

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

1900 SW 4<sup>th</sup> Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: [www.portlandoregon.gov/auditor/hearings](http://www.portlandoregon.gov/auditor/hearings)



## DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

### I. GENERAL INFORMATION

**File:** 11-103374 EN (HO 4110022)

**Applicant/Appellant:** Dan Walsh  
NW Wood & Fibre  
1650 NW Sundial Road  
Troutdale, OR 97060

**Applicant/Appellant's Representative:** Seth Otto  
Maul, Foster & Alongi, Inc.  
2011 NW 19<sup>th</sup> Avenue, Suite 200  
Portland, OR 97209

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Kate Green

**Subject Property Address:** 5339 NE 112TH AVENUE

**Legal Description:** BLOCK 100 LOT 2 EXC N 105', PARKROSE & RPLT

**Tax Account No.:** R647321710

**State ID No.:** 1N2E22BA 00200

**Quarter Section:** 2541

**Neighborhood:** Parkrose Neighborhood Association

**Business District:** Columbia Corridor Association

**District Coalition:** East Portland Neighborhood Office

**Zoning:** General Industrial 2 (IG2)  
Environmental Conservation (c) overlay  
Aircraft Landing (h) overlay

**Plan District:** Columbia South Shore - Southern Industrial

**Other Designations:** Open Channel, Subject Property I/*Columbia South Shore Natural Resources Plan*; Flood Hazard Area; Wellhead Protection Area

**Land Use Review:** Environmental Review (EN), Type II – an administrative decision with appeal to the Hearings Officer

**BDS Administrative Decision:** Approval with conditions

**Public Hearing:** The hearing was opened at 9:00 a.m. on August 31, 2011 and closed at 9:14 a.m. The hearing was continued to September 21, 2011 at 9:00 a.m. On September 21, 2011 at 9:00 a.m., the hearing was held in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 10:43 a.m. The record was held open until 4:30 p.m. on September 30, 2011 for new written evidence, until 4:30 p.m. on October 10, 2011 for Applicant/Appellant's rebuttal evidence, and until 4:30 p.m. on October 17, 2011 for Applicant/Appellant's final argument.

**Testified at the August 31, 2011 Hearing:**

Kate Green, BDS, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201  
Sarah Curtiss, Stoel Rives, 900 SW 5th, Suite 2600, Portland, OR

**Testified at the September 21, 2011 Hearing:**

Steve Abel, 900 SW 5th Avenue, Suite 2600, Portland, OR 97204  
Kate Green, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201  
Dan Walsh, 11005 NE Marx Street, Portland, OR 97220  
Elisabeth Reese Cadigan, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201  
George Helm, 1900 SW 4<sup>th</sup> Avenue, Suite 4000, Portland, OR 97201

**Proposal:**

**Evidentiary Background:** The Applicant/Appellant constructed rock check dams in a drainageway on real property generally described as 5339 NE 112<sup>th</sup> (the "Subject Property") without first obtaining the required City of Portland ("City") permits (Exhibit A). A City zoning violation case was commenced (Case No. 10-183065 – CC, see Exhibit H.11f).

In response to the zoning violation case, the Applicant/Appellant submitted a Land Use Review Application (Exhibit G.1) describing the proposal as to:

"mitigate disturbance within an environmental zone due to placement of rock check dams in existing swale. Total disturbance area is 310 square feet (footprint of check dams)."

The original application (Exhibit G.1) was accompanied by a "Review Narrative" (Exhibit A). Exhibit A does not clearly state that the "four rock check dams" were to be removed or retained. The Hearings Officer, however, interprets Exhibits G.1 and A to propose that the "four check dams" be retained and, in addition, mitigation plantings be installed.

A consultant for the Applicant/Appellant and the BDS planner, in an email string (Exhibit G.4 – email dated April 28, 2011) appear to discuss whether or not the Applicant/Appellant's proposal was to retain or remove the "four check dams." In a revised Type II Environmental Review Narrative (Exhibit A.1) the Applicant/Appellant states, "the proposed mitigation is to remove the rock check dams and replace them with equal area of native species of suitable riparian plants." BDS determined the application complete on May 12, 2011 (Exhibit H.3a).

On May 17, 2011, BDS staff sent, as required by Portland City Code, a "Notice of a Type II Proposal in Your Neighborhood" (Exhibit D.1). Exhibit D.1 states, in the Proposal section, that:

"the applicant now proposes to remove the rock and replant the adjacent banks with native vegetation..."

In response to Exhibit D.1, various City bureaus and one citizen provided written comments (Exhibits E.1, E.2, E.3 and F.1). Exhibit E.1, the written response from the Bureau of Environmental Services ("BES"), states, in part:

"BES understands the applicant intends to remove rock check dams and install native plantings within the drainage reserve area and other areas identified by BDS."

Exhibit F.1, the written comment from a citizen, states in part that:

"I would strongly support what may very well be the intent of this proposal already, to absolutely require removal of all rocks and provide complete revegetation with native plants and trees along this E-zoned waterway."

On June 28, 2011, BDS issued a "Notice of a Type II Decision on a Proposal in Your Neighborhood" (Exhibit H.3a). The June 28, 2011 administrative decision (Exhibit H.3a), which is subject to this appeal, states:

"applicant proposes to remove the rock and replant the adjacent banks with native vegetation"

On August 2, 2011, following the Applicant/Appellant's appeal (Exhibit H.3), BDS staff mailed a "Notice of Appeal Hearing on a Proposal in Your Neighborhood" (Exhibit H.2). The description of the proposal in Exhibit H.2 is the same as set forth in Exhibit H.3.

The Applicant/Appellant's attorney ("Mr. Abel"), in Exhibit H.5, indicated that one check dam located at the far west end of the drainageway was installed in 1998. Mr. Abel stated, in Exhibit H.5, that:

"...it was not NW Wood's intent to pursue removal of the rock check dams....NW Wood seeks a modification to the Environmental Review decision issued June 24, 2011. Based on the evidence attached hereto and contained in the record, NW Wood has demonstrated that the City's decision lacks an adequate basis in fact or law and should therefore be modified to allow NW Wood to retain rock check dams and, to the extent the hearings Officer finds it necessary, to provide mitigation as outline below."

At the September 21, 2011 public hearing, the Applicant/Appellant stated that he was informed by the City of Portland Zoning Enforcement representative ("Ms. Seward") that the check dams could remain if the Applicant/Appellant submitted a Type II Environmental Land Use Review (Exhibit H.11e, page 9). The Applicant/Appellant's attorney, at the public hearing, stated that:

"...the request that we have before you is to modify this decision which would allow for the retention of the three check dams" (Exhibit 11e, page 10).

A City of Portland Subject Property Development representative ("Mr. Helm"), at the public hearing, stated that:

"the proposal as presented was to remove the check dams" (Exhibit H.11e, page 19).

The BDS staff representative ("Ms. Green"), at the public hearing, noted that the "proposal was to remove the rock by hand and to replant the banks in accordance with the Columbia South Shore Plan District regulation" (Exhibit 11e, page 19).

Ms. Green submitted an open-record written submission (Exhibit H.9). Ms. Green, in Exhibit H.9 states that:

"...during the course of the completeness review for the Environmental Review, and ongoing discussions with the property owner and his engineer, BDS-LUS staff explained how the rock check dams are prohibited in the protected resource, so the applicant modified his proposal to involve the removal of all the rock check dams and replanting of the channel banks...This proposal was initially presented as a request for an Environmental Review to retain 4 check dams that had been installed."

