

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No.: LU 12-100368 CU EN (HO 4120011)

Applicants/Owners: Dunn Carney Allen Higgins & Tongue, LLC

Attention: Ty Wyman

851 SW 6th Avenue, Suite 1500

Portland, OR 97204

Perkins Coie, LLP

Attention: Michael Robinson

1120 NW Couch Street, 10th Floor

Portland, OR 97209-4128

Recology Oregon Material Recovery, Inc.

Attention: David Dutra

4044 N Suttle Road

Portland, OR 97217

Fuel Processors, Inc.

Attention: Bill Briggs

4150 N Suttle Road

Portland, OR 97217

Recology Oregon Material

9345 N Harborside Street

Portland, OR 97203-6314

Burlington Northern Santa Fe Railroad

388 State Street, Suite 420

Salem, OR 97301

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representatives: Stacey Castleberry and Sheila Frugoli

Site Address: 4044 and 4150 N Suttle Road and adjacent Burlington Northern Santa Fe Railroad right-of-way

Legal Description: LOT 1&2, PARTITION PLAT 1993-83; LOT 2, CANCEL INTO R237942 / PARTITION PLAT 1993-83, LOT 2; TL 1200 1.66 ACRES LAND & IMPS SEE R646369 (R951320281) FOR MACH & EQUIP, SECTION 32 2N 1E; TL 1100 0.48 ACRES, SECTION 32 2N 1E; TL 1700 1.58 ACRES, SECTION 32 2N 1E; TL 1400 2.81 ACRES, SECTION 32 2N 1E

Tax Account No.: R649733280, R649733290, R951320280, R951320370, R951320470, R951320570

State ID No.: 2N1E32D 01600, 2N1E32D 01500, 2N1E32AC 01200, 2N1E32AC 01100, 2N1E32D 01700, 2N1E32D 01400

Quarter Section: 1726

Neighborhood: St. Johns

Business District: Columbia Corridor Association

District Neighborhood Coalition: North Portland Neighborhood Services

Plan District: None

Other Designations: Smith & Bybee Lakes Natural Resource Management Plan area

Zoning: IHc h—Heavy Industrial base zone, with Environmental Conservation and Aircraft Landing Zone overlay zones

Land Use Review: Type III, CU EN—Conditional Use Review, and Environmental Review

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 1:44 p.m. on July 23, 2012, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 4:11 p.m. The record was held open until 4:30 p.m. on August 6, 2012, for Argument/Evidence from anyone; until 4:30 p.m. on August 20, 2012 for rebuttal from anyone and the issuance of a Revised Staff Report; until 4:30 p.m. on August 27, 2012, for anyone to comment on the Revised Staff Report with argument and evidence; and until 4:30 p.m. on September 4, 2012, for the Applicants' final argument. The record was closed at that time.

Testified at the Hearing:

Stacey Castleberry, BDS Planner
Elizabeth Reese Cadigan, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201
Bret Winkler, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201
Ty Wyman, 851 SW 6th Avenue, #1500, Portland, OR 97204
Michael Robinson, 1120 NW Couch Street, Tenth Floor, Portland, OR 97209
David Coles, 750 Rosemont Road, West Linn, OR 97068
Robert Roholt, 31150 NE Schaad Road, Newberg, OR 97132
Martin Shott, PO Box 529, Aurora, OR 97002
Troy Clark, 2821 NE Klickitat, Portland, OR 97212
Mark Pugh, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201
Jim Brown, PO Box 31, Marylhurst, OR 97036

Introduction: The proposal in this case relates to real property referred to as the Site on Exhibit B (hereafter the "Subject Property") and drainage of stormwater from the Subject Property. A BDS Staff Report and Recommendation to the Hearings Officer was issued on June 15, 2012. (Exhibit H.4 – hereafter referred to as the "Original Staff Report"). At that time, BDS staff concluded that there was an absence of substantial evidence in the record to demonstrate that all of the applicable approval criteria are met. BDS staff recommended, in the Original Staff Report, the denial of the proposed remedial activity and stormwater management plan.

A public hearing was held on July 23, 2012, and supplemental information was submitted into the record by the Applicants (all persons identified above as the Applicants/Owners are referred to collectively as the "Applicants"), City staff and citizens.

BDS provided the Hearings Officer, on August 20, 2012, a Revised Staff Report and Recommendation to the Hearings Officer (Exhibit H.26 – hereafter referred to as the "Revised Staff Report"). BDS represented that the Revised Staff Report sought to address the Applicants' proposals in light of supplemental information entered into the record since June 15, 2012.

At the July 23, 2012, public hearing, excepting for BDS staff and a legal representative ("Brown") for a neighboring property ("Triggco Property"), all persons testifying and submitting documents were in favor of approval of the proposal or, in the alternative, only had questions about the proposal. Brown raised a number of concerns, at the hearing, related to the functionality of the proposed stormwater disposal from the Subject Property (See Exhibit H.13). Brown, in subsequent open-record submissions (Exhibits H.23 and H.24), stated that, "Triggco amends its position on the Application from one of opposition to one of support for the Applicants' proposal; and, requests the City to approve the Application."

The Hearings Officer relies, to a great extent, upon the Revised Staff Report, in making this decision.

Proposal: The requested land use review in this case is for two actions: (1) excavation and remedial cleanup of contaminated soils and wetland substrate at the Site; and (2) construction of facilities to treat and dispose of stormwater from the Subject Property.

One of the Applicants, Oil Re-Refining Company ("ORRCO") and Merit USA, Inc. own property located at 4150 N Suttle Road on which ORRCO operates an oil re-refining business (includes Tax Lots 1100, 1200, 1300, 1400, 1700). Another of the Applicants, Recology Oregon Material Recovery, Inc. ("Recology"), owns 4044 N Suttle Road and obtained a conditional use permit to operate a waste transfer facility there (LU 10-203967 CU AD) (includes Tax Lots 1500 and 1600). Triggco (not one of the Applicants in this case) owns real property immediately west of Tax Lots 1100, 1200, 1300, 1600 and 1700. Burlington Northern Santa Fe Railroad ("BNSF"), one of the listed Applicants, owns Tax Lot 500. See Exhibit H.28 which shows the locations of Tax Lots 500, 1100, 1200, 1300, 1400, 1600, and 1700 and the Triggco property.

ORRCO proposes to excavate and cap contaminated soils from portions of Tax Lots 1400 and 1700 and the surrounding wetland. This area was filled during the 1970s and 1980s with material later discovered to contain contaminants. The fill extended beyond the ORRCO Property to the southwest, about 25 feet onto the adjacent wetland, owned by the BNSF Railroad. ORRCO will excavate contaminated material from the wetland, and then restore the wetland. The anticipated depth of wetland excavation is less than 18 inches. The Applicants' site plans note that a total of 30,383 square feet of contaminated wetland area will be excavated and regraded for the remediation project (24,204 square feet on Tax Lot 1400 and 6,179 square feet on BNSF and adjacent property). The new side-slopes of Tax Lot 1700 (along the southeast and southwest property lines) will be covered with about two feet of clean soil, terraced, and planted with appropriate upland vegetative species. The southern portion of Tax Lot 1700 will be filled, graded and then paved with asphalt to act as a cap over residual soil contamination, preventing stormwater from infiltrating and moving contaminants into the wetland.

