

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("IGA" or "Agreement") is entered into by and between City of Portland, by and through its Bureau of Parks and Recreation ("City" or "Parks"), and East Multnomah Soil and Water Conservation District ("District").

RECITALS

- A. City is the fee simple owner of that certain real property approximately 85 acres in size, located in the County of Multnomah, State of Oregon, formerly a portion of the Colwood National Golf Course, located at 7303 NE Columbia Blvd. and identified as Tax Lots 300 and 400 in Section 17, in Township 1 North, Range 2 East of the Willamette Meridian, and more particularly depicted on the attached Exhibit A (the "Property").
- B. The Property is bisected by the Columbia and Whitaker Sloughs which provides the City with opportunities to enhance water quality through management of the Property and to allow the public access to these waterways.
- C. City purchased the property to provide the public with access to golf and nature. The 37 acres of natural area will be protected as natural area in perpetuity while the golf facility will be subject to decisions in the future master planning process.
- D. The City is working with Cully neighborhood community groups and is committed to ensuring that the creation of this new park benefits the local community from a recreational, health, and economic perspective. For instance, the City has established a relationship with Verde whereby Verde may refer local community members for certain employment opportunities.
- E. As part of LU 12-213885 CP ZC EN/Ordinance 186308 ("Land Use Decision"), attached as Exhibit B, approximately 32 acres of the Property is subject to a mitigation project that includes forest restoration and wetland creation.
- F. District has a grant program to provide funds for conservation projects. The City's Colwood acquisition has been determined to meet the criteria for grant funding.

For valuable consideration, the receipt of which is hereby acknowledged by City, and the mutual covenants, terms, conditions, and restrictions contained herein, the parties hereby agree as follows:

AGREEMENT

1. **Funding.** In consideration of the terms and conditions herein, District agrees to provide One Million Dollars (\$1,000,000) (the "Funds") to City to reimburse Parks for funds used to acquire the Property. District's role is as funder only; District shall have no ownership interest in the Property.

2. **Term.** This agreement shall be in effect in perpetuity and shall run with the land, unless terminated pursuant to Section 14 of this Agreement.

3. **Natural Area Dedication.** City agrees that, unless otherwise agreed in writing, approximately 37 acres of the Property will be managed as a natural area in perpetuity for the purpose of protecting the natural habitat of plants and animals, enhancing water quality, preserving open space in an urban setting, and providing access to nature and nature based recreational activities. The area dedicated as Natural Area is depicted on Exhibit C ("Natural Area"). It is acknowledged that City does not own or manage the slough waterways and therefore, they are not included in the Natural Area.

4. **Prohibited and Permitted Uses.**

(a) **Prohibited Uses.** The City shall not allow any activity within the Natural Area that is inconsistent with the terms of this agreement. Uses that damage natural resource values or interfere with the quiet enjoyment of nature will be prohibited. It is agreed that recreational uses involving motorized vehicles and dog off leash areas are prohibited within the natural areas. No paved trails are allowed anywhere in the natural area except along Alderwood and any regional trails.

(b) **Permitted Uses.** City reserves all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Natural Area that are not inconsistent with the terms of this Agreement. City intends to operate the Natural Area as an open space, protecting its natural resources and providing the public with access to nature and the slough waterways as appropriate and consistent with the protection of the natural resource values, promotion of quiet enjoyment and appreciation of nature and conditions specified in Exhibit B ("Land Use Decision"), and this Agreement. City's permitted uses shall therefore include public access consistent with the protection of ecological functions and quiet enjoyment and appreciation of nature, such as hiking, canoeing, wildlife watching, environmental education, and research. Emphasis will be placed on passive access to nature that ensures protection of natural resources and minimizes impacts to visitor's opportunity to have a quiet nature based experience. City may enter the Natural Area at any time for the purpose of managing, maintaining and improving the Natural Area in a manner consistent with the terms and intent of this Agreement. Permitted maintenance and improvement activities include, but are not limited to, vegetation management, invasive species removal, planting, habitat restoration, facilities for nature based recreation and wildlife viewing such as trails and a canoe launch, parking as described in the Land Use Decision, bank stabilization and/or restoration, and monitoring.

