



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

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**Date:** July 23, 2021  
**To:** Interested Person  
**From:** Kate Green, 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 20-217881 EV**  
**UNINCORPORATED MULTNOMAH COUNTY**

**GENERAL INFORMATION**

**Applicant:** Robert Keatley  
PO Box 920  
Vancouver WA 98666  
[bobk@fortneycontractors.com](mailto:bobk@fortneycontractors.com) / 503-754-4547

**Site Address:** 5514 SW HEWETT BOULEVARD

**Legal Description:** TL 2400 3.66 ACRES, SECTION 07 1S 1E  
**Tax Account No.:** R991070950  
**State ID No.:** 1S1E07BA 02400  
**Quarter Section:** 3323

**Neighborhood:** Southwest Hills Residential League, contact at [contact@swhrl.org](mailto:contact@swhrl.org).  
**Business District:** NONE  
**District Coalition:** Southwest Neighborhoods Inc., contact at 503-823-4592.

**Plan District:** NONE  
**Other Designations:** Unincorporated Multnomah County, Streams, *Fanno Creek and Tributaries Conservation Plan* – Resource Site 124

**Zoning:** Residential 20,000 (R20)  
Environmental Conservation (c) and Environmental Protection (p)

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

**Proposal:** An **Environmental Violation Review** is requested to resolve unauthorized tree cutting, grading and ground disturbance (per Site Complaint, 16-266868 SC) in the Environmental Protection and Environmental Conservation overlays. To remedy the violation

and repair the disturbed area, the applicants propose to replant the impacted area with native vegetation and to remove ivy from trees in an adjacent area.

The applicant also proposes to remove a tree outside of the environmental zones and provide a replacement tree within the environmental overlay. The applicant indicates the tree to be removed is dead or dying from an ivy infestation. *In Unincorporated Multnomah County, no tree removal permit is required for trees outside of the environmental or scenic overlay zones, except in development situations. Planting native trees in the environmental zones is allowed and is not subject to environmental review.*

**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.**

## FACTS

**Site and Vicinity:** The subject site is situated in an Unincorporated Multnomah County pocket near the western boundary of the city's zoning jurisdiction. The site is approximately 3.66 acres and slopes down moderately to steeply from SW Hewett Boulevard. The site also has frontage along SW 55<sup>th</sup> Drive, which terminates in a cul-de-sac along the east property line. The violation area is adjacent to the SW 55<sup>th</sup> Drive frontage.

The northern portion of the site is developed with a multi-story residence, vehicle area, and ornamental landscaping. The balance of the site consists of a mix of ornamental and native vegetation. Nuisance vegetation is pervasive throughout the site. Several unnamed stream channels extend through the site, predominately within the portions with site that have environmental conservation and environmental protection designations. The surrounding development includes houses on large lots, a fragmented street system, hilly wooded terrain with multiple stream tributaries that feed into Fanno Creek.

**Environmental Resources:** Natural resources which have been identified by the City for protection in the environmental zones are listed in the Fanno Creek Watershed Inventory (1999), within Resource Site 124. Specific resources and functional values in Resource Site 124 include:

**Resource Features:** *tributaries to Fanno Creek; wetland, riparian and upland habitats, including open water stream/drainageway channels and ponds; wetland scrub-shrub and riparian and upland forests.*

**Functional Values:** *microclimate; stream flow moderation and water storage; bank and slope stabilization; sediment, pollution and nutrient control; fish and wildlife habitat.*

### **Site Resources, Habitat Features, and Wildlife noted in the Applicant's Arborist Report and Mitigation Plan:**

*The site is vegetated with an upland mixed deciduous-conifer forest dominated by an overstory of Douglas-fir (*Pseudotsuga menziesii*) in the south, and mixed invasive species in the north beyond the landscaped front and back fenced yards. The shrub layer in the area of impact includes English ivy (*Hedera helix*), Himalayan blackberry (*Rubus discolor*), and Oregon hazelnut (*Corylus cornuta*). The tree layer includes big leaf maple (*Acer macrophyllum*), birch (*Betula pendula*), cherry, plum (*Prunus avium* & *ceracifera*), Bradford pear (*Pyrus calleryana*) and English hawthorne (*Crataegus monogyna*). This assessment did not include a full site inventory of the forested area, but was limited in scope to the area of impact within the protected zone 60' down slope (southwest).*

