



Hearings Office

City of Portland

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File Number: LU 19-192268 CU (Hearings Office 4190024)

Applicant(s): Cynthia Haruyama  
Portland Japanese Garden  
611 SW Kingston Avenue  
Portland, OR 97205

Applicant's Representative(s): Chris Hagerman  
The Bookin Group LLC  
1140 SW 11<sup>th</sup> Avenue, Suite 500  
Portland, OR 97205

Property Owner(s): Kingston House:  
Japanese Garden Foundation of Oregon  
PO Box 3847  
Portland, OR 97205

Washington Park tax lots containing Japanese Garden

Leased Land:  
City of Portland  
1120 SW 5<sup>th</sup> Avenue #609  
Portland, OR 97204

Hearings Officer: Gregory Frank

Bureau of Development Services (BDS) Staff Representative: Andrew Gulizia

Site Address: Kingston House  
369 SW Kingston Avenue

Washington Park tax lots containing Japanese Garden

Leased Land:  
City of Portland  
1120 SW 5<sup>th</sup> Avenue #609  
Portland, OR 97204

Legal Description: BLOCK 11 LOT 18&26 TL 5800, ARLINGTON HTS & RPLT;

TL 2004.22 ACRES, SECTION 32 1N 1E; TL 200 21.12  
ACRES, SECTION 05 1S 1E

**Tax Account Number:** R037503150, R941321360, R991050840

**State ID Number:** 1N1E32DD 05800, 1N1E32 00200, 1S1E05 00200

**Quarter Section:** 3026

**Neighborhood** Arlington Heights

**Business District:** None

**District Neighborhood Coalition:** Neighbors West/Northwest

**Zoning:** Kingston House: R7c – Single-Dwelling Residential 7,000  
with a portion of the site in the Environmental  
Conservation (“c”) overlay

Washington Park tax lots containing Japanese Garden  
Leased Land: OS/OSc/OScs/OSp – Open Space with  
portions of the site in the Environmental Conservation  
(“c”), Scenic (“s”), and Environmental Protection (“p”)  
overlays

**Land Use Review:** Type III, CU – Conditional Use Review

**BDS Staff Recommendation to Hearings Officer:** Approval with conditions.

**Public Hearing:** The hearing was opened at 9:00 a.m. on October 30, 2019, in the third floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 11:28 a.m. The record was held open until 4:00 p.m. on November 6, 2019 for new evidence; until 4:00 p.m. on November 13, 2019 for response to new evidence; and until 4:00 p.m. on November 20, 2019 for the Applicant’s final argument. The record was closed at 4:00 p.m. on November 20, 2019.

**Testified at the Hearing:**

Andrew Gulizia  
Chris Hagerman  
Robert Zagunis  
Drake Snodgrass  
Lisa Christy  
Dana Mirkin  
Jeffrey Kleinman  
Kathy Goeddel

Hilary Mackenzie  
Collen Shoemaker  
Christie Galen  
Steve Janik  
Kristin Wuttig  
Kelly Hossaini

## II. ANALYSIS

**Proposal:** In 2009, a Type III Conditional Use Review approval (LU 09-143061 CU AD) allowed administrative offices at 369 SW Kingston Avenue (the "Kingston House"). Condition of approval D from LU 09-143061 CU AD (the "2009 Decision") limited the use of the Kingston House as administrative offices for 10 years. The Applicant, in this case, requested Type III Conditional Use Review approval to amend condition of approval D and extend the use of the Kingston House as administrative offices for the Japanese Garden for another 10 years. The Applicant did not propose any alterations to the existing house or grounds.

**Approval Criteria:** To be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are in the Portland Zoning Code ("PCC") Section 33.815.105.A-E.

The City's 2035 Comprehensive Plan has been appealed. PCC 33.815.105 A-E is considered an "unacknowledged land use regulation" while the appeal is pending. This proposal must also comply with applicable Statewide Planning Goals.

**Site and Vicinity:** The Portland Japanese Garden (the "Garden") is located in the northwest portion of Washington Park. Washington Park is a large City of Portland park with sloping topography, forest land, trails, and regional attractions such as the Oregon Zoo, World Forestry Center, Children's Museum, and the International Rose Test Garden, in addition to the Garden.

The property containing the Kingston House is a 9,400-square-foot lot on SW Kingston Avenue owned by the Japanese Garden Foundation of Oregon. The Japanese Garden portion of Washington Park is just south of the Kingston House, and the Washington Park tennis courts are across SW Kingston Avenue. The Kingston House is about 2,200 square feet (including the finished basement) and was built in 1925 as a residence.

Except for Washington Park to the south, neighboring properties around the Kingston House are developed with single-dwelling houses. Most homes in the area were built in the early 20<sup>th</sup> century, and the neighborhood is characterized by large lots and mature trees.

Participants in this case do not agree as to which properties are properly included in the "site." The Hearings Officer addresses the "site" topic in the Preliminary Findings below.

**Zoning:** The Kingston House property is designated with the R7 single-dwelling residential zone (Exhibit B). Single-dwelling residential zones are intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The remainder of the Garden property ("Leased Land") is located in Washington Park and is designated with the OS ("Open Space") zone (Exhibit B). The OS zone is intended to preserve open areas for outdoor recreation and scenic quality, to preserve the capacity and water quality of the stormwater drainage system, to protect sensitive or fragile environmental areas, to provide pedestrian and bicycle transportation connections, and to protect trees and the urban forest.

Portions of the Garden property and Kingston House property are designated with the Environmental Conservation ("c") and/or Environmental Protection ("p") overlay zones (Exhibit B). The "c" overlay is intended to conserve important environmental features and resources while still allowing compatible development. New development and exterior modifications to existing development in the "c" overlay must meet environmental standards or are subject to environmental review. The "p" overlay provides the highest level of protection to the most important resources and functional values. Development in the "p" overlay is approved only in unusual circumstances through environmental review. No development activities that would impact the "c" or "p" overlay zones are proposed.

Portions of the OS-zoned part of the Garden property are also in the Scenic ("s") overlay zone (Exhibit B). The "s" overlay zone establishes additional landscaping and screening standards to preserve and enhance identified scenic resources. The Kingston House property is not in the "s" overlay.

**Land Use Review History:** Below are the prior land use reviews for the Garden and Kingston House properties:

- LU 14-122172 CU EN: 2015 approval of a Conditional Use Review and Environmental Review for various improvements to the Garden property. No changes to the use or development on the Kingston House property were approved in LU 14-122172 CU EN.
- LU 09-143061 CU AD: 2009 Conditional Use Review approval to add the Kingston House property to the Japanese Garden's Conditional Use and to use the house for Japanese Garden administrative offices for 10 years. Adjustments were approved for the building setback and landscape screening requirements for institutional uses in the R7 zone.

The approval of LU 09-143061 CU AD was subject to the following conditions (Exhibit G-4):

*"A. As part of the building permit application submittal, the following development-related conditions (B through D) must be noted on each of*

*the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled 'ZONING COMPLIANCE PAGE - Case File LU 09-143061 CU AD.' All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled 'REQUIRED.'"*

BDS staff comment (per BDS Staff Report – Exhibit H.2). *"This condition of approval has no relevance to the current proposal because no building permit is needed to continue the administrative office use in the Kingston House. The final inspection for a building permit to apply commercial building code requirements to the Kingston House was approved in 2015 (building permit 14-159254 CO)."*

*"B. The regular hours of operation for the House for administrative office use is weekdays from 7 a.m. to 7 p.m., with occasional/infrequent weekend and additional hours allowed.*

BDS staff comment (per BDS Staff Report – Exhibit H.2). BDS staff, in the Staff Report (Exhibit H.2), recommended "continuing this condition."

*"C. Group use of the Subject Site and House are limited to staff meetings of up to 12 people, which shall occur on weekdays and conclude by 9:30 p.m."*

BDS staff comment (per BDS Staff Report – Exhibit H.2). *"As discussed in the approval criteria findings below, staff recommends continuing this condition of approval, with an additional condition to clarify the maximum occupancy for the house at any one time is 12, including regular staff and meeting attendees."*

*"D. The Conditional Use approval of this request shall sunset (terminate) ten years after the date of the approval. At the ten year sunset date of this approval, if the applicant wants to apply for a Conditional Use Review for continued administrative office use of the House and Subject Site, that application shall be processed via the Type III procedure."*

BDS staff comment (per BDS Staff Report – Exhibit H.2). *"The subject of the current Type III Conditional Use Review is the applicant's request to allow the Kingston House to be used as administrative offices for another 10 years. The applicant's request is evaluated in the approval criteria findings below.*

*Condition of approval D states that a continuation of the administrative office use beyond the originally-approved 10-year period can be requested through a Type III application. Zoning Code Section 33.730.140.A also allows the applicant to request changes to conditions of approval through a Type III Conditional Use Review and states that the approval criteria in the current*

*Zoning Code apply.”*

*“E. Applicant and Arlington Heights Neighborhood Association (AHNA) entered into a Good Neighbor Agreement (GNA) (Exhibit H-9). The obligation to implement the GNA is solely upon the applicant, any successor in interest to the applicant and AHNA and the City has no obligation to implement the GNA. However, non-compliance with the GNA is subject to enforcement by the City.”*

BDS staff comment (per BDS Staff Report – Exhibit H.2). *“The City Attorney’s Office and BDS’ Code Compliance Section have advised staff that Good Neighbor Agreements are private agreements to which the City is not a signatory, and that City enforcement of Good Neighbor Agreements is problematic, particularly when some of the provisions of the agreement are not clearly related to the Zoning Code approval criteria. The Good Neighbor Agreement between the Portland Japanese Garden and the Arlington Heights Neighborhood Association is still in effect, as it was signed by both parties and ‘shall remain in effect at any time that the Kingston House is used for non-residential purposes’ (Exhibit G-5, page 4). However, with the current review, rather than referring to the Good Neighbor Agreement in the conditions of approval, staff recommends new conditions of approval to explicitly require compliance with the elements of the Good Neighbor Agreement that are related to the approval criteria. These conditions of approval are discussed in the approval criteria findings below.”*

**Agency Review:** A “Request for Response” was sent to City agencies on September 23, 2019. The following bureaus responded:

- The Bureau of Environmental Services (“BES”) evaluated the approval criterion related to sanitary waste and stormwater disposal. The response is referenced in the findings for PCC 33.815.105.D.3, below. (Exhibit E.1)
- The Portland Bureau of Transportation (“PBOT”) evaluated the approval criteria related to the transportation system. The response is referenced in the findings for PCC 33.815.105.D.1-2, below. (Exhibit E.2)
- The Water Bureau responded with no concerns. (Exhibit E.3)
- The Fire Bureau responded with no concerns. (Exhibit E.4)
- The Police Bureau stated that police services are adequate for the proposed use. (Exhibit E.5)
- The Site Development Review Section of BDS responded with no concerns. (Exhibit E.6)

- The Life Safety Review Section of BDS responded with no concerns. (Exhibit E.7)
- The Urban Forestry Division of Portland Parks and Recreation responded with no concerns. (Exhibit E.8)

**Neighborhood Review:** Signs notifying the public of the application were posted on September 30, 2019 (Exhibit D-3) and a "Notice of Public Hearing" was mailed to neighbors on October 7, 2019 (Exhibit D-4).

