



City of Portland, Oregon
Bureau of Development Services
Land Use Services

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Date: June 25, 2009
To: Interested Person
From: Kathy Harnden, Land Use Services
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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 09-122400 EN

GENERAL INFORMATION

Applicant: Andrew Aebi
Portland Bureau of Transportation
1120 SW 5th Avenue, Ste 800
Portland, OR 97204

Representative: Keith Jones
Haper Houf Peterson Righellis Inc
205 SE Spokane St., Ste. 200
Portland, OR 97202

Site Address: Right-of-way on NE 92nd, north of 6215 NE 92nd Dr.

Legal Description: City of Portland Right-of-way
Tax Account No.: Not Applicable
State ID No.: Not Applicable
Quarter Section: 2339

Neighborhood: Sumner, contact Joanne Johnson at 503-257-3458.
Business District: Parkrose Business Association, contact Mike Taylor at 503-546-9928, Columbia Corridor Association, contact Peter Livingston at 503-796-2892.

District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

Plan District: Cascade Station/PIC - Subdistrict B; Columbia South Shore - Southern Industrial

Other Designations: *Columbia Corridor Industrial and Environmental Mapping Project, Water Feature 7 – Columbia South Slough, South Shore; Columbia South Shore Resource Protection Plan, Site C; Columbia South Shore Area of*

Zoning: Archeological Interest/Archeological Sensitivity Area; 100-Year Floodplain; Well Protection Area
EG2hp, IG2hp – General Employment 2 (EG2) and General Industrial 2 (IG2) with the Airport Landing (h) and Environmental Protection (p) overlay zones

Case Type: EN – Environmental Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The Portland Bureau of Transportation proposes to rededicate and enlarge once-vacated right-of-way and re-open, upgrade and add improvements to the existing NE 92nd Drive bridge and street north of the bridge. The additional right-of-way will total 7,602 SF. The improvements include: installing a new 14-foot wide by 100.5-foot long steel truss bike/pedestrian bridge adjacent to the east side of the existing street bridge; removing the existing sidewalk on the east side of the existing street bridge; and widening the existing sidewalk on the west side of the existing bridge. The new bridge will completely span the Columbia Slough from top of bank to top of bank. The new bridge will be lifted into place via a crane from the existing bridge. New concrete approach ramps will be installed on both the north and south ends of the existing bridge as well as for the new bike/pedestrian bridge. New asphalt will be laid over the existing deck and new approaches. Eleven trees will be removed. Thirteen trees plus 21 live stake willows will be installed, as well as 54 shrubs and a groundcover seed mix as mitigation.

An 8-foot wide water quality swale will separate the north and south-bound lanes north of the existing bridge, and outside the environmental zone. This swale will capture and treat runoff from the existing bridge as well as from the new bike/pedestrian bridge. Overflow will be directed to an existing outfall, west of the bridge. Because the swale will lie outside the environmental zone, however, it will not be included in the environmental review.

The Columbia South Shore Plan District and the Cascade Station/Portland International Center Plan District require environmental review for: “Removal of vegetation which is not identified as nuisance or prohibited plants on the *Portland Plant List*,” “Dedication of a public right-of-way,” and for “New construction, widening, and relocation of roads in a public right-of-way,” (33.515.276.B.1.f, and g and 33.508.320.B.1.f, and g).

Portions of this proposal will occur outside the environmental zone and are not included in this review.

Relevant Approval Criteria:

To be approved, this proposal must comply with the criteria of Title 33. The applicable criteria for the proposed street dedication, bike/pedestrian bridge construction, and associated street improvements within the Protected Natural Resource Area are found in:

33.508.340.D.2, 4 and 6 Approval Criteria
33.515.340.D.2, 4 and 6 Approval Criteria

ANALYSIS

Site and Vicinity: NE 92nd is a paved street containing an existing 2-lane bridge with a sidewalk on the east side. The street and right-of-way were vacated from the south end of the bridge north to the intersection with NE Alderwood Road. The street is currently gated, but emergency fire vehicles have access across the bridge. The surrounding area is characterized by industrial uses, predominantly warehouses, and a large Port of Portland parking lot to the northeast. The street crosses two branches of the Columbia Slough. The north branch is the location for the new bike/pedestrian bridge that will be constructed just east of the existing vehicular bridge. This section of the Slough is characterized by a narrow riparian strip,

predominantly on the south side. The north bank is more open, having fewer trees and more grass areas. A bike/pedestrian trail follows the slough along the north bank, east of NE 92nd Drive.

Zoning: The EG2 zone allows a wide range of employment opportunities without potential conflicts from interspersed residential uses. The emphasis of the zone is on industrial or industrially-related uses. EG2 areas have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street. The provisions of this zone allow this use; these provisions are not specifically addressed through this Environmental Review.

The IG2 zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. IG2 areas generally have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street. The provisions of this zone allow this use; these provisions are not specifically addressed through this Environmental Review.

The “h” overlay limits the height of structures and vegetation in the vicinity of the Portland International Airport; a height contour map is available for review in the Development Services Center.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to 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.

The Columbia South Shore Plan District regulations encourage the development of the Columbia South Shore as an industrial employment center which is intended to attract a diversity of employment opportunities. The plan district regulations also protect significant environmental and scenic resources and maintain the capacity of the area infrastructure to accommodate future development.

The Cascade Station/Portland International Center Plan District regulations encourage the development of a commercially viable mix of office, retail, hotel, entertainment, and industrial employment uses while protecting significant environmental and archeological features of the area.

Land Use History: There are no previous land use cases associated with NE 92nd Drive.

Environmental Resources: The application of the environmental overlay zones is based on detailed studies that have been carried out within ten 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 project site is mapped within the *Inventory and Analysis of Wetlands, Water Bodies and Wildlife Habitat Areas for the Columbia Corridor* as Water Feature No. 7 and in the *Columbia South Shore Resource Protection Plan* as Site C. Resources and functional values of concern on the project site include water, drainageways, and wildlife corridor. The Columbia Slough acts as a storm and groundwater drainage system for northeast Portland which has a high water table. The Slough performs a very important role of cycling water out of the area. The Slough provides forest and scrub-shrub riparian habitat. Wildlife, especially avian, use the corridor as a flyway as well as for resting and nesting. Drainageway functions include flood storage, desynchronization, erosion control, sediment trapping, fish habitat, and pollution and nutrient retention and removal.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **May 22, 2009**. Several Bureaus responded to this proposal; please see Exhibits E for details. Relevant comments are addressed under the appropriate criteria for review of the proposal.

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed **May 22, 2009**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.508.340; and 33.515.280

A. Purpose of the review. Environmental review of uses and development in the Environmental zones is intended to provide adequate protection for the identified natural resources. The review provides for flexibility and reasonable development opportunities when development is sensitive to the special environmental concerns of the site. Within the plan district(s), the applicant should be aware that if a cultural resource exists on an area to be removed from environmental zones, the protection measures of 33.508.295 and 33.515.262 still apply.

The Approval Criteria are almost identical between these two Plan Districts and are therefore combined to facilitate reading and understanding the report. Where language variations occur between the two Plan Districts, the differences are identified by their Chapter and Subsection numbers.

D – Approval Criteria. The applicable approval criteria are 33.508.340.D.2, D.4, and D.6 for the Cascade Station/Portland International Center PD; and

D – Approval Criteria. The applicable approval criteria are 33.515.280.D.2, D.4, and D.6. for the Columbia South Shore PD.

