



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

**NOTICE OF A PUBLIC HEARING BEFORE
THE CITY COUNCIL ON AN APPEAL OF A DECISION BY
THE CITY OF PORTLAND LAND USE HEARINGS OFFICER**

CASE FILE: LU 14-122172 CU EN (Portland Japanese Garden)
WHEN: August 28, 2014 at 2:00 PM
WHERE: COUNCIL CHAMBERS, 1221 SW FOURTH AVENUE

Date: August 1, 2014
To: Interested Person
From: Kathleen Stokes, 503-823-7843 and Rachel Whiteside, 503-823-7605
Bureau of Development Services, Land Use Services

A public hearing will be held to consider an appeal of the Hearings Officer's decision to approve a Conditional Use Review and an Environmental Review for proposed development at the Japanese Garden in the Open Space (OS) Zone and also within the Environmental Conservation Overlay ("c") Zone. The location of the Japanese Garden is listed as 400 SW Kingston Avenue, which is the location of the administrative office for the Garden. The office is adjacent to the Garden and is located within the R7 single-dwelling residential zone. (No change to the use of or the development at the administrative office was included with this proposal). The Hearings Officer's decision of approval with conditions has been appealed by The Arlington Heights Neighborhood Association, represented by Stephen T. Janik, and also by Hilary Mackenzie, a neighborhood resident. At the hearing City Council will consider the appeal. You are invited to testify at the hearing.

This will be an On-the-Record hearing, one in which new evidence cannot be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

GENERAL INFORMATION:

File No.: LU 14-122172 CU EN (HO 4140009)

Appellants: Arlington Neighborhood Association
2257 NW Raleigh Street
Portland, OR 97210

Hilary Mackenzie
2722 SW Rutland Terrace
Portland, OR 97205

Applicant/Owner: City of Portland
1120 SW 5th Avenue #609
Portland, OR 97204-1912

Representative: Beverly Bookin
The Bookin Group LLC
813 SW Alder Street, Suite 320
Portland, OR 97205

Architect: Jonah Cohen
THA Architecture
733 SW Oak Street, Suite 100
Portland, OR 97205

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representatives: Kathleen Stokes and
Rachel Whiteside

Site Address: 400 SW KINGSTON AVE

Legal Description: BLOCK 11 LOT 18&26 TL 5800, ARLINGTON HTS & RPLT; TL 200 4.22
ACRES, SECTION 32 1N 1E; TL 200 21.12 ACRES, SECTION 05 1S 1E

Tax Account No.: R037503150, R941321360, R991050840

State ID No.: 1N1E32DD 05800, 1N1E32 00200, 1S1E05 00200

Quarter Section: 3026

Neighborhood: Arlington Heights

District Coalition: Neighbors West/Northwest

Zoning: OS cs, (Open Space Zone, with Environmental Conservation and Scenic
Resource Overlays), R7 c (R7,000, Medium Density Single-Dwelling
Residential with an Environmental Conservation Overlay)

Land Use Review: Type III, Conditional Use Review, Environmental Review

BDS Staff Recommendation to the Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 8:35 a.m. on June 4, 2014, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 11:51 a.m. The record was held open until 4:30 p.m. on June 13, 2014, for new written evidence; until 4:30 p.m. on June 20, 2014 for rebuttal; and until 4:30 p.m. on June 27, 2014 for applicant's final rebuttal. The record was closed at that time.

Testified at the Hearing:

Kathleen Stokes	Rachel Whiteside	
Steve Bloom	Jonah Cohen	Beverly Bookin
Gwyneth Gamble Booth	Dorie Vollum	Julieann Barker
Sho Dozono	Dean Alterman	Dr. Carol Otis
Steve Janik	Joe Angel	Jeffrey Boly
Ingeborg Holliday	Michael Wallace	Hilary Mackenzie
Mike Dowd	Aliza Bethlahmy	Philip Worth

Kelly Hossaini

Proposal: The applicant is proposing a number of major alterations to the development at the Portland Japanese Garden ("the Garden"), in the OS zone. The proposed plans include increasing the size of their lease-hold, within the larger Washington Park, from about 9.1 to 12.56 acres and constructing a net addition of 11,340 gross square feet of building area,

mainly to accommodate several new amenities for a “cultural village” at the top of the access road to the Garden. These include the “Village House” (administration building, with learning spaces, gallery, gift store and offices), a garden house, and tea café. There would also be a new ticketing pavilion at the base of the Garden and modifications to structures that are involved in the maintenance of the garden, including a 30 square-foot addition to the existing service building and the construction of a new pump house. Other additional proposed improvements include:

- widening the access road and improving pedestrian paths;
- installing a 6-foot tall wood fence (approximately 728 feet long), with landscaping along the access road;
- planting new formal gardens;
- installing a stormwater conveyance system;
- constructing a retaining wall at the north end of the parking area;
- renovating the parking lot;
- installing a gate and retaining wall (uphill side of the access road at the entrance), and
- creating a Water Garden at the bottom of the hill.

NOTE: Two changes were made to the original proposal. The applicants originally requested approval for the construction of additions and changes to the operation of the Garden administrative office at 369 SW Kingston. These portions of the proposal have been formally withdrawn. Therefore, the proposal that was described when the Request For Response was mailed to the neighborhood has been modified. There are no changes to the conditions of approval of LU 09-143601 CU AD being requested and there is no construction of additions to this structure (Kingston House) being proposed as a part of this review.

The applicant has also decided to remove the proposal for a new Bonsai greenhouse in the Environmental Conservation zone. Therefore, the applicant has modified the proposed size of the disturbance area and the impacts on the resource area, from the amounts that were described in the Notice of a Hearing on a Proposal, that was mailed on May 15, 2014.

