

Date: September 30, 2009

To: Interested Person

From: Kathy Harnden, Land Use Services 503-823-7834

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

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 09-107658 EN

GENERAL INFORMATION

Applicant:	Peter Karp Pli Systems 3045 SE 61st Ct Hillsboro, OR 97123	503-649-8111
Property Owners	Linn Properties LLC 270 Kanoelani St Hilo, HI 96720	
Site Address:	6045 SW Beaverton Hillsdale High	way
Legal Description:	LOT 7 TL 7200, B P CARDWELL TR; LOT 7&8 TL 7400, B P CARDWELL TR; LOT 7&8 TL 7300, B P CARDWELL TR; LOT 8 TL 8000, B P CARDWELL TR	
Tax Account No.: State ID No.:	R049501250, R049501300, R0495 1S1E18BB 07200, 1S1E18BB 07 08000	501310, R049501660 400, 1S1E18BB 07300, 1S1E18BB
Quarter Section:	3523	
Neighborhood: Business District:	Bridlemile, contact Karen Tabata a None	at 503-292-4377.
District Coalition:	Southwest Neighborhoods Inc., cor	ntact Leonard Gard at 503-823-4592.
Plan District: Other Designations:	None 100-year Floodplain and Floodway	
Zoning:	R2c – Residential 2 base zone with overlay	the Environmental Conservation (c)
Case Type: Procedure:	EN – Environmental Review Type II, an administrative decision	with appeal to the Hearings Officer.

Proposal:

The applicant proposes to stabilize a failed bank area on Fanno Creek. In 2007, Fanno Creek undercut the south bank on property owned by the Raleigh Court Apartments. The 20-foot long failure undermined an existing fence and ornamental shrubs, portions of which fell into the creek. An approximately 149-square foot area was impacted by the failure. The bank failure is also within nine feet of a private sanitary sewer line. The applicant proposes to remove the remaining slide debris, install a pin-pile wall at the top of bank to prevent additional sliding, and install riprap on the exposed bank to hold the remaining bank in place.

The mitigation plan is to remove invasive plants from the bank area fronting the property, from the east end of the slide to the west end of the property. This bank area, which will include the 30 linear feet of riprapped bank, will be planted with 130 plants, including 1 tree, 2 shrubs and 7 ground covers per 50 square feet (see figure 7 for additional details).

This bank stabilization proposal does not meet Standard 33.430.140.B.3, which states: "The disturbance area must be set back at least thirty feet from the centerline of any identified water bodies within a conservation zone except those within the Columbia Corridor." Therefore, an environmental review is required.

Relevant Approval Criteria:

To be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in:

33.430.250.E Other development in the Environmental Conservation zone or within the Transition Area only.

PUBLIC REVIEW COMMENTS

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on August 19, 2009.

- **1. Agency Review:** Bureaus and agencies responded with general concerns about this proposal. Site Development noted that additional information may be required at the time of building permit review and the Bureau of Environmental Services noted that the new bank should be planted with native willows. Exhibits E contain additional details.
- **2. Neighborhood Review:** Written responses have not been received from either the Neighborhood Association or notified property owners in response to the proposal.

SITE INFORMATION

Site and Vicinity: The site is located on Fanno Creek in southwest Portland off the Southwest Beaverton Hillsdale Highway. Fanno Creek is a "flashy" creek, i.e., it rises and falls quickly with rain storm events. At this site, Fanno Creek is flowing in a westerly direction and makes a slight curve to the north. At the center of the curve, the creek has eroded into a steep bank on private property, eroding the bank, undercutting a private fence and cutting into the lawn area of an apartment complex. During the summer months, creek flow is quite low at this site, being only a foot or two deep.

The surrounding area is highly developed with apartment complexes and paved surfaces, including parking lots, throughout the associated 100-year floodplain, with single family residences to the north. The upstream area is also highly developed and the creek has been channelized for a distance of approximately 0.2 mile just prior to the bank stabilization site.

Zoning: The <u>R2 zone</u> allows multi-dwelling residential development up to a maximum density of one unit per 2,000 square feet of site area, and requires a minimum density of one unit per 2,500 square feet of site area. The provisions of this zone allow this use; these provisions are

not specifically addressed through this Environmental Review. The provisions of this zone allow this use; these provisions are not specifically addressed through this Environmental Review.