Mr. Abel, in the Applicant/Appellant's Final Argument (Exhibit H.12) suggests that one of the check dams should not be part of this review because it was not part of the current violation as set forth in Exhibit H.11f. Mr. Abel states that Applicant/Appellant:

"...sought approval of the rock check dams" and "it was never NW Wood's intent to remove the rock check dams" (Exhibit H.12, page 1).

Mr. Abel went on to say that:

"...there is simply no basis to require NW Wood to remove the rock check dams or to provide such extensive mitigation. Accordingly, NW Wood seeks a modification to the Columbia South Shore Environmental Review decision of June 24, 2011. Because NW Wood has demonstrated that the City's decision lacks an adequate basis in fact or law, the decision should

be modified to allow NW Wood to retain the rock check dams and, to the extent the Hearings Officer finds it necessary, to provide mitigation as outlined below."

### **What is the Proposal?**

**Retain or Remove Check Dams?** The threshold issue in this case is to determine "what is the proposal?" The Hearings Officer finds that there are two primary proposal options. The first proposal option is to retain the check dams and provide mitigation. The second proposal option is to remove the check dams (the specific number of check dams to be removed must also be determined) and provide mitigation.

It is clear to the Hearings Officer that the first option (retain check dams and provide mitigation) is what was included in the original application (Exhibits G.1 and A). It is equally clear to the Hearings Officer that the Applicant/Appellant modified the proposal (Exhibit A.1). As of the date the application was deemed complete (May 12, 2011 – Exhibit H.3a), the Applicant/Appellant was proposing to remove check dams and provide mitigation.

The Hearings Officer finds that following the submission of the modified application (Exhibit A.1 – removal of check dams), the City requested comments/responses from City bureaus, nearby property owners and recognized neighborhood organizations (Exhibits D.1 and D.2). Comments/responses were directed towards the Applicant/Appellant's proposal to remove check dams and provide mitigation (Exhibits E.1, E.2, E.3 and F.1). The Hearings Officer finds that the administrative decision rendered by BDS in this case (Exhibit H.3a) identifies the proposal as removing check dams and providing mitigation. The Hearings Officer finds that a Notice of Appeal (Exhibit H.2) was mailed to nearby property owners and recognized neighborhood organizations noting the proposal was to remove check dams and provide mitigation.

The Applicant/Appellant's appeal statement includes no reference to the nature of the proposal (Exhibit H.3).

The Hearings Officer finds that all Notices provided to the Applicant/Appellant, City bureaus, nearby residents and recognized neighborhood organizations identified the proposal as removing the check dams and providing mitigation. The Hearings Officer finds "*the*" proposal subject to the Applicant/Appellant's appeal was for the removal of check dams and provision of mitigation.

The Hearings Officer next addresses the issue of whether the Applicant/Appellant's requested modification (from removal of check dams to retention of check dams) *should* be granted.

The Hearings Officer notes that Portland City Code (PCC) 33.700.080 B addresses "revisions" in the context of which regulations apply. However, that is not the question in this case. The Hearings Officer infers that neither the City nor the Applicant/Appellant is contesting which regulations apply; the question in this case is whether or not the Hearings Officer *should* consider the modified proposal to retain the check dams.

The Hearings Officer acknowledges that land use applications are frequently modified after the date of original submission. The Hearings Officer also notes that there is nothing in PCC prohibiting modifications or amendments to be made to an original land use application either before or at a hearing. However, generally recognized Oregon land use law does address this issue. The Land Use Board of Appeals (LUBA), in *Corbett/Terwilliger/Lair Hill Neighborhood Association v. City of Portland*, Or LUBA 601, 606-607 (1997), stated that a modification could be processed (without the submission of a new application) if after the modification the original proposal remained "fundamentally intact." See also *Wentland v. City of Portland*, 23 Or LUBA 321 (1992)

The original application in this case (January 14, 2011 – Exhibit G.1) requested environmental review approval to retain check dams with mitigation. The Applicant/Appellant modified the proposal to be the removal of the check dams (May 9, 2011 – Exhibit A.1) prior to the application being deemed complete (May 12, 2011), prior to notices requesting responses/comments being sent to City bureaus, nearby property owners and recognized neighborhood organizations (May 17, 2011) and prior to the issuance of the BDS administrative decision (June 24, 2011 – Exhibit H.3a).

The Hearings Officer finds that a proposal to retain check dams and provide mitigation (January 14, 2011 original application) and a proposal to remove check dams and provide mitigation (May 9, 2011 modified application) are fundamentally different. One proposal places/retains check dams in an environmentally designated drainage way and the other proposal removes check dams from the drainage way.

In *Bonner v. City of Portland*, 11 Or LUBA 40, 60 (1984), LUBA allowed the City of Portland "substantial latitude" in determining whether revisions to an application, made during the local hearing and appeal process, require treatment as a new application. LUBA also, in *Bonner*, noted that interested parties must be given adequate notice and opportunity to comment on the revisions. It is the notice issue that creates the most concern, in this case, for the Hearings Officer.

In its decision in *Bigley v. City of Portland*, 168 Or App 508 (2000), the Oregon Court of Appeals addressed ORS 197.763(3) and ORS 197.830(3). The court noted that these two statutes create an obligation upon the City to describe, in notices to the public, the proposed uses that *could* be authorized (emphasis added) and that the actual final decision in a land use case must reasonably describe the proposal contained in the notice. *Bigley* involved an application for approval of a master plan for the Washington Park Zoo. The notice sent by the City did mention a "temporary parking lot" but not the possibility that the "temporary parking lot" would become "permanent." The court, in *Bigley*, stated "there is simply no way that a notice that made no mention of the proposed action concerning the parking lot, but did specifically enumerate a myriad of other actions were embodied in the same proposal, can be said to have 'reasonably describe[d]' the 'final action' affecting the parking lot." *Bigley* @ 514

The underlying rationale behind ORS 197.763(3) and ORS 197.830(3) and the *Bigley* decision is that land use notices sent to City bureaus, nearby residents and recognized neighborhood organizations are intended to provide sufficient information upon which to respond (or not respond). In this case the information sent to City bureaus, nearby residents and recognized neighborhood organizations (Exhibits D.1, D.2 and H.3a) all reference the removal of the check dams. Those persons/organizations that were given the right to be aware of the proposal believed the proposal to be removal of the check dams and providing mitigation.

The Hearings Officer finds that the modification of the original proposal (from retention of check dams to removal of check dams), although substantial, was the subject of all notices and decisions. The Hearings Officer finds that the Applicant/Appellant's recent request to modify the proposal to retain the check dams (made at the public hearing and in subsequent written submissions by Applicant/Appellant) was not the subject of any notices or decisions. The Hearings Officer finds that if Applicant/Appellant desires to have the City review a proposal to retain the check dams, it must submit a new application.

**Number of Check Dams?** During this application process, references to the "number" of check dams to be removed have varied. The original January 2011 application narrative (Exhibit A) states that the "cited violation was for placement of four rock check dams in an existing drainage swale without an Environmental Review;" this language is also included in the Applicant/Appellant's revised proposal of May 2011 (Exhibit A.1). The Notice of Proposal (Exhibit D.1) indicates two check dams will be removed. The BDS administrative decision (Exhibit H.3a and Exhibit C.3) indicates four check dams will be removed. The Applicant/Appellant suggests that only three of the check dams were subject to the BDS zoning violation (Exhibit H.5a). The Applicant/Appellant argues that only three of the check dams should be considered as part of this land use application (Exhibit H.5 and Exhibit H.12). The Notice of Zoning Violation (Exhibit H.11f) states that the violation at the Subject Property is the "installation of rock walls within the slough water body creating fill and destruction of a resource within the environmental conservation zone without Environmental Review." The single public written comment submitted into the record (Exhibit F.1) referenced the "removal of all rocks..."