BDS Staff, prior to the issuance of the Staff Report (Exhibit H.2), received four written responses from the public. The Hearings Officer quotes the section of the BDS Staff Report related to the four written responses received from the public and also quotes below the BDS Staff responses:

*"The first response was from a neighbor in support of the proposal (Exhibit F-1). This neighbor stated the Japanese Garden's use of the Kingston House did not appear to create negative impacts on the neighborhood.*

*Two responses were received from a neighbor with concerns about the proposal (Exhibits F-2 and F-3). This neighbor made the following points:*

- *A 10-year time limit for office use was the basis of the Hearings Officer's approval of LU09- 143061 CU AD.*
- *New office space for the Japanese Garden was recently constructed within Washington Park.*
- *The Kingston House property is under separate ownership from the Japanese Garden lease area in Washington Park and is separated from the Japanese Garden by fencing. Therefore, under the Zoning Code definition of "site," the Kingston House property should not be considered part of the Japanese Garden site.*
- *Office use is not an allowed or conditional use in the R7 zone.*
- *The Japanese Garden has not complied with conditions of approval from LU 14-122172CU EN.*

*The last response was from the Arlington Heights Neighborhood Association (Exhibit F-4). The Neighborhood Association does not support 10 more years of office use at the Kingston House but supports a 2-year extension conditioned on an updated Good Neighbor Agreement and a 10- person limit for administrative staff. The Neighborhood Association made the following points in support of their position:*

- *Growing visitation to the Japanese Garden has caused livability issues for the neighborhood, including traffic and parking problems, invasive lighting and noise, and safety issues. Several neighbors have moved from SW*

*Kingston Ave. because of these issues.*

- *The Neighborhood Association supported LU 09-143061 CU AD only after being explicitly told by the Japanese Garden that their use of the Kingston House would be temporary.*
- *Under the Zoning Code definition of 'site,' the subject site is the Kingston House property only. The zoning map included with the public notice is misleading.*
- *Office use is a commercial use, not an institutional use, and is not allowed in the R7 zone.*
- *All other uses in the surrounding R7 zone are residential, and a 10-year time limit for office use was the basis of the Hearings Officer's approval of LU 09-143061 CU AD. Increasing the 10-year time period for office use would impact the intensity and scale of the use and the residential appearance and function of the area.*
- *The current application mentions 12 administrative staff in the Kingston House, but the original agreement with the Neighborhood Association was for 7-10 staff.*
- *The Kingston House is one of only three houses on the west side of SW Kingston Ave., and the office use has created a dead zone at the end of the street, with no 'eyes on the street' in the evenings and on weekends to deter crime.*
- *The construction management plan from LU 14-122172 CU EN was not effective and the Japanese Garden did not abide by it.*
- *The Good Neighbor Agreement referenced in LU 09-143061 CU AD included a clear 10-year time limit for office use at the Kingston House.*
- *The Good Neighbor Agreement requires the Japanese Garden to meet with the Neighborhood Association at least once a year, but they have only done so once.*
- *The Good Neighbor Agreement requires staff and visitors to the Kingston House not to park on SW Kingston Ave. The Japanese Garden has only recently been enforcing this requirement.*
- *The Japanese Garden has not continuously complied with Good Neighbor Agreement requirements to implement a security plan for the Kingston House and to provide neighbors with contact names and telephone numbers for after-hours security issues.*

*Staff response: Although a 10-year time limit for office use was imposed in LU 09-143061 CU AD, the possibility of an extension request was anticipated in the land use decision (Exhibit G-4, pages 9-10) and the Good Neighbor Agreement referred to in the land use decision (Exhibit G-5, page 2). Even if this were not the case, Zoning Code Section 33.730.140.A would allow the applicant to request changes to conditions of approval through Conditional Use Review.*

*The Conditional Use approval criteria in Zoning Code Section 33.815.105 do*



*not require the applicant to demonstrate a need for the administrative office space in order to request it through Conditional Use Review. Therefore, the availability of office space within the Japanese Garden's lease area in Washington Park is not relevant to this review.*

*The approval criteria for the applicant's request are evaluated below, including for the intensity and scale of the use, the residential appearance and function of the area, and safety. Staff's review of the approval criteria was limited to the specific request under consideration in this review: the use of the Kingston House for Japanese Garden offices for another 10 years. As detailed later in this report, staff finds the approval criteria for the applicant's proposal can be met with conditions of approval.*

*The Portland Japanese Garden is a Parks and Open Areas use as described in Zoning Code Section 33.920.460. Parks and Open Areas use is listed under the Institutional Use category in Zoning Code Chapter 33.920. As a Parks and Open Areas use with accessory parking areas, the Japanese Garden is a Conditional Use under the OS zoning which applies to the garden's lease area in Washington Park (Zoning Code Section 33.100.100.B.2). LU 09-143061 CU AD approved an expansion of the Japanese Garden's Conditional Use site to include the R7-zoned Kingston House property. Parks and Open Areas uses that have accessory parking are also Conditional Uses in the R7 zone, per Zoning Code Section 33.110.100.B.2.*

*Office use as a primary use is prohibited in the R7 zone, per Zoning Code Table 110-1. However, based on the indicators in Zoning Code Section 33.920.030.A, the office use that was approved for the Kingston House is an accessory use to the Japanese Garden's primary Parks and Open Areas use. Accessory uses are allowed under the same regulations as the primary use, per Zoning Code Section 33.920.030.C. Although Zoning Code Section 33.920.460.B does not list office use as an example of an accessory use for Parks and Open Areas, this does not mean an institution in Parks and Open Areas use is prohibited from having administrative office space as an accessory use.*

*Zoning Code Section 33.920.030.C states that 'common accessory uses are listed as examples with the categories (emphasis added). The list of accessory uses in Zoning Code Section 33.920.460.B is not necessarily exhaustive.*

*The definition of 'site' in Zoning Code Chapter 33.910 states that 'if a proposed development includes more than one ownership, then all the ownerships are included as the site.' Since the Kingston House property abuts the Japanese Garden portion of Washington Park, and since LU 09-143061 CU AD added the Kingston House property to the Japanese Garden's Conditional Use site for an accessory use, staff considers the Kingston House property and the Japanese*

*Garden area of the park as a single development and 'site' for zoning purposes, even though the land is under different ownership.*

*The land use decision for LU 14-122172 CU EN acknowledged the Kingston House property as part of the Japanese Garden's Conditional Use site, but no changes to the use or development on the Kingston House property were included in the LU 14-122172 CU EN decision. Therefore, staff finds LU 14-122172 CU EN is not relevant to the current Conditional Use request for office use in the Kingston House. However, BDS' Code Compliance Section investigates complaints about violations to conditions of approval from land use reviews, and neighbors can contact Code Compliance at (503) 823-CODE. Code Compliance is currently reviewing a complaint related to conditions of approval from LU 14-122172 CU EN for mitigation plantings within Washington Park. There are no complaints currently under review for conditions of approval from LU 09-143061 CU AD or for the Kingston House property.*

*In LU 09-143061 CU AD, the Hearings Officer found the Conditional Use approval criteria were met with the Good Neighbor Agreement in Exhibit G-5. Since the currently proposed use for the Kingston House is the same as the use approved in LU 09-143061 CU AD, staff does not find a requirement for a revised Good Neighbor Agreement to be necessary for the approval criteria to be met. The existing Good Neighbor Agreement remains in effect, and staff recommends conditions of approval with this review to explicitly require compliance with elements of the Good Neighbor Agreement that relate to the Conditional Use approval criteria. BDS' Code Compliance Section would investigate complaints about violations to these conditions of approval. If repeated violations are substantiated, the Conditional Use approval could be revoked, pursuant to Zoning Code Section 33.700.040.*

*The office use described in the LU 09-143061 CU AD decision was for 'approximately 7 to 10' regular office staff (Exhibit G-4, pages 2, 6, and 15). In the current application, the applicant refers to 12 regular office staff (Exhibit A-1, page II-1). Staff finds that 12 staff is not necessarily more than one might expect from an upper limit of "approximately" 10. However, staff recommends a condition of approval to clearly limit the maximum occupancy of the Kingston House to 12 people at any one time. (The conditions of approval from LU 09-143061 CU AD only limited the number of meeting attendees to 12.)"*

## **ZONING CODE APPROVAL CRITERIA**

### **Preliminary Findings:**

Some or all of the property subject to this application (three tax accounts [R03703150, R941321260, and R99105840] have been involved in three land use decisions within the past 10 years. The first decision, the 2009 Decision, only included property which will be hereafter

referred to as the "Kingston House" or "Kingston House Property." (Tax account R03703150). The 2009 Decision considered the Applicant's requested conditional use review proposal to utilize a "single-dwelling residential structure" [the residence on the Kingston House property] for "administrative office" purposes. The 2009 Decision the Hearings Officer approved the Applicant's conditional use request to use the "single-dwelling residential structure" as "administrative offices" with conditions. One such 2009 Decision condition states the following:

*"Condition D. The Conditional Use approval of this request shall sunset (terminate) ten years after the date of the approval. At the ten year sunset date of this approval, if the applicant wants to apply for a Conditional Use Review for continued administrative office use of the House and Subject Site, that application shall be processed via the Type III procedure."*

The Applicant, in this case, is seeking to continue the use of the Kingston House as an administrative office for an additional 10 year period/term. The Applicant, in this case, is utilizing the provisions of Condition D to seek approval of its request.

As a historical note, the Applicant also received a land use approval for a portion of the real property described in this case as part of a 2014 application ("2014 Decision"). The Applicant's original request leading to the 2014 Decision involved the Kingston House. However, at some point, the Applicant withdrew the Kingston House property from consideration in the 2014 Decision.

### **What property or properties are included in the "site?"**

Opponents<sup>1</sup> in this case expended considerable time and effort disputing the BDS Staff and the Applicant's characterization of the "site." Opponents argued that *only* the Kingston House property should be considered the "site." BDS Staff (Exhibits H.2 and H.13) and the Applicant (Exhibit H. 25) argued that the "site" should include the Kingston House property *as well as* the remainder of property used by the Japanese Garden. The Kingston House property is owned by the Japanese Garden Foundation of Oregon (the "Foundation") and the remainder of the property ("Leased Land") is leased from the City of Portland by the Japanese Garden Society of Oregon ("Garden Society").

The Hearings Officer believes that the Opponents' "site" argument can be summarized as follows:

If the "site" includes only the Kingston House property then the Hearings Officer may only consider the R7 zoning of the Kingston House property and may not consider the Open

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<sup>1</sup> Including, but not limited to, the Arlington Heights Neighborhood Association, Jay and Colleen Shoemaker, Marshall Gannett, Christie Galen, and Joseph Angel.

Space zoning of the Leased Land when determining if the use of the Kingston House is an "accessory use" under the provisions of the PCC.

Attorney Jeffrey Kleinman ("Kleinman"), on behalf of the Arlington Heights Neighborhood Association ("AHNA"), clearly presented the Opponent's "site" argument (i.e., Exhibits H.7 and H.22). In summary, Kleinman argued that (Exhibit H.7, page 2):

*"Due to distinct ownerships, the subject residence is not part of the same site as the Japanese Garden. Per the assessor's records, the residence is owned by 'the Japanese Garden Foundation of Oregon.' The City of Portland owns the property on which the garden is located. It is leased from the city by 'the Japanese Garden Society of Oregon, under the assumed business name, 'Portland Japanese Garden.'" (italics in the original). Because no actual 'development' as defined in the PZC 33.910.030 is proposed to take place here (the house already exists and alterations are not proposed), staff's generous reading of the definition of 'site' [footnote: 'If a proposed development includes more than one ownership, then all ownerships are included in the site.'] is not relevant to this application. Thus, the use of the subject property cannot be deemed accessory to a primary use on adjacent property. This alone is fatal to the application before you. We would add that staff's proposed interpretation of the Code in this case could open the door to endless zoning mischief."*

The Hearings Officer takes note that Attorney Stephen Janik ("Janik"), an attorney representing Joseph Angel, the owner of a property located across the street from the Kingston House, made a similar argument in the 2009 Decision proceeding. The Hearings Officer reviewed the 2009 Decision (see page 7 of the 2009 Decision) and finds that Janik's argument was not that the Kingston House and Leased Land were, or were not, properly considered together as a "site" as defined by the PCC. Rather, the Hearings Officer finds Janik's argument in 2009 was primarily directed towards his client's concern that the use of the Kingston House, as administrative offices, would become permanent.<sup>2</sup>

Kleinman, in Exhibit H.22, expanded upon his "separate ownership" argument presented above. Kleinman, stated that:

*"This brings us back to the fundamental point raised in our earlier letter. Under PZC 33.910.030, the properties in question could only be deemed a single 'Site' in the following circumstance:*

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<sup>2</sup> Quote from the 2009 Decision, page 7: "Although the proposed use of the House as an administrative office is related to the adjacent use (Garden) it should not be characterized as a mere extension of an existing use. The House has been, and in the future is expected to be, used for residential purposes on a residentially zoned parcel. Further, the Hearings Officer concurs with Janik that approval of the proposed Conditional Use, in this case, should not be considered as institutionalization of the Subject Site forever."

*If a proposed development includes more than one ownership, then all the ownerships are included as the site.*

*No 'development' as defined by the Code is proposed here, nor does the application propose to 'develop' anything. Any improvement to the property or house which may have been approved or contemplated in the past have been completed."*

BDS Staff responded to Kleinman's argument stated above as follows (Exhibit H.13, page 1):

*"Staff considers the site for a Conditional Use Review to correspond to the extent of the existing or proposed Conditional Use. A Conditional Use Review does not always involve new construction. A change of use with no change in development can trigger Conditional Use Review (33.815.040.A). Also, there is nothing in the Conditional Use regulations that limits the boundary of a Conditional Use to a single ownership. In fact, for Conditional Use Master Plans, the code acknowledges that the boundary of a Conditional use may incorporate multiple ownerships (33.820.020.A and C.)"*

Additionally, BDS Staff, in the Staff Report (Exhibit H.2, page 7) stated the following:

*"The definition of 'site' in Zoning Code Chapter 33.910 states that 'if a proposed development includes more than one ownership, then all ownerships are included as the site.' Since the Kingston House property abuts the Japanese Garden portion of Washington Park, and since LU 09-14-143061 CU AD added the Kingston House property to the Japanese Garden's Conditional Use site for an accessory use, staff considers the Kingston House property and the Japanese Garden area of the park as a single development and "site" for zoning purposes, even though the land is under different ownership."*

The Hearings Officer approached Opponents' "site" argument from two perspectives. First, the Hearings Officer considered whether or not the 2009 Decision itself impacts what specific parcels of real property should be, or may be, included in the "site" for this case (Import of 2009 Decision Findings Below). Second, the Hearings Officer undertook a review, as requested by the Opponents, of the specific language of relevant sections of the PCC (PCC Review Findings Below).