(c) **Mitigation Work.** As a condition of the Land Use Decision, the owner of the adjacent property to the north of the Property is required to complete substantial mitigation work in the Natural Area

followed by five years of Mitigation Work maintenance and monitoring. The mitigation work is described in the Land Use Decision and the Compensatory Wetland Mitigation Plan for the Colwood Industrial Park Development, dated December 3, 2013 (the work described in these two documents is, collectively, the "Mitigation Work"). The Mitigation Work will generally consist of wetland creation, wetland buffer planting, turtle nesting habitat creation, and forest restoration. In order to complete the Mitigation Work, several other permits from agencies such as the Army Corp of Engineers, the Department of State Lands, and the City of Portland, had to be obtained. The parties acknowledge that nothing in this Agreement is intended to restrict or prohibit the completion of the Mitigation Work in accordance with all related permits.

Furthermore, it is acknowledged that the Mitigation Work will be performed by contractors hired by the owner of the adjacent northern parcel.

5. Property Conveyance. The District shall have the Right of First Refusal if the City considers conveying the Natural Area to another entity or entities. In the event that Parks wishes to sell the Natural Area and has a reasonable offer from a third party, Parks will present that offer to the District who will have the opportunity to purchase the property on the same terms and conditions as the offer contained. If District declines to purchase the property, City shall require, as a condition of sale, that the third-party purchaser agree to be bound by the terms of this Agreement. Failure to do so shall be deemed a termination of the Agreement by City under paragraph 14 of this Agreement.

6. Future Planning. District will have the right to participate as a direct project collaborator in any future master planning or other planning process conducted for the Property. Parks will develop and implement collaborative models and practices in terms of any design and implementation and will work with local communities and diverse constituencies

7. Recognition. City will publically recognize the District's contribution in a manner that is mutually agreeable to the parties. Recognition may include mention of the District as a sponsor on Parks' website, outreach materials, property signage or at events related to the Natural Area.

8. Local Job Creation. The parties mutually desire that the local community obtain economic as well as health and access benefits from the establishment of this park. To promote these objectives, Parks will work with local groups and organizers to discuss the project, future employment and contracting opportunities, and explore ways to reach out to and recruit local qualified candidates, and actively advertise and recruit within the Cully and Colwood neighborhoods and immediately adjacent neighborhoods as job openings with Portland Parks & Recreation become available.

9. Protection of Water Bodies. The entire Natural Area will be managed as a buffer to protect the water bodies in the Natural Area, including the sloughs, wetlands and ponds. In addition to the protections provided in this Agreement, City of Portland environmental zoning overlays including the existing Environmental Conservation Zone and the Environmental Protection Zone, and permits related to the Mitigation Work which provide additional protection of the waterbodies shall be enforced.

10. Structures. There are several existing structures within the Natural Area. With the exception of the pump house that serves the entire Property and may be replaced as needed, all the existing buildings will be removed from the Natural Area within five (5) years. Other than improvements permitted under Section 4(b) and related minor amenities, such as benches, no other buildings or structures will be constructed within the Natural Area without the mutual written agreement of the Parties. Any future structures in the Natural Area will be planned and constructed in such a manner as to minimize any adverse impacts to the Natural Area.

11. Management of Acreage Outside of the Natural Area: Reasonable efforts will be made to concentrate generally more active uses, such as the clubhouse, driving range and other high intensity recreational activities towards NE Columbia Boulevard.

12. Enforcement and Remedies.

(a) Notice of Violation. If District determines that City is using or managing the Natural Area in violation of the terms of this Agreement, District shall give written notice to City of such violation and demand corrective action sufficient to cure the violation. Such notice shall demand that City, at City's sole cost and expense, restore the portion of the Natural Area so injured to its prior condition in accordance with a plan approved by District.

(b) Failure to Cure. If City fails to cure a violation within 30 days after City's receipt of notice thereof from District, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period, District may bring an action at law or in equity to (i) enforce the terms of this Agreement, (ii) enjoin the violation by a temporary, preliminary, and/or permanent injunction, (iii) recover any damages to which District may be entitled for such violation of the terms of this Agreement, and (iv) require the restoration of the Natural Area to the condition and appearance that existed prior to such violation. Prior to taking legal action as contemplated in this section, the parties will meet to discuss and make a good faith effort to reasonably and amicably resolve any disputes or disagreements.

