



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

Carmen Rubio, Commissioner  
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[www.portland.gov/bds](http://www.portland.gov/bds)

**Date:** April 3, 2023  
**To:** Interested Person  
**From:** Timothy Novak, Land Use Services  
503-823-5395 / [Timothy.Novak@portlandoregon.gov](mailto:Timothy.Novak@portlandoregon.gov)

## **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 22-106557 EV**

#### **GENERAL INFORMATION**

**Applicant/Consultant:** Brian Bainnson | *Quatrefoil, Inc*  
415 NE 65th Ave | Portland, OR. 97213-5015  
(503) 256-8955 | [brian@quatrefoilinc.net](mailto:brian@quatrefoilinc.net)

**Owners:** Yi Chen & Corissa Lee  
252 NW Maywood Dr | Portland, OR. 97210-3332

**Site Address:** 252 NW MAYWOOD DR

**Legal Description:** LOT 1, PARTITION PLAT 1997-91; BLOCK 4 TL 6100, ST FRANCES HILL

**Tax Account No.:** R649773610, R737901420,  
**State ID No.:** 1N1E33CB 06001, 1N1E33CB 06100,  
**Quarter Section:** 3026 & 3027

**Neighborhood:** Hillside, contact Kevin Kohnstamm at [kevin.kohnstamm@comcast.net](mailto:kevin.kohnstamm@comcast.net) & Northwest District, contact Greg Theisen at [contact@northwestdistrictassociation.org](mailto:contact@northwestdistrictassociation.org)

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

**Plan District:** None  
**Other Designations:** Resource Site #110, *Southwest Hills Resource Protection Plan (1992)*; Regulatory Landslide Hazard Area (BDS)

**Zoning:** Residential 7,000 (R7)  
Residential Multi-Dwelling 2 (RM2)  
Environmental Conservation overlay zone (c)  
Constrained Sites overlay zone (z)

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

**Proposal:**

The applicant requests approval to remove and remediate impacts from unpermitted fill and grading that occurred on the site in the fall of 2020.

Total disturbance area from the violation is approximately 6,450 square feet, 5,225 square feet of which was in the resource area of the environmental conservation zone (e-zone) at the time the violation occurred (*the location of the environmental overlay was changed at the site in October 2022, when the Environmental Overlay Map Correction Project became effective*). According to the applicant and owners, no trees were removed as part of the violation; aerial imagery of the site from before and after the violation doesn't conflict with this assertion. The initial proposal included the retention of some portion of the unpermitted fill and grading to improve as a back yard area; that portion of the original proposal is no longer part of the request.

To remediate for the violation, the applicant proposes to remove the unpermitted fill and restore to the slope to its grade prior to the violation. Additionally, the applicant will remove invasive species from an additional 5,900 square feet beyond the disturbance associated with the violation. The total area of mitigation within the resource area and transition area is 12,150 square feet. This area will be replanted with 62 native trees, 420 native shrubs, 310 native groundcover plants, and seed with a native groundcover mix.

The violation site lies within the Environmental Conservation overlay zone. 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, disturbance occurred in the Environmental Conservation overlay zone that was both in excess of the maximum allowed by Standard 33.430.140.A and was done without authorization. Per 33.430.220, Environmental Review is required for all development in an environmental zone that does not meet the development standards of Sections 33.430.140 through .190 and for violations of this chapter. Per 33.430.405.A, under the scope of the revised proposal, the applicant could choose between meeting standards (Option One) or remediating the violation through Environmental Violation Review. Since a significant portion of the site is already vegetated with trees, the applicant chose an alternative planting plan that does not comply with the remediation planting standards of 33.430.405.B.3. Therefore, Environmental Violation Review is required to remedy the unauthorized grading within the resource area of the Environmental Zone. Per Subsection 33.430.405.D.2, the review to correct the violation is processed through a Type II procedure.