<u>Environmental overlay zones</u> protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

Land Use History: City records indicate there are no prior land use reviews for this site.

Environmental Resources: The application of the environmental overlay zones is based on detailed studies that have been carried out within eight separate areas of the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these study areas.

The portion of the project site subject to this review is mapped within the *Fanno Creek and Tributaries Conservation Plan* as Site #125. Resources and functional values of concern on the project site include a significant perennial stream, fisheries, riparian vegetation, wildlife habitat and wildlife corridor. Site 125 contains riparian and upland vegetation, as well as invasive plant species, but the creek is deeply incised, and has been straightened and culverted in a number of places.

PROJECT ANALYSIS

<u>Project Proposal</u>: Fanno Creek has been eroding its south bank on this property for the past several years. During the winter of 2007, a large bank failure occurred on the south bank that undercut an existing fence and ornamental shrubs that had been installed along the top of the bank, and a 149 square-foot bank area collapsed into Fanno Creek. Portions of the fence and shrubs also fell into the creek. High water events since then have washed away most of the soil that went into the creek.

To remediate the bank failure, the applicants propose to install a pin-pile retaining wall composed of 9 H-piles along a 30-foot long section above top of bank. The piles will be 20 feet long and will be driven into the bank such that the ends are even with the ground surface. At the toe of the slope, a 3 to 5-foot deep trench will be excavated and backfilled with rock to prevent scouring and to restore the bank profile. Approximately 55 cubic yards of bank material will be removed from the bank above the trench and replaced with 55 cubic yards of 18 to 30-inch rock. The repair area on the creek bank will be approximately 215 square feet, which will be overlain with the riprap. The rocked area of the bank will vary in depth from about 2 feet at the top to about 7 feet at the bottom. The location of the trench will be outside the bed of the creek. The new slope will be regraded to the approximate bank grade that existed prior to failure, as estimated by the bank grades up and downstream of the site.

An earlier submittal located the pin pile wall within the bank failure area, and projected the bank clean up area and revetment into the creek bed. The applicants, in a subsequent submittal, moved the pin pile wall landward of the top of bank and of the slope failure area, thereby keeping the revetment out of the creek bed.

The applicant's site description states that there are "downed logs, snags and stumps" in the stream bed, as well as English ivy and Himalayan blackberry along the bank at the site.

In addition to stabilizing the bank, the project will also aid in protecting an existing 6-inch diameter PVC sanitary line that is approximately 9 feet from the edge of the slope failure.

Further, another apartment building, located approximately 35 feet downstream, could be endangered if the bank failure were allowed to continue.

An additional 660 square-foot area will be planted with native species to mitigate the hardening of 215 square feet of creek bank.

<u>Alternatives Analysis</u>: The applicant examined three different options for stabilizing the creek bank. The first alternative is the one selected by the applicant and described above.

The second alternative was to construct a "Rockery Slope" stabilization feature. This option would include a rock retaining wall that would be 14 feet high, and embedded 2 feet below the channel bed for scour protection. The rockery wall would be 30 feet long and the base of the wall would be at least 8 feet wide. The rock would be placed in at least 5 layers with very large boulders at the bottom. The volume of removed material would be approximately 80 cubic yards, about 30 yards more than the other options. The wall itself would require more space, would be more visible, and provides less opportunity for providing habitat functions than the preferred alternative.

The third option would use biotechnology to stabilize the stream bank. Again, the applicant would use rock at the toe of the slope to prevent scour and would place coir wrapped "pillows" and live cuttings on the upper portion of the bank. Approximately 40 cubic yards of soil would be removed and replaced. The proposal did not include large woody debris to deflect and dissipate energy from large storm events. The applicant stated that during flood events, the pillows and live stakes would be easily eroded by fast moving water. The applicant, a professional geotechnical engineer, stated that a biotechnical bank stabilization solution would not be appropriate for this site.

