

**IN THE CITY COUNCIL OF THE
CITY OF
PORTLAND OREGON**

**IN THE MATTER OF AN APPEAL OF THE
HEARINGS OFFICER'S DECISION ON THE
APPLICATION BY THE PORTLAND JAPANESE
GARDEN SOCIETY FOR A TYPE III CONDITIONAL
USE AND ENVIRONMENTAL REVIEW FOR
THE PORTLAND JAPANESE GARDEN
LOCATED AT 400 SW KINGSTON AVENUE**

LU 14-122172 CU EN

FINDINGS AND CONCLUSIONS

**ADOPTED BY THE CITY COUNCIL ON
SEPTEMBER 17, 2014
(APPROVAL OF A TYPE III REVIEW)**

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FINDINGS AND CONCLUSIONS

The City Council finds the Hearings Officer's decision addresses many of the issues raised in the appeal of that decision to the Council and the Council adopts the Hearings Officer's decision and findings as the Council's own. Where appropriate and necessary to address arguments and issues raised in testimony at the appeal hearing and in support of the appeal, the Council supplements the decision of the Hearings Officer as noted in the body of the Hearings' Officer's decision and with the Supplemental Findings attached as Attachment 1. These supplemental findings are referenced as additional support for the Hearings Officer's findings throughout this document.

DECISION

Based on the Hearings Officer's findings and decision as modified and the Supplemental Findings, it is the decision of Council to:

Deny the appeal of Hillary Mackenzie, uphold the Hearings Officer's decision as modified, and approve the application of the Portland Japanese Garden Society for a conditional use and environmental review to allow major alterations to the Portland Japanese Garden with conditions of approval.



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

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

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

Applicant: Portland Japanese Garden Society
P.O. Box 3847
Portland, OR 97208

Applicant's 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 Avenue

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 Neighborhood Coalition: Neighbors West/Northwest

Zoning: OS cs, (Open Space Zone, with Environmental Conservation and Scenic Resource Overlays), R7 c (R7000, Medium Density Single-Dwelling Residential with an Environmental Conservation Overlay)

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

BDS Staff Recommendation to 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 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 application proposal. The applicant 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 include 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 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 area 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 III Environmental Review is required.

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

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

II. ANALYSIS

HEARINGS OFFICER’S DECISION FORMAT:

The June 4, 2014 hearing (the “Hearing”) before the Hearings Officer generated passionate testimony from supporters of the application and those opposing the application. Considering the high probability of an appeal of this decision, the Hearings Officer determined that it would be useful for City Council and those involved with any appeal to have the most complete picture of the case as possible. To that end, the Hearings Officer retained, for the most part, the proposed BDS findings as set forth in the Staff Report and Recommendation to the Hearings Officer (Exhibit H.2) and added supplemental findings/comments when the Hearings Officer found it necessary/appropriate. The BDS staff comments and proposed findings, where retained hereafter, are verbatim from the BDS Staff Report and Recommendation to the Hearings Officer; **the BDS comments and proposed findings are all in italics printing format and the Hearings Officer’s findings are in standard (non-italic) format.**

HEARINGS OFFICER’S SUMMARY FINDINGS RELATED TO MAJOR ISSUES RAISED BY OPPONENTS (THE “SUMMARY FINDINGS”):

Burden of Proof:

Opponents contend that PCC 33.815.100 B.2 (adequacy of the transportation system) has not been met by the application in this case (i.e. Exhibits H.20, H.49, H.50, H.53 and H.55 and oral hearing testimony of Steve Janik [“Janik”], Joseph Angel [“Angel”], Jeffry Boly [“Boly”], Holliday Ingeborg [“Ingeborg”] and Mike Dowd [“Dowd”]). Opponents, in part, argue that the traffic impact study relied upon by applicant’s traffic consultant fails to provide minimally adequate factual data/analysis to support the conclusions related to transportation/parking impacts (See, for example, Janik comments on pages 2 and 3 of Exhibit H.53). Janik (page 2 and 3 of Exhibit H.53), states, “The burden of proof is on the JGS to provide substantial evidence to meet the criteria for its applications.” Janik included a footnote (bottom of page 3 of Exhibit H.53) to that quote stating, “The Association [Arlington Heights Neighborhood Association] is not required to conduct its own traffic study during the peak summer usage in order to challenge the methodology of the Kittelson [applicant’s traffic engineering firm] study.”

(See also Dowd comments on page 4 of Exhibit H.55.) The Arlington Heights Neighborhood Association shall be referred to, in this decision, as the “AHNA.”

PCC 33.815.080 establishes the “who must prove what” in this case (the “burden of proof”). PCC 33.815.080 states, in part, that “requests for conditional uses will be approved if the review body finds that the applicant has shown that all of the approval criteria have been met.” In this case, the approval criteria are set forth in PCC 33.815.100. The Hearings Officer’s review, therefore, is limited to those issues/matters listed in PCC 33.815.100. If an issue is raised by an opponent and is not listed in PCC 33.815.100, it will not be addressed by the Hearings Officer in this decision.

The Hearings Officer agrees with opponents’ assertion above that the applicant, in a conditional use review, must show that “all of the approval criteria have been met.” The Hearings Officer also agrees with opponents’ argument that opponents are not “required” to conduct a traffic engineer generated traffic study/analysis. The Hearings Officer is required to support all findings with substantial evidence.¹ The Hearings Officer is required to assess the credibility of all evidence in the record. As a general rule, data and analysis provided by a certified/recognized professional in a field is found more credible than anecdotal or opinion evidence provided by a non-certified/recognized individual. Lay testimony/documentation can be found to be more credible than that supplied by certified/recognized professionals if the lay testimony/documentation includes persuasive data/analysis of its own.

General Summary of Opposition Issues:

Ms. Beverly Bookin (“Bookin”) appeared at the Hearing and represented herself as the applicant’s lead land use planning consultant. In Exhibit H.57a, Bookin characterized opposition testimony and written comments (hereafter the “Bookin List”). While the Hearings Officer does not endorse the “Bookin List” as including every relevant issue, it does provide a starting point to discuss concerns expressed by those in opposition to the application in this case. The Bookin List is set forth below:

- “Definition of ‘site’ and ‘ownership’, including inadequacies in written notification.
- Inconsistency of proposed building inventory with the intent of the Open Space (OS) zone.
- Failure to address all the requirements for incursion into the Environmental Conservation (‘c’) zone, including failure to adequately consider off-site alternatives and provide adequate mitigation.
- Inadequacy of the Transportation Impact Analysis (TIA) and Washington Park-Wide Transportation Demand Management Plan (WPTDMP) to address current and future PJG transportation-related impacts.
- Insufficiency of the intra-park shuttle system to support projected PJG patronage growth.
- Inadequate findings related to pedestrian/transit accessibility.

¹Substantial evidence is evidence a reasonable person would rely upon to reach a conclusion, notwithstanding reasonable people could draw different conclusions from the evidence. *Adler v. City of Portland*, 25 Or LUBA 546 (1993)

- Failure to address adverse impacts related to short-term construction activities, including questioning the integrity of the access road to support construction equipment.
- Opposition to closure of the access road for public access/recreation.
- Opposition to the 26-seat Tea Café for any number of reasons, including that it may encourage Garden visitors to linger and delay turn-over of parking spaces.
- Continued opposition to the retention of the Kingston House for PJG administrative office and claims that current occupation is illegal.
- Claims that PJG is violating its lease and 'license' with PP&R.
- Claims that PJG has engaged in illegal development within and beyond the boundaries of its leasehold.
- Complaints that PJG will make increased use of its access road instead of providing an inclined elevator.
- Contention that the Garden must comply with a 33-year-old Washington Park Master Plan, which was not adopted as part of the City's Comprehensive Plan or Zoning Code."

The Hearings Officer addresses many of the issues identified by the Bookin List in the findings below:

Site/Ownership/Notice:

Dowd, in Exhibit H.33, stated the following:

"I do not believe this application met the zoning code's requirements for public notification. First, it failed to provide posted signs as required for the site that is described in the hearing notice. The site has frontage on SW Fairview, yet no sign was posted on that frontage. There may have been other missing signs - I saw only two signs total (both on SW Kingston) - but one missing required sign is enough to show failure to meet posting requirements. More significantly, the 'site' as shown on the notice's map and described in its legal description is only a small portion of the 'site' as defined by the zoning code. The site shown includes only a portion of Washington Park, plus the house on SW Kingston that the Japanese Garden owns. But per code, the site must include the entire ownership, which also includes the entire City-owned park that is contiguous with the portion occupied by the Japanese Garden." (See also Exhibits H.27, H.50, H.56 and testimony of Dowd and Ingeborg)

Bookin responded to the above comments regarding the proper definition of the site and adequacy of notice in Exhibit H.54. The Hearings Officer finds the Bookin comments, in Exhibit H.54, to be persuasive. The Hearings Officer finds that 33.910 allows the applicant, in this case, to include as the "site" only a portion of the Portland Parks and Recreation ("PP&R") Washington Park ownership. The Hearings Officer finds PP&R is aware and supports the 12.6 acre description in the application; applicant has permission of PP&R to submit the application. Based upon the Hearings Officer's review of Exhibit B, the "site," for notification purposes, does not have "frontage" (as noted by Dowd in Exhibit H.33, page 1) on SW Fairview. The Hearings Officer finds, based upon a review of Exhibits B and D.4, signage notice was properly placed upon the "site." The Hearings Officer finds, based upon the "site," as shown on Exhibit B, notice was mailed in conformance with the Portland Zoning Code. See Supplemental Findings, Item 2.

Inconsistency of Proposed Building Size:

Dowd, in Exhibit H.55, asserted that materials/testimony supplied by applicant were inconsistent with respect to the size of the proposed Administration Building. Bookin, in Exhibit H.51 (page 2), acknowledges the size of the Administration Building has changed (from 8,010 to 8,980 square feet) as a result of the “refinement of the architectural design.” Bookin, in Exhibit H.51 (page 2), requested “the Hearings Officer approve the revised building inventory as shown in the amended plans submitted on 5/28/14 with the corrected FAR and building coverage figures presented immediately above and find that the request for the expansion of the building inventory is in compliance with Section 33.815.100 (C)(1) and (2).”

The Hearings Officer agrees with Dowd that there have been changes in the proposed size of the Administration Building. The Hearings Officer finds that Bookin acknowledges such changes and requested the Hearings Officer find the 5/28/14 “amended plans” to be in conformance with the relevant approval criteria. The Hearings Officer finds that the proposal, even with the size change request for the Administration Building, is substantially the same as the original proposal. The Hearings Officer finds notices provided to the public in general and the adjacent owners are adequate to apprise those interested in this case that a physical improvement (the Administration Building) is proposed as part of the project (including the general location and approximate size). The Hearings Officer finds opponents have had an opportunity to provide meaningful input in matters pertaining to the Administration Building. See Supplemental Findings, Item 9.

Failure to Consider Off-site Alternatives:

At least two opponents indicated that the applicant should consider off-site alternatives as part of the environmental review (Exhibits H.12 and H.32). Christie Galen and Marshall Gannett (“Galen & Gannett”), in Exhibit H.12, page 4, stated the following:

“The Japanese Garden’s submittal limited its evaluation to three alternatives located in Washington Park but ignored abundant opportunities in downtown Portland within a mile or two from the Garden where vacant property is already zoned for classroom activities and lectures and would not impact natural resources.”

Chris Hagerman (“Hagerman”) provided a written response by the applicant (Exhibit H.51b). Hagerman noted, in Exhibit H.51b, that the application will impact land area zoned “c” on the official zoning map. Hagerman noted, in Exhibit H.51b, that the relevant approval criteria, when impacts are to occur in a “c” zone, do not require consideration of off-site alternatives. The Hearings Officer agrees with Hagerman’s Exhibit H.51b comments regarding PCC 33.420.250.E. The Hearings Officer finds that no off-site alternatives need be considered in this case. See Supplemental Findings, Item 11.

Failure to Provide Adequate Environmental Mitigation:

General comments, from persons in opposition, expressed concern with respect to: (1) the accuracy of data/information used to determine the extent of mitigation required; and (2) the appropriateness of mitigation proposed by the applicant. The Hearings Officer reviewed the BDS staff report related to the environmental analysis (pages 21 through and including 29) and the Hagerman comments contained in Exhibit H.51b.

The Hearings Officer finds the Hagerman response (Exhibit H.51b) adequately responds to issues raised about the accuracy of the tree survey, identification of resources/functional values of the proposed projects, and the appropriateness of the proposed mitigation. Before the City Council, opponents argued the proposed environmental mitigation is inadequate because trees and other mitigation plantings will be planted in a closed-canopy forest on a near vertical slope and, as a result, are unlikely to survive. The Hagerman response in the

record (Exhibit H.51b addresses this issue as well, noting that “proposed planting is to focus on areas adjacent to current development when there is not dense forest, such as the trail spur that leads from the access road. Restoration of this area with the variety of native planting proposed will increase and extend tree canopy and forest habitat. In areas with extensive tree canopy, mitigation activities will focus on invasive species removal and replanting with understory species such as hemlock.” The mitigation plans were reviewed by BDS staff and BES watershed services staff (Exhibit E.2), both of whom determined the mitigation to be appropriate and specifically noted that additional native plantings would help minimize erosion and provide slope stability. Therefore, Council finds there is credible evidence in the record to support the adequacy of the proposed environmental mitigation.

Inadequacy of Applicant’s Transportation Impact Analysis (“TIA”):

The most common topic raised by opponents in this case related to transportation; specifically traffic and parking issues. The Hearings Officer fully appreciates comments made by those who reside in the general vicinity of the Garden and who “live with” traffic and parking issues generated by the Garden, the Rose Garden, Metro Zoo, and other venues located within Washington Park. The anecdotal, observational and photographic evidence provided by opponents was considered by the Hearings Officer in making this decision. The Hearings Officer also considered the applicant’s TIA (Exhibit A.2, Appendix D) and supplemental material (Exhibit H.51e) in making this decision.

Inadequate Growth and/or Traffic/Parking Projections:

The AHNA, through its attorney Janik, expressed serious reservations about the accuracy and/or correctness of projections used by Kittelson & Associates (“Kittelson”) in the TIA (Exhibit A.2, Appendix D) and the supplemental submission (Exhibit H.51 e). The Hearings Officer finds the AHNA’s concerns with Kittelson’s projections to be misplaced.

Janik, in his oral testimony at the Hearing and in written submissions (Exhibits H.20 and H.53), asserted that the “patronage” growth rate and “population” growth rates are inconsistent with expected growth in traffic and parking estimates used by Kittelson in the TIA. Kittelson, in its supplemental written submission (Exhibit H.51e) and in its final argument (Exhibit H.57b), responded to Janik’s assertion that it used an incorrect and/or unsubstantiated estimate in arriving at traffic and/or parking impacts created by the application in this case.

The Hearings Officer is persuaded by the “growth rates” discussion provided by Kittelson on Exhibit H.57b (pages 1-3). Kittelson, in Exhibit H.57b, stated the following:

“Mr. Janik’s June 4, 2014 and June 20, 2014 letters continue to incorrectly refer to the Garden’s forecast annual patronage growth of 5.97% as the measure that should be used to estimate future traffic volume forecasts. This is a flawed statement. As established by the patron intercept survey conducted on June 6 and 7, 2014 and documented in the June 13 Kittelson rebuttal letter, each patron to the Garden does not arrive in his or her own motor vehicle. As such, the rate of increase in transportation demand is not equal to the rate of growth in patron demand.”

Kittelson, in Exhibits H.51e and H.57b, provides a method of analysis in estimating transportation demand. The Hearings Officer finds the methodology used by Kittelson, in the TIA, is supported by recent approvals

of the Oregon Zoo Master Plan and the Portland Bureau of Transportation (“PBOT”). The Hearings Officer finds the approach taken by Kittelson is generally consistent with that used by Metro. The Hearings Officer finds the data and methodology used by Kittelson in preparing the TIA (Exhibit A.2, Appendix D) and supplemental submission (Exhibit H.51e) is reasonable, plausible and supportable in this case.

Mode Split Estimates:

Opponents argue that Kittelson’s use of November 2013 traffic volume and intersection data was inappropriate data to use in estimating traffic and parking demands for Washington Park and/or the Japanese Garden. The Hearings Officer takes note that Kittelson conducted additional fieldwork (Friday, June 6, 2014 and Saturday, June 7, 2014 between 10:00 a.m. and 3:00 p.m.). The Hearings Officer finds the Kittelson submission of the supplemental data (Exhibit H.51e) addresses the AHNA concern that using only November 2013 data invalidated the TIA traffic and parking estimates. The Hearings Officer finds no credible evidence in the record that the methodology used by Kittelson, in Exhibits A.2 (Appendix D) and Exhibit H.51e, is inappropriate in this case.

Washington Park Shuttle System:

Angel argued, during his testimony, at the Hearing, that a new Washington Park shuttle system was currently operating at 20 minute plus headways (time between shuttle service at a particular stop within Washington Park). The applicant, in Exhibit H.51d, stated the following with respect to Washington Park shuttle service:

“The first year of free service underwritten by WPTMA is providing 20-minute headways on a one-way loop. This free service has resulted in an 87% increase in ridership from the prior fee-for-service shuttle. By 2015, the WPTMA intends to increase shuttle funding and service to the standards of its 2014 RFZ with 15-minute headways with shuttles running in both directions of the loop.” (this statement is supported by a copy of the June, 12, 2014 Washington Park TMA Washington Park Loop Updates showing budget, 2014 statistics, average ridership and “next steps”)

Analytical Framework:

The applicant proffers the argument that “growth in Garden attendance is not correlated to an expansion in acreage, building square-footage, or new exhibits” (Exhibit A.2, Appendix D at page 36 and Exhibit H.57b at page 3). Stated differently, Bookin says that, “The proposed use will have very little to no impact on parking. Any real increase in need for parking will occur as a result of the annual increase in attendance of the existing Garden, which will occur whether the expansion occurs or not. The existing Garden is not a part of this application” (Exhibit H.57a, page 5).