**Relevant Approval Criteria:**

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

- **33.430.250.G** Corrections to Violations

## ANALYSIS

**Site and Vicinity:** The subject site is a 74,601 square foot site, composed of two taxlots just north and across W Burnside from Washington Park and is just west of the high density urban concentration that NW 23<sup>rd</sup> Avenue characterizes. West of the subject site is developed with medium density single-family dwellings, which abruptly transitions to exclusively closed-forest canopy at the southern-most section of Forest Park, near Pittock Mansion, about 0.6 miles away.

The site itself is covered in closed-forest canopy for all of its southern half or more. The northern portion of the site includes the house, garage, and associated improvements at the top of the slope; it also includes the location of the grading and fill that is the subject of this violation. While still accommodating a notable amount of closed-forest canopy, the northern portion of the site has clearly been witness to extensive tree clearing over the course of the last

two-plus decades, as evidenced by historic aerial imagery, successive tree-cutting violation cases starting in 2000 (see land use history, below), and the number of topped bigleaf maples that grow downslope of the house, closer to the property line shared with the *Hilltop Condominiums at Uptown*.

**Zoning:** The zoning on the site includes single-dwelling Residential 7,000 (R7) and Residential Multi-Dwelling 2 (RM2) base zone designations, with Environmental Conservation (c) and Constrained Sites (z) overlay zones (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. The maximum density in the R7 is 1 lot per 7,000 square feet of site area. The development standards of the base zone are generally not applicable to the proposal, but will be verified at the time of permit review.

The RM2 base zone is a medium-scale multi-dwelling zone that allows multi-dwelling residential development up to a maximum FAR of 1.5 to 1 and requires a minimum density of 1 unit per 1,450 square feet of site area. The development standards of the base zone are generally not applicable to the proposal, but will be verified at the time of permit review.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

The Constrained Sites overlay zone is intended to reduce development potential to comply with protective measures adopted and acknowledged pursuant to statewide land use planning goals. This overlay zone reduces risk to life or property from certain natural hazards. There are no regulations in this overlay zone that apply to this review.

**Land Use History:** City records indicate the following prior land use cases for this site:

- ❖ 00-194959 CC – Zoning violation for tree cutting and removal in the Environmental Zone outside necessary approvals.
- ❖ LU 02-121362 EV – Approval of a Type III Environmental Violation Review to correct tree cutting violations within the Environmental Zone. Review required per the above referenced code compliance case (00-194959 CC).
- ❖ 04-065198 CC – Zoning violation for tree cutting and removal in the Environmental Zone. Compliance case was closed due to inability to verify extent of the tree removal.
- ❖ 11-165009 CC – Zoning violation for tree cutting. Compliance case was closed due to inability to verify if tree cutting was within the Environmental Zone.
- ❖ 16-200601 CC – Zoning violation for removal of heritage tree. Violation handled by Urban Forestry under 16-144912 UF.
- ❖ 20-198908 CC – Zoning violation for clearing and ground disturbance in Environmental Zone without necessary approvals. Status of the code compliance case is active and is being resolved through the implementation of the conditions of approval of this review.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **June 7, 2022**. Multiple Bureaus and Sections within BDS provided responses, including:

- Bureau of Environmental Services

- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division
- Life Safety Section of BDS

The full responses from each reviewer can be found under the “E” Exhibits of this decision. No specific concerns were identified or conditions of approval recommended.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on June 7, 2022. One written response was received from a notified property owner. The neighbor’s concerns are outlined below and responded to by staff. The full response from the neighbor is exhibited as Exhibit F.1.

1. Are the proposed species in the planting plan allowed by the code and how will they provide erosion control and slope stability in the near and mid-term while the trees and larger shrubs mature?