(c) Repayment of Funds. If City fails to reasonably manage all or part of the Natural Area materially in accordance with the terms and conditions herein, then District may require City to repay that portion of the Funds that is proportionate to the amount of land that is not being managed in accordance with this Agreement. If City repays all or a portion of the Funds, then the Agreement shall terminate as to all areas included in the proportionate amount of repayment.

(d) Acts Beyond City's Control. Nothing contained in this Agreement shall be construed to entitle District to bring any action against City to abate, correct, or restore any condition on the Natural Area or to recover damages for any injury to, or change in, the Natural Area resulting from (1) causes beyond City's control including, without limitation, natural changes, fire, flood, storm or earth movement, acts of trespassers, or (2) any reasonable and prudent action taken by City under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

13. Liability and Indemnification.

(a) Liability. The parties acknowledge and agree that because City is the fee owner of the Property, except as specifically provided for under subsection (b) below, the general liability for risks, damages, injuries, claims, or costs arising by virtue of City's ownership and use of the Property shall remain with City as a normal and customary incident of the right of Property ownership. Nothing in this Agreement shall be construed as giving rise to any right or ability of District to become an "owner" or "operator" of the Natural Area within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or ORS Chapters 465 and 466, as amended.

(b) Indemnification. To the extent permitted by Article XI, Section 2 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, City shall indemnify, defend, and hold harmless District (and District's officers, employees and agents) from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of City and City's invitees on the Property, except to the extent such damages are due to District's or District's employees' or agents' negligence or willful misconduct, or to any breach of this Agreement by District. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, District shall indemnify, defend, and hold harmless City from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from, arising out of, or relating to the activities of District (or District's officers, employees and agents) on the Property, except to the extent such damages are due to City's or City's invitees' negligence or willful misconduct, or to any breach of this Agreement by.

14. Termination of Agreement. This Agreement may be terminated by the mutual consent of the parties. If City unilaterally terminates this Agreement then it shall repay the Funds to the District in their entirety within sixty (60) days of the date of termination.

15. Condemnation. If all or any part of the Natural Area is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate any portion of this Agreement, City and District shall act jointly to recover the full value of the interests in the Natural Area subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom. District shall be entitled compensation for its loss, which amount shall be equal to then-current fair market value of the portion of the Natural Area being acquired, as determined by a competent appraiser. All expenses reasonably incurred by City and District in connection with the taking shall be paid out of the amount recovered.

16. Notice and Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by mail, postage prepaid, to the address set forth below. Any party may change the address to which its notices are to be sent by duly giving notice pursuant to this Section.

To City: Portland Parks & Recreation
Property Management
1120 SW 5th, Room 1302
Portland OR 97204

With a copy to: Office of the City Attorney
1221 SW 4th Ave.
Portland, OR 97204

To District: East Multnomah Soil & Water Conservation District
5211 N. Williams Ave.
Portland, OR 97217

17. General Provisions.

(a) Governing Law and Forum. The interpretation and performance of this Agreement shall be governed by the laws of the State of Oregon. Any litigation between the City and Licensee arising under this Agreement, or out of work performed under this, shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

(b) Severability. If any provision of this Agreement, or its application to any person, entity, or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

(c) Entire Agreement and Amendments. This instrument sets forth the entire agreement of the parties with respect to the Natural Area and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Agreement. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment. The Director of Parks is authorized, on behalf of the City, to execute any amendment to this Agreement.

(d) No Partnership. Nothing contained in this Agreement is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership or a joint venture between City and District

(e) Exhibits, Successors; Counterparts. The exhibits attached to this Agreement are made a part of this Agreement. This Agreement shall benefit and bind City and District and their respective personal representatives, successors and assigns. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date it is fully executed.