The Notice of Zoning Violation (Exhibit H.11f), the genesis of this land use application, indicates the violation at the Subject Property is the "installation of rock walls within the slough water body..." The Applicant/Appellant clarified the violation in its original (Exhibit A) and revised (Exhibit A.1) proposal narrative to be four check dams. The Hearings Officer finds it reasonable to interpret that language as to include all rock walls (check dams) located on the Subject Property within the slough water body; a total of four. This interpretation is consistent with the administrative decision (Exhibit H.3a and Exhibit C.3) and the Applicant/Appellant's appeal narrative. The Hearings Officer rejects the Applicant/Appellant's public hearing argument (Exhibit H.5a, Exhibit H.5 and H.12) that only three of the check dams are subject to this land use review.

The Hearings Officer finds that the "proposal" for this land use application is the removal of four check dams and to provide mitigation.

**Equitable Estoppel:** The Applicant/Appellant, through Mr. Abel, argued that the City misrepresented the PCC when it indicated that check dams are not permitted in an environmental resource area (Exhibit H.12, pages 2-4). Mr. Abel argued that the Applicant/Appellant modified its original proposal (retain check dams) in reliance upon the City's misrepresentation. Mr. Abel argued, therefore, that the doctrine of equitable estoppel applies and Applicant/Appellant should be permitted to retain the check dams.

BDS staff stated, in Exhibit H.9 (page 1) that:

"during the course of the completeness review for the Environmental Review, and ongoing discussions with the property owners and his engineer, BDS-LUS staff explained how the rock check dams are prohibited in the protected resource, so the applicant modified his proposal to involve the removal of all the rock check dams and replanting of the channel banks to restore the area with native vegetation."

Based upon the preceding statement by BDS staff, it is clear to the Hearings Officer that BDS did represent that check dams are not permitted within a Columbia South Shore Plan District environmental zone. It is equally clear to the Hearings Officer that the Applicant/Appellant now disputes the legal conclusion drawn by BDS staff as quoted in the preceding paragraph.

The Applicant/Appellant cited *Coos Co. v State of Oregon*, 303 Or 173 (1987) in support of its equitable estoppel claim (Exhibit H.12, page 3). The Hearings Officer agrees with the Applicant/Appellant that estoppel may be raised against government entities, subject to certain specific limitations. However, the Hearings Officer notes that the general rule is that estoppel cannot be invoked to prevent a local government from enforcing its land use regulations. *Sellwood Harbor Condominium Association v. City of Portland*, 16 Or LUBA 505 (1988) Further, Oregon courts have historically held the alleged misrepresentation be one of fact, not of intention, or conclusion from facts or a conclusion of law. *Coos Co.* @ 180

The Hearings Officer finds that a BDS conclusion as to what may or may not be an allowable use, per a section of the PCC in a particular zone, is a conclusion of law. As such, the Applicant/Appellant's claim of equitable estoppel would fail for failure to prove a misrepresentation of a material fact; a required element of a claim of equitable estoppel.

The Hearings Officer also finds that granting the Applicant/Appellant's request to modify the proposal to allow the retention of the check dams, even if under the guise of equitable estoppel, would abrogate Oregon land use planning law. Notice of land use proposals and actions, to potentially affected persons/organizations, is fundamental under Oregon land use planning law. In this case affected persons/organizations have not been provided the required notice for a proposal to retain the check dams.

Finally, the Hearings Officer agrees with the BDS staff legal conclusion that "check dams" are prohibited under PCC 33.815.276 C. The Hearings Officer finds the specific uses, not mentioned in PCC 33.815.276 A and B are prohibited. Check dams are not specifically mentioned in PCC 33.815.276 A or B.



The Hearings Officer rejects the Applicant/Appellant's argument that a modification of the proposal (from removing check dams to retaining check dams) must be granted under the doctrine of equitable estoppel.

### **Columbia South Shore Environmental Review.**

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- **33.515.280.D, Columbia South Shore Environmental Review Approval Criteria.**

## **II. ANALYSIS**

**Subject Property Description:** The Subject Property is made up of multiple parcels with frontages on NE 109<sup>th</sup> Avenue, NE Marx Street, and NE 112<sup>th</sup> Avenue (Exhibit B). The Subject Property is relatively flat, except for the southeast area that is occupied by a drainage channel that is part of the Columbia Slough watershed (and the area of focus for this review). Most of the Subject Property has a paved or gravel surface, which is used for storage and processing of recycled wood products. Virtually no vegetation is located on the Subject Property, with the exception of the large trees on the shoreline of the drainageway.

The surrounding area is occupied by a multitude of industrial and residential uses. The main stem of the Columbia Slough and an associated wetland are located with 500 feet of the Subject Property drainage channel.

**Zoning:** The Subject Property is zoned IG2chx which is a General Industrial 2 zone, with Environmental Conservation (c), Aircraft Landing (h), and Airport Noise Impact (x) overlay zones. The Subject Property is also within the South Industrial Subdistrict of the Columbia South Shore Plan District.

The IG2 base zoning (PCC 33.140) provides standards and requirements for uses allowed on the Subject Property as well as development standards for buildings, parking, landscaping, and other development.

The Aircraft Landing (PCC 33.400) overlay limits the height of structures and vegetation at this Subject Property.

The Portland International Airport Noise Impact Overlay Zone (33.470) limits residential densities and requires noise insulation, noise disclosure statements, and noise easements.

The Columbia South Shore Plan District (33.515) has additional use and development regulations, and the environmental regulations of the plan district supersede those of the Environmental overlay zone (33.430). The plan district regulations designate a 50-foot transition area at this Subject Property, and require plantings to be native species.

**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 drainageway located on the Subject Property is a component of the Columbia Slough, which is part of the historic floodplain of the Columbia River. The environmental resources on the Subject Property are identified as Palustrine, Forested, Scrub-shrub in the *Natural Resources Protection Plan for the Columbia South Shore* (Subject Property # I). The resource values include:

- groundwater recharge/discharge,
- drainage,
- erosion control,
- sediment trapping, and
- pollution/nutrient retention/detention.

**Land Use History:** City records show the Subject Property was part of these prior land use reviews:

- LUR 99-00108 AD: Adjustment Review for fence-Denied.
- MCF 83-11-09: Multnomah County case-No information available.

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on May 17, 2011.

1. **Agency Review:** Several bureaus and agencies have responded to this proposal. Please see Exhibits E.1 through E.3 for details. The comments are addressed under the appropriate criteria for review of the proposal.
2. **Neighborhood Review:** One written response was received from an interested party who supports the removal of the rock from the waterway and the installation of native plantings.

## ZONING CODE APPROVAL CRITERIA

### 33.515.280 Columbia South Shore Environmental Review

#### D. Approval criteria.

1. Fill or destruction of a natural resource in an environmental conservation zone will be approved if the review body finds that:
  - a. All resource values listed in Figure 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore* being altered or destroyed will be replaced through mitigation. If the mitigation Subject Property is within a protected resource, values that already exist do not count towards mitigation;

- b. The mitigation area is in the Columbia South Shore plan district and abuts or is within a protected resource;
- c. If the mitigation area abuts a protected resource, the mitigation area will be at least 110 percent of the size and values of the altered resource area;
- d. If the mitigation area is within a protected resource:
  - (1) The mitigation area will be at least 330 percent of the size of the altered area; and will replace at least 110 percent of the values of the altered resource area; and
  - (2) Mitigation will be provided for all resource values lost, including those lost in the protected resource as part of mitigation efforts.
- e. The maintenance plan 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 which 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
  - (2) Compliance with development standards of Section 33.515.278.
- f. 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 Subject Property in accordance with the mitigation plan will be filed with the City Auditor prior to issuance of any development or building permit.