Recology proposes to revise the stormwater disposal system approved by LU 10-203967 CU AD (the approved Conditional Use Review for the transfer facility). The proposal now under review will remove an existing underground injection control well ("the UIC") from operation, and drain stormwater from the Recology property into a new engineered, conveyance channel (bioswale) discharging into the wetlands on ORRCO property (Tax Lot 1400), following removal of contaminants. The Applicants' site plans indicate the new channel on Tax Lot 1400 will be approximately 255 feet long, and will create approximately 7,260 square feet of permanent disturbance in the environmental zone. Stormwater from the new facility will eventually flow through an existing flow control structure, south to Smith Lake, part of the Columbia Slough system.

The Subject Property is within the City's Environmental Conservation overlay zone, within the *Natural Resource Management Plan for Smith and Bybee Lakes* ("Management Plan") area. The Management Plan identifies certain projects/actions that are in conformance with the Management Plan and therefore allowed with approval of a Type II land use review. The Management Plan does not identify remediation of contaminated upland or wetland areas. The Management Plan also does

not identify any new stormwater outfalls in the vicinity of this Subject Property. Therefore both actions described in this proposal are considered an "exception" to the Management Plan. On page 68 of the Management Plan (Application Case File, Exhibit G.7), it lists stormwater outfalls and private development projects not anticipated in the Plan as a major exception. Major exceptions require a Type III Environmental Review.

The Conditional Use Review (CU) is required in order to expand the Recology site and to utilize a different stormwater facility than the stormwater facility approved through LU 10-203967 CU AD. No other change to the facility or its operations is proposed. A Conditional Use review to amend LU 10-203967 CU AD must be approved before the stormwater and outfall facility may be relocated to Tax Lot 1400.

Relevant Approval Criteria:

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

- *Natural Resource Management Plan for Smith and Bybee Lakes Approval Criteria for Major Exceptions, a through e*, including **Approval Criteria for Minor Exceptions, a through d**, page 68 of the Management Plan; and
- **33.815.220 Conditional Use Review for Waste-Related Use.**

II. ANALYSIS

Site and Vicinity: The Subject Property, situated in north Portland, is between N Suttle Road and the BNSF Railroad right-of-way, north of Smith Lake. The immediate area is developed with heavy industrial uses. The general area is commonly known as the Rivergate Industrial District. North Suttle Road forms the north property line and is a narrow, unimproved roadway that terminates approximately 1,600 feet to the west of the Subject Property. North Suttle Road connects to N Marine Drive, a major east-west corridor via N Portland Road, a north-south corridor.

With regards to the physical limits of areas affected by the remediation proposal, plans submitted on June 26, 2012 (Exhibits C.18 through C.27) showed proposed grading around the southwest corner of the asphalt cap, extending beyond ORRCO property, and onto the 4301 N Suttle Road property, apparently owned by Triggco Real Estate, LLC. BDS staff communicated to the Applicants that without full code-required public notice, adding the Triggco property as part of the Subject Property would create a procedural error.

On July 19, 2012, the Applicants provided a letter stating that site plans would be revised to remove Triggco's property from the proposed project area (Exhibit H.11.c), and then on August 6, 2012, the Applicants did provide revised site plans (Exhibit H.21) indicating that no work is proposed on Triggco's property as part of this land use review.

While the overall "site" includes the entire ownership of the Recology and ORRCO properties, as well as a portion of the BNSF Railroad property, the project site for the purposes of this review include only Tax Lots 1400, 1600, 1700, and BNSF Railroad property, because the environmental regulations only pertain in these areas, and the Conditional Use only applies to the revised stormwater facility for Recology.

The Recology property is used for building material recycling and processing of large amounts of wood debris and landscape materials for composting. A small weighing depot building is located near the north property line that faces N Suttle Road. A new 3,500 square-foot storage and employee building is in the northeast corner of the site. A new 26,000 square-foot, open, metal structure used for accepting and processing blended food and yard debris waste, from residential sources, is situated centrally on the site. The Recology property also contains large mounds of landscape material, boulders, earth-moving equipment and paved truck loading and maneuvering areas.

The ORRCO property contains an oil recycling business located west of the Recology site, and includes numerous large tank containers and large truck facilities. The ORRCO site has a long history of heavy industrial use. Its northernmost building was constructed by 1970. A woodworking company used the property until 1976, at which time a used oil and petroleum-solvent recovery plant began operation. That use expanded over time into the central portion of the property. The southernmost structure on the ORRCO property was constructed by 1997. The southern portion of the ORRCO property has never been developed, although large quantities of fill were placed there in the 1990's. Tax lot 1400 (immediately southwest of the Recology property), owned by ORRCO, is a jurisdictional wetland area, including black cottonwood/willow forest and scrub shrub wetland areas, large expanses of reed canarygrass emergent wetland area, some open water, and filled upland at the northwest corner, where derelict vehicles are stockpiled. The Tax Lot 1400 wetland area drains into Smith Lake, situated south of the railroad.

Zoning: The Subject Property is zoned IH, Heavy Industrial with "h," Aircraft Landing and "c" Environmental Conservation overlay zones. The portion of the Subject Property, within the "c" overlay zone, is also within the Management Plan.

The Heavy Industrial zone is one of three zones that implement the Industrial Sanctuary Comprehensive Plan Map designation. The zone provides areas where industrial uses may locate, including those uses that are not desirable in other zones due to their objectionable impacts or appearance. Waste-Related facilities are permitted in the IH zone through Conditional Use review. The "h" overlay limits the height of structures and vegetation in order to provide safer operating conditions for aircraft in the vicinity of the Portland International Airport. The height limit of the overlay zone is, at its lowest point on the site, approximately 650 feet.

The southern portion of the Subject Property is located within the "c" Environmental Conservation overlay zone and the Management Plan. The "c" overlay conserves important environmental resources in areas where the resources can be protected while still allowing environmentally sensitive development. The Management Plan:

"seeks to implement the management framework, provide the funding, and institute the processes needed to restore and maintain the lakes to the extent possible in a way that is 'faithful to their original natural condition.' The Management Plan proposes a set of policies and actions enabling the establishment of a major regional environmental and recreational resource for the Portland metropolitan area. The Management Plan adopts as its overall goal protection and enhancement of the natural resources at the Lakes and compatible recreational uses" (Management Plan, pages 1 and 5).