The Hearings Officer finds no credible evidence in the record to dispute the Kittelson (Exhibit A.2, Appendix D at page 36 and Exhibit H.57b at page 3) and Bookin arguments (Exhibit H.57.a, page 5). The Hearings Officer finds the expansion of size of leased area and facilities will have little traffic and parking impact upon the transportation system.

The Hearings Officer adopts, as additional findings, the Kittelson statements found in Exhibit H.57b.

Pedestrian Accessibility:

The opposition claims that the applicant failed to meet approval criterion PCC 33.815.100.B.2 because pedestrian access along SW Kingston Avenue is not safe. Janik, in Exhibit H.53 (pages 4 and 5), states that the applicant:

"...attempts to avoid any responsibility for pedestrian access by arguing that the pedestrian and bicycle facilities are shared by all Washington Park facilities and Portland Parks & Recreation. This fact does not excuse the JGS from complying with the conditional use criteria, which require the JGS to demonstrate that the transportation system, including pedestrian access, can accommodate the proposed use and the existing uses in the surrounding area. Even with a condition of approval requiring additional sidewalks, the JGS would be free to work with other Washington Park facilities and Portland Parks and Recreation on sharing the costs for the sidewalk. The condition would merely ensure that appropriate facilities are in place before the expansion of the PJG can be completed." (See also Exhibits H.20, H.33, testimony of Janik and Angel and photo sets [Exhibits H.22 and H.23]).

The Hearings Officer found the two sets of photographs submitted by Angel to be helpful in considering the pedestrian impacts and the safety for all modes portions of the approval criterion (PCC 33.815.100 B.2). The impressions provided by the photographs in Exhibits H.22 and H.23 are clear and, in the opinion of the Hearings Officer, not capable of being controverted. The Hearings Officer, as an example, points to the lower left photograph on page 1 and the upper left photograph on page 2 of Exhibit H.22. The Hearings Officer cannot conceive that a reasonable person would consider pushing a baby stroller and walking with a child in the travel lane of SW Kingston Avenue is safe. Nor can the Hearings Officer believe any reasonable person would consider walking children adjacent to the travel lane and behind parked cars safe.

PBOT's May 15, 2014 response (Exhibit E.2) indicated, that while the sidewalk on the west side of SW Kingston Avenue is "incomplete," the sidewalk system on the east side of SW Kingston is complete. PBOT acknowledges that "patrons must cross the street" to access portions of Washington Park to the north and the Japanese Garden facility (if the patron decides to use a sidewalk). PBOT, in the "safety for all modes" comments says, "There are adequate sight lines from the parking lot at the bottom of the Garden to allow safe ingress and egress from the lot...this evaluation factor is met."

The applicant responded, in Exhibit H.51, that the Washington Park Transportation Management Association ("WPTMA") intends to address Washington Park "roads, bicycle and pedestrian infrastructure." Portland Parks and Recreation ("PP&R") acknowledged some responsibility for providing accessibility improvements in Washington Park (Exhibit H.44). The applicant also suggests that any condition of approval imposed by the Hearings Officer must meet case law requirements (5th Amendment taking cases) of "nexus" and "rough proportionality." *Nollan v. California Coastal Comm'n*, 107 SCT 3141, 97 LEd2d 677 (1987) and *Dolan v. City of Tigard*, 114 SCt 2309, 129 LEd2d 304 (1994)

The Hearings Officer finds the area that lacks sidewalks, on the west side of SW Kingston Avenue, is either within or adjacent to the "site area" that is subject to the application in this case. The Hearings Officer estimates the area lacking a sidewalk north of the applicant's parking lot on the west side of SW Kingston Avenue is approximately 200 lineal feet (Exhibit H.5 – full size plans).

The Hearings Officer finds, in this instance, that the photographic evidence provided by Angel (Exhibits H.22 and H.32) to be persuasive evidence that the current pedestrian infrastructure, adjacent to the applicant's "site" on SW Kingston Avenue, is not currently safe. The Hearings Officer finds any increase in the Garden patrons using the west side of SW Kingston Avenue to access (where there is no sidewalk) the parking lot/ticket pavilion, will result in the transportation system being incapable of supporting the proposed use.

The Hearings Officer finds that it is reasonable to infer that many of the persons using the west side of SW Kingston Avenue (where there is no current sidewalk) are destined to access the Garden; it is on the same side of the street and in close proximity to where the sidewalk ends. The Hearings Officer finds there is a "nexus" between a condition requiring completion of a sidewalk segment (roughly in the location shown on Exhibit H.21) and the proposal in this case. The Hearings Officer admits that had there been evidence presented by the applicant, City or opposition regarding the costs of a sidewalk segment (roughly in the location shown on Exhibit H.21), the Hearings Officer may have found the costs associated with the sidewalk were not "roughly proportional" to the impacts resulting from approval of the application. The Hearings Officer, in this case, is willing to take the risk that upon appeal, City Council overrules the imposition of a condition of approval requiring a sidewalk segment be constructed on the west side of SW Kingston connecting the current sidewalk to the Garden parking lot pedestrian connection system. The Hearings Officer finds that only with the imposition of a condition of approval requiring the construction of a sidewalk on the west side of SW Kingston Avenue (approximate location as shown on Exhibit H.21) can the pedestrian safety be assured. The Council agrees with the Hearings Officer's analysis and imposition of a condition requiring construction of a sidewalk on the west side of SW Kingston, but revised the condition to address timing of sidewalk construction and to include an assurance there will be adequate sidewalk width for pedestrians. See Supplemental Findings, Item 13, and Condition G.

Construction Management Plan:

The opponents raised two concerns regarding the applicant's construction management plan. First, the opponents (Exhibits H.25, H.33, H.44 and Hearing testimony of Janik, Holliday and Bethlahmy) question the ability of the "access road" to handle construction vehicle traffic (related to PCC 33.815.100 B.2). The applicant, at the Hearing, submitted a memorandum/addendum (Exhibit H.18) from a registered engineer stating:

"Based on our review of the SLIDO report, our site reconnaissance, and the boring logs, it is our opinion that the service roadway is predominantly underlain by stiff to very stiff decomposed basalt, and the anticipated construction traffic during the renovation of the Japanese Garden will not significantly reduce the overall stability of the service road and adjacent slopes."

The Hearings Officer finds the engineer's statement, as quoted immediately above, is credible evidence. The Hearings Officer finds the opposition concern about soil stability of the access road when used by construction vehicles is unfounded.

The second opposition concern, related to construction activity, is related to short-term construction impacts. Janik, in Exhibit H.20 (pages 2 and 3), most succinctly describes the opposition concerns with respect to the construction management plan. The Hearings Officer summarizes the concerns noted by Janik, in Exhibit H.20, as follows:

- Truck traffic travel route; and
- Truck back up (audible) devices; and
- Working hours; and
- Construction staging; and
- Truck wash-off.

The applicant, at the Hearing, submitted a memorandum related to the above-stated opposition construction management concerns (Exhibit H.36). Attached to the Exhibit H.36 memorandum is a Hoffman Construction Company of Oregon document (“Hoffman Document”) with a “subject” of “Construction Impact Considerations.” The Hoffman document purports to establish the following (Hearings Officer’s summary):

- Work hours; and
- Site Security; and
- Communication; and
- Project Contact Information; and
- Construction Traffic Impacts; and
- Construction worker parking; and
- Construction worker carpooling; and
- Truck cleaning; and
- Backup beeper restrictions; and
- Designated entry/egress points.

The Hearings Officer finds the Hoffman document addresses all of Janik’s issues (from Exhibit H.20) excepting for truck travel routes and construction staging. The Hearings Officer notes that Janik’s “staging” concern was primarily related to impacts created upon the Angel residence which is located across the street from a currently unused/disabled tennis court.

The applicant, in Exhibit H.57a indicated the following:

“The primary construction staging site will be the PP&R-managed parking lot at the Garden entrance that will be closed for the entire 18-month period of construction, from approximately 9/15 to early 2017. This means that the disabled tennis court will be used only for material storage including a few trailers, and therefore, have minimal adverse impacts during weekdays on the immediate neighbor.”

In the applicant’s final argument, Bookin recommended the following two conditions be imposed to address opposition construction management issues (Exhibit H.57a):

“No later than three months before the start of construction, Portland Japanese Garden will submit to Portland Parks and Recreation a construction management plan (CMP) containing all the information in the CMP template for Portland Parks and Recreation’s review and approval. In developing the CMP, the Applicant will seek input from the Arlington Heights Neighborhood Association and Portland Parks & Recreation.”

And,

"Prior to the onset of construction, PJG will install a site-obscuring construction fence on the west side of the access road to address its Fairview Boulevard neighbors' concerns about short-term impacts associated with construction truck and equipment glare, noise, privacy and security. The Cultural Village construction site itself will be separated from residences on SW Fairview Boulevard by an intervening hill that will provide a natural visual and noise barrier. Upon completion of construction, the Applicant will construct the permanent fence that is in substantive compliance with the plans presented to its neighbors on 9/28/14 and entered into the public record. This will occur immediately after the installation 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 will maintain the permanent perimeter fence in good repair in perpetuity."

The Hearings Officer finds the conditions of approval proposed by Bookin (as quoted above) generally address Janik's construction management concerns. Most notably missing from Bookin's proposed conditions is some reference to the specific route that construction trucks will take to travel to and from the construction site. The Hearings Officer finds all truck access routes will travel, to a large extent, through residential neighborhoods. The Hearings Officer finds the Hoffman document does address "Construction Traffic Impacts."

The Hearings Officer finds the Bookin proposed conditions, with minor modifications, adequately address the approval criteria PCC 33.815.B.2 and PCC 33.815.C. The Hearings Officer finds that the proposed conditions must clearly establish the Hoffman Document represents the minimal requirements for a construction management plan; no item on the Hoffman document may be deleted by the applicant and/or PP&R. The Hearings Officer finds that all of the issues on the Hoffman Document must be established and presented to the AHNA not less than three months prior to the start of construction.

To the extent neighbors' concerns focus on temporary construction impacts, the Council finds the relevant approval criteria do not address or require consideration of these impacts. Even if they did, the Council agrees with the Hearings Officer's analysis and finds the conditions of approval the Hearings Officer imposed are sufficient to address the neighbors' concerns.

Closure of Trail Access:

Currently it is possible to connect to the Wildwood Trail via the Garden access road. That access will be eliminated by the installation of security fencing.

The closure of the trail access aspect of this application was vigorously opposed during testimony at the hearing (Hillary Mackenzie ["Mackenzie"]) and in written comments submitted during the open record period (Exhibits H.25, H.28, H.39, H.43, H.46, H.50 and others).

Bookin, in Exhibit H.51, provided an explanation of why the trail access must be closed. Bookin, in Exhibit H.51, stated the following:

"On the south side of 2778 SW Fairview Boulevard, there is a legal access/connector to the Wildwood Trail to the south. However, over

the years, hikers and bikers have cut an informal trail northward to the top of the PJG access road as a short-cut between SW Fairview Boulevard and SW Kingston Avenue, even though there are adequate public sidewalks along both streets to provide this accessibility. This was possible as long as the access road lay outside the perimeter fence of the established Garden. However, with the completion of the new Cultural Village and relocation of the new Ticketing Pavilion at the bottom of the hill on SW Kingston Avenue, it will be necessary to construct a perimeter fence around the entire site, including the access road, to protect its facilities and create a single point of access. This in no way has any adverse impact on the official Wildwood Trail or its connectors. As a result, PJG will no longer be able to allow public access to its site except as patrons or members. The informal trail spur will be restored as part of mitigation..."

PP&R submitted a memorandum responding to the trail closure issue (Exhibit H.44, page 2). In relevant part the PP&R representative stated, in Exhibit H.44, the following:

"Although PJG's service road is not an official segment of the Wildwood Trail, PJG has allowed it to become an informal short-cut between SW Fairview Boulevard and SW Kingston Street for many years..."

Janik, in Exhibit H.20 (page 11), stated, in part, the following:

"The status of the trail spur is not entirely clear. Although it may not officially be part of the Wildwood Trail, it is shown as a public trail on Portland Parks' Washington Park Trails Map (<http://tinyurl.com/mkckogw>). As such, JGS should keep the trail spur access open during the Garden's operating hours."

Dowd, in Exhibit H.50 (page 5), stated, in part, the following:

"Closing this route [the trail connection] violates approval criteria for pedestrian connections and purposes of the Open Space Zone."

The Hearings Officer finds the Washington Park Trail Map (as referenced by Janik in Exhibit H.20) is not a legally binding document. The Hearings Officer finds the trail connection from the Garden access road to the Wildwood Trail is not an official segment of the Wildwood Trail. The Hearings Officer finds, therefore, that the trail connection is not an official pedestrian connection that must be improved and/or maintained. The Hearings Officer finds that at least one alternative connection from SW Fairview Boulevard to the Wildwood Trail exists and provides adequate connectivity (perhaps not subjectively as good a route as perceived by persons providing testimony/written comments in opposition). See Supplemental Findings, Item 12.

Kingston House:

The applicant requested, in the original application, modifications to conditions of approval made in LU 09-143601 related to the Garden office use of 369 SW Kingston ("Kingston House"). The applicant formally withdrew all requests for modification of conditions related to the Kingston House.

A number of opponents argued that the Hearings Officer must consider, in this decision, the now withdrawn Kingston House requests (Exhibits H.33, H.50 and H.55 and testimony of Dowd and Mike Wallace ["Wallace"]). The primary reason, as proffered by Dowd, is that the applicant failed to conform to the conditions of approval related to the Kingston House as set forth in LU 09-143601. Specifically, Dowd suggests, in Exhibit H.50 (page 8), that the applicant did not properly utilize the required building permit process (violation of PCC 33.700.005).

The Hearings Officer finds that the applicant withdrew its requested modification of conditions related to the Kingston House. The Hearings Officer finds the prior approval in LU 09-143601, related to the Kingston House, is not at issue in this case. Also, the Hearings Officer finds that failure to meet conditions of approval, as set forth in LU 09-143601, is not relevant to the approval criteria in this case.

Applicant's Lease/license with PP&R:

Janik, in Exhibit H.49, states the following:

"Attached is the License Agreement, dated December 28, 2007, under which the Japanese Garden Society has the right to occupy a portion of Washington Park. We believe that Exhibit A is the correct legal description of the land area covered by the License.

2.1 The applicant acknowledged in the hearing that it has not completed an agreement with the City's Parks and Recreation Bureau allowing an expansion of the land area covered by the License. Therefore, the applicant does not have the legal authority to submit an application covering land it has not right to utilize.

2.2 Article II, Section 1(B) of the License sets forth the 'Licensee Responsibilities and Authority' and provides: 'B. Develop a plan of management and development for the Garden that is consistent with the goals and policies of the Washington Park Master Plan. This 'Plan of Management' for the Garden must be approved by the Director of Parks and Recreation. This plan will be updated not less than once every five years.'

There is no evidence in the record that the Director of Portland Parks and Recreation has approved a 'Plan of Management' that allows the proposed expansion. Additionally, Article IV, Section 7.1 requires that all plans for improvements to be built on the property covered by the License must be approved by the Manager of Portland Parks and Recreation Bureau. There is no evidence in the record that such approval has been given."

PP&R, in Exhibit H.44, stated the following:

"Portland Parks & Recreation (PP&R) is fully aware of the PJG application and has been working closely with the PJG on the proposed PJG expansion project. PP&R supports expansion of the leased area from 9.1 to 12.6 acres as described in the application and will include this change in the updated PJG lease that is currently being negotiated."

The Hearings Officer finds, for the purpose of processing the application in this case, that the area covered by this proposal is not the same as that covered by the "License Agreement dated December 28, 2007." The Hearings Officer finds that a land use application need not necessarily conform to contracts, leases, licenses or other agreements affecting the property subject to the land use application. Issues related to those contracts, leases, licenses or other agreements may be a matter of contest between the parties, but so long as the basic Portland Zoning Code application requirements are met, the application can proceed to a land use decision. The Hearings Officer extracted language from the land use application form that relates to an owner granting permission to an applicant:

"Responsibility Statement As the applicant submitting this application for a land use review, I am responsible for the accuracy of the information submitted. The information being submitted includes a description of the site conditions. I am also responsible for gaining the permission of the owner(s) of the property listed above in order to apply for this review and for reviewing the responsibility statement with them. If the proposal is approved, the decision and any conditions of the approval must be recorded in the County Deed Records for the property. The City of Portland is not liable if any of these actions are taken without the consent of the owner(s) of the property. In order to process this review, City staff may visit the site, photograph the property, or otherwise document the site as part of the review. I understand that the completeness of this application is determined by the Director. By my signature, I indicate my understanding and agreement to the Responsibility Statement." [signature of applicant]

The Hearings Officer finds that the applicant signed the application in this case and is ultimately responsible for gaining approval(s) necessary to complete its proposed actions. The Hearings Officer finds informative the statement by the PP&R representative (Exhibit H.44) that the owner of the property subject to the application in this case is supportive of the application. The Hearings Officer finds the "license/lease" arguments made by Janik to be irrelevant to making a decision in this case. See Supplemental Findings, Item 3.