*The applicant states the site was cleared of blackberries, and featured a seasonal pond with a small dock in the R20c conservation area. At the time of inspection the area was dry, but reed canary grass present indicates seasonal moisture. Habitat value for the site is moderate. Habitat value is added by the predominant native overstory of much of the undisturbed area of the property and the seasonal water feature. Habitat value is reduced by factors including; invasive*

*ground cover and shrub species, low tree canopy in the northeast portion of the property, and noise disturbance from adjacent SW Hewett Blvd. and 55th Dr. Current canopy coverage ranges from 100% to 20% from south to north. Some woody debris was present from prior cutting.*

*Wildlife reported include deer, rodent species including squirrels. Robins, flickers, hawks, and sparrows were the bird species that were seen and heard at the time of the site visits.*

**Zoning:** The site is situated in the **Single Dwelling Residential 20,000 (R20)** zone. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.

The site also has **Environmental Conservation (c)** and **Environmental Protection (p)** overlay designations. The Environmental zones protect resources and functional values that have been identified by the City as providing benefits to the public.

**Land Use History:** City records indicate there was one prior land use application (LU 19-253633 EN) for this site; however, that application was withdrawn.

**Agency Review:** Site Development, Water, and Fire indicated no concerns and did not provide written responses. The following Bureaus provided written responses with information that could affect future development, but noted no requirements for the pending review:

- Bureau of Environmental Services
- Portland Transportation
- Urban Forestry
- Life Safety

The Oregon Department of State Lands (DSL) responded with the following comment:  
*Based on review of the available information, replanting native vegetation and invasive ivy removal should resolved any impacts to onsite wetlands or waters due to unauthorized clearing.*

**Neighborhood Review:** A *Notice of Proposal in Your Neighborhood* was mailed on **May 19, 2021**. No written responses have been received.

#### **ZONING CODE APPROVAL CRITERIA**

**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 all of the following are met:**

- 1. The remediation is done in the same area as the violation; and**
- 2. The remediation plan demonstrates that after its implementation there will be:**
  - a. No permanent loss of any type of resource or functional value;**
  - b. A significant improvement of a least one functional value; and**
  - c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.**

**Findings:** The approval criteria which would have been applied to environmental review of ground disturbance and tree removal are found in 33.430.250.E, *Other development in the Environmental Conservation zone*; and 33.430.250.F, *Other development in the Environmental Protection zone*. The applicant provided written findings for the noted approval criteria, which indicates none apply since no use or development is proposed. However, changes to landscaping and the topography of the site are considered alterations and development, per the Zoning Code definitions (33.910). Therefore, all the criteria in Section 33.430.250.G.1-G.2.a-c must be met. To address these criteria, the applicant submitted an Arborist Report and Mitigation Plan (Exhibit A.4.a) that outlines their remediation strategy as follows:

**Impact Evaluation:** *The applicant improperly pruned and/or removed fourteen non-nuisance species trees in the protected zone in 2016. The total diameter of cut trees was 75". The total area*

impacted by improper tree cutting was field measured to be 800 square feet. The canopy loss was likely less than 1,000 feet. A possible impact of this activity was increased sunlight that may have increased invasive groundcover growth. At the time of the November 2019 site inspection, damage from grading and ground-disturbing equipment was not apparent due to vegetation growth. The City provided a map of the reported violation, but much of the mapped area appears to be seasonally wet. The City mapped area was not entirely passable due to vegetation, and could not be fully surveyed. The ground disturbing impact could not be field verified and the applicant states the impact was limited to the area near the cut stumps which were inventoried. The cut trees and 800 square feet of impact are within a slope with substantial invasive species including ivy and blackberries that extend across an area of about 2,400 square feet.

**Stabilize Slope:** As plants are establishing, cover and erosion protection from existing ground cover will be lost. This loss will be compensated for by following plan strategies such as erosion control jute netting, and mulch application. The benefit from nuisance removal and native restoration outweighs this loss.

