southwest Hills Creek Resource Protection Plan (1992)*, as part of Site #115.

According to the Plan's description of Site #115:

The upland area is a western hemlock forest [the subject sites are in the upland area of Site #115]. The forest canopy is 80 to 90 percent closed and the dominant trees are bigleaf maple and Douglas fir. Generally, the forest is 10 percent coniferous with greater amounts of Douglas fir located higher in the basin and along NW Nebraska Street in George Himes Park. The forest includes old Douglas fir (over 36" dbh). The shrub layer is 30 percent closed and the herbaceous layer is 90 percent closed.

There is little habitat connection for terrestrial animals between the Willamette River and elsewhere in the study area due to obstacles such as I-5 and Barbur Boulevard. The bridges over I-5 and Barbur Boulevard provide a pedestrian link to the Corbett neighborhood. Between Corbett Street and the river, there are no habitat connections. There is, however, a strong avian link between the upland areas of the site (plus points farther west) and the river. Birds such as great blue heron, kingfisher and osprey travel west from the river via this site through the natural break in the West Hills.

The applicant's environmental consultant included the following description of the site in the narrative (Exhibit A.10, page 4):

*Vegetation here [in a very wet area near the head scarp, prior to installation of the drainage system] is dominated by giant horsetail (*Equisetum telmateia*) and Himalayan blackberry (*Rubus armeniacus*), with lesser amounts of willowherb (*Epilobium ciliatum*), evening nightshade (*Solanum dulcamara*), and speedwell (*Veronica americana*). Several red alder (*Alnus rubra*) stumps are located within this wet area. The periphery of this wet area contains overhanging big-leaf maple (*Acer macrophyllum*), English laurel (*Prunus laurocerasus*) with a dense undergrowth of English ivy (*Hedera helix*). Areas of mature forest are dominated by big-leaf maple and western red-cedar (*Thuja plicata*), with scattered Douglas-fir (*Pseudotsuga menziesii*), black cottonwood (*Populus balsamifera*) and red alder. Forested understories include holly (*Ilex aquifolium*), English laurel, beaked hazelnut (*Corylus cornuta*) and osoberry (*Oemleria cerasiformis*). Forest floors are a near monoculture of English ivy, with limited cover of native herbs including sword fern (*Polystichum munitum*), clasping twistedstalk (*Streptopus amplexicaulis*), Pacific waterleaf (*Hydrophyllum tenuipes*) and Pacific trillium (*Trillium ovatum*).*

Staff visited the site in May 2022, after much of the work had been completed. Observations were generally consistent with those above. Noteworthy was the concentrations of invasive English laurel, especially in the vicinity of the seasonal creek's banks (Exhibit G.4).

Land Use History: City records indicate there are no prior land use reviews for the subject sites.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 4, 2022**. The Bureaus listed below provided responses. Where applicable, their responses are incorporated into the relevant findings. The complete responses can be found in the "E" Exhibits.

- Bureau of Environmental Services
- Portland Bureau of Transportation
- Fire Bureau
- Site Development Section of BDS
- Urban Forestry Division of Portland Parks and Rec.
- Life Safety Section of BDS

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 4, 2022. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.430.250 Approval Criteria for Environmental 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 development subject to this review are found in Sections 33.430.250.A & E. Section 33.430.250.A contains the criteria for the outfall. Section 33.430.250.E contains the criteria for all development underground drainage pipe system uphill of 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:

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

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.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;

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: The purpose of these criteria is to recognize that some form of development is allowed, consistent with the base zone standards and that alternatives were considered to avoid and minimize impacts to the fullest extent practicable, while still meeting project objectives. Impacts of the proposed development are measured relative to practicable alternatives and to the impacts associated with the development normally allowed by the base zone; in this case, the development consists of a stormwater and groundwater management system that is necessary to provide slope stabilization for the site, which experienced acute slope failure (i.e., a landslide) in 2017. The slope stabilization work is necessary to safely maintain the residences on the site, which, per 33.110.100 and Table 110-1, are an allowed use (household living) in the R7 base zone.

