

**OPPOSE
APPEAL**
APPEAL OF ARLINGTON NA AND HILARY MACKENZIE
JAPANESE GARDEN PROPOSED DEVELOPMENT LU 14-122172 CU EN

 IF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)

ADDRESS AND ZIP CODE

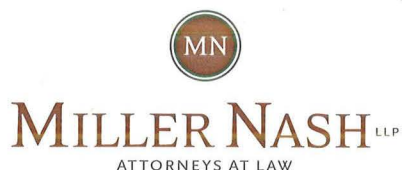
Email

✓ Gayle Mirkin	321 SW Kingston Ave 97205	dmirkin@mac.com
✓ Gayneeth Gamble Booth	2161 SW Laurel St.	ggbooth@comcast.net
✓ Tamara Kennedy/ Booth	1000 SW Broadway, suite 2300 97205	tamara@travelportland.com
✓ Carol L. Otis	0836 SW Curry St #1400 97239	dr.otis@sportsdoctor.com
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✓ DORIE VOLLUM	1000 NW SKYLINE BLVD PORTLAND, OR 97229	ddvolum@mac.com
✓ Alan Barker	2797 SW Rutland Terrace 97205	barkerspdx@gmail.com
✓ WAYNE DRINKWARD	5570 SW MERSESS, Portland, OR 97259	wayne-drinkward@hbsman.com
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**SUPPORT
APPEAL**
APPEAL OF ARLINGTON NA AND HILARY MACKENZIE
JAPANESE GARDEN PROPOSED DEVELOPMENT LU 14-122172 CU EN

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ Joe Angel	1501 SE Waters	
✓ Christie Galen	2732 SW Fairview Blvd	
✓ Michael Wallace	3213 SW Upper Cascade 97205	mbw4971@gmail.com
✓ DORTE Stu Levy	2740 SW Fairview Blvd.	
✓ Connie Kirk	1132 SW 19 th Ave. #304 97205 Portland, OR	connieKirk@me.com
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✓ William Newman	4916 SW Parham Ln	ahn@comcast.net
Joe Liebezeit	Audubon Portland	jliebezeit@audubonportland.org



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Kelly S. Hossaini
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(503) 205-2332 direct line

August 28, 2014

VIA HAND DELIVERY

Ms. Kathleen Stokes
Bureau of Development Services
City of Portland
1900 S.W. Fourth Avenue, Suite 5000
Portland, Oregon 97201

Subject: Casefile #LU 14-122172 CU EN

Dear Kathleen:

On behalf of the Portland Japanese Garden, I am writing to provide you with a third 120-day waiver to accommodate a decision by Portland City Council on appeal of the above-referenced application. The Garden is extending the 120-day period contained in ORS 227.178 to accommodate the Portland City Council decision. Specifically, the Garden is extending the 120-day period from Friday, September 12, 2014, which represents the 120th day, until Friday, September 19, 2014—a period of seven days. The 120th day will now be September 19, 2014.

Please let me know if you have any questions.

Very truly yours,



Kelly S. Hossaini

cc: Mr. Stephen Bloom

MACKENZIE ARCHITECTURE, INC.

2827 NE Martin Luther King Blvd. Portland, Oregon 97212
(503) 282-7674 Fax: (503) 282-1559 www.mackenziearchitecture.com

August 27, 2014

City Council c/o
Council Clerk
1221 SW Fourth Avenue, Room 140
Portland, Oregon 97204

RE: LU 14-122172 CU EN (Japanese Garden)

Dear Council Members:

What follows is a summary of the main issues. Most of the problems with this application stem from lack of transparency by both the Japanese Garden Society of Oregon and City Staff. Standard land use processes and procedures were not followed. The application met the very lowest standards for completion. The Applicant is proposing to build on public land and restrict public access to the park. This application should have met the highest standards for transparency and notification.

The hearing at City Council is technically a Land Use appeal of the Hearing's Officer's approval of increased development in the Open Space Zone and in an Environmental Conservation Zone. Separate but related issues are the expansion of the leasehold from 9.1 acres to 12.56 acres, and the lack of public notice about the proposal. The Japanese Garden Society has also violated their current lease agreement by fencing and developing lands outside of their leasehold and interfering with public access to those areas. The Hearings Officer and Planning Staff have included the expansion of the leasehold and the development of areas outside of the leasehold as part of the land use process. These are separate issues and are not covered in the Zoning Code.

Notification:

This application was a Type III Review. It required notification to all landowners within 400' of the site and to all recognized organizations within 1,000' of the site. Code defines "site" as an ownership **not** tenancy. Both staff and the applicant defined the site as the tenancy only. The City of Portland is the owner of Washington Park and the contiguous Forest Park. Clearly the notification area should have been many times larger and include property owners adjacent to all the Parks. Only about 80 households in Arlington Heights out of 300 received official notice of the application.

Oregon Land Use laws are largely based on citizen participation to shape all zoning and development approvals. The fact that this application is about development of a public Park makes it even more important to follow the rules on public notification.

I am certain there are very specific rules for selling public land including notification, open bidding, etc.. Expanding the leasehold is not covered in the Zoning Code. The Hearings Officer had no authority to approve the lease expansion of 3.46 additional acres. This should be a separate process.

Land Use Application:

The Japanese Gardens are proposing three areas of development. A "Village" of new buildings will be built near the upper gate. The current roadway will be widened and improved. A larger turnaround at the top will be built with a new retaining wall and new fencing will be installed. The existing trail to other areas of Washington Park will be removed. Lastly the lower parking area will be reworked for shuttle turnaround and a new ticket booth added.

The new buildings triggered the Conditional Use application for building in an Open Space Zone. These buildings are similar in size to the buildings at the Forestry Center. The applicant did not provide clear dimensions for these buildings nor was their true size disclosed. The two of the buildings are nearly three stories tall. There will be 25,732 sqft of new buildings. The Japanese Garden received approval for 11,340 sqft of new building-less than half of what they actually plan to build. The buildings are also very modern. They are incompatible with the current traditional Japanese Architecture within the Gardens. The proposed buildings are so large that they will be visible from within the Garden. Passing through the courtyard framed by these new buildings will diminish the experience of visiting the garden. The buildings have large expanses of glass and plate aluminum roofs. There is glass at the corners, sliding glass window walls, and at the Tea Café a glass railing. The ticket booth has a glass roof. All of these designs are deadly for birds. The designs do not comply with the City requirement for all new public buildings to be bird safe.

Construction of the buildings will require removal of hundreds of trees and thousands of cubic yards of earth. This has severe impacts on the neighborhood, the park and the quality of habitat within the park. In consideration of all of the above, none of the proposed buildings should be built. All of the "Village" plan should be redesigned to be compatible with the site, the neighborhood, and the surrounding park.

The access road will be widened and improved to accommodate more visitors, staff and shuttle usage. These improvements are primarily what have triggered the Environmental Review. Part of the new Garden House will dedicated for additional shuttle parking. There will be accessible parking and a larger turnaround at the top of the road. For these reasons the Japanese Garden wants to privatize and fence the road. Public trail access would be closed. The proposed shuttle bus route requires two left turns and one right turn across traffic on SW Kingston for every trip. This will add congestion to a street already over capacity. The increased traffic, noise and fumes are especially detrimental to the neighbors adjacent to the Japanese Garden access road.

The Japanese Garden has proposed closing the road to pedestrian traffic to reduce pedestrian and vehicular conflicts. This is the opposite of sound transportation planning.

The Japanese Garden should not expand their leasehold. Nor should they increase vehicular traffic as part of their expansion. Nor should they construct more garage space for shuttle buses. Vehicle traffic on the access road should be reduced and the road developed for better pedestrian access. Development of the trail that links the Rose Gardens and Japanese Gardens with the other areas of Washington Park is a key part of the 1981 Master Plan. The current Japanese Garden lease requires that they uphold the 1981 Master Plan and incorporate it into any development plans.

A better solution would be to construct a funicular (inclined elevator) behind the antique gate to improve pedestrian access up to the Garden. It is about 100' in a straight line from the base of the hill to the upper gate. This direct route is about 1000' shorter than the access road approach. A funicular would meet accessibility standards. Shuttle traffic on the access road could be eliminated. Traffic conflicts with shuttle turnaround on SW Kingston at peak times would be eliminated. Shuttle garage space could be eliminated from the expansion plans. New development could fit within the current leasehold. Public pedestrian access to the other areas of the park could be improved. Vehicular and pedestrian conflicts could be minimized. The property owners adjacent to the access road would be spared the excess noise, fumes, headlights, and vibrations from additional traffic. This is the sustainable solution.

Lastly, the Japanese Garden Society of Oregon is a private not-for-profit organization. They were authorized to develop an authentic Japanese Garden on public parkland as there was a public benefit to do so. The Garden is a valuable asset of the City. It is clear they have outgrown their current administrative and maintenance space. They would also like to improve their ticket receipts to lessen their dependence on fundraising. I am sure it is possible to develop an expansion plan that both serves the goals of the Japanese Garden and benefits the public. The current plan has no public benefit and extreme public costs.

Yours truly,



Hilary Mackenzie

Attachments:

Revised site plan showing funicular

Tuesday, August 19, 2014

Hilary:

This is difficult. At 78 I did not want to take time on the 18th.

But, for the record my first no is the Restaurant and next the Trail. I have walked almost all of it From Thurman Street on I see them walking up and down on the Street to the Garden. I visited many years ago the Japanese Garden in San Francisco. I cannot remember around the entrance.

Nevertheless a vote may count and definitely no. People come to see the two gardens.

Aesthically. Go to Jakes.

Ann Diestra

A handwritten signature in cursive script that reads "Ann K. Diestra".

2756 S. W. Fairview

a.diestra@att.net

503-223-7270

August 27, 2014

Portland City Council
Portland, Oregon

RE: Japanese Garden Expansion
#LU14-122172 CU EN

Dear City Council members:

First let me say how much my wife and I enjoy the Japanese Garden. We live only a few blocks from the garden and have been members off and on for many years. We always walk to the garden along the Wildwood Trail and down the path to the entry gate. It makes for a very nice walk.

We just discovered that the Japanese Garden is planning on closing that path off, along with a large development at the top of the shuttle road. Since we live so close to the garden and go there often, we were surprised we were not notified of the hearings regarding this proposed project. I ran into a neighbor on the trail last week and was invited to a discussion about the project.

I am an architect here in Portland and have had to go through several land use processes myself. I know the city has a process which is supposed to allow the neighbors a chance to review the proposed plans as well as the design solutions. From what I understand, there were only a few neighbors notified which seems negligent since so many people visit the Japanese Garden and will be affected by this project. We just went through an extensive process for the covering of the reservoirs.

We are concerned that the scope of the project is too grand and will change the character of the Japanese Garden to a more commercial feeling facility. We think the beauty of the garden is the scale and serenity it offers. We want the garden to be a success, but do not believe the city should give more land to a private enterprise so they can raise more money by having more and larger events. I do think a small tea house would be a nice addition for the visitors.

As much as I admire THA, I think the building design should be in character with the garden architecture. From the site plan it looks like the buildings are quite large and of modern materials. While I like modern materials and dislike design review, I do think the scale is a big concern.

At the meeting with the neighbors we discussed the possibility of having a funicular bring the guests up from the parking area by the Rose Garden. It seems like that would reduce the need for much of the work, and expense, of widening the road and excavating out so much new area. It would also allow the expansion into new public land to be eliminated

or at least reduced. If they don't build all the big new buildings, that would save a lot of expense, too, and there would not need to be so many more visitors to pay for it.