The new proposed facilities included a 250 gross square feet (“gsf”) Ticketing Pavilion and a 13,600-gsf Cultural Village, including a 480-gsf Tea Café, 8,980-gsf Administration Building and 4,140-gsf Garden House, for a total of 13,850 gsf. The increase in this inventory is due to a 970-gsf increase in the size of the Administrative House from 8,010 to 8,980 resulting from refinement of the architectural design; this is a combination of first-floor public patron functions and second-floor offices. This is offset by the demolition of 2,510-gsf of existing space for a total net increase of 11,340 gsf. The total building inventory in the Garden will increase from the current 8,330 gsf to 19,670 gsf. These area statements do not include the Kingston House; requests related to the Kingston House were withdrawn by the applicant.

The proposed 26 seat Tea Café will be within the fenced enclosure of the Garden and available only to patrons of the Garden. At maximum build-out, building coverage will increase from the existing 1.5 percent to 3.1 percent. The maximum building coverage in the OS zone is 50 percent (Portland Zoning Code [“PCC”] 33.110-5).

Despite being a heavily managed park for over 50 years, some of the existing and proposed development area is located within the Environmental Conservation Overlay Zone. A total of 1.69 acres of disturbance is proposed between the upper and lower garden improvements. Of this total, roughly 70 percent (1.19 acres) is proposed for areas that have been previously disturbed and 0.50 acres that will be new disturbance. Impacts within the disturbance areas also include removal of 50 trees within the upper garden area and transplanting of 14 other trees from the upper and lower gardens. Mitigation for the identified impacts includes resource enhancements in an area equal to the new permanent disturbance area adjacent to the service

access road and planting of 80 replacement trees and 183 shrubs. Additional trees, shrubs, and groundcover plants are proposed in temporary disturbance areas and to compensate for permanent loss of resource area.

Because the proposal is for additional development on a Conditional Use Site in an Open Space Zone and because the proposed increase in floor area is greater than 10 percent over the existing floor area for the use, a Type III Conditional Use Review is required. New development within the resource area of the Environmental Conservation zone exceeds the general development standards in Section 33.430.140; therefore a Type II Environmental Review is required.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- **Conditional Use – 33.815.100 A through D; and**
- **Environmental Review – 33.430.250 A and E**

REVIEW BODY DECISION

Approval of Conditional Use Review to allow the proposed plans for the Portland Japanese Garden, including:

- increasing the size of their lease-hold, within the larger Washington Park, from about 9.1 to 12.56 acres;
- constructing an additional 11,340 gross square feet of building area -mainly to accommodate several new amenities for a “cultural village” at the top of the access road to the Garden, including the “Village House” (administration building, with learning spaces, gallery, gift store and offices), a garden house, and tea café;
- building a new ticketing pavilion at the base of the Garden;
- making modifications to structures that are involved in the maintenance of the Garden; including a 30 square-foot addition to the existing service building and the construction of a new pump house;
- widening the access road and improving pedestrian paths;
- construction of a six-foot wood fence and installation of landscaping, to screen residences on SW Fairview;
- planting new formal garden areas;
- installing a stormwater conveyance system;
- constructing a retaining wall at the north end of the parking area;
- renovating the parking lot, in accordance with requirements of Title 33;
- installing a gate and retaining wall on the uphill side of the access road at the entrance, and
- creating a Water Garden at the bottom of the hill.

Approval of the Conditional Use is subject to general compliance with the site plan and screening fence and landscape plan (Exhibits H.3b and C-2) and is also subject to the following conditions:

- A.** As part of the building permit application submittals, the following development-related conditions (B through H) 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 14-122172 CU EN.” All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled “REQUIRED.”

- B. Prior to the start of any construction described in the approval of this application, the applicant shall provide BDS with a copy of a signed agreement (lease/license or other suitable document) confirming the legal right of the applicant to enter upon, perform construction activities, and use/possess the 12.56 acre site area.
- C. Prior to obtaining final occupancy permits for the proposed new development, the Garden must install CCTV video surveillance cameras, in accordance with the recommendations of the Portland Police Bureau, and must also obtain sign permits and post signage near the vehicle and pedestrian access points of the parking lot that states "under video surveillance."
- D. The Garden must provide a means of emergency access through the new secured access gate, after hours, for Police, Fire or Emergency Medical Response personnel.
- E. The Garden must offer free or discounted TriMet passes to the Garden staff and encourage them to use the free in-park shuttle for connections to LRT and/or other bus lines.
- F. The Garden must coordinate event scheduling proactively to limit the number of visitors on peak days and, thus attempt to reduce the parking demand on existing facilities during peak days and months. This must be accomplished by generally scheduling cultural festivals, workshops, and lectures throughout historically off-peak days and months during the year.
- G. The Garden shall construct a minimum 6-foot wide concrete sidewalk from the existing curb with a minimum 4-foot wide planting strip along the north side of the park road/SW Kingston Avenue between the Garden's new parking lot and the existing public sidewalk at the Park entrance. The new sidewalk shall be constructed at the same time as the new parking lot.
- H. When the Garden is aware that a tour bus will be bringing visitors to the Garden, the Garden shall instruct the tour bus operator to park, after unloading passengers, in designated bus parking areas adjacent to the Rose Garden.