Engineers from the Site Development Section of the Bureau of Development Services reviewed the three alternatives and agreed with the applicants findings. However, Site Development noted that additional information regarding the bank restoration and retaining wall may be required at the time of building permit review. Site Development also acknowledged that the BES Watershed Group had preferred a more bioengineered approach and noted that such an approach would require additional information relating to scour, erosion potential, time to establishment, long-term performance as well as cost and maintenance requirements. BES, in turn, accepted the proposed pin pile wall stabilization plan, but recommended planting the riprapped bank with willow stakes. Willow stakes will not only aid in the stabilization of the bank, but will provide food, cover and shading for both terrestrial and aquatic wildlife species. Willow fascines, bundles of 10 or more live stakes, planted in the interstices of the rocks would provide even more stability and would have a greater chance of success than individual live stakes. The applicant may determine that the fascines should be installed concurrently with the placement of the rocks to ensure that the stakes are rooted in soil.

<u>Construction Management</u>: The site will be accessed from the south side of the property, along a 14-foot wide open area along the eastern property boundary. The access route and staging area will be located in the transition area of the environmental zone, and is not, therefore, subject to this review.

The applicant's narrative states that orange safety fencing will be installed around the limits of disturbance, but did not show it on the site plans. The proposed construction area within the resource area is approximately 928 square feet. A 750-pound impact hammer on a track excavator will be used to drive the H-piles into the earth. In addition, the applicant noted that a 20-ton Hitachi 200 excavator, a 7-ton Bobcat 341 excavator and an 8-ton Bobcat T190 skidster loader will also be used. The applicant did not specify how each of these machines will be used on the site. Further, the applicant did not state how the riprap will be placed on the slope. It is important that the riprap not be dumped down the slope where stray rocks could fall into the creek and impact aquatic species. The trench at the toe of the regraded slope will be located outside the bed of the creek.

Plywood sheeting will be used to protect the lawn and ground within the resource area as well as outside the resource area. No equipment will be used on the bank or within the streambed. The applicant provided an erosion sediment pollution control plan that includes silt fencing, instream wattles and a turbidity curtain. The creek will be protected by a silt fence installed upstream to downstream below the construction area, with staked waddles directly below the work area. Site Development noted that the site meets the definition of a "Special Site" which has additional erosion, sediment and pollution control requirements, and has recommended that a Certified Professional Engineer in Sediment Control (CPESC) will likely be required for this project.

Site Development also noted that City records indicate that an existing stormwater outfall is located in the area of the proposed work and that there are easements and maintenance agreements associated with the utilities serving the existing structures. Site Development further noted that all mitigation plants should be labeled, flagged or tagged or otherwise identified at the time of inspection.

Some of the non-native laurels and additional fencing will be removed in order to install the pin pile wall and conduct the bank restoration. Non-native plant species, including laurels, are not allowed to be planted in resource areas of the conservation zone. The Environmental Code does allow replacement of existing structures such as the fence. However, the top of bank will be relocated to be farther south on the property due to the proposal to lay back the bank. The fence should not be relocated below the new top of bank.

<u>Mitigation Plan</u>: The applicant stated that the disturbance area within the resource area would be approximately 928 square feet in area, which includes the in-water work area. The mitigation plan will affect a riparian area of approximately 660 square feet (per page 8 of the applicant's narrative revised 7/15/09). The applicant's narrative and site plans contained some conflicting numbers for mitigation plants, varying between 130 and 136 plants. Table 8 included 14 trees, 26 shrubs and 96 groundcovers consisting of three species each of trees, shrubs and groundcovers. The 14 trees included red alders, Oregon ash, and big leaf maples. The shrubs included red current, re elderberry, and common snowberry. The applicant proposed to install 10 plants per each 50-square foot area of the mitigation site, including 1 tree, 2 shrubs and 7 groundcovers, consistent with Table 8. This would result in a density of 1 plant per each 5-square-foot area over the mitigation area.

BES concurred with the plant numbers, but recommended planting some native conifers, as well as alternative native shrubs that have large root masses such as Douglas spirea, Pacific nine bark, red osier dogwood and salmonberry. In addition, BES recommended that the riprapped area on the regraded bank should be planted with live native willow stakes.

The applicant also listed three groundcovers to be planted from 4-inch containers: red columbine, western bittercress and Columbia sedge. Staff was unable to find red columbine listed in the *Portland Plant List*. Therefore, a different groundcover must be selected by the applicant. Any groundcovers included in the Forbs list in the *Portland Plant List* may be substituted for the red columbine. Any of the forbs listed in the *Portland Plant List* may be substituted for the other groundcovers shown on Table 8 as well. All groundcovers must also be listed in the *PPL* as doing well in riparian habitats.

