



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

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**Date:** February 16, 2023  
**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 22-189370 GW EN**

#### **GENERAL INFORMATION**

**Applicant:** Stephanie Trujillo | Bureau of Environmental Services  
1120 SW 5th Avenue | Portland, OR 97204  
503.823.5786 | [Stephanie.Trujillo@portlandoregon.gov](mailto:Stephanie.Trujillo@portlandoregon.gov)

**Owners:** Miller Creek Holding, LLC  
1800 Southshore Boulevard | Lake Oswego, OR 97034

Frevach Land Co.  
12800 NW Marina Way | Portland, OR 97231

**Site Address:** [12800 NW MARINA WAY](#)

**Legal Description:** TL 200 16.68 ACRES SPLIT LEVY R502890 (R971340360), SECTION 34 2N 1W; TL 201 0.05 ACRES SPLIT LEVY R325463 (R971340030), SECTION 34 2N 1W

**Tax Account No.:** R971340030, R971340360

**State ID No.:** 2N1W34 00200, 2N1W34 00201

**Quarter Section:** 1716 & 1717

**Neighborhood:** Linnton, contact Sarah Taylor at [sarahsojourner@mac.com](mailto:sarahsojourner@mac.com)

**Business District:** None

**District Coalition:** North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-8877.

**Plan District:** None

**Other Designations:** [Inventory of Natural, Scenic and Open Space Resources for Multnomah County](#)  
[Unincorporated Urban Areas](#) – Resource Site 105A – Linnton; [Lower Willamette River Wildlife Habitat Inventory](#) – Inventory Site 4.2A (Rank I); 100-Year Floodplain

**Zoning:** Base Zone: Residential Farm/Forest (RF)  
Overlay Zones: Environmental Conservation (c), Environmental Protection (p), Greenway River General (g)

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

**Proposal:**

The applicant, City of Portland, Bureau of Environmental Services, requests approval of a resource enhancement project for fish passage enhancement at Fred’s Marina in Northwest Portland adjacent to Highway 30. The primary component of the project is to replace an existing 5-foot diameter corrugated metal pipe (CMP) culvert with a new 15½-foot x 7¼-foot aluminum box culvert for the benefit of fish passage through the project reach in lower Miller Creek. Another goal of the project is to remove invasive vegetation on the streambanks and establish native trees and shrubs for habitat enhancement. To complete the resource enhancement work, one native tree (10-inch Western red cedar) will need to be removed for the sake of equipment access. To mitigate for this impact and to enhance the onsite resources, the applicant proposes to plant 200 trees and 600 shrubs.

The site is within the City’s Environmental Conservation and Environmental Protection overlay zones. Certain standards must be met to allow the work to occur by right. If the standards are not met, an Environmental Review is required. In this case, the resource enhancement will require native tree removal and work within a waterbody; therefore, Standards 33.430.170.C.1, and .3 are not met by the proposal. For these reasons, an Environmental Review is required. Further, the site is also within the City’s Greenway River General overlay zone and because there are exterior alterations including tree removal, a Greenway Review is also required per 33.440.310.B.

**RELEVANT APPROVAL CRITERIA:**

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

- ❖ **33.430.250.B – Resource Enhancement Projects**
- ❖ **33.440.250.A – All Greenway Reviews**
- ❖ ***Greenway Design Guidelines***

## ANALYSIS

**Site and Vicinity:** The project site is located in unincorporated Multnomah County. Much of the site is located in an Urban Pocket area subject to City zoning regulations. A small portion of the work will occur outside of City jurisdiction. The proposed culvert replacement is to be constructed on land owned by Miller Creek Holdings, LLC in unincorporated Multnomah County and is on boat moorage property known as Fred’s Marina. The site is in the lowest reach of Miller Creek, about 700 feet upstream of its confluence with the Multnomah Channel. Surrounding uses include an active marina and boat moorage to the west, residential development to the south, the Willamette River to the north, and heavily vegetated natural area to the east.