Washington Park Master Plan:

Janik, in Exhibit H.49, stated the following:

"The 1981 adopted Washington Park Master Plan is attached (the 'Master Plan'). The Master Plan states at p. 52. '1. Expansion Plans: Adopt the institutions' existing development plans as part of the Washington Park Master Plan, future plans or modifications to be reviewed by the proposed Washington Park Advisory Committee prior to formal public review.'

The Japanese Garden is one of the institutions in the Master Plan. (Master Plan, p. 9) There is no evidence in the record that the Japanese Garden Society submitted its expansion plans to the Washington Park Advisory Committee and that the Committee approved its expansion plans.

The Master Plan does not allow additional structures beyond those currently in place. The Master Plan, at p. 56, states: 'Current attendance figures of 79,000 (1979) are expected to increase to 400,000 by the year 2000. In

anticipation of this, the Japanese Garden Society has been actively engaged in planning expansion of the gardens to utilize the full 5-1/2 acres within their lease. No other large structures are planned since the instability of the land is conducive to only small-scale, passive recreational uses.'

The Society's proposal includes a new 8,980 square foot Administration Building and a 4,140 square foot Garden House."

Bookin, in Exhibit H.54, responded to the above-quoted Janik comments as follows:

- "* Mr. Janik has pointed to no approval criterion that would make compliance with the master plan a requirement of this conditional use application.
- * The Washington Park Master Plan was adopted by the City Council in 1981 by resolution. The Plan was not adopted by ordinance as part of the City's comprehensive plan or land use regulations. ORS 227.173(1) requires that only standards and criteria applicable to a land use permit application be part of the City's comprehensive plan and development ordinance.
- * The opponents also have not demonstrated that the affected institutions' 'existing' development plans were ever adopted as a result of the master plan, such that future plans and modifications could be measured against those existing plans.
- * According to PP&R's Kia Selley (attached 6/19/14 email):
I did some checking here at Parks regarding the existence of an Advisory Committee for Washington Park (as per the 1981 master plan). As you can read in the Master plan, this committee was contemplated merely advisory and was not intended to be a decision-making body. To my knowledge - and that of many others here at Parks - there was never such a committee convened. Therefore, there is no advisory committee with which to meet, even if the requirement to do so was legally-binding, which it is not.
- * The 1981 Washington Park Master Plan is nearly 35 years out of date. At the request of AHNA and its sister neighborhood association, Sylvan Highlands (SHNA), the Washington Park Transportation and Parking Management Agreement (WPTPMA), which dictates the expenditure of annual paid-parking revenues, is setting aside \$133,000 for three years to fund an update of the master plan to take a comprehensive look at the Park's transportation and parking management (WPTPMA, Pages 10-11). AS a partner in the effort, the AHNA is aware the Washington Park Master Plan is out of date and not relevant to the contemporary management of the park."

The Hearings Officer finds satisfaction of the Washington Park Master Plan is not part of any relevant approval criteria in this case. On that basis, and that basis alone, the Hearings Officer finds Janik's claim that failure to satisfy the Washington Park Master Plan, in this case, is not relevant. See Supplemental Findings, Item 5.

Additional Issues Raised Before the City Council

Opponents characterized the Japanese Garden as a private, fee-based use and an inappropriate use of public property. The Council finds this issue is not relevant to any approval criterion; moreover, botanical gardens are an

allowed use in the Open Space zone and the related structures and uses are allowed as accessory uses in an Open Space zone as explained in the Supplemental Findings, Item 7.

Opponents offered testimony on a number of issues the Council finds are not relevant or constitute new issues or evidence that may not be raised in the on-the-record appeal of the Hearings Officer's decision. The Council specifically rejects this testimony for the reasons explained in the Supplemental Findings, Item 4. **THE FINDINGS ABOVE ARE INCORPORATED, WHERE APPROPRIATE, INTO THE FINDINGS OF THE APPROVAL CRITERIA BELOW.**

REMINDER:

Sections in italics are quoted (quotation marks omitted) BDS staff comments from the Staff Report and Recommendation to the Hearings Officer (Exhibit H.2).

Site and Vicinity: *The OS-zoned portion of the site is a 12.56-acre leasehold that is owned by the City of Portland and is located in the northwest portion of Washington Park. This portion of the park is just south of SW Fairview Boulevard and west of SW Kingston Avenue, across from the public tennis courts. The lease-hold site is forested and has relatively steep topography that includes the location of a former land slide. Development on the site currently includes an access road that provides the majority of the vehicle parking for employees, as well as access for the shuttle bus from the parking area on Kingston to the top of the road where the main garden entrance is currently located. In addition to the formal botanical gardens, the site includes numerous buildings for public education and amenities and also for maintenance and administration of the garden.*

The R7-zoned portion of the site is a 9,400 square-foot property that is owned by the Portland Japanese Garden Foundation and is developed with a residential structure that was constructed in 1925. This former residence was approved for use as the administrative office for the Japanese Garden through a 2009 Conditional Use Review (09-143061). Changes to the development of this site and the use of the property are no longer being proposed as a part of the current land use review.

Zoning: *The portion of the site that contains the proposed development locations is zoned OS (Open Space). The OS zone is intended to preserve and enhance public and private open, natural, and improved park and recreational areas identified in the Comprehensive Plan. These areas serve many functions, including:*

- *Providing opportunities for outdoor recreation;*
- *Providing contrasts to the built environment;*
- *Preserving scenic qualities;*
- *Protecting sensitive or fragile environmental areas;*
- *Preserving the capacity and water quality of the stormwater drainage system; and*
- *Providing pedestrian and bicycle transportation connections.*

A small portion of the site is zoned R7, or R7000, Medium Density Single-Dwelling Residential. This zone designation is intended for areas with adequate public services but minor development constraints. Single-dwelling residential will be the primary use. The Garden office was allowed to be located in this zone, because it was approved through a Conditional Use Review. No changes to the development or use or activities are being proposed for this portion of the site through this review.

Portions of the site also have a "c" or Environmental Conservation Overlay. This zoning overlay protects environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. Proposed development must meet the special development standards for the "c" Overlay or be approved through Environmental Review, in order to ensure that impacts on environmental resources are minimized.

A small portion of the site also has an "s" or Scenic Resource Overlay because the lease hold is located adjacent to the Washington Park Scenic Drive. The Scenic Resource zone is intended to:

- *Protect Portland's significant scenic resources as identified in the Scenic Resources Protection Plan;*

- Enhance the appearance of Portland to make it a better place to live and work;
- Create attractive entrance ways to Portland and its districts;
- Improve Portland's economic vitality by enhancing the City's attractiveness to its citizens and to visitors, and
- Implement the scenic resource policies and objectives of Portland's Comprehensive Plan.

The purposes of the Scenic Resource zone are achieved by establishing height limits within view corridors to protect significant views and by establishing additional landscaping and screening standards to preserve and enhance identified scenic resources. The standards of this overlay zone do not apply to the current proposal.

Environmental Resources: The application of the environmental overlay zones is based on detailed studies that have been carried out within eight separate areas of the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these study areas. The site is located in Resource Site 112 – Canyon Road East of the Southwest Hills Resource Protection Plan. Resource Site 112 is a 418-acre site that includes portions of Washington Park, Highway 26 and Portland Heights residential neighborhood. The curvilinear streets, variety of architectural styles and park land contribute to the area character and quality. Natural resources and functional values identified by the City for Resource Site 112 are open space, cultural, scenic, historic, recreation, wildlife habitat, seasonal creeks, groundwater recharge and forest. The wildlife habitat and intermittent stream resources are of moderate to high value. The site has high scenic value especially in combination with Resource site 111 to the west. The significant site habitat features include all ravines and the contiguous forested areas.

Impact Analysis and Mitigation Plan: A summary of the proposal was provided on page two of this report. A complete description of the proposal is found in Section III of Exhibit A-2 and additional testimony in Exhibits A-10 and A-15. The following discusses development alternatives that were considered by the applicant in addition to impacts of the preferred alternative. The following additionally outlines the proposed construction management plan, mitigation plan, and monitoring proposal. Again, see Exhibit A-2 in the application case file for a complete description. Dictated by the size of the garden area, the site plans and impact analysis were divided into three subareas for project elements that require environmental review:

- EN-U: new Garden House, Village House, Tea Café, Chabana Garden, shuttle drop-off, and accessible parking (Exhibits C-4 through C-11).
- EN-L: new access gate, existing garden gate, existing ornamental garden, and existing path and fences (Exhibits C-12 through C-19).
- EN-G: new Bonsai Greenhouse (This building was withdrawn from the development proposal on May 19, 2014. Therefore, the remaining discussion on impacts does not address EN-G).

The EN subareas are geographically- and environmentally-integrated, but are separated into subareas for ease of discussion and graphic presentation.

Development Alternatives:

Off-Site Locations: The applicant rejected a satellite location nearby as it would not meet project purposes is not a suitable operation from an operational perspective. Other locations in Washington Park are either already occupied, e.g., Oregon Zoo, World Forestry Center, or are equally or more environmentally sensitive. Even closer sites to the Garden proper are fully developed, such as the park's tennis courts, Portland International Rose Test Garden and Zoo Train station on the east side of SW Kingston Avenue. South of the Garden, across Kingston as it curves westward, the recently-planted stand of Centennial cherry trees symbolize the friendship between the United States and Japan. Further to the south, the park is characterized by steep slopes and extensive tree cover, and as a result, also lays within the "c" and/or "s" overlay zones. Residential properties border the Garden on the northwest and west.

Within Non-"c"-Zoned Areas: The non-"c"-zoned portions of the Garden already are developed, landscaped and programmed. Much of this area is dedicated to formally-designed and intensively-managed Japanese ornamental gardens that contain a mixture of native and non-native trees and shrubs interspersed with stones, sculptures, water features, graveled paths and other amenities, all located under a canopy of large, native trees. Expanding into the existing garden would not increase the area within which to disperse patrons, but will exacerbate crowding by

the removing of existing garden space to accommodate new structures. This option does not meet the project purpose.

Within “c”-Zoned Areas: The following three alternatives address the project objectives of expanding buildings and gardens contiguous to the already-developed portion; provide controlled access; utilize existing infrastructure and minimize environmental impacts:

- **Alternative 1.** *This alternative concentrates new space into a single two-story 13,000-gsf structure located in the parking lot adjacent to SW Kingston Avenue. All but the northern edge of the parking lot is outside the “c” overlay zone and has only a moderate slope leading up to the access road. However, the site is separated a significant distance from the main portion of the formal gardens and related facilities near the top of the steep hillside. To address this problem, new formal gardens were considered for location to the west of the new building on both sides of the service at the base of the hill as well as adjacent to the turn-around at the top.*
- **Alternative 2.** *In this alternative, proposed development would be located in the only other relatively flat, largely treeless area on the site, the top of the access road near the Main Gate that now serves as the Garden entrance. Clustering new buildings here would avoid incursion into the “c” zone to a significant extent, but would require removal of the Maintenance Building, Deweiss Hill Garden, and existing paved turn-around that provides drop-off, disabled parking, fire access and pre-entry staging. The associated garden then would extend up the hill and across the relatively flat area at the top. Ultimately, Alternative 2 would not provide contiguous gardens and would require significant intrusion into undisturbed resource areas across the top of the hill. The presence of the landslide further restricted the placement of a large structure in this location, making this option less practicable.*
- **Alternative 3 (preferred option).** *Alternative 3 combines elements of Alternatives 1 and 2, while eliminating the need to site new buildings across the historic landslide. This alternative identifies two primary development sites: 1) the already-disturbed top of the access road, including the site of the existing Maintenance Building and Deweiss Hill Garden; and 2) the relatively flat area between the adjacent parking lot and the access road that is almost entirely outside of the “c” overlay zone. In addition, small locations within existing development were identified for expansion to limit the intrusion of new structures and gardens into the “c” overlay zone.*

At the new Cultural Village, new structures would be dispersed around a central plaza centered over the existing turn-around so that they are located on either side of the landslide plane. New associated gardens would be similarly dispersed to cluster around the new buildings either located outside of or on previously-disturbed areas within the “c” overlay zone. This option moves the existing Ticket Booth and Patron Information Services from the Main Gate down to the south side of the parking lot, in an area that lies outside the “c” overlay zone. The new Ticketing Booth becomes the new point of access and permits the construction of an access gate just beyond the access road entrance from SW Kingston Avenue. Associated gardens combined with stormwater features help frame this entry into the gardens, but would involve small intrusions into the transition and resource areas adjacent to the access road.

Analysis for Utilities and Infrastructure: Using Alternative #3 as the preferred alternative, the following section provides an alternative analysis for the provision of necessary infrastructure to support both existing and proposed development. The proposed development is divided up into two main areas: the Upper (Cultural Village) Garden and Lower Garden. The latter falls primarily outside “c” overlay zone, and the utilities serving it can be routed entirely outside the “c” overlay zone. The Upper Garden is partially within the “c” overlay zone, which will require some portion of the utilities also to be located within the overlay zone.

- **Utilities Alternative 1: Follow existing water alignment.** *This option considers routing the proposed storm and sanitary sewer lines from the Cultural Village along the same route as the existing 6”water service lateral. Water service to the Village is currently provided from a 6”public water main located in SW Fairview Boulevard to the west of the project site. The new storm and sanitary lines would connect to an 18”public combined sewer main in SW Fairview Boulevard. However, this alignment would require approximately 500-linear feet of trenching through established existing vegetation within the “c” overlay zone. In addition to this new disturbance, the connection point for combined sewer is slightly higher than the Village elevation, requiring a pumped system for the sewer and storm to make this connection feasible. The significant cost of a pumped*

system, environmental incursion, and limited construction access due to steep slopes make this alternative undesirable.

- **Utilities Alternative 2: Connect through existing garden.** *An existing sewer line connects the restroom to a combined sewer main located south of the Garden in SW Kingston Avenue. In this option, the proposed sewer from the Village would be piped into the developed portion of the Garden and connect to the existing sewer serving the restroom. However, due to the existing sewer line size and restricted capacity, this would not be feasible. To route a new storm conveyance line along this alignment, trenching excavation would disturb the existing garden's vegetation. As part of the original project goals, the consulting team was directed to minimize disturbance to the existing garden to the degree possible. The lack of availability for sewer connection and significant disturbance to the garden makes this alternative undesirable.*
- **Utilities Alternative 3: Follow existing access road.** *This alternative would route the proposed storm and sewer conveyance from the Village along the existing access road. Although this route is within a previously-disturbed portion of the "c" zone, it provides construction concerns unique to this alignment. Neighbors adjacent to the north lease boundary have expressed concerns about construction noise and visibility of construction equipment. The design team has been working with neighbors to develop a concept that minimizes construction activity near adjacent residential properties to address these concerns. Thus, if this route along the road is chosen, it will result in more construction equipment noise, and disruption to the neighbors. This route also would disturb additional impervious areas, triggering the requirement for stormwater quality treatment of the entire access road. The topography directly adjacent to the road is steep (1H:1V) and is not suitable for development as a stormwater quality treatment area without significant earthwork and additional disturbance within the "c" zone.*

At approximately 1,400-linear-feet, this is the longest alternative route and would increase the construction costs considerably. As this roadway is the only access to the Village, the staging and construction of the utilities could prove problematic for the overall construction schedule. For these reasons and neighbors' concern, this alternative is practicable, but not desirable.

- **Utilities Alternative 4: Routes from Village to the Antique Gate and Existing Sewer in SW Kingston Avenue (Preferred Alternative).** *In this alternative, the sewer alignment will consist of a 100-linear-foot directional boring through the "c" overlay zone from the Village to the top of the stormwater treatment swale located near the Antique Gate. From here the sewer will be trenched through the pre-disturbed area to the Antique Gate and along the access road to SW Kingston Avenue to the existing combined sewer there.*

The storm alignment will collect and convey stormwater on the surface via a "dry creek bed" from the Village to a point near the new pedestrian bridge, where the 65-linear-foot directional boring will connect the open conveyance to the stormwater treatment swale at the Antique Gate. From there to the parking lot in the Lower Garden, the stormwater will go through a series of piped and open conveyance ways before discharging into the underground detention system, the outlets for which lead directly to the offsite combined sewer system in SW Kingston Avenue.

The preferred alternative will minimize impact within the "c" overlay zone, utilizing previously-disturbed areas to the degree possible and proposing directional boring through steep sensitive environmental areas. The total length of utility disturbance through the "c" overlay zone is approximately 250', which is minimized by the boring and routing through pre-disturbed areas. Following the natural path of drainage adjacent to the Garden's main pedestrian access allows an opportunity to educate and provide aesthetic viewing of stormwater conveyance and treatment facilities, which in turn enhance the patron experience. This alternative also minimizes the construction activity along the north side of the site in an effort to shield the neighbors from significant construction activity. In minimizing the impact within the resource areas, this alternative is the most desirable and, therefore, the preferred alternative. The project arborist will provide specific guidelines for the boring activity to avoid harming the roots of existing trees.

Construction Management Plan (CMP):

Exhibits C-9 and C-17 contain the construction management and erosion control plans, using the best management practices typically employed to minimize impacts during construction. This includes:

- *Tree protection fencing;*

- Construction fencing delineating the limits of work/disturbance;
- Clearing identified access and construction staging areas; and
- Techniques to reduce construction-related erosion and stormwater run-off.