Please delay the approval of this project and get the entire neighborhood involved before giving up more public land for a private, all be it non-profit, enterprise. Thank you for your consideration.

Sincerely,

Mitch Gilbert and Marjorie Kircher
3023 SW Cascade Drive

Subject: Japanese Garden

Date: Thursday, August 14, 2014 at 4:45:42 PM Pacific Daylight Time

From: Les Blaize

To: Mark Ross

CC: amanda, mike abbate, Hilary Mackenzie

Mark,

I have concerns about not following public process, the expansion and the leasing of OS park property to the Japanese Garden (JG). I was told that I had to go through you to get this information.

I would like you to Email me a copy of their old lease and a copy of the proposed new lease.
Does the public and the neighborhoods get to weigh in on this or is it done behind closed doors?

One of my concerns is that since Parks is looking for additional funding. How much does the JG pay to the City out of their 4-5 million dollar budget? I would suggest that you look at their IRS 990, it appears that they may be a little extravagant in the areas of salary and travel etc and some of that money, maybe, should go to Parks to be used in areas where the citizens would actually benefit, east Portland for instance.

I am also curious, that because this is public property does the lease go out for competitive bid?

Another concern is that the property is zoned OS with a few E zones on it (i think), are they following ALL of the environmental regulations along with the required public notifications or is this another "parking fiasco"? I have not seen notice of any land use review.

There is an very large and ugly chain link fence that is offensive (and maybe illegal) to the public when coming down the hill toward the rose garden, how and why have you let the JG install that and will this appear around the new expansion?

I know the line of, it is a special place and it brings in the tourist's dollar, but it appears that they may not be very good neighbors and they don't follow their own "CORE VALUES" or their "GOALS" as listed on their web page. It appears on the surface that the JG may be a little elitist and with only 2 free days a year and a \$10 admission (they took in around 2 million at the gate last year) with no discount for City residents it looks as if their market is for tourist, not Portlanders so why are you giving them our Park.

Does the City/Parks spend any money to maintain their access, parking, security etc?

les blaize
503-286-2206

Subject: Japanese Garden Expansion Appeal Case LU14-122172 CU EN

Date: Monday, August 18, 2014 at 9:03:06 PM Pacific Daylight Time

From: Virginia Herndon

To: amanda@portlandoregon.gov, nick@portlandoregon.gov, mayorcharliehailes@portlandoregon.gov, novick@portlandoregon.gov

Dear Mayor and Commissioners:

I assume you are aware that the BDS has approved the Japanese Garden (JG) for a 3 acre development within Washington Park. The development includes (but is not limited to) an event center, a "cultural village", a restaurant, classrooms, a gift shop and more than a thousand feet of fencing. The expansion is not "green space" or garden but instead comprises an additional 11,340 gross square feet of building area. Why not move the all the structures that house events, classrooms and administration functions to office space outside Washington Park?

The Japanese Garden "leases" the land it occupies free of charge from Washington Park/City of Portland, but a family of four must pay \$32.50 to enter the Japanese Garden. Not everyone can afford JG entry but everyone can enjoy the trails and the Park free of charge. It is troubling that the JG plan, as approved by BDS/Land Use Services, completely eliminates a heavily used trailhead connecting the Rose Garden via the Wildwood Trail to other trails of Forest Park, the Arboretum, zoo and the war memorial.

Given our city's population growth and the huge increase in tourism it is ill advised to transfer park space away from the public. Much of the proposed expansion occurs within a designated Environmental Zone. In order to achieve the expansion at least 50 trees will be felled and many thousands of yards of soil will be removed to flatten the hill where construction will occur. It is estimated that during construction trucks will traverse neighborhood streets every 12 minutes for 4 straight months while the earth moving takes place. All of this in an area where slides have occurred.

Locating the administrative, classroom and event functions off site will completely eliminate environmental impact and ease what is already a traffic nightmare for those of us whose neighborhood streets are overtaken by cars seeking parking in the congested areas of the rose garden, Japanese garden, children's play park, tennis courts and the auxiliary station for the zoo train.

Please note that the JG plan calls for "renovation" of existing parking without adding significant additional parking — yet the JG has noted an average 6% increase in visitors year-over-year for the last 5 years and projects ever increasing attendance going forward.

We ask that you review the BDS decision and support mitigation of the JG plan in order to reduce the adverse impact on our shared Washington Park lands and trails and on the livability of zoned residential neighborhoods already overburdened by traffic, noise and privacy issues.

We love the Japanese Garden but we do not support an additional 11,340 gross feet of building, the elimination of a main connector trail of the Wildwood trail, cutting of trees, massive earth moving projects and impact on a designated environmental zone. We urge you to protect Washington Park and neighborhood streets from this incursion and prevent a development from occurring within the Park. Washington Park should first be protected with a comprehensive updated master plan. The Japanese Garden should not be allowed to create a restaurant, event spaces, classrooms and administrative offices within Washington Park and streets zoned residential.

Respectfully,

Virginia Herndon and Charles Baker

211 SW Kingston Avenue
Portland 97205

File# LU14-122172 CU EN
(HO 4140009)

City Council meeting, August 28, 2014

Commissioner Fritz, Mayor Hales, and Counselors:

Thank you for allowing us to speak briefly in favor of the Portland Japanese Garden expansion and support the decision of the Hearing Officer

We are neighbors (2 blocks away), long time garden members, and volunteer (Julie). We partly chose our home 26 years ago because of the neighborhood. We are certainly aware of the abundant summertime neighborhood visitors and traffic that not only frequent the Japanese Garden but the International Test Rose Garden, the amphitheater for concerts, the playground, tennis courts, zoo train, hiking trails, and picnic areas. We actually relish chatting with the many visitors from Portland, the region, the rest of the US, and other countries. On walks we occasionally enjoy pointing confused visitors to a bus stop, explaining where the Garden actually is located, or sometimes giving a lost soul a ride downtown to their hotel after the buses have stopped running for the day.

We have been well aware of the forward thinking Japanese Garden expansion for several years. We have attended most of the neighborhood meetings with the Garden staff. They have been most open, accommodating, and transparent responding to questions and concerns and modifying design and construction that might interfere with neighborhood activities. Let me share an example: The innovative relocation of the popular upper Wildwood trail spur (required collaboration with the Parks department); there are currently 2 access points to the Wildwood Trail in the neighborhood, the current spur and another trail easily and currently approached from Fairview avenue. The spur at the garden is being rerouted a few hundred yards while the one off Fairview will remain

The Japanese Garden Village will not only create a unique sensual, artistic, and educational experience, but the beauty and tranquility of the garden itself will be preserved. This expansion will be terrific for the neighborhood, Portland and Oregon as tourist destinations, and fill an unmet need for learning about Japanese Garden design.

Alan F and Julieann Barker, 2797 SW Rutland Terrace



THE
BOOKIN
GROUP
LLC

Land Use &
Institutional
Planning

Policy Analysis

Project
Management

Group
Facilitation

MEMORANDUM

DATE: August 28, 2014

TO: Portland City Council

FROM: Beverly Bookin, AICP, Consulting Planner on Behalf of the Portland Japanese Garden

SUBJECT: PROPOSED REVISION OF CONDITION G OF LU 14-122172

Purpose. The Applicant, Portland Japanese Garden (PJG), requests the modification of Condition G of LU 14-122172.

Discussion. In the Hearings Officer's decision, Condition G reads as follows:

"The Garden shall construct a minimum 6-foot wide concrete sidewalk from the existing curb with a minimum 4-foot wide planting strip along the north [sic] side of the park road/SW Kingston Avenue between the Garden's new parking lot and the existing public sidewalk at the Park entrance. The new sidewalk shall be constructed at the same time as the new parking lot."

The Hearings Officer is requiring the sidewalk segment at the request of the Arlington Heights Neighborhood Association (AHNA) to provide additional pedestrian access on the west side of SW Kingston Street. This portion of SW Kingston Avenue is a private park road and, therefore, not subject to the requirements in Title 17. In fact, the proposed design and permitting of the required sidewalk segment is subject to review by the Bureau of Development Services (BDS) Site Development Review Section, rather than the Portland Bureau of Transportation (PBOT). Because this sidewalk segment is on a private street, BDS has wide latitude in determining the final design based on such concerns as steep slopes, loss of significant trees and the like. For this reason, the Applicant feels that the condition as written is too prescriptively, and offers the following modification, which also corrects a scrivener's error:

"The Garden shall construct a ~~minimum 6-foot wide~~ concrete sidewalk from the ~~existing curb with a minimum 4-foot wide planting strip along the north [sic]~~ west side of the park road/SW Kingston Avenue between the Garden's ~~new~~ redeveloped parking lot and the existing public sidewalk at the Park entrance that will provide adequate unimpeded pedestrian access. The new sidewalk shall be constructed at the same time as the new parking lot. This proposed sidewalk design will require approval of Portland Parks & Recreation and the Bureau of Development Services Site Development Review Section."

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97205

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503.241.2423

Facsimile
503.241.2721

Connie Kirk
1132 SW 19th Avenue, #304, Portland, OR 97205

August 28, 2014

The Honorable Mayor Charlie Hales and Members of the City Council
Commissioners Amanda Fritz, Nick Fish, Steve Novick, and Dan Saltzman
1121 SW 4th Avenue, Room 110, Portland, OR 97204
RE: Case: Japanese Garden Expansion - LU 14-122172 CU EN

Dear Mayor Hales and Members of the City Council:

I am a resident at the Legends Condominiums in Goose Hollow. I've been a member of the Japanese Garden, an oasis of tranquility, but I urge you to Vote "No" to Japanese Garden Expansion.

- Arlington Heights neighbors did not receive comprehensive notification regarding this expansion. They deserve to be part of the larger civic discourse.
- This proposal elevates commercialization over neighborhood livability.
- The plan does not fully meet Goals 6 and 8 of the City of Portland's Comprehensive Plan Goals and Policies.

Goal 6 – Transportation. “ ... reinforces the livability of neighborhoods; supports a strong and diverse economy; reduces air, noise, and water pollution; and lessens reliance on the automobile while maintaining accessibility.”

Goal 8 – Environment. Goal 8 requires the applicant to “Maintain and improve the quality of Portland's air, water and land resources and protect neighborhoods and business centers from detrimental noise pollution.”

Goals 6 and 8 are not fully met. Commercial expansion encourages automotive use. Additional supply trucks will be necessary to meet the project's commercial needs. Air pollution will increase. Land in the Environmental Zone will be cleared. These factors do not reinforce the livability in Arlington Heights nor improve their land resources. Arlington Heights will be affected by increased traffic and so, too, will Goose Hollow. Goose Hollow is an artery for MAC traffic, Timbers traffic, traffic en route to Washington Park, the Rose and Japanese Gardens.

Goals 6 and 8 require the reduction of, and protection from, detrimental noise. Arlington Heights will not be protected. Commercial zoning allows 24 hour trash collection. The *City of Portland's Noise Control Task Force and Noise Review Board in 2004* found that noise from late night trash collection adversely impacts health by raising blood pressure and respiratory levels (pages 2-3). The study states that noise from late night collection adversely impacts the sleep of health care workers. Residents of Arlington Heights, as well as neighboring King's Hill, Goose Hollow and other Northwest areas will be adversely affected, as health care workers live in these areas and work at neighboring hospitals. Vote “No” to Japanese Garden Expansion. Allow time for a better vision to emerge from this noble institution.