The groundwork required to install the drainage system was limited to the area of the site already within the developed back yards and shared driveway of the residences. Beyond these existing disturbance areas, impacts were limited to erosion control and the placement of an above-ground pipe and associated outfall and rip-rap, where the underground drainage system is channeled to, nearer to the creek. The original proposal (alternative) by the engineers showed the removal of 7 native trees, totaling 112-inches diameter. Using the performance path, the project arborist was able to provide an alternative tree protection plan that reduced the number of trees that needed to be removed to 4, reducing the total diameter inches by more than half, to 52-inches. The remediation work and system installation were necessary

As indicated above, the new piping system and outfall for landslide remediation considered alternative approaches and chose the one that met the project objectives while minimizing the loss of resources and functional values on the site.

As such, *these criteria are 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: This approval criterion requires the protection of resources outside of the designated disturbance area from impacts related to the project work, such as damage to vegetation, erosion of soils and slope instability, as well as downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion.

The Construction Management Plan (Exhibit C.4), in combination with the arborist report (Exhibit A.10, pages 20-39), 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 has been effective because it provides realistic limits to disturbance while containing the necessary elements (e.g., sediment fencing, tree protection fencing, arborist supervision) to effectively protect resources and functional values outside of designated disturbance areas. Per the applicant's narrative addressing this criterion (Exhibit A.10, page 7):

- *Adjacent areas will be protected from disturbance throughout the project through the following:*
 - *Erosion Control measures to avoid sediment or sediment-laden water from moving beyond the work area.*
 - *Construction fencing will be placed during earth work to ensure no encroach on adjoining areas occurs.*
 - *Preserved trees will be marked, and root protection zones will be established.*

Therefore, *this criterion is 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: These criteria require 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. As stated in the applicant's narrative (Exhibit A.10), impacts of the proposal include:

- Approximately 70 square feet of permanent disturbance from the overland stormwater line and rip-rap at the outfall; and
- Approximately 3,799 square feet of total temporary disturbance in the Environmental Conservation Overlay Zone, 1,376 square feet of which is in the resource area.
- Removal of 4 native bigleaf maple trees with a total diameter of 52 inches. Of those, an 8 and a 13-inch are in the resource area, a 12.5-inch is in the transition area, and the largest, a 36.5-inch, was outside of the Environmental Zones*.

**It is worth noting here that the environmental zones have been expanded on the property since the application was received as part of the Environmental Zones Map Correction Project, which became effective on October 1, 2022. The location where the 36.5-inch Bigleaf maple was removed from is now in the transition area of the Environmental Conservation overlay. While that doesn't have bearing on the mitigation required to compensate for the project's impacts per se, it has informed how and where the proposed mitigation will occur. The majority of the impacted area on the site was outside of the e-zone or in the transition area. Now that area is almost completely within the e-zone. As such, staff has supported focusing the mitigation planting efforts in these areas to maximize the positive impacts of the planting plan on the site as it is currently configured with regards to the e-zone boundaries.*

To compensate for these impacts, the proposed Mitigation Plan includes the following:

- The restoration and replanting of 2,202 square feet of disturbance area within the resource area of the current environmental conservation overlay zone location;
- The restoration and replanting of 1,491 square feet of disturbance area within the transition area of the current environmental conservation overlay zone location;
 - Total plantings include 600 forbes, 80 shrubs, 4 trees, and a native prairie seed mix. All plant species proposed are flowering species and have been chosen, in part, to provide food for native pollinators (see Exhibit G.5);
- Nuisance species removal, as required by 33.430.140.L and 33.248.090.D, in and within 10 feet of the planting area(s);
- The removal of invasive English laurel from the portion of the site below the driveway and adjacent to the creek; and
- The cutting of invasive English ivy from the base and lower trunks of all affected trees within the e-zones of the site.

The final planting plan submitted on November 18, proposes the removal of ivy from approximately 750 square feet in the lower portion of the site (Exhibit C.5). Rather than removing ivy from an area that is likely to be surrounded by more ivy that will grow in over the course of time and, without regular maintenance, revert the area to its current condition in short order, staff suggested revising the nuisance species removal approach to focus on a broader, higher impact strategy that will have higher potential to better serve the site in the long run. Specifically, removal of all ivy climbing or at the base of the trees, coupled with removal of invasive English laurel, which has a significant presence on the site, especially in the vicinity of the creek. The applicant's environmental consultant responded, agreeing that it

“makes sense [to] broaden the area of treatment with a focus on sources of future ivy recruitment as well.”