**Findings:** The Hearings Officer shall address each relevant section of PCC 33.515.280 D separately.

- a. **All resource values listed in Figure 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore* being altered or destroyed will be replaced through mitigation. If the mitigation Subject Property is within a protected resource, values that already exist do not count towards mitigation;**

This section of PCC 33.815.280 D requires a decision maker to first *identify* the resource values listed in Figure 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore*. The Applicant/Appellant does not appear to dispute the BDS listing of the resource values for the Subject Property. The Hearings Officer finds the resource values for the environmentally zoned drainageway on the Subject Property to be:

- groundwater recharge/discharge,
- drainage,
- erosion control,
- sediment trapping, and
- pollution/nutrient retention/detention.

The next task for a decision maker is to determine which, if any, of the listed resource values have been altered or destroyed. PCC 33.910.010 states:

"words used in the zoning code have their normal dictionary meaning unless they are listed in 33.910.030 below. Words

listed in 33.910.030 have the specific meaning stated, unless the context clearly indicates another meaning."

The word alteration is defined in Development-Related Definitions of PCC 33.910.030. Alteration is defined as "a physical change to a structure or Subject Property." Specifically, alteration includes "changes to landscaping" and "changes to the topography of the Subject Property." The Hearings Officer notes that the PCC 33.910.030 definition is found in the Development-Related Definitions and not within the Environment-Related Definitions. To that end, the Hearings Officer finds a dictionary definition of alter as an additional aid to interpreting this section of the PCC. Alter is defined by the *Merriam-Webster Online Dictionary* as "to make different without changing into something else."

The Hearings Officer finds that alter, in the context of PCC 33.815.280 D.1.a means to change or make different one or more of the identified resource values.

**Check Dams:** The Hearings Officer reviewed written documents submitted by the Applicant/Appellant's professional engineers (Exhibits H.5e and H.11). The Hearings Officer, while not agreeing or disagreeing with any specific written statement, finds that the Applicant/Appellant's professional engineers' comments focus on whether the impacts of the check dams are significant or insignificant. The Hearings Officer finds that PCC 33.815.280 D.1.a is not directed to whether an alteration of a resource value is significant or insignificant. Rather, the Hearings Officer finds that PCC 33.815.280 D.1.a is focused on whether or not there is any alteration of resource values.

The Hearings Officer determined above that four check dams were installed in the environmentally protected zone on the Subject Property. The Hearings Officer finds that installation of check dams involves placing rock material into the drainageway to:

"control erosion and sediment and reduce concentrations of suspended solids and associated contaminants from entering surface waters" (Exhibit H.11a, page 3).

The Hearings Officer finds, based upon statements made by Applicant/Appellant's consultant, that the installation of the check dams alters the erosion control, sediment trapping and pollution/nutrient retention/detention. The Hearings Officer finds that the installation of check dams, "detains the flow, reducing the velocity of stormwater passing through" a drainageway (Exhibit H.11a, page 2). The Hearings Officer finds that the installation of check dams alters drainage.

The Hearings Officer finds that installation (and to an equal extent the removal) of check dams alters the following resource values:

- drainage,
- erosion control,
- sediment trapping,
- pollution/nutrient and retention/detention.

**Blackberry Removal:** The Applicant/Appellant asserts that the only vegetation that it removed from the environmentally zoned drainageway on the Subject Property was 400 square feet of blackberries (Exhibit H.5a, paragraph #3). The Hearings Officer takes note that Himalayan blackberry is a non-native species and considered a nuisance plant (City of Portland Plant List). Ms. Green provided no evidence in support or in opposition to this statement by the Applicant/Appellant. The Hearings Officer, therefore, finds that the Applicant/Appellant removed 400 square feet of blackberry. As pointed out by Mr. Abel, the removal of vegetation identified on the Nuisance Plants List in the *Portland Plant List* is a permitted use under PCC 33.515.276 A.2 (so long as the activity complies with development standards of PCC 33.515.278). There is no evidence in the record of this case to suggest that removal of blackberry from the drainageway banks is inconsistent with PCC 33.515.278.

**Tree Removal:** Ms. Green, in Exhibit H.9, stated that:

"...based on a Subject Property visit in February 2011, two tree stumps were visible adjacent to the drainageway (Exhibit 4)" (Exhibit 4 has Hearings Office Exhibit No. H.9d).

Ms. Green reasoned that:

"...in this situation, the facts, as presented by the applicant do not match the information gathered during the Subject Property visit and review of city records. In light of this, it is not unreasonable for BDS-LUS staff to conclude native vegetation was removed from the areas indentified as 'altered resource area' on the attached plans (Exhibit 3)" (Exhibit 3 has Hearings Office Exhibit No. H.9c).

Mr. Abel responded that:

"...there is nothing in the record beyond Staff's speculative assertions" to suggest that "the area was altered beyond the installation of the rock check dams and the removal of invasive blackberry" (Exhibit H.12, page 6).

The Hearings Officer reviewed Exhibit H.9d (photo of drainageway) and concurs with Ms. Green that there appears to be two "stump" areas in the foreground. However, one of the "stump" areas has an irregular top surface which makes it difficult to determine if the tree was cut or toppled over from natural reasons. The other "stump" in the foreground appears to have multiple small trunks/growths with clean cut tops. The Hearings Officer cannot ascertain, from Exhibit H.9d, the species of the "stump" with the smaller trunks. There is no authoritative evidence in the record to confirm that the "stump" with smaller trunks is native or non-native and whether or not the "cuts" were made as part of "resource maintenance" as permitted in PCC 33.515.276.

Whether or not Ms. Green is, in fact, correct in the assertion that "trees" were removed in the resource area, the Hearings Officer finds that there simply is insufficient evidence in the record to make such a finding. For the purposes of this decision, the Hearings Officer finds no "trees" were removed on or adjacent to the drainageway within the environmental zone.

**Entire Drainageway Altered and/or Destroyed:** Ms. Green suggests that the altered resource area:

"...includes the entire channel from the headwall at the west end to the east property boundary on the project Subject Property, where the channel has been altered by the installation of rock check dams, and the area within the c-zone within 30 feet of the channel, where vegetation removal appears to have occurred, as shown on Exhibit 3, at least" (Exhibit H.9, page 5).

Applicant/Appellant disagrees with this BDS suggestion (Exhibit H.12, page 6).

The Hearings Officer does not disagree, in theory, with the BDS suggestion that placing check dams in a drainageway alters the entire drainageway. However, the Hearings Officer disagrees with Ms. Green that such interpretation is appropriate in the context of this approval criterion. By way of an extreme example, if a small Site (such as a 5,000 square foot property) is located on a single side of a bank of a very extensive drainageway (2000 feet long by 50 feet wide = 100,000 square feet in size) and the area that is altered on the Site is minimal (such as 500 square feet), the Hearings Officer would find it inappropriate to require a mitigation area calculated on the entire area of the drainageway. In the example, the Hearings Officer finds that it would be inappropriate to use a 100,000 square foot resource value impact area for the purposes of calculating mitigation for a 500 square foot environmental impact.