THE CITY OF PORTLAND


By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM


CITY ATTORNEY 10/30/04

EAST MULTNOMAH SOIL & WATER CONSERVATION DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

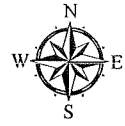
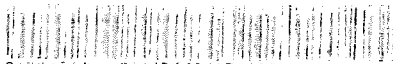


Exhibit A: Colwood Property



Exhibit B: Land Use Decision

Multnomah County, Oregon	2013-16743
Weldon, Deputy Clerk	
	
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20-CH01MNC	11/08/2013 03:13:00 PM
380.00 \$11.00 \$13.00	Pgs=10, Ch=23, ATPRC

CITY OF PORTLAND
 Office of the City Auditor
 1221 SW Fourth Avenue, Room 230
 Portland, OR 97204-1900

I hereby certify this Land Use Document No. LU 12-213885 – Ordinance to be a complete and exact copy of the original as the same appears on file and of record in my office and in my care and custody on November 8, 2013.

LAYONNE GRIFFIN VALADE
 Auditor of the City of Portland
 By _____
 Deputy

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

ORDINANCE No. 186308

*Amend the Comprehensive Plan Map designation and change zoning of property in the vicinity of NE Alderwood Road and NE Cornfoot Road, the northern portion of the site known as the Colwood National Golf Course property, at the request of Don Goldberg, The Trust for Public Lands (Ordinance; LU 12-213885 CP ZC EN)

The City of Portland ordains:

Section 1. Council finds:

1. The property located at 7313 NE Columbia Boulevard, currently the site of the Colwood Golf Course, consists of four parcels with State ID numbers 1N2E17 00100, 1N2E17 00400, 1N2E17 00300, and 1N2E17AA 02000, legally described as "TL 100 47.57 ACRES, SECTION 17 1N 2E; TL 400 50.40 ACRES, SECTION 17 1N 2E; TL 300 32.17 ACRES, SECTION 17 1N 2E; and TL 2000 0.30 ACRES, SECTION 17 1N 2E" (the "Overall Site"). The Applicant requested a Comprehensive Plan Map amendment and concurrent Zoning Map amendment for one of these parcels, and requested Environmental Review that requires modification of Environmental Protection and Environmental Conservation overlay zones on two of these parcels.
2. The Applicant seeks the following on the Overall Site:
 - a. a Comprehensive Plan Map Amendment from Open Space to Industrial Sanctuary for the property identified as State ID No. 1N2E17 00100, legally described as "Tax Lot 100 47.57 acres, Section 17 1N 2E" (hereinafter referred to as the "Northern Parcel");
 - b. a Zoning Map Amendment from Open Space to General Industrial 2 for the Northern Parcel;
 - c. a Zoning Map Amendment to modify Environmental Protection and Environmental Conservation overlay zones on the Northern Parcel and on the property identified as State ID No. 1N2E17 00400 and legally described as "TL 400 50.40 ACRES, SECTION 17 1N 2E" (the "Eastern Parcel"); and
 - d. approval of concurrent Environmental Review for:
 - 2.74 acres of wetland fill and riparian buffer removal within the Environmental Protection zone on the Northern Parcel;
 - Removal of approximately 24.96 acres of riparian area in the Environmental Conservation zone on the Northern Parcel;
 - A minimum of 3.07 acres of wetland creation and plantings in the Environmental Conservation zone south of Whitaker Slough and east of NE Alderwood Road (on the Eastern Parcel);

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- A minimum of 8.89 acres of plantings in the area adjacent to Columbia and Whitaker Sloughs, east of NE Alderwood Road (on the Eastern Parcel);
 - A minimum of 3.15 acres of plantings within the environmental zones remaining on the Northern Parcel; and
 - A minimum of 14.04 acres of plantings in the area between Columbia and Whitaker Sloughs, west of NE Alderwood Road.
3. An application complying with all requirements of Title 33, Planning and Zoning, of the Code of the City of Portland seeking amendment of the Comprehensive Plan Map and Zoning Map and Environmental Review has been received with the proper fee for filing paid.
 4. The Hearings Officer held a duly noticed public hearing on June 12, 2013, and a Recommendation was issued on August 21, 2013, (BDS File No. LU 12-213885 CP ZC EN). The Hearings Officer recommended approval of the requested Comprehensive Map Amendment, Zoning Map Amendment and Environmental Review, with conditions.
 5. The requested Comprehensive Plan Amendment, Zoning Map Amendment and Environmental Review, based on the findings contained in the Recommendation of the Hearings Officer, are found to be in conformance with the Comprehensive Plan and relevant Title 33 approval criteria.