**Zoning:** The zoning designations on the site include Residential Farm/Forest base zone, with the Greenway River General (g), Environmental Conservation (c), and Environmental Protection (p) overlay zones.

The Residential Farm/Forest base zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 52,000 square feet. Newly created lots must have a maximum density of 1 lot per 87,120 square feet of site area. The proposed resource enhancement is allowed in this zone and no base zone regulations apply to the proposal. The project will not change the use on the property.

The Greenway overlay zones are intended to protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along Portland’s rivers; establish criteria, standards, and procedures for the development of land, change of uses, and the intensification of uses within the greenway; and implement the City’s Willamette Greenway responsibilities as required by ORS 390.310 to 390.368 and Metro’s Title 3. The purpose of this land use review is to ensure compliance with the regulations of the Greenway overlay zones.

The 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.

**Applicant's Statement:** Miller Creek is a cold-water tributary to the Willamette River that originates in the northernmost region of Forest Park. Much of the watershed is forested with little impervious area, except for the lowest reaches where the creek crosses under State Highway 30, the Portland & Western railroad tracks, NW Marina Way, and finally through the project reach on private property. Three culverts remain within the lower 1,000 linear feet of the creek since ODOT removed a culvert from under Highway 30 in 2003. The lowest reach of the Miller Creek mainstem and its tributary run through Fred's Marina before discharging to a boat dock lagoon on the Multnomah Channel, a distributary channel of the lower Willamette River.

Miller Creek supports a healthy population of cutthroat trout and is the only Forest Park stream where anadromous salmon have been found. The BES watershed monitoring program has collected data indicating the stream's fish community is represented by entirely native species, including coastal giant salamander, rainbow/steelhead trout, and coho salmon. Though juvenile salmon have been found in reaches upstream of the project site, more recent stream surveys indicate instream conditions in the lower reaches of the creek present partial barriers to fish passage. Dense mats of reed canary grass in the channel inhibit passage during low flows, and the driveway culvert (which is consistently filled with rocks and debris) surcharges during higher flows creating a hydraulic barrier for fish during their return time upstream. As a result, BES monitoring efforts have yet to find evidence of migratory adult salmon presence upstream of the project site. Miller Creek habitat upstream of Highway 30 provides high salmon production capacity, and the project team has developed a proposal to remove a barrier and allow adult salmon and trout access to spawning and rearing reaches and maximize the recovery of ESA-listed salmon in Miller Creek. Miller Creek is slated to become the next City of Portland Salmon Sanctuary (<https://www.portland.gov/bes/protecting-rivers-streams/salmon-sanctuaries>), but first the creek must accommodate upstream passage for adult anadromous salmon and trout to complete the spawning phase of their life cycle.

The goal of this project is to construct a new 15½-ft by 7¼-ft box culvert to convey Miller Creek under the driveway to the entrance of Fred's Marina off NW Marina Way. The existing culvert is undersized (5-feet in diameter) for the active stream channel (9-foot width) and is a barrier to fish passage due to high flow velocities and limited depth of flow. There is an overflow ditch just upstream of the existing culvert that transports higher flows directly to the Multnomah Channel on the west side of the property. As a result of the current situation, channel conditions through the project reach are poor and contribute to migratory fish passage barriers. Fred's Marina maintenance staff have reported frequent removal of large volumes of sediment and debris upstream of the driveway culvert on their property. The property owner is cooperating with the city on replacing the existing culvert and improving the condition of Miller Creek.

The benefits expected from this project include:

- Provide adequate conveyance capacity so the driveway culvert does not surcharge up to a 25-year storm event
- Remove invasive riparian vegetation and establish native trees and shrubs
- Improve fish passage for native fish in all life stages
- Improve instream habitat features
- Reduce ongoing sediment and debris deposition upstream of the culvert
- Remove contaminants of concern associated with creosote logs positioned in the streambed prism and along the floodplain.

