



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: June 28, 2011
To: Interested Person
From: Kate Green, Land Use Services
503-823-5868 / Kate.Green@portlandoregon.gov

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 11-103374 EN

GENERAL INFORMATION

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

Site 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, Mary Walker at 503-252-2146
Business District: Columbia Corridor Association, Peter Livingston at 503-796-2892
District Coalition: East Portland Neighborhood Office, Richard Bixby at 503-823-4550

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

Plan District: Columbia South Shore - Southern Industrial
Other Designations: Open Channel, Site I/ *Columbia South Shore Natural Resources Plan*; Flood Hazard Area; Wellhead Protection Area

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

Proposal: The applicant removed vegetation along the banks of a drainageway located on the subject site and installed rock check dams within the drainageway channel, without city permits. To resolve this unauthorized fill and plant removal within a designated environmental resource area, the applicant proposes to remove the rock and replant the adjacent banks with native vegetation, as noted in the attached plans. The work necessary to correct this code violation is subject to a Type II **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.**

FACTS

Site Description: The project site is made up of multiple parcels, with frontages on NE 109th Avenue, NE Marx Street, and NE 112th Avenue. The site 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 site has a paved or gravel surface, which is used for storage and processing of recycled wood products. Virtually no vegetation is located on the site, 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 onsite drainage channel.

Zoning: This 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 site is also within the South Industrial Subdistrict of the Columbia South Shore Plan District.

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

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

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 site, 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 onsite drainageway is a component of the Columbia Slough, which is part of the historic floodplain of the Columbia River. The environmental resources on the site are identified as Palustrine, Forested, Scrub-shrub in the *Natural Resources Protection Plan for the Columbia South Shore* (Site # I). The values afforded by these resources include: groundwater recharge/discharge, drainage, erosion control, sediment trapping, and pollution/nutrient retention/detention.

Land Use History: City records show the site 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 site 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 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 applicant removed vegetation and installed rock fill material in and adjacent to a drainageway, which is located on the east side of the site. To correct this unpermitted activity, the applicant intends to remove the rock and install native plantings to repair the area impacted by these alterations. The Columbia South Shore regulations do not exempt these corrective activities, so the proposed work is subject to this review.

The plans provided by the applicant show an 800 square foot disturbance area that appears to include only the rock fill areas, and not the overall area of vegetation removal and waterway and shoreline impact noted by BDS staff during a site visit on February 4, 2011. Based on BDS staff assessment of the site and project plans, the disturbance area includes the area between the south edge of the gravel driveway to the south property line, and from the east edge of the concrete head wall to the east lot line, as shown on the BDS-staff modified Repair and Replanting Plan (Exhibit C.3). This disturbance area is approximately 8,000 square feet and includes approximately 2,800 square feet of protected resource area, with the balance in the 50-foot transition area. To meet this criterion, a mitigation area equivalent to 110 or 330 percent of the disturbance area must be provided.

Additionally, the planting concept submitted by the applicant does not provide a sufficient number of tree or shrub plantings to achieve the planting requirements spelled out in the CSSPD-Development Standards (33.515.278.B.1 and 2) for the disturbance area identified by BDS staff.

Furthermore, as noted in the responses from BDS-Site Development and the Bureau of Environmental Services (BES), the applicant's materials do not provide sufficient detail to demonstrate how the project construction will be conducted in accordance with tree preservation, construction management, erosion control, or drainageway requirements. BDS-Site Development did find that removing the rock and restoring the original grade will satisfy the Flood Hazard regulations.

In spite of these deficiencies in the applicant's materials, with conditions which call for the BDS-identified disturbance area to be repaired and replanted, this will afford an area of mitigation sufficient to replace damaged resources and fulfill these requirements. The project conditions must include measures to address erosion, sediment, and pollution controls during the rock removal activities; compliance with the drainageway reserve requirements; implementation of the performance guarantee provisions; sufficient plantings to meet the CSSPD development standards; and monitoring provisions.

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

DEVELOPMENT STANDARDS

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

CONCLUSIONS

The applicant proposes to remove rock check dams and replant the adjacent bank with native vegetation to correct the unauthorized work within the drainageway channel. With provisions to assure sufficient erosion controls are in place during the rock removal, and with planting and monitoring requirements to assure success of the repair and replanting efforts, the proposal will satisfy the noted approval criteria. Based on these factors, the proposal should be approved with the conditions outlined in this report.