*Staff Response: Yes, all plantings are native plantings listed in the Portland Plant List. In addition to larger plants (trees) that take years to mature and provide significant soil and slope stability, the planting plan proposes seeding to provide swift permanent erosion control. Per the Site Development response (Exhibit 3.a), “The project area meets the criteria specified in City Code 10.30.030 as a Special Site with additional requirements for erosion, sediment and pollution control. An erosion control plan prepared by qualified design professional will be required at the time of site development permit application. Temporary and permanent erosion control will be required.”*

2. The area of the violation within the resource area should be fully planted.

*Staff Response: Since the Notice of Proposal was mailed out, the scope of work has changed and the request to retain a portion of the unpermitted work is no longer in the request. All of the area where unpermitted grading occurred that is within the resource area (as mapped at the time this application was submitted) is now proposed to be planted. See Exhibit C.2 for details.*

## ZONING CODE APPROVAL CRITERIA

### Title 33.430.250.G Corrections to Violations

For corrections to violations of this Chapter the application must meet all applicable approval criteria stated in subsections A through F above, and paragraphs 1, 2.b and 2.c, below. If these criteria cannot be met, then the applicant’s remediation plan must demonstrate that paragraphs 1, 2.a, 2.b, and 2.c are met.

**Findings:** The applicant is proposing to remove all unpermitted fill and restore the site to pre-violation conditions and implement a remediation plan; no other alterations to development, tree removal, or actions listed in 33.430.070 are proposed. As such, none of the approval criteria listed in subsections A through F apply and the application must meet the approval criteria of paragraphs 1, 2.a, 2.b, and 2.c.

#### 1. The remediation is done in the same area as the violation; and

**Findings:** As shown on the approved exhibits, C.2 and C.3, all of the unpermitted fill that precipitated the violation will be removed. All remediation, including invasive species removal, the planting of native trees, shrubs, groundcover, and the seeding of the project area with native grasses and forbes, will occur in the same area as the violation and in the areas adjacent to it on the same lot.

Therefore, *this criterion is met.*

**2. The remediation plan demonstrates that after its implementation there will be:**

**Findings:** According to the SW Hills Resource Protection Plan description of Resource Site #110, the types of resources within the site include: Intermittent creek, groundwater, scenic, open space, wildlife habitat and corridor, forest, cultural and historic heritage.

**a. No permanent loss of any type of resource or functional value;**

**Findings:** The proposal will return the site to pre-violation conditions. The remediation plan will restore and enhance the vegetation profile within the remediation area. In restoring the topography to pre-violation conditions, any impacts from the violation to groundwater/subsurface hydrological patterns will be remedied. Since the remediation area lacked much in the way of native plantings and trees prior to the violation (as evidenced by aerial and other imagery), the remediation plan not only avoids permanent loss of resources, but will enhance the site's contribution to the Resource Site's overall contribution to scenic, open space, wildlife habitat, and forest resources.

Therefore, *this criterion is met.*

**b. A significant improvement of a least one functional value; and**

**Findings:** As was noted in the description of the proposal and of the site, above, there were no trees present or removed within the violation area at the time the violation occurred. As noted in the applicant's narrative (Exhibit A.10.a), as documented in the Geotechnical Report, and as witnessed by staff during a site visit in the Spring of 2022, much of the project area is colonized by invasive species. By removing these invasives in an area twice the size of the area of the violation, and by replanting with native trees, shrubs, groundcovers, grasses, and flowering forbes, the habitat values at the site will be greatly increased, providing improved food and cover opportunities for a variety of invertebrates, birds, small mammals, and other species. For example, of the seven tree and ten shrub species listed, all but two are listed in the *Portland Plant List* as native plants used as food by wildlife.

Furthermore, 5 of 7 tree species and 2/3 of the total tree specimens proposed are attractive to pollinators (Exhibit G.5, page 13). The same is true for 9 of the 13 shrub and groundcover species. As noted in the introduction of the guide, *Enhancing Urban and Suburban Landscapes to Protect Pollinators* by the Oregon State University Extension Service, "landscapes that support a broad array of insect pollinators contribute to preserving the region's plant and insect biodiversity, ensuring robust and resilient ecosystems." (Exhibit G.5)

To ensure that the functional value of habitat wildlife continues to be significantly improved by the proposal, even if substitutions of plant species occurs, conditions of approval will require that species that provide food for wildlife or that are attractive to pollinators must be substituted with other species that are also documented as providing food for wildlife or are also attractive to pollinators. To further enhance and diversify pollinator-friendly habitat, a condition of approval will require that the seed mix that will be required over the remediation area must contain at least 20% by weight of species that are attractive to pollinators.

