

### City of Portland, Oregon

### **Bureau of Development Services**

#### **Land Use Services**

FROM CONCEPT TO CONSTRUCTION

Charlie Hales, Mayor Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

**Date:** June 13, 2013 **To:** Interested Person

**From:** Rachel Whiteside, Land Use Services

503-823-7605 / Rachel.Whiteside@portlandoregon.gov

# NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <a href="http://www.portlandonline.com/bds/index.cfm?c=46429">http://www.portlandonline.com/bds/index.cfm?c=46429</a>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

# CASE FILE NUMBER: LU 13-120187 GW UNINCORPORATED MULTNOMAH COUNTY

#### **GENERAL INFORMATION**

**Applicant:** Mike Montgomery,

5531 SW Buddington St / Portland, OR 97219

Owner: Michael P Hagel

14979 SW Juliet Ter / Tigard, OR 97224-0832

**Site Address:** 12780 SW Fielding Rd

**Legal Description:** TL 1100 1.09 ACRES, SECTION 35 1S 1E

**Tax Account No.:** R991350020 **State ID No.:** 1S1E35CD 01100

Quarter Section: 4231

Other Designations: Unincorporated Multnomah County

**Zoning:** R20cg – Single-Dwelling Residential with Environmental Conservation

and Greenway (River General) overlays

**Case Type:** GW – Greenway Review

**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### Proposal:

The proposal is to relocate an in-ground swimming pool approved under LU 06-120231 GW and to add a spa and pool house within the greenway overlay. All development is landward of the greenway setback. On this property, the top of the bank is marked by an existing retaining wall; therefore, the Greenway Setback is measured from the wall towards the land for a distance of 25 feet. A new single-family home and detached garage are currently under construction on the site. The home, garage, and greenway plantings shown on the site plans were all approved under LU 06-120231 GW.

#### Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

Section 33.440.350 Greenway Approval Criteria

Willamette Greenway Design Guidelines

#### **ANALYSIS**

**Site and Vicinity:** The subject property is a triangular shaped property. The narrow portion of the property faces SW Fielding Road while the wider portion of the property faces the Willamette River. The property is accessed from SW Fielding Road, a private road that is accessed via SW Riverside Drive (also known as Highway 43 and SW Macadam Avenue). See Exhibit B. A dock, retaining wall, and manicured lawn area existing within and riverward of the 25-foot greenway setback. There is a home and garage under construction on the property.

**Zoning:** The subject property is zoned R20cg. The surrounding properties are also zoned R20; some of these properties are also within the c and g overlay zones.

The <u>R20 zone</u> is intended to foster the development of single-dwelling residences on lots having a minimum area of 12,000 square feet. Newly created lots must have a minimum density of 1 lot per 20,000 square feet of site area. The provisions of this zone allow this use; these provisions are not specifically addressed through this Greenway Review.

Environmental overlay zones protect 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. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. The environmental zone is divided into the resource area and the transition area. The resource area contains important resources to be protected. The transition area is the outermost 25 feet of the environmental zone and is intended to buffer the resource area from impacts of surrounding development. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

The <u>Greenway overlay zone</u> is intended to protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along Portland's rivers; establish criteria, standards, and procedures for the development of land, change of uses, and the intensification of uses within the greenway; and implement the City's Willamette Greenway responsibilities as required by ORS 390.310 to 390.368 and Metro's Title 3.

**Land Use History:** City records indicate that prior land use reviews have occurred under Multnomah County's land use provisions (identified as MUP) and these include the following: MUP 28-67 C, MUP 3-91 FD, MUP 3-91 WRG, and MUP 8-91 WRG. The cases are Willamette River Greenway (WRG), Floodplain Review (FD), and Planning Commission (C). LU 06-120231 GW approved the house, garage with accessory dwelling unit, and dock upgrades currently under construction.

**Environmental Resources:** The subject property is within Resource Site 117-A of the *Inventory of Natural, Scenic, and Open Space Resources for Multnomah County Unincorporated Urban Area.* Resource Site 117-A is approximately 660 acres.

The *Inventory* describes the resources of Resource Site 117-A; in particular, the resources are noted as being both in aquatic and terrestrial habitat. The resources include the steams and ravines flowing to the Willamette River and Tryon Creek, and the rock cliffs above the Willamette River. In general, the resources types include: perennial and seasonal streams, palustrine wetlands, springs, forest, fish and wildlife, special status species, groundwater, and open space. A review of the map, "Recommended Significant Resource Area Rankings: 117-A, Dunthorpe" shows the subject property within the Significant Resources area.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **May 16, 2013**. Agency comments are incorporated under the relevant approval criteria. Complete comments are included in the file as "E" Exhibits.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on **May 16**, **2013**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

#### ZONING CODE APPROVAL CRITERIA

#### 33.440.350 Approval Criteria

The approval criteria for a Greenway Review have been divided by location or situation. The divisions are not exclusive; a proposal must comply with all of the approval criteria that apply to this site. A Greenway Review application will be approved if the review body finds that the applicant has shown that all of the approval criteria are met.