1. Fill or destruction of a natural resource in an environmental conservation zone will be approved if the review body finds that:

Findings: This project is not located in the environmental *conservation* zone and therefore, *the conditions listed under this criterion are not applicable.*

2. Removal of vegetation in an environmental zone or planting of native vegetation if not required in a protected natural resource will be approved if the review body finds that all activities will result in no loss of resource values identified in Figure 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore*;

Findings: The applicant proposes to remove 11 trees to allow construction of the new bike/pedestrian bridge and enhancement of the existing bridge and roadway. In addition, any native shrub or groundcover species within the disturbance area will be impacted by construction activity. The applicant provided a resource analysis, which found that habitat along the Columbia Slough in the vicinity of this project has a narrow, linear riparian form consisting primarily of a few mature cottonwoods and Douglas fir trees, including one 6-foot tall snag and two habitat logs adjacent to the northeast corner of the site. Further, reed canarygrass (an invasive species on the Portland Prohibited Plants list) is dominant, which minimizes the structural complexity of the site.

The applicant’s mitigation plan will enhance the native vegetation community at the site. The plan includes installing 15 native trees, 21 native live willow stakes, 54 shrubs, 21 Red-osier dogwood live stakes, and seeding the site with a groundcover seed mix composed of 50 percent native grass seed and 50 percent native forb seed and seeded at a rate of 69.2 pounds per acre. This mitigation plan ensures that there will be no permanent loss of

resource values identified in Figure (Table) 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore*.

With conditions to install the native plants identified in the mitigation plan and for maintenance, monitoring and reporting requirements, *this criterion will be met*.

3. **Planting non-native vegetation in an environmental zone will be approved if the review body finds that the vegetation:**
 - a. **Provides food or other values for native wildlife that cannot be achieved by native vegetation; and**
 - b. **Is not classified as a nuisance or prohibited plant on the *Portland Plant List*.**

Findings: Non native vegetation is not proposed and will not be planted in the environmental zone as part of this proposal. Therefore, *this criterion is not applicable*.

4. **The following activities will be approved if the review body finds that the criteria of this paragraph are met: other resource enhancement or alteration or road improvements in public rights-of-way in an environmental zone; (light rail transit corridors in an environmental zone per 33.508); or overhead utilities, underground utilities (other than sewer connections to individual properties, per 33.515); or recreation or trail facilities identified in the *Columbia South Shore Slough Trail Master Plan* (or trails shown in Figure 508-13, CS/PIC Pedestrian and Bicycle Plan per 33.508); in the protected resource:**
 - a. **The proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;**

Findings: The proposal to improve an existing street bridge and add a separate bike/pedestrian bridge within the right-of-way has been designed to have as few impacts as possible to the resource area. An existing 33-foot wide street bridge currently spans the slough. The proposed 14-foot wide bike and pedestrian bridge will span the width of the Slough with footings at or near the top of bank, well above the ordinary high water mark. The number of trees that must be removed has been minimized and the mitigation plan will enhance the right-of-way area by installing far more native species and quantities of plants than exist in that area today. Stormwater from the existing road and from all proposed improvements will be sent to a new stormwater swale located outside the environmental zone where it will be treated prior to discharge in an existing outfall to the Slough. The existing groundcover is primarily Reed canarygrass, which is an invasive species that will be removed during the construction associated with the bridge work.

The construction area will be limited by fencing so that resources outside the limits of disturbance will not be impacted. Although not regulated by Site Development, this BDS Section commented that this site meets the criteria for being a “special site” due to the proximity of open water per City Code 10.30.030, and should have an erosion control plan prepared by a Certified Professional in Erosion and Sediment Control (CPESC) or State of Oregon registered professional engineer in order to protect Slough waters. To protect the water resource, therefore, a condition is needed to require a Certified Professional in Erosion and Sediment Control (CPESC) or State of Oregon registered professional engineer to prepare and monitor an erosion control plan for this site.

With a requirement to have a CPESC to prepare an erosion control plan and to be on-site to monitor its implementation, this criterion will be met.

- b. **All detrimental environmental impacts are mitigated in the following manner:**
 - (1) **All resource values listed in Figure (Table) 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore* for the site being altered or destroyed will be replaced at the mitigation site. If the mitigation site is**

within a protected resource, values that already exist do not count towards mitigation;

Findings: The site is located in a protected resource area and its values include groundwater recharge, discharge, drainage, flood storage, erosion control/sediment trapping, pollution/nutrient retention/removal, fish and wildlife habitat (esp. corridor, dispersion), potential recreation, visual amenity.

The proposed bike/pedestrian bridge will span the Slough from top of bank to top of bank. It should not impact groundwater recharge or discharge. Drainage will be improved by sending stormwater from both bridges and other street improvements to a new stormwater quality swale outside the environmental zone. The effect of the new footings in the floodplain is expected to be minimal.

Although 11 trees will be removed, including 3 non-native Scotch pine, the applicants will install 15 native trees and 21 native willow stakes, or a replacement ratio of 3 to 1. In addition, 54 shrubs will be planted and the area will be seeded with a native forb/grass seed mix at a rate of 69 pounds per acre. The new, native vegetation will enhance wildlife habitat and provide a visual amenity. *This criterion is met.*

(2) The mitigation area abuts or is within a protected resource;

Findings: The mitigation area is within and abuts the protected resource area within the existing and proposed right-of-way. *This criterion is met.*

(3) If the mitigation area is within a protected resource, mitigation will be provided for all resource values lost, including those lost in the protected resource as part of mitigation efforts; and

(4) All detrimental impacts on resource values listed in Figure (Table) 2-3 of the Natural Resources Protection Plan for the Columbia South Shore for the site on which the use or activity is taking place will be replaced at the mitigation site;

Findings: The mitigation plan will replace cut trees at a 3 to 1 ratio and will add 75 native shrubs to the site as well as remove a prohibited plant species (Reed canary grass) and replace it with a 50:50 mix of native forbs and grasses. Altogether, 17 native plant species will be introduced to this site: 5 trees, 4 shrubs, 4 forbs and 4 grasses. These plants will more than replace any lost resources and will improve or enhance all of the listed resource values. For example, the increased amount of vegetation on the site will improve pollution/nutrient retention by preventing pollutants from entering the Slough, which will improve habitat. Both fish and wildlife habitat will be improved by the existence of native vegetation along the banks, and the new vegetation will help prevent erosion and sedimentation in the Slough. Therefore, *these criteria are met.*

c. A monitoring or maintenance plan has been prepared which insures the maintenance and protection of resource mitigation areas and associated functions and values for 5 years after success has been achieved. The 5-year period will begin when the Bureau receives and approves a report from the applicant that describes the manner in which mitigation success has been achieved. Success shall be defined in the approved mitigation plan to include:

(1) Full achievement of required resource values; and

Findings: The applicant states that the plants will be installed with mulch for weed control and browse protection to prevent predation. Plants will be watered upon installation and a temporary irrigation system with time-release watering will be installed. Weeding will occur twice each year for the 5-year period and plant cover will be monitored and evaluated using either a transect or random plot methodology. Mulch

will be restored once each year and dead plants will be replaced at the end of the first growing season. Plant survival will be measured by an actual plant count.

Monitoring and Maintenance:

The Zoning Code requires that all mitigation shrubs and trees that are required to be planted will survive until maturity. Monitoring and maintenance of the plantings for a period of five years, in compliance with the requirements of the two Plan Districts, will ensure survival during the most critical period of establishment of new plantings. One hundred percent of the planted trees are required to survive the two-year monitoring period, or be replaced. Maintaining shrub and groundcover survival so that 90 percent of the planted areas are covered by native vegetation will ensure a healthy understory is established. Limiting intrusion into planted areas by invasive species, as well as providing water during the dry summer months, for the first few years, will also help to ensure survival of the mitigation plantings. Documentation of plant survival and replacement and of these monitoring and maintenance practices shall be included in an annual monitoring report to demonstrate success of the mitigation plan.

With conditions for plant replacement as needed on a yearly basis and for specific monitoring requirements, *this criterion will be met.*

(2) Compliance with development standards of Section 33.508.330 and 33.515.278.