Approval of an Environmental Review for the Portland Japanese Garden for:

- Construction of the Garden House, Village House, Tea Café, and Village Plaza;
- Installation of the new Chabana Garden, Dry Creek Garden and Terraced Garden;
- New utility connections and stormwater facilities, including surface planters and swales
- Widening the access drive and turnaround/shuttle drop-off area;
- Adding retaining walls and fencing; and
- Removal of up to 60 trees and grading necessary to accomplish the identified projects

all located within or partially within the Environmental Conservation overlay zone, and in substantial conformance with Exhibits H.3f, H.3j, H.3k, H.3l and H.3m. Approval is subject to the following conditions:

- I. **All permits:** Conditions of Approval listed below, shall be included within all plan sets submitted for permits (building, grading, Site Development, erosion control, etc.). These exhibits shall be included on a sheet that is the same size as the plans submitted for the permit and shall include the following statement, **"Field changes are not allowed without prior BDS LUS approval."**
- J. Construction fencing shall be placed along the Limits of Construction Disturbance for the approved development, as depicted in diagrams contained in Exhibit H.3 as Construction Management Plans or as required by inspection staff during the plan review and/or

inspection stages. Temporary protection fencing shall be installed in conformance with Exhibits H.3f and H.3i Tree Removal and Inventory Plan.

1. No mechanized construction vehicles are permitted outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
 2. Changes to the Root Protection Zones or tree protection treatments identified on the Tree Removal and Inventory Plans, Exhibits C-8 and C-16, and in the arborist report (Exhibit Appendix I of Exhibit A-2) are only allowed under the observation of the project arborist.
- K.** The following mitigation plantings shall be installed in substantial conformance with the Landscape Mitigation Plans contained in Exhibit H.3:
1. A total of 692 trees and 1,384 shrubs shall be planted in conformance with Exhibit A.14;
 2. All temporary disturbance areas shall be planted with a minimum of 1 tree, 2 shrubs and 7 ground cover plants per 50 square feet.
- Plantings shall conform to the following:
- All species shall be selected from the Portland Plant List;
 - Plantings shall be installed between October 1 and March 31 (the planting season);
 - Prior to installing required mitigation plantings, non-native invasive plants shall be removed from the entire project area, including the areas identified for mitigation plantings; and
 - After installing the required mitigation plantings, the applicant shall request inspection of Permanent Erosion Control Measures (IVR 210) by the Bureau of Development Services, who will confirm that all required mitigation plantings have been installed. A letter of certification from the landscape professional or designer of record may be requested by BDS to document that the plantings have been installed according to the approved plans.
- L.** The following parameters apply to the removal of Optional Trees. No more than 10 trees or 150 caliper inches may be removed. An Optional Tree may be removed if:
1. The Root Protection Zone for the tree falls within an approved disturbance area and removal is required to facilitate construction access or a slight field adjustment to slope, grade, or work limits;
 2. The tree is within 20 feet of other trees to be removed;
 3. The tree is a minimum of 30 feet from a drainage way;
 4. The tree is no larger than 20 caliper inches;
 5. The project arborist recommends the tree's removal; and
 6. The tree is identified on the building or site development plans and approved by BDS staff prior to removal.
- M.** **An inspection of Permanent Erosion Control Measures shall be required** to document installation of the required mitigation plantings.

1. The **Permanent Erosion Control Measures** inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described in Condition H above);

--OR--

2. If the **Permanent Erosion Control Measures** inspection (IVR 210) occurs outside the planting season (as described in Condition C above), then the Permanent Erosion Control Measures inspection may be approved prior to installation of the required mitigation plantings – if the applicant obtains a separate **Zoning Permit** for the purpose of ensuring an inspection of the required mitigation plantings by March 31 of the following year.

N. The land owner shall maintain the required plantings for two years to ensure survival and replacement. The land owner is responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period. The landowner shall:

1. Provide two letters (to serve as monitoring and maintenance reports) to the Arlington Heights and Sylvan Highlands Neighborhood Associations, and to the Land Use Services Division of BDS (Attention: LU 14-122172 CU EN) containing the monitoring information described below. Submit the first letter to BDS within 12 months following approval of the Permanent Erosion Control Inspection of the required mitigation plantings. Submit the second letter 12 months following the date of the first monitoring letter. All letters shall contain the following information:
 - a. A count of the number of planted trees that have died. One replacement tree must be planted for each dead tree (replacement must occur within one planting season).
 - b. The percent coverage of native shrubs and ground covers. If less than 80 percent of the mitigation planting area is covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
 - c. A list of replacement plants that were installed.
 - d. A description of invasive species removal (English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis) within 10 feet of all plantings. Invasive species must be removed with 10 feet of all mitigation plants.
2. Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The permit must be finalized no later than 2 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.

O. In addition to the construction management related conditions above, the following conditions shall apply:

- a. No later than three months before the start of construction, the Garden will submit to Portland Parks and Recreation a construction management plan (CMP) containing **all** of the information in the CMP template (H.36a). Portland Parks & Recreation may not approve the CMP unless all matters contained on Exhibit H.36a are addressed. In developing the CMP the applicant will seek input from the Arlington Heights Neighborhood Association.

- b. Prior to the onset of construction, the Garden will install site-obscuring fencing on the west side of the access road to address its SW Fairview Boulevard neighbors' concerns about short-term impacts associated with construction truck and equipment glare, noise, privacy and security. Upon completion of construction, the applicant will construct the permanent perimeter fence that is in substantive compliance with Exhibit H.58. The construction/installation of the permanent fence shall occur within 45 days of the completion of the required mitigation landscaping for the incursion into the 'c' zone, which must be completed prior to the issuance of the occupancy permit. The applicant is to maintain, in good and serviceable condition (maintain the sight obscuring characteristics), so long as the site is used for the purposes allowed under this conditional use approval.
- P. The Garden shall post, in coordination with Portland Parks and Recreation and the Portland Bureau of Transportation, signs providing the public notice of the closure of the access road; said signs to be placed not less than six months prior to the access road being closed to general public use.
- Q. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and/or enforcement of these conditions in any manner authorized by law.