The Management Plan identifies specific improvements anticipated on the properties, and determines the procedure and approval criteria for development that triggers an Environmental Review.

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

The Subject Property is mapped as Site #55 and Water Feature #41, Smith and Bybee Lakes, within the *Inventory and Analysis of Wetlands, Water Bodies and Wildlife Habitat Areas for the Columbia Corridor* ("The Inventory"). The *Columbia Corridor Mapping Project* identifies high quality uplands and wetlands for all of Smith and Bybee Lakes. Identified resources and functional values for Site 55 includes drainageway functions, including fish habitat, drainage, flood storage, desynchronization, erosion control, sediment trapping, and pollution and nutrient retention and removal.

The Inventory describes Site #55 and Water Feature #41 as follows:

"Smith and Bybee Lakes is the most complex and unique natural area within Portland's Urban Growth Boundary. It is about 2,000 acres of a type of habitat which was formerly widespread throughout the lower Columbia River riparian area. Almost all of the site is within the 100-year flood boundary. Even though this site scored the highest on the Wildlife Habitat inventory of all sites inventoried, there is still potential for further enhancement. Extensive amounts of edge habitat are found at this wetland, and are one of the site's most significant and basic natural resources for wildlife."

"The Smith and Bybee Lakes area is the largest, most significant wetland area in the City of Portland, and the largest natural resource inventory area in the Columbia Corridor. It has tremendous habitat value and diversity, and should be protected."

The Management Plan also describes environmental resources within the identified area. It states:

"Smith and Bybee Lakes and their associated sloughs and wetlands are remnants of formerly extensive river bottomlands located near the confluence of the Willamette and Columbia Rivers. The wildlife area is managed primarily for wildlife habitat protection and enhancement while providing passive recreation opportunities for the Portland metropolitan area. The Smith and Bybee Lakes Wildlife Area is composed of two lakes and a number of smaller ponds and sloughs. Considerable changes have occurred to these lakes that have had negative impacts on the lake's system: construction of dam and dikes, filling of wetlands and waterbodies, and introduction of exotic species of plants and animals."

Currently, the wildlife area contains open water, emergent, shrub/scrub, and forested wetlands as well as upland forest. Myriad wildlife species use the site, including more than 100 bird species and a variety of mammals, reptiles and amphibians, including western painted turtles, which are on the Oregon Department of Fish and Wildlife's sensitive species list.

Land Use History: A detailed list of the land use history of both the ORRCo and Recology properties is provided in Exhibit G.2 in the application case file. City records indicate that prior land use reviews include LU 10-203967 CU AD--Approval of a Conditional Use to establish a Waste-Related use that receives, sorts, handles, stores, and re-loads mixed yard debris/food waste; and approval of Adjustments to:

- waive the requirement that the activities relating to the receiving, sorting, handling, storage and transfer of wastes take place entirely within an enclosed structure;
- reduce the Waste-Related setback from 100 feet to 30 feet between the structure containing the waste-material and the east property line;
- waive the L1, General Landscaping requirement within the required setback;
- waive the requirement for a fence on the interior side of the required setback;
- waive the perimeter parking lot landscaping standard, applied as a nonconforming upgrade requirement to the existing parking area; and
- waive the interior parking lot landscaping standard, applied as a nonconforming upgrade requirement to the existing parking area.

Unless expressly modified by this land use review, all approvals and conditions of approval remain in effect for LU 10-203967 CU AD.

Applicants' Statement: A description of the proposal was provided on pages 4 and 5 of this decision. The Applicants have provided additional description of the project in the Stormwater Report (Exhibit A.6) and a statement of project need (see Exhibit A.5) copied below:

Proposed Improvements: (Exhibit A.6, page 1)

"This joint stormwater project between ORRCo and Recology is actually part of two larger projects; ROMAR [reference is to Recology] is enlarging the operation of their N Suttle Road facility and ORRCo is working with the Oregon Department of

Environmental Quality (DEQ) to remediate contaminated wetland sediments and surface soils in the panhandle (tax lot 1700) caused in part by foundry wastes being used as fill to create the panhandle portion of the ORRCO site during the facility's early history. As part of the project, a stormwater management system is required to treat the precipitation accumulation on the site. Recology is currently using an Underground Injection Control (UIC) structure for the control of stormwater. However, the UIC is not adequate to handle stormwater from the entire site. Because of high ground water and issues of soil contamination, DEQ determined that the UIC was not appropriate for this site. The new stormwater management system will treat and release stormwater to the wetland on ORRCO's tax lot 1400."

Project Need: (Exhibit A.5, page 5)

"...The project is needed for the following reasons:

- Storm Drainage. The existing stormwater conveyance systems on the ORRCO Property and the Recology property are substandard to City of Portland regulations. The UIC was designed only to handle the stormwater from a portion of the Recology property. During sustained rain events the lower portion thereof has standing water. The stormwater trench on the ORRCO property was never engineered; in a significant rain event the water can flow directly into the wetland without any treatment.
- Environmental Cleanup. As mentioned above, portions of the panhandle and the wetland are currently contaminated with heavy metals from operations conducted on site and from contaminated fill material. Were the UIC forced to handle all stormwater from the site, it could produce a groundwater mound, which could cause soil contamination to migrate.
- Resource Restoration. As described in the December 21, 2011 Natural Resources Report by Martin Schott of Schott & Associates Inc. ('the Natural Resource Report') (Exhibit 4 hereto), natural resources on the Environmental-zoned portion of the site are degraded. A substantial element of the project is to replant that area in native species."

Agency Review: A "Request for Response" was mailed May 10, 2012. The following bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering ("PBOT")
- Water Bureau
- Portland Fire Bureau
- Portland Police Bureau
- BDS Life Safety Plan Review
- Portland Parks and Recreation, Urban Forestry

BDS Site Development and the Bureau of Environmental Services (BES) responded on June 8, 2012 with concerns regarding how the proposal meets Titles 10 and 24, and the Stormwater Management Manual (please refer to Exhibits E.6 and E.7). They stated that the Applicants did not submit all of the information requested (please refer to Exhibits E.1, E.2 and G.5) and that they cannot support the proposal.

BDS Site Development administers City Titles 10, Erosion Control, and 24, Building Regulations. Erosion control in and around water bodies included in environmental overlay zones affects impacts to environmental resources and functions, such as slope stability and water quality. In this case, erosion control is a listed function for Resource Site #55 in the *Inventory and Analysis of Wetlands, Water Bodies and Wildlife Habitat Areas for the Columbia Corridor*. Several approval criteria in this environmental review refer to impacts on resource values, water quality in the lakes, detection of potential environmental problems, and mitigation of adverse impacts on resource values. Flood storage is also a listed function for the resource site, and Title 24 includes requirements for balance cut and fill in the 100-year floodplain. These aspects of Titles 10 and 24 therefore relate directly to the environmental review approval criteria.