#### **Import of 2009 Decision.**

BDS Staff and the Applicant suggest that the 2009 Decision should be a consideration in determining what property/properties should be considered as part of the "site." The Applicant, in Exhibit H.25, stated, in part, the following:

*"As noted in the November 6, 2019, Staff memorandum (the 'November Staff Memo'), the 2009 decision that originally approved the office use at the Kingston House (the '2009 Decision') expanded the conditional use area for the Garden to include the Kingston House. The 2009 Decision understood that what was being requested was an 'expansion of the Garden use to include the Subject Site' and that the expansion 'requires a Conditional Use Review.' 2009 Decision at 2. The 2009 Decision, then, actually expanded the Garden's conditional use onto the Kingston House property so that the Kingston House and the leasehold area comprise one site... The purpose of this current application is to extend the expansion of the conditional use onto the Kingston House for another 10 years. In other words, the Garden is only asking to do again what the City approved in 2009..."*

BDS Staff, in Exhibit H.13 (the "Staff Memo" referred to by the Applicant in the previous paragraph), stated that:

*"In 2009, the approval of LU 09-143061 CU AD expanded the Conditional Use area for the Japanese Garden's institutional use to include the Kingston House property. (See the Proposal description on page 2 of Exhibit G-4.) The subject site for LU 19-192268 CU corresponds to the Japanese Garden's institutional use area as expanded by the 2009 decision. Staff considers the subject site for LU 19-192268 CU to include three tax lots comprising about 25 acres in total: two tax lots in Washington Park containing the Japanese Garden lease area, plus the tax lot adjacent to the park containing the Kingston House."*

Kleinman discounted the legal import and/or relevance of the 2009 Decision in the determination of the "site" for this case. Kleinman stated, in Exhibit H.22 (page 1), that:

*"...staff and the applicants' attorney have suggested that this question ["site" description] (1) was decided in prior adjudications involving the Japanese Garden and/or the Kingston House, and (2) that those decision should be binding here. Even if there were somehow a legal argument to be made on the latter point, their contention with respect to the former is simply wrong. The garden site on city-owned parkland and the Kingston House have never been adjudged to be a single site."*

The Hearings Officer agrees with Kleinman that the "site" issue, as addressed in this case, has not been independently argued and decided in a prior case involving the Applicant. However, the Hearings Officer also finds that the 2009 Decision did approve the expansion of the Japanese Garden conditional use of the Leased Land to include the Kingston House. The Hearings Officer finds that the 2009 Decision is a relevant consideration in this case. The Hearings Officer, for the purposes of this case, finds that one of the results of the 2009 Decision was to add the Kingston House property to the properties included in the Japanese

Garden conditional use. The Hearings Officer finds the current Japanese Garden conditional use includes the Leased Land and the 2009 Decision added Kingston House property.

### **PCC Review.**

**Site:** PCC 33.910.030 defines the term "site."<sup>3</sup> Generally a "site" is described as property that is within a single ownership. PCC 33.910.030 does, however, include three exceptions to the single ownership rule. The first exception is the basis for Opponents "site" argument and states: *"If a proposed development includes more than one ownership, then all the ownerships are included as the site."*

Kleinman argued that the above-quoted exception does not apply because the Applicant proposed no "development" (Exhibits H.22 and H.24). The Applicant acknowledged that the current application does not include physical additions or changes at the Kingston House.

The term "development" is defined in PCC 33.910.030 as follows:

*"All improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage, or activities. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved land. See also Exterior Improvements."*

The Applicant responded to Kleinman's "no development" argument as follows (Exhibit H.25, page 3):

*"The definition of development focusses on the existing built environment of a piece of property. It refers to 'all improvements on a site,' and 'includes improved open area,' but does not include 'unimproved land.' In other words, it describes a place with specific attributes. The text of the definition is clear that its intent is to include land that has improvements, but exclude vacant land. In the context of defining a site for purposes of a land use application, this definition has utility, because it is intended to ensure that property contains*

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<sup>3</sup> PCC 33.910.030 Site For land divisions, the site is the lots, lots of record, or tracts proposed to be divided or reconfigured. For all other purposes, the site is an ownership except as follows:

- If a proposed development includes more than one ownership, then all the ownerships are included as the site.
- If a proposed development includes only a portion of an ownership, and the balance of the ownership is vacant, then the applicant may choose to define the site as the portion of the ownership that is proposed for development.
- If a proposed development includes only a portion of an ownership, and there is other development on the ownership, then the applicant may choose to define the site as the portion of the ownership that is currently developed plus the portion proposed for development.

*development related to the land use application at issue is understood as part of the whole development.*

*Under opponents' narrow reading of 'development' in the context of defining a site, a 'proposed development' cannot include a conditional use application that does not require a physical alteration of the site. First, opponents have pointed to nothing that would require 'development' to be construed as only encompassing proposed physical alterations. As noted above, the definition of development defines the boundaries of a place more than it defines an activity. If the definition had intended to restrict 'development' to only a physical alteration of some kind, then it would have included language to that effect. Second, the PCC 33.910.030 definition of 'site' does not exist in a vacuum. As noted in the November Staff Memo, the City routinely considers conditional use sites to correspond to the extent of the existing or proposed conditional use and conditional uses do not always involve new construction or site alterations or even the same ownership. The November Staff Memo points to the conditional use section of the code, PCC 33.815, which includes triggers for conditional use review when there is a change of use with no physical alteration of the property at issue, and which acknowledges that the boundary of a conditional use can include different ownerships. It makes no sense to read the definition of 'site' so narrowly as to truncate the City's review of conditional uses under PCC 33.815."*

The Hearings Officer finds persuasive the BDS Staff's (Exhibits H.2 and Exhibit H.13) and the Applicant's above-quoted arguments related to the proper interpretation of the definition of "site" and "development." The Hearings Officer finds the Applicant proposed no physical alterations or changes at the Kingston House. The Hearings Officer finds that the Leased Land and Kingston House are under different ownership. The Hearings Officer finds that the PCC 33.910.030 definition of "site" includes exceptions to the "single owner" general requirement. The Hearings Officer finds that one such exception is where a "proposed development includes more than one ownership." The Hearings Officer finds the definition of "development" includes the existing improvements located at the Kingston House property.

The Hearings Officer finds, in this case, that the "site" includes the Leased Land and the Kingston House.

**Accessory use:** Closely related to the Opponents' "site" argument, as discussed above, are the Opponents' "accessory use" arguments. Opponents contend that use of the Kingston House as administrative offices is neither an accessory allowed in the R7 zone (Kingston House zoning) nor an accessory use allowed by PCC 33.920.460 (Parks and Open Areas).

The Hearings Officer agrees with Opponents that if only the R7 zoning is considered, the use of the Kingston House would not be a PCC allowed "accessory" use. However, as noted above, the Hearings Officer found that the "site", in this case, included both the Leased Land and the



Kingston House. The Hearings Officer found that the 2009 Decision "expanded" the Japanese Garden conditional use "site" to include the Kingston House property.

PCC 33.910.030 defines "accessory use" as: "A use or activity which is a subordinate part of a primary use and which is clearly incidental to a primary use on a site."

The Hearings Officer finds that the Japanese Garden conditional use "site" is land or property that is focused on natural areas which include vegetative landscaping, community gardens and supporting uses. The Hearings Officer finds the Japanese Garden uses clearly meet the requirements (characteristics) of Parks and Open Areas as set forth in PCC 33.920.460 A. The Hearings Officer finds the "site," in this case, is primarily used as a PCC 33.920.460 Park and Open Area use. The Hearings Officer finds that it is appropriate to consider and apply the "Accessory uses" section of PCC 33.920.460 B to the Park and Open Area use criterion (PCC 33.920.460).

PCC 33.920.460 B was the subject of considerable discussion in this case. Janik, on behalf of his opponent client, argued that PCC 33.920.460 B does not expressly state "that an office use is an allowed 'accessory use'" (Exhibit H.3, page 2).

PCC 33.920.460 B states: "Accessory uses. Accessory uses may include club houses, maintenance facilities, concessions, caretaker's quarters, food membership distribution, and parking."

The Hearings Officer agrees with Janik that PCC 33.920.460 B does not include the word "office."

Janik further argued that PCC 33.920.460 B:

*"does not contain any language that indicates that these listed accessory uses are just 'examples,' thereby implying that other unlisted uses may be allowed as accessory uses. Subsection C. Examples sets forth the types of activities and uses that help explain what are the primary activities allowed in the Parks and Open Areas use; but Subsection C has no impact on the stated of allowed accessory uses allowed under Subsection B. Subsection (B) simply is a list of accessory uses while Subsection C consists of examples. The Code is clear when it lists specific uses and when it lists examples."*

BDS Staff, in Exhibit H.13 (page 3), responded to Janik's "accessory use" arguments as follows:

*"Staff, however, considers the list of accessory uses in 33.92.460.B to be a list of examples rather than an exhaustive list."*

*Section 33.920.030 (Classification of Uses) describes the classification of land uses, including the classification of uses as either primary or accessory. Section 33.920.030.C says the following about accessory uses:*

- C. Accessory uses. Accessory uses are allowed by right in conjunction with the use unless stated otherwise in the regulations. Also, unless otherwise stated, they are subject to the same regulations as the primary use. Common accessory uses are listed as examples with the categories.*

*The phrase, 'may include' in 33.920.460.B is also relevant:*

- B. Accessory uses. Accessory uses may include club houses, maintenance facilities, concessions, caretaker's quarters, food membership distribution, and parking.*

*Section 33.700.070 (General Rules for Application of Code Language), Subsection D states the following about lists in the Zoning Code:*

- 4. Lists. Lists of items that state 'including the following,' 'such as,' or similar language are not limited to just those items. The lists are intended to provide examples, but not to be exhaustive of all possibilities.*

*Construing the lists of accessory uses for the use categories in Chapter 33.920 as exhaustive lists rather than lists of examples would prohibit the Japanese Garden from having any administrative office space in Washington Park, because 'office is not allowed as a primary use in the OS zone (Table 100-1) and 'office' is not included in the list of accessory uses for Parks and Open Areas in 33.920.460.B. It would mean a church operating as a Conditional Use in a residential zone could not have any administrative office space on-site because 'office' is not allowed as a primary use in most residential zones (Tables 110-1 and 120-1) and 'office is not listed as an accessory use for Religious Institutions in 33.920470.B, it is not listed as an accessory uses for all of the land use categories in Chapter 33.920." [Underlining from original and not added by the Hearings Officer.]*

The Applicant generally agreed (Exhibit H.25) with the above-quoted BDS Staff Memo. The Hearings Officer also agrees with the BDS Staff argument set forth above. The Hearings Officer finds that the PCC 33.920.030.C language "common accessory uses are listed as examples with the categories" is applicable and persuasive. The Hearings Officer also finds the use of the term "may" in PCC 33.920.460.B is also important. The word "may" is not a mandatory and/or restrictive term. The Hearings Officer finds the word "may" allows flexibility.

The Hearings Officer finds PCC 33.700.070 is also relevant to the interpretation of PCC 33.920.460.B. The Hearings Officer finds that PCC 33.700.070 provides general assistance in

interpreting the PCC. In particular, PCC 33.700.070.D.4 provides assistance in how to deal with "lists" included in the PCC. PCC 33.700.070 states that when language "such as" or "similar language" is used in connection with a PCC "list," the list is "not limited to just those items." PCC 33.700.070 concludes by stating that "...lists are intended to provide examples, but not to be exhaustive of all possibilities." The Hearings Officer finds, based upon the findings above, that the listing of uses in PCC 33.920.460.B is a list of examples.

Janik's final argument related to "accessory uses" was that even if PCC 33.920.460.B is a "list of examples," the Hearings Officer must undertake an additional analysis. Janik stated the following (Exhibit H.3, page 3):

*"Assuming the list of accessory uses in Subjection B is a list of examples, it would be logical to ask what does an office use have in common with the listed accessory uses: 'club houses, maintenance facilities, concessions, caretakers quarters, food membership distribution.' Those uses need to be at the site of the Parks and Open Areas use; office space need not be on this site and in a zone that prohibits office use. So even using staff's strained and Applicant-friendly analysis, these 'examples' are inconsistent with the office use. City of Portland parks do not generally have offices for daily occupancy by Park Bureau employees."*

The Hearings Officer disagrees with Janik's argument that an "office use" is not an accessory use because it is not "needed" in a Parks and Open Areas use. The PCC 33.920.460.B list of accessory uses includes club houses, concessions, caretaker's quarters, and parking. The Hearings Officer agrees these four uses, for all practical purposes, "need" to be co-located at a Parks and Open Area "site" or operation. The Hearings Officer, however, finds that maintenance facilities and food membership distribution, while perhaps desirable to be located at a Parks and Open Area "site" or operation, are not "needed" to be so located. For example, the Hearings Officer finds that not all Portland parks have co-located onsite maintenance facilities.