Findings: The proposal either meets the development standards or will be conditioned to meet the development standards. Therefore, *this condition will be met.* (Please refer to the Development Standards section below, beginning on page 8, below.)

- d. Except for public improvement projects undertaken by the City, a performance guarantee which meets the requirements of Section 33. 700.050, Performance Guarantees, for construction, monitoring, and maintenance of the mitigation site in accordance with the mitigation plan will be filed with the City Auditor prior to issuance of any development or building permit.**

Findings: The project is a public improvement project; therefore a Performance Guarantee is not required, and *this criterion is not applicable.*

- 6. Public right-of-way dedication in an environmental zone will be approved if the review body finds that there are no practicable alternatives that have less impact on the protected resource.**

Findings: Dedication of a wider right-of-way is required in order to install the new bike/pedestrian bridge and install a new sidewalk on the west side of the street. The NE 92nd Drive Bridge has existed at this location for several decades, predating the environmental studies that created the environmental zones. The street was vacated in 1982 as part of the Airport Master Plan. The Port of Portland retained ownership of the vacated right-of-way and developed the area as industrial property with private access road. With the increasing amount of traffic in the area, it has been determined that NE 92nd should become public right-of-way once more. The street and bridge exist and the street area is used by local traffic at either end of the bridge. Re-opening an existing bridge with only a slight widening of the right-of-way to accommodate a bike/pedestrian bridge and a new sidewalk will have far fewer impacts than constructing a brand new bridge and improvements in another location across the Slough. Approximately 7,602 SF of right-of-way will be added within the environmental zone. Any other site that does not contain an existing bridge and street would have far more impacts on the protected resource. Therefore, *this criterion is met.*

DEVELOPMENT STANDARDS

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

The proposed right-of-way improvements are subject to compliance with the Development Standards of Sections 33.508.330 (the Cascade Station/Portland International Center Plan District and 33.515.278 (the Columbia South Shore Plan District) per the provisions of Sections 33.508.320.B and 33.515.276.B and Sections 33.508.340.D.4.c(2) and 33.515.280.D.4.c (2). The two Plan Districts are adjoining and do not overly one another (see Exhibit B for Plan boundaries). Essentially, the standards are identical between these two Plan Districts and have been combined to facilitate reading and understanding the report. Where language variations occur between these two Plan Districts, the differences are identified by their Chapter and Subsection numbers.

33.508.330 Cascade Station/Portland International Center Plan District, Subdistrict B; and 33.515.278 Columbia South Shore Plan District

A. Except for temporary uses and as specified in Paragraph A.6, land uses and activities on lots or sites or lease areas which contain an environmental zone on any portion of them require revegetation of the vegetated transition area as follows:

- 1. Species must be classified as native on the *Portland Plant List*, and not be classified as prohibited or nuisance plants; (and be listed in the approved CS/PIC Plant List – for projects in the CS/PIC PD only)**

Findings: The approved plant list in the CS/PIC PD contains mostly non-native species. Non-native species are not allowed to be planted in environmental zones. The applicant proposes to use only native species selected from the Portland Plant List, which meets the intent of both the Cascade Station/Portland International Center and the Columbia South Shore Plan Districts. Therefore, *this standard is met.*

- 2. 508.330. Three different native shrub species are required at a minimum 1-gallon size or bare root, planted at a density of 3 plants per 10 square feet.
515. 278. Planting must cover 90 percent of the ground within one year or two growing seasons after planting;**

Findings: The applicant proposes to plant 15 trees composed of 4 species and 21 live willow stakes, as well as 54 shrubs composed of 3 species and 21 live Red-osier dogwood stakes, meeting the species diversity requirement. The area to be planted is 3,184 SF, which means that each plant will have a 4' by 7', or a 28 square-foot planting area which is somewhat larger than the required 10 square feet. This planting density will ensure at least a 90 percent ground cover within two growing seasons after planting, provided the plants are monitored, maintained or replaced as needed to ensure 100 percent survival.

However, the planting density does not meet the planting requirements of the Cascade Station/PIC Plan District that require planting shrubs at a density of 3 plants per 10 square feet. An Adjustment Review is required to vary from the standards of these two Plan Districts. Because there is a dichotomy between the two sets of planting standards, one of which, the Columbia South Shore PD, are met, and one of which, the

Cascade Station/PIC PD standards aren't met, the applicant may choose to apply for an Adjustment Review to reconcile the two planting requirements.

To ensure that mitigation plants are installed in a timely fashion, and maintained as required above, a zoning permit will be required. The zoning permit must be obtained within the first growing season (October 1st through March 31st) following completion of the bridge project.

Therefore, with conditions to meet standards or apply for an Adjustment Review to vary the planting requirements, to obtain a Zoning permit within the first growing season following completion of the bridge project, and for monitoring, maintaining and reporting the mitigation plan status for a period of 5 years following planting, *this standard will be met.*

3. **508.330. The remaining area must be planted with native groundcover using a minimum of four-inch pots at a density of 8 plants per ten square feet. 515. 278. At least 8 species of (groundcover) plants must be used. Fifty percent of any seed mix used must be grass and 50 percent flowers when measured by area covered; and**

Findings: The applicant proposes to plant 5 tree species and 4 shrub species and proposes to plant native groundcover seeds instead of 4-inch pots. The area will be seeded at a rate of 69.2 pounds per acre. This rate is far more dense than the typical seeding of 30 to 40 pounds per acre. The applicant specified 4 groundcover species, two grass and two flowers (blue wild-rye and western Fescue grasses; yarrow and lupine forbs), instead of the 8 species required by the Plan Districts. Four additional groundcover species are required to meet the intent of this standard. The dense seeding, combined with regular irrigation, maintenance and monitoring should accomplish the same goal as planting 4-inch pots. However, as noted above, modification of the Plan District standards requires an Adjustment Review. Therefore, with a condition to meet standards or apply for an Adjustment Review to vary the planting requirements in order to equally or better meet this standard, and with conditions to add 2 more native grass and 2 more native forb species to the seed mix, and for specific maintenance and monitoring plans, *this standard will be met.*

4. **508.330. Below the top-of-bank on slopes greater than 30 percent or in riprap areas, live stakes, ½ to 1½ inches in diameter, may be substituted for the requirements of D.1 and D.2 above. Stakes must be installed at a density of 2 to 4 stakes per square yard. Detailed specifications for installing live stakes are found in Chapter 18 of the United States Department of Agriculture Engineering Field Handbook (entitled Soil Bioengineering for Upland Slope Protection and Erosion Reduction, October 1992. 515. 278. If cover requirements are not met within one year from issuance of an occupancy permit, final inspection, or certificate of completion, replanting is required and the requirements of this section must be met within one year or two growing seasons of replanting.**

Findings: The banks are less than 30 percent and do not contain riprap areas. Therefore, the requirements of 508.330.A.4 do not apply. The applicant's mitigation and monitoring plan indicates that these requirements will be met. Conditions of approval attached to other Standards or Approval Criteria will ensure that these requirements will be met. Therefore, *this standard will be met.*

5. **Plants used for revegetation may also count towards other landscaping requirements.**

Findings: This standard and the mitigation requirements in 33.515.280 are the only landscaping requirements to be applied to this proposal. No other landscaping requirements are necessary. Therefore, *this standard is not applicable.*

6. **Exception for sites with an existing nonconforming use, allowed use, limited use, or conditional use. Sites with an existing nonconforming use, an allowed use, a limited use, or a conditional use are subject to the following regulations:**
 - a. **Required improvements. When alterations are made to a site that does not meet the standards of A.1-5, above, the site must be brought into conformance with the standards of A.1-5. The cost of meeting the standards of A.1-5 may be counted toward the cost of upgrades required by Subsection 33.258.070.D. However, the standards of A.1-5 must be met first.**
 - b. **Area of required improvements. Except as provided in 33.258.070.D.2.c(2), Exception for Sites with Ground Leases, required improvements must be made to the entire site.**
 - c. **Timing and cost of required improvements. The timing and cost of the required improvements is specified in 33.258.070.D.2.d. However, where 33.258.070.D.2.d refers to the standards listed in subparagraph 33.258.070.D.2.b, the standards of A.1-5 are also included.**