The U.S. Army Corps of Engineers ("Corps") responded (Exhibit E.8) that the proposal requires a Corps permit. Since one of the environmental review approval criteria requires review and approval by appropriate state and federal resource agencies, this is relevant.

The Applicants supplemented the application on June 26, 2012, with revised and full-sized site plans (Exhibits C.18 through C.27), and narrative information responding to BDS's and BES's need for additional information (Exhibit A.17). BDS Site Development issued a revised response, noting that, while additional geotechnical, flood hazard, and erosion control information may be required at permit time, they take no exception to the proposal as presented (Exhibit E.14).

BES issued a Revised Land Use Response on June 15, 2012 (see Exhibit E.11). There were outstanding technical questions pertaining to the type of treatment facility, the rate of discharge to the wetland, the drainage basin area, engineering details, and calculations. Questions regarding federal (US Army Corps of Engineers) approval of the proposal also remained.

BES issued a memorandum to the Hearings Officer on July 23, 2012 (Exhibit H.14), describing new information received from the Applicants. BES indicated that they had reviewed the new information. BES stated that the system as most recently proposed meets BES flow control and pollution reduction requirements, that the Applicants clarified the merits of the proposal relative to the Stormwater Management Manual's flow control requirements, that the Applicants clarified how the three main basins are related within the proposed treatment train, and that adequate details and calculations were provided in the stormwater report supplement. BES indicated that it is satisfied that the swales will not be lined, that maintenance easements over the swale may be addressed by conditions of approval, and that wetland impacts will be compensated for. BES requested selection of several different plant species for revegetation of the wetlands, and that wetlands not be restored with two feet of sand as the replacement substrate.

During his testimony at the hearing, and as a member of the Applicants' project team, Dr. Martin Schott, stated that silt loam topsoil, not clean sand, will be used to restore excavated wetlands, as depicted on corrected cross-section drawings provided by the Applicants on July 19, 2012. He also acknowledged BES concerns with the species *Rosa pisocarpa* in stormwater swale plantings and agreed that it would be removed from swale planting areas.

On August 6, 2012, revised site plans were submitted to the City by the Applicants (Exhibits H.21.a through H.21.j). Although the July 19, 2012 version of MERIT/FPI REMEDIATION CROSSECTIONS & HYDRAULIC PROFIELS Sheet 4 of 10 notes that all excavated wetland areas are to be restored with top soil (Exhibit H.11.c), the August 6, 2012, version of the same plan sheet (Exhibit H.21.d) (erroneously) notes excavated wetland to be restored with up to two feet of clean sand. This notation is in direct conflict with oral testimony provided by Dr. Schott and with the July 19, 2012 letter to Stacey Castleberry, with the accompanying cross section drawing.

The August 6, 2012, site plans remove *Rosa pisocarpa* from swale planting areas, consistent with BES' and Dr. Schott's testimony at the July 23, 2012 hearing.

On August 17, 2012, BES provided a memorandum to the Hearings Officer explaining that it concluded that the application meets the Stormwater Management Manual's Stormwater Hierarchy; that the point of discharge is the wetland on the ORRCO property; and that elevation information provided on both the Applicants' revised site plans, and on a survey attached to a Triggco letter, indicates stormwater has the opportunity to flow through the 18-inch pipes leading to the 4-foot culvert leading to Smith Lake. BES noted that maintenance of the culvert system is not within the purview of BES.

Neighborhood Review: A Notice of a Public Hearing on a Proposal in Your Neighborhood was mailed on June 5, 2012. The Original Staff Report was issued on June 15, 2012. A Notice of Rescheduled Public Hearing was sent out June 28, 2012. In response to the Original Staff Report, correspondence from three neighboring property owners, or the neighborhood association, was submitted to BDS staff (Exhibits F.1, F.2, and F.3).

The three letters (Exhibits F.1, F.2 and F.3) discuss stormwater impacts on the neighboring property to the northwest of the ORRCO site, at 4301 N Suttle Road; installation of the new stormwater management system prior to the heavy rain season, or some alternative means to minimize stormwater runoff pollution; and inquiries as to the listed Applicants and consultants for the proposal.

On June 20, 2012, BDS staff received an e-mailed letter from Jim Brown (Exhibit H.13), representing the adjacent property owner, Triggco Real Estate, LLC. In his e-mailed letter, in testimony at the July 23, 2012, hearing, and subsequently in written evidence (Exhibit H.23) Mr. Brown described stormwater ponding problems on the Triggco property and expressed concern that the Applicants' proposal would adversely impact Triggco's property. He raised questions regarding the ownership, and maintenance responsibility of the existing culverts that route water from wetland areas north of the railroad, under the railroad, and south to Smith Lake. Evidence submitted by Mr.

Brown raised technical stormwater facility design questions, similar to those described in BES's June 15, 2012 Response letter.

BDS Staff Comments: (BDS staff included the following comments in the Revised Staff Report):

"BES responded to Triggco's concerns in a July 23, 2012 memorandum to the Hearings Officer (Exhibit H.14). BES concluded that while the expected rise in surface water elevation is minimal, the Applicants should provide more specific site elevation numbers to substantiate their claim that the project will not increase flooding on adjacent properties.

On August 17, 2012, BES provided a memorandum to the Hearings Officer explaining that the application meets the Stormwater Management Manual's Stormwater Hierarchy; that the point of discharge is the wetland on the ORRCO property; and that elevation information provided on both the applicants' revised site plans, and on a survey attached to a Triggco letter, indicates stormwater has the opportunity to flow through the 18-inch pipes leading to the 4-foot culvert leading to Smith Lake. They note that maintenance of the culvert system is not within the purview of BES.

On July 2, BDS received a letter from Metro's Advisory Committee for the Smith and Bybee Wetlands Natural Area (Exhibit H.10). In their letter they express a more desirable stormwater plan would include disposal to a municipal storm sewer, although they acknowledge that such an alternative is cost prohibitive to the applicants. They express support for the invasive species removal and revegetation of wetland and banks surrounding them, and concern with regards to water quality in Smith Lake, following implementation of the stormwater plan. They suggest that the applicants monitor water and soil quality at the discharge point into Smith Lake annually for five years, rather than merely at the wetland discharge point.

At the July 23, 2012 hearing Dave Coles responded for the applicants, noting that surface waters entering Smith Lake originate from five other sources besides ORRCO and Recology, as well as from N Suttle Road. Nonetheless the applicants will monitor groundwater and surface water from the remediation area from 11 monitoring wells, quarterly for a minimum of one year following remediation, as required by DEQ."