Unavoidable Impacts:

A total of 1.69 acres of impacts are contained within the limits of project work. This includes all proposed structures, site improvements, and temporary disturbance areas within the resource area of the conservation zone. Of the 1.69 acres, 70 percent will be located in already-disturbed areas and 30 percent will be located in currently undisturbed areas, as shown with Table III-4 from Exhibit A-2 (updated with Exhibit A-11):

NEW DISTURBANCE	ALREADY DISTURBED	UNDISTURBED	TOTAL
Permanent	1.10 acres	0.16 acres	1.26 acres
Temporary	0.09 acres	0.34 acres	0.43 acres
TOTAL	1.19 acres	0.50 acres	1.69 acres

Table III-3 in Exhibit A-2 (updated with Exhibit A-11), provides a detailed breakdown on how many square feet of disturbance are located within each of the three EN subareas (reduced to two after the Bonsai Greenhouse was eliminated) illustrated on Exhibits C-7 and C-15. The total numbers are as follows:

SUBAREA	INDICE	DISTURBED	UNDISTURBED	TOTAL
UPPER	SF (ACRE)*	28,714 (0.66)	18,312 (0.42)	47,026 (1.08)
	%	61%	39%	100%
LOWER	SF (ACRE)	23,005 (0.53)	3,497 (0.08)	26,502 (0.61)
	%	87%	13%	100%
TOTAL	SF (ACRE)	51,719 (1.19)	21,809 (0.50)	73,527 (1.69)
	%	70%	30%	100%

A total of 50 trees are proposed for removal and another 14 are proposed to be transplanted. The applicant has also requested flexibility to possibly remove up to an additional 10 trees, totaling no more than 150 caliper inches.

Proposed Mitigation:

A landscape mitigation plan is presented for each of the three EN subareas (Exhibits C-10, C-18, and C-20), which identify mitigation enhancement areas, trees destined for transplanting, and the replacement of trees removed to accommodate improvements. Tree replacement is a combination of trees and shrubs per the replacement formula in Option B of Table 430-3. Although not noted on the plans, the narrative indicates mitigation includes removal of invasive shrubs and groundcovers (e.g., English ivy) and replacement with native groundcovers.

All temporary disturbance areas (0.35 acre) will be re-vegetated with native plants following completion of development. The 0.16 acre of new permanent disturbance in the resource area will be mitigated by resource enhancements in an equal area of land adjacent to the upper portions of the access road in EN-U. This mitigation will include both removal of invasive species and replanting of middle-story shrubs appropriate for a fir-maple forest. Trees that are proposed for removal will be replaced by 80 native trees and 183 native shrubs, all of which will be planted within the environmental overlay zone. Including the replanting of temporary disturbance and mitigation areas, the applicant proposes a total of 692 trees and 1,384 shrubs, plus groundcover plants and native grass seed (Exhibit A-14)

All plants shall be selected from the Portland Plant List, and shall be planted in substantial conformance with the landscape mitigation plans (Exhibits C-10, C-18, and C-20).

- Plantings shall be installed during the optimum planting season between October 31st and March 31st of each year. The applicant will replant temporarily-disturbed areas as soon as practicable given acceptable industrial standards for re-planting once the area is no longer needed for construction of permanent improvements. During the period between completion of work and the next planting season, the applicant will maintain erosion control measures to the degree practicable.

- *Prior to installation required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using hand-held equipment. These shall be replaced with native groundcover to be planted at a density prescribed by the BDS.*
- *All mitigation and remediation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector. All tape shall be a contrasting color that is easily seen and identified.*
- *After installing the required mitigation plantings, the applicant shall request inspection of Permanent Erosion Control Measures (IVR 210) by the Bureau of Development Services (BDS), which will confirm that all required mitigation plantings have been installed. The landscape professional or designer of record shall submit a letter of certification to document that the plantings have been installed according to the approved plans, if requested by BDS.*

Monitoring Plan for Mitigation:

The Portland Japanese Garden or its designated landscape designer of record shall monitor the required plantings for two years to ensure survival and replacement as described above. The land owner is responsible for on-going survival of required plantings beyond the designated two-year period.

Land Use History: *City records include the following prior land use review for this site:*

LU 09-143061 CUAD - *Approval of a Type III Conditional Use Review (effective November 5, 2009) to allow the use of the property at 369 SW Kingston Avenue as the administrative office for the Portland Japanese Garden. Approval was also given for an Adjustment Review to grant an exception to the Institutional Development Standards, 33.110.245, to reduce the minimum building setback from 15 feet to 14 feet from the north property line. Conditions of approval limited use of the property as follows:*

- A.** *As part of the building permit application submittal, the following development-related conditions {"B through D" (sic) } 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."*
- 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.*
- 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.*
- D.** *The Conditional Use approval of this request shall sunset (terminate) ten years after the date of 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.*
- 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.*

The referenced Good Neighbor Agreement (GNA) included the elements that were largely reflected in these conditions of approval (The entire GNA is attached as Exhibit A-2, Appendix B).

Agency Review: *A "Request for Response" was mailed April 11, 2014. The following Bureaus have responded with no issues or concerns, regarding the requested land use reviews:*

- *Bureau of Environmental Services BES provided a response that stated that they do not object to approval of the Conditional Use and Environmental Review. The response noted that the proposed development will be subject to BES standards and requirements during the permit review process (Exhibit E-1).*

- *Bureau of Transportation Engineering provided an analysis of the proposal, which is contained in the findings for the transportation-related approval criteria, 33.815.100 B. 1 and 2, below (Exhibit E-2).*
- *Water Bureau provided information on the existing water service to the site and discussed the requirements for any expansion or change to the service that may be sought through building permits (Exhibit E-3).*
- *Fire Bureau stated that separate building permits are required for the proposed development and that all applicable Fire Code requirements will apply at time of permit review. The response further noted details that are involved in meeting these Code requirements (Exhibit E-4).*
- *Police Bureau noted that a public facility such as the Garden needs to follow safety and security precautions and provided comments and recommendations on procedures to meet these ends. (Exhibit E-5).*

(BDS Staff Note: Summaries of the analyses of the proposal and the further discussion and details of the responses from the Bureaus of Environmental Services, Water, Police and Fire are contained in the findings for approval criteria 33.815.100 B.3, below).

- *Site Development Section of BDS stated that they can support approval without additional information at this time. A draft geo-technical report was submitted with the application for their review. A more formal and detailed report is required for submittal of building permits due to the history of landslides on this site. Upon review of permit submittals, additional information may be required, as needed to ensure that slope stability is adequately maintained (Exhibit E-6).*
- *Life Safety Plan Review Section of BDS noted various building code standards that must be met at the time of building permit review. Included was also the building permit requirement that, “at least one accessible route shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading and drop off zones, and public streets or sidewalks to an accessible entry. OSSC 1104.1” (Exhibit E-7).*
- *A letter was also received from the Tri-County Metropolitan Transportation District of Oregon, TriMet, which recommended some amenities that would further support transit use by the public when visiting the Japanese Garden. The criterion that addresses availability of transit has been met (see findings for 33.815.100 B.2, below). If the applicant wishes to provide additional amenities for transit users, they are encouraged to do so, but staff finds that there is no nexus to include the recommended conditions that are detailed in this response (Exhibit E-8).*

Neighborhood Review: *A Notice of Proposal in Your Neighborhood was mailed on May 15, 2014. A total of 12 written responses have been received from either the Neighborhood Association or notified property owners in response to either the Request for Response or the Notice of the Proposal.*

Staff received nine letters in support of approving the proposal. All of these letters praised the Japanese Garden as a major asset for the cultural and scenic life of the City and urged approval of the Conditional Use and Environmental Reviews to allow the proposed development (Exhibits F-1 through F-9).

Three letters that expressed opposition to some or all of the proposal were also received. Two of these letters were only opposed to the expansion of the development and the administrative office use of the residential property at 369 SW Kingston (Kingston House). As this part of the overall proposal has been withdrawn, the points raised in these letters (Exhibits F-10 and F-11) have now become moot.

BDS Staff Note: *It should be mentioned, however, that the issue of whether the Kingston House should ever have been approved for use as the administrative office for the Japanese Garden is still being raised. While this review is not re-evaluating the 2009 Conditional Use decision that approved the use of the house as the Garden’s administrative office, the following comment pertains to an argument that was offered in these letters, which stated that the use cannot be legal because, “office,” is not listed among the accessory uses for Parks and Open Areas Uses, in Code Section 33.920.460 B.*

Rules for administration of the Code, (Section 33.700.070, General Rules for Application of the Code Language, D. Terms, 4. Lists) provide the following direction for this situation: “Lists of terms 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.”

The final letter (Exhibit F-12) came from seven neighbors who reside on SW Fairmount Boulevard. The letter stated a number of objections to the expansion of the Garden and proposed development:

- 1. The proposal includes, “buildings and structures that are inconsistent with the specific Open Space Environmental Conservation zone within which the Japanese Garden is located.” In the letter, the residents agreed that the Japanese Garden is a “Botanical Garden,” which is an allowed use in the OS zone and then listed some of the accessory uses that require approval as Conditional Uses in the OS zone. The letter then brought up a definition of “open space reserve,” which they applied to this situation, arguing that the proposed development is not in character with the OS zone and raising objections, in particular, to the proposal for the “Cultural Village,” and the new “Tea Cafe.”*
- 2. “The Construction plan ignores recent landslides (1990 and 1996) and fails to address potential landslide problems caused by heavy truck traffic on a road that was built on soft silt. Neither does it address the potential impact on forest habitat.” The letter continues with a discussion about the amount of fill that would be removed in the “village area,” and the numbers of trucks and trips by those trucks that would be estimated to remove the fill, citing nuisance impacts and concerns regarding impacts on the stability of the access road.*
- 3. “The application fails to accurately or sufficiently describe the ecological impact created by the proposed development.” The letter includes a quote from some of the text of Code Section 33.430.240, regarding required information for Environmental Review and a partial description of information on Site No. 112 of the Southwest Hills Natural Resource Inventory, stating that the proposal does not adequately recognize the existing resource values and the potential impacts on the habitat value. The letter also expresses concerns regarding impacts on slope stability and the potential for erosion and landslides.*
- 4. “The application fails to seriously address alternatives to the proposed development in order to reduce the detrimental impact on the site.” The letter finds fault with the alternatives that were proposed by the applicants and argues that other alternatives should have been evaluated. A separate paragraph follows, within this same section of the letter, which states that the residents believe that there are too many activities and events that occur in the Garden and that some of these could occur elsewhere.*
- 5. Finally, the letter expresses objections to the portions of the original proposal that were related to the Garden administrative office at 369 SW Kingston Avenue.*

(BDS Staff Note: As mentioned above, the portion of the proposal related to the administrative office has been removed and so it is no long part of the review or the discussion. This letter does not explain how the number of activities that the Garden hosts is related to the Environmental Review approval criteria. This is, however, a topic that is related to the Conditional Use approval criteria and is considered in that review. The other issues raised in this letter are also addressed in the findings for the Conditional Use Review and Environmental Review, below).

Hearings Officer Comment: The Hearings Officer generally concurs with the BDS statements in the Site and Vicinity, Zoning, Impact Analysis & Mitigation, Land Use History, and Agency Review sections. The Hearings Officer specifically incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS addressing Burden of Proof, Failure to Consider Off-Site Alternatives, Failure to Provide Adequate Environmental Mitigation, Kingston House, Applicant’s Lease/License with PP&R and the Washington Park Master Plan.

ZONING CODE APPROVAL CRITERIA

CONDITIONAL USE REVIEW

33.815.100: Uses in the Open Space Zone

33.815.040 Review Procedures

The procedure for reviews of conditional uses depends on whether the applicant is proposing a new conditional use, changing to another type of conditional use, or modifying development at an existing conditional use. The review procedure may also depend upon the type of use that is being proposed. This proposal is for additions to the development of an existing conditional use site, on the portion of the site that is located in the OS zone. The proposed addition will increase the building and floor area by more than 10% and therefore requires approval through a Type III Conditional Use Review.

33.815.100 Approval Criteria for Uses in the Open Space Zone

These approval criteria apply to all conditional uses in the OS zone except those specifically listed in other sections of 33.815. The approval criteria allow for a range of uses and development which are not contrary to the purpose of the Open Space zone. The approval criteria are:

A. Character and impacts.

1. The proposed use is consistent with the intended character of the specific OS zoned area and with the purpose of the OS zone;

Findings: *The purpose of the OS zone is:*

- *to provide opportunities for outdoor recreation;*
- *to provide contrasts to the built environment;*
- *to preserve scenic qualities;*
- *to protect sensitive or fragile environmental areas;*
- *to preserve the capacity and water quality of the stormwater drainage system; and*
- *to provide pedestrian and bicycle transportation connections.*

The Open Space zoning on this site was applied to the expansive contiguous public park lands that comprise the many features of Washington Park (including the outdoor amphitheatre, the International Rose Test Garden, the Archery Field, the picnic areas, tennis courts, the reservoirs, and the Japanese Garden, and also extending to the Hoyt Arboretum, the Pittock Mansion, and the Oregon Zoo, and the associated attractions at the zoo site). The Japanese Garden is actually a reinvention of the open space area in this portion of the park, which once housed the Portland Zoo.

The leasehold site was redeveloped over 50 years ago, in 1963, as the Portland Japanese Garden, a botanical garden. Supporters inform staff that the Garden bears the claim of being the most authentic Japanese Garden, outside of Japan. The character of this garden incorporates the wild native species and heavy forestation with the carefully cultured and manicured artistry that is unique to such gardens.

As the Portland Japanese Garden was developed, certain structures were included to provide space for groups who come to study the Garden or just to enjoy its amenities. Some of these structures provide opportunities for education regarding the cultural history that is reflected in the garden. One example of this is the tea house that provides the opportunity for visitors to witness a classical tea ceremony, which is illustrative of the spirit that inspires the creation of a Japanese Garden. The proposed development of the "Cultural Village" continues this tradition and offers the opportunity for larger, enhanced facilities to serve these purposes. The increase in visitors and activities are a part of fulfilling the purpose of the garden; to educate, entertain and provide respite from the urban environment, functions which all great public gardens and other public spaces are intended to serve.

In the spirit of carefully and artistically combining the built and the natural environment, in a holistic expression of serenity and meditative spaces, the proposal calls for the structures to be knit into the overall

composition of the Garden, offering better accommodations for classes and various other group gatherings and without detracting from the quality of the open space. In fact, the careful design of the location of the structures within the garden and the simple traditional elegance of the architectural elements will enhance the open space character. Though the juxtaposition and contrast of the contained outdoor garden “rooms” and the built portions of the overall development, the Garden is allowed to develop as a unified cohesive statement.

This proposed design will allow visitors to continue a type of passive outdoor recreation, through the appreciation of the aesthetic features of the Garden, allowing the experience of glimpsing vistas that are farther away, framed by the wealth of rich plant materials and vibrant natural colors. The proposal thereby preserves scenic qualities and fragile environmental characteristics of the open space area. The proposed amenities will preserve the pedestrian experience of the garden and the proposed storm water management plans, which have been reviewed and accepted by the Bureau of Environmental Services, will preserve the capacity and water quality of the stormwater drainage system. Therefore, the proposed use and development are consistent with the intended character of the specific OS zoned area and with the purpose of the OS zone and this criterion is met.

Hearings Officer Comment: The Hearings Officer concurs with the BDS proposed findings related to this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to Site/Ownership/Notice, Inconsistency of Proposed Building Size, Applicant’s Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer finds this approval criterion is met. See Supplemental Findings, Item 10.

2. Adequate open space is being maintained so that the purpose of the OS zone in that area and the open or natural character of the area is retained; and

Findings: *As mentioned earlier in this report, the Portland Japanese Garden was developed fifty years ago in Washington Park, on the site of the former Portland Zoo. This precedes the existence of this OS zone designation. The City’s Comprehensive Plan was first adopted in October, 1980. The current version of the Portland Zoning Code was adopted in 1991 and a new zoning designation system was adopted with it. The OS designation on the site dates to these planning projects and so the Japanese Garden, which was started in 1963, was always the open space use that was identified for this area. As discussed, at length, in the findings above, the character of the Japanese Garden is to weave the natural and the man-made together to create spaces that inspire reflection. The man-made portions of the garden involve the use of both sculpted garden areas and built structures and the natural areas include both native vegetation and sculpted topography, rock formations and other elements that can be incorporated into the architectural and aesthetic statement of the Garden.*

The proposed development will increase the amount of the building coverage for the lease hold from the existing 8,330 square feet up to 18,450 square feet. This additional building coverage will account for increasing the percentage of the built area on the overall area of the lease hold, from 2% of the current 9.1 acres, to 3.3% of the proposed 12.56 acres. Beyond the fact, as discussed above, that the design incorporates the built structures into the esthetic of the open space, so that entire Garden will still remain consistent with the open and natural character that is intended for this OS designated area, these figures indicate that adequate open space will still be maintained so that the purpose of the OS zone in that area and the open or natural character of the area is retained. Therefore, this criterion is met.

Hearings Officer Comment: The Hearings Officer concurs with the BDS proposed findings related to this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to Site/Ownership/Notice, Inconsistency of Proposed Building Size, Applicant’s Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer finds this approval criterion is met.

3. City-designated environmental resources, such as views, landmarks, or habitat areas, are protected or enhanced.

Findings: *There are City-designated environmental resources on this site. Some of the proposed development is located within the resource area of the Environmental Conservation zone and because the proposed disturbance to the resource area is greater than the amount that can be approved through Environmental Standards, an Environmental Review is being conducted, concurrent with this Conditional Use Review. The findings for this review are below. Staff has found that the proposal is meeting the criteria for the Environmental Review (33.430.250 A and E) because the proposal will have the least detrimental impact possible on the identified resources and functional values as other practicable and significantly different alternatives, and also because appropriate mitigation and construction management plans have been proposed to address the impacts that would occur. Therefore, with approval of the Environmental Review and any conditions imposed by the approval, this criterion can be met.*

Hearings Officer Comment: The Hearings Officer concurs with the BDS proposed findings related to this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to Site/Ownership/Notice, Inconsistency of Proposed Building Size, Applicant's Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer finds this approval criterion is met.