As argued by the Mr. Abel, the mitigation area must be proportional to the impacts created by the Applicant/Appellant's proposed action. The Hearings Officer finds, using the previously stated extreme example, that considering the entire drainageway to be altered when determining the mitigation area is not proportional and would violate a long line of Oregon land use case decisions. *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994), *McClure v. City of Springfield*, 39 Or LUBA 329 (2001), *Hallmark v. Lake Oswego*, 193 Or App 24 (2004)

The Hearings Officer finds, for the purposes of analysis of PCC 33.815.1.b, c, and d, includes the area covered by the four check dams located in the environmental zone on the Subject Property and does not include the entire drainageway. The Hearings Officer finds the area covered by the check dams must be mitigated.

- b. The mitigation area is in the Columbia South Shore plan district and abuts or is within a protected resource;**

The Applicant/Appellant has suggested a mitigation area (Exhibit H.6). The Hearings Officer finds that the proposed mitigation area is within the Columbia South Shore Plan District and abuts or is within a protected resource.

- c. If the mitigation area abuts a protected resource, the mitigation area will be at least 110 percent of the size and values of the altered resource area;**  
**d. If the mitigation area is within a protected resource:**

- (1) The mitigation area will be at least 330 percent of the size of the altered area; and will replace at least 110 percent of the values of the altered resource area; and**
- (2) Mitigation will be provided for all resource values lost, including those lost in the protected resource as part of mitigation efforts.**

The Applicant/Appellant's proposed mitigation area (Exhibit H.6) is partially within a protected resource and partially adjacent to the protected resource area. The area of alteration, as discussed above, is 800 square feet. The Hearings Officer finds that there is sufficient mitigation area, within the protected resource. The Hearings Officer, therefore, finds that 330% of the altered area would be 2,640 square feet.

Ms. Green, in her revised findings (Exhibit H.9, page 6) calculated the replacement value to one tree and three shrubs for every 500 square feet of planting area. Using this formula, and a 2,640 altered area size, mitigation would include 5.28 trees and 15.84 shrubs. The Mr. Abel, in his final argument (Exhibit H.12, page 6), considered only three of the check dams and concluded that appropriate mitigation for the environmental alteration at the Subject Property would be four trees and 12 shrubs. Mr. Abel stated that such mitigation "would go far beyond replacing at least 110 percent of the values in the 'altered area.'"

The Hearings Officer finds that PCC 33.815.280 D.1.d.(1) to set mandatory mitigation standards. The Hearings Officer finds the mitigation "area" reference in PCC 33.815.280 D.1.d.(1) to be clear and concise; 330 percent of the size of the altered area is to be included in the mitigation area. The Hearings Officer finds that the "values" reference in PCC 33.815.280 D.1.d.(1) requires the Hearings Officer to exercise discretion/judgment.

The Hearings Officer finds that the "values" reference in PCC 33.815.280 D.1.d.(1) to require consideration of the ultimate impacts of activities within the protected resource. The Hearings Officer finds that the Applicant/Appellant constructed four check dams within the protected resource. The Hearings Officer finds that the construction of the check dams altered drainage, erosion control, sediment trapping and pollution/nutrient retention/detention. The Hearings Officer also finds that the application is to remove the check dams. The Hearings Officer finds that approval of this application will result in the conditions of the drainageway to be returned those that existed before the installation of the check dams excepting that the drainageway banks, at the location of each check dam, will need to be mitigated.

The Hearings Officer, utilizing the mitigation ratios suggested by Mr. Abel in Exhibit H.12, page 6, finds that approval of this application must include mitigation as follows:

- 2 pounds of ground cover seed planted in locations along the drainageway banks where rocks for the check dams are removed; and
- 12 shrubs to be planted on the banks of the drainageway in clusters of three (within the "available mitigation area" shown on Exhibit H.6).

- e. **The maintenance plan 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 which 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**
  - (2) **Compliance with development standards of Section 33.515.278.**

The Hearings Officer finds that the Applicant/Appellant will be required to maintain the ground cover and the shrubs, referenced in the findings for PCC 33.815.280 D.1.d, for a period of five years. The mitigation plan shall be deemed a "success" if the plantings (ground cover and shrubs) are established per the mitigation plan and are living and the plantings are in compliance with PCC 33.515.278.

- f. **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 Subject Property in accordance with the mitigation plan will be filed with the City Auditor prior to issuance of any development or building permit.**

The Hearings Officer finds that the Applicant/Appellant will be required to file, with the City Auditor, a Performance Guarantee consistent with PCC 33.700.050 for the planting, monitoring and mitigation of the mitigation Subject Property in accordance with the mitigation plan referenced in the findings for PCC 33.815.280 D.1.d above.

With the implementation of these conditions, the proposal will meet this criterion.

## **DEVELOPMENT STANDARDS**

PCC 33.515.278 B requires activities within an environmental zone meet a variety of development standards. The Hearings Officer finds that the Applicant/Appellant is required to meet the applicable provisions of PCC 33.515.278.B.

## **III. CONCLUSIONS**

The initial application was to retain check dams installed, without proper permits, within a Columbia South Shore Plan District environmental zone. The Applicant/Appellant subsequently modified the proposal so that check dams would be removed. Notices of the proposal to remove the check dams were sent to affected bureaus, neighborhoods and organizations. An Administrative decision was rendered by BDS approving the request to remove check dams with conditions of approval related to mitigation. The Applicant/Appellant appealed the Administrative decision. The Applicant/Appellant, following its appeal, modified its proposal



once again to request check dams to be retained. The Hearings Officer found that the proposal, for the purpose of considering the Applicant/Appellant's appeal, is to remove four check dams.

The Applicant/Appellant, in its appeal of the BDS administrative decision, argued that the BDS' approved conditions were not proportionate to the standards of the relevant approval criteria. The Applicant/Appellant argued that the BDS' determined mitigation area was too large and that the number of mitigation plantings required was too many. The Hearings Officer concluded that the BDS' proposed mitigation area and number of plantings were excessive.

The Hearings Officer found that the application to remove four check dams should be approved upon the condition mitigation plantings be installed and maintained. In particular, the Hearings Officer found that ground cover seed needs to be planted in areas along the drainageway bank where the rocks for the check dams are removed. In addition, the Hearings Officer found that shrubs be planted in the mitigation area as described by the Applicant/Appellant.

The Hearings Officer found that a performance guarantee, for the installation, monitoring and maintenance of the ground cover and shrubs, must be filed with the City Auditor. The Hearings Officer found that applicable provisions of PCC 33.815.278 (development standards) apply to the approval of this application.

#### **IV. DECISION**

The Applicant/Appellant prevailed in part (reduction of mitigation requirements) and did not prevail in part (request to modify proposal to allow retention of check dams) in this appeal.

**Approval** of an Environmental Review to correct unauthorized fill and vegetation removal within the Environmental Conservation overlay zone including the following:

- Removal of all check dams (check dams 1, 2, 3 and 4 as described on Exhibit H.6) within and adjacent to the drainageway
- Installation of mitigation plantings in conformance with applicable provisions of PCC 33.815.278 (development standards).

The project must be in substantial conformance with Exhibit C.3 as modified by the Hearings Officer and attached to this decision (Exhibit H.13). Approval is subject to the following conditions:

- A. Prior to issuance of any permits for this work, the property owner must provide a performance guarantee to the Bureau of Development Services Land Use Services. The guarantee must meet the requirements of Section 33.700.050, Performance Guarantees, for construction, monitoring, and maintenance of the rock removal and planting work shown on the Repair and Replanting Plan (Exhibit C.3), and outlined in the conditions below. Once approved by the Bureau of Development Services and the City Attorney, the guarantee must be filed with the City Auditor.