The Hearings Officer also finds that an argument that offices need to be located on the Japanese Garden "site" could also be made. As noted by BDS Staff (Exhibit H.13), an office is very important, in effect "needed," at a church that is conditionally approved. An additional example might include a community swim pool located at a community park. The Hearings Officer finds a plausible argument can be made that having an onsite office at the Park and Open Area use community pool is "needed." Finally, the Hearings Officer finds persuasive the BDS Staff argument that if office use is not allowed by PCC 33.920.460 as an accessory use, then no office space would be allowed anywhere on the Japanese Garden "site."

The Hearings Officer finds that "office" use at the "site," which includes the Kingston House, is an allowed accessory use under PCC 33.920.460.

### Conditional Use Review

### **33.815.105 Institutional and Other Uses in R Zones**

These approval criteria apply to all conditional uses in R zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in a residential zone that maintain or do not significantly conflict with the appearance and function of residential areas. The approval criteria are:

**A. Proportion of Household Living uses.** The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:

1. The number, size, and location of other uses not in the Household Living category in the residential area; and
2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

**Findings:** BDS Staff, in the Staff Report (Exhibit H.2, page 8), determined the “residential area” to be residentially-zoned lots within 600 feet of the “site.” BDS Staff excluded, from the “residential area” the OS-zoned lots in Washington Park. This corresponds to the “residential area” considered for approval criterion A in LU 09-143061 CU AD (Exhibit G-4, page 5). The Hearings Officer agrees with the BDS Staff determination of the “residential area” to be considered under this approval criterion.

The Kingston House property is the only developed lot in the “residential area” that is currently used for a non-Household Living (non-residential) use, so the proportion of non-Household Living uses in the “residential area” is small. Also, since no exterior alterations to the Kingston House or grounds are proposed, the property would continue to have a residential appearance.

The Applicant is requesting Conditional Use review approval for the Kingston House to be used as administrative offices servicing the Japanese Garden for an additional 10 years. The Applicant did not propose any expansion in the intensity or scale of the use (Exhibit A-1, page III-1), which was limited by conditions of approval from LU 09-143061 CU AD. Condition of approval B from the 2009 Decision limited the regular hours of operation from 7 a.m. to 7 p.m. weekdays, with occasional/infrequent weekend and additional hours allowed. Condition of approval C from the 2009 Decision required staff meetings to be limited to 12 people, to be held on weekdays only, and to conclude by 9:30 p.m. To ensure the intensity and scale of the use does not increase beyond the scope of the Applicant’s proposal, BDS Staff, in the Staff Report (Exhibit H.2) recommended conditions of approval to continue these requirements from the 2009 Decision.

BDS Staff, in the Staff Report (Exhibit H.2, page 8), stated the following:

*"In LU 09-143061 CU AD, the Hearings Officer found that approval criterion A was met for the applicant's proposal, which included a 10-year time limit for the office use, but that the criterion would not necessarily be met if the Kingston House would not revert to residential use in the future (Exhibit G-4, pages 6-8). The Hearings Officer's findings did not specify why a permanent Conditional Use might not have met the approval criterion, but in any case, the current proposal is comparable to the proposal approved in LU 09-143061 CU AD. After the 10-year period proposed by the applicant for this review, the Kingston House would either have to revert to residential use or the Japanese Garden would have to apply for another Type III Conditional Use Review. In any future Conditional Use Review, any change in the proportion of Household Living uses in the residential area or in the proposed intensity or scale of the accessory office use could be considered.*

*In Exhibit F-4, the Arlington Heights Neighborhood Association mentioned an apparent discrepancy between the LU 09-143061 CU AD findings, which mentioned "approximately 7 to 10" regular office staff (Exhibit G-4, pages 2, 6, and 15) and the current application, in which the applicant refers to 12 regular office staff (Exhibit A-1, page II-1). Staff finds that 12 staff is not necessarily more than one might expect from an upper limit of "approximately" 10. However, to ensure the intensity and scale of the use remains as proposed by the applicant and as intended by the LU 09-143061 CU AD decision, staff recommends a condition of approval to limit the maximum occupancy of the house at any one time to 12. In the LU 09- 143061 CU AD decision, the decision language and conditions of approval only limited the number of meeting attendees to 12, not the number of regular office staff.*

*With the conditions of approval mentioned above, staff finds the proposal would not significantly lessen the overall residential appearance and function of the residential area, and that approval criterion A is met."*

Generally, the Hearings Officer concurs with the BDS Staff above-quoted discussion. However, the Hearings Officer does not agree with the BDS Staff comment that the Hearings Officer did not "specify why a permanent Conditional Use might not have met the approval criterion." The Hearings Officer found, in 2009, that permanent use of the Kingston House as administrative offices would cause significant adverse impacts on the livability of the "residential area." The Hearings Officer finds that the primary impacts upon the "residential area" anticipated to be created by the Applicant's 10 year office use extension proposal are best discussed in the findings for PCC 33.815.105.C.

## **B. Physical compatibility.**

1. The proposal will preserve any City-designated scenic resources; and

**Findings:** City-designated scenic resources are identified on the official zoning maps with a lower case "s," representing the Scenic overlay zone. The Kingston House property is not in the "s" overlay zone. While it is near an "s" overlay zone to the south and east (Exhibit B), no exterior alterations are proposed so scenic resources will not be affected by the Applicant's proposal. Therefore, the Hearings Officer finds criterion B.1 is met.

2. The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, tree preservation, and landscaping; or
3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, and other design features.

**Findings:** The Kingston House was built in 1925 as a residence and has the exterior appearance of a home rather than an office. The lot size (9,400 square feet), building scale and style, building setbacks, on-site parking, and landscaping are all typical for the established residential neighborhood adjacent to the Kingston House. The mature trees in the front yard largely obscure the view of the Kingston House from the street.

The Applicant's request includes no exterior alterations to the house or property (Exhibit A.1, page I-1).

The GNA prohibits signage on the Kingston House property (with exceptions for address identification and small signs or stickers near the front door) and prohibits changes to the exterior of the house that would make the house look like something other than a private residence (Exhibit G.5, pages 3-4).

The Hearings Officer finds this approval criterion is met because there are no physical changes proposed by the Applicant.

Since the Hearings Officer finds approval criterion section B.2 is met, approval criterion section B.3 does not need to be addressed. The Hearings Officer finds this approval criterion is met.

**C. Livability.** The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:

1. Noise, glare from lights, late-night operations, odors, and litter; and
2. Privacy and safety issues.

**Findings:** The standard set forth in this approval criterion requires the Hearings Officer to review evidence in the record to determine whether or not the Applicant's proposal will have significant adverse impacts on the livability of the described "residential area." The

"residential area" for this case is described in the findings for PCC 33.815.105.A.

This approval criterion limits the issues/matters that are to be considered as affecting livability in a conditional use application. Those issues/items are noise, glare from lights, late-night operations, odors, litter, privacy, and safety issues. This approval criterion does allow a proposed conditional use to have some adverse impacts and still meet the approval criterion. This approval criterion is not met if the adverse impacts resulting from a conditional use proposal create "significant adverse impacts on the livability."

PCC 33.700.070.D.1 states that "words used in the zoning code have their dictionary meaning unless they are listed in Chapter 33.910, Definitions." The term "significant" is not defined in the PCC. The Merriam-Webster online dictionary defines "significant" as "having meaning especially" and "having or likely to influence or effect" and "of a noticeably or measurably large amount" [<https://www.merriam-webster.com/dictionary/significant>]. The Hearings Officer utilized the dictionary definition of "significant" in the analysis of the evidence and law related to this approval criterion.

The adverse impacts referenced in this approval criterion are those impacts created by the specific proposal. In this case, the proposal is to use the Kingston House as offices for an additional 10 years (2019 – 2029); the 2009 Decision approved the use of the Kingston House for offices from 2009 until 2019.

The Applicant, in Exhibit H.25 (pages 8-10), addressed livability impacts, in part, as follows:

*"The evidence [offered by the AHNA] is problematic for a number of reasons. First, the letter does not identify where any of the board members live or identify 'the two closest homes' at which the incidents allegedly occurred. Second, even if we accept that over the past year two of the nine board members who live at undisclosed locations had their cars keyed and two unidentified but neighboring homes to the Kingston House had five slashed tire and one car keying incident, and we accept that there were '6 times the number of mischief incidents' (although the evidentiary basis of that statement is not clear) it is not clear what we are to make of it or how we are to reasonably tie the latter incidents to the Kingston House. It may be that the increased incidents are due to the proximity of the houses to Washington Park as a whole, including the tennis courts and Rose Test Gardens. It may be that other neighbors who live blocks away from the Kingston House but who are not AHNA board members have had more incidents of crime and vandalism over the past year than those that occurred nearer to the Kingston House. Third, Mr. Mirkin, who lives just three lots north of the Kingston House, testified at the hearing and again in a letter to the record that the Garden has been a good neighbor in its use of the Kingston House, that he and his wife have seen no negative impact at all from that use..."*

*The November AHNA Letter also states that '[t]here is an ongoing problem with commercial trucks making business deliveries to the Kingston House.' November AHNA Letter at 2. According to AHNA, the trucks that make deliveries to the Kingston House are larger and more frequent than trucks that usually make residential deliveries. This is untrue. As set forth in the Garden's November 13, 2019, rebuttal memorandum ('Garden Rebuttal Memo'), no mail or other deliveries are made to the Kingston House."*

The Hearings Officer inferred, from the above-quoted Applicant response, that the Hearings Officer should discount the credibility of the AHNA livability assertions (Exhibit H.16, page 2) because the AHNA failed to meet some unidentified [by the Applicant] evidentiary standard. This Hearings Officer Decision is not made by a judge in a court proceeding and courtroom rules of evidence are generally inapplicable. The decision in this case is made by the Hearings Officer, and if appealed, by the Portland City Council. The Hearings Officer and City Council are mandated to follow Oregon land use planning laws and the PCC. Under the PCC it is the Applicant, not the opposition, that has the burden of persuasion.

The Hearings Officer finds credible the AHNA statements that crime has increased in the residential area since 2009 (including the "keying" of vehicles, unauthorized camping, thefts, graffiti, and similar adverse/negative activities). However, the Hearings Officer agrees with the Applicant's statement that the increase in the described criminal activities cannot be directly sourced to the operation of the Kingston House as an administrative office.

The Hearings Officer finds that the "residential area" location is unique and is particularly sensitive to **any** adverse impacts created by a non-residential use such as the operation of administrative offices. Across the street from the Kingston House are public tennis courts and adjacent to the Kingston House is a parking lot. In extremely close proximity to the Kingston House are entrances to Washington Park and the Japanese Garden. The Rose Test Gardens is in close proximity to the Kingston House. All of these nearby/adjacent uses generate activity in the "residential area" and contribute to the character and nature of the "residential area."

Opposition in the 2009 Decision was, to a large extent, withdrawn because of the Applicant's representation that the office use would be limited to 10 years. The Hearings Officer, in the 2009 Decision, was spared making the challenging findings required for this approval criterion because the Applicant modified its original proposal to include the 10 year limitation.

The Hearings Officer, in the 2009 Decision, recognized that long term utilization of the Kingston House for administrative office use could create adverse impacts upon the "residential area." The Hearings Officer found, in the 2009 Decision, that the adverse impacts created by limiting the office use of the Kingston House to 10 years would not be "significant."

The Hearings Officer, in the 2009 decision (page 7) referenced a "Declaration of Restrictive



Covenant" ("DRC") entered into between the Applicant and a nearby property owner. The Hearings Officer noted, in the 2009 decision (page 7), that the Applicant and AHNA entered into a GNA. Both the DRC and GNA referenced the 10 year limitation upon the Applicant's use of the Kingston House as administrative offices.

The Hearings Officer is cognizant of approval language in the 2009 Decision findings for PCC 33.815.105.A and C related to the Applicant's right to seek a modification of Condition D (sunset condition with right to apply for an extension). The 2009 Decision findings for PCC 33.815.105.C indicate that BDS Staff recommended that the Applicant have a right to re-apply to allow additional time for the Kingston House to be conditionally approved for office use. Further, the findings for PCC 33.815.105.C indicate that BDS Staff recommended that the re-application utilize a Type II (administrative review with right of appeal) process and also BDS Staff recommended that the scope of the re-application be limited to "livability" impacts. Ultimately, the Applicant and opponents agreed that any re-application to extend the administrative office use at the Kingston House would utilize the Type III application (public hearing) process and did not include any limits upon the scope of the conditional use review.

