



# CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Suite 613, Portland, Oregon 97204 ■ Mingus Mapps, Commissioner ■ Michael Jordan, Director

## Land Use Response

**Date:** April 18, 2023

**To:** Andrew Gulizia, BDS Land Use Services  
503-865-6714, Andrew.Gulizia@portlandoregon.gov

**From:** Ella Ruth, BES Systems Development  
503-823-8068, Ella.Ruth@portlandoregon.gov  
Marc Peters, BES Watershed Review

**Case File:** LU 22-185273

**Location:** 10625 SW 35TH AVE

**R#:** R330729, R330986

**Proposal:** HO HEARING: The applicant proposes improvements to the athletic facilities on the Jackson Middle School campus.

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The following comments are based on the land use review plans and documents provided to the Bureau of Environmental Services (BES). Some references to Portland City Code (PCC) are included below; the applicant may also refer to the Auditor's Office [Online Charter and Code page](#).

### A. RESPONSE SUMMARY

BES does not recommend approval of the Conditional Use due to insufficient information to show how the proposal complies with the public services approval criterion related to sanitary waste and stormwater disposal (PCC 33.815.100.B.3). Please see the following comments for more information.

### B. SANITARY SERVICE

*For the conditional use application to be approved, the applicant must show that the proposal complies with the public services approval criterion related to sanitary waste disposal (PCC 33.815.100.B.3). The comments below are in response to this criterion.*

1. *Existing Sanitary Infrastructure:* According to available GIS data, the following sewer infrastructure is located in the vicinity of the project site:
  - a. Public 8-inch CSP sanitary sewer in SW 35<sup>th</sup> Ave (BES as-built # 3374).
  - b. Public 8-inch CSP sanitary sewer in SW Dickinson (BES as-built # 3908).
  - c. Public 8-inch CSP sanitary sewer in SW 40<sup>th</sup> Ave (BES as-built # 3908).
  - d. Public 8-inch CSP sanitary sewer located within a public sewer easement running across the subject property (BES as-built #2648; Easement tracking ID 2717).
  - e. Public 8-inch CSP sanitary sewer in SW Alfred St. (BES as-built # 2755).
2. *Service Availability:* Sanitary connections from private property that are to be permitted according to PCC 17.32.090 must be separately conveyed to the property line and connected through individual laterals to a City sanitary or combined sewer. All discharge must be connected via a route of service approved by the BES Chief Engineer.
  - a. *Proposed Development:* The proposed development does not appear to include any new connections to the public sewer.

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3. *Sewer Easements and Encroachments*: A 10-foot sewer easement granted to the City of Portland exists over the public sanitary sewer that runs across this site. The sewer easement grants certain rights to the City of Portland related to constructing, maintaining, and/or accessing public sewer infrastructure. Features or activities that would interfere with the City's granted rights are considered unauthorized encroachments. In evaluating a proposed encroachment, administrative rule ENB-4.07 establishes that BES "will balance the need for the encroachment against the repair and maintenance needs of that sewer." Examples of features or activities that may be limited or prohibited, depending on the easement, include building construction, utility installation or maintenance, material storage, grading, fence installation, and tree planting. BES staff review for possible easement encroachments as authorized by PCC 17.32.040.B during land use and/or building permit review. BES may deny a request to encroach, approve the request, or approve the request with conditions. If the encroachment is approved, the City will obtain an executed and recorded encroachment agreement with the property owner to satisfy the authorization
  - a. **10-foot sewer easement and 8-inch sewer main**: BES requires additional information to confirm that the 8-inch sanitary sewer main will not be negatively impacted by the proposed development. Note that this pipe serves the school and hundreds of upstream properties. Based on the proposal, additional measures will be required to ensure that BES can continue to access the pipe and that the development proposal will not adversely impact the pipe.
    - 1) **The following items must be addressed for BES to recommend approval of the Conditional Use Review**:
      - (1) The submitted site plans do not show the public sewer easement or the complete alignment of the sewer main. Please update the site plans to include all BES assets and easements relative to the proposed development.
      - (2) The proposed stormwater rock storage around the perimeter of the phase one soccer field is proposed to cross over the sanitary sewer main. BES has concerns about the weight of the rock above the sewer main and the ability to conduct repairs through the rock. Prior to recommending approval of the conditional use review, the applicant must provide a cross section and calculations demonstrating that the rock will not impact the integrity of the pipe, and that it will not interfere with routine or emergency maintenance of the pipe. Alternatively, the applicant could propose a different approach to stormwater management that does not include the 30-inch depth of rock storage over the sanitary sewer main.
    - 2) **The following items will be required prior to building permit issuance**:
      - (1) Necessary evaluation and improvements must be done through a Public Works Permit (PWP). Through the PWP the applicant will be required to adjust maintenance holes to the new grade and provide access to the maintenance holes through the turf. Calculation evaluating differential settlement and anticipated fill weight must also be submitted through the PWP. Note that based on the calculations, the applicant may be required to make improvements which could consist of lining, repairing, or replacing the pipe. Prior to building permit issuance, the applicant must obtain 30% concept approval for all necessary work on the pipe and maintenance holes.
      - (2) Prior to building permit issuance, the applicant must receive BES approval of an encroachment agreement for the building proposed over the pipe and within the public sewer easement. Alternatively, the applicant could propose not to place the building over the easement.
4. *Connection Requirements*: Connections to the City sewer system must meet the standards of the City of Portland's [Sewer and Drainage Facilities Design Manual](#), [PCC 17.32.090](#), administrative rules [ENB-4.07](#) and [ENB-4.17](#), and all other relevant City codes and rules.