Findings: The site does not contain any of the above-described uses; therefore, *these standards are not applicable.*

- B. **Land uses, land divisions, and activities within an environmental zone must meet the following standards:**
 1. **Revegetation in a vegetated transition area must meet the following:**
 - a. **Species must be classified as native on the *Portland Plant List*, and not be classified as prohibited or nuisance plants;**
 - b. **Planting must cover 90 percent of the ground within one year or two growing seasons after replanting;**
 - c. **At least 8 species of plants must be used. Fifty percent of any seed mix used must be grass and 50 percent flowers when measured by area covered; and**
 - d. **If cover and species requirements are not met within one year or two growing seasons from issuance of an occupancy permit, final inspection, or certificate of completion, replanting is required and the requirements of this section must be met within one year of replanting.**
 - e. **Plants used for revegetation may also count towards other landscaping requirements.**

Findings: Standards B.1.a-e are identical to Standards A.1-5. Please refer to Findings listed under Standards A.1-5 above for compliance with this list and any required conditions of approval.

2. **Revegetation in a protected resource must meet the following:**
 - a. **Species must be classified as native on the *Portland Plant List*, and not be classified as prohibited or nuisance plants; and be listed in the approved CS/PIC Plant List (for projects in the CS/PIC PD only).**

Findings: This requirement contains an internal revegetation conflict, i.e., most of the plants on the CS/PIC PD list are non-natives, which are not allowed to be planted in the environmental zones. However, this CS/PIC PD standard also requires that only native species listed in the *Portland Plant List* may be planted in a protected resource area. These two requirements directly conflict one another. However, it is clear that the intent of the CS/PIC PD is to install only native species in the environmental zone. The

applicant intends to install only native species that are selected from the *Portland Plant List*. Therefore, *this standard is met*.

b. Planting must cover 90 percent of the ground within one year or two growing seasons after planting;

Findings: As stated in 515.278.A.2 above, the mitigation proposal and additional conditions of approval will result in a 90 percent ground cover within two growing seasons after planting. Therefore, *this standard is met*.

c. Figure 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore* lists all protected natural resources in the plan district and identifies their resource values. If a site is a riparian area, Subsubparagraph (1) must be met. If a site is not a riparian area, but is a meadow or open space without trees, Subsubparagraph (2) must be met. All other sites must meet Subsubparagraph (1).

(1) Planting requirements with trees:

- At least 8 species of plants must be used;
- At least 2 species must be shrubs and 2 must be trees;
- Fifty percent of any seed mix used must be grass and 50 percent flowers when measured by area covered;
- One tree and 3 shrubs are required for every 500 square feet of planting area; and
- Trees and shrubs must be planted in clusters of at least 3.

(2) Planting requirements without trees:

- At least 8 species of groundcover plants must be used; and
- Fifty percent of any seed mix used must be grass and 50 percent flowers when measured by area covered.

Findings: The site includes the bed and banks of the Slough as well as the adjacent riparian area. Therefore, the proposal must meet the standards of Paragraph (1) above.

The applicant proposes to plant 5 tree species, 4 shrub species and a 50:50 mix of native grass/wildflower seeds seed at 69.2 pounds per acre, which meets the above listed requirements. The species composition includes 15 trees and 21 live willow stakes (or 36 trees altogether), 54 shrubs and 21 live Red-osier dogwood stakes (or 75 shrubs altogether).

The area to be planted is 3,184 SF which results in 6.4 areas of 500 square feet. The requirement to plant 1 tree and 3 shrubs for each 500 square feet of planting area results in a requirement for 7 trees (rounded up) and 19 shrubs. The applicant's mitigation plan, which includes 36 trees and 75 shrubs, far exceeds the planting density of this Standard.

The requirement to plant trees and shrubs in clusters of three may not be feasible in the small planting area associated with this site. The applicant should install mitigation plants in the best locations and associations to ensure plant survivability.

Therefore, *this standard is met*.

d. If cover and species requirements are not met within one year from issuance of any occupancy permit or final inspection, replanting is required and the requirements of this section must be met within one year of replanting.

Findings: A zoning permit is required to ensure that mitigation plants are installed and maintained as required. The zoning permit must be obtained within the first planting

season following construction of the bike/pedestrian bridge. With this condition, *this standard will be met.*

e. Plants used for revegetation may also count towards other landscaping requirements.

Findings: There is no other required landscaping. Therefore, *this standard is met.*

3. Herbicides used for removal of vegetation must be listed by the U.S. Environmental Protection Agency (and Oregon Department of Fish and Wildlife per CS/PCI PD) as appropriate for application in aquatic areas and use must be in accordance with directions for application.

Findings: The applicant has requested use of herbicides. Therefore, *this standard will become a condition of approval.*

4. Areas cleared of vegetation must be reseeded or replanted within one year of vegetation removal.

Findings: As noted above, the site will be replanted and reseeded during the first growing season following completion of the project. The growing season is defined as October 1 through March 31st. With a condition requiring the applicant to install mitigation plants during this time period, *this standard will be met.*

5. All development or activities which disturb ground or remove vegetation must conform to Chapter 24.70, Clearing, Grading, and Erosion Control, and to the Erosion Control Technical Guidance Handbook. In addition, the following standards must be met:

- a. **Wet weather.** All development between November 1 and April 30 of any year, which disturbs more than 500 square feet of ground, requires wet weather measures described in the *Erosion Control Technical Guidance Handbook*. These measures must be met until issuance of any occupancy permit or final inspection;
- b. **Maintenance.** Erosion control measures must be maintained until 90 percent of all disturbed ground is covered by vegetation;
- c. **Self inspection.** Areas where the ground is disturbed must be inspected by or under the direction of the owner at least once every 7 calendar days, within 24 hours of any storm event greater than one-half inch of rain in any 24-hour period, or at any time when water runoff occurs. These measures must be met until issuance of any occupancy permit or final inspection; and
- d. **Record keeping.** Records must be kept of all inspections. Instances of measurable erosion must be recorded with a brief explanation of corrective measures taken. This record must be available to the City and retained until final inspection.

Findings: Although not regulated by Site Development, this BDS Section stated that this site meets the criteria for being a “special site” per City Code 10.30.030, and should have an erosion control plan prepared by a Certified Professional in Erosion and Sediment Control (CPESC) or State of Oregon registered professional engineer in order to protect Slough waters. To protect the water resource, therefore, a condition is needed to require a Certified Professional in Erosion and Sediment Control (CPESC) or State of Oregon registered professional engineer to prepare and monitor an erosion control plan for this site.

With conditions to list the above standards and a requirement for a CPESC to prepare and monitor an erosion control plan during construction, *these standards will be met.*

6. Stormwater discharge must pass through water quality facilities, which conform to Chapter 17.38, Drainage and Water Quality.

Findings: Stormwater runoff will be directed to a new swale that will be located outside the environmental zone, and is therefore outside the jurisdiction of this review.

7. Stormwater discharge into a mitigation area is not allowed unless it is part of the mitigation plan.

Findings: This proposal does not discharge stormwater to a mitigation area, so *this standard is met.*

8. Except for stormwater discharges, industrial or sanitary discharges, including wastewater and overflow, into the slough system is not allowed.