**Land Use History:** Below are the land use case reviews that the City of Portland has on record for the subject site:

- ❖ LUR 97-116403/404 (MUP 7-97 WRG/20-97 GEC): Approval of a Willamette Greenway Permit for fill dirt.
- ❖ LUR 99-131844 (MUP 47-99 GEC): Approval of grading activities associated with the construction of a dirt ramp east of Miller Creek and parking lot adjacent to NW Marina Way.
- ❖ LUR 02-162203 (MUP 02-086 T2): Approval to construct a new parking area adjacent to NW Marina Way, south of the marina access; boat trailer/dredge pipe storage area north of the marina access.

- ❖ LU 04-008697 EN GW: Approval of an Environmental Review and a Greenway Review to excavate a portion of the Olympic Pipeline for inspection and to install a temporary access route to the pipeline through a hardwood wetland forest.

**Agency Review:** A Notice of Proposal in Your Neighborhood was mailed November 2, 2022. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Life Safety
- Fire Bureau
- PBOT
- Site Development

The Senior Septic Sanitarian responded with the following comment. Please see Exhibit E.6 for additional details.

*In summary: The proposed culvert replacement and streambank restoration with native planting poses no concern to septic with 90% plans as shown. The ordinary high-water mark is not projected to change as shown on sheet 5 of 14. An existing system evaluation report from a certified septic installer / maintenance provider was received and the septic system was field located and marked. A site visit was conducted by myself [Lindsey Reschke] on 11/29/22 and some of the septic system locate markings were still visible (locate had occurred in summer).*

*The following are required:*

- 1. The septic system must be field located prior to the start of construction. The west distribution boxes and header pipes must be marked, and the lowest drainfield line (line number 6) must be field located and marked. Records indicate this drainfield line is 80ft long.*
- 2. The septic system must be fenced off during construction as shown on sheet 3 of 14.*
- 3. No grading downslope of the drainfield is allowed.*
- 4. No native tree or shrub plantings within 10ft of the lower drainfield line / drainfield are allowed. As described in #1 above, the lowest drainfield line must be field located and marked and records indicate it is 80ft long.*
- 5. A commercial plumbing permit is required to replace the 2" pressure line from the dockside ejector to the septic tank.*

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on November 2, 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

### 33.440.350 Greenway Review Approval Criteria

The approval criteria for a Greenway review have been divided by location or situation. The divisions are not exclusive; a proposal must comply with **all** the approval criteria that apply to the site. A Greenway review application will be approved if the review body finds that the applicant has shown that all the approval criteria are met.

**A. For all Greenway reviews.** The Willamette Greenway design guidelines must be met for all Greenway reviews.

**Findings:** The Willamette Greenway Design Guidelines address the quality of the environment along the river and require public and private developments to complement and enhance the riverbank area. The Design Guidelines are grouped in a series of eight Issues and are combined where similar:

**Issue A. Relationship of Structures to the Greenway Setback Area:** This issue “applies to all but river-dependent and river-related industrial use applications for Greenway Approval, when the Greenway trail is shown on the property in the *Willamette Greenway Plan*.” These guidelines call for complementary design and orientation of structures so that the Greenway setback area is enhanced;

**Issue B. Public Access:** This issue “applies to all but river-dependent and river-related industrial use applications for Greenway Approval, when the Greenway trail is shown on the property in the *Willamette Greenway Plan*.” These guidelines call for integration of the Greenway trail into new development, as well as the provision of features such as view points, plazas, or view corridors;

**Issue F. Alignment of Greenway Trail:** This issue “applies to all applications for Greenway Approval with the Greenway trail shown on the property in the *Willamette Greenway Plan*.” These guidelines provide direction for the proper alignment of the Greenway trail, including special consideration for existing habitat protection and physical features in the area of the proposed alignment;

**Issue G. Viewpoints:** This issue “applies to all applications for Greenway Approval with a public viewpoint shown on the property in the *Willamette Greenway Plan* and for all applications proposing to locate a viewpoint on the property”. These guidelines provide direction about the features and design of viewpoints, as required at specific locations;

**Issue H. View Corridors:** This issue “applies to all applications for Greenway Approval with a view corridor shown on the property in the *Willamette Greenway Plan*.” These guidelines provide guidance in protecting view corridors to the river and adjacent neighborhoods;

**Findings:** The Greenway trail designation is not shown on the property in the Willamette Greenway Plan and there are no viewpoints or view corridors identified on the site; therefore, *Issues A, B, F, G, and H do not apply*.