Sanitary sewage from private property must be separately conveyed to the property line and connected through individual laterals for discharge to the City separate sanitary or combined sewer. Per [ENB-4.07](#), sewer connection permits are required to make new connections to City mains and laterals, relocate or upsize existing laterals, and repair sewers in City right-of-way. The permittee is responsible for verifying the location, depth and size of an existing sewer lateral and for ensuring the lateral is clear of obstructions prior to connection.

Prior to issuing a recommendation of approval of the application BES requires additional information as described above.

### **C. STORMWATER MANAGEMENT**

*For the conditional use application to be approved, the applicant must show that the proposal complies with the public services approval criterion related to stormwater disposal (PCC 33.815.100.B.3). The comments below are in response to this criterion.*

1. *Existing Stormwater Infrastructure:* According to available GIS data, the following stormwater infrastructure is located in the vicinity of the project site:
  - a. Public 18-inch CSP storm sewer in SW Alfred (BES as-built # 2942).
  - b. Public 12-inch CSP storm sewer in SW 40<sup>th</sup> Ave (BES as-built # 2942).
  - c. Public 12-inch CSP storm sewer in SW 35<sup>th</sup> Ave (BES as-built # 4025).
  - d. 36-inch CSP PPS-owned storm sewer running across the subject property. This pipe contains the flow of Falling Creek across the property. Please note that this pipe is in very poor condition. BES recommends a robust analysis of the pipe condition prior to construction to confirm that the pipe will continue to convey upstream flow.
  - e. Currently, stormwater from the public right-of-way discharges to existing storm only infrastructure.
2. *Sewer Easements and Encroachments:* A storm sewer easement granted to the City of Portland exists over the inlet where Falling Creek enters the private storm pipe on the PPS property. The sewer easement grants certain rights to the City of Portland related to constructing, maintaining, and/or accessing public sewer infrastructure. Features or activities that would interfere with the City's granted rights are considered unauthorized encroachments. In evaluating a proposed encroachment, administrative rule ENB-4.07 establishes that BES "will balance the need for the encroachment against the repair and maintenance needs of that sewer." Examples of features or activities that may be limited or prohibited, depending on the easement, include building construction, utility installation or maintenance, material storage, grading, fence installation, and tree planting. BES staff review for possible easement encroachments as authorized by PCC 17.32.040.B during land use and/or building permit review. BES may deny a request to encroach, approve the request, or approve the request with conditions. If the encroachment is approved, the City will obtain an executed and recorded encroachment agreement with the property owner to satisfy the authorization.
3. *General Stormwater Management Requirements:* Development and redevelopment sites that include any of the triggers listed in PCC 17.38.040 are subject to the policies and standards of PCC 17.38.035, Portland's [Stormwater Management Manual](#) (SWMM) and [Source Control Manual](#) (SCM). Projects must comply with the current adopted version of the SWMM as of the permit application date. A fundamental evaluation factor in the SWMM is the Stormwater Infiltration and Discharge Hierarchy (Section 1.3.3), which sets the framework that will be used to determine when a project's stormwater runoff must be infiltrated onsite and when offsite discharge will be permitted, and the parameters that must be met for either scenario. If tested infiltration rates on a property are greater than or equal to 2 inches per hour, onsite infiltration will be required unless the site qualifies for the ecoroof

exception per Section 3.2.1 or infiltration is determined infeasible based on site conditions described in Chapter 2 of the SWMM. Note that maximum building coverage allowed by the zoning code, including below grade development, does not exempt the applicant from stormwater requirements. Pollution reduction and flow control requirements must be met using vegetated facilities to the maximum extent feasible, though roof runoff and some paved impervious surfaces are exempt when discharging directly to a UIC (refer to Sections 1.3.2, 1.3.4, 3.2.4 and 4.2.2 of the SWMM).