The applicant identified downed trees, snags and stumps in the creek bed and English ivy and Himalayan blackberry along the banks. The woody debris in the creek should not be disturbed during the bank repair process; and the invasive species should be removed from the entire bank area both up and down-stream of the work area.

As described above, the impacts of this development include the hardening of 215 square feet of creek bank. The installation of the pin pile wall requires excavation of the creek bank and

the repair of the bank will be accomplished with riprap, resulting in permanent loss of and riparian habitat areas, and an increase in impervious surfaces, i.e., riprapped bank.

<u>Proposed Monitoring Plan for Mitigation</u>: The applicant provided a monitoring plan that is consistent with the type of monitoring typically required through environmental review for mitigation sites. However, the Bureau has developed a list of monitoring requirements that must be identified and complied with to ensure a successful mitigation plan.

ZONING CODE APPROVAL CRITERIA

33.430.250 Approval Criteria for Environmental Review

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

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

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

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

Findings: As discussed above on pages 3-4, the proposed creek bank stabilization has been designed and situated to effectively minimize the loss of resources and functional values on the site. The proposed pin-pile wall was pulled landward from the top of bank in order to minimize the footprint of the riprap revetment that will be placed over the slide area. The new configuration keeps the riprap out of the creek bed. This improvement helped minimize impacts on the site's resources and functional values and is consistent with base zone regulations.

The non-native laurel shrubs that were lost in the slide or will be removed for the construction activity cannot be replaced in the resource area of the conservation zone. The fence may not be reinstalled in a straight line crossing the bank stabilization area, but can be re-installed around the top of the bank restoration area after construction and mitigation activity is complete.

With conditions regarding fence placement and disallowing planting of laurels or other nonnative species in the resource area of the conservation zone, *this criterion can be met.*

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

Findings: These criteria require the applicant to demonstrate that alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values.

The location of the bank stabilization project is dictated by the area of bank failure. The design of the proposed bank stabilization was determined through the alternatives analysis and is designed to minimize impacts to identified resources and functional values as evaluated above on page 4. The construction staging area is located in the transition area of the conservation overlay zone, or outside the environmental zone altogether. Because Site Development determined that the site is a "Special Site" with additional erosion, sediment and pollution control requirements, a Certified Professional Engineer in Sediment Control (CPESC) will likely be required for this project. Site Development will make this determination at the time of permit review.

Construction fencing must be placed around the mechanized limits of disturbance and may not be placed in the creek bed. The trench at the toe of the slope must be located outside the creek bed. Construction fencing must be placed around the work area that will be impacted by mechanized equipment, as indicated on Exhibit C.3.b. Restrictions on how rocks are placed on the slope will further protect the creek bed and aquatic wildlife. Rocks may not be dumped from trucks onto the creek bank or below the top of bank. The rocks for the riprap bank and trench must be placed individually or in small groups of 3 to 4 rocks, using mechanized equipment, to ensure that they do not fall into the streambed. Motorized equipment is not allowed in the creek bed.

Some of the work, such as placement of the staked waddles or turbidity curtain, if required, must be done by hand to reduce impacts to the creek bed and aquatic species. The locations for the turbidity curtain and staked waddles are outside or beyond the construction fencing.

Because the stabilization project will be located in close proximity to an existing stormwater outfall and because there are easements and maintenance agreements associated with the utilities serving the existing structures, the location of these easements and utilities must be shown on permit application plans.

The willows to be planted in the riprap must be planted as fascines, bundles of 10 or more live stakes, in the interstices of the rocks. One end of the fascines must be inserted into native soil and the other must extend beyond the outside perimeter of the rocks. Placement of the willow fascines must begin at the ordinary high water line and extend to the top of bank. The applicant may determine that the fascines should be installed concurrently with the placement of the rocks to ensure that the stakes are rooted in soil.