**Issue C. Natural Riverbank and Riparian Habitat:** This issue “applies to situations where the riverbank is in a natural state, or has significant wildlife habitat, as determined by the wildlife habitat inventory.” These guidelines call for the preservation and enhancement of natural banks and areas with riparian habitat;

**Guidelines:**

**1. Natural Riverbanks.** The natural riverbank along the Willamette River should be conserved and enhanced to the maximum extent practicable. Modification of the riverbank should only be considered when necessary to prevent significant bank erosion and the loss of private property, or when necessary for the functioning of a river-dependent or river-related use.

**2. Riparian Habitat.** Rank I riparian habitat areas, as identified in the wildlife habitat inventory, should be conserved and enhanced with a riparian landscape treatment. Other riparian habitat should be conserved and enhanced through riparian landscape treatments to the maximum extent practical. Conservation however does not mean absolute preservation. Some discretion as to what vegetation should remain and what can be removed and replaced should be permitted. Riparian habitat treatments should include a variety of species of plants of varying heights that provide different food and shelter opportunities throughout the year.

**Findings:** The portion of the site within city zoning jurisdiction contains a riverbank that is largely in a natural state and is categorized as having a Rank I habitat value (the highest rank) in the wildlife habitat inventory. The proposal does not propose any impacts or modifications to the riverbank as the resource enhancement work is occurring upland of the riverbank adjacent to NW Marina Way. Therefore, the natural riverbank and its riparian habitat are being conserved and protected as part of the proposed resource enhancement project and resources in the vicinity of the riverbank will be enhanced. Considering the preservation of an already high-value riverbank as well as the enhancement of surrounding resources, *Issue C is met*.

**Issue D. Riverbank Stabilization Treatments:** This Issue “applies to all applications for Greenway Approval.” This guideline promotes bank treatments for upland developments that enhance the appearance of the riverbank, promote public access to the river, and incorporate the use of vegetation where possible;

**Guidelines:**

**1. Riverbank Enhancement.** Riverbank stabilization treatments should enhance the appearance of the riverbank, promote public access to the river, and incorporate the use of vegetation where practical. Areas used for river-dependent and river-related industrial uses are exempted from providing public access.

**Findings:** Issue D promotes bank treatments for “upland developments” to promote public access. The proposed restoration project does not propose upland development, but rather a resource enhancement endeavor. Further, there is no recreational trail designation on City maps of the site, and no public access is proposed as part of this resource enhancement project. Therefore, *Issue D is not applicable*.

**Issue E. Landscape Treatments:** This Issue “applies to all applications for Greenway Approval which are subject to the landscape requirements of the Greenway chapter of Title 33 Planning and Zoning of the Portland Municipal

Code.” This Issue calls for landscaping treatments that create a balance between the needs of both human and wildlife populations in the Greenway Setback area or riverward of the Greenway Setback.

**Guidelines:**

**1. Landscape Treatments.** The landscape treatment should create an environment which recognizes both human and wildlife use. Areas where limited human activity is expected should consider more informal riparian treatments. Areas of intense human use could consider a more formal landscape treatment. The top of bank may be considered a transition area between a riparian treatment on the riverbank and a more formal treatment of the upland.

**2. Grouping of Trees and Shrubs.** In areas of more intense human use, trees and shrubs can be grouped. The grouping of trees and shrubs allows for open areas for human use, and has the secondary value of increasing the value of the vegetation for wildlife.