Gregory J. Frank, Hearings Officer

Application Determined Complete:	April 10, 2014
Report to Hearings Officer:	May 23, 2014
Decision Mailed:	July 11, 2014

APPEAL

The Hearings Officer's decision of approval with conditions has been appealed by the Arlington Heights Neighborhood Association, represented by Stephen T. Janik, and also by Hilary Mackenzie, an Arlington Heights resident. According to these appellants' statements, the appeals of the Hearings Officer's decision are based on the following arguments:

First Appeal (Arlington Heights Neighborhood Association):

1. The decision of the Hearings Officer fails to adequately address on-street parking impacts and neighborhood impacts, including impacts from visitor traffic (33.815.100 B.2).
2. The decision fails to address factors that must be analyzed to show that the transportation system is capable of supporting the proposed use, including street performance measures, neighborhood impacts, impacts on pedestrians and safety for all modes (33.815.100 B.2).
3. The decision fails to adequately address potential impacts that could have significant adverse effects on livability of nearby residential zoned lands due to noise and to privacy and safety issues (33.815.100 C).

Second Appeal (Hilary Mackenzie):

1. The City incorrectly interpreted the definition of "site" (33.910.030, Definitions), thereby limiting public notice and comment and violating the Type III Lane Use procedures (Section 33.730.030).
2. The proposed use is inconsistent with the character and purpose of the OS Zone (33.8125.100 A).

3. The development interferes with pedestrian and vehicular access in and around the site (33.815.100 B).
4. The proposal will have significant adverse impacts on the livability of nearby residentially zoned lands (33.815.100 C).
5. The proposal is inconsistent with area plans, including the Comprehensive Plan and Washington Park Master Plan (33.181.100 D).
6. The statement also claimed that the applicant failed to show that Environmental Review Criteria (specifically, 33.430.250 A.1.a, b and c, 33.430.250 A.3.a, 33.430.250 E1 through E4) are met.

Review of the case file: The Hearings Officer's decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4th Avenue, # 5000, Portland OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies. I can provide some of the information over the phone.

We are seeking your comments on this proposal. The hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. A description of the City Council Hearing process is attached.

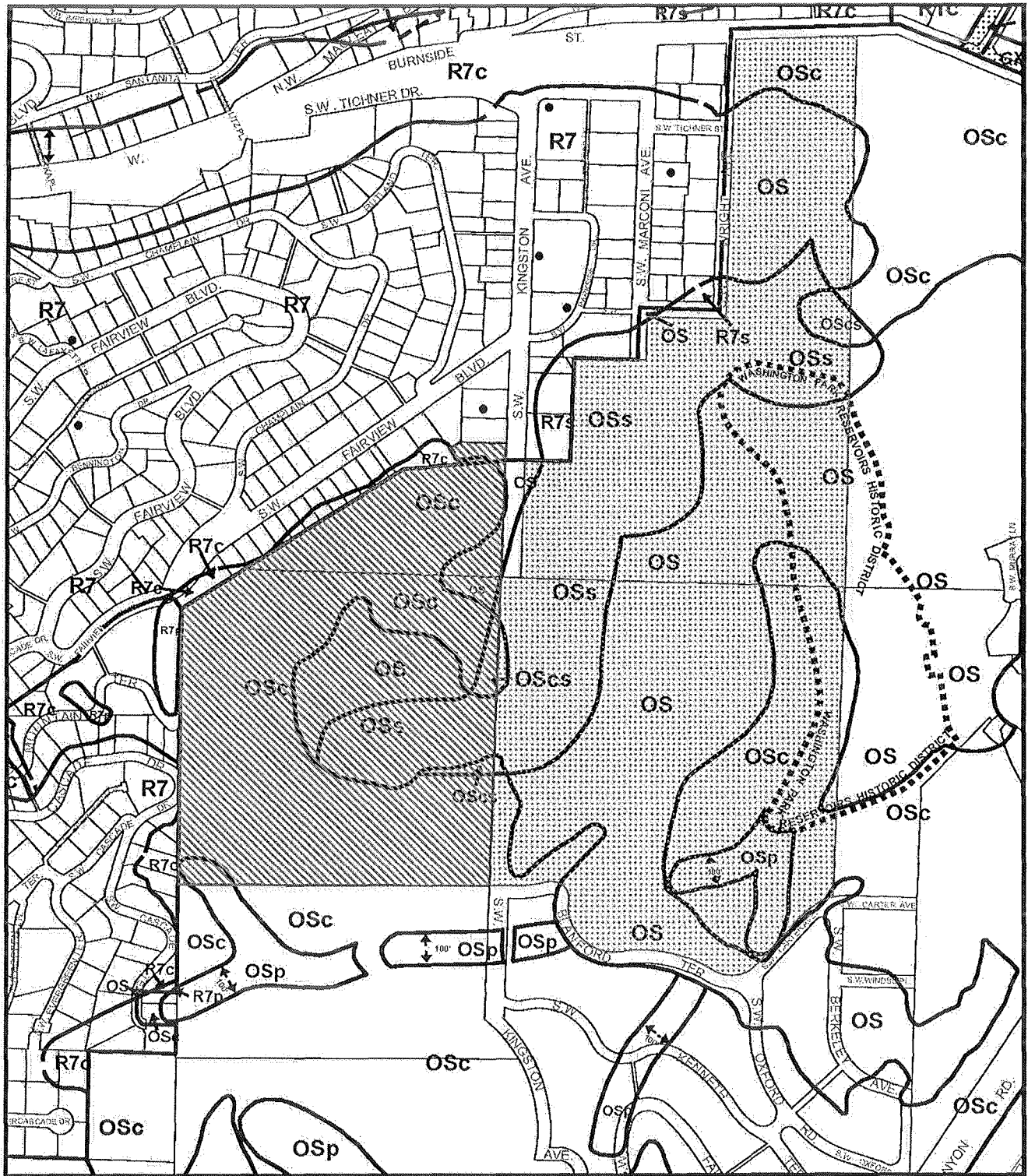
If you choose to provide testimony by electronic mail, please direct it to the Council Clerk [karla.Moore-Love@portlandoregon.gov]. Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.