Respectfully, Connie Kirk



DOWD ARCHITECTURE INC.

June 3, 2014

Land Use Hearings Officer
1900 SW Fourth Avenue, Suite 3100
Portland, Oregon 97201

Re: LU 14-122172 CU EN AD
Japanese Garden expansion

Hearings Officer:

I am opposed to approval of the expansion of the Japanese Garden as proposed for the following reasons.

1. Failure to provide required public notice

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. That 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.

Since the requirements for posting notices apply to the entire "site" as defined by the zoning code--not just the portion that the applicant thought was relevant-- that means that there should have been many more signs posted on the many street frontages of the total site to meet minimum posting requirements.

Furthermore, if the area for mailed notices was based on the arbitrarily shrunk site shown and described in the notice, then notices were mailed to only a small fraction of people legally entitled to receive them. Since the correct site would include many more acres, potentially hundreds of people, plus some organizations, likely did not receive notices as legally required.

I asked Planning staff why the site shown was so small, and included only part of the ownership, and was told that it would have been time-consuming to show or describe the entire "site". While true, that does not mean the notice requirements can be ignored.

And of course, this all also means that the notices themselves were faulty, because they did not show the site as defined by the zoning code.

Failing to show the whole site on the notice, failing to post required signs, and failing to mail notices to people and possibly organizations entitled to them are not just technicalities. This

project affects several acres of public land--in fact it proposes to fence off and eliminate public access to large portions of that land. Moreover, it affects not just the Garden, but the public trail system. Currently, the public road from SW Kingston up to the Japanese Garden is open to the public for hiking, and it connects via a short trail link to the park's trail system. The project proposes to shut off public access to the road, and eliminate the short link to the trail system. Yet it would only be by chance that any of the thousands of people using the road or trails for hiking or running would see any notice, since most have no reason to pass by the two signs on SW Kingston. There is also a major trail access on SW Fairview (within the abbreviated site shown on the notice) but not even that was posted.

So even considering this project's impacts only to people hiking and running in this part of the public park, the posting omissions leave many hundreds of people significantly affected by it unaware that the project even exists, let alone informed that it proposes to bar them from access to their favorite running or walking routes on public land. If the notification is faulty, then these people were cheated out of their legal right to be notified of this proposal and to comment on it. That is exactly the situation that the zoning code's requirements for public notice, and instructions for defining a site, were aimed at preventing.

The applicant will claim they did an extensive public outreach, but even if that is accepted as true, the reality is that impacts such as the trail closure and road access were not frankly disclosed, and in any event, informal outreach does not substitute for satisfying legal notification requirements. As a result, this hearing is compromised.

2. Failure to show compliance with the approval criteria--specific comments

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

The staff report, quoting heavily from the applicant's statements, works hard to disguise that the proposal's new buildings are not consistent with the purpose of the OS zone. Certainly classrooms, meeting rooms, and restaurants have their purposes, but those purposes conflict with every single purpose of the OS zone.

Do these proposed buildings:

- Provide opportunities for outdoor recreation? No.
- Provide contrasts to the built environment? No.
- Preserve scenic qualities? No.
- Protect sensitive or fragile environmental areas? No.
- Preserve the capacity and water quality of the stormwater drainage system? No.
- Provide pedestrian and bicycle transportation connections? No.

While the claims are true that the new buildings will provide *a contrast* to the natural environment, and will provide *views* to the open space, those claims do not trump the specific purposes of the OS zone, and accepting those arguments as justification to replace open space with structures would set a horrible precedent. It could justify putting almost any attractive

building into any OS-zoned property, as long as it contrasts with the open space and provides views into it.

One certainly can argue that some buildings are justified being located in an OS zone--a grandstand to enjoy a sports event, a minimal snack bar, or even some of the Japanese Garden's proposed buildings, such as the ticket booth, since these directly support people enjoying outdoor recreation. But classrooms, meeting rooms for art shows and similar structures do not.

The proposal is especially at odds with the OS purpose of providing pedestrian connections. It does the opposite--taking existing connections away. Currently, walking on the public property up the ravine trail to the Garden entrance, and walking or running through the public park property on the access road that goes from SW Kingston up the hill to the top of the Japanese Garden area, then connecting via the short link to the park's public trail system, are hugely popular public park activities. This proposal entirely eliminates those public activities, ceding acres of public land to private control, accessible to the public only by paying admission to go through a fence, and then only during Garden hours. The road that is a popular public walking and running route will become essentially a private parking area for Garden staff. This is a huge public cost, without a comparable offsetting benefit.

I understand that a new trail connection is proposed south of the Garden. But that connection is hundreds of yards away from the current link between the trail system and the road leading down from the top of the Garden area. It also is not convenient to the parking area, which many people use when they walk that trail. It also is much less safe in off-hours, because it is isolated from other park users such as Japanese Garden and Rose Garden visitors. Eliminating the quick link to the trail at the top of the Garden area also creates a safety hazard, because hikers cannot get off the trail if necessary until they go hundreds of yards further, and away from the parking area, and away from houses and other park users.

The applicants don't even mention the impacts of closing these popular walking/running routes in some portions of the application dealing with circulation impacts. When the closing of the short trail link that connects the trail system to the road at the top of the Garden area *is* (briefly) discussed, its impacts are dismissed by stating that it's not an *official* trail, therefore closing it somehow has no impacts. The fact is that it's a popular, essential link that thousands of trail users have loved using for years. And only a tiny percentage of them know it is proposed to be closed forever.

I also understand that the Garden believes there are safety issues of sharing the access road with the public. But the Garden is often closed during hours of much of the running and walking by the public, so there is no safety issue then. There *is* a safety issue in forcing trail users to go hundreds of yards further, and away from the parking lot and neighborhood, in order to get off the trail system and back to their cars or homes. And of course there are many safety solutions short of banning the public from the access road, including slowing the Garden shuttle down, or simply using pavement markings and signage as is done on virtually every other road in Portland.

There is also irony in the applicant's claims that pedestrians create such a safety issue on the access road to the top of the Garden area that they need to be banned from it, while on the other hand, the applicant claims there is no safety impact resulting from not building a sidewalk to connect from the base of the Garden's area to the public sidewalks just outside the park on SW Kingston, thus forcing hundreds of pedestrians per day to weave among the parking cars and park traffic to get to the bus stop, or to other locations within or outside the park.

Criterion B. Public services.

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 adequate transportation demand management strategies;

The application includes a traffic study, but its analysis is faulty, and it doesn't prove that the proposed use can be supported by the transportation system, especially in regard to on-street parking and neighborhood impacts.

The applicant is proposing a large expansion of facilities designed to attract more visitors to come to the Garden, to come more often, and to stay longer. Yet it is proposing to *reduce* the parking spaces in the lot at the base of the Japanese Garden. The applicant uses two main arguments to convince us that this will be acceptable--first, that the park's new, paid parking system will increase turnover of parking spaces, effectively "creating" additional parking, and second, that the park shuttle bus will allow Garden visitors to park elsewhere in the park rather than near the Garden.

Both arguments may be true to a limited extent, but they don't tell the whole story.

In regard to the new paid parking system, the obvious impact--which is already happening on a large scale--is that the fee parking is encouraging park visitors to park outside the park on the neighborhood streets--that already have limited on-street parking due to their narrowness. While there are hundreds of spaces within the park, most of them are further from the Japanese Garden, and the Rose Garden adjacent to it, than are many of the on-street spaces within the neighborhood. Plus, the neighborhood spaces don't require steep uphill walks to these gardens, as do many of the park's spaces.

I lived a block from the Japanese Garden for twenty years ending in 2005, but visit the neighborhood often. The increased spillover into the neighborhood of park traffic and parking since then has been astounding, but not surprising given the Japanese Garden alone has added over 100,000 visitors per year over that time. I'm sure the Rose Garden and Zoo have also had substantial increases. Having all on-street parking on surrounding streets being filled with park visitors' vehicles, which used to occur only on peak weekends, now starts in Spring and is constant through Summer. And that was true even before visitors began being charged for in-park spaces, creating an incentive for them to park in the neighborhood even when in-park spaces are available.

Last weekend, it took me about ten minutes to drive two blocks on SW Kingston from SW Fairview to the south end of the tennis courts in front of the Japanese Garden parking lot. It was badly congested and dangerous. There was no possibility of emergency vehicle access through it. The lack of sidewalks in the park means pedestrians had to weave in and out among cars trying to park and drive through. All on-street spaces

within the neighborhood near the park were filled. Yet there were several empty spaces further down the hill within the park near the reservoir. Those don't get found easily because visitors have to leave the area of the Japanese Garden and head out of the park to find them. They only find them after they've given up looking. Those spaces are also a long, steep, uphill walk away from the gardens, and require payment, while neighborhood spaces are closer and free.

What that demonstrates is that while a traffic study, using the methodology of the applicant's, would simply show there were excess spaces in the park last weekend, the reality was it was a dangerously congested situation in the neighborhood and along SW Kingston within the park. So the traffic study's assertions that unfilled spaces in the park equate to limited parking and traffic impacts in the park and neighborhood are false.

Furthermore, I understand the applicant's traffic study was done in November, when park traffic and parking demand is at most a tiny fraction of Spring or Summer levels. If true, that in itself should be cause to dismiss the report's relevance and accuracy.

The traffic study's arguments in regard to the park shuttle are flat-out silly. It claims that the shuttle will greatly reduce parking demand at the parking lot at the base of the Japanese Garden because those visitors can park anywhere within the park, then take the shuttle to the Garden. It makes the wild claim that, due to the shuttle's existence

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)

It does not take a traffic engineering degree to realize that that works two ways--while a Japanese Garden visitor may park at the zoo, then take the shuttle, of course a zoo, Forestry Center, or Children's Museum visitor may also park at the Japanese Garden lot and take the shuttle. And since those other lots fill up equally or more often than the Japanese Garden lot, it's much more likely the shuttle will bring *more* rather than less parking to the Japanese Garden area. It also means the neighborhood streets near the Japanese Garden now become a convenient "park-and-ride" lot for Zoo visitors--and free as well.

In regard to pedestrian circulation, the proposal makes matters worse, as described earlier in regard to the public's access to the popular walking/running routes that now (but will no longer) include the road from SW Kingston up to the top of the Japanese Garden hill, and the short, "unofficial"--but popular and important--link from that road onto the trail system. The applicant wrongly dismisses the negative impact of this, almost ignoring the use of the road for walking, and dismissing the short trail link as not being "official".

The application also dismisses the critical importance for safety, convenience and accessibility of creating a sidewalk connection from the existing SW Kingston sidewalks at the park entrance (those sidewalks lead to the main bus stops to the Rose Garden and

Japanese Garden at Fairview/Kingston) through the parking area, and up to the ticket booth/Garden shuttle area.

In fact, the Oregon Structural Specialty Code (the “building code” which governs this project) requires that sidewalk connectivity in its accessibility regulations (OSSC 1103.1). The Life Safety reviewer’s summary response to this application states correctly:

Exterior accessible route - 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.

What is troubling to me is that, even though this response was given weeks ago to the Planning staff reviewing this application, there was seemingly no understanding that it applies, because the staff report makes no objection to that code-mandated connection being absent in the proposal. Without that connection, it is not safe for pedestrians to get from the bus stop to the Japanese Garden’s proposed ticket booth, and not even possible to do it for anyone needing an accessible route. Obviously, it makes no sense to approve this Conditional Use review with a site plan that the City’s Bureau of Development Services Life Safety staff will be unable to approve during the building permit stage. The addition of the sidewalk at building permit stage may lead to reducing landscaping or parking spaces that the proposed site plan is promising in this current land use review.

