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**CITY OF PORTLAND**  
**Office of the City Auditor**  
**1221 SW Fourth Avenue, Room 130**  
**Portland, OR 97204-1900**

I hereby certify this Land Use Document No. LU 14-122172 CU EN – Order of Council to be a complete and exact copy of the original as the same appears on file and of record in my office and in my care and custody on September 26, 2014.

**LAVONNE GRIFFIN-VALADE**

**Auditor of the City Of Portland**

By Gayla Jennings  
**Deputy**

**RETURN TO CITY AUDITOR**  
**131/130/Auditor's Office**

**ORDER OF COUNCIL ON APPEAL OF ARLINGTON HEIGHTS NEIGHBORHOOD  
ASSOCIATION AND HILARY MACKENZIE AGAINST HEARINGS OFFICER'S DECISION TO  
APPROVE A CONDITIONAL USE REVIEW AND AN ENVIRONMENTAL REVIEW FOR  
PROPOSED DEVELOPMENT AT THE PORTLAND JAPANESE GARDEN AT 400 SW KINGSTON  
AVENUE (HEARING; LU 14-122172 CU EN)**

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

Hilary Mackenzie  
2722 SW Rutland Terrace  
Portland, OR 97205

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

**Owner:** City of Portland  
1120 SW 5<sup>th</sup> Avenue #609  
Portland, OR 97204-1912

**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

**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)

**Procedure:** 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)

**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.

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.

The appeal hearing before the City Council was opened in the Council Chambers, 1221 SW 4<sup>th</sup> Avenue on August 28, 2014 at approximately 2:00 p.m. The Arlington Heights Neighborhood Association withdrew its appeal and all issues contained in their appeal letter of July 25, 2014 at the August 28, 2014 appeal hearing. After hearing public testimony on the remaining appeal of Hilary Mackenzie, Council voted 5-0 to tentatively deny this appeal, uphold the Hearing Officer's decision subject to a revised Condition G and other conditions of approval, and ordered findings be prepared for consideration on September 17, 2014 at 10:15 a.m. On September 15, 2014 at 10:15 a.m. Council voted 3-0 to adopt findings, and to deny the appeal, uphold the Hearing Officer's decision subject to a revised Condition G and additional conditions of approval, and approve the application for a conditional use and environmental review.

## DECISION

Based on evidence in the record, the Council's Findings and Decision in **Case File LU 14-122172 CU EN** and by this reference made a part of this Order, **it is the decision of Council to deny the appeal of Hilary Mackenzie, uphold the Hearings Officer's Decision as modified and supplemented, and approve the application of the Portland Japanese Garden Society for a conditional use and environmental review subject to the following findings:**

**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.

**IT IS SO ORDERED:**

SEP 18 2014

Date \_\_\_\_\_

Ch. H.

Mayor Charlie Hales  
Presiding Officer at Hearing of  
September 17, 2014  
9:30 a.m. Session