If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.

Attachments

1. Zoning Map
2. Site plans and Mitigation Plans (H.3.a, b, e, g and k)
3. Appeal Statement
4. City Council Appeal Process

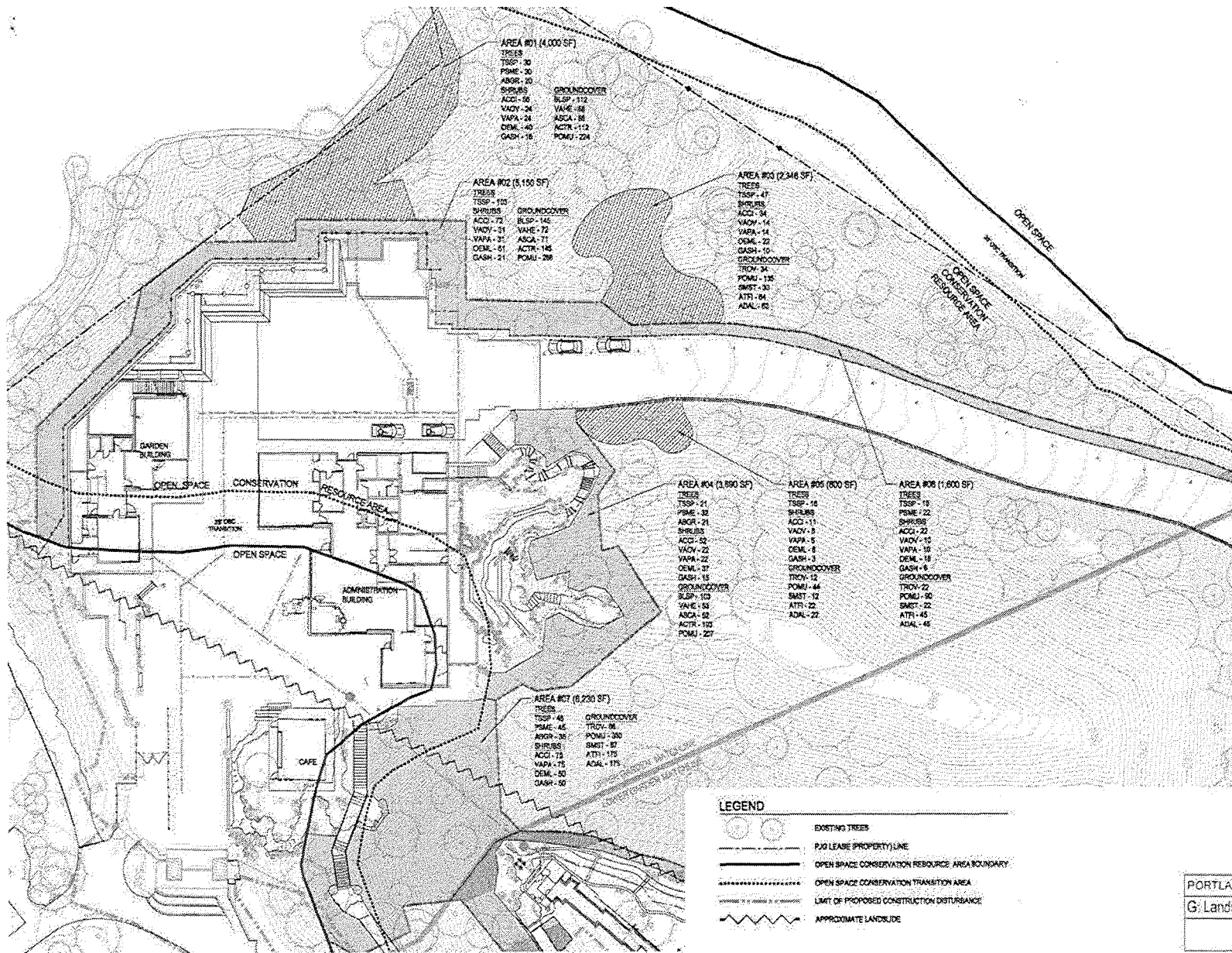


ZONING

-  Site
-  Also Owned
-  Historic Landmark



File No. LU 14-122172 CU EN
 1/4 Section 3026,3126
 Scale 1 inch = 400 feet
 State_Id 1N1E32DD 5800
 Exhibit B (May 23, 2014)



LEGEND

- MITIGATION FOR LOST RESOURCE AREA (7,156 SF) (SEE SHEET EN-U FOR DETAILS)
- PLANTING WITHIN TEMPORARY DISTURBANCE (SEE SHEET EN-U FOR DETAILS)