ADMINISTRATIVE DECISION

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

- Removal of all fill rock within and adjacent to the drainageway
- Installation of native plantings

The project must be in substantial conformance with Exhibit C.3 as modified, signed, and dated by the City of Portland Bureau of Development Services on **June 24, 2011**. 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 (BDS)-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 BDS 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 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-Site Development.
 3. Provide plans and information to address the Drainage Reserve requirements to the satisfaction of the Bureau of Environmental Services.
- C.** An onsite 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-Site Development.
- D.** A minimum of 16 trees, 48 shrubs, and 5 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 3 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 site 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, 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.

Staff Planner: Kate Green

Decision rendered by:  **on June 24, 2011**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 28, 2011

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

Procedural Information. The application for this land use review was submitted on January 13, 2011, and was determined to be complete on **May 12, 2011**.

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 January 13, 2011.

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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: September 10, 2011.**

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

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

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

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on July 12, 2011** at 1900 SW Fourth Avenue. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

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

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

Recording the final decision.

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

- *Unless appealed*, The final decision may be recorded on or after **July 13, 2011**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

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

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

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

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

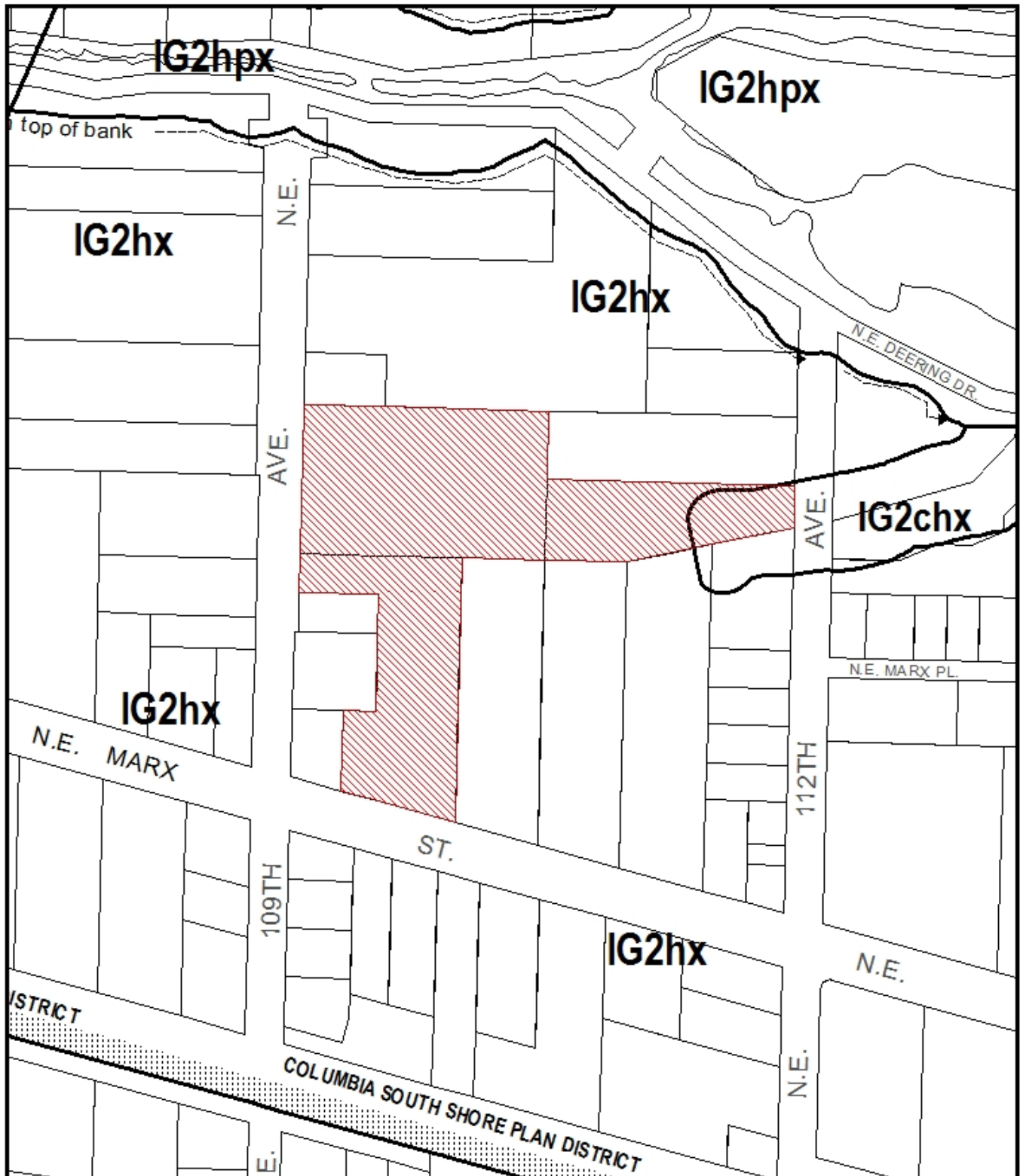
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