B. Public services.

1. The proposed use is in conformance with the street designations of the Transportation Element of the Comprehensive Plan; and

Finding: *The Portland Japanese Garden is located on a private park street, SW Kingston Avenue, which to the north of the Washington Park boundary becomes a Local Neighborhood Street. As a result, the Transportation Element of the Comprehensive Plan does not apply to this site.*

Hearings Officer Comment: The Hearings Officer concurs with the BDS proposed findings related to this approval criterion.

2. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, and other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; safety for all modes; and transportation demand management strategies;

Findings: *Portland Transportation/Development Review has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services and provided the following analysis:*

Street Capacity/Level of Service. *Based on the methodology contained in the Transportation Impact Analyses (TIA) prepared by Kittelson & Associates, 2023 traffic projections related to the proposed growth in the Garden's patron, employee and volunteer trips will have the following impact upon the two intersections identified for study by the Portland Bureau of Transportation (PBOT). Both study intersections are forecast to continue to operate at acceptable levels of service during the weekday PM and Saturday mid-day peak hours. A 10-year forecast traffic operations analysis was conducted for Year 2023 at the same study intersections. Based on this analysis, both study intersections are forecast to continue to operate at acceptable levels of service. The 2023 traffic operations analysis is summarized below.*

- *The intersection of W. Burnside Road/SW Tichner Drive is forecast to operate at LOS ["level of service"] D with a v/c ["volume to capacity"] ratio of 1.00 during the weekday PM peak-hour and LOS C with a v/c ratio of 0.85 during the Saturday mid-day peak hour.*
- *The intersection of SW Kingston Avenue/SW Fairview Boulevard is forecast to operate at LOS A with the eastbound left as the critical movement during both the weekday PM and Saturday mid-day peak-hours.*

Thus, by 2023, the Garden's impact upon the nearby roadway system will be within acceptable limits. This evaluation factor is met.

Access to Arterials. *The Garden has direct access to SW Kingston Avenue via the parking lot at the base of the Garden on the west side of the street across from the Washington Park Tennis Courts and Rose Garden. From here, vehicles can travel north onto the public portion of SW Kingston Avenue outside the park gate and hence to the arterial streets system in SW Portland, including SW Fairview Boulevard, SW Tichnor Drive and W. Burnside Avenue. As an alternative, vehicles can travel south through the park to Highway 26 or east through the park to SW Park Street/SW Vista Avenue. The proposed expansion within the Garden's site will have no adverse impact on this access. This evaluation factor is met.*

Connectivity. *As described immediately above, there is already significant vehicular connectivity throughout the immediate area adjacent to the Garden, both on the public street system to the north and private park circulation system to the south and east. This connectivity will not be affected by the proposed expansion of the Garden. To this end, there is a sidewalk along the Garden's frontage and to the north on both sides of SW Kingston Avenue and SW Fairview Boulevard. However, on the west side of the street, there is a gap between the Garden's sidewalk and SW Kingston Avenue to the north, and another gap to the south. There are sidewalks on the east side of SW Kingston Avenue on the west side of the Tennis Courts and southward on the edge of the Rose Garden. Although not perfect, there is reasonable pedestrian connectivity in the vicinity of the Garden. However, With regard to pedestrian connectivity, there is no requirement for pedestrian or bicycle facilities on private roads. This evaluation factor is met.*

Transit Availability. *Public transit to the site is provided by the #63 - Washington Park/Arlington Heights line runs from Downtown via SW 18th Avenue through the northern portion of Washington Park, including service to the Garden, and then to the southern park venues/LRT ["light rail transit"] station, via SW Fairview and Knights Boulevards. The bus line runs weekdays with one-hour headways but provides no bus service on weekends, so that even on weekdays, the service is not very convenient for the Garden patrons and employees, e.g., providing infrequent connections to the Washington Park/Oregon Zoo LRT station. The northern Washington Park Alliance (WPA) venues – Portland Japanese Garden and Rose Garden – also are connected to the southern WPA venues via the Zoo Train that runs between the Oregon Zoo and Rose Garden Terminus, but patrons need to buy admission to the Zoo to use it. Still, this permits patrons who are visiting the Zoo as well as one or both of the northern venues without adding vehicle trips. Moreover, one of the implementing measures of the Washington Park Transportation and Parking Management Plan (WPTPMP), Appendix F, is the proposed 2015 expansion of the now seasonal in-park shuttle bus system to move patrons around the park to various venues and connect LRT station at the south end of the park throughout the year. This evaluation factor is met.*

On-Street Parking Impacts. *The lynchpin of the WPTPMP is the now-completed installation of paid parking in all Washington Park parking facilities, including the public parking lot at the Garden's entrance. In combination with the free in-park shuttle system, the TIA concludes:*

.....the effect of metered parking may increase the functional capacity of the existing parking lots in the vicinity of the Garden by up to thirty percent. Based on the future supply of 173 spaces in the vicinity, the effect of metered parking spaces could increase the functional capacity to approximately 225 spaces, an increase of up to 52 spaces. In addition, the impact of the free park-wide shuttle promotes shared trips throughout Washington Park and effectively makes available the entire Washington Park parking system to Japanese Garden visitors. The result is an immediate growth of the effective parking system for visitors

from 173 spaces in the vicinity of the Garden to all available spaces in the park (up to 1,998 spaces—an increase of 13 times over the existing immediate supply). (Executive Summary, Page 7)

As there will be no paid parking on the public streets immediately beyond the park's entrance, including SW Kingston Avenue and SW Fairview Boulevard, there is likely to be some spill-over of patrons of the northern park venues into these on-street spaces, as there already are. However, Portland Parks & Recreation (PPR) only has authority over parking within the park's boundaries. Moreover, it is hoped that the greater increase in parking availability close to the Japanese Garden, Tennis Courts and Rose Garden will discourage such over-spill and encourage use of alternative modes. This evaluation factor is met.

Access Restrictions. *There are no access restrictions in the vicinity of the Garden. This evaluation factor does not apply.*

Neighborhood Impacts

Vehicular Street Capacity. The adjacent public street system is adequately sized and configured to accommodate the estimated changes in travel demand that may reasonably be expected through the Year 2023.

Parking Capacity. Functional capacity of the immediately-adjacent parking supply of 173 spaces managed by the Washington Park TMA has been increased by up to 30% due to implementation of a park-wide paid parking system. In addition, the park-wide shuttle system planned for implementation in mid-2015 before the proposed Garden development plan is completed will make an additional 1,853 physical spaces available to support parking demand to JPG. These spaces also are controlled by the park-wide system managed by the TMA, thus, increasing the functional capacity of that supply to more than 2,026 (173 + 1,853). Finally, the park-wide shuttle will provide direct access to the Washington Park/Oregon Zoo LRT station at the south end of the park, which will increase public transit access to the Garden. The combined effect of these planned and implemented actions is to minimize the potential for neighborhood impacts. This evaluation factor is met.

Impacts on Pedestrian, Bicycle and Transit Circulation. *As noted above, the sidewalk system on the west side of SW Kingston Avenue within Washington Park is incomplete but augmented by sidewalks on the east side of the street. As a result, patrons must cross the street to move to other WPA venues on the north end of the park and to leave the park to the north. As traffic moves relatively slowing on this portion of SW Kingston Avenue and there are adequate sight distances from the existing and proposed second entrance into the Garden parking lot, there are and will continue to be no serious impediments to pedestrian, bicycle and transit circulation. This evaluation factor is met.*

Safety for All Modes. *As noted immediately above and in the TIA, there are adequate sight lines from the parking lot at the bottom of the Garden to allow the safe ingress and egress from the lot. The TIA also notes that: "A review of historical crash data did not reveal any patterns or trends in the site vicinity that require mitigation associated with this project." This evaluation factor is met.*

Adequate Demand Management Strategies. *As a signatory of the WPTPMP, the Portland Japanese Garden is a partner in the implementation of the park-wide TDMP (Appendix G). This includes the use of revenues from in-park paid parking to fund the Washington Park Transportation Management Association (WPTMA) and such initiatives as the expansion of the free in-park shuttle system slated for 2015. As noted at the end of Chapter III, the TIA recommends that the Garden undertake two TDMP measures of its own: 1) Offer free or discounted TriMet passes to Garden staff and encourage them to use the free in-park shuttle for connections to LRT and other bus lines; 2) Coordinate event scheduling proactively to limit the number of visitors on peak days and, thus, the parking demand on existing facilities during peak days and months. This would be accomplished by scheduling cultural festivals workshops, and lectures throughout historically off-peak days and months throughout the year. This evaluation factor is met.*

The proposal meets all of the required evaluation factors that apply to the demonstration of the adequacy of the transportation system.

Summary: *Portland Transportation has no objection to approval of the proposed Conditional Use, subject to two Transportation Demand Management Plan measures independent of those in the park-wide TDMP.*

- 1) Offer free or discounted TriMet passes to Garden staff and encourage them to use the free in-park shuttle for connections to LRT and other bus lines.*
- 2) Coordinate event scheduling proactively to limit the number of visitors on peak days and, thus, the parking demand on existing facilities during peak days and months. This would be accomplished by scheduling cultural festivals workshops, and lectures throughout historically off-peak days and months throughout the year.*

Therefore, with these conditions, this criterion can be met.

Hearings Officer Comment: The Hearings Officer generally concurs with the BDS proposed findings related to this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to Inadequacy of Applicant's TIA (including findings for Inadequate Growth and Traffic/Parking Projections, Mode Split Estimates, Washington Park Shuttle System and Pedestrian Accessibility, Site/Ownership/Notice, Applicant's Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer finds this approval criterion, with conditions, can be met.

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 service agencies responded to indicate that public services are capable to serve the proposed level of the use, or can be made capable to serve the proposed development and uses, with certain conditions of approval, as noted in the following summaries of responses from these bureaus:*

- Water Bureau stated that there is a 6" metered service which provides water to the location from the existing 6" CI water main in SW Fairview Boulevard. The bureau's response also noted that there were no concerns regarding the service for the proposal at this time and discussed the requirements for any expansion or change to the service that may be sought through building permits (Exhibit E-3).*
- Fire Bureau stated that separate building permits are required for the proposed development and that all applicable Fire Code requirements will apply at time of permit review. The bureau further noted that there appears to be no fire hydrants that would provide fire protection to the proposed buildings. The applicant shall verify with the Water Bureau where the fire hydrants are located in this area. If there currently are not fire hydrants that can provide adequate fire protection, fire hydrants that meet the Fire Code will be required at time of development. (Exhibit E-4).*
- Police Bureau noted that a public facility such as the Garden needs to follow safety and security precautions and recommended an open landscaping plan in the parking area and use of lighting along paths or other pedestrian areas. The Police Bureau noted that they had received information from the applicants' representative that CCTV cameras would be incorporated into the site as a part of the proposed alterations. The Police Bureau's response also included a suggestion that signage should be placed on the site, specifically near the vehicle and pedestrian access points of the parking lot, that states "under video surveillance." The Bureau also noted that the new secured access gate would need to be accessible by Police, Fire and/or Emergency Medical Response personnel, if secured after hours. The response also noted that the Garden staff and administrators should work with the Central Precinct to establish a community policing relationship (Exhibit E-5).*
- The Bureau of Environmental Services (BES) noted that stormwater management plans were adequate and that they had no concerns regarding approval of the proposal. The following comments and analysis were provided in their response and are included to explain BES conclusions (Exhibit E-1).*

SANITARY SERVICE

1. *Existing Sanitary Infrastructure:* The Japanese Garden site is served by a Parks combined sewer system in SW Kingston Ave that connects downstream to a BES system at a manhole just north of the rose garden amphitheatre.
2. *Connection Requirements:* Though none are anticipated, note that connections to public sewers must meet the standards of the City of Portland's [Sewer and Drainage Facilities Design Manual](#).

STORMWATER MANAGEMENT

3. *Existing Stormwater Infrastructure:* There is no public storm-only sewer available to this property.
4. *General Stormwater Management Requirements:* All development and redevelopment proposals are subject to the requirements of the City of Portland Stormwater Management Manual (SWMM). The SWMM is periodically updated; projects must comply with the version that is adopted when permit applications are submitted. Note that a new version was adopted on January 2nd, 2014. The SWMM is available on the BES website here: www.portlandoregon.gov/bes/SWMM. Development projects are evaluated using the criteria described in [Section 1.3](#) of the SWMM. The Stormwater Hierarchy guides the applicant in determining where stormwater runoff should be conveyed (i.e. infiltrated on-site or discharged off-site). The highest technically feasible category must be used. Regardless of the discharge point, vegetated surface facilities are required to the maximum extent feasible to meet SWMM pollution reduction and flow control requirements.
5. *On-Site Stormwater Management Comments:* BES reviews stormwater management facilities on private property for the feasibility of infiltration, pollution reduction, flow control, and off-site discharges. The Site Development Section of BDS determines if stormwater infiltration on private property is feasible, when slopes on or near the site present landside or erosion related concerns, or where proximity to buildings might cause structural problems.
 - a. BES has reviewed a stormwater report from KPFF, revision date May 19, 2014. The report includes a Draft Geotechnical Investigation report from GRI dated February 21, 2014. In addition BES has received a supplemental Infiltration Recommendation memorandum from GRI dated March 28, 2014, which includes the geotechnical engineer's recommendation against infiltrating stormwater runoff on-site. The stormwater report describes how the project will provide treatment and detention of stormwater runoff on-site before discharging off-site to the public combined sewer system. Because the geotechnical engineer recommends against on-site infiltration due to concerns related to historic landslides on this site, the proposal to follow Stormwater Hierarchy Category 4 is acceptable to BES. The applicant proposes treatment and some detention in vegetated swales and planters to the maximum extent practicable, but due to constraints such as slopes and environmental overlay zones, detention pipes are proposed under the parking lot to ensure runoff from the entire redeveloped portion of the site will meet flow control requirements. For one section of redeveloped impervious area – North Village basin 6 – site grades do not allow the collected runoff to be conveyed by gravity to the storm system in the Village area, so the applicant proposes two options: A) connect to the Village storm drain system by pump and force main; or B) construct a gravity storm drain down the access road to connect to Planter B. The applicant has shown that either option can meet the requirements of the SWMM, therefore BES has no objection to determining a solution for this basin during review of building permits. Note that Option A may require approval of a plumbing code appeal, which is administered by BDS and approval of which cannot be guaranteed. BES has no objection to the proposed stormwater management approach for the purpose of reviewing this land use application.
 - b. The project site is located in the Willamette River Watershed, in the Tanner subwatershed. Total Maximum Daily Load (TMDL) water quality requirements apply in the Willamette River Watershed, as required by Oregon DEQ. The SWMM requires that applicants use pollution reduction facilities that are capable of reducing TMDL pollutants. Vegetated facilities sized according to the Simplified or Presumptive Approaches as proposed here meet these requirements.

SITE CONSIDERATIONS

The following information relates to specific site conditions or features that may impact the proposed project.

- 6. Plantings: Portland's Zoning Code (33.248) includes specific requirements for mitigation and restoration plantings, including that the plant materials must be native and selected from the [Portland Plant List](#). Where mitigation and/or restoration plantings are not required, BES still recommends the use of native plants to help stabilize soils and minimize erosion.*
- 7. Nature in Neighborhoods Inventory Information: The natural resources at this site were identified in Metro's Nature in Neighborhoods inventory of regionally significant riparian corridors and wildlife habitat.*

This site is part of the [Westside Wildlife Corridor](#), an area that has been identified by City and Metro inventories as an important forested corridor connecting Forest Park to the north to Tryon Creek State Natural Area to the south. The forest and woodlands provide food and shelter for a variety of birds, mammals, and other species.

To protect the natural functions provided by these resources, BES recommends that the applicant minimize site disturbance and replant disturbed areas with native vegetation. Doing so will help minimize erosion, protect slope stability, and restore lost functions.

- 8. Mature Trees: The site contains mature trees which are beneficial because they intercept at least 30% of precipitation that falls on the canopy, filter stormwater, help prevent erosion, and provide shade which cools the air and stormwater runoff. It is difficult to mitigate for the removal of mature trees as it can take decades for new trees to provide equivalent benefits. BES recommends that future development at this site include measures to preserve as many of the site's existing trees as possible. Financial incentives for existing trees taller than 15 feet on private property may be available for ratepayers who register with [Clean River Rewards](#), the City's stormwater discount program. Call 503-823-1371 for more information.*

Additionally, the City of Portland has a program for repurposing trees, especially large cedar and Douglas firs, into river restoration projects. BES encourages the applicant to consider this reuse of the larger trees. The applicant can call 503-823-5669 for more information on this program.

BES supports the applicant's novel proposal to transplant 14 mature trees. If any of the trees fail to survive within the required monitoring period, BES recommends the applicant replace them per Chapter 33.430 tree replacement table 430-3.