TOTAL TREE REPLACEMENT WITHIN OPEN SPACE CONSERVATION TRANSITION AREA		MITIGATION TREE & SHRUB REQUIREMENTS (OPTION B)	
TREES	SHRUBS	TREES	SHRUBS
TOTAL REQUIRED TREE & SHRUB FOR TREE MITIGATION	80	105	
TOTAL PROVIDED WITH TREE & SHRUB FOR TREE MITIGATION LOCATED IN TEMPORARY DISTURBANCE AREA	545	1038	
TOTAL TREES & SHRUBS PROVIDED	545	1038	

REPLACEMENT CALCULATION FOR LOST RESOURCE AREA			
MITIGATION TREES	MITIGATION SHRUBS	MITIGATION FOR LOST RESOURCE	
8,110 (8,110)	145	200	7,156 SF
8,110 (8,110)	5	0	0
8,110 (8,110)	5	0	0
TOTAL	145	200	7,156 SF

GENERAL NOTES:

- REFER TO SHEET FIG. 10-110 FOR PLANT BORDER/SCALE
- REPLACE ALL TEMPORARY DISTURBED AREAS AND MITIGATION AREAS WITH NATIVE GRASS MIX MDC.

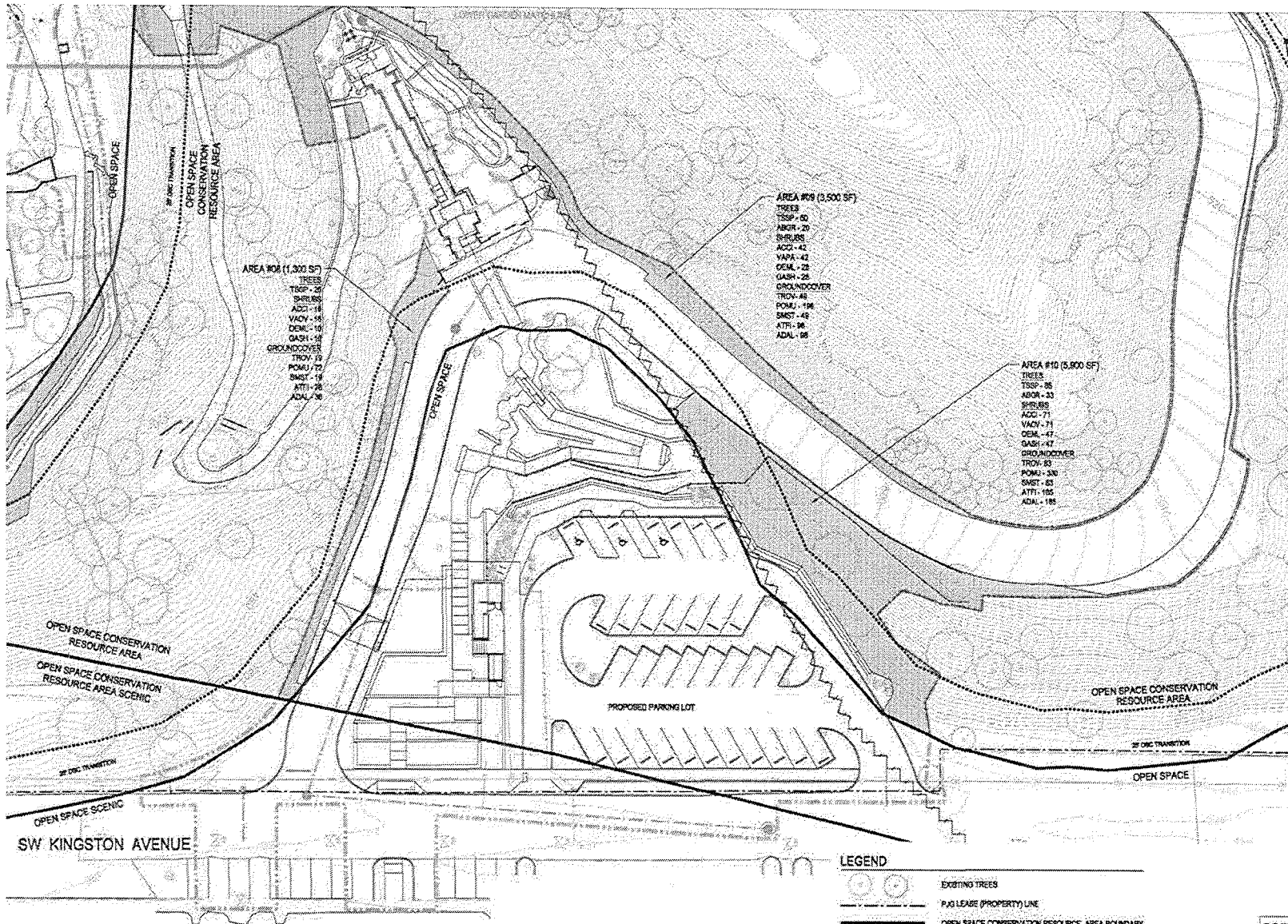
CITY OF PORTLAND
HEADQUARTERS OFFICE
DATE: 7-11-2011
CASE # 41-00009
PROJECT CASE # 14-12112-GJ (EN)

LEGEND

- EXISTING TREES
- PJO LEASE (PROPERTY) LINE
- OPEN SPACE CONSERVATION RESOURCE AREA BOUNDARY
- OPEN SPACE CONSERVATION TRANSITION AREA
- LIMIT OF PROPOSED CONSTRUCTION DISTURBANCE
- APPROXIMATE LANDSLIDE