The Hearings Officer finds that the language allowing the Applicant to apply for a modification of the 2009 Decision Condition D 10 year term neither implied that such an application would be nor should be approved. The Hearings Officer finds that in 2009 and again in 2019 (current application), the Applicant represented that the use of the Kingston House as an administrative office is intended to be temporary.

The Applicant, in Exhibit H.25 (page 12), stated the following:

*"No approval criterion requires the Garden to demonstrate that office space is not available elsewhere in order for this application to be approved. There is also no required alternatives analysis for office space. Opponents expressed frustration, however, with the Garden's request for an additional ten years at the Kingston House. As noted at the hearing, the Garden did add office space as part of the Garden expansion. Due to site constraints, however, the amount of office space that was possible was limited, primarily due to the hilly terrain and mapped landslide hazard areas. The Garden also worked with PP&R during the master planning process for Washington Park to provide some office space for Garden staff. Disappointingly, that additional office space was not forthcoming through that process, but there is now another opportunity to work with new PP&R leadership to identify that additional office space. See Garden Q&A regarding the search and timeline for appropriate office space, submitted November 6, 2019 ('Office Q&A').*

*As the Office Q&A makes clear, the Garden has been pursuing permanent additional office space to replace the Kingston House since 2009. The search has been frustrating, but the Garden is hopeful that the new effort with PP&R will bear fruit. That will take time, and although ten years sounds like a long*

*time, as the Office Q & A explains, there is a lot of work and cooperation that need to occur to implement the permanent solution."*

The Hearings Officer agrees with the Applicant that there is no relevant approval criterion that requires the Applicant to demonstrate a "need" for office space.

The Hearings Officer, as suggested above by the Applicant, did review carefully the Office Q&A (Exhibit H.17d). The Hearings Officer, based upon the above-quoted Applicant statement, the Office Q&A (Exhibit H.17.d), written comments from Robert Zagunis (President, Japanese Garden Board of Trustees – Exhibit H.17a), and written comments from Drake Snodgrass (President-Elect, Japanese Garden Board of Trustees – Exhibit H.17b), finds the following:

- The Applicant desires/prefers to re-locate its office space, currently at the Kingston House, within walking distance from the primary Japanese Garden physical improvements (Testimony of Lisa Christy and Drake Snodgrass); and
- The Applicant desires/prefers office space to be located either at the Kingston House (adjacent to the Lease Land) or within Washington Park (Testimony of Robert Zagunis, Drake Snodgrass, and Lisa Christy and Exhibits H.17a, H.17b, H.17d, and H.25); and
- The Applicant, during the time period of 2009-2019, focused its search for office space (to replace the Kingston House) to locations within Washington Park (Exhibits H.17a, H.17b, H.17d, and H.25); and
- The Applicant's attempts to secure office space on Portland Parks property within Washington Park, from 2009-2019, were unsuccessful (Exhibits H.17a, H.17b, and H.17d); and
- The Applicant is renewing its efforts to secure office space on Portland Parks property within Washington Park (Testimony of Drake Snodgrass and Exhibits H.17a, H.17b, and H.17d); and
- Reaching a mutually agreeable resolution with Portland Parks will require "a lot of work and cooperation" (Exhibit H.25, page 12)<sup>4</sup>; and
- The Applicant did not propose any alternative locations to re-locate the Kingston House office space other than a location within Washington Park.

The Hearings Officer finds, based upon the bullet point findings referenced above, that it is reasonable to conclude that as long as the Applicant continues to prefer/focus upon relocating office space in Washington Park, it will be difficult to confidently predict when such alternative office space will be secured. The Hearings Officer finds that it is also reasonable to conclude, based upon the above bullet point findings, that it is possible, and perhaps even probable, that the Applicant will need to re-apply again in 2029 for another extension.

The Hearings Officer finds that the Applicant's initial (2009) request for a limited duration use

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<sup>4</sup> Exhibit H.17b, page 1 of 3, states "lack of office support space is a systemic problem throughout Washington Park and it will take a big solution to solve it correctly."

of the Kinston House as an administrative office met this criterion because the conditional use approval was approved subject to the use "sunsetting" in 10 years. The Hearings Officer finds that granting another 10 year term to use the Kingston House as administrative offices stretches the credibility of the "temporary" concept.

At the conclusion of the October 30, 2019 hearing, the Hearings Officer requested that BDS Staff, the Applicant, and/or Opponents submit, during the open-record period, comments and/or legal arguments to answer the following question: *Does the Hearings Officer have the legal authority to modify the Applicant's requested 10 year term; i.e., can the Hearings Officer reduce or lengthen the 10 year term set forth by the Applicant in its current application proposal?*

BDS Staff, in Exhibit H.13 (page 1), responded to the Hearings Officer's above-stated query as follows:

*"The City Attorney's Office finds it would be permissible to approve the application with a time limit shorter than 10 years. The City Attorney's Office pointed out that 33.800.070 allows the City to impose conditions 'to ensure that the proposal will conform to the applicable approval criteria for the review or ensure the enforcement of other City regulations.' Therefore, if you conclude in the findings that a shorter time limit on the proposed use is necessary for the approval criteria to be met, you can impose that time limit as a condition of approval. It would not be necessary for the applicant to re-frame their original proposal."*

Based upon the evidence in the record, in particular the evidence provided by the Applicant (i.e. Exhibits H.17a, H.17b, H.17d, and H.23), the Hearings Officer finds that the Applicant's search for alternative office space appears to be focused on locations within walking distance from its current operations and within publicly owned Washington Park. The Hearings Officer finds that the Applicant acknowledged (i.e. Exhibits H.5, H.17a, H.17b, and H.25) that securing office space in Washington Park is dependent upon political discretion, fundraising, and an extended design/construction process.

The Applicant represented (Exhibit H.25, page 12) that it did not construct office space on the Lease Land sufficient to accommodate the Kingston House employees, during its 2014 expansion process, because of steep slope and landslide hazard issues. The Hearings Officer takes notice that Washington Park can be generally described as having steep slopes and is subject to landslide hazards. The Applicant provided no evidence in the record suggesting any locations within Washington Park, within walking distance of the primary Garden facilities, where it could re-locate the Kingston House office space that did not have slope and landslide issues.

The Hearings Officer takes notice that the Applicant suggested its goal was to co-locate its Kingston office space with other Washington Park users and/or the City of Portland Parks

bureau maintenance function. While such co-location may be an admirable goal, it should be noted that most other Washington Park users (other than the Japanese Garden) are located in the general vicinity of the Oregon Zoo (Children's Museum, Forestry Center, and Oregon Zoo). Any co-located office space convenient for these other Washington Park users would not be within convenient walking distance to the Japanese Garden (See the Applicant's Q & A – Exhibit H.17d, page 3 of 3).

The Applicant provided no rationale or reason why the City of Portland Parks would desire or be motivated to co-locate office space with the Garden within Washington Park. As noted earlier in these findings, Washington Park is characterized by hills, landslide risks, and has winding roadways (Exhibit H.17d). As noted by the Applicant, construction of offices within Washington Park can be expected to be challenging.

Physical features (slope/landslide), co-location issues (proximity of a possible co-located office to other Washington Park users), and lack of evidence that the City of Portland Parks Bureau has any motivation to locate office space in Washington Park contribute to the Hearings Officer's concerns that the Applicant may not actually find alternative office space meeting its Washington Park location search parameters. If the Applicant cannot locate office space within walking distance of the primary Garden facilities and/or within Washington Park during an extended 10 year term, then the Applicant will need to either start anew its Washington Park office search efforts or revise its search parameters.

The Hearings Officer, in the 2009 Decision, strongly inferred that use of the Kingston House as administrative offices for a term longer than 10 years was effectively the institutionalization of the office use. The Applicant also expressed that office use at the Kingston House should not become permanent/institutionalized.

The Hearings Officer takes note that the AHNA and others (i.e. Exhibits H.16, H.22, H.24, and Hearing testimony of Colleen Shoemaker, Christy Galen, and Janik) requested that if the Applicant's current request to extend the use of the Kingston House as office space was approved, that the Hearings Officer limit the term of the extension to 2 years. The Hearings Officer finds the requests to shorten the term of any approved extension, in this case, are reasonable.

Kleinman, in Exhibit H.22, also requested the Hearings Officer, if the Applicant is allowed to continue use of the Kingston House as administrative offices, impose a condition stating that "the permit will terminate automatically after two years; that it cannot be renewed or extended..." The Hearings Officer, based upon the record of this case, finds that he does not have legal authority to prohibit the Applicant, at the end of any length of extension approval, from making an application to once again modify its approved conditional use. The result, in the 2009 Decision, was not to expressly prohibit an applicant from submitting an application, but rather to make sure the "process" used in any extension application allowed for a public hearing.

The Hearings Officer finds the "residential area," in this case is unique and that **any** additional or different noise, glare from lights, late-night operations, odors, litter, and/or privacy/safety impacts do adversely impact the livability of the "residential area." The Hearings Officer finds office use is different from residential use no matter how many conditions are imposed to limit impacts from noise, glare from lights, late-night operation, odors, litter, privacy, and safety matters.

The Hearings Officer finds that granting an additional 10 year extension allowing the Applicant to use the Kingston House for office use, in this unique "residential area," will adversely impact the "residential area." The Hearings Officer finds the use of the Kingston House as office space has meaning to "residential area." The Hearings Officer finds the use of the Kingston House as office space will have, or likely have, influence or effect upon the "residential area." The Hearings Officer finds granting the Applicant's requested 10 year extension will result in "significant"<sup>5</sup> adverse office use impacts on the "residential area."

The Hearings Officer finds that limiting the length of time the Applicant can use the Kingston House as an office is reasonable and appropriate. As noted above, the Hearings Officer found that the Applicant's requested 10 year extension did not meet this approval criterion. The Hearings Officer finds that a reasonable time to allow the Applicant to find alternative office space is four years.

The Hearings Officer finds that limiting the extension to four years provides the Applicant a strong incentive to expedite its search for alternative office space; a process the Applicant represented to the Hearings Officer and opponents, in 2009, would be completed by 2019. The Hearings Officer finds that the Applicant, during the four year extension, can determine if locating office space in Washington Park is viable/feasible. If the Applicant determines that locating office space in Washington Park is viable/feasible, it can present such evidence in a future application to request an additional short-term extension. If the Applicant determines that it cannot meet its current alternative office space search parameters (walking distance and/or Washington Park), the Applicant can broaden its' search to traditional office space markets and, if necessary, seek an additional short-term extension.

The Hearings Officer finds that if the Applicant seeks an additional extension, beyond the four years granted in this decision, the Applicant should be placed on notice that approval of its request will not be automatic and will be reviewed carefully to assure any additional extensions will not have the effect of "institutionalizing" or "making permanent" the office use of the Kingston House. The Hearings Officer finds if the Applicant seeks another extension, beyond the four years approved in this decision, it must utilize a process that involves a public hearing.

If this case is appealed to the Portland City Council, the Hearings Officer requests Council

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<sup>5</sup> Merriam Webster Online Dictionary definition of "significant": having meaning especially, having or likely to influence or effect, of a noticeably or measurably large amount.

consider the practical effect of granting the Applicant's requested 10 year extension. If Council finds that this approval criterion is technically satisfied, then the Hearings Officer asks, "how and when can Council ever deny an Applicant request for an extension?" The Hearings Officer believes that if Council approves the Applicant's request for a 10 year extension, then the Council would effectively be making the office use of the Kingston House permanent.

The Hearings Officer finds that this approval criterion can be met by reducing the Applicant's 10 year term request to four years and the inclusion of BDS Staff recommended conditions.