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 (attached)
 - 4. Overall Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Development Services-Site 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. Site History Research
 - 3. Letter to applicant re: incomplete application
 - 4. Emails to/from applicant and applicant's representative, Tim Turner
 - 5. Site Photos

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



ZONING



Site



NORTH

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)

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.

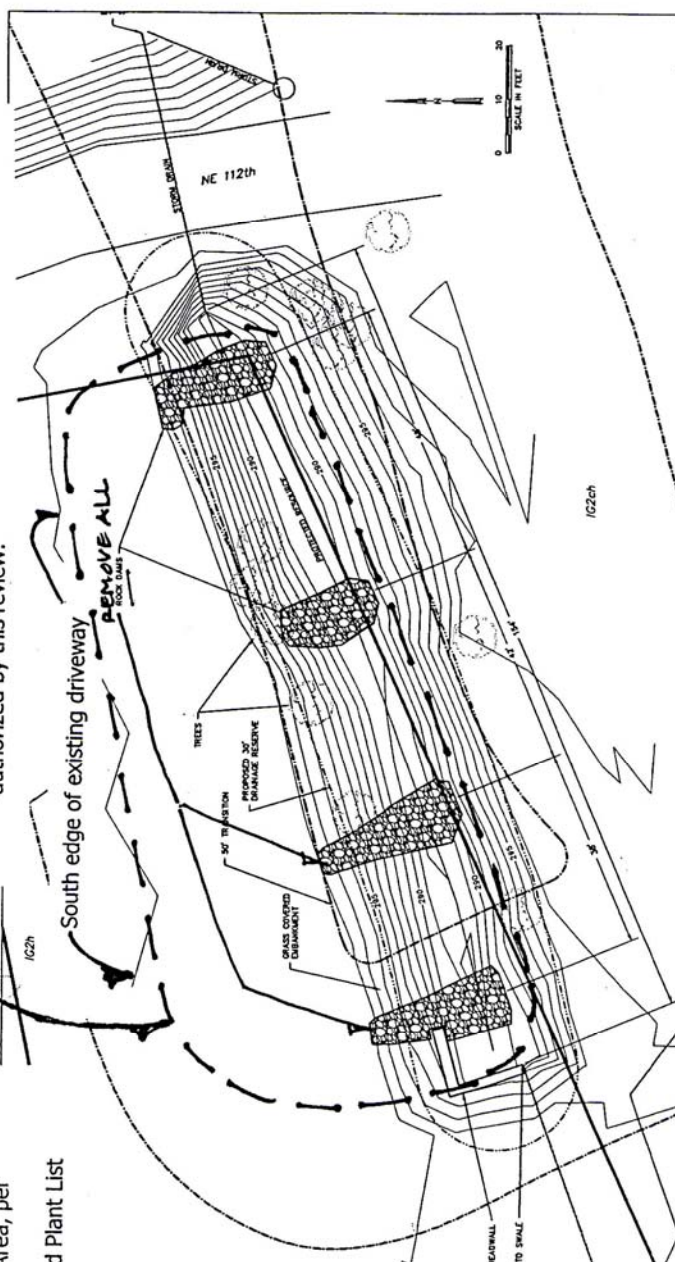
No mechanical equipment or vehicles are allowed within the Repair and Replanting Area, per Condition B.1

A minimum of 16 trees, 48 shrubs, and 5 pounds of groundcover seed must be installed in the Repair and Replanting Area, per Condition D.

All plantings must be native species from the Portland Plant List
Plantings must be installed in clusters of 3 or more

Plantings must be installed in clusters of 3 or more

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.



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.

REPAIR & REPLANTING PLAN

reduced copy not to scale

Approved

City of Portland

Bureau of Development Services

TAX LOT 200

Time

Planner Kg

Date 6.24.2011

* Approval for Environmental Review only.

Not a building permit.

Additional zoning requirements may apply.

CASE NO. 11-103374

EXHIBIT

4 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.

This plan is used to show the area of renewal
only. No authorization for development
shown on this plan is granted or
implied.