A letter was received from Gerald Breunig and Diane Rohrbach (Exhibit H.12). The authors of Exhibit H.12 represented that they own real property "directly adjacent and east of both the Recology site and the wetland area that are the subject of this case file." The authors expressed concern that the City staff had not reviewed/researched the stormwater impacts upon their property

if the proposal were to be approved. The Hearings Officer notes that stormwater impacts are discussed, in the context of relevant approval criteria, in the findings below. The Hearings Officer also notes that the relevant approval criteria do not specifically require the Applicants to demonstrate "that their proposed storm water management system will not affect our [Bruenig/Rohrbach] property to the east."

ZONING CODE APPROVAL CRITERIA ENVIRONMENTAL REVIEW

Zoning Code Section 33.430.030 describes the relationship of Chapter 33.430 to other environmental regulations. This section explains that Natural Resource Management Plans may contain regulations that supersede or supplement the regulations of this chapter. Whenever natural resource management plan provisions conflict with other provisions of this chapter, the natural resource management plan provisions supersede. Non-conflicting provisions supplement the provisions of this chapter. It lists the Management Plan as having additional regulations that may supersede or supplement the environmental regulations of Chapter 430.

The Management Plan mandates review procedures and approval criteria for projects in conformance with the Management Plan, for minor exceptions to the Management Plan, for major exceptions to the Management Plan, and for Management Plan Modifications.

As described in the Management Plan, the following Approval Criteria for Major Exceptions are applicable to the proposed hazardous waste remediation project and water quality/stormwater outfall project.

Approval Criteria for Major Exceptions

a. Same criteria as for minor exceptions.

Approval Criteria for Minor Exceptions:

a. The activity will have no negative long-term impact on the resource values of the Management Area.

Findings: Identified resource values of the Management Area include uplands and wetlands for all of Smith and Bybee lakes, drainageway functions, including fish habitat, drainage, flood storage, desynchronization, erosion control, sediment trapping and pollution and nutrient retention and removal. The Applicants provided an assessment of the resource values at the Subject Property and rated it with an overall habitat value score of 19 out of a possible 108 points, with resources related to the presence of long-standing water receiving the highest score (10 out of a possible 32). The Smith and Bybee Lakes inventory site, overall, received a Wildlife Habitat Inventory Score of 106 (The Inventory).

The Inventory describes the Smith and Bybee Lakes inventory site further as:

"Even though this site scored the highest on the Wildlife Habitat Inventory of all sites inventoried, there is still potential for further enhancement," and

"Extensive amounts of edge habitat (ecotone) is found at this wetland, and is one of the site's most significant and basic natural resources for wildlife."

Ecotone is defined as a transition area between two adjacent ecological communities, such as between wetland and upland areas.

The Applicants describe the project as,

"Stormwater from both the ORRCO Property and the Recology Property will be directed through two separate sediment traps, oil/water separators, and separate bioswales before discharging into the wetland. Both facilities will have separate conveyance systems, sample collection/compliance points, and NPDES 1200-COLS permits."

The Applicants cite their stormwater report (Exhibit A.6 in the application case file) and notes that the project will improve values associated with stormwater management. The Applicants highlight the bioengineered features of the energy dissipation structure, as well as in-water erosion protection and bank stabilization features.

The Applicants, in Exhibit A.17, quantified the disturbance of the overall project as follows:

"The project area, which is also the total area of temporary disturbance is as follows:

Recology: 63,800 square feet, including:

- 51,300 square feet of asphalt paving and
- 12,500 square feet of swale and landscaping

ORRCO: 92,000 square feet, including:

- 30,800 square feet asphalt cap
- 27,900 square feet landscaping and swale
- 30,400 square feet current wetland to be restored
- 2,900 square feet of new wetland to be created

The permanent disturbance area includes the construction area (including the bioswale, graded panhandle, asphalt cap, and the Recology retention swale) with the exception of the currently contaminated wetlands, which will be restored to an improved condition."

With regards to potential impacts to wetlands on the site, the Applicants reference Exhibit A.9. Exhibit A.9 (March 27, 2012 Letter to Ty Wyman from Schott & Associates) notes that the wetlands are already contaminated, that contaminants will be removed, and clean fill will be used to restore the wetlands to their current elevation.

BES commented (Exhibit E.7) as follows:

"As discussed in the pre-application conference, BES requires that a wetland biologist or similarly-qualified professional assess impacts this proposal will have on the wetland, including the additional water (quality, quantity) that will be discharged to it. The assessment should discuss at a minimum whether the impacts will change the wetland class, inundation levels and vegetation composition."

The Applicants described wetland impacts, in Exhibit A.17, as follows:

"The Applicants have submitted three exhibits from Martin R. Schott, Ph.D. ~

- October, 2011 wetland delineation;
- December 21, 2011 Merit/FPI Remediation & Recology Expansion: Natural Resources (hereinafter, the Natural Resource Report); and
- A March 27, 2012 letter to Ty Wyman of Dunn Carney.

The Natural Resource Report describes the quality of the existing wetland as follows: Using the same method set forth in the Inventory and Analysis of Wetlands, Water Bodies, and Wildlife Habitat Areas for the Columbia Corridor, [t]he assessment method breaks down the various habitat components into five categories: water, food, cover, other values, and unique features. Except for having water present for a good portion of the year the site received low scores for all habitat components. The water component had a score of 10 out of a possible 32 points, and most of the points were due to the long duration of standing water. The food component had a score of 3 out of a possible 24 points. The cover component had a score of 6 out of a possible 28 points. There is little structural diversity on the site. Most of the cover consists of herbaceous grasses or grass likes, and Himalaya blackberry.

There are a few trees, but they are mostly located in the northeast corner of the wetland. Because the wetland is located within an industrial area the site receives a great deal of disturbance. There are frequently people working on the railroad siding, located south of the project: There is heavy equipment being used on the Recology and ORRCo properties for daily operations. Essentially, there is no inter-dispersion with other habitats. Because of the disturbance and the lack of other habitats the site had a score of 1 out of a possible 14 points for the other value category. Finally, there are no unique features, such as habitat types, flora, or fauna. The site received no score for this component.

Overall, the site had a score of 19 out of a possible 108 points.

Dr. Schott's March 27 letter described impacts he expects the combined stormwater system to have on the enhanced wetland.

The storm water report prepared by R. Roholt, P.E., predicts that there will be no significant difference in the quantity of the water entering the wetland. Thus,

the quantity of the water entering the wetlands will not change and will have no impact on the wetland. The storm water report also calculated that the rate of water entering the wetlands will be essentially unchanged from the existing conditions. This is due to the residence time in Recology's retention swale.

The quality, quantity and rate of flow of water entering the wetland will not have a negative impact on the wetlands. In fact, because the contaminated areas within the wetlands will be cleaned up and replanted to native vegetation, and the upland panhandle will be capped with asphalt, the project will have a net improvement on the wetlands. Combine this with the development and planting of buffers with native species and there will be a significant improvement in the value of the wetland after the project is completed."