Even if there were no building code requirement for a sidewalk connecting the base of the Japanese Garden area to the adjacent City sidewalk system, there certainly is an obligation under the approval criteria for this CU review to provide that connection. Without it, pedestrians are forced to weave in and out among cars parking and driving through, as they attempt to walk to the bus stops at the Kingston/Fairview intersection that serve this park entrance, or to the other adjacent areas of the park and neighborhood (including all the on-street parking spaces in the neighborhood that visitors use to avoid the congestion and payment required for parking within the park).

Finally, although the “Kingston House” at 369 SW Kingston was taken out of this application, it still is relevant to the proposal (see comments following). Specifically in regard to this connection issue, when that property went through the 2009 CU review, the zoning code requirement that it meet the pedestrian requirements of the CG zone was overlooked. Those would have required pedestrian connections--compliant with zoning code standards--to be created between the Kingston house and other buildings on the “site”, which would include the park per the code’s definition of “site”. The failure of the Planning staff and applicants to identify that requirement in 2009 should not absolve the current proposal from meeting that requirement, and creating a code-compliant sidewalk connection between the City’s Kingston sidewalk and the base of the Japanese Garden area.

Criterion 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.***

The livability of the nearby residential neighborhood has been hurt by the Japanese

Garden in the past few years due to its office use intrusion at the “Kingston house” (see comments below) and its increasing attendance by over 100,000 visitors per year. The problems commented on above--increased traffic and parking in the neighborhood, loss of walking routes in the park, loss of access to park space around the Japanese Garden (which is also the park space closest to the neighborhood)--are all livability issues in addition to being impacts in other categories. Certainly bringing over 100,000 new visitors per year to the Garden impacts livability--including noise, privacy and safety--because many of those 100,000-plus new visitors clog the neighborhood’s narrow streets and take up limited on-street parking.

The proposed expansion will exacerbate livability impacts. The only proposed work that really is aimed at mitigating the impacts of increasing attendance so drastically over recent years is the addition of some restrooms. Otherwise, parking is being cut, and several acres of the park that is now open to public use is being privatized by being fenced off. Most importantly, the bulk of the expansion consists of new structures designed to bring even more visitors, and to encourage them to come more often and to stay longer.

The main difference between the attendance increases to date, and the future attendance increases that the Garden is encouraging through construction of new structures is that up until now, the Garden had some expansion room available within the park to mitigate the impacts of the attendance increases, through adding office space within the park instead of in the neighborhood, adding more landscaped buffer areas, adding parking, enhancing pedestrian connections and safety, etc. But now--as it states throughout the application--it has basically filled every square foot of area where expansion is practical with new buildings that will bring more people in. But when attendance increases as a result of that, there will be no room left to provide mitigating facilities. The current proposal almost guarantees that the Garden will attempt to make the office use on Kingston permanent, or attempt to expand other activities into the neighborhood, or attempt to expand further into the park’s natural areas, because this proposal fills their currently-proposed area within the park.

3. Failure to show compliance with the approval criteria--other comments

A. The Kingston house is relevant to this review, and pulling it out of the application calls the whole application into question, and makes approval of it unwise: This review is for practical purposes--if not in legal terms---an approval of a master plan for the future of the Garden. The Garden has stressed in public numerous times that expanding and making permanent the office space in the Kingston house is critical to the ongoing operations of the Garden. Now it has pulled that critical function out of the application. That does not mean the need goes away. It means that the current application is not complete (in practical, not legal, terms) because it proposes facilities without office space after 2019. If the current application is approved, that means the Garden will have to return soon to alter what has just been approved, either by adding office space within the park, or adding the Kingston house (or another house in the neighborhood) back into the picture, neither of which are desirable so soon after this review. The exception to this is if the Garden chooses to locate its offices in a commercial area offsite, which would be a fine outcome, but not one that is guaranteed or even likely.

One likely reason the Kingston house was pulled from this review may be that, as a result of a citizen complaint, the City initiated a code violation case against the Japanese Garden for failure to obtain a Change of Occupancy through the building permit process. This failure was despite being told explicitly by both Fire Bureau and Life Safety reviewers in 2009 that that process was required prior to using the structure as offices, and despite obtaining a building permit being a necessity of meeting Condition A of the 2009 CU approval. That process has still not been completed.

One reason this is relevant to this 2014 review is that the impacts on the neighborhood of the 2009 approval are still unknown, because it is the change of occupancy review that identifies the many building code regulations that must be met in order to occupy the house as office space, and meeting those requirements is certain to result in changes to the exterior appearance of the structure and its site. For instance, code-required changes to exterior stairs, railings, driveway, windows, and so forth are all common requirements of changes of occupancy to office use from residential use. Until those are constructed, the impacts of the change of use will not be visible. At a minimum, any changes will invalidate the applicant's promise in 2009 to leave the appearance of the house unchanged, a promise that was central to meeting at least one approval criteria.

So in this 2014 review, as of today we are guessing what the full impact of the 2009 CU approval is, because the applicant still has not made the building-code-mandated changes to the site and structure.

Another reason the change of occupancy failure is relevant is that that review is the process by which the City determines what code-required upgrades must be made to protect property, health and life safety of the structure's occupants and neighbors. Likely upgrades include structural upgrades, accessibility upgrades, fire safety upgrades, etc. Since the applicant elected to skip the change of occupancy, and to skip compliance with Condition A of the 2009 review, the result has been to potentially jeopardize the life safety and property protection of the house's neighbors. Certainly this is relevant to the "livability" approval criteria in regard to safety.

Also, the zoning code requires institutional uses in residential zones to meet the pedestrian connection requirements of the CG zone.. These would prohibit the current situation of pedestrian access to the house being on the driveway, unless the pavement were changed. They also require code-compliant connections to other buildings on the "site" which would include structures in the park. Unless those requirements did not exist in 2009, they were missed in the 2009 review, and thus that should be remedied now in this review. But if it is remedied, that will require changes to the exterior appearance of the house--contrary to the promise of 2009 to leave that alone--and also changes to the site (house plus Japanese Garden facilities in the park, and perhaps beyond that) that are not shown in the current proposal. And that means once more that the applicant has not shown compliance with the requirements relevant to this proposal.

Further, the failure of the Japanese Garden to apply for a change of occupancy through the building permit process, even though it was clearly stated as a requirement in 2009, means that conditions of approval cannot be relied on to protect the neighborhood in this 2014 review. After all, the change of occupancy deals with critical issues of life and property safety. Since the applicant has shown a total failure to pursue the change of occupancy--until the City's code violation process began--how can it be trusted to conform to approval criteria involving less critical issues? To me, this means that this current application should not be approved unless it can be deemed approvable with only very limited, clear, measurable conditions.

Finally in regard to the Kingston house, I believe that the 2009 conditional use review should have expired three years after the 2009 review, because the applicant did not have a building permit issued (as required for the change of occupancy) and did not “begin the approved activity”. (One or the other of these must have occurred within three years of the 2009 decision to avoid its expiration, under the terms of the 2009 review.) Planning staff disagrees, ruling that the “approved activity” began in 2009 when the applicant moved in and began using the house as offices illegally, without benefit of a change of occupancy review. My belief is that the “approved activity” in the 2009 review was not “office use” in a vacuum, but legal use of the structure as offices, which would not be possible prior to completing the change of occupancy review process, which would also include making code-required upgrades.

If appropriate, I would like you to rule which interpretation--mine or the City's--is correct. At issue is whether the 2009 review should be deemed expired.

B. Other problems related to incorrectly defining the “site”: The notification problems mentioned earlier are not the only problems created by incorrectly defining the proposal's “site” as an arbitrary, small portion of the ownerships. Many zoning code regulations apply to “sites”. For instance, the pedestrian connection standards that should have been applied in 2009 (or removed through an adjustment) to the Kingston house require connections to other buildings on the “site”. Since neither the applicant or the planning staff defined the “site” as the zoning code requires, it's not possible for the applicant to have shown that their proposal meets zoning code requirements, since that is not possible without discussion of the whole site. At this point, with the “site” incorrectly defined, it is not even possible to know if all the applicable zoning code requirements have even been identified, let alone satisfied.

4. Summary comments

First, I ask that you verify whether the proper public notification (posted signs and mailings) took place, and if not, it be redone so that people legally required to be notified have a chance to see the proposal and comment on it.

Second, I ask that you do not approve the current proposal. It simply includes too much new structure area to meet the approval criteria. It privatizes several acres of public park land for a private organization, and sets a poor precedent for other institutions within Washington Park and the surrounding neighborhoods.

If the proposal is approved, I ask that conditions be placed that will allow it to meet the approval criteria, and reduce its impacts on the public park and residential neighborhood.

At a minimum, these conditions/mitigations should include:

- focus expansion work on mitigating impacts of the huge attendance increases over the last several years that are already straining the surrounding park and neighborhood, rather than on building new structures that will lead to further, unmitigatable attendance increases and impacts
- limit new structures to those that directly support the enjoyment of the outdoor garden, in keeping with the purposes of the OS zone
- maintain current parking space numbers
- provide an accessible sidewalk/route connecting the existing sidewalk outside the park entrance on SW Kingston to the area at the base of the Japanese Garden road where the Garden shuttle loads

--preserve fulltime public access to park areas currently accessible to the public, including the road from the parking lot up to the top of the Japanese Garden, and the important link from there to the rest of the park's trail system

--create certainty that the house on SW Kingston will be returned to use as a single-family dwelling no later than 2019, and that the Garden will not attempt to create permanent offices or other uses there, or attempt to expand other activities into the surrounding neighborhood in the future

Thank you for your consideration of these comments.

Respectfully submitted,

Dowd Architecture Inc.

A handwritten signature in blue ink, appearing to read "h" followed by a stylized "D" or "Dowd".

Michael Dowd, President

June 20, 2014

Gregory Frank, Land Use Hearings Officer
1900 SW Fourth Avenue, Suite 1100
Portland, Oregon 97201

Re: LU 14-122172 CU EN AD
Japanese Garden expansion

Dear Mr. Frank:

I have the following rebuttal comments to testimony submitted in the Transmittal dated June 13th to you from Beverly Bookin.

These comments relate to my concerns about:

- the amount of new building construction and the uses inside them being at odds with the character and purposes of the OS zone
- the closure to the public for hiking of the access road and the short link to the Wildwood Trail and the conflicts of that with approval criteria relating to pedestrian connections, safety, and recreational opportunities
- the applicant's refusal to provide a sidewalk from the parking lot at the base of the Japanese Garden to connect to the sidewalk on the west side of SW Kingston, and the conflicts of that with approval criteria relating to pedestrian connections and safety, and zoning code requirements for pedestrian standards
- the impacts of the proposal on traffic and especially parking within the park and neighborhood
- public notice and completion of the application.