- 9. Nesting Birds: Nesting birds are regulated by the U.S. Migratory Bird Treaty Act. BES offers the following "Best Management Practices" as informational only to safeguard migratory birds. The BMPs include avoiding disturbance (i.e. tree removal) between primary nesting season: April 15 – July 31. If tree removal is necessary during this time, it is recommended that the applicant survey the trees slated for removal for signs of nesting. If an active nest is found (one with eggs or young), the application should contact the U.S. Fish and Wildlife Service for compliance with the Migratory Bird Treaty Act. . Additional guidance on avoiding impacts on nesting birds can be found in BES's [Terrestrial Ecology Enhancement Strategy guidance document](#).*
- 10. Slope Information: This site is steeply sloped; therefore, BES recommends that slope stability be carefully considered in all aspects of site development. This may include strategies such as replanting disturbed areas with native plants to help stabilize soils and minimize erosion, and placing stormwater facilities in areas that will protect slope stability.*

***BDS SUMMARY:** Based on these comments from the service agencies, services can be made adequate to serve the proposal and, therefore, with the conditions requested by these agencies, this criterion can be met.*

***Hearings Officer Comment:** The Hearings Officer concurs with the BDS proposed findings related to this approval criterion. The Hearings Officer finds, with conditions, this approval criterion can be 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 Garden attracts a large number of visitors and hosts many events, which are projected to increase with time. The proposed development is expected to help to accommodate these increased numbers of visitors, but will not, in and of itself, create impacts on livability for the adjacent residential area. The visitors are not involved in activities at the Garden that generate noise. Hours of operation are generally from 10 a.m. to 7 p.m. and so the schedule does not include any late night activities. None of the activities create odors and any litter is removed, with the curating attention that the Garden receives on a continual basis.*

As noted in the Applicant's narrative, "with the exception of the new Ticketing Booth at the base of the garden just to the west of SW Kingston Avenue, the new development will occur primarily in the Cultural Village at the top of the existing access road to the northwest of the existing main garden. Because this portion of the Garden is visible from the back yards of eleven private residences on the southeast side of Fairview Boulevard, the Applicants state that they have agreed to build an 6-foot tall, completely opaque wood fence along the west side of the access road, in order to block out views of the new buildings and the headlights of vehicles using the access road." Subject to approval through the concurrent Environmental Review, this fence can ensure that there will be no impacts to neighbors due to glare from headlights or intrusions on privacy.

The Portland Police Bureau reviewed this proposal and provided comments on adequate security measures, which included providing a means of access through the secured gate after hours, for fire, police and emergency response personnel, and also the provision of security cameras for the parking and entry areas. With these requirements as conditions of approval, these criteria can be met.

Hearings Officer Comment: The Hearings Officer generally concurs with the BDS proposed findings related to this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to Inconsistency of Proposed Building Size, Construction Management Plan, Closure of Trail Access, Kingston House, Inadequacy of Applicant's TIA (including findings for Inadequate Growth and Traffic/Parking Projections, Mode Split Estimates, Washington Park Shuttle System and Pedestrian Accessibility, Site/Ownership/Notice, Applicant's Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer reiterates, from the BDS findings and the just referenced SUMMARY FINDINGS that conditions of approval will address noise, glare from lights and privacy issues related to construction activity (on the access road, SW Fairview and SW Kingston) as well as a permanent fence along the access road. The Hearings Officer also notes that a condition of approval will address pedestrian safety issues on the west side of SW Kingston by requiring the completion of a segment of sidewalk. The Hearings Officer finds, with the imposition of conditions, this approval criterion can be met. See Supplemental Findings, Item 6.

D. 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 site is not located within the boundaries of any adopted area plans. Therefore, this criterion does not apply.*

Hearings Officer Comment: The Hearings Officer agrees with the BDS findings for this approval criterion.

ENVIRONMENTAL REVIEW

33.430.250 Approval Criteria for Environmental Review

An environmental review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .190, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

Findings: *The approval criteria applicable to the proposed development include those found Section 33.430.250.A and Section 33.430.250.E. The applicant has provided findings for these approval criteria and BDS Land Use Services staff revised these findings or added conditions, where necessary to meet the approval criteria. The criteria and findings for Subsections A and E are combined where they are similar.*

Hearings Officer Comment: The Hearings Officer agrees with the BDS findings for this approval criterion.

33.430.250 A. Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments. Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met:

Findings: *Note that since this activity is not a Public Safety Facility, Land Division, Planned Development, or Planned Unit Development and does not require a Property Line Adjustment, the criteria in Sections 33.430.250 A.2 and A.4 do not apply and are not included.*

Hearings Officer Comment: The Hearings Officer agrees with the BDS comment for this approval criterion.

33.430.250 E. Other development in the Environmental Conservation zone or within the Transition Area only. In Environmental Conservation zones or for development within the Transition Area only, the applicant's impact evaluation must demonstrate that all of the following are met:

E.1 Proposed development minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review;

Findings: *This criterion applies to the Cultural Village (plazas, structures, and gardens), the Terraced Garden, walls, fencing, and gates within the resource area of the Environmental Conservation overlay zone. The purpose of this criterion is to recognize that some form of development is allowed, consistent with the base zone standards. Impacts of the proposed development are measured relative to the impacts associated with the development normally allowed by the base zone. The Portland Japanese Garden falls into the Park and Open Areas use category – an allowed use in the OS zone. Certain accessory uses and facilities in the Parks and Open Areas use category are allowed if approved through the conditional use review process.*

In this case, the Japanese Garden, a botanical garden, is an allowed use. Some of the accessory uses and facilities in the Garden require approval through a Conditional Use Review.

Findings earlier in this report demonstrate the Garden meets the applicable approval criteria for the Conditional Use Review. Therefore, pending the decision of approval by the Hearings Officer, the Garden, including its accessory uses and facilities, would be an approved use that is allowed in the base zone.

The OS zone refers to Table 110-5 of the Zoning Code, which allows 50 percent of the site to be covered by buildings. The combined footprint of all existing and proposed buildings will be less than 19,000 square feet, of which less than

10,000 square feet is within the conservation zone. This is well below the allowed building coverage. The small size of the proposed footprints, reuse of existing disturbance areas, careful construction management, and diligent tree preservation reduce impacts on the identified resources and values.

Therefore, the proposal minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review and this criterion is met.

Hearings Officer Comment: The Hearings Officer agrees with the BDS findings for this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to Inconsistency of Proposed Building Size, Construction Management Plan, Closure of Trail Access, Kingston House, Failure to Consider Off-Site Alternatives, Failure to Provide Adequate Environmental Mitigation, Site/Ownership/Notice, Applicant's Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer finds this approval criterion, with conditions, can be met.

A.1. General criteria for public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments;

A.1.a. Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;

Findings: *This criterion requires the applicant to demonstrate that alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values. The applicant provided an alternative analysis that can be found in the application case file in Exhibit A-2, and is summarized in this report on Pages 5-7. This approval criterion applies to the following site improvements:*

- *Turn-Around and Shuttle Drop-Off*
- *Utility Connections*
- *Walkways*
- *Access Road*

Turn-Around and Shuttle Drop-Off: *The location of the turn-around is dictated by the existing alignment of the access road and placement of new buildings and gardens on the site of existing disturbance. Although most of these features are located outside of the environmental conservation zone or within areas of existing disturbance, the location of the turn-around is dictated by the existing location of the road and need for adjacency to the Cultural Village. Therefore, there is no feasible alternative to intruding into the resource area. This new intrusion has been designed to minimize new disturbance, resulting in a small expansion of disturbance immediately adjacent to already-disturbed areas. This is illustrated in the analysis of already-disturbed areas the Tree Survey contained in Exhibit A-2 and confirmed in the analysis of impact on functional values in EN-U (Pages III-23-24). Thus, the environmental impact of the proposed turn-around elements has been minimized.*

Utility Connections: *To implement the preferred alternative for new buildings and gardens requires connecting utilities and stormwater management facilities to services located in adjacent streets. PJG is surrounded on all sides by the environmental conservation overlay, making it impossible to route utilities without passing through the overlay zone. As detailed in the utility alternative analysis on Pages 5-7, the alternatives with the least environmental impacts are Alternatives 3 and 4. The preferred utility connection is via the ravine upon which the Cultural Village will sit, down to the Antique Gate, under the access road and into the parking lot adjacent to the Garden entrance (Alternative 4). The least-impact construction method is to use boring technology to allow sewer, stormwater, water and electrical lines to be conveyed underground where they won't require extensive disturbance of the resource area. Pits dug at the point of origin at the Cultural Village will be utilized to start bores that will follow the slope down at a depth of several feet. This is the shortest distance for these utilities to travel and involves the least physical impact*

upon resources and their functional values. This also is confirmed in the analysis of impact on functional values in Exhibit A-2 (Pages III-23-24).

During the course of the review City staff indicated a need to manage stormwater flowing off the top of the existing service road that was not anticipated in the initial stormwater evaluation. The applicant presented two possible methods for managing this area's flow in materials submitted May 19, 2014 (Exhibit A-10). Both options involve adding a curb along the roadway edge to direct flow to a catch-basin. Option A would involve pumping the water from the catch-basin up to the stormwater disposal system proposed in the application to convey water down the ravine and into facilities in the Lower Garden. This option fits completely within the preferred Utility Alternative 4. Option B would convey the stormwater to the Lower Garden facilities in a pipe to be installed in the existing roadway (complies with Utility Alternative 3). Both options require no change in the proposed limits of disturbance. Consistent with the alternatives analysis submitted in Exhibit A-2, Option B is less practicable than Option A. However, the applicant is requesting approval for both options, with Option B as a back-up in case Option A proves to be unfeasible at the time of permitting.

Walkways: *New pedestrian connections will be required through the new gardens and in and around the buildings in the Cultural Village. These will necessarily pass through the resource area, but because the buildings and gardens have been situated on previously-disturbed areas and outside of the conservation zone to the greatest extent possible, the location of these walkways similarly will be located.*

Access Road: *The sharp corner at the southeastern-most reach of the access road is too narrow for fire access. The widening of the roadway at this location will require incursion into the resource area through which the existing roadway already passes. However, the area around this curve has been used as a "heel-in" area where plants are placed temporarily until final planting elsewhere. The small incursion into this area required to widen the access drive will not increase the amount of new disturbance in the resources area or displace native vegetation and, therefore, will not have any effect on resources of functional values.*

In summary, the applicant's alternatives analysis documents that the proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values. With a condition that development occurs in substantial conformance with Exhibits C-7, C-11, C-15 and C-19, this criterion is met.

Hearings Officer Comment: The Hearings Officer agrees with the BDS findings for this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to Inconsistency of Proposed Building Size, Construction Management Plan, Closure of Trail Access, Kingston House, Failure to Consider Off-Site Alternatives, Failure to Provide Adequate Environmental Mitigation, Site/Ownership/Notice, Applicant's Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer finds this approval criterion, with conditions, can be met.

E.2. Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;

Findings: *This criterion requires the applicant to demonstrate that alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values. The applicant provided an alternative analysis that can be found in the application case file in Exhibit A-2, and is summarized in this report on Pages 4-5. This approval criterion applies to the following site improvements:*

- Cultural Village (Plaza, Structures, and Gardens)
- Walls, Fencing, and Access Gate
- Terraced Garden
- Optional Trees

Cultural Village: Of the practical alternatives, Alternative #3 best meets the project goals to expand the building inventory and gardens in a manner consistent with PJG's mission. This alternative features maximum efficiency of existing access and infrastructure while minimizing new incursions into the environmental resource area, as discussed on Pages 4-5. Clustering new development at the top of the access road was originally the preferred option to keep virtually all of the development activities outside of the conservation zone. However, the presence of a landslide plane with a pre-historic and historic pattern of earth movement makes that option infeasible.

Although a minimal amount of development within the conservation overlay zone cannot be avoided, clustering of the village components to the extent possible has kept most of the new development away from the extensive patch of undisturbed resource area that extends across the hilltop to the north. Adding new gardens close in to the buildings of the Cultural Village will limit additional intrusions into the resource area for these critical project elements. Further, the applicant proposes the use of construction management and erosion control techniques that minimize additional loss of resources and functional values during construction as illustrated in Exhibits C-9 and C-17 and as discussed in Chapter III, both for the site in general (Page III-6) and for each of the EN subareas (Pages III-23 and III-27). Finally, beyond replacement for tree removal and replanting of temporary disturbance areas, mitigation has been proposed to equal the amount of permanently-disturbed resource area. This mitigation within the resource area immediately adjacent to the access road in EN-U is designed to compensate for the loss of functional value.

Walls, Fencing, and Access Gate: New retaining walls above and below the access road must be constructed to control adjacent slopes. The location of the walls is dictated by the access road, which is not being realigned. A new access gate across the road at SW Kingston Avenue, a portion of which is within the transition area of the environmental conservation zone, is necessary to complete securing the Garden. Reconfiguration of the parking lot adjacent to the entry will require construction of a small retaining wall at its north end to support the slope above the lot where the landslide plane passes. All of these elements have been designed to stay within existing disturbance area or transition area to minimize impacts.

As a result of re-grading of the reconfigured turn-around and shuttle drop-off at the top of the access road, several retaining walls at the margins of the area will be necessary to stabilize the slope above and provide a measure of site security. Fencing will be placed in these areas as well as down the north side of the access road to secure the site from physical intrusion and to provide visible screening from the residential properties to the northwest. Along the access road, this fencing will be comprised of sight-obscuring wooden slats in a design that the applicant had reviewed and approved by affected neighbors. Exhibit C-2 indicates the extent of the wooden fencing. The design of these elements minimizes any impact on resources and functional values and will limit access from the Garden or surrounding areas into the undisturbed resource areas.

Terraced Garden: The Terraced Garden, which will extend from the new Ticket Booth and reach up to the access road, will extend a small way into the transition area of the conservation zone that extends down the slope below the road. Stormwater features discussed earlier will also be located here, as well as ornamental fencing. All of the permanent elements have been proposed for areas that are either outside the conservation zone, located entirely in the transition area (and are therefore allowed by right), or in previously-disturbed portions of the resource area. Therefore, impacts have been limited to the maximum extent possible.

Optional Trees: The Garden has proposed an ambitious Tree Protection Plan drawing on the expertise of the Garden's staff and consulting arborist. Significant work is proposed to take place in and adjacent to trees not designated for removal, identified as Type III impacts in the arborist report (Appendix I of Exhibit A-2). While the Garden intends to retain as many trees as possible, in the course of development even minor changes to finished grades may require removal of additional trees. Limited to 10 trees or 150 caliper inches total, the Garden proposes that a 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.

The applicant did not provide alternative parameters for consideration by the City, however a myriad of different quantities, sizes, or distances are possible. The total quantity of trees in question, 10, is quite reasonable considering the size of the site and forested condition. The maximum size of any individual tree is characteristic of the average tree size on the site. Recognizing that projects of this size and length may require a greater degree of flexibility when there are multiple complex project elements, BDS finds that the applicant's request is reasonable when the strict parameters identified above are applied.

In summary, proposed development minimizes the loss of resources and functional values and the proposed development location, design, and construction methods are less detrimental to identified resources and functional values than other practicable alternatives. The extensive impact evaluation in Exhibit A-2 shows that the proposed developments maximize the use of existing disturbance area. Utilizing existing disturbance area significantly reduces the amount of new site disturbance and loss of native vegetation. With a condition that development occurs in substantial conformance with Exhibits C-7 and C-15 and a condition establishing parameters for the optional tree removal, this criterion is met.

Hearings Officer Comment: The Hearings Officer agrees with the BDS findings for this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to Inconsistency of Proposed Building Size, Construction Management Plan, Closure of Trail Access, Kingston House, Failure to Consider Off-Site Alternatives, Failure to Provide Adequate Environmental Mitigation, Site/Ownership/Notice, Applicant's Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer finds this approval criterion, with conditions, can be met.

A.1.b. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

E.3. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

Findings: *These approval criteria require the protection of resources outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site. A complete stormwater management report was submitted as Exhibit A-9. All proposed stormwater facilities are graphically represented in Exhibits C-11 and C-19. Exhibit A-2 contains a detailed description of the construction management plan. In addition, graphic illustration of the construction management plans the EN subareas is presented in Exhibits C-9 and C-17. The Construction Management Plan is summarized on Page 7 of this report.*

To establish which City of Portland drainage design hierarchy to utilize for the project, a geotechnical engineer was retained by the owner to perform a site assessment. Based on the results of that investigation and because the site is within an active landslide area, onsite disposal is not recommended. Therefore, the project falls into the Hierarchy 4 category for drainage facility design. Since the project drains to a combined sewer, stormwater detention is provided both in surface drainage facilities and underground detention storage. BES has indicated this meets the City of Portland requirement to maintain post-development flow rates.

The stormwater report (Exhibit A-9) describes how the project will provide treatment and detention of stormwater runoff on-site before discharging off-site to the public combined sewer system. The applicant proposes treatment and some detention in vegetated swales and planters to the maximum extent practicable, but due to constraints such as slopes and environmental overlay zones, detention pipes are proposed under the parking lot to ensure runoff from the entire redeveloped portion of the site will meet flow control requirements.

For one section of redeveloped impervious area – North Village basin 6 – site grades do not allow the collected runoff to be conveyed by gravity to the storm system in the Village area, so the applicant proposes two alternative options: A) connect to the Village storm drain system by pump and force main; or B) construct a gravity storm drain down the

access road to connect to Planter B (illustrated on Exhibits C-11 and C-19). The applicant has shown that either option can meet the requirements of the Stormwater Management Manual, therefore BES has no preference. As noted in the findings above, both alternatives are within areas already approved for disturbance. Therefore, BDS finds that either option could be selected at the time of building permit without causing additional detrimental impacts to resources or functional values.

Construction management techniques have been proposed by the applicant to minimize impacts to identified resources and functional values designated to be left undisturbed. The Construction Management Plans (Exhibits C-9 and C-17) identify the project boundary and outer limits of disturbance, describe temporary erosion control and tree protection measures, identify location of site access and construction staging, and show proposed final grading.