Some of the non-native laurels and additional fencing will be removed in order to install the pin pile wall and conduct the bank restoration. Because laurel is a non-native species, it cannot be replaced in the resource area of the conservation zone. The fence may be re-installed around the top of the new bank restoration area after construction and mitigation activity is complete, but may not be placed across restoration area.

With the above conditions and with additional conditions requiring planting willow fascines in the riprap; for individual rock placement on the new bank slope; for keeping the rock toe outside the creek bed; for keeping all equipment out of the creek bed; for placing construction fencing around the limits of disturbance; for installing only native species in the resource area of the conservation area; for installing permanent fencing upslope of the bank stabilization area; and for all work to comply with all Site Development requirements, this *criterion can be met.*

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

Findings: These approval criteria require the protection of resources located outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site.

The proper placement of the proposed construction fencing will ensure that construction activities do not go beyond approved disturbance areas, which includes not entering the creek bed. The proposed sediment or erosion control fencing, in-stream wattles and turbidity curtain will ensure that soil disturbance caused by construction activity will not migrate off site or end up in this fish bearing stream.

With the conditions listed above in E.2, this criterion can be met.

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

Findings: These criteria require the applicant to assess unavoidable impacts and propose mitigation that is proportional to those impacts, as well as sufficient in character and quantity to replace lost resource functions and values.

As described above, the impacts of this development include the hardening of 215 square feet of creek bank. The installation of the pin pile wall requires excavation of the creek bank and the repair of the bank will be accomplished with riprap, resulting in permanent loss of and intrusion into riparian habitat areas due to the riprapped bank.

Because the applicant's narrative and site plans contained conflicting numbers for mitigation plants, varying between 130 and 136 plants, staff opted to use the numbers identified for each category of plants per Table 2 on page 8 of the Revised 7/15/09 Narrative for a total installation of 136 plants. Staff concurs with BES that exchanging some of the deciduous trees for conifers and substituting the BES identified shrubs that have large root masses for the applicant's proposed shrubs will better bind the soil in this unstable bank environment.

Since big leaf maples are prevalent in the area, they could be eliminated from the list. Western hemlock, which is well adapted to riverine environments, should be substituted for the maples. The applicant did not specify the quantity of each species to be planted. Therefore, staff determined that 4 western hemlock, 5 red alders and 5 Oregon ash would provide a good mix of trees to be planted along the bank area. Staff also determined that seven each of Pacific ninebark (*Physocarpus capitatus*) and Vine maple (*Acer Circinatum*), and six each of red-osier dogwood (*Cornus sericea ssp. sericea*) and Douglas spirea (*Spiraea douglasii*), must be substituted for the applicant's proposed 26 shrubs.

Any woody debris, including downed trees, snags, or stumps currently located in the creek must not be disturbed by the bank repair process.

Invasive species must be removed from the entire bank area both up and down-stream of the work area. The proposed mitigation plantings must be installed along the entire creek bank after non-native invasive species are removed.

Monitoring and maintenance is required to ensure that planted groundcovers, shrubs and trees survive until maturity. Documentation that required monitoring and maintenance measures have been undertaken must be included in an annual monitoring report to demonstrate success of the mitigation plan. The City provides a list of monitoring details to ensure that adequate monitoring will be provided to guarantee the success of the mitigation plan.

With conditions for the specific mitigation and monitoring requirements described above and on page 5 of this report, *this criterion can be met.*

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

E.6. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure

the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: Mitigation for significant detrimental impacts will be conducted on the same site as the proposed use or development, and the applicant owns the proposed on-site mitigation area. *These criteria are met.*

DEVELOPMENT STANDARDS

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

CONCLUSIONS

The applicant proposes to install a pin-pile retaining wall, regrade 215 square feet of failed bank area and line it with riprap, and provide 660 square feet of mitigation along the bank of Fanno Creek. No native trees will be removed for this proposal. Willow fascines will be required to be planted within the interstices of the riprap to soften the hardscape, provide additional vegetative bank protection, and provide additional riparian habitat next to the creek. Mitigation plants will be used that also provide additional bank protection as well as habitat and functional values for both fish and wildlife. With the conditions described above and listed below and with conditions to comply with staff-altered Site Plans (see Exhibits C.1 - C.4), the proposal meets the Approval Criteria for other development in the environmental zones, and this proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Environmental Review for:

- Installation of a 30-foot long pin-pile retaining wall;
- Repair of a 149-square foot slide area;
- Excavation of approximately 55 cubic yards of slide debris and soil;
- Placement of approximately 55 cubic yards of 2.5 3-foot diameter rock riprap; and
- Mitigation Plan for impacts to resources

all within the Environmental Conservation overlay zone, and in substantial conformance with Exhibits C.2 through C.4, as modified, signed, and dated by the City of Portland Bureau of Development Services on September 18, 2009. Approval is subject to the following conditions:

- A. All permits: Copies of the stamped Exhibits C.2 C.4 from LU 09-107658 EN and Conditions of Approval listed below, shall be included <u>within all plan sets submitted for</u> <u>permits (building, grading, Site Development, erosion control, etc.)</u>. These exhibits shall be included on a sheet that is the same size as the plans submitted for the permit and shall include the following statement, "Any field changes shall be in substantial conformance with approved Exhibits C.1 through C.4."
- **B.** A Preconstruction Erosion Control inspection (IVR 200) by Bureau of Development Services is required prior to any ground disturbing activity. Condition 1 below shall be completed prior to the scheduled inspection, and the following conditions shall be shown on all permit plans:
 - 1. Construction fencing shall be placed along the Limits of Construction Disturbance for the approved development, as depicted on Exhibit C.3.b, Construction Management Plan, or as required by inspection staff during the plan review and/or inspection stages, but **may not** be placed in the creek bed.
 - 2. Mechanized construction vehicles **are not permitted** outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence.

- 4. The rocks for the riprapped banks must be placed individually or in small groups of 2 to 4 rocks to ensure that they do not fall into the streambed, or beyond the limits of construction.
- 5. The rock trench at the toe of the regraded slope will be located outside the perimeter of the creek bed.
- 6. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
- 7. Any woody debris, including downed trees, snags, or stumps currently located in the creek must not be disturbed by the bank repair process.
- 8. The location of all easements and maintenance agreements associated with utilities serving existing structures on this site must be shown on permit application plans.
- 9. A registered professional engineer, other professional certified by the state with experience in preparing erosion control plans, or a registered Certified Professional in Erosion and Sediment Control (CPESC) who prepares and implements erosion control plans, shall prepare the required erosion control plan, if required by the Site Development section of BDS, and the proposal shall meet all other requirements of Site Development that do not conflict with other conditions of approval.
- C. A total of 14 1-inch diameter native trees, 26 2-gallon native shrubs, and 96 4-inch pot native ground covers, selected from the Portland Plant List, shall be planted in substantial conformance with Staff Revised Exhibit C.4 Mitigation Plan. Trees include: 4 western hemlock, 5 red alders and 5 Oregon ash. Shrubs include: 7 Pacific ninebark (*Physocarpus capitatus*); 7 Vine maple (*Acer Circinatum*); 6 red-osier dogwood (*Cornus sericea ssp. sericea*); and 6 Douglas spirea (*Spiraea douglasii*). Native groundcovers are as listed on Site Plan C.4.
 - 1. Invasive species must be removed from the entire bank mitigation area both up and down-stream of the work area. The proposed mitigation plantings must be installed along the entire creek bank after non-native invasive species are removed.
 - 2. Substitutions to native groundcovers are allowed as long as they are listed native forbs or ferns on the *Portland Plant List* and are included on the riparian habitat list.
 - 3. Plantings shall be installed between October 1 and March 31 (the planting season). Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
 - 4. Willow fascines composed of 10 or more live stakes shall be planted in the interstices of the riprapped bank. The fascines must have one end rooted in soil and the other end exposed to sunlight and air.
 - 5. Placement of the willow fascines must begin at the ordinary high water line and extend to the top of bank.
 - 6. After project completion, the existing fence may be replaced only if it is installed landward of the bank stabilization area, not across it.
 - 7. Laurels and other non-native plant species may not be planted or replanted in the resource area of the environmental conservation zone.
 - 8. All mitigation and remediation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector. All tape shall be a contrasting color that is easily seen and identified.
 - 9. After installing the required mitigation plantings, the applicant shall request inspection of Permanent Erosion Control Measures (IVR 210) by the Bureau of Development Services, who will confirm that all required mitigation plantings have been installed.