Here are the specific comments I disagree with in the transmittal:

--p. 1: Kingston house: states the Kingston house is "irrelevant to these proceedings" because the request to expand and make permanent the office use was removed from this application: It is still relevant for all the reasons I stated in earlier testimony. Most importantly, there is a zoning code requirement for "pedestrian standards" that applies to the Kingston house, as an institutional use in a residential zone, and one requirement is creating zoning-code-compliant pedestrian connections between the building and street and between the building and other buildings and areas on the "site". That would require connections between the Kingston house and other Japanese Garden buildings and areas which are not shown on the proposal. It would include the pedestrian connection between the sidewalk in front of the Kingston house and the ticket booth area--the same sidewalk the neighborhood has requested and the applicant is refusing to provide. So even if it is determined that that sidewalk isn't required to meet approval criteria, that doesn't mean the zoning code requirement associated with the Kingston house for providing pedestrian connections is waived. And even if that requirement is missed in the current building permit review, that doesn't meet it still doesn't apply.

The Bookin argument that requiring the Garden to include a sidewalk on Kingston as part of this review is unfair due to “proportionality” is especially ironic when the sidewalk is required as a basic condition of meeting the zoning code requirements for pedestrian standards (linking the Kingston house to the rest of the Japanese Garden facilities).

Finally in regard to the Kingston house, the application for change of occupancy is being reviewed now. I looked at the checksheet of only one of many reviewers--the Life Safety reviewer. His checksheet alone has seventeen items either needing correction (i.e. construction changes) or needing more information before he is even able to evaluate what additional corrections must be needed to comply with the building code. Many of these items have potential impacts on the exterior of the house and on the Kingston lot between the house and street, and between the house and neighbors. Those seventeen items are in addition to any that the applicant already may have noted when submitting the plans for the change of occupancy permit. So as of five years after the 2009 CU, nobody knows yet what the impacts of the office use will be in regard to physical appearance of the house. All that is certain is that there is almost no chance that the applicant's promise in 2009 to avoid exterior changes to the house's appearance (a focus of one approval criteria) will be met. And that still-unknown impact does have direct applicability to the current review, because it contributes to the cumulative impact of the proposal. And these building code upgrades are in addition to the pedestrian-standard requirements of the zoning code that also have yet to have been met, in regard to making code-compliant connections to other buildings and areas on the “site” which includes the entire Garden facilities, and perhaps beyond into other park areas that are under the same ownership.

p. 2: Size and use of the Administration Building: states that the Administration Building increased 970 sf *“resulting from a refinement of the architectural design; this is a combination of first-floor public patron functions and second-floor offices”*.

Yet at the hearing, Ms. Bookin testified (at approximately 2:08:10 in the audio file) that they were adding 4,000 sf to the Administration Building.

And in her May 29th memorandum, she stated the increase was either 960 or 970 sf, but that the purpose of the increase was *“to accommodate internal accessibility requirements to which the original design did not comply, to correct a roof slope. The west wall of the first floor was moved 48” to the west.”*

And if her May 29th statement is true that the increase was due to moving a first-floor wall, how can her June 13th statement be true that the added area was partially due to “second-floor offices”?

So, since the time of the public notice and staff review, the building's size increased and the uses apparently changed, and in her three mentions of it since then (hearing, May 29 and June 13) she has given two different sizes of the increase, and two different descriptions of how and why it was increased, and what spaces and use occur within that increased space.

An accurate description of the size, design, and use of the building, including plan and elevation drawings, should have been available prior to the hearing, so the public, the planning staff and the other Bureau's reviewers had a chance to review them and comment. Not only was that not done, but the size, design and use has remained in flux. And still, there are no drawings (that I could find in file) showing the (currently) current design.

The rules about notice and completeness are intended to make it possible for the hearing process to allow testimony about the proposal. The process is not meant to be about the public scrambling to the hearings offices to try to find the latest proposal and to decipher which description from the applicant is accurate.

p.2: FAR and compliance with the intent of the OS zone: states that because of the low FAR, "the proposal complies with the approval criteria (Section 33.815.100(A)(1)..." That criterion is "The proposed use is consistent with the intended character of the specific OS zoned area and with the purpose of the OS zone". The low FAR may help with meeting other criteria, but not that one. A sports facility building could have a high FAR but its use could be aligned well with the OS purposes. Offices and meeting rooms are not consistent with the OS purpose even with a low FAR.

p.6: The "privacy" of the access road: refers to the Garden's "private access road" which is "not accessible to the public". The references are in response to parking issues, but they are also relevant to the issue of closure of the access road and trail link to the public. The access road is not a "private access road". Most of it (all but the very bottom) isn't even within the current lease area. And the lease prohibits the tenant from interfering with public use of the park, which includes use of the road for walking. And the current parking spaces there signed for use only by Garden staff is outside the leased area. The applicant has confused privileges it has with rights, and confused public rights as privileges that the Garden is somehow free to restrict.

p. 8: Wildwood Trail comments: The applicant seems to believe that if it calls the access road and the short trail link to the Wildwood Trail a "shortcut" and "unofficial" enough times, that will make that true, and it will negate any need to meet approval criteria and conformance to OS purposes for pedestrian links, recreational opportunities, safety, etc. even though those approval criteria don't depend on trails being "official" (not that it isn't "official" based on signage and other evidence several people have already submitted).

The applicant also states on p. 8 that the new trail connection south of the Japanese Garden--which it has touted throughout this process as a route to replace the route eliminated when it closes the short link and access road to public use--is actually *not* something it is promising. It states its agreement to participate in creating that alternate link is "voluntary" and "not required as a part of Conditional Use review" (and here I thought it was the Hearings Officer who determines that). It then refers to Figure III-1E that up to now has been presented to the public as something that *was* happening.

So, throughout this process, the applicant (and the Parks Bureau in a phone call with me) have dismissed the concerns that closing the access road and link to hikers was a problem, because there would be a new link built to the south. Now, the applicant is saying that was never a promise, just a “voluntary” idea outside this review!

It was bad enough that the proposed south replacement link was not a good replacement (per previous testimony by me and others). Now we (actually “I” since nobody else among the public--even those who read the entire application and attended the hearing--knows about this unless they came in and read the new rebuttal testimony) find out that even this poor substitute link is not really being proposed, just being “explored” as an idea.

The trail comments also state that the closure of the access road and short trail link are necessary because of the Garden’s plans to fence off the entire portion of the park. But only slight fencing modifications and creation of a short link to Kingston from the lower portion of the access road would allow public use of the road and trail link--day or night--without interfering with the Garden’s expansion of area beyond its “control point”, and no mixing of the trail users with paid Garden visitors. In fact, that trail link would be much shorter than the one (sort of) proposed south of the Garden.

p.8 (Bookin) and p. 4 (Kittelsohn info attached to Bookin transmittal): Dismissal of all concerns about traffic and parking: There are several comments dismissing concerns by neighbors and others about traffic and parking within the park and on surrounding streets.

On p. 8, Bookin states that the on-street parking is “not owned by the neighbors...”. Nobody ever claimed it was, and the approval criteria deal with impacts on on-street parking, with the full knowledge that it is public, not private.

On p. 4 of its report included in the transmittal, Kittelson dismisses all testimony related to traffic and parking issues, and all comments criticizing its report. Either the criticisms and concerns are “opinions” or “misunderstandings” or there was “no new evidence” to support any criticisms or concerns, or (elsewhere beyond p. 4) no “technical analysis”.

Certainly the applicant is free to ignore criticisms and concerns. But if any criticisms or concerns are valid--I believe many are--then the application should be denied, because it is the applicant’s burden of proof to show compliance with the approval criteria, and not the opponents burden to hire a traffic engineer and submit its own a ‘technical analysis’ to prove the applicants wrong.

There are further problems with the applicant’s stance. First, it is irrelevant what credentials anyone criticizing its report has.

Second, the criticisms of the earlier Kittelson report mentioned basic factual errors, conflicts (i.e. using one growth rate here, another there) etc. that take no special knowledge to see. The whole report can be undermined by criticisms well before any

technical analysis or special knowledge is needed. If Kittelson wants opponents to limit their criticisms to “technical analysis” then it should make mistakes complex enough that they aren’t easily evident to attorneys or the general public.

Third, Kittelson’s attitude seems to be that actual observation by actual people who’ve actually observed traffic and parking issues over the years (and have submitted actual photos of actual problems) is “opinion”, and all that counts is their own technical work, much of which consisted of counting cars and parking spaces in the winter, and making projections on what will happen in the summer, backed up in large part by relying on a study done in another country with no evidence that its context or findings are relevant to this review.

Fourth, by Kittelson’s logic, the Hearings Officer would have no way to evaluate the traffic or parking issues, because he is only an attorney, not a traffic engineer.

Fifth, by Kittelson’s logic, there should be no comment allowed at hearings in regard to traffic or parking unless it was made in the form of “technical analysis” and probably only by a traffic engineer. Public observations, photos, etc. are just “opinion”.

Fifth, the bulk of the Kittelson arguments rely on showing that at the times opponents claim there is traffic congestion and parking shortages, there are still empty parking spaces within the parking lot and neighborhood. But that doesn’t mean the problems aren’t there, it just means the solution may be easier. And empty spaces really are irrelevant if people are not using them due to their being unnoticed, too far away, or any other reason.

Sixth, a major Kittelson argument in the new information is that many Garden visitors are not coming to the park exclusively to use the Garden, so that means their traffic and parking somehow “doesn’t count”. That’s dumb. It’s similar to Kittelson’s earlier argument that the park shuttle’s existence means that all spaces in the park (say near the Zoo) are available to Garden visitors, without understanding that it also means the spaces near the Garden are equally available to Zoo patrons.

Seventh, the new information in the transmittal also includes the argument that even if there are parking or traffic shortages, it’s irrelevant because the opponents can’t prove that those are a result of Japanese Garden traffic. But again, it’s not the opponent’s burden to prove that it is, it’s the applicant’s burden to prove that it isn’t.

Mr. Frank, since this is my last communication with you, I want to stress that one of my main objections to the testimony submitted in this review subsequent to the hearing is that it includes not just additional information about the proposal and its impacts, but major changes to the proposal itself. And those changes are areas of key concern to me and others.

One example noted above in the increase in area and change in design of the

Administration Building. Based on the information available to me (from reviewing the file in this final week) the information submitted conflicts with itself as how much the increase is, where it occurs, and what's inside it, and there are no drawings that give any real answers to these questions.

Another is that the June 13th transmittal is the first place I've seen the new south trail replacement link described as just an idea, versus something that was actually being proposed to happen. I do know it's been promised to many people by Parks and the applicants as something that would definitely be built. As mentioned above, it was a poor substitute, but at least it was something. Since you know yourself that the applicant hasn't promised it, please evaluate the trail issue with that knowledge in mind (i.e. that nothing is being offered as a substitute of the access road and existing short link trail are closed).

I wouldn't be surprised if the only members of the public to know about these examples are me and the one or two other people I've mentioned them to. That's not how this process is supposed to work. With the earlier notification problems, and these last-minute changes, the applicant has turned this into a scramble to uncover information about the true proposal before time runs out.

Respectfully submitted,

Dowd Architecture Inc.

Michael Dowd, President

My name is Michael Wallace. I live at 3213 SW Upper Cascade Drive, about 20 minutes' walk from the Japanese Garden. I love going to the garden, but I am opposed to its expansion.

First, the Garden area. The Japanese Garden proposes to increase its area by nearly 40% by acquiring 3.5 acres of public property, closing a public road and a popular walking trail to both the Japanese Garden and the Rose Garden, increasing vehicle traffic and congestion, and paying nothing for it. Nothing. That is not right. Should a private organization be allowed to take and fence off 3.5 acres of public space for nothing?