Findings: Only treated stormwater discharge will be directed to the Slough by this proposal. Therefore, *this standard is met.*

9. Construction and ongoing maintenance for overhead or underground utilities, including sanitary sewer connections to individual properties and stormwater outfalls, cannot affect more than a 25-foot-wide corridor (10-foot-wide corridor for private utility connections and a 15-foot-wide corridor for public utilities per Ch. 508.330) across the resource. These activities cannot result in the killing or removal of trees over 6 inches in diameter, measured 4-1/2 feet above the ground.

Findings: No overhead or underground utilities or sanitary sewer connections to individual properties are proposed. Therefore, *this standard does not apply.*

10. Road improvements (and light rail transit corridors per Ch.508.330) across the slough must be by bridge unless a water control structure is a necessary part of the design.

Findings: Road improvements and the new bike/pedestrian bridge will be by bridge. Therefore, *this standard is met.*

11. Water quality monitoring facilities may be up to 100 square feet in area.

Findings: Water quality monitoring facilities are not included in this proposal. Therefore, *this standard is not applicable.*

12. In Employment and Industrial zones, new lots completely within the environmental protection zone are exempt from minimum lot size and shape requirements of Chapter 33.614 and chapter 33.615 (or Section 33.140.200, Lot Size per Ch. 508.330). All other new lots must meet the minimum size and shape requirements of Chapter 33.614 and Chapter 33.615, outside of land zoned environmental protection.

Findings: New lots are not proposed. Therefore, *this standard is not applicable.*

13. Location and design of any trail or recreation facilities must conform to standards of the Columbia South Shore and CS/PIC plan districts. All new trail easements must be in the outer 25 feet of the environmental zone, except as necessary to connect to existing easements or trails on adjacent sites.

Findings: No trail or recreation facilities are included in this proposal. Therefore, *this standard is not applicable.*

14. Construction of the trail or recreation facilities cannot result in the removal of trees more than 6 inches in diameter, measured 4-1/2 feet above the ground, and are not required to be located within wetlands subject to state or federal regulations.

Findings: No trail or recreation facilities are included in this proposal. Therefore, *this standard is not applicable.*

- 15. Staging areas for slough and drainageway maintenance may have up to 5,000 square feet of gravel, paving, structures, or other ground-disturbing uses or activities exclusive of an access road. Access roads within an environmental zone may be up to 300 feet in length.**

Findings: This proposal does not include slough or drainageway maintenance activities. Therefore, *this standard is not applicable.*

- 16. Water levels in the slough will be maintained at an elevation of between 5 and 10 feet mean sea level in order to preserve wetlands that are protected by an Environmental zone. An exception to this standard is for maintenance or emergency situations when a lower level is necessary.**

Findings: This proposal will not affect water elevations in the slough. Therefore, this standard is not applicable.

17. Nonconforming situations

a. Required improvements.

- (1) Paved areas in Environmental Overlay Zones. When the value of proposed alterations on the site, as determined by BDS, is more than \$131,150, paved areas that do not meet plan district regulations must be removed from environmental zoned areas. The value of the alterations is based on the entire project, not individual building permits.**
- (2) Unpaved exterior areas. When development is proposed or alterations are made to a site, unpaved exterior improvements must comply fully with development standards.**
- (3) The cost of meeting the standards of B.17.a(1) and (2), above, may be counted toward the cost of upgrades required by Subsection 33.258.070.D. However, the requirements of B.17.a(1) and (2) must be met first.**

b. Area of required improvements. Except as provided in 33.258.070.D.2.c(2), Exception for Sites with Ground Leases, required improvements must be made to the entire site.

c. Timing and cost of required improvements. The timing and cost of the required improvements is specified in 33.258.070.D.2.d. However, where 33.258.070.D.2.d refers to the standards listed in subparagraph 33.258.070.D.2.b, the standards of B.17.a(1) and (2), above, are also included.

d. Removal of existing bridges, utilities, or public improvements is not required.

Findings: The site does not contain a nonconforming situation. Therefore, *these standards do not apply.*

515.278.B.18 – only. Land divisions. The following standards apply to land divisions where at least half of the site is within an environmental zone:

Findings: No land divisions are included in this proposal. Therefore, *these standards do not apply.*

33.515.260 Public Recreational Trails

- A. Public recreational trail requirements. All sites with a public recreational trail symbol shown on the Official Zoning Maps must comply with the requirements of Chapter 33.272, Public Recreation Trails, except those in the Columbia South Shore Slough Trail area or Cross-Levee Trail area. Sites in these areas, shown on Map 515-4, must also comply with the regulations of this section. If the trail is located within the Environmental zones, the trail must also comply with those requirements.**

Findings: This site does not contain the Columbia South Shore Slough Trail designation, which is plainly shown on Map 1 of Map 515-4. Figure 508-13 in the CS/PIC PD shows a slough channel but does not designate it. The verbiage states that the “trail route must be as generally shown on Figure 508-13.” The zone map shows both Slough channels with the

trail designation. Therefore, the requirements of Chapter 33.272, Public Recreation Trails, and the additional trail standards found in this chapter are applicable.

METRO noted in comments on this review that a built trail currently exists along the northeast bank of the Slough, from NE 92nd Drive east to I-205. METRO suggested that PBOT grade an area from the west edge of the proposed sidewalk to the edge of the right-of-way, where it could potentially meet a future paved trail. METRO also suggested that PBOT incorporate at-grade crosswalk striping with trail stop signs, or construct a trail undercrossing under the bridges.

In response, PBOT explained that the grades for any future trail expansion are unknown at this time and that the right-of-way for such a trail has not been established. Trying to grade an area when neither the location nor the elevation for a future project is unknown would have impacts that could be unnecessary or excessive. Furthermore, any future trail to the west could be matched up to the back of the concrete sidewalk and curb ramp proposed in this application with minimal expense.

A trail crossing under the bridge is not feasible due to the low clearance on the existing vehicular bridge and additional impacts such a crossing would have below ordinary high water.

Finally, although pedestrian/bike crossing signs are included in the proposal, a marked crossing is not a legal requirement because it will be far more than 150 feet from the nearest intersection. Further, NE 92nd Drive is a local street with low traffic volumes and low speeds, there is good sight distance at the crossing, and the crossing distance is short, minimizing pedestrian and bike exposure to traffic.

Therefore, PBOT feels that its proposed crossing treatments for bike and pedestrian traffic are sufficient to ensure bike and pedestrian safety and that plans for future trail connections will be relatively easy to incorporate at the time a trail addition is made.

CONCLUSIONS

The Portland Bureau of Transportation proposes to rededicate a vacated right-of-way on NE 92nd Drive and widen the right-of-way by approximately 7,602 SF. The Bureau will also construct a separate bike/pedestrian bridge to the east of the existing vehicular bridge and add a new sidewalk to the west of NE 92nd. These developments will have impacts to the protected resource and vegetated transition area, primarily loss of area and loss of eleven trees. The applicant's mitigation plan meets the revegetation requirements of the affected Plan District's development standards and approval criteria with only a few required conditions. Therefore, this proposal should be approved, subject to the conditions listed below.