#### A. Willamette Greenway Design Guidelines:

- Issue A. Relationship of Structures to the Greenway Setback Area
- Issue B. Public Access
- Issue C. Natural Riverbank and Riparian Habitat
- Issue D. Riverbank Stabilization Treatments
- Issue E. Landscape Treatments
- Issue F. Alignment of Greenway Trail
- Issue G. Viewpoints
- Issue H. View Corridors
- B. River frontage lots in the River Industrial zone.
- C. Development within the River Natural zone.
- D. Development on land within 50 feet of the River Natural zone.
- E. Development within the greenway setback.
- F. Development riverward of the greenway setback.
- G. Development within the River Water Quality overlay zone setback.
- H. Mitigation or remediation plans.

**Staff Note:** The applicable approval criteria for this application are the Willamette Greenway Design Guidelines found under Criteria A and E. The Guidelines are discussed, below, with Staff findings. Criterion B does not apply because the site is not in the River Industrial Zone. Criteria C and D do not apply because the site is not in or within 50 feet of the River Natural Zone. Criterion F does not apply because no development is proposed riverward of the greenway setback as part of this review. Changes to the existing dock and greenway landscape plantings were approved under LU 06-120231 GW. Criteria G and H do not apply because the site is not within the River Water Quality Zone. No findings are necessary for the non-applicable approval criteria.

## A. For all Greenway Reviews. The Willamette Greenway design guidelines must be met for all Greenway Reviews.

**Findings:** The Willamette Greenway design guidelines will be considered individually below:

<u>Guideline Issue A. Relationship of Structures to the Greenway Setback Area</u> Guideline Issue B. Public Access

**Response to Guideline Issues A & B:** The Greenway Trail is not designated on this property, nor any public access in the *Willamette Greenway Plan*. There is no block pattern, potential view corridor from an adjacent right-of-way, or acknowledged viewpoint on or near the site to consider.

The proposed structures will be outside of the Greenway Setback. No new pedestrian public access is proposed. Access to the property will be by the people living on the property, and will include the usual related residential activities. The guideline requirements are not applicable.

#### Guideline Issue C. Natural Riverbank and Riparian Habitat

- (1) Natural Riverbanks. The natural riverbank along the Willamette River should be conserved and enhanced to the maximum extent practicable. Modification of the riverbank should only be considered when necessary to prevent significant bank erosion and the loss of private property, or when necessary for the functioning of a riverdependant or river-related use.
- (2) Riparian Habitat. Rank I riparian habitat areas, as identified in the wildlife habitat inventory, should be conserved and enhanced with a riparian landscape treatment. Other riparian habitat should be conserved and enhanced through riparian landscape treatments to the maximum extent practical. Conservation however does not mean absolute preservation. Some discretion as to what vegetation should remain and what can be removed and replaced should be permitted. Riparian habitat treatments should include a variety of species of plants of varying heights which provide different food and shelter opportunities throughout the year.

**Response to Guideline Issue C**: This guideline requires conservation and enhancement of the riparian habitat at the site to the maximum extent practicable, except when necessary for the functioning of a river-dependant use (Section 33.910.030 defines river-dependent use).

The applicant's landscape plan is consistent with the approximately 20 grasses, 83 shrubs, 3 arborescent shrubs, and 4 trees approved under LU 06-120231 GW. All plants are native plants selected from the City of Portland's *Portland Native Plant List*. The proposed landscaping treatment will enhance the riparian environment by providing vegetation that will be visually pleasing, in addition to providing habitat and stormwater retention and infiltration. With the proposed plantings, this guideline can be met.

#### Guideline Issue D. Riverbank Stabilization Treatments

(1) Riverbank Enhancement. Riverbank stabilization treatments should enhance the appearance of the riverbank, promote public access to the river, and incorporate the use of vegetation where practical. Areas used for river-dependant and river-related industrial uses are exempted from providing public access.

**Response to Guideline Issue D**: There is an existing retaining wall located at the top-of-bank on this site. No changes are proposed to the retaining wall as part of this application. There is no information to indicate any destabilization of the riverbank as a result of the applicant's proposal. This guideline can be met.