Second, the lease expansion. The Hearings Officer overstepped his authority in approving the lease expansion. The application is about developing an Open Space Zone, not about the lease.

Third, public notification. The application for this acquisition was noticed to only 80 households, and ignored more than 200 households that will be directly affected. This application is about developing public parkland, a valuable public resource for the City of Portland, so it is critical to follow the rules on public notification.

Fourth, the buildings. The application grossly understates the size of the more than 25,000 sq ft of planned buildings, two of which are three stories tall, like the Forestry Center. ~~The glass buildings are not bird safe, and will be death traps for birds.~~ The new buildings do not benefit the general public, but are designed primarily to increase revenue.

Fifth, the Master Plan. Developing the trail that links the Rose Garden and Japanese Garden with Washington Park is a key part of Portland's Master Plan. The Japanese Garden lease requires that it uphold and support the Master Plan. This land use application completely ignores the Master Plan, and the principles on which it is based. As an example of good land use and public stewardship, the Garden must follow and uphold the Master Plan.

Finally, a private organization. The Japanese Garden is a private non-profit organization. It was allowed to develop an authentic Japanese Garden on public parkland for public benefit. The Garden is a valuable asset to the City of Portland, but it should not be allowed to expand its private use area at public expense, and close popular public roads and trails, without informing concerned and affected citizens.

Public space is valuable to Portland residents, and as the city grows this open space will take on more value. Rather than allow a private organization to consume more public space, Washington Park should continue to exist for everyone as a public benefit. The residents who are most in need of open space are the least likely to pay to visit an expanded Japanese Garden.

Who is the Garden for? Who is public parkland for?

This application has not followed proper procedures, and the appeal should be upheld.

Thank you.



Moore-Love, Karla

From: Commissioner Fritz
Sent: Thursday, August 28, 2014 12:43 PM
To: Moore-Love, Karla
Subject: FW: Japanese Garden Expansion LU14-122172 CU EN
Attachments: Japanese Garden Development.doc

Amanda Fritz
Commissioner, City of Portland

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-----Original Message-----

From: Mitch Gilbert & Margie Kircher [mailto:marmitch@comcast.net]
Sent: Wednesday, August 27, 2014 11:46 PM
To: Commissioner Fritz; Commissioner Fish; Hales, Mayor; Commissioner Novick; Commissioner Saltzman
Subject: Japanese Garden Expansion LU14-122172 CU EN

Please see attached letter for hearing on Thursday, August 28th, 2014.

August 27, 2014

Portland City Council
Portland, Oregon

RE: Japanese Garden Expansion
#LU14-122172 CU EN

Dear City Council members:

First let me say how much my wife and I enjoy the Japanese Garden. We live only a few blocks from the garden and have been members off and on for many years. We always walk to the garden along the Wildwood Trail and down the path to the entry gate. It makes for a very nice walk.

We just discovered that the Japanese Garden is planning on closing that path off, along with a large development at the top of the shuttle road. Since we live so close to the garden and go there often, we were surprised we were not notified of the hearings regarding this proposed project. I ran into a neighbor on the trail last week and was invited to a discussion about the project.

I am an architect here in Portland and have had to go through several land use processes myself. I know the city has a process which is supposed to allow the neighbors a chance to review the proposed plans as well as the design solutions. From what I understand, there were only a few neighbors notified which seems negligent since so many people visit the Japanese Garden and will be affected by this project. We just went through an extensive process for the covering of the reservoirs.

We are concerned that the scope of the project is too grand and will change the character of the Japanese Garden to a more commercial feeling facility. We think the beauty of the garden is the scale and serenity it offers. We want the garden to be a success, but do not believe the city should give more land to a private enterprise so they can raise more money by having more and larger events. I do think a small tea house would be a nice addition for the visitors.

As much as I admire THA, I think the building design should be in character with the garden architecture. From the site plan it looks like the buildings are quite large and of modern materials. While I like modern materials and dislike design review, I do think the scale is a big concern.

At the meeting with the neighbors we discussed the possibility of having a funicular bring the guests up from the parking area by the Rose Garden. It seems like that would reduce the need for much of the work, and expense, of widening the road and excavating out so much new area. It would also allow the expansion into new public land to be eliminated

or at least reduced. If they don't build all the big new buildings, that would save a lot of expense, too, and there would not need to be so many more visitors to pay for it.

Please delay the approval of this project and get the entire neighborhood involved before giving up more public land for a private, all be it non-profit, enterprise. Thank you for your consideration.

Sincerely,

Mitch Gilbert and Marjorie Kircher
3023 SW Cascade Drive

Moore-Love, Karla

From: Commissioner Fritz
Sent: Thursday, August 28, 2014 12:43 PM
To: Mitch Gilbert & Margie Kircher
Cc: Moore-Love, Karla
Subject: RE: Japanese Garden Expansion LU14-122172 CU EN

Dear Mitch and Margie,

Thank you for your message. I will keep your comments in mind at the hearing this afternoon.

Amanda

Amanda Fritz
Commissioner, City of Portland

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-----Original Message-----

From: Mitch Gilbert & Margie Kircher [mailto:marmitch@comcast.net]
Sent: Wednesday, August 27, 2014 11:46 PM
To: Commissioner Fritz; Commissioner Fish; Hales, Mayor; Commissioner Novick; Commissioner Saltzman
Subject: Japanese Garden Expansion LU14-122172 CU EN

Please see attached letter for hearing on Thursday, August 28th, 2014.

Moore-Love, Karla

From: Commissioner Fritz
Sent: Thursday, August 28, 2014 12:41 PM
To: Moore-Love, Karla
Subject: FW: LU 14-122172 CU EN - Portland Japanese Garden expansion
Attachments: shna.response.LU 14-122172 CU EN.140827.pdf

Importance: High

Amanda Fritz
Commissioner, City of Portland

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From: D Malcolm [mailto:dmall.shna@comcast.net]
Sent: Wednesday, August 27, 2014 7:23 PM
To: Hales, Mayor; Commissioner Fish; Commissioner Fritz; Commissioner Novick; Commissioner Saltzman
Subject: LU 14-122172 CU EN - Portland Japanese Garden expansion
Importance: High

Dear Mayor Hales and Commissioners:
Please see the attached letter from Sylvan-Highlands Neighborhood Association. Thank you.
Sincerely,
Dave Malcolm
SHNA Director



Sylvan-Highlands Neighborhood Association
c/o Neighbors West-Northwest Coalition
2257 NW Raleigh St.
Portland, OR 97210
503-823-4288, fax 503-223-5308
<http://www.sylvanhighlands.org>

August 27, 2014

Via email to: mayorhales@portlandoregon.gov, nick@portlandoregon.gov, amanda@portlandoregon.gov,
novick@portlandoregon.gov and dan@portlandoregon.gov

Mayor Hales and Commissioners Fish, Fritz, Novick and Saltzman

RE: LU 14-122172 CU EN (Portland Japanese Garden expansion)

Dear Mayor Hales and Commissioners:

Sylvan-Highlands Neighborhood Association ("SHNA") writes in support of the appeals made by Arlington Heights Neighborhood Association and Hilary Mackenzie regarding the Portland Japanese Garden ("PJG") expansion and LU 14-122172 CU EN (collectively, "this matter").

First, SHNA fully supports both appeals and all points raised therein.

Second, SHNA is particularly concerned with the absence of a broad public process in this matter. Transparency, open communication, public knowledge and public input are all the more critical due to the major impact this matter will have on Washington Park and its use, access, traffic and environmental impacts. This matter has been conducted with minimal public input and a constricted public process.

SHNA requests you act as good stewards of Portland's parks – especially Washington Park, Portland's crown jewel. A thorough process of communication and public input is necessary, as well as full geotechnical, environmental and traffic analysis. Public input should be solicited via mechanisms such as open houses and online forums. Ultimately, this matter and any PJG expansion should be incorporated into a new Washington Park Master Plan ("WPMP").

In summary, SHNA respectfully requests that the City Council (a) grant the appeals and (b) make as condition of approval that this matter be integrated into a new, revised WPMP.

Sincerely,

SHNA Board of Directors

Moore-Love, Karla

From: Christie Galen <christiegalen@gmail.com>
Sent: Thursday, August 28, 2014 10:33 AM
To: Moore-Love, Karla
Subject: LU 14-122172 CU EN Japanese Garden Expansion
Attachments: Galen_Testimony_LU14-122172_Appeal_27Aug14.pdf

Dear Karla, Council Clerk,

I'm attaching my comments supporting the appeals to the Hearings Officer's decision of approval of the proposed Japanese Garden expansion.

Please let me know that you've received this.

Thank you,
Christie Galen
2732 SW Fairview Blvd.
christiegalen@gmail.com

City Council
1221 SW Fourth Avenue, Council Chambers
Portland, OR

August 27, 2014

RE: LU 14-122172 CU EN Japanese Garden Expansion Appeal

Dear City Council Members,

This letter supports an appeal of the Hearings Officer's decision allowing the expansion of the Japanese Garden to increase the building inventory from the current 8,330 gross square feet (gsf) to 19,670 gsf, impacting 1.59 acres of public park, and removing 50 native trees. I live at 2732 SW Fairview Blvd, and our property abuts the Japanese Garden access road. While I appreciate the beauty of the Japanese Garden and the cultural experience it provides, I believe the magnitude of the proposed development is too large for the site and will diminish the natural quality of Washington Park.

I'm an environmental consultant with over 25 years experience. I've conducted Goal 5 Inventories for jurisdictions in the Metro area identifying natural resources and evaluating their significance. I've written numerous Environmental Reviews for residential and institutional development projects including Lewis & Clark College and Oregon Health Sciences University. For both Lewis & Clark College and OHSU, New Master Plans were required by the City to be approved prior to any development applications due to the size of the properties and their location in an Environmental Zone.

1. Washington Park Master Plan should be followed or updated prior to any proposed development (33.815.100 D).

The Japanese Garden is part of a large public land holding (Washington Park, >500 acres). The proposed Japanese Garden project is not small; it includes massive excavation (14,740 cubic yards is equivalent to an 11-foot deep hole with the footprint of the Portland Building). The City of Portland Bureau of Parks and Recreation needs to follow the same rules that the City imposes on other large property owners. The 1981 Washington Park Master Plan should be followed or updated before any development is allowed in the Park. This would allow public input and would provide a public vision. The current Master Plan states "that future plans or modifications are to be reviewed by the proposed Washington Park Advisory Committee prior to formal public review." The Japanese Garden has not submitted their plans to an Advisory Committee because there isn't one or to a formal public review; with the exception of immediate neighbors, there was no notification to the broader public. The Master Plan also does not allow additional structures beyond those in place and states that "no other structures are planned since the instability of the land is conducive to only small-scale, passive, recreational uses (p. 56, Master Plan)." Nothing has changed; the land is still unstable.

2. Public Notice was insufficient (33.730.030 & 33.815.100 B).

There has not been sufficient public notice regarding the project and the proposed closing of the access road and "spur" trail to public access, nor sufficient opportunity for the public to provide comments to the City. Public access on the road and "spur" trail pre-dates the Japanese Garden (pers. com. Doris Avshalomov, resident since the 50's). It is a very popular route in the

Washington Park trail system for neighborhood residents as well as the general public; it's regularly used by walking clubs, people walking dogs, and people walking down from the Arboretum. Most users of this trail will be completely taken by surprise when the road is closed. The Japanese Garden and Portland Parks and Recreation should be required to provide city-wide notice of this change, provide opportunity for public comment, and then factor public comments into the decision whether or not to allow the Japanese Garden exclusive use of a well-established public right of way.