ADMINISTRATIVE DECISION

Approval of an Environmental Review for:

- Rededication of existing right-of-way;
 - Adding 7,602 SF of additional right-of-way;
 - Construction of a new 14-foot wide by 100.5-foot long steel truss bike/pedestrian bridge;
 - Widening and separating the existing sidewalk on the west side of the existing bridge.
 - Installing new concrete approach ramps on both the north and south ends of the existing bridge and for the new bike/pedestrian bridge.
 - Removing eleven trees;
 - Installing 34 native trees including 21 native live stake willows; 75 native shrubs including 21 live stake Red-osier dogwoods, and a native grass and flower seed mix;
- all of which is located within the Protected Natural Resource Area of the Columbia South Shore

Plan District, within an environmental zone in the Cascade Station/Portland International Center Plan District, and within the environmental protection overlay zone, and in substantial conformance with Exhibits C.2, C.3, C.4, C.5, C.6, C.7 and C.8, as modified, signed, and dated by the City of Portland Bureau of Development Services on June 17, 2009. Approval is subject to the following conditions:

A. All permits: A zoning permit is required for mitigation plant installation. Copies of the stamped Exhibits C.2 – C.8 from LU 09-122400 EN and Conditions of Approval listed below, shall be included within all plan sets submitted for permits. 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.2 through C.8."***

B. Construction management shall include:

1. Prior to ground disturbing activities, the applicant shall implement construction management measures in conformance with Exhibits C.4-6. Temporary construction fencing (four feet high) shall be installed according to Section 33.248.068 (Tree Protection Requirements), except as noted below. Construction fencing shall be placed along the Limits of Disturbance for the approved development, as depicted on Exhibit C.4 Construction Management Plan, or as required by inspection staff during the plan review and/or inspection stages.
2. No mechanized construction vehicles are permitted outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
3. Erosion Prevention and Sediment Control must be carried out in conformance with the City of Portland, Bureau of Environmental Services Erosion Prevention and Sediment Control Technical Guidance Handbook, or later edition. Areas where the ground is disturbed must be inspected according to this schedule: once every 7 calendar days; within 24 hours of any storm event greater than one-half inch of rain in any 24-hour period; or at any time when water runoff occurs. Records must be kept of all inspections. Instances of measurable erosion must be recorded with a brief explanation of corrective measures taken. Erosion control measures must be maintained until 90 percent of all disturbed ground is covered by vegetation.
4. A Certified Professional in Erosion and Sediment Control (CPESC) or State of Oregon registered professional engineer must prepare an erosion control plan for this site and monitor its implementation for the duration of the entire construction period and mitigation plant installation.
5. If, during the construction period, materials are found which may have Native American cultural significance, the project managers or site workers must notify the appropriate Native American tribe(s) within 24 hours of the discovery of any cultural resources. Should any human remains or possible human remains or burials be discovered, all ground disturbing activities within fifty feet of the discovery will be halted immediately. The remains and any assorted artifacts or other items, or any associated deposits, shall be left undisturbed except to cover the remains and associated items to protect them from public view and weather. For any remains that appear to represent a Native American burial, the Oregon State Police, Oregon State Historic Preservation Office, Commission on Indian Services, and appropriate Native American tribe(s) must be promptly notified pursuant to ORS 97.745 and 358.920.

C. After completion of the bridge improvements, the applicant shall obtain a zoning permit for mitigation plant installation. Mitigation/Revegetation shall include: A total of 36 native trees, 75 shrubs and 69 pounds per acre of a 50/50 native grass/wildflower seed mix, selected from the Portland Plant List, shall be planted in substantial conformance with Exhibits C.7-8, Mitigation Plans, with the changes listed

below:

1. Plantings shall be installed between October 1 and March 31 (the planting season).
2. 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.
3. The applicant shall install 15 trees, 21 live willow stakes 54 shrubs, 21 live Red-osier dogwood stakes, and seed the site with a 50/50 mix of native grass and flower seed at a rate of 69 pounds per acre, per the approved Mitigation Site Plan.
4. The applicant shall add 2 native grass and 2 native flower species, selected from the *Portland Plant List*, to the native seed mix for a total of 4 native grass species and 4 native flower species.
5. The native seed mix shall be applied in all disturbance area within the environmental zone.
6. To meet the CS/PIC PD shrub and groundcover plant requirements, the applicant shall plant an additional 238 native shrub species (for a total of 313 shrubs) and 2,504 native groundcover plants in four-inch pots. These numbers are in addition to the requirements of Condition C.3, above.
7. The applicant shall either accept the condition to plant according to the planting standard requirements listed above in Condition 6, or apply for and receive approval of an Adjustment Review of the Cascade Station/PIC PD shrub and groundcover planting standards.
8. Mitigation plants shall be installed during the first growing season (October 1 through March 31) following project completion.
9. All mitigation and revegetation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the BES landscape designer of record. All tape shall be a contrasting color that is easily seen and identified. The project area shall be revegetated in substantial conformance with the attached mitigation and revegetation plans (Exhibits C.7-8) within the first planting season (as described above) following construction activities per Exhibit C.7, the Mitigation Plan.
10. Herbicides to be used to control non-native invasive species on the site must be listed by the U.S. Environmental Protection Agency as appropriate for application in aquatic areas and use must be in accordance with directions for application.
11. The Bureau of Transportation shall have a registered landscape architect, a registered landscape contractor, or the designer of record certify that all the required mitigation plantings were installed as required. After installation, PBOT shall submit a Landscape Certification Form to this effect, signed by the registered landscape professional. The signed Landscape Certification Form shall be submitted to the Bureau of Development Services, Environmental Review Section, (RE: LU 09-122400 EN), confirming that all required mitigation plantings have been installed in accordance with these conditions of approval.

D. The landscape professional or designer of record shall monitor the required plantings for five years to ensure survival and replacement as described below. The 5-year period will begin when the Bureau of Development Services receives and approves a report from the applicant that describes the manner in which mitigation success has been achieved, i.e., when all mitigation plants have been installed. The Bureau of Environmental Services is responsible for ongoing survival of required plantings beyond the designated five-year monitoring period. The Bureau of Environmental Services' landscape professional shall:

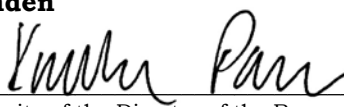
1. Provide five letters (to serve as monitoring and maintenance reports) to the Sumner Neighborhood Association and to the Land Use Services Division of the Bureau of Development Services (Attention: Environmental Review LU 06-146295 EN) containing

the monitoring information described below. BES shall submit the first letter within 12 to 13 months following submittal of the Landscape Certification Form. Subsequent letters shall be submitted every 12 to 13 months thereafter for a period of 4 years. 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 90 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 90 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 approved Exhibits C.6-7, Proposed Mitigation Plans, 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 five summers after planting. All irrigation systems shall be temporary and above-ground.
- f. An estimate of percent cover of invasive species (English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis, etc.) within 10 feet of all plantings. Invasive species must be controlled so as to not exceed 20 percent cover during the monitoring period.

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

Staff Planner: Kathy Harnden

DECISION RENDERED BY:  **ON JUNE 22, 2009**

By authority of the Director of the Bureau of Development Services

Decision filed: June 23, 2009

Decision mailed: June 25, 2009

About this Decision. This land use decision is **not a permit** for development. Any Final Plats must be completed and recorded before the proposed lots can be sold or developed. 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 April 17, 2009, and was determined to be complete on May 20, 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 April 17, 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 for one week, to June 24, 2009. Unless further extended by the applicant, **the 120 days will expire on: September 25, 2009.**

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, who will hold a public hearing. Appeals must be filed **by 4:30 PM on July 9, 2009** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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 review, 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.

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

The file and all evidence on this case are available for your review by appointment only. Please 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 Hearing 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 **July 10, 2009 – the 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 503-823-7967.

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, or
- In situations involving only the creation of lots, the land division has been recorded.

Recording land use decisions. Land use decisions must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

The applicant, builder, or their 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.
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For further information on recording, please call the County Recorder at 503-988-3034.

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- In situations involving only the creation of lots, the land division has been recorded.