The planting plan, in combination with the nuisance species removal noted above, will compensate for the lost resources resulting from the landslide remediation and will, in fact, enhance the overall condition of the site’s environmental resources by planting nearly twice the area disturbed, by providing a diverse palette of plantings that will support a more beneficial understory than is currently on site, and by providing a nuisance species removal plan that is more likely to provide increased opportunities for existing native understory vegetation to establish and expand their presence and inhibit regrowth of nuisance species into the future.

To confirm installation of the required plantings and removal of nuisance species, the applicant will be required to apply for a Zoning Permit to have the plantings and nuisance species removal inspected upon installation and completion. To confirm continued maintenance of nuisance species removal and planting areas, and to confirm the establishment of the required plantings for an initial two-year establishment period, the applicant will be required to submit annual monitoring and maintenance reports over a two-year monitoring period.

Furthermore, in addition to the above mitigation measures, the applicant shall be required by condition to plant the rip-rap at the outfall in accordance with 33.430.180.F.

Finally, it is worth noting that while the underground piping and drainage system that was installed had the adverse impacts listed above, by stabilizing the slope at the site, the work itself provides a long-term benefit to the site’s resources by limiting and avoiding future landslides with their associated loss of impacted resources.

With conditions for conformance with the standard for riprap pads, and to ensure nuisance species removal and that all required plantings are installed, maintained, and monitored, *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

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.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: The mitigation is proposed on the site where the landslide remediation occurred. The owners of the subject site(s) are party to this application.

Therefore, *these criteria are met.*

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

- 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 and associated rip-rap are located just outside of the environmental protection zone. Therefore, *this criterion is not applicable.*

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

Findings: The location of the outfall is approximately 45 feet from the creek. By providing sufficient rip-rap and by planting the rip rap with live stakes, water exiting the pipe will have its energy dissipated so that erosion into the creek is prevented. By doing so, impacts to fish resulting from siltation caused by erosion from the project will be avoided. As such, the project work avoids significant detrimental impacts to water quality in the creek. As noted above, a condition of approval will require that the rip-rap be planted in accordance with 33.430.180.F.

With the above condition of approval, *this criterion can be met.*

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

Findings: The project includes no crossing of water bodies. As such, *this criterion is met.*

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all 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.

In this case, the work has been conducted under Permit #21-042419 RS. The permit status is "Under Inspection". To further ensure that the mitigation plan is implemented, a condition of approval will mandate that the RS permit not receive final inspection approval until the Zoning Permit to verify installation of the plantings and riprap outfall pad, and removal of the nuisance species is issued and receives final inspection approval.

CONCLUSIONS

The applicant requests retro-active approval of the installation of a subterranean drainage pipe system and overground pipe and outfall within the transition area and resource area of the environmental conservation overlay zone to stabilize a slope where a significant and acute landslide occurred in 2017. The installation of the drainage pipe system was initially permitted under 33.430.080.B, an exemption for temporary emergency procedures necessary for the protection of life, health, safety, or property. The applicant worked with Land Use Services and Site Development staff during the building permit process to stabilize the slope in the least detrimental manner to the site's resources and functional values. The applicant has proposed plantings to mitigate and restore the resources and functional values that were impacted because of the landslide and subsequent slope stabilization work. The applicant, in conjunction with the above findings, has shown that the proposal meets the applicable approval criteria with conditions. Therefore, this proposal should be approved, subject to the conditions described below.

ADMINISTRATIVE DECISION

Approval of a retroactive Environmental Review for:

- The installation of a subterranean drainage pipe system and overground pipe and outfall; and,
- Mitigation efforts, including nuisance species removal and the planting of native trees, shrubs, and groundcovers at the site;

Within the Environmental zones and in substantial conformance with the approved site plans, Exhibits C.3 through C.5, subject to the following conditions:

A. A BDS Zoning Permit is required for inspection of required mitigation plantings and shall be obtained within 90 days of the final approval of this decision.