PORTLAND JAPANESE GARDEN
G: Landscape Mitigation Plan

EN-U FIG. III-110



LEGEND

- MITIGATION FOR LOST RESOURCE AREA (7,106 sq. ft.)
- PLANTING WITHIN TEMPORARY DISTURBANCE

TOTAL TREE REMOVAL/ MITIGATION WITHIN OPEN SPACE CONSERVATION RESOURCE AREAS		
	MITIGATION TREES & SHRUBS	REQUIREMENTS (OPTION 2)
	TREES	SHRUBS
TOTAL REQUIRED TREE & SHRUB FOR TREE MITIGATION	85	165
TOTAL PROVIDED NEW TREE & SHRUB FOR TREE MITIGATION LOCATED IN TEMPORARY DISTURBANCE AREA	345	1345
TOTAL TREES & SHRUBS PROVIDED	345	1345

REPLACEMENT CALCULATION FOR LOST RESOURCE AREA		
	MITIGATION TREES	MITIGATION SHRUBS
0-11' & 12-15' DBH	142	85
16-19' & 20-24' DBH	0	0
TOTAL	142	85

GENERAL NOTES:

- REFER TO SHEET FIG. B-130 FOR PLANT SCHEDULE
- RESEED ALL TEMPORARY DISTURBED AREAS AND MITIGATION AREAS WITH NATIVE GRASS SEED MIX

CITY OF PORTLAND
HEARINGS OFFICE
EXHIBIT #4-30
Case # 41-40089
Hearings Case # 14-12317 CU EN

LEGEND

- EXISTING TREES
- PJO LEASE (PROPERTY) LINE
- OPEN SPACE CONSERVATION RESOURCE AREA BOUNDARY
- OPEN SPACE CONSERVATION TRANSITION AREA
- LIMIT OF PROPOSED CONSTRUCTION DISTURBANCE
- APPROXIMATE LANDSLIDE

PORTLAND JAPANESE GARDEN
G: Landscape Mitigation Plan

EN-L FIG. III-12G



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7300 • www.portlandoregon.gov/bds



Type III Decision Appeal Form

LU Number: 14-122172 CU EN

FOR INTAKE, STAFF USE ONLY

Date/Time Received 7/25/14 @ 8:15am

Received By AG

Appeal Deadline Date 7/25/14

☒ Entered in Appeal Log

☒ Notice to Auditor

☒ Notice to Dev. Review

☒ Action Attached

Fee Amount 3450.00

☒ [N] Fee Waived

Bill # 3641918

☐ [Y] [N] Unincorporated MC

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 400 SW Kingston DEADLINE OF APPEAL July 25, 2014

Name Arlington Heights Neighborhood Association

Address 2257 NW Raleigh St. City Portland State/Zip Code OR 97210

Day Phone 503-823-4288 Email Coalition@nwnw.org Fax N/A

Interest in proposal (applicant, neighbor, etc.) Neighborhood Association

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. 815 . 100

Zoning Code Section 33. _____ . _____

Zoning Code Section 33. _____ . _____

Zoning Code Section 33. _____ . _____

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

See attached Exhibit A

Appellant's Signature [Signature] Authorized Representative

FILE THE APPEAL - Submit the following:

- ☒ This completed appeal form
- ☒ A copy of the Type III Decision being appealed
- ☒ An appeal fee as follows:
 - ☒ Appeal fee as stated in the Decision, payable to City of Portland
 - ☒ Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
 - ☐ Fee waiver for low income individual approved (attach letter from Director)
 - ☐ Fee waiver for Unincorporated Multnomah County recognized organizations is signed and attached

The appeal must be filed by 4:30 pm on the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1500, Portland, Oregon, between 8:00 am and 3:00 pm on Monday through Wednesday and Friday, and between 8:00 am and 2:00 pm on Thursday. After 3:00 pm on Monday through Wednesday and Friday, and after 2:00 pm on Thursday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

EXHIBIT A

1. PMC § 33.815.100(B)(2) requires that a decision to approve a conditional use in the OS zone establish that the "transportation system is capable of supporting the proposed use." Factors to be considered include: "on-street parking impacts" and "neighborhood impacts." The decision of the Hearings Officer fails to adequately address these factors and fails to adopt findings of fact supported by substantial evidence showing: (1) the impacts from the proposed expansion on neighborhood on-street parking and visitor traffic impact on the neighborhood (2) the amount of parking available to support the expansion and (3) the availability of an adequate amount of parking to support the expansion.

2. PMC § 33.815.100(B)(2) requires that a decision to approve a conditional use in the OS zone establishes that the "transportation system in capable of supporting the proposed use." Factors to be considered include: street performance measures "neighborhood impacts", "impacts on pedestrians" and "safety for all modes."

The decision of the Hearings Officer fails to adequately address those factors and fails to adopt findings of fact supported by substantial evidence showing that construction truck traffic through the neighborhood will not adversely affect the performance of neighborhood streets, the residential character of the neighborhood and the safety of pedestrians. The evidence in the record shows that a truck will traverse neighborhood streets every 12 minutes of every working day for the 4 month construction period. This truck traffic will overburden the neighborhood streets, damage the residential character of the neighborhood, and adversely affect the safety of pedestrians. Condition O(a) does not insure compliance with PMC § 33.815.100(B)(2). Rather Condition O(a) simply defers finding compliance with the above criteria to a later time and in a decision making process that is unreviewable.

3. PMC § 33.815.100(C) requires that a decision to approve a conditional use in the OS zone establishes that "the proposal will not have significant adverse effects on the livability of nearby residential zoned lands due to: (1) noise . . .and (2) privacy and safety issues."