NOW THEREFORE, the Council directs:

- a. City Council adopts the facts, findings, conclusions and recommendations of the Hearings Officer in BDS File No. LU 12-213885 CP ZC EN, except as Conditions B and C are modified and Condition K is added by this ordinance. City Council also adopts supplemental findings to address Policies 3.5, Neighborhood Involvement, Policy 6.5, Traffic Classification Descriptions, and Criterion 33.855.050.B.2, Zoning Map Amendment, as follows:

At the September 25, 2013 City Council hearing for this proposal, the Sumner Neighborhood Association testified that they were not officially notified of the recommended condition for the construction of an additional southbound ramp at I-205 and NE Killingsworth, to fulfill the transportation mitigation requirement. City Council directed Bureau of Transportation (PBOT) staff to meet with the Sumner Neighborhood Association and discuss their concerns and commit to future timely notification to any neighborhood association whose boundaries include a location proposed for off-site mitigation.

The neighborhood meeting occurred on October 8, 2013 with PBOT, Oregon Department of Transportation staff and the applicant in attendance. The transportation staff responded to the concerns raised by neighborhood representatives and explained that the State Transportation Planning Rule allows off-site mitigation to address impacts to regional transportation systems.

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The Council has considered the concerns raised by the Sumner Neighborhood Association as well as the compelling evidence submitted from the applicant's transportation engineering representative and PBOT staff. The Kittelson and Associates letter dated October 22, 2013 addresses each of the Sumner Neighborhood Association's concerns and outlines the process used for recommending the preferred off-site mitigation. In addition, the letter restates that the proposal will encourage the use of major arterial streets for regional traffic and separate this traffic from local traffic. The letter also addresses the Sumner Neighborhood Association concern that the TIA contained transcription errors in some of the TIA figures. There are no errors in the subject figures. The northbound to westbound I-205 loop off-ramp loads traffic onto NE Killingsworth between these two study intersections, which accounts for the additional westbound traffic arriving at the I-205/Killingsworth Southbound Ramp signalized intersection. PBOT has reviewed the Kittelson letter and find it to be a credible complete response to the Sumner Neighborhood's expressed concerns.

Consistent with the recommendation of the Hearings Officer, Council finds the evidence in the record provided by the applicant and PBOT demonstrates that the proposal satisfies Policy 3.5 and equally supports Policy 6.5. The Council finds that evidence in the record demonstrates that the proposal satisfies City Code Section 33.855.050.B.2, as transportation services are adequate to support the proposal.

- b. The Comprehensive Plan Map Amendment, Zoning Map Amendment and Environmental Review for the Overall Site are approved as follows:
 1. A Comprehensive Plan Map Amendment from Open Space to Industrial Sanctuary for the property identified as State ID No. 1N2E17 00100 and legally described as "Tax Lot 100 47.57 acres, Section 17 1N2E" (the "Northern Parcel");
 2. Zoning Map Amendment from Open Space to General Industrial 2 for the Northern Parcel;
 3. Zoning Map Amendment to modify Environmental Protection and Environmental Conservation overlay zones for the Northern Parcel and on the property identified as State ID No. 1N2E17 00400 and legally described as "TL 400 50:40 ACRES, SECTION 17 1N 2E" (the "Eastern Parcel") as shown on Exhibit B.4; and
 4. Environmental Review for:
 - 2.74 acres of wetland fill and riparian buffer removal within the Environmental Protection zone on the Northern Parcel;
 - Removal of approximately 24.96 acres of riparian area in the Environmental Conservation zone, on the Northern Parcel;
 - A minimum of 3.07 acres of wetland creation and plantings in the Environmental Conservation zone south of Whitaker Slough and east of NE Alderwood Road (on the Eastern Parcel);