3. The proposed mitigation for wildlife habitat (forest) impacts is inadequate because the proposed mitigation areas are mostly already forested. Environmental review Approval Criteria require that *"33.430.250 A.1.c.E.4. the mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for."*

The Japanese Garden proposes to plant trees on-site but there is no description of the existing habitat in the areas proposed for mitigation planting. Consequently, I walked a portion of the mitigation area including the access road and the trail to the Japanese Garden and found that the location of the proposed mitigation in these areas is in closed multilayered canopy forest habitat or on a steep nearly-vertical slope adjacent to the access road where a recent landslide occurred. It does not make ecological sense to plant the number of proposed trees in an existing forest that already consists of more than 80% tree cover; it also would be impractical to plant a nearly vertical slope. If additional trees are planted in the forest, they will be too crowded and most will not survive; planting additional trees in these settings will not improve wildlife habitat or groundwater retention functions.

The Gardens's consultant (Hagerman) stated that the proposed mitigation follows the requirements of Option B in Table 430-3 of City code. I agree that it follows code. However, it disregards the condition of the forest where proposed mitigation will occur. Functionally, forest habitat where mitigation plantings are proposed already has a multi-layered structure. New plantings of shrubs, wildflowers, and ferns could survive in some areas after removal of English ivy and laurel but most plantings, especially trees, should occur elsewhere on public park property. The proposed plan does not meaningfully mitigate for the loss of forest habitat and will result in a net loss of 0.5 acre of native forest.

Additionally, the staff report recommends that all English ivy, laurel, and other invasive species should be removed from the "project area". Since project design is dependent upon a new lease boundary that will be fenced, the area of the new lease should be defined as the "project area" and invasive species should be removed from the entire lease area. Although the Japanese Garden has leased property from the city for decades, they have never controlled invasive species outside of their formal garden area. If the city is allowing the Japanese Garden to use public property, the Garden needs to markedly improve their land stewardship and control/remove all invasive plants.

4. The application fails to seriously address alternatives to the proposed development in order to reduce the detrimental impact on the site. The approval criteria state:

(2) Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the

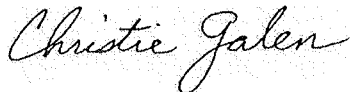
identified resources and functional values of the site; and
(3) Determination of the alternative that best meets the applicable approval criteria and identify significant detrimental impacts that are unavoidable.

The Japanese Garden limited its evaluation to three alternatives located in Washington Park but ignored using the Forestry Center or other existing buildings for class activities in the Park and 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. The Garden states that a satellite location is not a suitable option from an “operational perspective” but fails to provide any justification whatsoever for this statement; permanently impacting forest habitat on public park land for convenience should not be acceptable. There is no reason given why some of the proposed activities could not be held off site; off site alternatives would avoid detrimental impacts to significant natural resources and would help mitigate neighborhood livability issues of traffic, parking, and congestion.

The Japanese Garden calendar posted on its web site includes all of its annual activities. Most of these are non-garden related, including meetings, lectures and exhibits (weaving, music, prints, lacquer, calligraphy, sculpture, Ikebana, bonsai), workshops (bonsai, Kadomatsu) and some festivals (doll, star). These could easily occur in a variety of off-Garden locations. The Garden related events happen less frequently, and include hands on gardening techniques, such as pruning (Japanese maple, pine), as well as workshops on bamboo fencing and stone paving; they also include the tea ceremony and some festivals (O-tsukimi moon viewing and O-bon spirit festival). These activities should occur on site.

5. The Japanese Garden plans to install a fence along the access road to provide security and provide a screen from neighbors on Fairview. Garden representatives indicated that the fence would be set back from the property line to allow planting of native vegetation on the private residence side of the fence to shield residences from the fence. Our property comes close to the access road and due to the curve in the road adjacent to our property, the road will be widened to provide fire truck access. The landscape mitigation figure that was sent to us (Fig.III-12G) shows mitigation plantings all along the fence behind our house; however, when I reviewed the project file a couple of days ago, Fig. III-12G no longer showed plantings adjacent to our property to screen the fence. This concerns us as we prefer to look at green space and not fencing. I would like confirmation that it will be planted with native species like the other Fairview Blvd. properties.

Respectfully,



Christie Galen
2732 SW Fairview Blvd.
(christiegalen@gmail.com)

Moore-Love, Karla

From: Stu Levy <drzone@ipinc.net>
Sent: Wednesday, August 27, 2014 11:14 PM
To: Moore-Love, Karla
Subject: RE: LU 14-122172 Japanese Garden Expansion Application

To: City Council of Portland

1221 SW Fourth Avenue

Portland, OR 97204

Re: LU 14-122172 Japanese Garden Expansion Application

I have lived on SW Fairview Blvd. for 40 years. I have been a member of the Japanese Gardens for much of that time. I have walked the Wildwood trail frequently during those 40 years, including the so-called "Spur Trail" from the Wildwood Trail to the Japanese Gardens, (near the intersection of SW Fairview Blvd and SW Champlain Drive.)

For years there was an official city sign at the junction, labeled "Japanese Gardens", but the sign has disappeared within the past year or two

The attached map, Hoyt Arboretum, City of Portland, OR, Bureau of Parks and Recreation, shows this trail as a dotted line, indicating an established trail.

As such, I think the city is obligated to let the users of the City Parks, that is, the general citizenry, know about the closure of this popular trail with opportunity to comment, not just the adjacent homeowners such as myself.

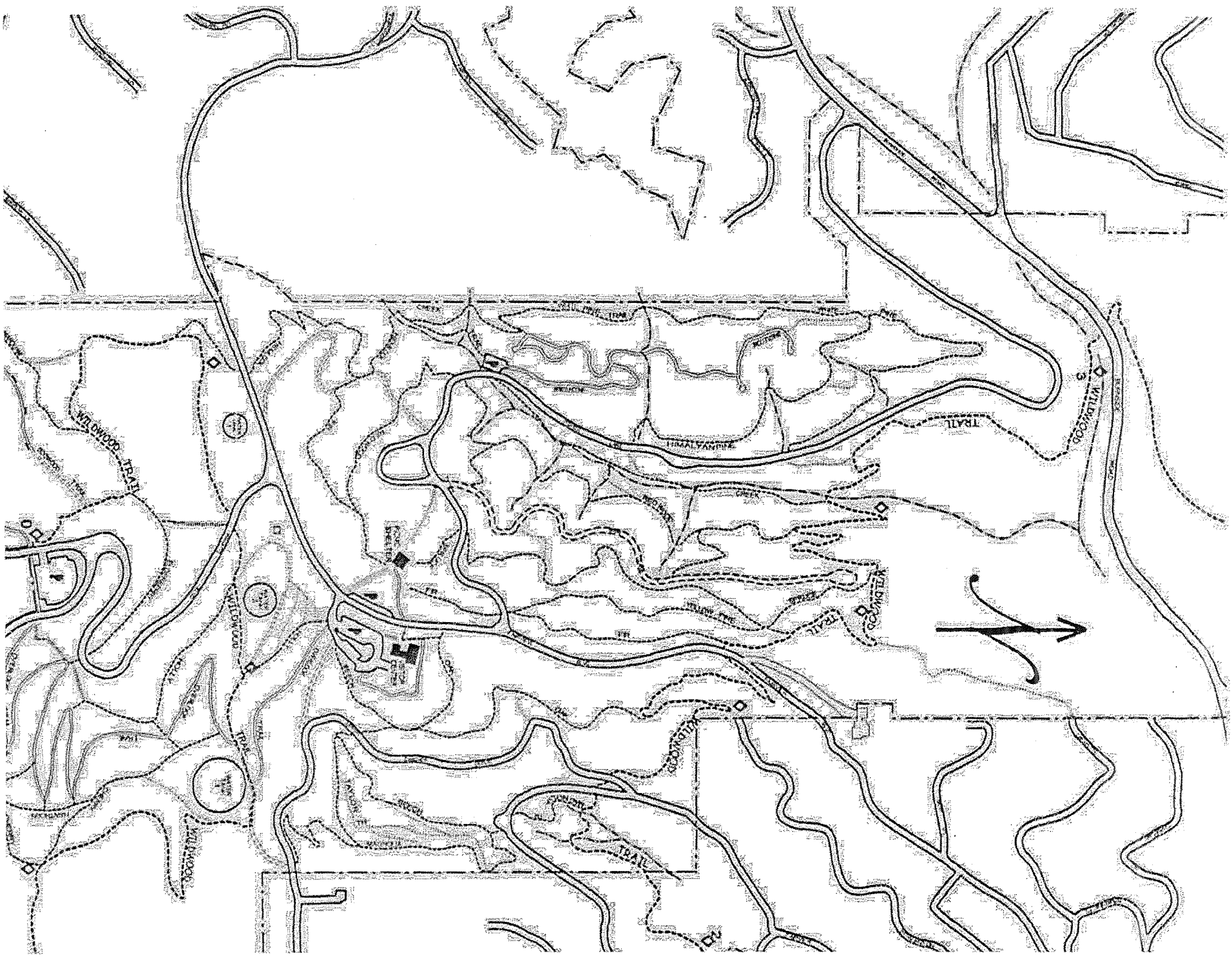
Any claim that this is not an "official" trail should be refuted by this map.

Sincerely,

Stu Levy

2740 SW Fairview Blvd.

Portland, OR 97205



Moore-Love, Karla

From: Commissioner Fritz
Sent: Monday, August 25, 2014 11:37 PM
To: Julie Blackman CTC
Cc: Moore-Love, Karla
Subject: RE: Expansion Plans of Portland Japanese Garden

Dear Julie,

Thank you for your message. Since the hearing before Council is a quasi-judicial matter, I am not allowed to comment on the substance of your email outside of the public meeting. I am copying the Council Clerk, so your opinion is included in the record for this case. Thank you for participating in the review.

Amanda

Amanda Fritz
Commissioner, City of Portland

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From: Julie Blackman CTC [mailto:jnblackman@yahoo.com]
Sent: Monday, August 25, 2014 9:22 PM
To: Commissioner Fritz
Subject: Expansion Plans of Portland Japanese Garden

Dear Commissioner Fritz:

I am writing to request that you reject the Japanese Garden's proposed expansion plans when the vote comes before the City Council this week.

I live within the Sylvan Highlands Neighborhood Association boundaries so am not a direct neighbor of this lovely space but am quite familiar with the area and the issues.

I am particularly concerned about the following issues:

- Closure of the connecting trail (which has been ruled not to be a trail - news to anyone who has spent much time in Hoyt Arboretum)
- Conversion of public property within Washington Park, open to all at no fee, to essentially private, fee-based usage, which seems to go against Portland's egalitarian spirit
- Extensive construction on an extremely sensitive, landslide prone hillside

- The impact on the surrounding residents

Sadly, the Portland Japanese Garden has made little effort to fully involve the neighbors in its plans and seems to take for granted its right to the land it seeks to convert. I really expect better of the Garden and hope that a 'no' vote by the Council, and particularly your vote as Parks Commissioner, will offer them the opportunity to go back to the drawing board and achieve a better outcome for all concerned, including the Garden.

Thank you for your thoughtful consideration of these concerns.