4. *Private Property Stormwater Management:* Stormwater runoff from this project must comply with all applicable standards of the SWMM and SCM and be conveyed to a discharge point along a route of service approved by the BES Director or the Director's designee. **BES has received incomplete information regarding the project's stormwater management plan.** Staff reviewed the submitted stormwater report from McKenzie (2/27/23) and geotechnical report from Pali Consulting (10/24/22). The submitted infiltration testing report includes Open Pit infiltration test results of 0-1 inches per hour on this site. Based on poor infiltration rates the applicant proposes for runoff from the development to be discharged offsite to the private storm sewer that runs across the property and conveys Falling Creek.
  - a. **Phase 1 Turf Field:** The applicant proposes to meet pollution reduction and flow and volume control standards with underdrains and rock storage conveyed to a flow control manhole, followed by water quality cartridges. Rock storage is not a typical approach for stormwater detention, and it is unclear how the rock storage will function over time; for example, if/when sediment fills the rock voids, or the flow control manhole backs up. Further, as discussed above, BES has concerns about the weight of the rocks over the existing sanitary sewer main. In order to meet the public services approval criterion related to stormwater disposal, the applicant must update the stormwater report to address these issues and demonstrate that there is a feasible stormwater management plan that can accommodate the proposed development.
  - b. **Phase 1 Building, Parking Lot and Walkways:** The submitted stormwater report doesn't address how stormwater will be managed from the proposed building, walkways and parking lot. In order to meet the public services approval criterion related to stormwater disposal, the applicant must update the stormwater report demonstrate that there is a feasible stormwater management plan that can accommodate the proposed development.
  - c. **Phase 2 Development:** The submitted plans indicate a turf field and tennis courts proposed for phase 2 of the development. In order to meet the public services approval criterion related to stormwater disposal, the applicant must include the stormwater management plan for the turf field, tennis courts, and any other impervious area proposed for phase 2 of the development. Note that the proposed stormwater management should also consider impacts to the sanitary sewer that runs across the site and address that as needed in the narrative and calculations.
5. *Public Right-of-Way Stormwater Management:* Stormwater runoff from public right-of-way improvements as required by the City of Portland Bureau of Transportation (PBOT) must be managed according to the standards of the SWMM and the Sewer and Drainage Facilities Design Manual. There are no public right-of-way improvements that will trigger BES public stormwater drainage improvements.
6. *TMDL Requirements:* The majority of the project site is located in the Falling Creek subwatershed and a small portion in the southeast corner of the lot is in the Arnold Creek subwatershed of the Willamette River Watershed, where Oregon DEQ Total Maximum Daily Load (TMDL) water quality requirements apply. The SWMM requires that applicants use pollution reduction facilities that are capable of reducing TMDL pollutants. Vegetated facilities sized according to the Simplified or Presumptive Approaches meet these requirements.

Prior to issuing a recommendation of approval of the application BES requires additional information as described above.

#### **D. SITE CONSIDERATIONS**

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

1. *Drainageway Protection:* City records and the submitted plans indicate there is a drainageway on and near the subject site along the southern end of the property.
  - a. *Drainageway:* A drainageway is defined as a constructed or natural channel or depression that may at any time collect and convey water; it may be permanently or temporarily inundated. Depending on the capacity of the drainageway and size of the proposed development, the identified drainageway may serve as a disposal location for stormwater runoff from the project.
  - b. *Drainage Reserve:* Drainageways are protected by means of a drainage reserve except when the drainageway is adequately protected by an Environmental Protection overlay zone, another overlay zone that provides equivalent or better protection as determined by BES, or a tract (such as an Environmental Resource Tract) that equally or better meets the purpose of the drainage reserve, as determined by BES. Drainage reserves act as no-build areas and are intended to protect flow conveyance and water quality in both natural and constructed surface channels. Drainage reserves are typically delineated 15 feet from the centerline of the channel on both sides; however, a drainage reserve may be wider than 30 feet if needed to adequately protect the channel and bank. On this site, BES has determined that the drainage reserve must be delineated 15 feet from centerline. The applicant should refer to Chapter 5 of the SWMM for drainage reserve information and/or contact BES staff (identified above) for assistance. The submitted site plans show a 15-foot drainage reserve on the southern end of the site where Falling Creek enters into the private pipe on PPS property.

#### **E. CONDITIONS OF APPROVAL**

As discussed above, BES does not recommend approval of the application at this time. If the application is deemed approvable at a later date, the following conditions should be included in the final decision. This list may be revised based on subsequent submittals.