- B.** Prior to any in-water or ground disturbing activity, the Applicant/Appellant must obtain a Zoning Permit for the approved work. The Zoning Permit must include copies of the stamped Repair and Replanting Plan (Exhibit C.3) from LU 11-103374 EN and meet the conditions listed below:
1. All activities within the Repair and Replanting Area must be conducted using hand held equipment. No mechanized construction equipment or vehicles are permitted in the Repair and Replanting Area.
  2. Provide an erosion, sediment, and pollution control plan for all in-water and shoreline work to the satisfaction of the Bureau of Development Services Subject Property Development.
  3. Provide plans and information to address the Drainage Reserve requirements to the satisfaction of the Bureau of Environmental Services.
- C.** An on Subject Property preconstruction meeting must be held with Bureau of Development Services inspection staff to confirm the erosion, sediment, and pollutions control measures have been installed per the plan approved by the Bureau of Development Services Subject Property Development.
- D.** A minimum of 12 shrubs and two pounds of ground cover seed must be planted in the Repair and Replanting Area shown on the Repair and Replanting Plan (Exhibit C.3).
1. All plant materials must be native species selected from the Portland Plant List.
  2. Trees and shrubs must be planted in clusters of three or more.
  3. Plantings must be installed between October 1 and March 31 (the planting season).
  4. Prior to installing required mitigation plantings, non-native invasive plants must be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
  5. Prior to final inspection of the Zoning Permit for the remediation plantings, the land owner or designer of record must provide an As-Planted Plan and certify that all the plantings were installed in accordance with the approved plans.
- E.** The land owner must 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 landowner must:
1. Provide a minimum of five letters (to serve as monitoring and maintenance reports) to the Parkrose Neighborhood Association, and to the Land Use Services Division of the Bureau of Development Services (Attention: Environmental Review LU 11-103374 EN) containing the monitoring information described below.
  2. Submit the first letter within 12 months following approval of the final inspection for the Zoning Permit for the required remediation plantings. Submit subsequent letters every 12 months following the date of the first monitoring letter. All letters must 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 Repair and Replanting 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 Subject Property plan, in conformance with the Repair and Replanting Plan (Exhibit C.3), 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 dry seasons after planting. All irrigation systems must be temporary and above-ground.
- f. An estimate of percent cover of invasive species (English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis) within 10 feet of all plantings. Invasive species must not exceed 10 percent cover during the monitoring period.

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

**Note:** In addition to the requirements of the Zoning Code (including PCC 33.815.278), all uses and development must comply with other applicable City, regional, state and federal regulations. In cases of overlapping City, Special District, Regional, State, or Federal regulations, the more stringent regulations will control. City approval does not imply approval by other agencies.

  
\_\_\_\_\_  
Gregory J. Frank, Hearings Officer

10/26/11  
\_\_\_\_\_  
Date

Determined Complete:	May 12, 2011
Report to Hearings Officer:	August 16, 2011
Decision Mailed:	October 27, 2011
Last Date to Appeal	November 17, 2011

**Conditions of Approval.** 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.** The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

**Recording the final decision.**

If this land use review is approved, the final decision must be recorded with the Multnomah County Recorder. A building or zoning permit will be issued **only after the final decision is recorded.**

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

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

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

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

Where a Subject Property has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final

decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

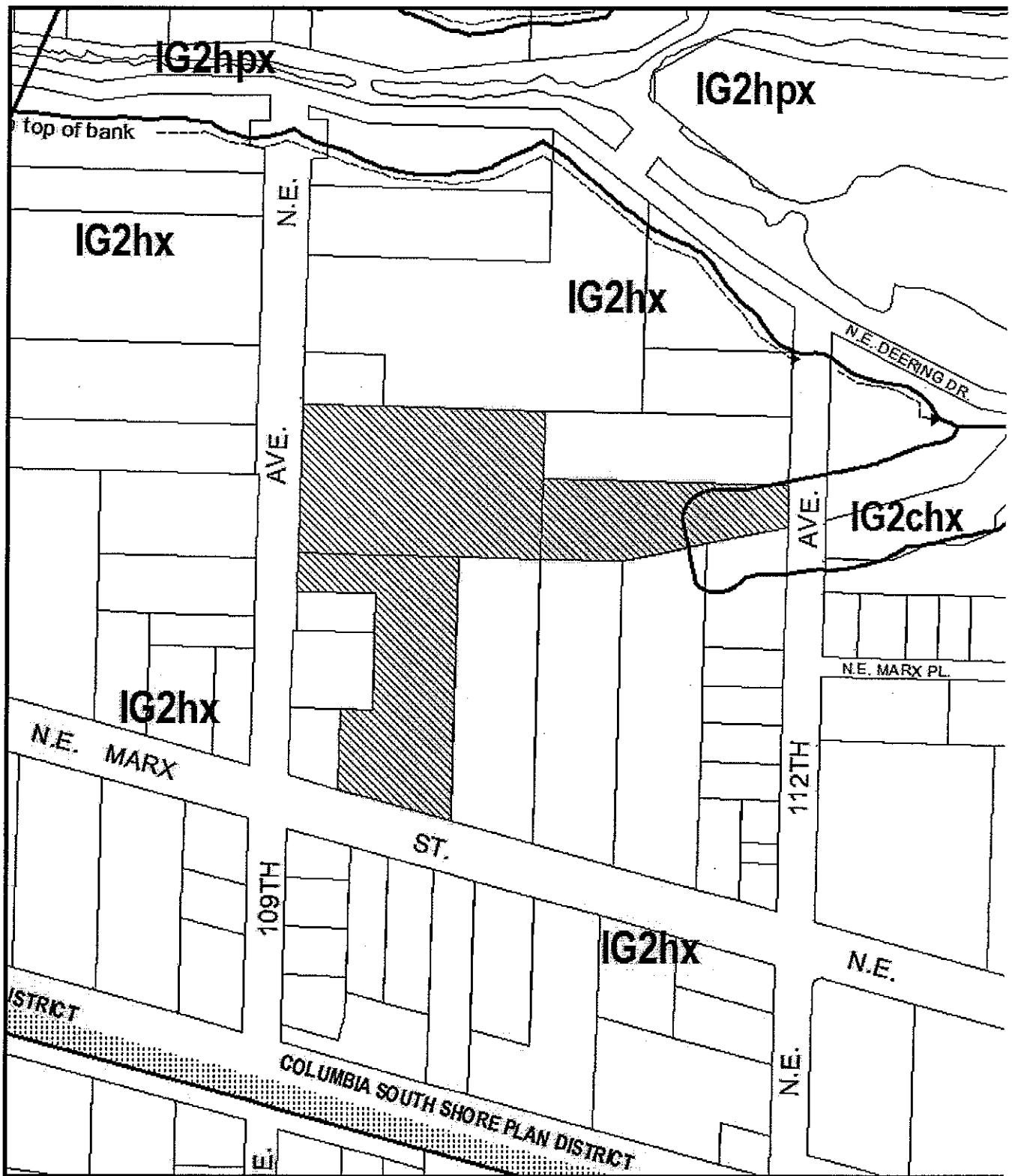
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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. Supplemental Narrative
- B. Zoning Map (**attached**)
- C. Plans/Drawings
  - 1. Initial Plan Set
  - 2. Revised Plan Set
  - 3. Repair and Replanting Plan
  - 4. Overall Subject Property Plan
- D. Notification information
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Bureau of Development Services-Subject Property Development
  - 3. Water Bureau
- F. Correspondence
  - 1. Alice Blatt, June 7, 2011, re: supportive of rock removal and native plant installation
- G. Other
  - 1. Original LU Application
  - 2. Subject Property History Research
  - 3. Letter to applicant re: incomplete application
  - 4. Emails to/from applicant and applicant's representative, Tim Turner
  - 5. Subject Property Photos
- H. Received in the Hearings Office
  - 1. Request to Reschedule – Kate Green – 7/20/11
  - 2. Notice of Hearing – Kate Green – 8/8/11
  - 3. Decision Appeal Form – Kate Green – 8/16/11
  - 3a. Notice of Type II Decision – Kate Green – 8/16/11
  - 4. 8/24/11 Letter – Steven W. Abel – 8/26/11
  - 5. 9/20/11 Letter with attachments – Steven W. Abel – 9/20/11
  - 5a. Declaration of Dan Walsh – Steven W. Abel – 9/20/11
  - 5b. Plan Adopted Nov. 1993 – Steven W. Abel – 9/20/11
  - 5c. PortlandMaps printout: 5339 NE 112<sup>th</sup> Ave. – Steven W. Abel – 9/20/11
  - 5d. PortlandMaps printout: 5339 NE 112 Ave. – Steven W. Abel – 9/20/11
  - 5e. 9/19/11 Memo, Seth Otto to Abel – Steven W. Abel – 9/20/11
  - 5f. Photo – Steven W. Abel – 9/20/11
  - 5g. Photo – Steven W. Abel – 9/20/11
  - 5h. Photo – Steven W. Abel – 9/20/11
  - 5i. Photo – Steven W. Abel – 9/20/11
  - 5j. Photo – Steven W. Abel – 9/20/11
  - 5k. Photo – Nuisance Plants in Detail – Steven W. Abel – 9/20/11