#### D. Public services.

1. The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;
2. Transportation system:
  - a. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated;
  - b. Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements;
  - c. Transportation improvements adjacent to the development and in the vicinity needed to support the development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed;

**Findings:** PBOT reviewed the proposal and submitted the following response to approval criteria D.1 and D.2 (Exhibit E-2):

*"PBOT staff has reviewed the transportation assessment prepared by Kittelson & Associates, dated August 12, 2019 [Exhibit A-4], and concurs with their*

*findings that the transportation system is capable of supporting the proposed use in addition to existing uses in the area.*

Consistency with the Street Designations

*Each modal designation is addressed, based on the Portland 2035: Transportation System Plan, dated May 2018 and adopted by Ordinance numbers 187832, 188177, and 188957 (the Transportation Element of the Portland Comprehensive Plan). This document will be referred to as the Portland TSP.*

Pedestrian

*Map C2 on page 116, indicates that SW Kingston Avenue is designated as a City Walkway. Text on page 74 describes the intent of City Walkways:*

*'... to provide safe, convenient, and attractive pedestrian access to activities along major streets and to recreation and institutions; provide connections between neighborhoods; and provide access to transit.'*

*Land uses anticipated along City Walkways include '... areas with dense zoning, commercial areas, and major destinations.'*

*Findings: Proposed use of the Kingston House has an institutional purpose and pedestrian activity to such uses are anticipated and promoted on City Walkways. The area does have multiple major destinations that include Washington Park, The Japanese Garden, and several other venues within the park. The site is equipped with sidewalk facilities along the frontage that extend to Washington Park to the south and to the intersection of Kingston Avenue with Fairview Boulevard (and beyond) to the north. Facilities and proposed uses are consistent with the Portland TSP.*

Bicycle

*Map C2 on page 134, indicates that SW Kingston Avenue is designated as a City Bikeway. Text on page 76 describes the intent of City Bikeways:*

*'... to establish direct and convenient bicycle access to significant destinations, to provide convenient access to Major City Bikeways and to provide coverage within three city blocks of any given point.'*

*City Bikeways are to support 2040 land use types and residential neighborhoods.*

*Finding: The area is a combination of residential neighborhoods and regional park, venues, and open spaces (2040 land use types). Kingston Avenue is a 24-foot wide street that provides bicyclists with shared-use facilities only. On-street parking is prohibited on both sides of Kingston Avenue for the segment that includes the site access, from the entrance to Washington Park to the intersection with SW Fairview Boulevard. No posted speed limit is displayed on the segment from the Washington Park entrance to the intersection with SW*

*Tichner Drive. All public streets connecting directly to Kingston Avenue also provide only shared-use bicycle facilities. Employees, guests, and visitors of the Kingston House have access to these facilities from a standard residential driveway. Use of the driveway for access to the facility is consistent with intentions for the City Bikeway (direct and convenient bicycle access). Facilities and proposed uses are consistent with the Portland TSP.*

#### Transit

*Map C2 on page 152, indicates that SW Kingston Avenue is designated as a Transit Access Street. Text on pages 81-82 describes the intent of Transit Access Streets:*

*'... facilitate movement of transit vehicles connecting town centers, neighborhood centers, and industrial and employment areas with other destinations and other transit service.' Land uses anticipated along Transit Access Streets include pedestrian- and transit- oriented development in commercial, institutional, and mixed-use areas. Transit access should include pedestrian and bicycle facilities that are safe and convenient with accessible crossings and bus stop locations roughly every one-quarter mile.*

*TriMet Route 63 (Washington Park/Arlington Heights) has a bus stop on SW Kingston Avenue at the Japanese Garden entrance (approximately 470 south of the Kingston House) and a stop on SW Fairview Boulevard (approximately 345 feet north of the Kingston House). The latter is also a stop location for TriMet Route 83 (not listed on the TriMet website). Both bus stops are equipped with a blue post, route number, and route information*

*Findings: The Kingston House is well within the roughly one-quarter mile distance desired for transit service on a Transit Access Street. The proposed use is among those anticipated to be served by a Transit Access Street. The bus stop street crossing at The Japanese Garden has accessibility features. Facilities and proposed uses are consistent with the Portland TSP.*

#### Freight

*SW Kingston Avenue has no freight designation within the Portland TSP. Findings: This criterion does not apply.*

#### Street

*Map C2 on page 188, indicates that SW Kingston Avenue is designated as a Local Street within the Portland TSP. Text on page 98 describes the intent of Local Streets:*

*'... to complement planned land uses and reduce dependence on arterials for local circulation.'*



*Land uses anticipated along Local Streets 'are multimodal, but not intended for trucks (other than local deliveries)'. The street design includes 'frequent street connections, sidewalks, on-street parking, stormwater facilities, and planting of street trees and ground covers (where planting strips are included).'*

*Findings: The proposed use retains an existing street connection and includes sidewalk, stormwater facilities, and planting of street trees and ground cover at the back of curb. Facilities and proposed uses are consistent with the Portland TSP.*

#### Emergency Response

*Map C2 on page 206, indicates that SW Kingston Avenue is designated as a Minor Emergency Response Street within the Portland TSP. Text on page 100 describes the intent of Minor Emergency Response Streets: '... to serve primarily the shorter legs of emergency response trips.' This is the default street classification. Only higher-order facilities receive an elevated emergency designation. The street provides access to individual properties and traffic slowing devices are allowed.*

*Findings: The proposed use retains an existing street connection and site frontage that supports emergency response to and through the area, similar to any other residential site in the vicinity. Facilities and proposed uses are consistent with the Portland TSP.*

#### Traffic

*Map C2 on page 224, indicates that SW Kingston Avenue is designated as a Local Service Traffic Street within the Portland TSP. Text on page 105 describes the intent of Local Service Traffic Streets: '... to distribute local traffic and provide access to local residences or commercial uses.' This is the default traffic classification. Only higher-order facilities receive an elevated traffic designation. The street provides slow vehicle operating speeds, discourages auto-oriented land uses, connects 'neighborhoods, provides local circulation, and provides access to nearby centers, corridors, station areas, and main streets.'*

*Hourly traffic volumes on SW Kingston Avenue were measured over a four-day period beginning on Thursday, July 11, 2019 and ending at midnight on Sunday, July 14, 2019. The highest measured weekday volume was 2,563 motor vehicles on Friday, July 12th and the highest measured weekend volume was 2,645 on Saturday July 13th. The average daily volume for the four days was 2,513 motor vehicles.*

*The morning peak hour consistently occurred at 11:00 AM across all four days (averaging 245 vehicles) with the highest weekday being 242 vehicles on*

*Friday, July 12th and the highest weekend day being 265 vehicles on Saturday, July 13th. The PM peak hour fluctuated between noon and 3:00 PM across the four days (averaging 262 vehicles at 2:00 PM) with the highest weekday being 266 vehicles at 2:00 PM on Friday, July 12th and the highest weekend day being 311 vehicles at 2:00 PM on Sunday, July 14th.*

*The site driveway to the Kingston House was counted between the hours of 6:00 AM and 9:00 PM, at 5-minute increments on Thursday, July 11, 2019 to better understand the typical weekday vehicle trip-making patterns of the Kingston House. A total of four (4) vehicles were counted entering or leaving the driveway during this 15-hour period. One entered in the morning (10:15 AM) and one in the afternoon (1:10 PM) and two vehicles exited the driveway in the afternoon (at 4:10 PM and 5:30 PM).*

*Pedestrian activity across the driveway was also measured for the same 15-hour period on Thursday, July 11, 2019. A total of four (4) pedestrians were observed to cross the driveway during this period. Traffic speeds on SW Kingston Avenue were measured during the same four-day period from July 11 to July 14, 2019. The 85th-percentile speed was found to be 16 miles per hour and the average speed was determined to be 9 miles per hour.*

*Findings: Traffic patterns and speeds in the immediate site vicinity are consistent with the designation of Local Service Traffic Street. The existing use was found to have four (4) motor vehicle driveway trips during a 15-hour period on a typical weekday during hours of driveway usage. Hours outside of those collected do not experience vehicular traffic at the driveway. If the 15-hour data were extrapolated to a 24-hour period, the result would indicate an estimate of 6.4 motor vehicle trips. The ITE Trip Generation, 10th Edition, would estimate 9.44 vehicle trips to a single-family detached home in an urban/suburban area. Data indicates that the proposed use generates traffic volumes at the site driveway that are fewer than that of a single-family home and thus consistent with the Portland TSP. The traffic volume data is included as an attachment to the transportation assessment.*

#### Safety

*No new motor vehicle trips are anticipated as part of the proposed use. Further, no changes to the building access are proposed. For these reasons, no safety-related impacts are anticipated, and no historical crash data review is necessary. The 85th- percentile speeds on SW Kingston Avenue, near the site driveway are reasonably low at 16 miles per hour. The low speed and low volume of motor vehicle traffic on SW Kingston Avenue is conducive to bicycle activity, even though it is a shared-use facility.*

*Pedestrians are buffered from the motor vehicle traffic by a planter strip between the sidewalk and the paved street.*

*Finding: The proposed use will have no measurable effect on safety conditions in the vicinity.*

City of Portland Transportation Capacity Implications (Street Capacity/Level of Service) The City of Portland Administrative Rule TRN 10.27 - Administrative Rules for Traffic Capacity Analysis in Land Use Review Cases provides standards for traffic impact studies required in the course of land use review or development. A summary of TRN 10.27.3 is provided below.

*10.27.3. An amendment or other land use application that requires analysis of traffic capacity and allows development that either (1) may cause a transportation facility to perform below the standards established in sections 1 and 2, or (2) adds vehicle trips to a facility that is already performing below the standards established in sections 1 and 2 may be approved if:*

- a. Development resulting from the amendment or other land use application will mitigate the impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of development through one or more of the following:*
  - (i) the development is limited to result in no net increase in vehicle trips over what is allowed by the existing zoning; OR*
  - (ii) one or more combination of transportation improvements or measures are imposed to mitigate the transportation impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of any development.*

*Finding: The conditional use application is to continue the existing use in the R7 zoning with no increase to existing transportation demands. With no changes in demand anticipated as part of the conditional use, the requirements of TRN 10.27.3 are satisfied.*

#### Connectivity

*Finding: The site has direct connection to pedestrian, bicycle, transit, and motor vehicle facilities. No connectivity changes are proposed as part of the conditional use application. As such, this criterion is met.*

#### Transit Availability

*The nearest transit service is provided by Tri-Met Route 63 – Washington Park/Arlington Heights, with northbound stops on SW Kingston Avenue*

*(approximately 470 feet from the site) and bi-directional stops on SW Fairview Boulevard near SW Kingston Avenue (approximately 345 feet from the site). Route 63 provides service at headways of 61-80 minutes, Monday through Friday.*

*Finding: With no new trips associated with continuation of the proposed use, no impacts to transit service are anticipated. As such, this criterion is met.*

#### Availability of Bicycle and Pedestrian Networks

*Shared-use bicycle facilities are present along the site frontage and seamlessly connect via additional shared-use facilities to various off-street shared-use paths and on-street striped bike lanes that link the Arlington Heights neighborhood to the greater Portland region. A continuous sidewalk is present along the site frontage that connects into Washington Park, the immediately adjacent Arlington Heights neighborhood, the regional trail system, and the greater Portland region.*

*Finding: With no new trips associated with continuation of the proposed use, no impacts to bicycle and pedestrian service are anticipated. As such, this criterion is met.*

#### On-Street Parking Impacts

*On-street parking is prohibited along SW Kingston Avenue from 10 AM to 5 PM all days. The evenings and early mor[n]ing measured driveway activity of the existing use is found to be lower than a typical single-family detached home in an urban/suburban setting.*

*Finding: With no new trips associated with continuation of the proposed use, no new parking demand is anticipated. As such, this criterion is met.*

**BDS Staff comment** (Exhibit H.2, page 15): *"The applicant proposes for employees and visitors to the Kingston House to not use on-street parking on SW Kingston Ave. outside of Washington Park, consistent with the Good Neighbor Agreement between the Portland Japanese Garden and the Arlington Heights Neighborhood Association (Exhibit A-1, pages II-1 and IV-10 and Exhibit G-5, page 3). Employees and visitors can park in the Kingston House garage, on the Kingston House driveway (up to two vehicles at a time), or in Washington Park (Exhibit A-1, page II-1 and Exhibit G-5, page 3). Since this aspect of the proposal will preserve more on-street parking for neighbors, staff recommends a condition of approval to require this aspect of the proposal to be maintained.]"*

#### Access Restrictions

*Finding: No new access restrictions are included as part of the conditional use. As such, this criterion is met.*

Neighborhood Impacts

*Finding: With no new access, no change in use, and no net new trips there are no new neighborhood impacts to consider. As such, this criterion is met.*

Impacts on the Pedestrian Circulation

*Finding: No changes to pedestrian demand or the pedestrian circulation system are anticipated. As such, this criterion is met.*

Impacts on the Bicycle Circulation

*Finding: No changes to bicycle demand or the bicycle circulation system are anticipated. As such, this criterion is met.*

Impacts to Transit Circulation

*Finding: No changes to transit demand or the transit circulation system are anticipated. As such, this criterion is met.*

Additional Information

*The Garden compensates their employees for bus passes, as a means of supporting the use of non-auto commute options and to be good stewards of the environment.*

CONCLUSION

*Approval of The Japanese Garden Office Conditional Use Permit is not expected to have measurable impact on the surrounding transportation system. All transportation-related criteria related to this application appear to be met."*

Based on the PBOT quoted comments above, BDS Staff, in the Staff Report (Exhibit H.2, page 15), recommended that the Hearings Officer find that with conditions of approval criteria D.1 and D.2 are met. The Hearings Officer concurs.