3.1 The decision of the Hearings Officer fails to adequately address these criteria and fails to adopt findings of fact supported by substantial evidence showing that construction truck traffic through the residential neighborhood will not adversely affect the livability of the residential neighborhood due to excessive truck traffic, excessive noise and pedestrian safety issues.

3.2 The decision of the Hearings Officer fails to adequately address these criteria and fails to adopt findings of fact supported by substantial evidence showing that the location of the construction staging area will not adversely affect livability of nearby residential uses in the immediate vicinity of the proposed construction staging area.



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7300 • www.portlandoregon.gov/bds



Type III Decision Appeal Form

LU Number: 14-122172 CU EN
LU14-122172, CU EN (HO 4140009)

FOR INTAKE, STAFF USE ONLY

Date/Time Received 7/25/14 11:40

Received By E

Appeal Deadline Date 7/25/14 4:30

☒ Entered in Appeal Log

☒ Notice to Auditor

☒ Notice to Dev. Review

☒ Action Attached

Fee Amount 3,450

☒ [N] Fee Waived

Bill # 3643531

☒ [N] Unincorporated MC

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 400 SW Kingston Avenue DEADLINE OF APPEAL 4:30pm July 25, 2014

Name Hilary Mackenzie

Address 2722 SW Rutland Terrace City Portland State/Zip Code OR 97205

Day Phone 503-282-7674 Email hilary@mackenziearchitecture.com

Interest in proposal (applicant, neighbor, etc.) citizen

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. 815 . 100 A through D Zoning Code Section 33. 910 . 030

Zoning Code Section 33. 430 . 250 A & E Zoning Code Section 33. 730 . 030

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

See attached.

Appellant's Signature [Signature]

FILE THE APPEAL - Submit the following:

- ☒ This completed appeal form
- ☒ A copy of the Type III Decision being appealed
- ☒ An appeal fee as follows:
 - ☒ Appeal fee as stated in the Decision, payable to City of Portland
 - ☐ Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
 - ☒ Fee waiver for low income individual approved (attach letter from Director)
 - ☐ Fee waiver for Unincorporated Multnomah County recognized organizations is signed and attached

The appeal must be filed by 4:30 pm on the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1500, Portland, Oregon, between 8:00 am and 3:00 pm on Monday through Wednesday and Friday, and between 8:00 am and 2:00 pm on Thursday. After 3:00 pm on Monday through Wednesday and Friday, and after 2:00 pm on Thursday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

Mackenzie Mackenzie
2722 SW Rutland Terrace, Portland, Oregon 97205
(503) 282-7674 www.mackenziearchitecture.com

July 24, 2014
City of Portland
Bureau of Development Services
1900 SW Fourth Avenue
Portland, Oregon 97201

Re: LU 14-122172 CU EN (HO 4140009)

Narrative addendum:

The city incorrectly interpreted the definition of "site" (33.910.030 Definitions), thereby limiting public notice and comment. This violated the Type III Land Use Procedures (Section 33.730.030). The proposed use is inconsistent with the character and purpose of the OS Zone (Section 33.815.100, A). The development interferes with pedestrian and vehicular access in and around the site (Section 33.815.100 B). The proposal will have significant adverse impacts on the livability of nearby residentially zoned lands (Section 33.815.100, C). The proposal is inconsistent with area plans, including the Comprehensive Plan, and Washington Park Master Plan (Section 33.815.100, D). Therefore the proposal fails to meet the relevant approval criteria in Section 33.815.100 A-D.

The applicant failed to show that the proposed development would have the least detrimental impact on resources and functional values than other practical alternatives and that there would be no significant detrimental impact on resources left to be undisturbed (33.430.250 A. 1.a.,b.3.a) The mitigation plan fails to compensate for the detrimental impacts in areas left undisturbed (Section 33.430.250 A.1.c) The applicant's impact evaluation fails to demonstrate that criteria in Section 33.430.250 E.1,2,3 & 4 are met.

GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR ON-THE-RECORD APPEALS

1. SUBMISSION OF LEGAL ARGUMENT

- a. On-the record appeals are limited to legal argument only. The only evidence that will be considered by the City Council is the evidence that was submitted to the HEARINGS OFFICER prior to the date the HEARINGS OFFICER closed the evidentiary record. Parties may refer to and criticize or make arguments in support of the validity of evidence received by the HEARINGS OFFICER. However, parties may not submit new evidence to supplement or rebut the evidence received by the HEARINGS OFFICER.
- b. Legal argument may be mailed to the Council Clerk, 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. Written legal argument must be received by the time of the hearing and should include the case file number.
- c. Legal argument may be submitted orally (see below).

2. COUNCIL REVIEW

- a. The order of appearance and time allotments are generally as follows:

Staff Report	10 minutes
Appellant	10 minutes
Supporters of Appellant	3 minutes each
Principal Opponent	15 minutes
Other Opponents	3 minutes each
Appellant Rebuttal	5 minutes
Council	

- b. The applicant has the burden of proof to show that the evidentiary record compiled by the HEARINGS OFFICER demonstrates that each and every element of the approval criteria is satisfied. If the applicant is the appellant, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the applicant must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidentiary record compiled by the HEARINGS OFFICER demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong approval criteria are being applied or additional approval criteria should be applied.

3. OTHER INFORMATION

- a. Prior to the hearing, the case file and the HEARINGS OFFICER decision are available for review, by appointment, at the Bureau of Development Services, 1900 SW 4th Avenue, #5000, Portland, OR 97201. Call 503-823-7617 to make an appoint to review the file.

If you have a disability and need accommodations, please call 823-4085 (TDD: 823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.