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- A minimum of 8.89 acres of plantings in the area adjacent to Columbia and Whitaker Sloughs, east of NE Alderwood Road (on the Eastern Parcel);
 - A minimum of 3.15 acres of plantings within the environmental zones remaining on the Northern Parcel; and
 - A minimum of 14.04 acres of plantings in the area between Columbia and Whitaker Sloughs, west of NE Alderwood Road, as illustrated by Exhibits H.26a, H.26b and H.26c.
5. The Comprehensive Plan Map Amendment, Zoning Map Amendment and Environmental Review are subject to the conditions below. Any violation of these conditions shall be subject to the enforcement procedures in the City code, but will not void the Comprehensive Plan Map and Zoning Map Amendments:
- A. Prior to, or concurrent with, the recording of a decision of approval with Multnomah County, the Applicant must execute and record an easement granted to the City of Portland to provide legal access for a public storm outfall. Per PCC 33.730.120, prior to the City making any changes to the Comprehensive Plan Map or Zoning Map, documentation must be submitted by the Applicant that shows that both the land use decision and the easement have been recorded.
- B. Prior to altering any environmental zone designations on the Official Zoning Map, the following must occur:
1. The Applicant must obtain permits from BDS for the mitigation work required under Condition E.
 2. The Applicant must obtain permits from BDS for the resource removal north of NE Cornfoot Road (Tax Lot 100). This may take the form of a Site Development Permit limited to clearing and grading and/or a Commercial Building Permit that includes the grading work and future development.
 3. All BDS permits for mitigation south of NE Cornfoot Road (Tax Lots 300 and 400) must receive final inspection and approval by BDS.
 4. All BDS permits for resource removal north of NE Cornfoot Road (Tax Lot 100) must receive final inspection and approval by BDS. A final occupancy cannot be obtained until the mitigation work required under Condition B (except monitoring required under Condition J) is complete.
- C. Off-site transportation improvements must be addressed, through coordination and construction under separate Public Works Permits issued by PBOT and an ODOT Permit to Construct on State Right of Way. Prior to issuance of Building Permit and/or Site Development Permits for new development on the Northern Parcel (TL 100), financial guarantees to the satisfaction of PBOT and ODOT must be provided for the following improvements:
- Add a third queuing lane for the southbound on-ramp to result in three 12-foot wide lanes;
 - Widen to the outside of the existing lane to accommodate the additional lane;
 - Replace the existing ramp meter to accommodate the additional lane;

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- Provide new illumination;
 - Accommodate stormwater from the new impervious area in roadside swales; and
 - Provide any necessary related improvements to NE Killingsworth at the intersection with the southbound I 205 ramp.
- D. All Permits: As part of any Site Development permit, grading permit, and/or building permit application submittal, the following development-related conditions (D through J) must be noted on each of the required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 12-213885 CP ZC EN." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- E. Mitigation Plantings shall be installed on the parcel north of NE Cornfoot Road in substantial conformance with Exhibit H.26a. Plantings shall be installed in the area adjacent to Columbia and Whitaker Sloughs, east of NE Alderwood Road in substantial conformance with Exhibits H.26b and C.5. Plantings shall be installed in the area between Columbia and Whitaker Sloughs, west of NE Alderwood Road in substantial conformance with the forest restoration and enhancement planting tables identified on Exhibit H.26c. All mitigation plantings must be permitted with or in advance of the resource removal on the parcel north of NE Cornfoot Road (Tax Lot 100).
- F. A legal instrument sufficient to carry out mitigation activities must be provided at the time of permit review for the resource removal and mitigation work.
- G. The Applicant shall provide proof of an escrow account with no less than \$25,000 per year of required monitoring or a performance guarantee meeting the standards of PCC 33.700.050 at the time of permit for the resource removal and mitigation work.
- H. A permit from the Bureau of Development Services is required for all resource removal and mitigation activities. The following shall be submitted with applications for permit review of the project elements. All site plans listed below shall be at a scale of 1 inch = 60 feet, or larger.
1. Construction management plan conforming with Exhibits H.26a, C.9 and C.10 and graphically show the following:
 - a. Location and identification of proposed grading for all purposes, with quantities in cubic yards for both fill and cut areas
 - b. All trees to be removed are marked with a large, bold X over the tree
 - c. Location and identification of the required 6-foot chain link tree protection fence placed along the root protection zone (RPZ) of trees to be preserved within disturbance areas and within 50 feet of disturbance areas
 - d. Location of stockpile areas and worker and equipment staging areas