As well, as further detailed in the findings for 2.c below, by conditioning that the property owners monitor and maintain plant establishment and prevent the reestablishment of nuisance species, the long-term improvement of wildlife habitat and other vegetation-related resources on the site will be better ensured.

To the point of ensuring the long-term benefits of the proposed remediation, staff identified a potential conflict for trees planted along the north side property line. The property directly north of the subject property is in fact part of the parcel that the Uptown Condominiums are on and own. It is a ten-foot wide, 175-foot long portion of the condo's taxlot that connects the parcel to NW Maywood Dr. Based on GIS data, it appears to serve as a utility corridor for the condos' water service. That said, based on GIS data and Water Bureau comments from a

voided PLA on the subject property from 2018 (Exhibit G.8), it appears that the water line(s) could be on the subject property rather than in the condo-owned strip. The current remediation plan for this project proposes a concentration of large coniferous trees in very close proximity to the north property line. Whether in the condo-owned strip or the subject property, trees' roots can damage underground utilities under certain circumstances; tree removal can result as part of the repair process. Evidence of this risk is found in Chapter 3 of Water Bureau's Public Works Permit Process Manual, where it states, "Do not locate water mains in median strips or planter areas. For water mains installed less than 10 feet from street trees, a root barrier....is required." (Exhibit G.7, page 3-4). As proposed, there is a significant risk that the locations of the tree plantings on the north end of the subject property will create conflicts with water utilities as the trees mature, necessitating their removal, which compromises the benefits the remediation plan intends to provide. As such, staff finds that a condition of approval is appropriate requiring the applicant to locate the water lines and adjust the planting plan as needed to ensure that maturing trees will not damage the lines. Guidance for the distances between plantings and water infrastructure shall be obtained from the Water Bureau, plumbing code (which regulates private lines on private property), or other relevant agency and submitted with the Site Development Permit that will be required for the regrading and landscaping work.

With the above-noted conditions, *this criterion can be met.*

**c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.**

**Findings:** The original tree inventory for the vicinity of the project was significantly incorrect, it appears that it measured circumference, but even that, in a manner that is not consistent with the methods prescribed in 33.930.130 (See Exhibit C.2). The applicant re-measured the two trees nearest the area of work (Trees #1 and #10) and confirmed that the tree diameters are much smaller than listed on the tree inventory (Exhibits 12.a and 12.b). The new measurements also support the hypothesis that while inaccurate, the original tree inventory had an internal consistency that provides an understanding into the sizes of the trees in relation to each other. Based on this, we can ascertain that if placing the tree protection fencing at the location of the erosion control fencing shown on the plans (Exhibits C.1 and C.3) protects Trees #1 and #10 in conformance with the prescriptive path, then the remaining trees in the vicinity of the project can also be protected during the removal of the fill and regrading work. To ensure that all trees are sufficiently protected, a condition of approval will require that the applicant submit a corrected tree inventory with their Site Development permit application for the earth work and that, as needed, a certified arborist will create a tree protection plan where the prescriptive path to tree protection cannot be met. All tree protection shall be in conformance with 11.60.030.C Tree Protection Methods.

In addition to protecting existing trees, for new plantings, per the applicant's narrative (Exhibit A.10.a):

*A temporary irrigation system will be installed to provide supplemental watering during the establishment period.*

By protecting all trees in the vicinity of the project area, by installing erosion control in accordance with Title 10, and by irrigating all new plantings through the establishment period, the project proposal minimizes loss of resources and functional values during the remediation work and will do so until the full remediation program is established.

To ensure minimal loss of remediation plantings during establishment period, a condition of approval will require that the installation of the temporary irrigation system be incorporated into the scope of the Zoning Permit application for review and inspection along with nuisance species removal and the installation of native plantings.