The Conditions of Approval listed below, shall be noted on the appropriate plan sheets submitted for the zoning permit. Plans shall include the following statement, ***“Any field changes shall be in substantial conformance with approved LU 21-088142 EN, Exhibits C.3 through C.5.”***

The Building Permit for the installation of the drainage system (currently 21-042419 RS) **shall not be finalized until the BDS Zoning Permit for inspection of nuisance species removal and mitigation plantings required below is finalized.**

1. The Zoning Permit shall include inspection of a mitigation plan, in conformance with Exhibit C.5 for:
 - a. The restoration and replanting of 2,202 square feet of disturbance area within the resource area of the current environmental conservation overlay zone location;
 - b. The restoration and replanting of 1,491 square feet of disturbance area within the transition area of the current environmental conservation overlay zone location;
 - c. Total plantings including 600 forbes, 80 shrubs, 4 trees, and a native prairie seed mix.
 - d. Nuisance species removal in and within 10 feet of the planting area(s);
 - e. The removal of invasive English laurel from the portion of the site below the driveway and adjacent to the creek; and
 - f. The cutting of invasive English ivy around the base and lower trunks of all affected trees within the Environmental Zones of the site.
 - g. The planting of the outfall rip-rap in accordance with 33.430.180.F.
2. The plans shall include a planting table listing the species, quantity, spacing and sizes of plants to be planted in substantial conformance with the tables listed on pages 2 & 3 of Exhibit C.5. 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. Pollinator-friendly flowering species must be substituted with pollinator-friendly flowering species.
4. Plantings shall be installed between October 1 and March 31 (the planting season).
5. All mitigation and restoration planting will be in conformance with 33.248.090 Mitigation and Restoration Plantings.
6. All mitigation and remediation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector; or the applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.

7. After removing the invasive species and installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Site Development Permit.

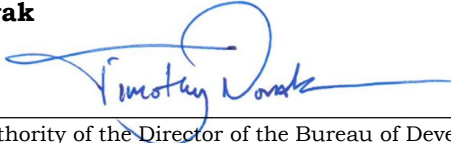
B. The landowner shall monitor the required plantings for two years to ensure survival and replacement as described below. The landowner is responsible for ongoing survival of required plantings beyond the designated two-year monitoring period. The landowner shall:

1. 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 Exhibit C.5, Mitigation Plan, showing the location and direction of photos.
- e. An estimate of percent cover of invasive species (e.g. English ivy, Holly, English laurel, etc.) within 10 feet of all plantings. Invasive species must not exceed 15 percent cover during the monitoring period.

C. 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 December 20, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed: December 22, 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 September 17, 2021, and was determined to be complete on March 14, 2022.

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 September 17, 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 227 days (Exhibits A.3, A.4, A.6, A.8, & A.9). Unless further extended by the applicant, **the 120 days will expire on: February 24, 2023.**

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 January 5, 2023. 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 **January 5, 2023** 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 Submittals
 - a. Plans
 - b. Arborist Report
 2. Revised Submittals (3/14/2022)
 - a. Narrative
 - b. Plans
 - c. Arborist Report
 - d. Geotech Field Report (11/2021)
 3. Request to Extend 120-day processing time, #1
 4. Request to Extend 120-day processing time, #2
 5. Geotech Field Report (09/2022)
 6. Request to Extend 120-day processing time, #3
 7. Narrative, Plans, and Arborist Report (10/24/2022)
 8. Request to Extend 120-day processing time, #4
 9. Request to Extend 120-day processing time, #5
 10. Narrative, Plans, and Arborist Report (11/18/2022)
- B. Zoning Map (attached)

C. Plans/Drawings:

1. Existing Conditions Plan
2. Proposed Development Plan
3. Tree Protection Plan (attached)
4. Construction Management Plan
5. Mitigation Plan with Planting Palette Tables

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. Fire Bureau
4. Site Development Review Section of BDS
5. Bureau of Parks, Forestry Division
6. Life Safety Review Section of BDS

F. Correspondence: NONE

G. Other:

1. Original LU Application
2. Incomplete Letter
3. Geotechnical Report(s) from 21-042419 RS
4. Site Photos taken by staff in May 2022
5. OSU Extension Guide – Landscapes for Pollinators

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).