#### Guideline Issue E. Landscape Treatment

- (1) Landscape Treatments. The landscape treatment should create an environment which recognizes both human and wildlife use. Areas where limited human activity is expected should consider more informal riparian treatments. Areas of intense human use could consider a more formal landscape treatment. The top of bank may be considered a transition area between a riparian treatment on the riverbank and a more formal treatment of the upland.
- (2) Grouping of Trees and Shrubs. In areas of more intense human use, trees and shrubs can be grouped. The grouping of trees and shrubs allows for open areas for human use, and has the secondary value of increasing the value of the vegetation for wildlife.
- (3) Transition. The landscape treatment should provide an adequate transition between upland and riparian areas, and with the landscape treatment of adjacent properties.

**Response to Guideline Issue E:** The applicant's landscape plan is consistent with the approximately 20 grasses, 83 shrubs, 3 arborescent shrubs, and 4 trees approved under LU 06-120231 GW. All plants are native plants selected from the City of Portland's *Portland Native Plant List.* 

The proposed landscape treatment will enhance the riparian environment along the riverbank, and will also improve the areas of human use on the site. The proposed landscaping treatment will enhance the existing grassy areas below and above the retaining wall by providing vegetation that will be visually pleasing, in addition to providing habitat and stormwater retention and infiltration. With the proposed plantings, this guideline can be met.

Guideline Issue F. Alignment of Greenway
Guideline Issue G. Viewpoints
Guideline Issue H. View Corridors

**Response:** There are no Greenway Trail, viewpoint, or view corridor designations on the property, and therefore these guidelines do not apply.

E. Development within the Greenway setback. The applicant must show that the proposed development or fill within the Greenway setback will not have a significant detrimental impact on Rank I and II wildlife habitat areas on the riverbank. Habitat rankings are found in the Lower Willamette River Wildlife Habitat Inventory.

**Findings:** The proposal does not include work in the Greenway Setback, with the exception of greenway plantings which are allowed. To ensure that no unauthorized cut or fill occur in the Greenway Setback, conditions of approval requiring the applicant to clearly mark the disturbance area on the site, install silt fencing, and install tree protection fencing are necessary. With these conditions, this criterion is met.

#### **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards 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.

#### Section 33.440.230 Landscaping

- A. Required Landscaping. Landscaping must be provided to conserve or re-establish vegetative cover within or riverward of the Greenway Setback. The landscaping must comply with the standards specified below. This is in addition to any landscape requirements of other chapters of this Title. The greenway landscape requirements may be included in any overall percentage of site landscape requirements of the base zone. Landscaping is not required where it would significantly interfere with a river-dependent or river-related use or development, or where the Fire Marshal finds that it would pose a safety hazard.
- B. Landscaping Standards. Required greenway landscaping must comply with the standards stated below.
  - 1. A minimum of one tree for every 20 feet of river frontage.
  - 2. A minimum of one shrub for every two feet or river frontage...
  - 3. Remaining areas which are not paved or reveted surfaces must have living ground
  - 4. All trees and shrubs are to be generally within and riverward of the Greenway Setback.
  - 5. The standards are for calculation purposes only, and do not require or imply linear plantings. Grouping of trees and shrubs is encouraged, particularly on the riverbank.

## C. Native Plants. All landscaping must comply with the native plant requirement of the Willamette Greenway Plan.

**Findings:** Based on the requirements of these standards, the applicant is required to plant seven (7) trees and 72 shrubs (143 feet of river frontage). Given the site constraints of planting along the river frontage and still providing for dock access and human use, findings were made under LU 06-120231 GW that 4 trees, 3 arborescent shrubs, 83 shrubs, and 20 grasses were adequate to meet the landscape requirements. The number, type, and location of the proposed plants to be installed is consistent with the previous decision.

#### CONCLUSIONS

The proposed development includes adding an in-ground swimming pool and spa along with a pool shelter that includes a covered area, bathroom, and outdoor barbecue/kitchen. All development is landward of the 25-foot greenway setback. Greenway plantings are proposed on both sides of the existing retaining wall that delineates top-of-bank on this site. Conditions for construction management techniques that will prevent disturbance to the greenway setback and for the greenway plantings will allow this proposal to meet all applicable approval criteria. This proposal should be approved.