- 5l. Seth S. Otto Resume – Steven W. Abel – 9/20/11
6. Mitigation Area Map – Steven W. Abel – 9/21/11 (8 ½” x 11” **reduced size attached**)
7. PowerPoint presentation – Kate Green – 9/21/11
8. 8/24/11 Letter from Steve Abel – Kate Green – 9/21/11
- 8a. 7/14/11 Email from Seth Otto to Kate Green – Kate Green – 9/21/11
- 8b. 7/15/11 Email from Seth Otto to Kate Green – Kate Green – 9/21/11
- 8c. 7/19/11 Email from Seth Otto to Kate Green – Kate Green – 9/21/11
- 8d. 7/19/11 Request for Extension of 120-day Review Period – Kate Green – 9/21/11
- 8e. 6/24/11 Request for Extension of 120-day Review Period – Kate Green – 9/21/11
- 8f. 6/28/11 Email from Dan Walsh to Kate Green – Kate Green – 9/21/11
9. 9/23/11 Memo – Kate Green – 9/23/11
- 9a. Mitigation Area Map – Kate Green – 9/23/11
- 9b. Chart – Kate Green – 9/23/11
- 9c. Impact Area and Mitigation Area Charts – Kate Green -- 9/23/11
- 9d. Color photo printout -- Kate Green – 9/23/11
- 9e. Aerial photo: 1996 – Kate Green – 9/23/11
- 9f. Aerial photo: 2007 – Kate Green – 9/23/11
- 9g. 2/4/11 Email from Daryl Houtman to Kate Green and others – Kate Green – 9/23/11
- 9h. Plumbing Inspection Request Form – Kate Green – 9/23/11
- 9i. 9/21/11 Land Use Review Response – Kate Green – 9/23/11
10. 9/29/11 Addendum to Land Use Response – Elisabeth Cadigan Reese – 9/29/11
11. 10/10/11 Letter – Steven W. Abel – 10/10/11
- 11a. 10/9/11 Memo to Steve Abel from Ada Banasik and Neil Alongi – Steven W. Abel -- 10/10/11
- 11b. Ada H. Banasik Resume – Steven W. Abel – 10/10/11
- 11c. Neil R. Alongi Resume – Steven W. Abel – 10/10/11
- 11d. Transcript of 8/31/11 Appeals Hearing – Steven W. Abel – 10/10/11
- 11e. Transcript of 9/21/11 Appeals Hearing – Steven W. Abel – 10/10/11
- 11f. Notice of Zoning Violation – Steven W. Abel – 10/10/11
12. 10/17/11 Letter – Steven W. Abel – 10/17/11
13. Repair and Replanting Plan (Revised) Reduced Copy Not to Size – Hearings Office -- 10/25/11 (**attached**)



# ZONING



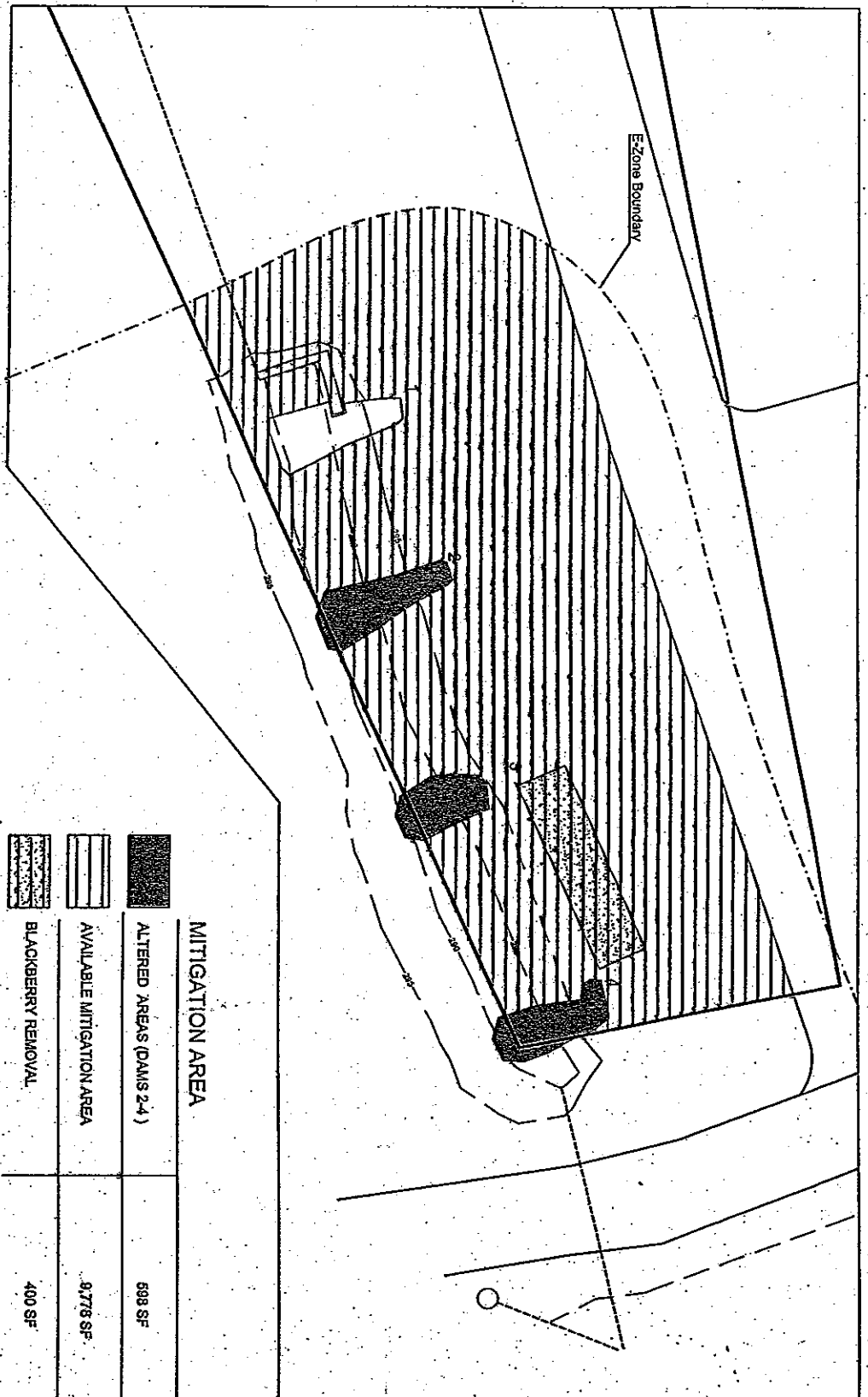
This site lies within the:  
COLUMBIA SOUTH SHORE PLAN DISTRICT