Sincerely,

Julie Blackman
4489 SW Fairview Circus
Portland, OR 97221

Moore-Love, Karla

From: Commissioner Fritz
Sent: Monday, August 25, 2014 9:38 AM
To: Brynn Graham
Cc: Moore-Love, Karla
Subject: RE: Japanese Garden Expansion Appeal

Dear Brynn and Tanith,

Thank you for your message. Since the hearing before Council is a quasi-judicial matter, I am not allowed to comment on the substance of your email outside of the public meeting. I am copying the Council Clerk, so your opinion is included in the record for this case. Thank you for participating in the review.

Amanda

Amanda Fritz
Commissioner, City of Portland

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-----Original Message-----

From: Brynn Graham [mailto:brynngraham@mac.com]
Sent: Sunday, August 24, 2014 8:05 PM
To: Commissioner Fritz; Commissioner Fish; Hales, Mayor; Commissioner Novick; Commissioner Saltzman
Subject: Japanese Garden Expansion Appeal

Dear City Council members,

We are writing to you in regards to the Japanese Garden expansion that we understand will be discussed at the Council hearing on 8/28/14.

We live in the Arlington Heights neighborhood, within several blocks of the Japanese Gardens. We have lived in this neighborhood for 25 years. We love our neighborhood and we are also fond of the Japanese Gardens. We appreciate all that the Washington Park area brings to Portland's tourist industry as well as what it offers to those of us who live here.

We ask that you take a VERY close look at this plan of expansion for the Japanese Gardens. Although it sounds like it would be "nice" to expand the Japanese Gardens, there are some crucial issues that should be considered:

1) THE TRANSFER OF 3 ACRES OF PUBLIC OPEN SPACE TO A PRIVATE ORGANIZATION - needs no explanation.

2) LACK OF PUBLIC NOTIFICATION & INVOLVEMENT IN THE PROCESS - this expansion plan calls for taking PUBLIC lands for PRIVATE use without adequate public notification and/or input. The only way we heard about this Expansion Plan was through word-of-mouth from concerned neighbors whose property directly

backs up to the trail that goes to the Japanese Gardens. We have since learned that less than 1/3 of the Arlington Heights neighborhood received notification of the Expansion Plan. This is NOT the appropriate way to handle something like this.....clearly a violation!! It appears that the Japanese Garden organization is trying to be 'sneaky' about their plans by attempting to push them through without proper public input. We ask that our neighborhood and other citizens who care be given the opportunity to give input to the project.

3) INCREASED ACTIVITY WITHIN AN ENVIRONMENTAL ZONE - this Expansion Plan calls for the removal of a great deal of soil on a very steep hillside (that backs up to a number of very nice homes) to give the Japanese Gardens the space they need to build their expansion and within an Environmental Zone. I question the geological integrity of that hillside to endure 30 dump trucks loads per day for 4 months!! What route will those dump trucks take to move that soil and how will that affect our neighborhood and our roads? Our streets are already very narrow and they are very popular with neighbors, tourists, and visitors alike. How will they handle day-to-day traffic issues as well as Tri-met buses and dump trucks? There are very few routes to get in and out of the Park.....which route will they take? Those of us who have lived in this neighborhood for a long time are well aware of the nightmare landslides that can occur, even on hillsides that have appeared to be intact for many years. There are numerous natural springs which run through the hills in Arlington Heights. When we (who live in Arlington Heights) want to build any sort of a retaining wall or expand our homes, we have to go through an engineering extravaganza even for the smallest project if it sits on the hillside.....I imagine the same concerns would/should exist for a project such as what the Japanese Gardens is proposing!

4) LACK OF DESIGN REVIEW - we have learned from our neighbor, Hillary McKenzie, who is a prominent architect in the Portland area, that there are ways to achieve all of the expansion that the Japanese Gardens wants to achieve without expanding its current boundaries by minimally redesigning the plan. This proposed plan (of Ms. McKenzie) keeps the Japanese Gardens within its current boundaries and gives them all of the new buildings + employee parking that they're asking for without moving any soil (or the expense of doing so). I ask you to please strongly consider the plans that she will be presenting to you 8/28 as it will alleviate a lot of the issues I am mentioning.

5) CLOSURE OF A MAIN PEDESTRIAN LINK IN WASHINGTON PARK - the current expansion plan actually DECREASES the size of the beautiful gardens themselves. It increases the property around the Japanese Gardens with an event building, a tea cafe, a maintenance building, and minimal employee parking. In addition, this new plan takes away some very popular and very loved walking trails (that are easy for most people to manage) because they exist within the property that the Japanese Gardens wants to take away from the public. They offer another trail, but apparently it's very steep for most people to manage and is inconveniently located a distance from the longer continuous and easily-connected path that most people take when walking through Washington Park from further down by the reservoir continuing up the Wildwood Trail through the Arboretum, and even on up to Pittock Mansion. This is a popular walk for many tourists and locals alike.....why mess it up? Arguably, the walking trails are just as popular (or nearly as popular) as the Japanese Gardens for tourists and locals alike.....let's try to keep them both intact.

6) this current plan does not increase the actual amount of parking for the public who will visit the Japanese Gardens. From what I understand, the existing expansion plan only gives a minimal number of employee parking spots up near the new buildings. The existing parking situation in that area of Washington Park will continue to be the parking for the public for any events, etc. that will occur in the newly built event center, cafe, etc. in addition to the International Rose Test Gardens, the Children's Play Park, the Zoo Train, etc. This will inevitably have its own issues, especially during the summer and early fall months, and will need to be addressed at some point.

We ask that you please reconsider the current Expansion Plan for the Japanese Garden. We want to make it clear that we are not opposed to improvements to the Japanese Gardens, but we are opposed to the current Expansion Plan.

Sincerely,

Brynn & Tanith Graham
2869 SW Champlain Drive
Portland 97205

Kelly S. Hossaini
kelly.hossaini@millernash.com
(503) 205-2332 direct line

August 15, 2014

AUDITOR 08/18/14 AM10:20

Portland City Council
c/o Council Clerk
1221 S.W. Fourth Avenue, Room 140
Portland, Oregon 97204

Subject: Appeal of LU 14-122172 CU EN

Dear Mayor Hales and Commissioners:

We represent the applicant, Portland Japanese Garden ("PJG") in the appeal of the above-referenced application (the "Application") by Arlington Heights Neighborhood Association ("AHNA") and Hilary Mackenzie. The purpose of this letter is to respond to two issues raised by AHNA and Ms. Mackenzie in their respective appeal narratives.

Issue 1. The notice area for the Application was incorrectly defined.

Response: The notice area for the Application has been correctly defined as PJG's leasehold. Pursuant to the Portland Development Code ("PDC" or the "Code") 33.730.030(D)(1), notice of the Application was sent to, among others, all property owners within 400 feet of PJG's 12.56-acre site within Washington Park. The 12.56-acre site represents the boundaries of PJG's leasehold under the Application. Opponents contend that the Application notice area should have included all property owners within 400 feet of the boundaries of the entire 400-acre Washington Park, because that represents the boundaries of Portland Parks & Recreation's entire ownership. Staff, the hearings officer, and PJG disagree. It would serve no practical purpose to define the notice area for PJG's 12.6-acre development site to include property owners that are literally miles from that development site and the Code certainly does not require it. PJG requests that Council make two interpretations of the Code to clarify this issue:

a. PJG requests that Council interpret the definition of "Ownership" under PDC 33.910 to include a leasehold interest. PDC 33.910, "Ownership," states in relevant part: "An ownership is one or more contiguous lots that are owned by the same person, partnership, association, or corporation." A leasehold interest meets the intent

Portland City Council
August 15, 2014
Page 2

of that definition, because a leasehold interest is an ownership interest and would define a person's, partnership's, association's or corporation's interest in a defined area, which would in turn be the subject of a development application.

b. PJG also requests that Council interpret its code to find the PJG leasehold also meets the definition of "Site," also as set forth in PDC 33.910. Specifically, the definition of "Site" in PDC 33.910 includes:

"[T]he site is an ownership except as follows:

* * *

"If a proposed development includes only a portion of an ownership, and there is other development on the ownership, then the application may choose to define the site as the portion of the ownership that is currently developed plus the portion proposed for development."

Issue 2. Temporary constructions impacts of the proposed conditional use were not properly addressed.

Response: Temporary construction impacts are not part of the "proposed use" for purposes of PDC 33.815.100. Through the Application, PJG requests conditional use approval and environmental review for several proposed uses within the Garden. These proposed uses include new administration building, a renovated parking lot, and a tea cafe. PDC 33.815.100 states that the approval criteria contained within it "apply to all conditional uses in the OS zone." AHNA contends that the PDC 33.815.100 approval criteria apply not only to conditional uses in the OS zone, but also to temporary construction impacts that may occur during the actual development of those conditional uses. There is no support in the Code for this interpretation of PDC 33.815.100.

Looking at Table 100-1, which lists "Open Space Zone Primary Uses," and Table 100-1's corresponding textual notations, nowhere is "temporary construction impacts" set out as a conditional use or even mentioned. Similarly, PDC 33.920 defines "proposed uses" for purposes of the Code and nowhere in that entire chapter is "temporary construction impacts" referred to or mentioned. Therefore, when PDC 33.815.100 requires a "proposed use" to meet certain approval criteria, that provision does not include within its scope the temporary impacts that may occur as a result of the actual construction of that proposed conditional use. Instead, that provision means literally what it says: impacts from the "proposed use" are reviewed.



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Page 3

Temporary construction impacts are addressed by other parts of the Portland City Code ("PCC"). For example, PCC 18.10.060 controls hours of operation and noise levels for construction activities. As well, PCC 10.30.020(A)(1) prohibits dirt from a construction site from being tracked onto roadways. It would make no sense to apply conditional use approval criteria to temporary construction impacts resulting from a proposed conditional use, when temporary construction impacts from other uses, including those permitted outright, would not have to undergo such scrutiny, even though they may be far more impactful on a neighborhood.

Further, even though the applicable approval criteria do not require it, PJG has committed to addressing construction impacts through a construction management plan, which PJG offered and agreed to as a condition of approval. Similarly, PJG has offered and agreed to provide a fence along the access road during construction to provide screening of construction activities from neighboring properties. As the hearings officer noted in his decision, the construction management plan that PJG has committed to, along with other proposed conditions of approval, generally address all of AHNA's concerns.

Thank you for your consideration of these issues.

Very truly yours,



Kelly S. Hossaini

cc: Mr. Steve Bloom



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August 13, 2014

VIA E-MAIL

Ms. Kathleen Stokes
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Portland, Oregon 97201

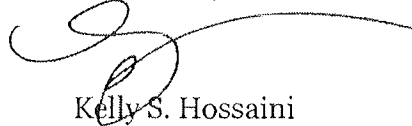
Subject: Casefile #LU 14-122172 CU EN

Dear Kathleen:

On behalf of the Portland Japanese Garden, I am writing to provide you with a second 120-day waiver to accommodate a decision by Portland City Council on appeal of the above-referenced application. Pursuant to your request, the 120-day waiver the Garden provided you with yesterday is rescinded and this waiver will take its place. The Garden is extending the 120-day period contained in ORS 227.178 to accommodate the Portland City Council decision. Specifically, the Garden is extending the 120-day period from Friday, August 29, 2014, which represents the 120th day, until Friday, September 12, 2014—a period of 14 days. The 120th day will now be September 12, 2014.

Please let me know if you have any questions.

Very truly yours,



Kelly S. Hossaini

cc: Mr. Stephen Bloom

CASE NO. LU14-122172
EXHIBIT I-7