#### ADMINISTRATIVE DECISION

**Approval** of a **Greenway Review** for an in-ground pool and spa, poolhouse structure, patio area and greenway plantings consistent with the approved site plans, Exhibits C.1 through C.6, signed and dated **June 10, 2013**, subject to the following conditions:

- **A.** All permits: Copies of the stamped Exhibits C.1-C.6 from LU 12-120187 GW and 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, "Any field changes shall be in substantial conformance with approved Exhibits C.1 through C.6."
- **B.** A Preconstruction Erosion Control inspection (IVR 200) is required prior to any ground disturbing activity. Condition 1 below shall be completed prior to the scheduled inspection, and the following conditions shall be shown on all permit plans:
  - 1. Temporary construction fencing (four feet high) shall be installed along the Limits of Construction Disturbance (the 25-foot greenway setback).
  - 2. 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.
- **C.** A total of 20 grasses, 83 shrubs, 3 arborescent shrubs, and 4 trees will be selected from the *Portland Plant List*, and shall be planted, in substantial conformance with Exhibit C.4 Landscape Plan.

Plantings shall be installed between October 1 and March 31 (the planting season).

- 1. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
- 2. The applicant shall have a registered landscape architect, a registered landscape contractor, or the designer of record certify that all the required mitigation plantings were installed as required. After installation, the applicant shall submit a Landscape Certification Form to this effect, signed by the registered landscape professional. The signed Landscape Certification Form shall be submitted to the Site Development Section

of the Bureau of Development Services, confirming that all required mitigation plantings have been installed in accordance with these conditions of approval.

- **D.** 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 C 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.
- **E.** Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

Staff Planner: Rachel Whiteside

Decision rendered by: \_\_\_\_\_\_ on June 10, 2013

By authority of the Director of the Bureau of Development Services

Decision mailed: June 13, 2013

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on February 26, 2013, and was determined to be complete on May 14, 2013.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 26, 2013.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: September 11, 2013.** 

#### Some of the information contained in this report was provided by the applicant.

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

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the

permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 27, 2013** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged**. The appeal fee will be refunded if the appellant prevails.

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

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <a href="https://www.portlandonline.com">www.portlandonline.com</a>.

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

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

#### Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- Unless appealed, The final decision may be recorded on or after **June 28, 2013.**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034 For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

#### **EXHIBITS**

#### NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
  - 1. Original Submittal
  - 2. Construction Management Plan
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Site and Landscape Plan west half of site
  - 3. Site and Landscape Plan east half of site
  - 4. Greenway Landscape Plantings (attached)
  - 5. Poolhouse Elevations (attached)
  - 6. Pool and Spa Plan
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Site Development Review Section of BDS
  - 2. Life Safety Review Section of BDS
- F. Correspondence: None received
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).