The applicant has submitted an extensive arborist report prepared by Treecology, Inc (Appendix I of Exhibit A-2). This report has ranked impacts to preserved trees and provided preservation treatments based upon the impact type. Possible preservation treatments include:

- *Tree protection fencing*
- *Timed application of tree protection fencing*
- *Modified tree protection fencing*
- *Hand-digging in root protection zones (RPZ)*
- *Air excavation in RPZ*
- *Pre-cut roots*
- *Temporary pathway through RPZ*
- *Pruning*
- *Alternate construction techniques*
- *Transplanting*

The tree chart included with the arborist report and the applicant's narrative identify which treatments are recommended for each tree to be preserved on the Tree Removal and Inventory Plan (Exhibits C-8 and C-16). These preservation treatments, when undertaken earnestly, will provide as much protection as possible, given the challenging site conditions and program requirements. This tree protection and preservation plan will allow for maximum preservation of the forest canopy in the Garden. After-care provided by the professional and volunteer garden staff at the Garden should be sufficient to ensure excellent survivorship and maximal health for trees that will be impacted as well as those to be transplanted.

Tree protection measures must be consistent with Exhibits C-8 and C-16 and the arborist report (Appendix I of Exhibit A-2). If modifications are necessary to the tree preservation plan at the time of building permit, the applicant must provide an arborist report documenting how the tree(s) will continue to be protected. Any increase to the number of trees to be removed, beyond the "10 optional trees" within the environmental zones is subject to a revised environmental review.

With conditions for development to occur in conformance with the Construction Management Plans (Exhibits C-9 and C-17), the Tree Removal and Inventory Plan (Exhibits C-8 and C-16), and arborist report (Appendix I of Exhibit A-2), these criteria can be met by the proposal.

Hearings Officer Comment: The Hearings Officer agrees with the BDS findings for this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to Inconsistency of Proposed Building Size, Construction Management Plan, Closure of Trail Access, Kingston House, Failure to Consider Off-Site Alternatives, Failure to Provide Adequate Environmental Mitigation, Site/Ownership/Notice, Applicant's Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer finds this approval criterion, with conditions, can be met.

A.1.c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

E.4. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

Findings: *This criterion requires the applicant to assess unavoidable impacts and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace lost resource functions and values. The unavoidable impacts are quantified on Pages 7-8 of this report and the proposed mitigation and monitoring plan is described on Pages 8-9 and graphically represented on Exhibits C-10, C-18, and C-20. It is designed to offset 7,128 square feet of new permanent disturbance area and 14,681 square feet of temporary disturbance area, and mitigate the removal of 50 trees.*

Exhibit A-2 included a detailed discussion on the qualitative impacts on functional values – cultural, scenic, open space, seasonal creeks, groundwater, wildlife habitat and forest – identified in the Southwest Hills Resource Area Plan. These impacts are either 1) not significant because of the small area of impact; or 2) are fully mitigated by the proposed mitigation landscape plan. The mitigation plan will compensate for impacts at the site for the following reasons:

- The mitigation area (in excess of 7,128 square feet) is equal to or greater than the area of disturbance.*
- The number of proposed trees and shrubs far exceeds those required by Table 430-3.*
- All temporary disturbance areas will be densely planted with native vegetation.*
- The interface between the development and protected resource areas will be buffered with the mitigation plantings.*
- Removal of invasive species and replacement with native mid-story vegetation and groundcover will increase species diversity and improve wildlife habitat.*
- Groundcover plantings will provide assistance with pollution and nutrient retention and removal, sediment trapping and erosion control.*

The proposed Mitigation Plan will be installed and maintained under the regulations outlined in Section 33.248.040.A-D (Landscaping and Screening). A two-year monitoring plan is described above and will ensure survival of all proposed mitigation plantings. To confirm maintenance of the required plantings for the initial establishment period, the applicant will be required to have the plantings inspected two years after plantings are installed. Additionally, upon completion of mitigation landscaping, PJG shall provide two letters to serve as monitoring and maintenance reports to the Arlington Heights and Sylvan Highlands Neighborhood Associations, and to the BDS Land Use Services Division. The first letter will be submitted within 12 months following approval of the Permanent Erosion Control Inspection of the required mitigation plantings. The second letter will be submitted to the neighborhood associations and BDS 12 months following the date of the first monitoring letter. The two letters will contain the following information:

- A count of the number of planted trees that have died. One replacement tree will be planted for each dead tree and must be planted within one planting season.*
- If less than 80% 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% cover; such replacement will occur within one planting season.*
- A list of replacement plants that were installed.*
- Photographs of the mitigation area and a site plan, in conformance with the approved showing the location and direction of photos.*
- A description of the method used and the frequency for watering mitigation trees, shrubs, and groundcovers for the first two summers after planting. All irrigation systems shall be temporary and above-ground.*
- An estimate of the percent cover of invasive species such as English ivy, Himalayan blackberry, reed canary grass, and teasel, clematis within 10 feet of all plantings.*

With conditions to ensure that plantings required for this Environmental Review are installed in conformance with Exhibits C-10, C-18, and C-20, maintained and inspected, these criteria can be met.

Hearings Officer Comment: The Hearings Officer agrees with the BDS findings for this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to

Inconsistency of Proposed Building Size, Construction Management Plan, Closure of Trail Access, Kingston House, Failure to Consider Off-Site Alternatives, Failure to Provide Adequate Environmental Mitigation, Site/Ownership/Notice, Applicant's Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer finds this approval criterion, with conditions, can be met.

A.1.d. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

E.5. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

A.1.e. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

E.6. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: *Mitigation for significant detrimental impacts will be conducted on the same site as the proposed use or development. The property is owned by the City of Portland and leased to Portland Japanese Garden, therefore, the Garden can assure that the mitigation plantings are installed and monitored as required. These criteria are met.*

Hearings Officer Comment: The Hearings Officer agrees with the BDS findings for this approval criterion. The Hearings Officer incorporates, into the findings of this approval criterion, the SUMMARY FINDINGS related to Inconsistency of Proposed Building Size, Construction Management Plan, Closure of Trail Access, Kingston House, Failure to Consider Off-Site Alternatives, Failure to Provide Adequate Environmental Mitigation, Site/Ownership/Notice, Applicant's Lease/License with PP&R and Washington Park Master Plan. The Hearings Officer finds this approval criterion, with conditions, can be met.

A.3. Rights-of-way, driveways, walkways, outfalls, and utilities;

A.3.a. The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;

Findings: *Outfalls and utilities within the conservation zone are discussed under criterion A.1.a, above. No outfalls or utilities are proposed within an environmental protection zone. Therefore, this criterion does not apply.*

Hearings Officer Comment: The Hearings Officer agrees with the BDS comments for this approval criterion.

A.3.b. There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and

Findings: *There are no water bodies within or near the development area. As discussed under Criterion A.1.b, the applicant's construction management plan adequately protects resources outside of the proposed disturbance area from impacts related to the proposal. This includes downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site. Therefore, this criterion is also met.*

Hearings Officer Comment: The Hearings Officer agrees with the BDS comments for this approval criterion.
A.3.c. Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.

Findings: *No water bodies will be crossed by the proposed development. This criterion does not apply.*

Hearings Officer Comment: The Hearings Officer agrees with the BDS comments for this approval criterion.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

The following information was provided by PBOT, regarding the requirements of City of Portland Title 17, which may apply at the time of building permit submittal and review:

Transportation System Development Charges (Chapter 17.15)

System Development Charges (SDCs) may be assessed for this development. The applicant can receive an estimate of the SDC amount prior to submission of building permits by contacting Rich Eisenhauer at 503-823-6108.

Street Improvements (Chapter 17.88)

The site of the Garden has no frontage on City public right-of-way. No public street improvements are required.

Driveways and Curb Cuts (Section 17.28)

Curb cuts and driveway construction must meet the requirements in Title 17. The Title 17 driveway requirements will be enforced during the review of building permits.

III. CONCLUSIONS

Opponents, in this case, presented their arguments clearly and passionately. The applicant presented its facts and argument in a thorough and reasoned manner. At the end of the day the Hearings Officer found that the proposal in this case could meet all relevant approval criteria if conditions were imposed.

IV. 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 concrete sidewalk from the existing curb along the west side of the park road/SW Kingston Avenue between the Garden's redeveloped parking lot and the existing public sidewalk at the Park entrance. The sidewalk shall achieve a minimum 6-foot wide unobstructed pedestrian access, roughly as shown on Exhibit H.21. The new sidewalk shall be constructed at the same time as the parking lot is redeveloped. This proposed sidewalk design will require approval of Portland Parks & Recreation, the Bureau of Development Services Site Development Review Section, and the Portland Bureau of Transportation.

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.

/S/ Gregory J. Frank
Gregory J. Frank, Hearings Officer

July 10, 2104
Date

V. APPEAL INFORMATION

Appeals to the Land Use Board of Appeals (LUBA)

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of the decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period or this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

A. Applicant's Statement

1. Application
2. Original submittal -- includes original proposal, existing conditions and proposed plans, approval criteria narrative, information and data for Environmental Review, and also
 - Pre-application Conference Notes (Appendix A),
 - Good Neighbor Agreement (Appendix B),
 - PJG Special Events (FY 2012-2013, Appendix C),
 - Transportation Impact Analysis (Appendix D),
 - Preliminary Stormwater & Geotechnical Reports (dated February 18, 2014, Appendix E),
 - Washington Park Transportation & Parking Management Plan (WPTMP, Appendix F),
 - Washington Park Transportation & Demand Management Plan (WPTDMP, Appendix G),
 - Summary of Neighborhood Outreach Efforts (Appendix H),
 - Arborist Report (Appendix I)
3. Second version of Stormwater Report, dated March 31, 2014 (not the final version)
4. Supplemental information, received April 3, 2014 (response to incomplete letter)
5. Extension of the 120-day timeline, dated April 8, 2014
6. Addendum to original narrative, regarding various issues, including compliance with 2009 Conditional Use Review (09-143061 CU), dated April 18, 2014
7. Request to withdraw changes to Kingston House (369 SW Kingston), including proposed additions and amendments to conditions of approval, from the current review, dated May 7, 2014.
8. Revised and updated Environmental Review Plans, received May 15, 2014
9. Final Revised Stormwater Report, dated May 19, 2014
10. Additional Testimony on Stormwater, received May 20, 2014
11. Revised Tables for Proposed Plan, received May 20, 2014
12. Plans for 6-foot tall wood fence and landscaping along access drive (May 21, 2014)

13. Supplemental information, received May 21, 2014 (corrected information on calculations of square footage of proposed buildings and building coverage)
14. Supplemental information, received May 22, 2014 (corrections of Landscape Mitigation Plans)
15. Additional Testimony on Tree Removal, received May 21, 2014
- B. Zoning Map (**attached**)
- C. Plans and Drawings
 1. Portland Japanese Garden Full Build-Out
 2. Plans for screening fence along access drive
 3. EN Subareas
 4. EN-U Existing Conditions
 5. EN-U Existing Disturbance
 6. EN-U Tree Survey
 7. EN-U Proposed Development
 8. EN-U Tree Removal and Protection Plan
 9. EN-U Construction Management Plan
 10. EN-U Landscape Mitigation Plan
 11. EN-U Utility and Stormwater Plan
 12. EN-L Existing Conditions
 13. EN-L Existing Disturbance
 14. EN-L Tree Survey
 15. EN-L Proposed Development
 16. EN-L Tree Removal and Protection Plan
 17. EN-L Construction Management Plan
 18. EN-L Landscape Mitigation Plan
 19. EN-L Utility and Stormwater Plan
 20. EN-G Landscape Mitigation Plan
 21. Tree Table and Preservation Treatments (2 pages)
- D. Notification information
 1. Request for response
 2. Posting letter sent to applicant
 3. Notice to be posted
 4. Applicant's statement certifying posting
 5. Mailing list
 6. Mailed notice
- E. Agency Responses
 1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Police Bureau
 6. Site Development Review Section of Bureau of Development Services
 7. Life Safety Review Section of BDS
 8. TriMet
 9. Summary of electronic responses from City service agencies
- F. Letters
 1. John A. Kodachi, letter of support, received May 9, 2014
 2. Susan Winkler, letter of support, received May 9, 2014

3. Carol L. Otis, MD, letter of support, received May 9, 2014
4. Ed McVicker, letter of support, received May 12, 2014
5. Margueritte H. Drake, letter of support, received May 12, 2014
6. Cathy Rudd, letter of support, received May 12, 2014
7. William A. Hughes, letter of support, received May 13, 2014
8. Gwyneth Gamble Booth, letter of support, received May 14, 2014
9. Frances von Schlegell, letter of support, received May 16, 2014
10. Stephen T. Janik, letter of opposition, received May xx, 2014
11. Michael Wallace, letter of opposition, received May 9, 2014
12. Stuart Levy, letter of opposition, received May 9, 2014
(additional names printed on letter F-12 include “Christie Galen and Marshall Gannett”, “Aliza Bethlahmy and Dan Berne”, “Alyssa and Mats Lanner”)

G. Other

1. Incomplete Letter, sent March 21, 2014

H. Received in the Hearings Office

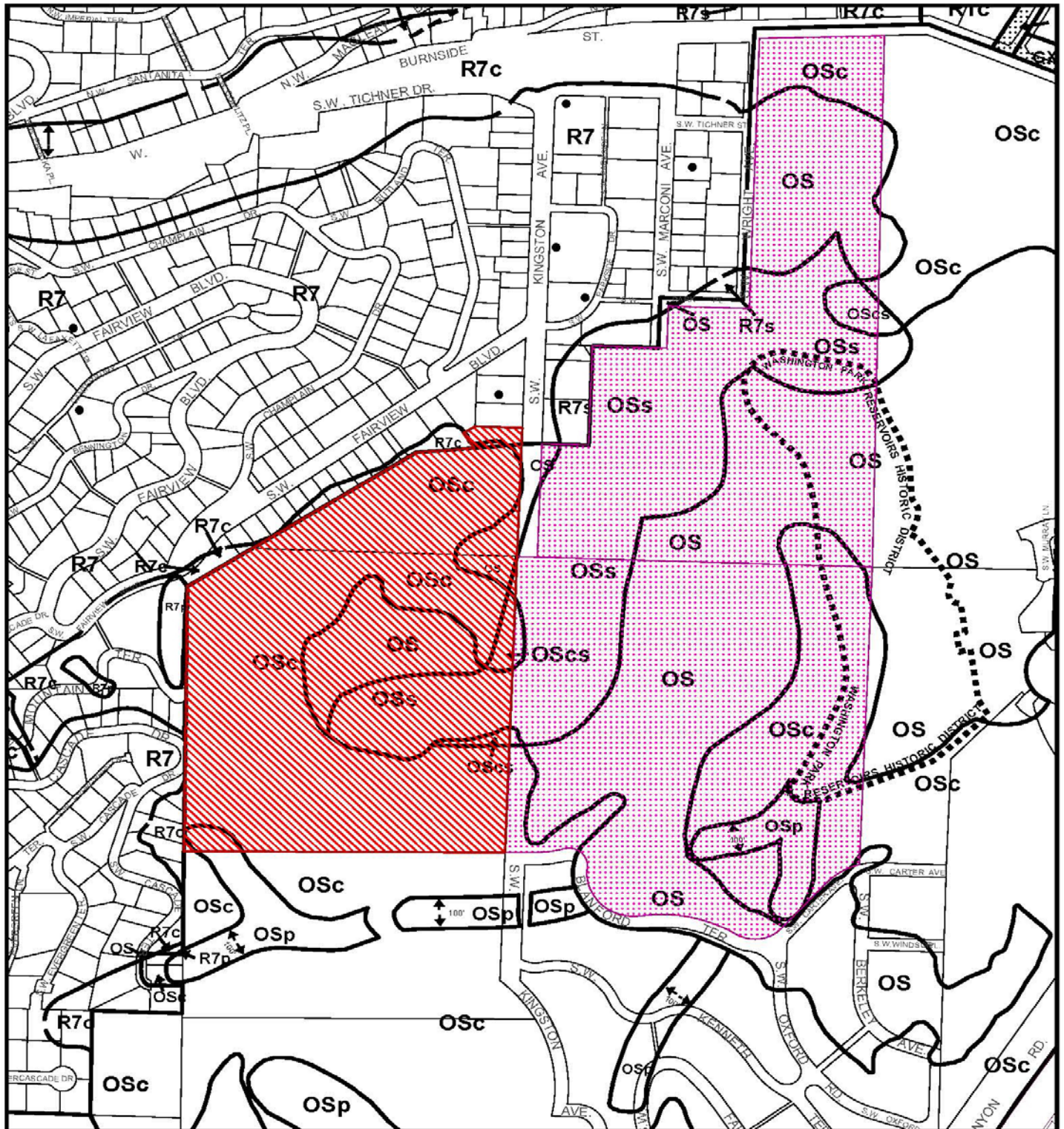
1. Hearing Notice - Stokes, Kathleen
2. Staff Report - Stokes, Kathleen
3. 5/29/14 Memo - Bookin, Beverly
 - a. Existing Conditions Map - Bookin, Beverly (**attached**)
 - b. Full Build-Out Map - Bookin, Beverly (**attached**)
 - c. Cultural Village Map - Bookin, Beverly (**attached**)
 - d. Ticketing & Parking Map - Bookin, Beverly (**attached**)
 - e. Parking & Circulation map - Bookin, Beverly (**attached**)
 - f. Tree Removal and Inventory Plan - Bookin, Beverly (**attached**)
 - g. Landscape Mitigation Plan - Bookin, Beverly (**attached**)
 - h. Utility and Stormwater Plan - Bookin, Beverly (**attached**)
 - i. Tree Removal and Inventory Plan - Bookin, Beverly (**attached**)
 - j. Construction Management Plan - Bookin, Beverly (**attached**)
 - k. Landscape Mitigation Plan - Bookin, Beverly (**attached**)
 - l. Utility and Stormwater Plan - Bookin, Beverly (**attached**)
 - m. Proposed Development Map - Bookin, Beverly (**attached**)
4. 5/28/14 Memo - Bookin, Beverly
5. Big Plans - Bookin, Beverly
6. Letter from Melissa N. Babson- Stokes, Kathleen
7. 5/16/14 Letter from Lou Phemister - Stokes, Kathleen
8. Card from Gail Jubitz - Stokes, Kathleen
9. 5/22/14 Letter from Kristen Dozono - Stokes, Kathleen
10. 3/17/14 Letter - Alpert-Siegel, Susan
11. 5/29/14 Letter - Alpert-Siegel, Susan
12. 5/31/14 Letter - Galen, Christie
13. 3/17/14 Letter - Alpert-Siegel, Susan
 - a. 3/17/14 Letter - Alpert-Siegel, Susan
14. 6/3/14 letter - Thomas, Shannon
15. Letter - Connolly, Mari
16. 6/3/14 letter - Tennant, Robert
17. PowerPoint presentation printout - Whiteside, Rachel
18. 6/3/14 Memo, Michael Reed/George Freitag to Sadafumi Uchiyama - Bookin, Beverly