3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

**Findings:** The Applicant's proposal was to maintain the existing Kingston House water service (Exhibit A-1, page IV-12), and the Water Bureau reviewed the proposal and responded with no concerns (Exhibit E-3). The Police Bureau reviewed the proposal and stated that police can adequately serve the proposed use (Exhibit E-5). The Fire Bureau reviewed the proposal and responded with no concerns (Exhibit E-4), indicating that adequate fire protection can be provided. BES found the Kingston House property has adequate sanitary waste disposal with its existing sewer connection, and that stormwater requirements are met because no 500-

square-foot or larger increase in impervious surface area is proposed (Exhibit E-1).

The Hearings Officer finds this approval criterion is met.

**E. Area plans.** The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.

**Findings:** The Kinston House property is not within the boundaries of any area plans adopted by the City Council as part of the Comprehensive Plan. Therefore, the Hearings Officer finds this approval criterion is not applicable.

### Oregon Statewide Planning Goals

#### Goal 1: Citizen Involvement

Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program containing six components specified in the goal. It also requires local governments to have a Committee for Citizen Involvement to monitor and encourage public participation in planning.

**Findings:** The City of Portland maintains an extensive citizen involvement program which complies with all relevant aspects of Goal 1, including specific requirements in Zoning Code Chapter 33.730 for public notice of land use review applications. For this application, a written notice seeking comments on the proposal was mailed to property owners and tenants within 400 feet of the "site" and to recognized organizations in which the "site" is located and recognized organizations within 1,000 feet of the "site." In addition, the public had, and took advantage of, the opportunity to testify at the public hearing for the application. The Hearings Officer finds the public notice requirements for this application have been met, and nothing about this proposal affects the City's ongoing compliance with Goal 1. Therefore, the Hearings Officer finds this proposal is consistent with this goal.

#### Goal 2: Land Use Planning

Goal 2 outlines the basic procedures of Oregon's statewide planning program. It states that land use decisions are to be made in accordance with a comprehensive plan, and that suitable "implementation ordinances" to put the plan's policies into effect must be adopted. It requires that plans be based on "factual information", that local plans and ordinances be coordinated with those of other jurisdictions and agencies, and that plans be reviewed periodically and amended as needed. Goal 2 also contains standards for taking exceptions to statewide goals. An exception may be taken when a statewide goal cannot or should not be applied to a particular area or situation.

**Findings:** Compliance with Goal 2 is achieved, in part, through the City's comprehensive planning process and land use regulations. For quasi-judicial proposals, Goal 2 requires that the decision be supported by an adequate factual base, which means it must be supported by substantial evidence in the record. The Hearings Officer finds that the proposal complies with

the applicable regulations, as supported by substantial evidence in the record. As a result, the Hearings Officer finds that the proposal meets Goal 2.

### Goal 3: Agricultural Lands

Goal 3 defines "agricultural lands," and requires counties to inventory such lands and to "preserve and maintain" them through farm zoning. Details on the uses allowed in farm zones are found in ORS Chapter 215 and in Oregon Administrative Rules, Chapter 660, Division 33.

### Goal 4: Forest Lands

This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will "conserve forest lands for forest uses."

**Findings:** In 1991, as part of Ordinance No. 164517, the City of Portland took an exception to the agriculture and forestry goals in the manner authorized by state law and Goal 2. Since this review does not change any of the facts or analyses upon which the exception was based, the Hearings Officer finds the exception is still valid, and Goals 3 and 4 do not apply.

### Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources

Goal 5 relates to the protection of natural and cultural resources. It establishes a process for inventorying the quality, quantity, and location of 12 categories of natural resources. Additionally, Goal 5 encourages but does not require local governments to maintain inventories of historic resources, open spaces, and scenic views and sites.

**Findings:** The City complies with Goal 5 by identifying and protecting natural, scenic, and historic resources in the City's Zoning Map and Zoning Code. Natural and scenic resources are identified by the Environmental Conservation ("c"), Environmental Protection ("p"), and Scenic ("s") overlay zones on the Zoning Map. The Zoning Code imposes special restrictions on development activities within these overlay zones. Historic resources are identified on the Zoning Map either with landmark designations for individual sites or as Historic Districts or Conservation Districts. Portions of the "site" are in the Environmental Conservation ("c"), Environmental Protection ("p"), and Scenic ("s") overlay zones. However, this proposal does not include any physical development, so there is no effect on the regulations of these overlay zones. Also, no new uses are proposed on OS-zoned property. Therefore, the Hearings Officer finds the proposal is consistent with Goal 5.

### Goal 6: Air, Water and Land Resources Quality

Goal 6 requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.

**Findings:** Compliance with Goal 6 is achieved through the implementation of development regulations such as the City's Stormwater Management Manual at the time of building permit review, and through the City's continued compliance with Oregon Department of Environmental Quality ("DEQ") requirements for cities. The proposal complies with stormwater management requirements, as explained earlier in this decision. Therefore, the

Hearings Officer finds the proposal is consistent with Goal 6.

Goal 7: Areas Subject to Natural Disasters and Hazards

Goal 7 requires that jurisdictions adopt development restrictions or safeguards to protect people and property from natural hazards. Under Goal 7, natural hazards include floods, landslides, earthquakes, tsunamis, coastal erosion, and wildfires. Goal 7 requires that local governments adopt inventories, policies, and implementing measures to reduce risks from natural hazards to people and property.

**Findings:** The City complies with Goal 7 by mapping natural hazard areas such as floodplains and potential landslide areas, which can be found in the City's MapWorks geographic information system. The City imposes additional requirements for development in those areas through a variety of regulations in the Zoning Code, such as through special plan districts or land division regulations. The "site" is within a mapped landslide hazard area, as is much of Portland's west side. Since no new development is proposed with this application, the Hearings Officer finds that the proposal does not increase risks from natural hazards. Therefore, the Hearings Officer finds the proposal is consistent with Goal 7.

Goal 8: Recreation Needs

Goal 8 calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. It also sets forth detailed standards for expediting siting of destination resorts.

**Findings:** The City maintains compliance with Goal 8 through its comprehensive planning process, which includes long-range planning for parks and recreation facilities. Since nothing about this proposal would undermine planning for future parks and recreation facilities, the Hearings Officer finds the proposal is consistent with Goal 8.

Goal 9: Economy of the State

Goal 9 calls for diversification and improvement of the economy. Goal 9 requires communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.

**Findings:** Land needs for a variety of industrial and commercial uses are identified in the adopted and acknowledged Economic Opportunity Analysis ("EOA") (Ordinance 187831). The EOA analyzed adequate growth capacity for a diverse range of employment uses by distinguishing several geographies and conducting a buildable land inventory and capacity analysis in each. In response to the EOA, the City adopted policies and regulations to ensure an adequate supply of sites of suitable size, type, location and service levels in compliance with Goal 9. The City must consider the EOA and Buildable Lands Inventory when updating the City's Zoning Map and Zoning Code. Because this proposal does not change the supply of industrial or commercial land in the City, the Hearings Officer finds the proposal is consistent with Goal 9.



### Goal 10: Housing

Goal 10 requires local governments to plan for and accommodate needed housing types. The Goal also requires cities to inventory buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.

**Findings:** The City complies with Goal 10 through its adopted and acknowledged inventory of buildable residential land (Ordinance 187831), which demonstrates that the City has zoned and designated land for an adequate supply of housing. For needed housing, the Zoning Code includes clear and objective standards. The "site," in particular the Kingston House property, was approved for 10 years of administrative office use rather than residential use in LU 09-143061 CU AD. The Applicant's current proposal would extend the office use for another 10 year term. Under the current proposal, the Applicant's rights to use the Kingston House for office purposes would expire after 10 years unless another Conditional Use Review request were reviewed and approved. Technically, the Applicant's proposal would not permanently remove the Kingston House from the City's housing supply. Under the findings for PCC 33.185.105.C, the Hearings Officer determined that the Applicant's requested 10-year term should be reduced to 4-years. Therefore, after the 4-year extension ends, the Kingston House would return to residential use. The Hearings Officer also, in the findings for PCC 33.815.105.C, strongly discouraged the approval of any additional extensions (beyond the initial 10-years and the 4-years approved in this decision) so as to minimize Goal 10 impacts. The Hearings Officer finds, limiting the use of the Kingston House use as an administrative office to four additional years is consistent with Goal 10.

### Goal 11: Public Facilities and Services

Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. The goal's central concept is that public services should be planned in accordance with a community's needs and capacities rather than be forced to respond to development as it occurs.

**Findings:** The City of Portland maintains an adopted and acknowledged public facilities plan to comply with Goal 11. The public facilities plan is implemented by the City's public services bureaus, and these bureaus review development applications for adequacy of public services. Where existing public services are not adequate for a proposed development, the Applicant is required to extend public services at their own expense in a way that conforms to the public facilities plan. Existing public services are adequate for this proposal, as explained earlier in this decision. Therefore, the Hearings Officer finds the proposal is consistent with Goal 11.

### Goal 12: Transportation

Goal 12 seeks to encourage "safe, convenient and economic transportation systems." Among other things, Goal 12 requires that transportation plans consider all modes of transportation and be based on inventory of transportation needs.

**Findings:** The City of Portland maintains a Transportation System Plan ("TSP") to comply with

Goal 12, adopted by Ordinances 187832, 188177 and 188957. The City's TSP aims to "make it more convenient for people to walk, bicycle, use transit, use automobile travel more efficiently, and drive less to meet their daily needs." As discussed earlier in this decision, PBOT found that the Conditional Use proposal will not negatively impact the City's transportation system and the goals of the TSP. Therefore, the Hearings Officer finds the proposal is consistent with Goal 12.

#### Goal 13: Energy

Goal 13 seeks to conserve energy and declares that "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."

**Findings:** With respect to energy use from transportation, as identified above in response to Goal 12, the City maintains a TSP that aims to "make it more convenient for people to walk, bicycle, use transit, use automobile travel more efficiently, and drive less to meet their daily needs." This is intended to promote energy conservation related to transportation. Additionally, at the time of building permit review and inspection, the City implements energy efficiency requirements for structures, as required by the current building code. No new structures are proposed in this application, and PBOT's analysis concluded that the Conditional Use proposal would not negatively impact the City's transportation system and the goals of the TSP. Therefore, the Hearings Officer finds the proposal is consistent with Goal 13.

#### Goal 14: Urbanization

This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. It calls for each city to establish an "urban growth boundary" (UGB) to "identify and separate urbanizable land from rural land." It specifies seven factors that must be considered in drawing up a UGB. It also lists four criteria to be applied when undeveloped land within a UGB is to be converted to urban uses.

**Findings:** In the Portland region, most of the functions required by Goal 14 are administered by the Metro regional government rather than by individual cities. The desired development pattern for the region is articulated in Metro's Regional 2040 Growth Concept, which emphasizes denser development in designated centers and corridors. The Regional 2040 Growth Concept is carried out by Metro's Urban Growth Management Functional Plan, and the City of Portland is required to conform its zoning regulations to this functional plan. This land use review proposal does not change the UGB surrounding the Portland region and does not affect the Portland Zoning Code's compliance with Metro's Urban Growth Management Functional Plan. Therefore, the Hearings Officer finds Goal 14 is not applicable.

#### Goal 15: Willamette Greenway

Goal 15 sets forth procedures for administering the 300 miles of greenway that protects the Willamette River.

**Findings:** The City of Portland complies with Goal 15 by applying Greenway overlay zones which impose special requirements on development activities near the Willamette River. The "site" is not within a Greenway overlay zone near the Willamette River. The Hearings Officer finds Goal 15 does not apply.

Goal 16: Estuarine Resources

This goal requires local governments to classify Oregon's 22 major estuaries in four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes types of land uses and activities that are permissible in those "management units."

Goal 17: Coastal Shorelands

This goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. It specifies how certain types of land and resources there are to be managed: major marshes, for example, are to be protected. Sites best suited for unique coastal land uses (port facilities, for example) are reserved for "water-dependent" or "water-related" uses.

Goal 18: Beaches and Dunes

Goal 18 sets planning standards for development on various types of dunes. It prohibits residential development on beaches and active foredunes but allows some other types of development if they meet key criteria. The goal also deals with dune grading, groundwater drawdown in dunal aquifers, and the breaching of foredunes.

Goal 19: Ocean Resources

Goal 19 aims "to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf." It deals with matters such as dumping of dredge spoils and discharging of waste products into the open sea. Goal 19's main requirements are for state agencies rather than cities and counties.

**Findings:** Since Portland is not within Oregon's coastal zone, the Hearings Officer finds Goals 16-19 do not apply.

### III. CONCLUSIONS

In 2009 the Applicant requested and received approval for the use of the Kingston House property as an administrative office for a 10 year term. The Applicant, in this case, seeks to extend the 2009 Decision approval for an additional 10 year term.