To further ensure that the remediation plan effectively minimizes the loss of resources and significantly improves the site's native plant diversity and associated wildlife habitat, a condition of approval will require that the applicant monitor survival rates for a period of two years and replace any plantings that die in kind (in accordance with 33.248.090.G). Annual reports shall be submitted to BDS documenting survival rates and replanting efforts. Where a species has low survival rates, the applicant is responsible for replanting with a different native species. The monitoring report will provide a rationale for how the new species will better establish itself and what, if any, measures the applicant is taking to ensure improved success.

With the aforementioned conditions, *this approval 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 any required development permits (e.g. Site Development or Zoning) 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 remedy a violation to Chapter 33.430 for unpermitted grading in the Environmental Conservation overlay zone (20-198908 CC). To remedy the violation, the applicant and property owner propose to remove all unpermitted fill placed on the site and to regrade the site sufficient to restore the pre-violation topography. In addition, they propose to remediate by planting the disturbed slope with native vegetation and further enhancing the site by removing nuisance species in an adjacent 5,900 square foot area that they will also replant with native vegetation. The applicant's submitted materials 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 conditions described below.

## **ADMINISTRATIVE DECISION**

Approval of an Environmental Violation Review to:

- Remove all unpermitted fill and to regrade the approximately 6,450 square foot area of disturbance created by the violation;
- Remove nuisance species from an approximately 5,900 square foot area adjacent to the violation area;
- Replant within those areas 62 native trees, 420 native shrubs, 310 native groundcovers; and
- Reseed the project area with a native seed mix composed of at least 20% (by weight) flowering species attractive to pollinators;

Per the approved site plans, Exhibits C.2 and C.3, signed and dated March 30, 2023, subject to the following conditions:

- A. A BDS Site Development Permit is required for 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 22-106557 EV, Exhibits C.2 and C.3."
- B. Construction Management

1. The applicant shall submit a corrected tree inventory with their Site Development permit application for the earth work and that, as needed, a certified arborist will create a tree protection plan where the prescriptive path to tree protection cannot be met. All tree protection shall be in conformance with 11.60.030.C Tree Protection Methods.
  2. All measures provided for erosion control, such as silt fencing and straw wattles, shall be placed inside of the limits of disturbance and outside of the root protection zone established by the tree protection fencing.
  3. Tree protection and erosion control fencing shall be installed and inspected prior to any ground disturbance on the site.
  4. No mechanized construction vehicles are permitted outside of the approved "Limits of Disturbance" as delineated by the tree protection fencing. All planting work and invasive vegetation removal to be done outside the Limits of Disturbance shall be conducted using hand-held equipment.
- C. The Site Development Permit review shall include approval and inspection of a Remediation Plan for:
- The removal of invasive species from a 5,900 square-foot area and within ten feet of all planting areas, as indicated on Exhibit C.2;
  - The planting of 62 native trees, 420 native shrubs, and 310 native groundcovers within the area of the violation and the 5,9000 square foot nuisance species removal area adjacent to it;
  - The seeding of all disturbed areas (regrading and nuisance species removal) with a native seed mix that is composed by weight of at least 20% pollinator-friendly, flowering species; and
  - The installation of a temporary irrigation system to service new plantings.

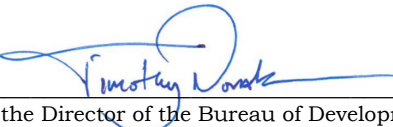
Any plant substitutions shall be selected from the Portland Plant List and shall be substantially equivalent in size to the original plant. Species that provide food for wildlife or that are attractive to pollinators must be substituted with other species that are also documented as providing food for wildlife or are also attractive to pollinators. Species diversity may not be reduced below that shown in the planting schedule on Exhibit C.2.

1. Permit plans shall show the general location of the trees, shrubs and ground covers required by this condition to be planted in the remediation 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. The applicant is responsible for locating the water lines in the vicinity or the north property line that provide service to the Uptown Terrace Condominiums and adjusting the planting plan as needed to ensure that maturing trees will not damage the lines. Guidance for the distances between plantings and the water lines shall be obtained from the Water Bureau, plumbing code (which regulates private lines on private property), or other relevant agency and submitted with the Site Development Permit for remediation activities. The purpose is to avoid any future need to remove required trees to prevent or address tree-related damage to the water service. Future requests to remove those trees will require approval through Environmental Review.