- a. Japanese Garden Board of Trustees - Bookin, Beverly
- 19. Written Testimony - Barker, Alan
- 20. 6/4/14 letter with add'l info. - Janik, Steve
- 21. Plan - Angel, Joe
- 22. Photo Set - Angel, Joe
- 23. Photo Set - Angel, Joe
- 24. Letter - Angel, Joe
- 25. Letter - Angel, Joe
- 26. Letter- Boly, Jeff
- 27. 6/3/14 letter - Holliday, Ingeborg
- 28. 6/3/14 letter - Mackenzie, Hilary
- 29. 5/31/14 letter from Christie Galen and Marshall Gannett - Bethlahmy, Aliza
- 30. Memo from Stu Levy - Bethlahmy, Aliza
- 31. Written testimony - Bethlahmy, Aliza
- 32. 6/1/14 letter from Mats and Alyssa Lanner - Dowd, Mike
- 33. 6/3/14 letter - Dowd, Mike
- 34. E-mail string - Dowd, Mike
- 35. E-mail string - Dowd, Mike
- 36. 6/4/14 Memo - Bookin, Beverly
 - a. Hoffman Construction Co. Construction Impact Considerations - Bookin, Beverly (**attached**)
- 37. Record Closing Information - Hearings Office
- 38. 6/4/14 Fax extending 120-period - Hossaini, Kelly
- 39. 6/6/14 Letter - Wallace, Michael
- 40. 6/6/14 letters - Wallace, Michael
- 41. Fax Cover - Angel, Joe
- 42. 6/6/14 letter - Sprietsma, John
- 43. 6/12/14 Letter - Kelly, Stephen & Kathy
- 44. 6/11/14 letter - Selley, Kia
- 45. 6/12/14 letter - Stone, Jason
- 46. 6/13/14 Letter - Herndon, Virginia
- 47. 6/12/14 Letter - Holliday, Ingeborg
- 48. 6/12/14 Packet - Mackenzie, Hilary
- 49. 6/13/14 letter with attachments - Janik, Steve
 - a. Washington Park Master Plan - Janik, Steve
 - b. License Agreement 2007 - Janik, Steve
 - c. Full Build-Out Map - Janik, Steve
- 50. 6/13/14 letter with attachments - Dowd, Mike
 - a. E-mail string - Dowd, Mike
 - b. Change of Occupancy Program Guide - Dowd, Mike
 - c. Photos - Dowd, Mike
- 51. 6/13/14 Memo with attachments - Bookin, Beverly
 - a. 6/11/14 letter from Kia Selley - Bookin, Beverly
 - b. 6/13/14 Memo from Chris Hagerman - Bookin, Beverly
 - c. 6/13/14 Memo from Cynthia Haruyama - Bookin, Beverly
 - d. 6/13/14 Memo from Cynthia Haruyama - Bookin, Beverly
 - e. 6/13/14 Memo from Diego Arguea - Bookin, Beverly
- 52. 6/13/14 letter with attachment - Boly, Jeff

- a. 6/9/14 e-mail, Mike Dowd to Joseph Angel/Ingeborg Holliday - Boly, Jeff
- b. Transmission Verification Report - Boly, Jeff
- 53. 6/20/14 Letter - Janik, Steve
- 54. 6/20/14 Memo - Bookin, Beverly
- 55. 6/20/14 letter - Dowd, Mike
- 56. 6/20/14 letter - Dowd, Mike
- 57. Cover Transmittal - Arguea, Diego
 - a. 6/27/14 Memo from Bookin - Arguea, Diego
 - b. 6/27/14 Memo - Arguea, Diego

ATTACHMENTS

- 1 Supplemental Findings for the Proposed Expansion of the Portland Japanese Garden (LU 14-122172 CU EN), September 17,2014**



ZONING

- Site
- Also Owned
- Historic Landmark



NORTH

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)

ATTACHMENT 1

SUPPLEMENTAL FINDINGS FOR THE PROPOSED EXPANSION OF THE PORTLAND JAPANESE GARDEN (LU 14-122172 CU EN) SEPTEMBER 17, 2014

Two appellants, the Arlington Heights Neighborhood Association and Hillary Mackenzie, appealed the Hearings Officer's decision to the City Council. The Council held an appeal hearing on August 28, 2014. The Council's review of the Land Use Hearings Officer's decision in LU 14-122172 CU EN approving the proposed expansion of the Portland Japanese Garden ("Garden") was on the record and was restricted to only argument. Therefore, no new issues could be raised or evidence introduced. Following the appeal hearing, the Council closed the hearing and voted tentatively to affirm the Hearings Officer's decision with a revised Condition G. The Council continued the appeal to September 17, 2014 to allow time for preparation of supplemental findings and, based on the findings, to take a final vote on the appeal.

The Council affirms and adopts as its own the Hearings Officer's decision (the "Hearings Officer's Decision") as modified and supplements that decision with the following additional findings:

1. The Arlington Heights Neighborhood Association (AHNA) withdrew its appeal at the 8/28/14 appeal hearing, and, therefore, all issues contained in AHNA's 7/25/14 appeal letter have been withdrawn.
2. With regard to proper notice of the initial evidentiary hearing before the Hearings Officer, Appellant Hilary Mackenzie argues BDS and the applicant incorrectly identified the "site" at issue in this application and, as a result, failed to post notice in the manner the zoning code requires. For purposes of providing the code-required notice, BDS determined the applicant's site is the existing 9.1-acre Portland Japanese Garden, plus the additional 3.46 acres included within the proposed expansion area. The City of Portland owns the Garden property and has granted the Portland Japanese Garden Society (PJGS) a long-term license, which operates much like a lease, to operate and manage the Garden. The City and the PJGS are preparing to enter into a license extension that will expand the Garden from 9.1 to 12.56 acres in size to accommodate the proposed uses contemplated by this land use application. The Garden is a distinct part of Washington Park, a 400-acre City-owned park property that includes the Washington Park Zoo, Western Forestry Center, Rose Garden, trails, and open space, among other attractions.

For a Type III review, like this application, the zoning code requires the applicant to post notice of the application "on the site" in a manner consistent with PCC 33.730.080. That section requires the applicant to place posted notice "on each street frontage of the site." If the street frontage is more than 600 feet long, one notice must be posted for each 600 feet of street frontage. The notice must be placed within 10 feet of a street lot line and must be visible to pedestrians and motorists. (See PCC 33.730.080.A) The zoning code also requires that written notice be mailed to all property owners within 400 feet of the site. (PCC 33.730.030(d)(1)).

Ms. Mackenzie argues the applicant erred by defining the site as the Garden, rather than the entirety of Washington Park. As a result, Ms. Mackenzie asserts the applicant misapplied the code by posting notice only along SW Kingston Street and the streets abutting the Garden, rather than along the street frontages that border the boundaries of Washington Park that are much farther away from the Garden property. The applicant and BDS disagree and assert the site at issue in this application is properly defined as the Garden property. The Hearings Officer agreed with the applicant and BDS, as does the City Council for the reasons explained below.

Ms. Mackenzie proposes an expansive interpretation of "site" to include the entire Washington Park, and perhaps even Forest Park, because both are under City ownership. Council rejects that interpretation and instead interprets the definition of "site" more narrowly, as the Hearings Officer did in his decision. Hearings Officer's Decision, pages 6-7. Specifically, pursuant to PCC 33.910.030, a "site" is defined as an ownership. An "ownership" is defined as "one or more contiguous lots that are owned by the same person, partnership, association, or corporation." The definition of "site" contains exceptions that allow a site to be defined as only a portion of an ownership under certain circumstances. One of those exceptions is relevant here and states:

"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."

It is unclear how this exception is to be applied in this situation where the City is the owner of a large park (like 400-acre Washington Park) that contains significant open space and very discrete (and in some cases widely spaced) pockets of development, such as the Japanese Garden, that are leased to or operated by non-City entities. The purpose of posting notice is to make the most immediately affected neighbors and other passersby aware of a pending land use proposal. If notice was required to be posted on all street frontages bounding the entirety of Washington Park, notice would be given to neighbors who are literally miles away from the Japanese Garden and who will not be directly affected by this proposal. Notice would not be required to be posted along SW Kingston adjacent to the Park because, under this reading of the code, it is interior to the park and not a "street frontage of the site." As a result, those persons most directly affected by this proposal—immediate neighbors—would not be aware of the proposed alterations to the Garden. The Council finds no purpose would be served by interpreting this exception this broadly and by requiring notice to be posted at such a distance from the proposed development.

In this case, Council determines that the existing discrete Garden lease area of 9.1 acres to be the currently developed portion of the ownership and the additional 3.46 acres as the portion of the ownership proposed for additional development for purposes of applying the exception language. Therefore, the 12.56-acre site used for notification purposes pursuant to PCC 33.730.030(D)(1) is correct. The applicant posted notice only along SW Kingston. Additionally, the City mailed notice to all property owners within 400 feet of the Garden as the code requires and there is no evidence to the contrary. Even if this exception is

interpreted in the manner the appellant asserts, notice would not be required to be posted along SW Fairview because the Park does not have frontage along this street.

Finally, even under Ms. Mackenzie's interpretation of the code, the Council finds any failure to post notice is not prejudicial. The Hearings Officer and the Council received oral and written testimony from many individuals who live in surrounding neighborhoods at some distance from the Japanese Garden. Additionally, the appellant testified that she personally notified many other individuals of the applicant's proposal. This combined testimony raised numerous issues, including the closure of a spur trail, that were addressed by the Hearings Officer and are further addressed here. There is simply no testimony to suggest that any deficiency in posting notice prevented interested persons from raising issues of concern. Nor is there anything in the record that suggests the Hearings Officer or the Council were prevented from considering the full range of issues raised below and in this appeal. For these reasons the Council affirms the Hearings Officer's findings that the site was properly defined and notice was properly posted in advance of the hearing before the Hearings Officer.

3. The Council affirms the determination of the Hearings Officer that compliance with the terms of the existing lease ["license"] between Portland Parks & Recreation ("PP&R") and the Garden, and proposed revisions to the terms of the lease are irrelevant to the applicable approval criteria and this application. Hearings Officer's Decision, page 17. This land use process also does not amend the existing lease, nor is there any requirement that the lease be amended prior to this application being approved. However, the expansion of the Garden lease area from 9.1 to 12.56 acres is an expansion of a Conditional Use site area, requiring approval through Conditional Use review, according to PCC 33.815.040. Council affirms the Hearings Officer's decision that the proposed expansion of the Conditional Use site area meets the approval criteria of 33.815.100.
4. The Council finds the following assertions of the Appellant and other supporters of the appeal to be irrelevant and/or constitute new evidence, and, therefore, these assertions cannot be considered in this decision:
 - a. Goals 6 and 8 of the Portland Comprehensive Plan are not relevant, because they are not approval criteria for this application.
 - b. The issue of bird-friendly design is not an issue raised below and relies on evidence not in the record to support the contention that the proposed building design is not bird-friendly. Therefore, this issue and its corresponding evidence are disregarded.
 - c. The effect of this application on traffic in Goose Hollow is a new issue that was not raised below and relies on evidence not in the record to support a contention that the application will create congestion in Goose Hollow. Therefore, this issue and its corresponding evidence are disregarded. The Council also notes that the Hearings Officer found that the application will have little negative impact on parking and traffic, even in the area immediately adjacent to the Garden. Hearings Officer's Decision, page 10.

- d. The effect of this application on noise in the surrounding neighborhood, specifically that related to commercial trash collection, is a new issue that was not raised below, and relies on evidence not in the record to support a contention that noise from commercial trash collection will adversely affect the neighborhood. Therefore, this issue and its corresponding evidence are disregarded.
5. The Council affirms the Hearings Officer's determination that the 1982 Washington Park Master Plan is not the subject of any relevant approval criteria in this case. Hearings Officer's Decision, page 19.
6. As documented in Appendix H of the application and Exhibit H-4, the Applicant engaged in a 13-month outreach effort with the Arlington Heights Neighborhood Association. This included a workshop on 8/7/13 attending by 50 neighbors in which the design team made a detailed presentation on the proposed purpose, design and scale of the expansion project. The Applicant also met twice (8/7/13 and 9/28/13) with immediately-affected neighbors on SW Fairview Boulevard to gain their input on the design of the new architecturally-designed wooden perimeter fence on the west side of the access road, to provide these neighbors with a visual and noise barrier. The Applicant is committed to construct the fence, as detailed in Condition 0 (b) of the Hearings Officer's Decision.
7. The Garden is a non-profit organization that provides recreational, educational, and cultural services to the Portland region and, therefore, is an appropriate use in Washington Park. Moreover, "botanical gardens" are outright permitted uses in the Open Space (OS) zone. All uses proposed as part of the expansion are allowed as accessory uses in Parks and Open Space uses, although some of the uses require approval through Conditional Use Review. These include food concessions, which in this case, refers to a 26-seat Tea Café located within the proposed fenced perimeter of the Garden that will serve only patrons, employees and volunteers already on-site and for whom traffic and parking impacts already have been accounted.
8. Expansion of the Garden, development of accessory uses that are classified as Retail Sales and Service and the reduction of parking from 36 to 32 parking spaces in the PP&R-owned parking lot at the base of the Garden ~~has~~ have triggered a requirement for Conditional Use review. Because a portion of the proposed improvements will lie within the Environmental Conservation ("c") Overlay, a concurrent Environmental Review also is required. The site does not lie within a Design ("d") overlay, and, therefore, the proposal is not subject to Design Review. As a result, Council affirms that any elevations or other illustrations of proposed buildings are presented in the application for purposes of context only.
9. As part of the Conditional Use review, the Applicant is required to document the maximum total square footage of net new development requested. In this case, the Applicant requested and the Hearings Officer approved a maximum expansion of 11,430 net square feet; this includes a total of up to 13,850 gross square feet of new development less the demolition of an existing 2,510-gsf building. Hearings Officer's Decision, page 51. It is to this maximum square footage that the Applicant has calculated all potential off-site impacts, including parking and traffic impacts, and to which it will be held in the building permit process. No

credible evidence has been provided by the Appellant or other supporters of the appeal that this number is incorrect.

10. With regard to scale and impact of the proposed improvements as they pertain to the requirements of Section 33.815.100(A)(1) and (2), addressing the intended character of the OS area and maintenance of adequate open space.

The proposed building coverage will increase from 1.5% of the current lease area of 9.1 acres to 3.0% of the proposed 12.56-acre lease area. According to Table 33.100-5, the maximum building coverage in the OS zone is 50%

The Council affirms the Hearings Officer's determination that the application is in full compliance with the approval criteria contained in Section 33.815.100 (A)(1) and (2)

11. The Council affirms the Hearings Officer's determination that the Applicant's technical environmental analysis and mitigation plans fully meet the approval criteria in Chapter 33.430 and Section 33.815.100(1)(C). Council also affirms that an off-site alternatives analysis is not required for incursions into the Environmental Conservation ("c") zone, per Section 33.430.250.E.
12. The Council affirms the Hearings Officer's determination that the informal trail connection along the Garden's access road from the Wildwood Trail to SW Kingston Avenue is not an official part of the Wildwood Trail, and, therefore, can be closed as part of the Garden expansion. This is based on evidence that this informal connection is not designated as an "off-street path" on ~~Map 6.40.4~~ of the City of Portland Transportation System Plan, which is the definitive legal authority on the location of the Wildwood Trail. The Council also specifically agrees with the Hearings Officer's rejection of Appellant's and other opponents' assertions that the trail has become part of the Wildwood Trail by virtue of its designation on the PP&R Trail Map, because the latter is not a legally-binding document. Hearings Officer's Decision, page 16.
13. The Council supports the revision of Condition G, related to the construction of a new segment of a sidewalk on the west side of SW Kingston Avenue between the north end of the PP&R parking lot and the north entrance to Washington Park as follows:

"The Garden shall construct a concrete sidewalk from the existing curb along the west side of the park road/SW Kingston Avenue between the Garden's redeveloped parking lot and the existing public sidewalk at the Park entrance. The sidewalk shall achieve a minimum 6-foot wide unobstructed pedestrian access, roughly as shown on Exhibit H.21. The new sidewalk shall be constructed at the same time as the parking lot is redeveloped. This proposed sidewalk design will require approval of Portland Parks & Recreation, the Bureau of Development Services Site Development Review Section, and the Portland Bureau of Transportation."