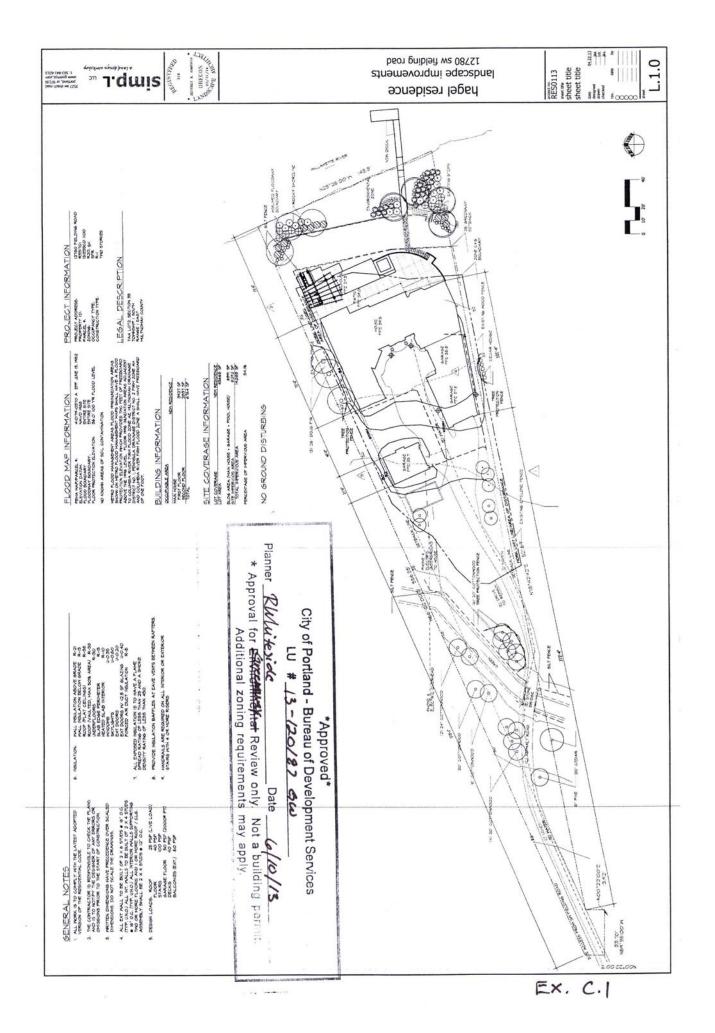


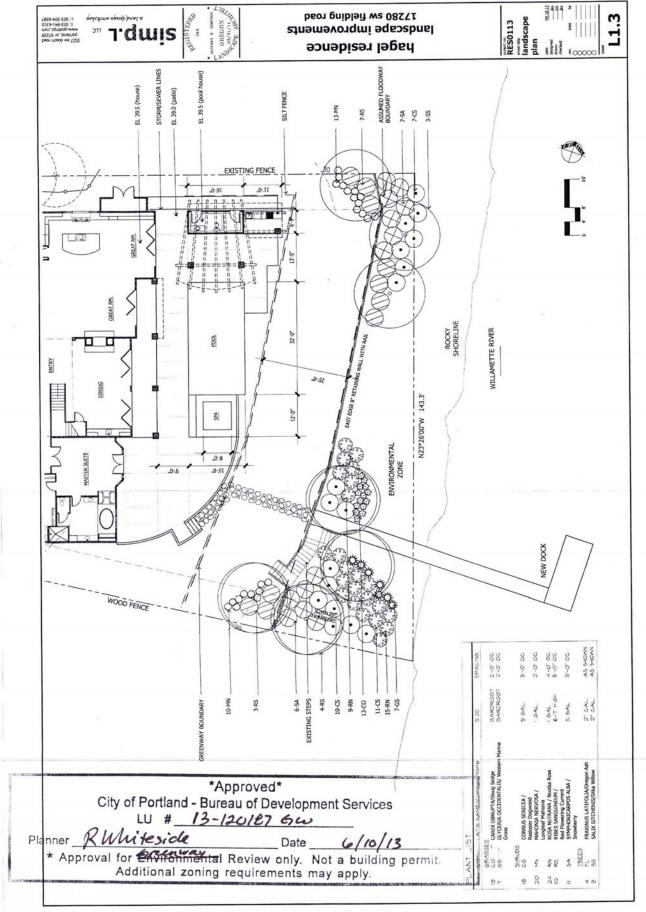
ZONING Site

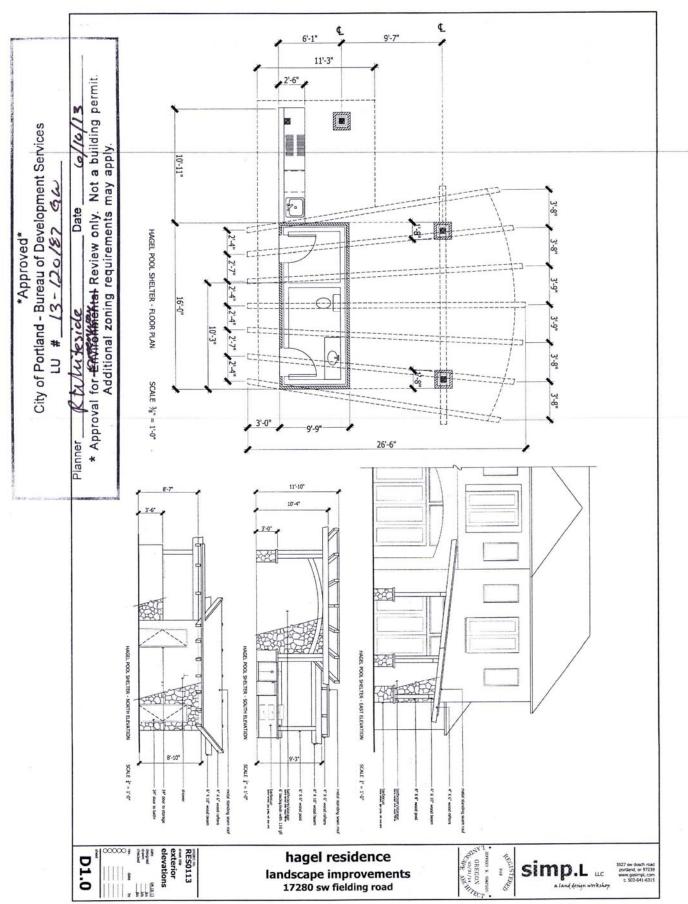


<b>A</b>
NORTH

File No.	LU 13-120187 GW
1/4 Section	4231,4232
	1 inch = 300 feet
	1S1E35CD 1100
Evhibit	B (Feb 28 2013)







Ex. C.5