File No.	LU 11-103374 EN
1/4 Section	2541, 2542
Scale	1 inch = 200 feet
State Id	1N2E22BA 200
Exhibit	B (May 16, 2011)



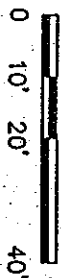
**MAUL FOSTER ALONGI**  
 714.4319 (DOW) | www.mfabl.com  
 This document is prepared in accordance with the requirements of the Oregon Department of Environmental Quality (ODEQ) and the Oregon Department of Transportation (ODOT) for the purpose of providing information to the public regarding the proposed project. It is not intended to be used for any other purpose. The information contained herein is for informational purposes only and does not constitute a guarantee, warranty, or representation of any kind. The user of this document is advised to consult with the appropriate regulatory agency for more information regarding the project.

Design based on a plan by JTB Engineering, Inc.  
 Northwest Wood Recovery, Inc.  
 5339 NE 112TH  
 PORTLAND, OREGON 97220



[Hatched Box]	ALTERED AREAS (DAMS 2-4)	698 SF
[Hatched Box]	AVAILABLE MITIGATION AREA	9,776 SF
[Hatched Box]	BLACKBERRY REMOVAL	400 SF

NOT FOR CONSTRUCTION



NORTHWEST WOOD & FIBRE RECOVERY, INC.  
 MITIGATION AREA  
 5339 NE 112TH  
 PORTLAND, OREGON

CITY OF PORTLAND  
 HEARINGS OFFICE  
 Exhibit #H-6  
 Case # 4110022  
 Bureau Case # 11-103374 EN

**RECEIVED**  
 SEP 21 2011  
 HEARINGS OFFICE

All existing trees must be preserved and protected.

All rock-dams must be removed.

All rock removal and planting work must be conducted by hand.

No mechanical equipment or vehicles are allowed within the Repair

and Replanting Area, per Condition B.1.

2 pounds of ground cover seed planted in locations along the

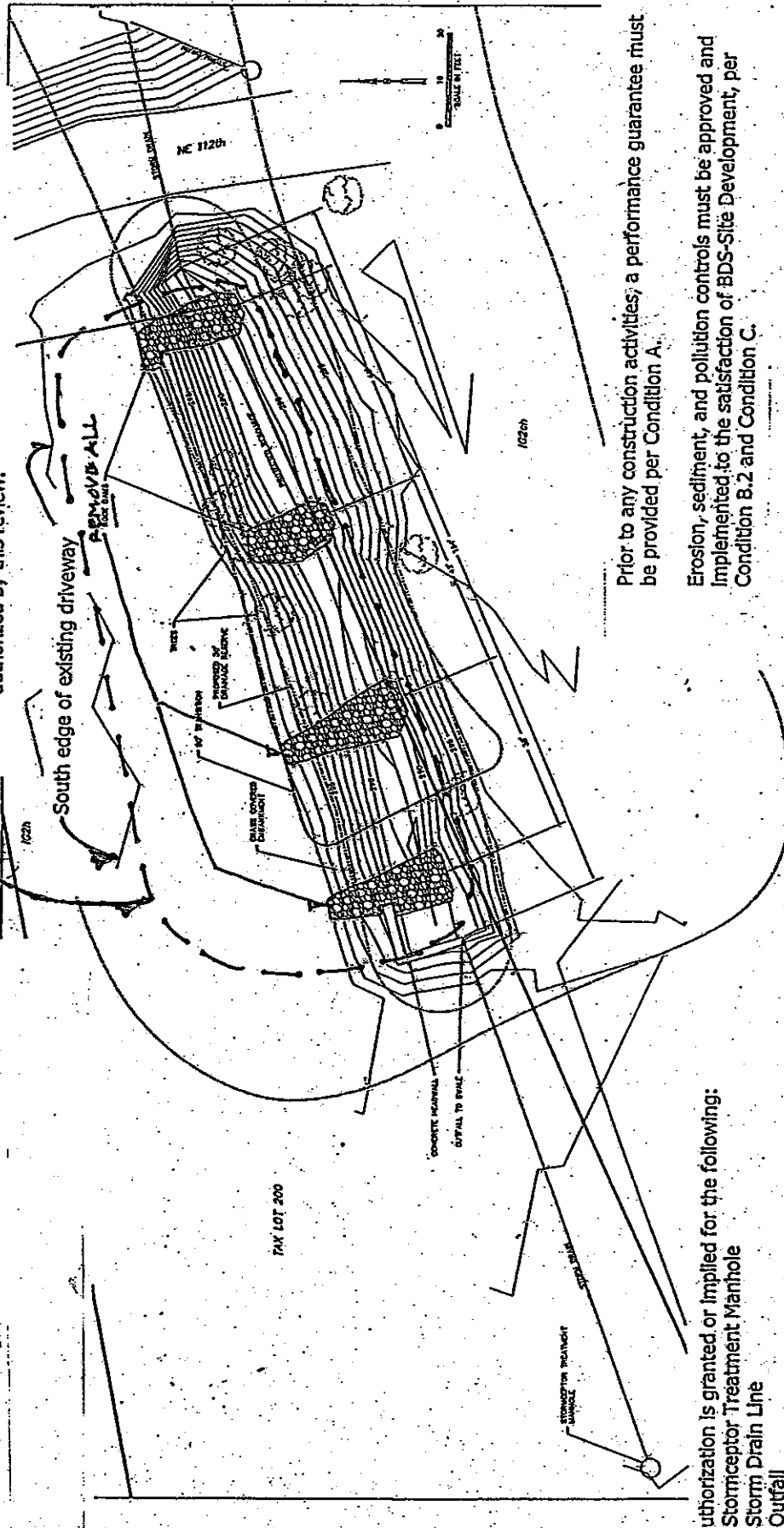
drainage way banks where rocks for the check dams are removed; and

12 shrubs to be planted on the banks of the drainage way in clusters of three

(within the "available mitigation area" shown on Exhibit H.6.).

All plantings must be native species from the Portland Plant List.

REPAIR and REPLANTING AREA includes the area within the south edge of the existing driveway to the south property line, and the east edge of the headwall to the east property line. The boundaries of the Repair and Replanting Area must be flagged prior to any inspections for the rock removal and replanting work authorized by this review.



CASE NO. H-103374  
EXHIBIT C-5

No authorization is granted or implied for the following:

- Stormceptor Treatment Manhole
  - Storm Drain Line
  - Outfall
  - Concrete Headwall
- This development was not reviewed as part of this land use case. Any permits and land use reviews required for this development must have been obtained or must be obtained by the property owner.

Prior to any construction activities, a performance guarantee must be provided per Condition A.

Erosion, sediment, and pollution controls must be approved and implemented to the satisfaction of BDS-Site Development, per Condition B.2 and Condition C.

Drainage Reserve requirements must be implemented to the satisfaction of BES, per Condition B.3.

All repair and replanting work must be monitored by the property owner for 5-years, per Condition E.

CITY OF PORTLAND  
HEARINGS OFFICE  
Exhibit #H-13  
Case # 4110022  
Bureau Case # 11-103374 EN

REPAIR & REPLANTING PLAN

Reduced copy not to scale