**3. Transition.** The landscape treatment should provide an adequate transition between upland and riparian areas and with the landscape treatments of adjacent properties.

**Findings:** The portion of the site within the city limits is largely undeveloped with the riverbank in a natural state. The landscape requirements required by 33.440.230 are currently met by the onsite conditions. As such, *this Issue is met.*

**B. River frontage lots in the River Industrial zone.**

**C. Development within the River Natural zone.** The applicant must show that the proposed development, excavation, or fill within the River Natural zone will not have significant detrimental environmental impacts on the wildlife, wildlife habitat, and scenic qualities of the lands zoned River Natural. The criterion applies to the construction and long-range impacts of the proposal, and to any proposed mitigation measures. Excavations and fills are prohibited except in conjunction with approved development or for the purpose of wildlife habitat enhancement, riverbank enhancement, or mitigating significant riverbank erosion. [and]

**D. Development on land within 50 feet of the River Natural zone.** The applicant must show that the proposed development or fill on land within 50 feet of the River Natural zone will not have a significant detrimental environmental impact on the land in the River Natural zone. [and]

**E. Development within the Greenway setback.** The applicant must show that the proposed development or fill within the Greenway setback will not have a significant detrimental environmental impact on Rank I and II wildlife habitat areas on the riverbank. Habitat rankings are found in the [Lower Willamette River Wildlife Habitat Inventory](#)

**F. Development riverward of the Greenway setback.** The applicant must show that the proposed development or fill riverward of the Greenway setback will comply with all of the following criteria:

**G. Development within the River Water Quality overlay zone setback.** If the proposal includes development, exterior alterations, excavations, or fills in the River Water Quality overlay zone setback the approval criteria below must be met:

**Findings:** Development is not proposed:

1. On a river frontage lot in the Greenway River Industrial overlay zone.
2. On or within 50 feet of the Greenway River Natural overlay zone.
3. within or riverward of the Greenway Setback.
4. Within the River Water Quality overlay zone setback.

Therefore, *these criteria are not applicable.*

**33.430.250 Approval Criteria**

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.

**B. Resource Enhancement Projects.** In resource areas of environmental zones, resource enhancement projects will be approved if the applicant's impact evaluation demonstrates that all the following are met:

**1. There will be no loss of total resource area;**

**Findings:** No loss of resource area is proposed. There will be no anticipated detrimental impact on any resources or their functional values. Only significant improvements are anticipated across all functional values. The resource area will provide enhanced habitat by removing a fish passage barrier and subsequently providing fish passage for native fish during all life stages.

Since no loss of total resource area will occur as a result of this project, *this criterion is met.*

**2. There will be no significant detrimental impact on any resources and functional values;**

**Findings:** The location of the proposed resource enhancement area is not designed to have any detrimental impacts to identified resources and functional values. Areas left undisturbed will not be indirectly or negatively impacted by the proposed project, and there will be better connectivity of improved habitat to adjacent undisturbed areas creating an overall ecological uplift to the site. The planting plan for the project will more than adequately compensate for any temporary impacts caused by the culvert replacement and the removal of one tree. Construction fencing will form a continuous barrier along the areas that are to remain undisturbed. Contractors will be instructed to stay within designated access, staging, and work areas, and outside of the tree protection fencing area. In this way, areas to remain undisturbed, including the area with an existing septic system discussed below, will not experience significant detrimental impact to resources and functional values.

A septic system and associated drainfield which services the marina was identified in the vicinity of the resource enhancement activities. The City's Septic Sanitarian identified measures (Exhibit E.6) the applicant must take to ensure the septic system and drainfield are avoided and remain intact. These measures will safeguard the septic system ensuring no impacts result from the resource enhancement activities.

Based on the foregoing and with the conditions for installation of construction fencing and erosion control as well as measures to protect the septic system and its components, *this criterion can be met.*

**3. There will be a significant improvement of at least one functional value.**

**Findings:** Functional values are anticipated to improve based on the removal of a fish barrier, the addition of large wood habitat to Miller Creek, and the comparison of existing versus proposed habitat. In addition, the project will also provide water quality and stream flow conveyance improvements.