- **D.** An inspection of Permanent Erosion Control Measures shall be required to document installation of the required mitigation plantings.
 - 1. The **Permanent Erosion Control Measures** inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described in Condition C above);

--OR--

- 2. If the **Permanent Erosion Control Measures** inspection (IVR 210) occurs outside the planting season (as described in Condition C above), then the Permanent Erosion Control Measures inspection may be approved prior to installation of the required mitigation plantings if the applicant obtains a separate **Zoning Permit** for the purpose of ensuring an inspection of the required mitigation plantings by March 31 of the following year.
- **E.** The land owner or landowner's representative shall monitor the required plantings for two years to ensure survival and replacement as described below. <u>The land owner is</u> <u>ultimately responsible for ongoing survival of required plantings beyond the designated two-year monitoring period.</u> The landowner or landowner's representative shall:
- 1. Provide a minimum of two letters (to serve as monitoring and maintenance reports) to the Bridlemile Neighborhood Association, and to the Land Use Services Division of the Bureau of Development Services (Attention: Environmental Review LU 09-107658 EN) containing the monitoring information described below. Submit the first letter within 12 months following approval of the Permanent Erosion Control Inspection of the required mitigation plantings. Submit subsequent letters every 12 months following the date of the first monitoring letter. All letters shall contain the following information:
 - a. <u>A count of the number of planted trees that have died</u>. One replacement tree must be planted for each dead tree (replacement must occur within one planting season).
 - b. <u>The percent coverage of native shrubs and ground covers.</u> If less than 80 percent of the mitigation planting area is covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
 - c. <u>A list of replacement plants that were installed</u>.
 - d. <u>Photographs of the mitigation area and a site plan</u>, in conformance with approved Exhibit C.4, Proposed Mitigation Plan, showing the location and direction of photos.
 - e. <u>A description of the method used and the frequency</u> for watering mitigation trees, shrubs, and groundcovers for the first two summers after planting. All irrigation systems shall be temporary and above-ground.
 - f. <u>An estimate of percent cover of invasive species (English ivy</u>, Himalayan blackberry, reed canarygrass, teasel, clematis) within 10 feet of all plantings. Invasive species must not exceed 20 percent cover during the monitoring period.
- **F.** Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

Note: In addition to the requirements of the Zoning Code, all uses and development must comply with other applicable City, regional, state and federal regulations.

This decision applies to only the City's environmental regulations. Activities which the City regulates through PCC 33.430 may also be regulated by other agencies. In cases of overlapping City, Special District, Regional, State, or Federal regulations, the more stringent regulations will control. City approval does not imply approval by other agencies.

Staff Planner: Kathy Harnden miluly Tallant **Decision rendered by:**

by: ______ on September 28, 2009 By authority of the Director of the Bureau of Development Services

Decision mailed: September 30, 2009

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

Procedural Information. The application for this land use review was submitted on February 10, 2009, and was determined to be complete on August 10, 2009.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 10, 2009.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended by 51days to September 30, 2009. Unless further extended by the applicant, **the120 days will expire on: January 28, 2010.**

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

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

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

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

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on October 14, 2009** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. An appeal fee of \$250 will be charged. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part

may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review₁ and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

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

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

Recording the final decision.

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

- Unless appealed, The final decision may be recorded on or after October 15, 2009 (the first business day following the last day to appeal).
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

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

Page 14

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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

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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant's Submittal dated February 10, 2009
 - 2. Applicant's Submittal dated July 15, 2009
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Existing Conditions Revised Site Plan
 - 2.a. Proposed Development Revised Site Plan (attached)
 - b. Proposed Development Section A Revised Site Plan (attached)
 - c. Alternatives Site Plan
 - 3.a. Construction Management Site Plan (attached)
 - b. Erosion Sediment Pollution Control Plan (attached)
 - c. Erosion Sediment Pollution Control Plan Section and Details
 - d. General Construction Notes
 - 4. Mitigation Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services, dated September 9, 2009
 - 2. Water Bureau, dated August 24, 2009
 - 3. Site Development Review Section of BDS, dated September 8, 2009
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Letter of Incompleteness to applicant, dated May 11, 2009
 - 4. Miscellaneous email

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