1. Through a Public Works Permit, the applicant is required to make improvements to the existing sanitary sewer main that runs across the subject property to support the proposed development. Prior to building permit issuance, the applicant must obtain 30% concept approval for the necessary work on the pipe as a result of the proposed development. The applicant must submit approved engineered plans, provide a financial guarantee, pay all outstanding fees, and provide a signed permit document.
2. There is a public sewer easement over the 8-inch sanitary sewer main that crosses the subject property. Prior to building permit issuance, the applicant must do one of the following:
  - a. Receive approval from BES for an encroachment agreement into the existing public sewer easement for any structures proposed over the easement; or
  - b. Locate proposed structures outside of the public sewer easement areas.

#### **F. PERMIT INFORMATION**

At the time of permit review the applicant should be aware of the following:

1. *Connection Fees:* Sewer system development charges and connection fees are assessed at the time of building plan review and change every fiscal year on July 1<sup>st</sup>. For additional

information on these fees use the [BDS Online Fee Estimator](#) or call the BES Development Review Team at 503-823-7761, option 2.

2. *Building Plans*: Building plans for this project must include a detailed site utility plan which shows proposed and existing sanitary connections, as well as stormwater management that meets the requirements of the version of the SWMM that is in effect at the time permit applications are submitted.
3. *Drainageway Protection*: At the time of permit review, the applicant will be required to include on the plan set all onsite drainageways and associated drainage reserves or tracts. The applicant should refer to Chapter 5 of the SWMM for information related to drainageway protection requirements that will apply at the time of permit review.
4. *Source Control Requirements*: Source control requirements from the [Source Control Manual](#) (SCM), [Portland City Code \(PCC\) Title 17](#), and [BES Administrative Rules](#) that may be applicable to this project are listed below with the corresponding chapter, section, code, and/or rule. For specific questions on the following, please contact BES Source Control at 503-823-7122.
  - a. *Site Use and Activity-Based Source Control Requirements (SCM Chapter 6)*: BES recommends the applicant review the following SCM sections to understand the structural, treatment, and operational BMP requirements that may impact the project design.
    - 1) *Waste and Recycling Storage (SCM Section 6.1)*
  - b. *Site Dewatering Requirements (SCM Chapter 9, [PCC 17.34](#), [PCC 17.36](#), [PCC 17.38](#), [PCC 17.39](#), [ENB 4.32](#))* BES evaluates requests for temporary and long-term stormwater and groundwater dewatering discharges into the city sewer system for approval or denial. See Appendix 1 of the SCM for the Construction Dewatering Discharge Application Form. If approved, a Discharge Permit for the storm or combined sewer may be required.
    - 1) Fees are assessed for temporary construction discharges to the public sewer system – navigate [HERE](#) for current rates and information about dewatering as it relates to [construction projects](#).
    - 2) Construction discharges to City UICs are prohibited.
    - 3) Construction discharges to private UICs (e.g., drywells or soakage trenches) must be authorized by DEQ's UIC Program.
    - 4) Groundwater levels at this location are relatively low. If the development is expected to reach this depth or encounters perched groundwater, additional requirements apply if long-term post-construction dewatering is needed. When using a private onsite facility to manage groundwater flows, the SWMM O&M Form and O&M Plan must be recorded with the County and submitted. A Notice of Conditions must also be recorded against the property deed.

#### **G. ADMINISTRATIVE REVIEW**

The applicant may request a modification of a decision presented in this response, as applicable, via an administrative review as outlined in PCC sections 17.06.050, 17.32.150, 17.33.100, 17.34.115, 17.36.110, 17.38.060 and 17.39.120 and in those sections' associated administrative rules. Some portions of this response are not decisions, but guidance related to requirements that this proposal may be subject to during City review of other processes, such as a building permit or public works permit review. While these are not decisions that are ripe to be considered through an administrative review, if the outcome of a future administrative review needs to be anticipated at this time in order to inform the land use action, the administrative review process may be utilized. Some items, such as technical standards, are not reviewable. For guidance on

whether a modification can be requested and whether the land use process is the proper time to request it, consult with the BES staff identified above prior to submitting a request.

There is no fee charged for an administrative review, and all BES penalties and late fees will be stayed pending the outcome of the review process, as applicable. To request an administrative review, the applicant must complete the Administrative Review Request Form (located here: [www.portlandoregon.gov/bes/68285](http://www.portlandoregon.gov/bes/68285)) and submit it to the Systems Development staff listed above within 20 business days of the mailing date of this response. The applicant should coordinate with the BDS planner to determine whether applying for an administrative review would have an impact on state-mandated land use timelines.