The project revegetation plan includes revegetating disturbed areas with 200 native trees and 600 native shrubs. The installation of Large Wood habitat features will provide habitat for ground animals as well as insects. These actions will significantly enhance the stream and its riparian area and the functional values they provide, that currently exist onsite but are severely diminished due to the state of the current culvert.

Based on the improvement of resources and their functional values, and with conditions for tree and shrub planting and maintenance/monitoring, *this criterion can be 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 resource enhancement in the form of improved fish passage. All the construction activities will occur within the boundary of a delineated work area, which will localize impacts and protect other natural resources in the vicinity, specifically trees and wetlands. Subject to conditions related to on-going maintenance activities for the proposed plantings, the project is expected to result in an ecological uplift of multiple resources and functional values

within the project area. Therefore, the proposed resource enhancement project should be approved, subject to the conditions stated below.

## ADMINISTRATIVE DECISION

### Approval of a Greenway Review for:

- Exterior alterations to development, within the Greenway River General overlay zone including the removal of one tree and shrubs

### Approval of an Environmental Review for:

- Resource enhancement activities including the removal of one undersized culvert and the installation of one fish passage culvert;
- Installation of a temporary channel crossing;
- Disturbance including the removal of one native tree and understory vegetation; and
- Installation of native plantings and large wood habitat.

all within the Environmental Conservation, Environmental Protection, and Greenway River General overlay zones, and in substantial conformance with Exhibits C.1 to C.4, as approved and signed by the City of Portland Bureau of Development Services on **February 14, 2023**. Approval is subject to the following conditions:

**A. A BDS Zoning 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 22-189370 GW EN Exhibits C.1 to C.4."***

**1.** The permit plans must show or note the following:

- a. The septic system must be field located prior to the start of construction. The west distribution boxes and header pipes must be marked, and the lowest drainfield line (line number 6) must be field located and marked.
- b. The septic system must be fenced off during construction as shown on plan sheets found in Exhibit E.6.
- c. No grading downslope of the drainfield is allowed.
- d. No native tree or shrub plantings within 10ft of the lower drainfield line / drainfield are allowed. As described in #1 above, the lowest drainfield line must be field located and marked and records indicate it is 80ft long.

**B.** A commercial plumbing permit is required to replace the 2" pressure line from the dockside ejector to the septic tank.

**C.** Sediment fencing, wattles, and/or tree protection fencing shall be placed along the Limits of Construction Disturbance line, as depicted on Exhibits C.3, 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.

**D.** The Zoning Permit review shall include inspection of a mitigation plan for a total of 200 trees and 600 shrubs in substantial conformance with Exhibit C.4, Mitigation Plan. Any plant substitutions shall be selected from the *Portland Plant List* and shall be substantially equivalent in size to the original plant. Conifers must be 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.

**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 all areas within 10 feet of mitigation plantings, 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. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Zoning Permit.

**E. 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 Exhibit C.4, 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.

**Staff Planner: Morgan Steele**

Decision rendered by:  on February 14, 2023

By authority of the Director of the Bureau of Development Services

**Decision filed: February 16, 2023**

**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 30, 2022, and was determined to be complete on October 31, 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 30, 2022.

*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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: February 28, 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 March 02, 2023. 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 **March 02, 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 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 Submittal
  2. Narrative
  3. Greenway Overlay Map
  4. No-Rise Letter
  5. Site Photos
  6. 120-Day Extension Request
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Existing Conditions Site Plan
  2. Proposed Development Site Plan (attached)
  3. Construction Management Site Plan
  4. Mitigation Site Plan (attached)
- 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. Fire Bureau
  5. Site Development Review Section of BDS
  6. Septic Sanitarian
- F. Correspondence: None Received
- G. Other:
  1. Original LU Application

**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).**