**Restore Trees:** A Certified Arborist can restore cut trees to 1-3 stems to minimize loss of resources (root mass). The inventoried trees were cut near the base and not stump ground. As a result, they grew stump sprouts which are now 10-20' tall and suitable to be pruned by a Certified Arborist to be restored into trees. The basal pruning of the previous trunks does introduce the potential for decay, but the location has no target or hazard, and the risk of failure is low. The most ecological strategy is to train the sprouts to form new trees supported by existing established root systems. This option is preferable to further removal which would constitute a loss of resources and functional values as some of the existing root systems are stabilizing a slope over 45 degrees.

**Undisturbed Area:** The undisturbed area is south of the proposed mitigation. This undisturbed area will be fenced before and during mitigation using T- posts and pvc mesh construction fencing that is not trenched below grade, but installed above grade to avoid impacting tree roots. Silt fencing is not recommended, as the installation specifications require trenching that would cause further impacts. Erosion control methods are described in the Mitigation Plan. Site access will be through the area of the property that is not a protected or conservation zone. Site access will be conducted on foot by personnel carrying light-duty power and hand tools, and not conducted with heavy equipment. Debris will be hauled out by hand or on tarps without the use of wheeled machinery. Material staging if required will be on the paved patio area or within the backyard, which is not part of the protected zone.

#### **Mitigation Measures - Site Restoration**

1. Prior to work, all contracted personnel should attend a pre-work meeting to review the Mitigation Plan and fully understand the recommendations outlined to ensure success and avoid site impacts.
2. Restoration work will be conducted by personnel accessing the site on foot carrying light-duty power and hand tools, and not conducted with heavy equipment. Debris will be removed by carrying it off site by hand along existing concrete path when feasible to minimize soil compaction.
3. A Certified Arborist will supervise preservation of damaged trees with restoration pruning.
4. In lieu of tree protection fencing within the restoration area - which would hinder invasive species removal and site management - conduct vegetation removal by hand, near trees to be retained, with Certified Arborist supervision. The Certified Arborist will photo document any impacts that may hinder tree restoration and may make additional tree care recommendations as a result of tree and site features identified in the course of mitigation.
5. Stabilize slopes and replant site within 7 days after invasive species removal.
  - a. Install slope stabilizing jute mesh across the restoration area.
  - b. Plant native groundcover, shrubs, and trees listed in Table 2. Plant Material
  - c. Prune stump sprouts to restore trees to 1-3 stems.
  - d. Install drip irrigation on a timer connected to hose bib at main building.
  - e. Spread 3-4" of wood chip or bark mulch across the area to minimize erosion, soil temperature fluctuation, and desiccation. Over time, mulch will breakdown and increase

soil organic content. Mulch may be blown in or applied using wheelbarrows and rakes. New mulch must be reapplied throughout the establishment period, likely annually to maintain 3-4" throughout the site.

- f. No weed barrier cloth is to be applied. Weeds should be monitored monthly and treated according to the maintenance plan (below).

**Maintenance and Monitoring:** Maintenance will be conducted regularly according to the following guidelines:

1. Monitor site monthly for weed emergence and spot treat with mechanical and/or chemical control for a period of 12 to 24 months.
2. Begin irrigation in April, two to three times per week to allow for plant establishment. Adjust irrigation as needed if plants show stress. Irrigation can end in October after rainfall has been sufficient to saturate soil.
3. Inventory groundcover in February each year and replant any sites that fail to establish with new plantings, substituting species or amending site if necessary to aid establishment.
4. Prune basal sprouts from trees to promote upright growth of one to three main stems in March and June each year until trees have regained structure.
5. All maintenance should be conducted by personnel accessing the site on foot carrying light-duty power and hand tools, and not conducted with heavy equipment.
  - a. Installation: All landscaping will be in-ground. All plant materials should be installed to current nursery industry standards. Ground cover and shrubs will not be staked. Trees should be staked for one year with two or three wooden posts pounded to a depth of 1.5-2', and tree should be loosely tied with jute twine at two points of connection. Stakes should be monitored and replaced in the event of failure for one year. After one year, stakes should be removed unless tree still requires support.
  - b. Maintenance: Maintenance of landscaped areas is the ongoing responsibility of the applicant or property owner. Required landscaping must be continuously maintained in a healthy manner. Plants that die must be replaced in kind, or with an alternate native species from the Portland Plant List. City of Portland maintains that a fine may be levied if the landscaping has not been maintained, and new plants required to be planted. Regular monitoring will alert applicant or owner to issues that may arise.
  - c. Irrigation: Plants will be watered by temporary drip irrigation installed at the time of planting. This qualifies as Option 3: (by hand). City of Portland maintains if the applicant chooses this option an inspection will be required one year after final inspection to ensure that the landscaping has become established. An inspection fee, paid at the time of permit application, will be required.
  - d. Protection: The restored area must be protected from potential damage by adjacent uses and development. The area is in a remote area of the property, far from site uses, and beyond a fence from adjacent development.