3. Plantings shall be installed between October 1 and March 31 (the planting season).
- 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 Site Development Permit, the applicant must submit and pay fees for review of the Landscape Monitoring Reports required below.
  2. After installation and inspection of the initial remediation plantings, the land owner must submit two annual monitoring and maintenance reports for review and approval to the Land Use Services Division of the Bureau of Development Services containing the monitoring information described below. Submit the first report within 12 months following the final inspection approval of the initial 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 90 percent of the planting area(s) vegetation cover at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 90 percent cover.
    - c. A list of replacement plants that were installed. As noted above, any plant substitutions shall be selected from the Portland Plant List and shall be substantially equivalent in size to the original plant. Species that provide food for wildlife or that are attractive to pollinators must be substituted with other species that are also documented as providing food for wildlife or are also attractive to pollinators. Species diversity may not be reduced below that shown in the planting schedule on Exhibit C.2.
    - d. Photographs of the Remediation area and a site plan, in conformance with approved Exhibit C.2, Remediation Plan, showing the location and direction of photos.
    - e. An estimate of percent cover of nuisance species (e.g. English ivy, Himalayan blackberry) within 10 feet of all plantings. Invasive species must not exceed 15 percent cover during the monitoring period.
- E. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

**Staff Planner: Timothy Novak**

**Decision rendered by:**  **on March 30, 2023**

By authority of the Director of the Bureau of Development Services

**Decision mailed: April 3, 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 January 25, 2022, and was determined to be complete on May 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 January 25, 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 requested that the 120-day review period be extended an additional 245 days, as documented in exhibits A.5, A.6, and A.11. Unless the applicant waives the 120-day review period, **the 120 days will expire on: May 31, 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 April 17, 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 **April 17, 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**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 (01/25/2022)
    - a. Narrative
    - b. Drawings
    - c. Site Evaluation and Tree Inventory

- d. Geotechnical Report
2. Revised Submittals (03/26/2022)
  - a. Narrative rev1
  - b. Drawings rev1
3. Revised Submittals (05/31/2022)
  - a. Narrative rev2
  - b. Drawing (remediation plan) rev2
4. Geotechnical Report rev1
5. 120-day extension request #1
6. 120-day extension request #2
7. Geotechnical Report rev2
8. Geotechnical Report rev3
9. Revised Submittals (02/07/2023)
  - a. Narrative rev3
  - b. Drawings rev3
  - c. Updated LUR application (new owners)
10. Cover Letter, Revised Submittals (03/02/2023)
  - a. Narrative rev4
  - b. Drawings rev4 (also exhibited as Exhibits C.1 through C.3)
11. 120-day extension request #3
12. Tree Measurements, Photo-documentation
  - a. Tree #1
  - b. Tree #10
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Site Plan
  2. Remediation Plan (attached)
  3. Grading Plan
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Fire Bureau
  3. Site Development Review Section of BDS
    - a. Site Development Addendum
  4. Bureau of Parks, Forestry Division
  5. Life Safety Review Section of BDS
- F. Correspondence:
  1. Saito Comments ([kelly.saito@yahoo.com](mailto:kelly.saito@yahoo.com))
- G. Other:
  1. Original LU Application
  2. Incomplete Letter #1
  3. Incomplete Letter #2
  4. LUS Response to 02/07/2023 Submittals
  5. OSU Extension Guide – *Enhancing Urban and Suburban Landscapes to Protect Pollinators*
  6. Section 3.17 of the Portland Plant List – *Native Plants Used As Food by Wildlife*
  7. Ch. 3 of Water Bureau Public Works Process Manual
  8. Water Bureau comments and related GIS maps from PR 18-117993 PLA in regards to location of water utilities near north property line.

**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).**