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- e. Location and type of erosion control measures to be installed
 - f. Show the Erosion Control installation details, maintenance & monitoring procedures as notes on the plan
 - g. Location of construction ingress and egress
 - h. The official environmental overlay zone boundaries of the Environmental Protection and Conservation zones, with the transition and resource areas correctly identified.
2. A geotechnical report to the satisfaction of the Site Development section of BDS addressing grading, excavation, fill placement and compaction, dewatering, drainage considerations, and slough bank stabilization.
 3. An Erosion Control Plan prepared by a Certified Professional in Erosion and Sediment Control (CPESC) or State of Oregon registered professional engineer.
 4. A graphic Tree Protection Plan shall be included with any permit application, indicating the location of construction fencing for tree protection for all trees to be retained, in conformance with PCC 33.248.065. Temporary tree protection fencing shall conform with PCC 33.248 or a written Alternate Tree Protection Plan, or as required by inspection staff during the plan review and/or inspection stages.
 5. Final Planting plans shall be submitted at permit time, for Planning and Zoning review and approval. The plan shall illustrate the location, species, quantity, spacing and sizes of all required mitigation plantings, consistent with Exhibits C.3-6. The plans shall show each of the following:
 - a. The total trees, shrubs, and native groundcovers, selected from the Portland Plant List, to be planted on site.
 - b. For the restoration area north of and parallel to NE Cornfoot Road, two 40-foot wide driveway accesses may remain unplanted.
 - c. For the area between the Columbia and Whitaker Sloughs west of NE Alderwood Road, an area intended to provide vehicle parking for up to 8 parking spaces may remain unplanted. This area may also contain pedestrian pathways and benches consistent with Portland Parks and Recreation Trail Standards for natural areas.
 - d. All plant materials shall be native vegetation listed on the *Portland Plant List*.
 - e. Plantings shall be installed between October 1 and March 31.
 - f. Prior to installing required plantings, non-native invasive plants shall be removed from all areas within 10 feet of plantings.
 - g. The Applicant shall water plantings as necessary for survival.
 - I. An inspection of Permanent Erosion Control Measures shall be required to document installation of the required mitigation plantings.

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1. The Permanent Erosion Control Measures inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described in Conditions E and H.5 above);

--OR--

2. If the Permanent Erosion Control Measures inspection (IVR 210) occurs outside the planting season (as described in Condition H.5 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.
- J. The landscape professional or designer of record shall monitor the required plantings for five years to ensure survival and replacement as described below. The land owner is responsible for ongoing survival of required plantings beyond the designated five-year monitoring period. The landscape professional shall:
1. Provide a minimum of five letters (to serve as monitoring and maintenance reports) to the Cully Neighborhood Association and to the Land Use Services Division of the Bureau of Development Services (Attention: Environmental Review LU 12-213885 CP ZC 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 previous monitoring letter. All letters shall contain the following information:
 - a. A count of the number of planted trees that have died. One replacement tree must be planted for each dead tree (replacement must occur within one planting season).
 - b. The percent coverage of native shrubs and ground covers. If less than 80 percent of the planting areas, and restored temporary disturbance areas, are covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
 - c. A list of replacement plants that were installed.
 - d. Photographs of the mitigation area and a site plan, in conformance with Final Planting Plans described above in Condition B.4, showing the location and direction of photos.
 - e. A description of the method used and the frequency for watering mitigation trees, shrubs, and groundcovers for the first two summers after planting. All irrigation systems shall be temporary and above-ground.
 - f. An estimate of percent cover of invasive species (invasive hawthorn, English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis) within 10 feet of all plantings. Invasive species must not exceed 20 percent cover during the monitoring period.

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K. Prior to recording the Comprehensive Plan and Zoning Map Amendment the applicant shall provide a 20-foot wide public access easement to the City along the NE Columbia Boulevard frontage from the intersection with NE Alderwood Road to the western boundary of the site. At the time of a future project approval to improve the intersection of NE Columbia Boulevard and NE Alderwood Road the applicant shall dedicate required right-of-way within this easement area needed for those improvements. The City will then quitclaim the remaining public access easement area not needed for the improvements to this intersection.

Section 2. The Council declares an emergency exists because there should be no delay in the beneficial use of the above-described property; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: OCT 23 2013

Commissioner Amanda Fritz
Prepared by: Sheila Frugoli, BDS
Date Prepared: October 23, 2013

LaVonne Griffin-Valade
Auditor of the City of Portland

By 

Deputy