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

**Findings:** The remediation is proposed within the same general area as the violation, so this criterion is met.

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

- a. No permanent loss of any type of resource or functional value;**
- b. A significant improvement of a least one functional value; and**
- c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.**

**Findings:** These criteria require that the disturbed area is returned to a natural state, and that all resources and functional values formerly present in the violation area, are restored by the remediation plan. As described in the applicant's Arborist Report and Mitigation Plan (Exhibit A.4.a), the project arborist identified 14 trees, including 13 native big leaf maple (*Acer macrophyllum*) and 1 non-native red oak (*Quercus rubra*), were removed from an approximately 800 square foot area. To address the loss of the trees and the associated

ground disturbance, the applicant proposes to prune stump sprouts to restore those impacted trees to 1-3 stems and to install native plantings, including 48 trees, 48 shrubs, and 240 ground cover.

To ensure these measures are sufficient to prevent any permanent loss of environmental features or functional values, the remediation actions and the quantity of plantings must be sufficient to repair and enhance the violation area. There are discrepancies between the impact area and planting details provided in the planting table in the arborist report and that shown on the project plans. For instance, the size of the restoration area is noted as 2,400 square feet in the applicant's narrative (Exhibit A.4.b) and the disturbance area is noted as 3,895 square feet on the project plan (Exhibit C.3). Whereas, the size of the disturbance area is shown as approximately 6,000 square feet on the aerial photo and diagram of tree cutting area (Exhibit G.3) prepared by BDS Staff as part of their site inspection for the 2016 Site Complaint (16-266868 SC). Additionally, though the project plan (Exhibit C.5) shows an approximately 10,000 square foot area where plantings are proposed to be installed, and an approximately 40,000 square foot area where ivy is proposed to be removed from all tree trunks, a large portion of those designated areas are outside of the environmental zones. So, while the removal of nuisance species and the addition of native plantings outside of the environmental zones is encouraged, the remediation actions should be located within the environmental zoned portions of the site to repair and amplify improvements to the designate resources within those areas.

To address these inconsistencies, BDS Staff find that a minimum 6,800 square foot replanting area, localized within the environmental protection and conservation zones, as noted on the BDS Staff Modified Plan (Exhibit C.1), must be planted with native species from the *Portland Plant List* at the following minimum planting density: 10 plants per 50 square feet at a ratio of one tree, two shrubs, and 7 groundcover plants, to align with the Restoration Planting standard (33.430/Table 430-2). Existing trees and tree stumps shall not be counted toward the minimum planting density. The remaining area may be seeded with native grass seed. Additionally, to allow adequate space for the existing tree stumps to be restored to full size trees, per the arborist recommendations, as well as reasonable spacing from other existing trees, the remediation tree plantings should be installed at least 10 feet from any existing tree or tree stump. Prior to plant installation, all plants listed on the *Nuisance Plant List* must be removed from within 10 feet of remediation plantings, with hand-held tools and under the project arborist's supervision to avoid impacts to the remaining trees. These measures should help to ensure there is no permanent loss of environmental resources.