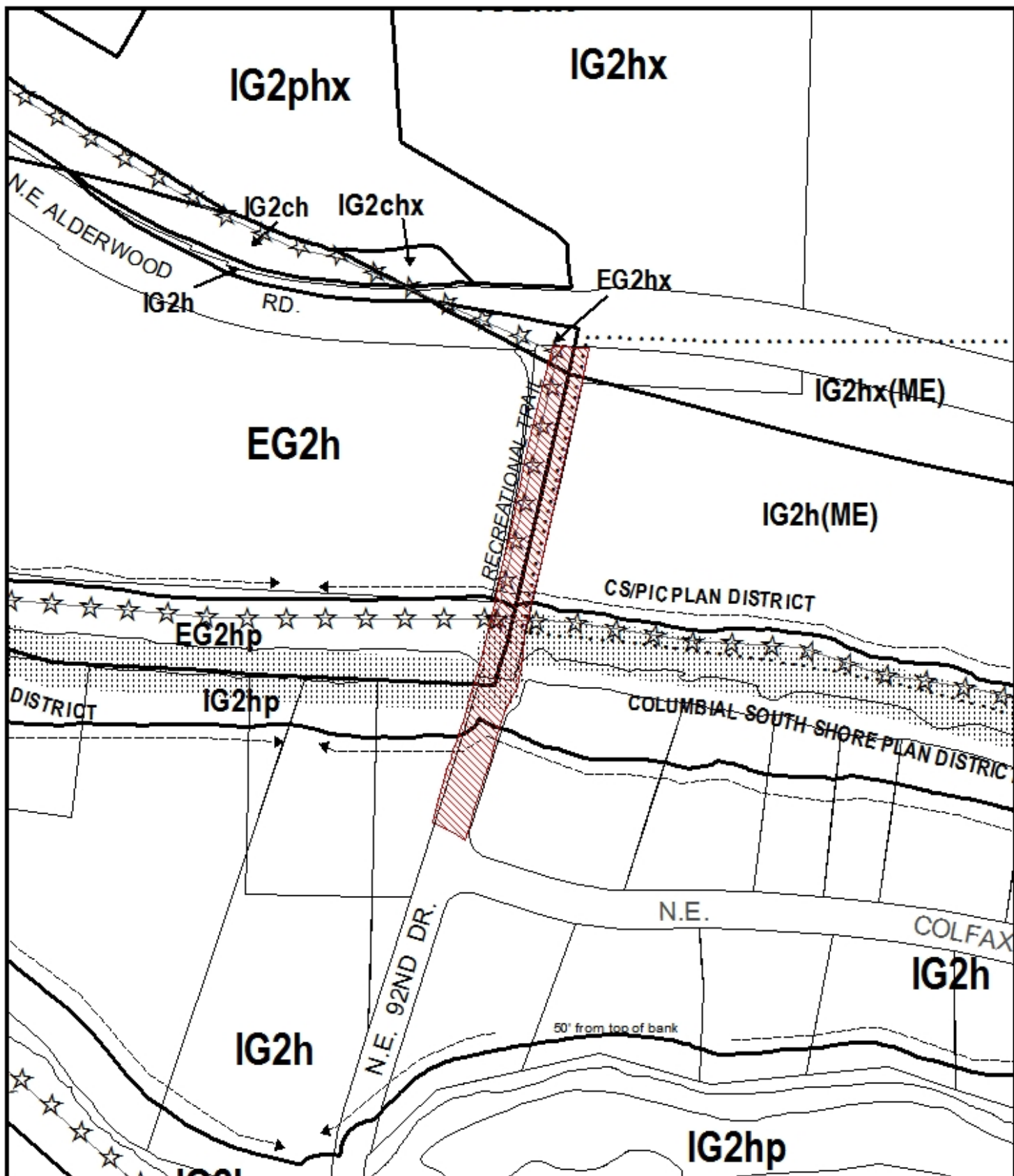
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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 April 17, 2009
 2. Applicant's Submittal dated May 11, 2009
 3. Applicant's Request to Extend 120 Day time line, dated June 15, 2009
 4. Applicant's Submittal dated June 16, 2009
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Existing Conditions Site Plan
 2. Proposed Development Site Plan (attached)
 3. Proposed Bridge Plan and Profile
 4. Construction Management Site Plan (attached)
 5. Tree Removal/Impact Area Site Plan
 6. Construction Management/Cut & Fill Area Site Plan
 7. Mitigation Site Plan (attached)
 8. Mitigation Plant Installation Plan
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services, June 11, 2009
 2. Water Bureau, June 8, 2009
 3. BDS, Site Development, June 1, 2009
 4. BDS Life Safety, May 26, 2009
 5. Multnomah Drainage District No. 1, June 12, 2009
 6. Metro, June 12, 2009
- F. Correspondence:
 1. Bureau of Planning, Zoning Confirmation for Archaeological Resources, April 29, 2009
- G. Other:
 1. Original LU Application
 2. Site History Research
 3. Staff Incomplete Letter, April 30, 2009
 4. Email correspondence



ZONING

 Site

File No. LU 09-122400 EN

1/4 Section 2440

Scale 1 inch = 200 feet

State_Id 1N2E16 204

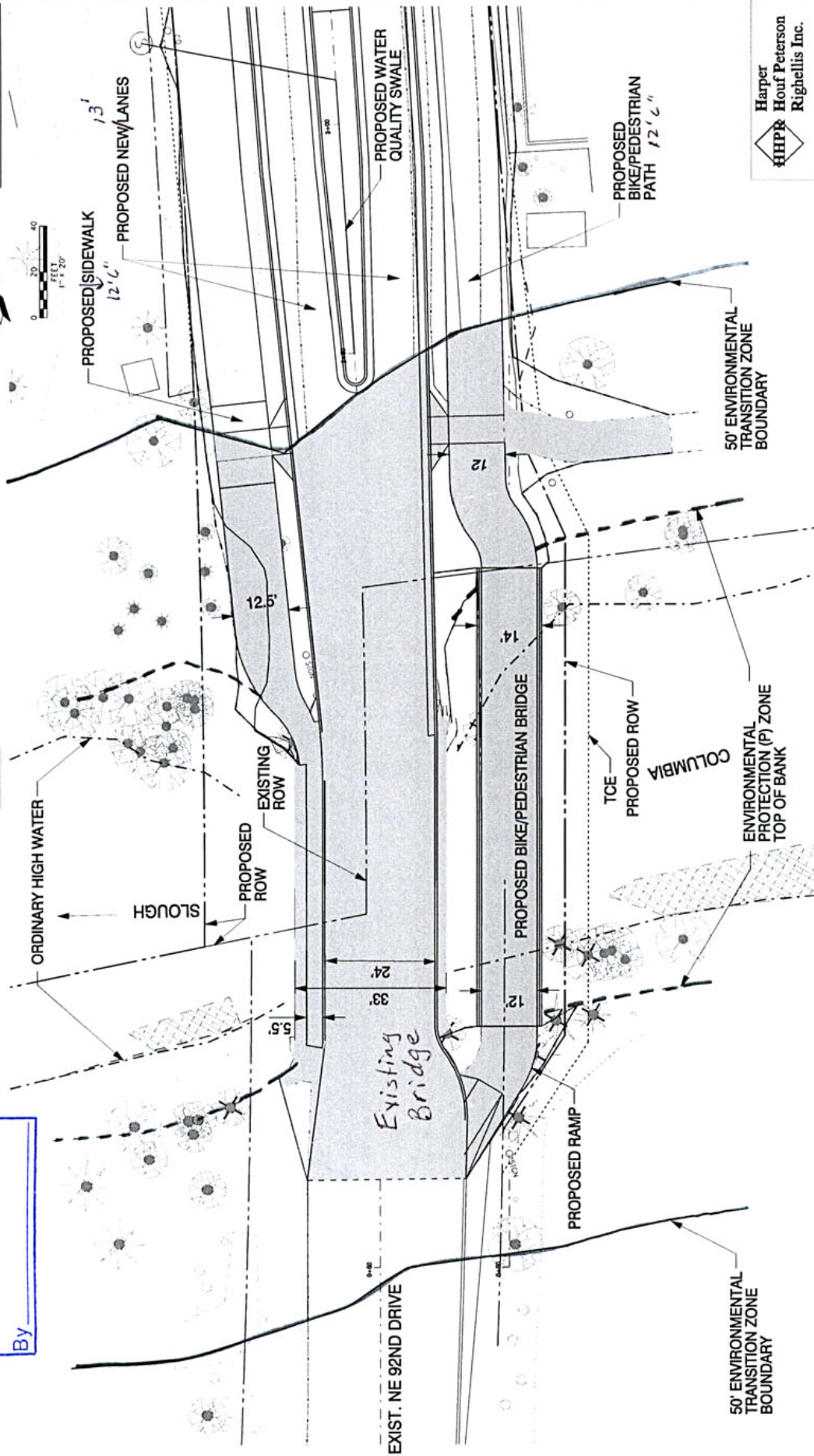
Exhibit B (Apr 22, 2009)



RECEIVED
 JUN 10 2009
 By _____

NEW PAVING AND CONSTRUCTION

ENVIRONMENTAL II REVIEW
 06/08/2009



Harper
 HPR Houf Peterson
 Righellis Inc.