Opponents, in this case, argued that the BDS Staff and Applicant legal interpretations of "site" and "accessory use" were incorrect. The Hearings Officer found that the BDS Staff and Applicant interpretations of "site" and "accessory use" were correct. The Hearings Officer concluded that the "site," for the purpose of deciding this case, included Japanese Garden

Leased Land **and** the Kingston House Property. The Hearings Officer concluded that office use is allowed as an "accessory use" on a Parks and Open Space "site."

The Hearings Officer found the Applicant, in the 2009 Decision, represented to owners/residents of the "residential area" and to the Hearings Officer, that the non-residential use (office) would not become permanent and/or "institutionalized." The Hearings Officer found the "residential area," as considered in PCC 33.815.105.C, is unique and particularly sensitive to impacts created by a non-residential use (office) at the Kingston House location.

The Hearings Officer found the Applicant provided no evidence in the record of this case that gave the Hearings Officer any confidence that the current request for an additional 10 year term would be the last such request. The Hearings Officer found adverse impacts arising from use of the Kingston House property, for a relatively short time period (the initial 10 year term approved in the 2009 Decision) were not significant. However, the Hearings Officer found that approving the Applicant's currently requested 10 year extension would cause significant adverse impacts to the "residential area."

The Hearings Officer modified the term of conditional use approval for office space at the Kingston House to four years. The Hearings Officer agreed with BDS Staff that conditions of approval set forth in the BDS Staff Report (Exhibit H.2) were reasonable, appropriate, and necessary.

#### IV. DECISION

**Approval** of a Conditional Use Review for the Kingston House (369 SW Kingston Avenue) to be used as accessory administrative offices for the Portland Japanese Garden for four years. This approval supersedes the approval and conditions of approval from LU 09-143061 CU AD. The approval of the current Conditional Use Review is subject to the following conditions:

- A. The Conditional Use approval for the Kingston House to be used as accessory administrative offices shall sunset (terminate) four years after the effective date of the LU 19-192268 CU approval. At the four year sunset date of this approval, a new Type III Conditional Use Review shall be required for any proposal to continue the accessory administrative office use of the Kingston House.
- B. The regular hours of operation for administrative office use shall be limited to weekdays from 7 a.m. to 7 p.m., with occasional/infrequent weekend and additional hours allowed.
- C. Meetings held in the Kingston House shall be limited to 12 people, shall occur only on weekdays, and shall conclude by 9:30 p.m.
- D. The maximum occupancy of the Kingston House shall be limited to 12 people at any one time, including regular office staff and meeting attendees.

- E. The exterior of the Kingston House shall not be changed in a manner that would make the house look like something other than a private residence.
- F. No signs on the Kingston House property are allowed except for:
- Identification of the house address in the general manner in which the address is now identified; and
  - Signs or stickers on or near the front door that are not large enough to be readable from the street, and which comply with Title 32 (Signs and Related Regulations).
- G. The Portland Japanese Garden shall keep representatives of the Arlington Heights Neighborhood Association continuously informed of a current contact name and telephone number for after-hours security concerns related to the Kingston House. The Portland Japanese Garden shall respond promptly to any security issues.
- H. The Portland Japanese Garden shall instruct employees and visitors to the Kingston House not to utilize on-street parking on SW Kingston Avenue outside of Washington Park. Employees and visitors must park in the Kingston House garage, on the Kingston House Driveway (no more than two vehicles at a time), or within Washington Park.



\_\_\_\_\_  
Gregory J. Frank, Hearings Officer

\_\_\_\_\_  
December 5, 2019  
Date

**Application Determined Complete:** September 18, 2019  
**Report to Hearings Officer:** October 18, 2019  
**Decision Mailed:** December 5, 2019  
**Last Date to Appeal:** 4:30 p.m., December 19, 2019  
**Effective Date (if no appeal):** December 20, 2019

**Conditions of Approval.** 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.

**Appeal of the decision.** ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4<sup>TH</sup> AVENUE, PORTLAND, OREGON 97201. Appeals can be filed at the 5<sup>th</sup> floor reception desk, Monday through Friday between 8:00 a.m. and 4:30 p.m. **An appeal fee of \$2,500.00 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000.00).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

**Who can appeal:** You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

**Appeal Fee Waivers:** Neighborhood associations recognized by the Office of Community and Civic Life may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

**Recording the final decision.** If this land use review is approved, the final decision will be recorded with the Multnomah County Recorder. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder. For further information on 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 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:

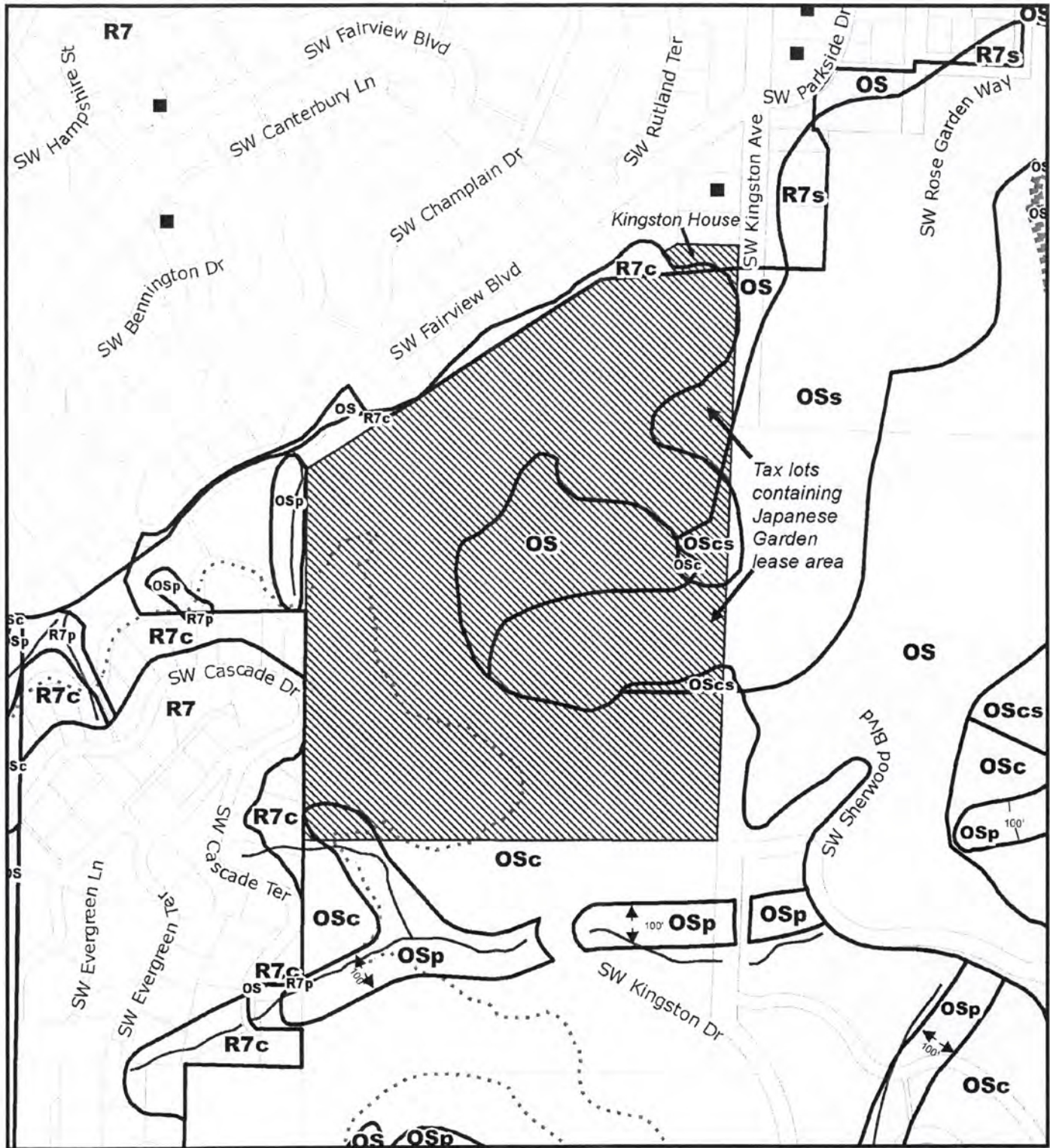
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

**EXHIBITS**  
Not Attached Unless Indicated

- A. Applicant's Statement
  - 1. Applicant's narrative
  - 2. Memo from applicant, dated September 18, 2019
  - 3. Applicant's responses to statewide planning goals
  - 4. Transportation study
- B. Zoning Map (**attached**)
- C. Plans/Drawings
  - 1. Site plan/utility plan
- D. Notification Information
  - 1. Request for Response, dated September 23, 2019
  - 2. Posting letter sent to applicant, dated September 24, 2019
  - 3. Applicant's statement certifying posting, dated September 30, 2019
  - 4. Mailed Notice of Public Hearing, dated October 7, 2019
  - 5. Mailing list for Notice of Public Hearing
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Portland Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Police Bureau
  - 6. Site Development Review Section of BDS
  - 7. Life Safety Review Section of BDS
  - 8. Bureau of Parks and Recreation, Urban Forestry Division
- F. Correspondence
  - 1. E-mail from F. Gordon Allen, dated October 2, 2019
  - 2. E-mail from Hilary Mackenzie, dated October 10, 2019
  - 3. E-mail from Hilary Mackenzie, dated October 12, 2019
  - 4. E-mail and letter from Kathy Goeddel representing the Arlington Heights Neighborhood Association, dated October 13, 2019
- G. Other
  - 1. Land use application form and receipt
  - 2. Incompleteness determination letter, dated July 30, 2019
  - 3. PBOT completeness review memo, dated January 30, 2019
  - 4. LU 09-143061 CU AD decision
  - 5. Good Neighbor Agreement referenced in LU 09-143061 CU AD condition of approval E
- H. Received in the Hearings Office
  - 1. Notice of a Public Hearing - Gulizia, Andrew
  - 2. Staff Report - Gulizia, Andrew
  - 3. 10/29/19 letter from Stephen T. Janik with attachments - Gulizia, Andrew
    - a. Good Neighbor Agreement - Gulizia, Andrew
    - b. Declaration of Restrictive Covenant - Gulizia, Andrew



4. Letter of additional testimony from Chris Hagerman (4 pgs.) - Hagerman, Chris
5. Attachment A: Letter and emails to Joseph Angel from Lisa Christy (10 pgs.) - Hagerman, Chris
6. Attachment B Email and documents from Lisa Christy (10 pgs.) - Hagerman, Chris
7. Letter from Arlington Heights NA attorney (3 pgs.) - Kleinman, Jeffrey
8. Letter in opposition - Galen, Christie
9. Final Opinion and Order Mackenzie vs. City of Portland and Japanese Garden et. al (23 pgs.) - Gulizia, Andrew
10. Introduction to the Use Categories (5 pgs.) - Gulizia, Andrew
11. PowerPoint Presentation (10 pgs.) - Gulizia, Andrew
12. 11/5/19 letter - Janik, Stephen
13. 11/6/19 Memorandum - Gulizia, Andrew
14. 11/6/19 letter - Janik, Stephen
  - a. 11/5/19 letter - Janik, Stephen
15. 11/4/19 letter - Mirkin, Dana
16. 11/6/19 letter from Arlington Heights NA - Goeddel, Kathy
17. 11/6/19 Memorandum with attachments - Hagerman, Chris
  - a. Robert Zagunis written testimony - Hagerman, Chris
  - b. Drake Snodgrass written testimony - Hagerman, Chris
  - c. Lisa Christy written testimony - Hagerman, Chris
  - d. Q&A Regarding Time & Space - Hagerman, Chris
  - e. PortlandMaps printouts - Hagerman, Chris
  - f. Portland Japanese Garden Employee Handbook - Hagerman, Chris
  - g. Portland Japanese Garden Employee Neighborhood Parking Agreement - Hagerman, Chris
  - h. Mt. Tabor Maintenance Yard - Hagerman, Chris
18. Number Not Used
19. 11/4/19 letter from Colleen M. Shoemaker - Shoemaker, Jay
20. 11/6/19 letter - Shoemaker, Jay
21. LU 14-122172 CU EN City Council Decision with Partial Decision of the Hearings Officer - Shoemaker, Jay
22. 11/6/19 Letter with attachment - Kleinman, Jeffrey
  - a. LU 09-143061 CU AD Decision of the Hearings Officer - Kleinman, Jeffrey
23. 11/13/19 Memorandum - Hagerman, Chris
24. 11/13/19 letter - Kleinman, Jeffrey
25. Applicant's Final Argument (14 pgs.) - Hossaini, Kelly
26. 11/19/19 final argument letter from Kelly S. Hossaini - Hagerman, Chris



# ZONING



-  Site
-  Stream
-  Historic Landmark
-  Recreational Trails

File No.	LU 19-192268 CU
1/4 Section	3026
Scale	1 inch = 300 feet
State ID	1N1E32DD 5800
Exhibit	B Jul 15, 2019