Additionally, to ensure the applicant's ivy removal remediation measures will result in a significant improvement to the site resources and temper any further losses pending success of the remediation plantings, ivy should be removed from all trees within both the planting remediation area and the ivy remediation area, as noted on the BDS Staff Modified Plan (Exhibit C.1). Since no specific details about the proposed ivy removal were provided in the applicant's materials, and to ensure clarity for the applicant, construction workers, and city inspectors, BDS staff will require the ivy cutting to be performed as outlined in the following guidelines from Portland Parks "No-Ivy League": *Girdle the ivy by using loppers or a pruning saw to cut through every vine clinging to the tree trunk at shoulder height and at ankle height. Strip the ivy away from the tree between the two cuts – carefully, so the bark is not damaged. After girdling the ivy from the tree, also clear the surrounding ground ivy vines and roots within a 6-foot radius around the tree. Remove all cut ivy vines and roots from the site.*

Additionally, to minimize the impacts of lost resources within the violation area, the remediation must occur as soon as practicable. Therefore, the applicant will be required to apply for a BDS Zoning Permit for inspection of the remediation actions within six weeks of the final day of the appeal period of this decision.

To demonstrate that the full remediation program becomes established in a timely manner, the applicant must document success of the remediation plan approved in this review. To

document the success of the ivy and other nuisance plant removal and the health of the tree stumps and other required plantings, the applicant will be required to submit monitoring reports for the required remediation 2 years following final plantings.

Also, the option of controlling subsequent weed emergence with the use of chemical controls, as proposed in the arborist report, does not satisfy the approval criteria and will not be allowed, since no specific herbicides or application techniques were proposed and the probability of detrimental impacts to the newly planted native species and other resources, including the onsite stream corridors, is extremely high.

Otherwise, with the noted conditions, the area of the violation will be repaired, the loss of resource functions and values will be minimized, and the health of the remaining trees will be enhanced. As such, these criteria will be met.

## CONCLUSIONS

Through this Environmental Violation Review, the applicant requests approval of remediation for a Zoning Code violation which occurred within the Environmental overlay zones. The applicant proposes to repair the impacted area; install new native plantings to replace the values afforded by the 14 cut trees; and remove ivy from existing trees to improve their health and support the remaining tree canopy. With conditions that outline specific planting locations and densities; ivy removal methods; onsite supervision by the project arborist; and monitoring requirements; and disallow herbicides, there will be no permanent loss of resource function or value; there will be significant improvements to the existing trees; and nearby resources will be protected.

Overall, with the noted conditions, the applicant's proposed remediation plan, as modified by BDS Staff, will meet the criteria for remediation of violations and should be approved.

## ADMINISTRATIVE DECISION

**Approval** of an Environmental Violation Review for correction of a Zoning Code violation in the Environmental Conservation and Protection overlay zones in conformance with BDS Staff-Modified Exhibit C.1. Approval is subject to the following conditions:

- A. Within six weeks of the final day of the appeal period of this decision**, the applicant shall:
1. **Apply for a BDS Zoning Permit** for the removal of noxious vegetation and the installation of the required remediation plantings, as depicted on the BDS Staff Modified Plan (Exhibit C.1)
    - a. No other BDS Permits shall be finalized until the BDS Zoning Permit for inspection of remediation plantings required in Condition B, below, is finalized.
    - b. The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permit. Plans shall include the following statement, "*Any field changes shall be in substantial conformance with approved LU 20-217881 EV Exhibit C.1.*"
      - 1) The project arborist shall be onsite during all nuisance plant removal and plant installation and monitoring activities for the approved remediation actions, during the required minimum 2 year monitory period.
      - 2) Native plants shall be installed at the following minimum density: 10 plants per 50 square feet at a ratio of one tree, two shrubs, and 7 groundcover, to provide at least 136 trees, 272 shrubs, and 952 groundcover within the designated 6,800 square foot planting remediation area in substantial conformance with the BDS Staff Modified Plan (Exhibits C.3). Existing trees and tree stumps shall not be counted toward the minimum planting density. Trees must be at least one-half inch in diameter, shrubs must be at least 1 gallon, and groundcover plants a minimum pot size of 4 inches. The remaining area may be seeded with native grass seed. All plantings shall be selected from the *Portland Plant List*.