As described on page 9 of this decision, testimony from representatives of neighboring property owners, such as from Mr. Jim Brown and from Metro, raised concerns with technical aspects of stormwater impacts to both water quantity and water quality in the wetlands, and subsequently in Smith Lake. BES, as the City's bureau responsible for administering the Stormwater Management Manual, requested more specific site elevation numbers to substantiate claims by the Applicants that the project will not increase flooding on adjacent properties.

On August 17, 2012, BES responded (Exhibit H.25) to new information from the Applicants and from Triggco, that elevation information shows stormwater has the opportunity to flow through the 18-inch pipes leading to the 4-foot culvert leading to Smith Lake. BES indicated that the Stormwater Management Manual flow control and pollution reduction standards are met.

At the July 23, 2012, hearing, the Applicants provided testimony describing the water and soil monitoring that will be required of them by the Oregon State Department of Environmental Quality ("DEQ") to ensure no further soil or water contamination occurs as a result of this project. Such monitoring will ensure that contaminants do not enter downstream water bodies as a result of this project.

Regarding excavation impact on wetlands, site plans submitted by the Applicants on June 26, 2012 included cross-section views of upland, bank, and wetland areas to be excavated and then re-filled or capped to contain toxic materials. The Cross Sections and Hydraulic Profiles sheet (Exhibit C.21) noted "Contaminated Sediment Removed to a maximum depth of 2 [feet] and replaced with clean sand." During the July 23, 2012 public hearing, the Applicants stated that the notation of sand was in error and that silty loam topsoil would be used to replace excavated contaminated soils from wetland areas.

The Applicants' supplemental narrative (Exhibit A.17) described impacts to resources on page 7 as follows:

"The cleanup of contaminated soils within the wetlands will result in approximately 0.772 acres of wetland impacts. The contaminated soils will be removed and then clean topsoil will be added to the cleanup area bringing the topography back to original elevations. In conjunction with the removal of contaminated soils, reed canary grass, an invasive species, will be removed from the wetlands where there are contaminated soils. All of the disturbed area (0.772 acres) will be planted with native herbaceous wetland plant species."

Similarly, the Merit/FPI Remediation and Recology Expansion Natural Resources report (Exhibit A.2) describes replacing excavated wetland soils with clean topsoil.

On August 6, 2012, revised site plans were submitted to the City by the Applicants (Exhibits H.21.a through H.21.j). Although the July 19, 2012 version of MERIT/FPI REMEDIATION CROSSECTIONS & HYDRAULIC PROFIELS Sheet 4 of 10 notes that all excavated wetland areas are to be restored with top soil (Exhibit H.11.c), the August 6, 2012 version of the same plan sheet (Exhibit H.21.d) (erroneously) notes excavated wetland to be restored with up to two feet of clean sand. This notation is in direct conflict with oral testimony provided by Dr. Martin Schott and with the July 19, 2012 letter to BDS staff planner Stacey Castleberry, with the accompanying cross section drawing (Exhibit H.11.c). Therefore Exhibit H.21.d cannot be approved, but rather Exhibit H.11.c should be approved in its place.

As described generally by the Applicants, removal of the contaminated sediments and replacement with clean topsoil, in concert with replanting native wetland vegetation (100 trees and 13,800 plugs) is self-mitigating. Further, enhancement of the upland buffer areas adjacent to the wetland with dense native tree and shrub plantings (259 trees and 1,634 shrubs) will offset the impacts of developing a stormwater swale through the upland buffer. The Hearings Officer finds that with the approval of Exhibit H.11.c (instead of Exhibit H.21.d) *this approval criterion can be met.*

- b. The activity provides a buffer of equivalent quality, density, and resource value as required by the Management Plan.**

Findings: The Applicants noted that

"The Natural Resource Report (p. 6) presents a Mitigation Plan that depicts enhancement of the site with native plantings upon completion of the project [see Exhibit A.7]. (Exhibit 8 hereto is a plan showing this planting in more detail....)"

The Applicants provided a mitigation planting plan (Exhibits C.27 and H.21j) that indicated significant wetland and buffer plantings. Buffer plantings are proposed to cover 19,312 square feet and are comprised of 259 trees and 1,634 shrubs. The Applicants described the buffer to be planted with four different types of trees planted at a density equivalent to 10 feet on center, to form a visual barrier between the wetland and industrial area as they mature. The buffer would replace an existing blackberry community with a mixed forest scrub-shrub community (Exhibit A.17). Note that the Mitigation Planting Plan plant list includes 95 Oregon ash trees that are not shown on the graphic plan. These trees will be required to be planted and shown on plans at permit time.

LU 10- 203967 CU AD required the following plantings at the south property line of the Recology site:

- A minimum of 65 native trees comprised of at least 15 each of cottonwood, cedar, maple, and oak; spaced, on average, 15 feet apart.
- A minimum of 300 native shrubs comprised of at least 75 each of dogwood, currant, Douglas spiraea, and shiny-leaf spiraea, spaced, on average 5 feet apart.
- Seeded at a rate of 10 pounds per 1000 square feet, with native grasses, sedges, and forbs selected from the *Portland Native Plant List*.

Exhibits C.27 and H.21.j indicate that the LU 10-203967 CU AD plantings have been installed.

The Applicants described, in part, a five-year monitoring plan (see Exhibit A.5, page 13-14) to ensure survival of the proposed plantings as follows:

"Upon completion of the plantings described in the Mitigation Plan, the wetland and its buffer will be monitored for five years pursuant to DSL guidelines. The monitoring will inspect the hydrology of the site and determine the percent survivorship of the planted trees and shrubs to insure they meet the success criteria typically required by DSL and the Army Corps of Engineers. The percent cover of each herbaceous species will be estimated. If non-native or invasive species are observed control measures will be designed.

At the time of the fifth monitoring site visit, the wetland boundary will be redelineated to verify that the wetland restoration and wetland creation areas meet the three wetland criteria; wetland hydrology, dominance by hydrophytic vegetation, and hydric soils. During the monitoring of the wetlands the water quality facility will be monitored to verify that it is well vegetated, and functioning properly."

The monitoring program proposed by the Applicants will ensure survival of all proposed mitigation plantings. To confirm maintenance of the required plantings for the initial

establishment period, the Applicants must have the plantings inspected five years after plantings are installed.

The buffer plantings on the Recology property, together with the proposed 259 trees (including the 95 Oregon ash trees) and 1,634 shrubs on the ORRCO property, will provide a buffer of equivalent quality, density, and resource value as required by the Management Plan. The Hearings Officer finds that with conditions to include the 95 Oregon ash trees and a 5-year monitoring and maintenance plan, *this approval criterion will be met.*

- c. **A construction management plan is provided to minimize impacts on the resource area and provide complete restoration at time of construction. Success criteria must be met within two years of construction.**

Findings: The Applicants noted that the remediation of the wetland, the construction of an upland containment site with a cap, and the installation of a stormwater treatment facility all require the use of large construction equipment like dump trucks, loaders, dozers, and excavators. The Applicants indicated that construction management procedures would be followed that will minimize impacts to the wetlands.