241 SE Spokane Street, Suite 200, Portland, OR 97202
 Phone: 503.221.1111 www.hprpt.com

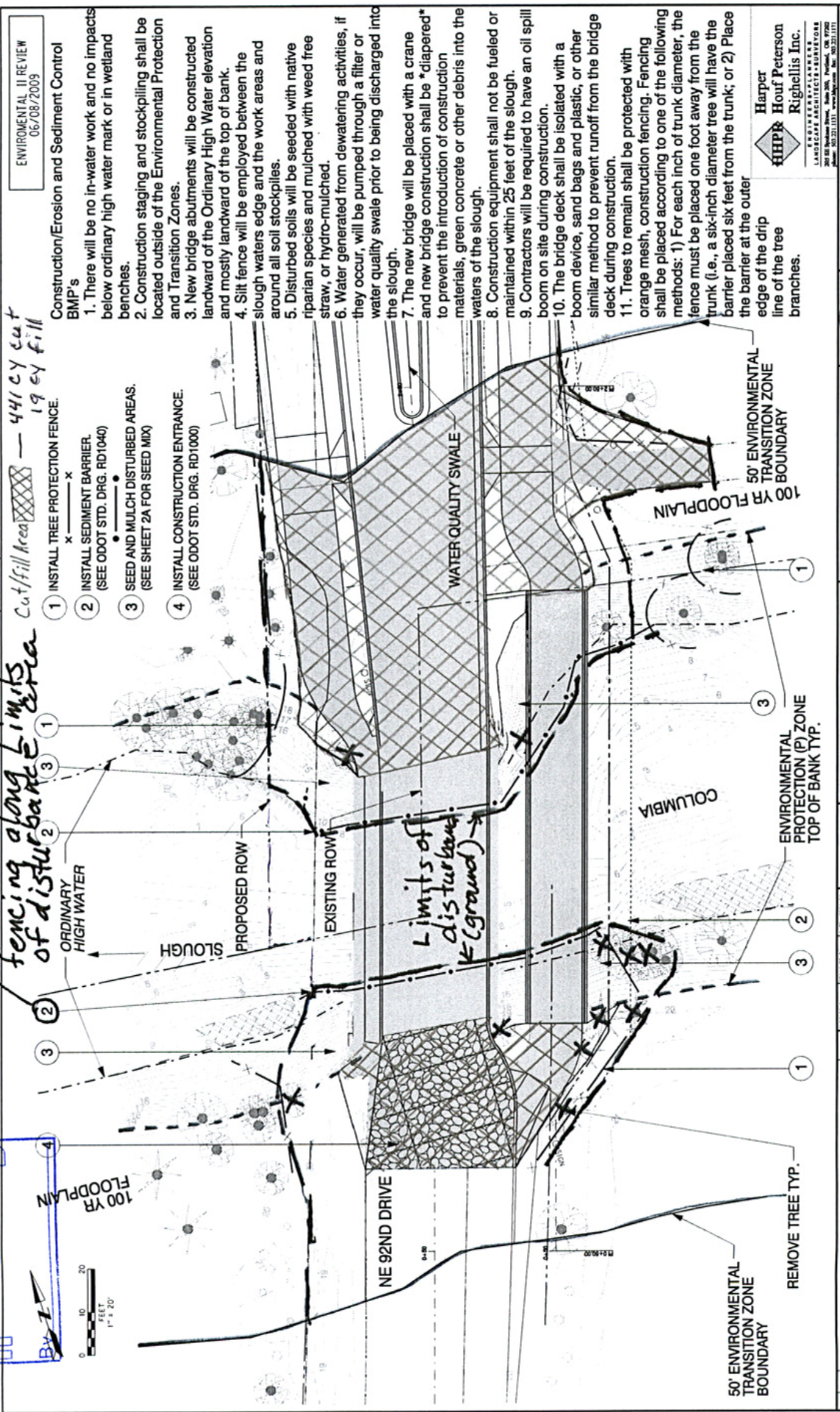
		CITY OF PORTLAND, OREGON BUREAU OF ENVIRONMENTAL SERVICES DAN KALITOMAN		Proposed Development Plan NE 92nd Drive LD TYPE II ENVIRONMENTAL REVIEW 4A	
APPROVALS:		DATE APPROVED SIGNED BY S. GIBSON L.S. M. MITCHELL		PROJECT NO. 09-122400-EN	
City of Portland - Bureau of Development Services LU # 09-122400-EN		Approved: _____ Date: 6/22/09		Planner: S. Hanna	

* Approval for Environmental Review only. Not a building permit. Additional zoning requirements may apply.

RECEIVED
JUN 10 2009

install construction
fencing along limits
of disturbance area

X - Tree to be removed
Cat/fill Area - 441 CY cut
19 CY fill



- Construction/Erosion and Sediment Control BMP's**
1. There will be no in-water work and no impacts below ordinary high water mark or in wetland benches.
 2. Construction staging and stockpiling shall be located outside of the Environmental Protection and Transition Zones.
 3. New bridge abutments will be constructed landward of the Ordinary High Water elevation and mostly landward of the top of bank.
 4. Silt fence will be employed between the slough waters edge and the work areas and around all soil stockpiles.
 5. Disturbed soils will be seeded with native riparian species and mulched with weed free straw, or hydro-mulched.
 6. Water generated from dewatering activities, if they occur, will be pumped through a filter or water quality swale prior to being discharged into the slough.
 7. The new bridge will be placed with a crane and new bridge construction shall be "diapered" to prevent the introduction of construction materials, green concrete or other debris into the waters of the slough.
 8. Construction equipment shall not be fueled or maintained within 25 feet of the slough.
 9. Contractors will be required to have an oil spill boom on site during construction.
 10. The bridge deck shall be isolated with a boom device, sand bags and plastic, or other similar method to prevent runoff from the bridge deck during construction.
 11. Trees to remain shall be protected with orange mesh, construction fencing. Fencing shall be placed according to one of the following methods: 1) For each inch of trunk diameter, the fence must be placed one foot away from the trunk (i.e., a six-inch diameter tree will have the barrier placed six feet from the trunk; or 2) Place the barrier at the outer edge of the drip line of the tree branches.

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		Construction Management Plan	
CITY OF PORTLAND BUREAU OF TRANSPORTATION SAM ADAMS RENE TOWNSEN, P.E. MAYOR CITY ENGINEER		NE 92ND DRIVE IUD TYPE II ENVIRONMENTAL REVIEW 3	
APPROVALS: OPERATIONS ENGINEER DESIGN ENGINEER CITY ENGINEER		APPROVED: DATE: 6/22/09	
CITY OF PORTLAND - Bureau of Development Services LU # 09-122400 EN		Date: 6/22/09	

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* Seed mix shall contain 4 native grasses & 4 native flower species.
* The disturbance area within the E.N. zone, including the area under the bridges, shall be seeded at a rate of 69 pounds per acre