- (a) Permit plans shall show:
1. The general location of the trees, shrubs and ground covers required by this condition to be planted in the remediation planting area and labeled as “new required landscaping”. The plans shall include a 40-foot by 40-foot “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. To allow adequate space for the 14 existing tree stumps to be restored to full size trees, per the arborist recommendations, as well as reasonable spacing from other existing trees, the remediation tree plantings shall be installed at least 10 feet from any existing tree or tree stump.
  3. The applicant shall indicate on the plans selection of either tagging plants for identification or accompanying the BDS inspector for an on-site inspection.
- 3) Plantings shall be installed between October 1 and March 31 (the planting season).
  - 4) Prior to installing the required remediation plantings, non-native invasive plants shall be removed from all areas within 10 feet of remediation plantings, using handheld equipment. No herbicides or mechanized construction vehicles are permitted.
  - 5) Ivy shall be removed all tree trunks in both the planting remediation area and the ivy remediation area, as noted on the BDS Staff Modified Plan (Exhibit C.1), as follows: *Girdle the ivy by using loppers or a pruning saw to cut through every vine clinging to the tree trunk at shoulder height and at ankle height. Strip the ivy away from the tree between the two cuts – carefully, so the bark is not damaged. After girdling the ivy from the tree, also clear the surrounding ground ivy vines and roots within a 6-foot radius around the tree. Remove all cut ivy vines and roots from the site.*
  - 6) After removing the invasive species from the planting areas; removing ivy from the tree trunks; and installing the required remediation plantings, the applicant shall request inspection of remediation actions and final the BDS Zoning Permit.
  - 7) All ivy cleared trees and remediation trees and shrubs 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.

- B. The landowner shall monitor the required ivy removal, the 13 big leaf maple tree stumps/shoots, and remediation plantings** for two years to ensure the ivy remains clear of the trees within the Ivy Remediation Area, the tree stump/shoots are managed, per the arborist report, and to ensure survival and replacement of native plantings in the Planting Remediation Area, 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 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 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 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) to ensure a minimum of 136 trees are thriving in the Planting Remediation Area.
    - The percent coverage of native shrubs and ground covers. If less than 80 percent of the Planting Remediation 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).
    - A list of replacement plants that were installed.



- Photographs of the mitigation area and a site plan, in conformance with the permit plans approved per Condition A, showing the location and direction of photos.
- 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. Herbicides are not approved for nuisance control.

**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: Kate Green**

**Decision rendered by:**  **on July 21, 2021**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: July 23, 2021**

**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 November 19, 2020, and was determined to be complete on April 30, 2021.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on November 19, 2020.

*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 by 14 days (Exhibit A.5). Unless further extended by the applicant, **the 120 days will expire on: September 10, 2021.**

**Some of the information contained in this report was provided by the applicant.** As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Hearings Officer, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on August 6, 2021. 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.

**Appeal fee waivers.** Multnomah County may cover the appeal fees for their recognized associations. An appeal filed by a recognized association must be submitted to the City with either the appropriate fee or the attached form signed by the County. Contact Multnomah County at 503-988-3043, 1600 SE 190<sup>th</sup>, Portland, OR 97233.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **August 6, 2021** 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. Initial Submittal
  - 2. Submittal 4-29-2021
  - 3. Submittal 4-30-2021
  - 4. Submittal 5-13-2021
    - a. Arborist Report and Mitigation Plan
    - b. Narrative
  - 5. Timeline Extension
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. BDS Staff Modified Mitigation and Remediation Plan (attached)
  - 2. Pre-Cut Site Plan
  - 3. Cut Conditions Site Plan
  - 4. Enlarged Planting Plan
  - 5. Mitigation and Remediation Plan
- 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. Bureau of Parks, Forestry Division
  - 4. Life Safety/BDS
  - 5. Oregon Division of State Lands
- F. Correspondence: (none received)
- G. Other:
  - 1. Original LU Application
  - 2. Letter to applicant re: incomplete application
  - 3. Aerial photo and diagram of tree cutting area from 2016 Site Complaint (16-266868 SC)

**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).**