The Applicants' narrative Construction Management Plan (Exhibit A.17) described erosion control measures, clearing, construction of the haul road, and the sequence of excavation and dewatering of wetlands, placement of excavated material in upland areas, paving with asphalt, and planting of finished grades.

A graphic Construction Management Plan (Exhibit H.21.i), identified the temporary operational road as well as the extent of the project. To provide added protection of resources beyond the project limits and to inform contractors working in the field, BDS recommended that the Applicants should be required to provide temporary construction fencing at the "extent of project" line.

The Applicants proposed a five-year monitoring plan (see Exhibit A.5, page 13-14) to ensure survival of the proposed plantings as follows:

"Upon completion of the plantings described in the Mitigation Plan, the wetland and its buffer will be monitored for five years pursuant to DSL guidelines. ...The percent cover of each herbaceous species will be estimated. If non-native or invasive species are observed control measures will be designed."

In order to meet the two-year restoration timeline required by this criterion, BDS recommended that the Applicants should be required to provide BDS with a two-year monitoring report describing the survival of required plantings.

The monitoring program proposed by the Applicants will ensure longer term survival of all proposed mitigation plantings. To confirm maintenance of the required plantings for the

initial establishment period, the Applicants should have the plantings inspected by the City five years after plantings are installed.

The Construction Management Plan, together with the monitoring program described by the Applicants, will minimize impacts on the resource area and provide restoration of the site. The Hearings Officer finds that with conditions for construction fencing to further protect environmental resources, for a two-year monitoring report, and for inspection of proposed wetland and buffer plantings, *this approval criterion will be met.*

d. The activity is consistent with the Goal Statement and Objectives of the Plan.

Findings: The Goal Statement of the Management Plan is:

"to protect and manage the Smith and Bybee Lakes area as an environmental and recreational resource for the Portland region. The lakes will be preserved as historical remnants of the Columbia River riparian and wetlands system. They will be maintained and enhanced, to the extent possible, in a manner that is faithful to their original natural condition..."

The findings provided by the Applicants related to this approval criterion are as follows:

"The wetland on the site is an isolated portion of the Smith/Bybee Lakes SNRA, situated beyond the BNSF tracks northeast of Smith Lake proper. The goal statement recognizes a number of public values at stake (viz., environmental, natural, recreational, and historical resources of Smith & Bybee Lakes) and seeks to enhance all in a balanced way.

The uses on the site have not changed since adoption of the NRMP. Thus, the question is whether reconfiguration of the upland storm water drainage to direct drainage to an enhanced wetland is, de facto, inconsistent with the goals set forth in this statement. We do not believe so.

We believe that, to the contrary, by improving the quality of upland drainage and restoring a degraded wetland, the project tends to fulfill the goals set forth therein.

Protection and management of environmental and natural resources. The goal statement describes these as the primary public values at stake. As to these public values, the project scores high. It will remediate environmental contamination and restore a degraded wetland.

Protection and management of recreational resources. Given its location north of the railroad culvert, we see no feasible active recreational opportunity (and note

that, unlike Smith Lake proper) nothing in the NRMP suggests the site should be given to such uses.

Protection and management of historical resources. The goal statement recognizes two historical uses, as floodplain and wetland of the NRMP. Regarding the former, the statement does not suggest a desire to return to uncontrolled flooding. Furthermore, the statement explicitly recognizes wetlands among the historical use of the area; the project will enhance a currently degraded wetland."

With regards to the Objectives of the Management Plan, the Applicants' findings are summarized below:

Objective 2. Provide for and maintain habitat diversity representative of the lower Columbia River Floodplain wetlands.

The Applicants described wetland and upland plantings that will follow excavation and capping of contaminated soils, and construction of the new stormwater channel as:

"The planting of the buffer with native trees and shrubs will result in greater buffering of the wetlands from adjacent industrial activities. The resultant forested area will be both a visual and a physical separation of the wetland from the activities within the industrial areas. There will be four to five different wetland plant communities verses the current three communities."

The Applicants' supplemental narrative (Exhibit A.17) describes the result of the wetland remediation proposal as:

"In conjunction with the removal of contaminated soils, reed canary grass, an invasive species, will be removed from the wetlands where there are contaminated soils. All of the disturbed area (0.772 acres) will be planted with native herbaceous wetland plant species."

The Hearings Officer finds that the removal of contaminated sediments, along with replacing invasive exotic vegetation with native wetland species, is consistent with Objective 2.

Objective 3. Maintain and enhance water quality in the lakes.

The Applicants noted that consistency with the City's Stormwater Management Manual will ensure this objective is met. BES provided five separate responses to various revisions of the proposal and supplemental information provided by the Applicants. Ultimately, BES provided comments in support of the proposal with regards to water quality (Exhibit H.25). In Exhibit H.25, BES responded to new information from the Applicants and from Triggco, that the Stormwater Management Manual flow control and pollution reduction standards are met. The Hearings Officer concurs with the BES' (Exhibit H.25) comments.

Objective 4. Implement a monitoring program to assure early detection of potential environmental problems, and to quantify management programs.

The Applicants stated in findings presented in Exhibit A.5, that upon completion of the plantings described in the Mitigation Plan, the wetland and its buffer will be monitored for five years pursuant to DSL guidelines. The Applicants stated that:

"The monitoring will inspect the hydrology of the site and determine the percent survivorship of the planted trees and shrubs to insure they meet the success criteria typically required by DSL and the Army Corps of Engineers. The percent cover of each herbaceous species will be estimated.

If non-native or invasive species are observed control measures will be designed."

"At the time of the fifth monitoring site visit, the wetland boundary will be redelineated to verify that the wetland restoration and wetland creation areas meet the three wetland criteria; wetland hydrology, dominance by hydrophytic vegetation, and hydric soils. During the monitoring of the wetlands the water quality facility will be monitored to verify that it is well vegetated, and functioning properly."

Regarding monitoring waters and soils for contamination, at the July 23, 2012 hearing, the Applicants stated that they will monitor groundwater and surface water from the remediation area from 11 monitoring wells, quarterly, for a minimum of one year following remediation, as required by DEQ. The Hearings Officer finds this objective is satisfied.

Objectives 1 and 8 are also applicable to the proposal:

Objective 1. Control water level in order to manage the lakes' environmental system.

Objective 8. Develop upland areas in a manner which is compatible with the preservation of the wetlands and use of the lakes for passive recreation.

In their supplemental findings of June 26, 2012 (Exhibit A.17), the Applicants elaborate on how the overall project will maintain floodplain functions and restore wetlands on the site. The Hearings Officer finds, based upon Exhibit A.17, that the overall project is consistent with the Goal Statement and Objectives of the Plan. The Hearings Officer finds that *this approval criterion is met.*

b. Review and Approval by appropriate State and Federal resource agencies.

Findings: The Applicants stated, in Exhibit A.4, that the hazardous material cleanup precludes Corps/DSL (US Army Corps of Engineers and Oregon Department of State Lands) jurisdiction. The Applicants stated in Exhibit A.5 that they will obtain necessary approvals including NPDES 1200-CA permit, NPDES Municipal Separate Storm Sewer Discharge Permit; and a joint Corps and State Lands Removal/Fill permit.

A letter from Dave Coles of the Oregon Department of State Lands (Exhibit A.10), on the one hand confirms the delineation performed by the Applicants' representative, and on the other hand alerts the Applicants that:

"...a series of filling activities were conducted that converted visible wetlands to upland on the southern half of Tax Lot 1700 and the northern portion of Tax Lot 1400. Since the Department has no record of issuing a permit for these activities, I have forwarded this information to the Department's Resource Coordinator for Multnomah County..."

BES requested, in their June 8, 2012 comments (Exhibit E.7), confirmation of feedback from the Oregon Department of State Lands, the Corps regarding approval of work in wetlands, approval by DEQ of contamination removal, and DEQ approval of a 1200 C construction permit.

The Corps (Exhibit E.8) has commented that a Corps permit is required for work in jurisdictional wetlands.

The Applicants submitted in Exhibit A.17:

"As noted previously, this request creates a Catch-22 in that these agencies will not grant such approval until the City approves the application. The applicants submit as Exhibit 2 hereto a June 21, 2012 email from the Corps that it has received our application. The applicants have asked DEQ to confirm its review and approval of the Recology portion of the project. We expect DEQ to review this request and submit something to the City soon. As to the ORRCO Property, the applicants will accept a condition of approval that review and approval of both remediation proposal and stormwater management proposal by DEQ, DSL, U.S. Army Corps of Engineers must precede any work on the site."

Given the iterative nature, between federal, state, and city agencies, of permitting in-water work, it is somewhat challenging to gain complete federal and state permit approval, absent local planning agency approval. Therefore it is a reasonable solution for the Applicants to demonstrate federal and state approval of the remediation work and the stormwater swale, as a condition to be met prior to issuance of city grading, building, or other development permits. The Hearings Officer finds that with such a condition, *this approval criterion can be met.*

- c. **There are no alternate sites within the urban area suitable for the use which will have less impact on the resource.**

Findings: The Applicants argue that this approval criterion applies directly only to proposals to permit a primary use/development of land, as opposed to an accessory use/development such as that contemplated here.

The proposal to construct an engineered, lined stormwater conveyance channel roughly 270 feet long, will permanently displace approximately 12,000 square feet of undeveloped upland and riparian resource area within the Management Plan area and the environmental zone.

The Management Plan (page 68) provides a list of "Uses and Activities" under the heading "Minor Exceptions," and a second list of "Uses and Activities" under the heading "Major Exceptions." Both lists of "Uses and Activities" are presented in concert with the respective "Approval Criteria" that must be met to approve the described exceptions. "Storm water outfalls and passive water treatment areas not anticipated in the Plan" are listed there as a "Use and Activity" considered a "Major Exception." The "Approval Criteria for Major Exceptions" listed within the same section of the Management Plan includes this criterion that "there are no alternate sites within the urban area suitable for the use which will have less impact on the resource." This criterion refers to the "uses and activities" listed above and in the same section, and includes stormwater outfalls and passive water treatment areas.

Therefore, the Hearings Officer finds that the Applicants must provide an analysis of alternatives considered for the stormwater conveyance channel and outfall structure, including conducting stormwater treatment and conveyance on the developed tax lots, instead of in the Management Plan resource area, and the alternatives analysis must clearly demonstrate there are no other possible locations for the facilities with fewer impacts.

The Applicants explained the only area on the Subject Property low enough for the stormwater facility (other than the proposed location) is at the south end of Tax Lot 1700; and that this filled area encroaches into BNSF property and the fill contains metal contamination. The Applicants stated that the DEQ required contaminants be removed from the wetland up to the ORRCO (Tax Lot 1700) property line, and that the area within Tax Lot 1700 be capped (paved with asphalt). In their supplemental findings of June 26, 2012 (Exhibit A.17), the Applicants described the limitations created by existing topography and development on the ORRCO and Recology properties, and the need to place the new stormwater swale within the environmental zone of the Management Plan area. The Hearings Officer finds such explanation/description reasonable. Given such constraints, the Hearings Officer finds that *this approval criterion to be met.*

d. Any long-term adverse impacts of the proposal on the resource values protected or created by the Management Plan are mitigated within the Management Area.

Findings: The Applicants' proposed findings noted that design elements of the outfall and swale protect resource values recognized by the Management Plan, and that excavation of and capping of contaminated soils protects wetland vegetation. Further, the first approval criterion for environmental review (Criterion for Major/Minor Exceptions) stipulates that the activity will have no negative long-term impact on the resource values of the Management Area. Criterion a.a (Criterion for Major/Minor Exceptions) was determined to be met. To the extent that no negative long term impacts result from the project, the Hearings Officer finds that the impacts are either insignificant or are mitigated by the project itself. To the extent that Criterion a.a is met, the Hearings Officer finds that *this approval criterion is also met.*

e. The proposed exception is consistent with the purposes of the City of Portland Environmental Regulations (E Zone).

Findings: The Environmental Conservation zone conserves important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development.

Applicants assert that the project is consistent with these purpose statements as follows:

- Outfall protection will be installed at the three remaining outfalls to minimize erosion and turbidity.
- Spill containment facilities will be installed at the three outfalls to be utilized, to minimize the potential for a spill of toxic or hazardous material from trucks to enter the wildlife area.
- The use of native vegetation will enhance habitat values relative to existing conditions south of the wall and will emphasize the uniqueness of the area along the roadway frontage.

The approval criteria described above require that the project be designed, located, and constructed in a way that minimizes impacts to identified resources and functional values, and that mitigates adverse impacts to the resources. The City's environmental regulations as described in Zoning Code chapter 33.430 contain similar requirements, and a project that meets the approval criteria for Major Exceptions to the Management Plan will be consistent with the purposes of the environmental regulations of Zoning Code chapter 33.430. The Hearings Officer finds that *this approval criterion is met.*

CONDITIONAL USES

33.815.220 Mining and Waste Related These approval criteria allow these uses in locations where their large size and potential nuisance and environmental impacts will not harm surrounding land uses. The approval criteria are as follows:

A. There are adequate nearby lands available for the development of more intense industrial uses;

Findings: The Applicants propose to expand the exterior improvement area (development) by approximately 12,000 square feet on an adjacent ownership in order to construct a new stormwater bioswale/disposal system. The proposed new stormwater facility will serve the Recology site as well as the ORRCO/Merit USA site. Because the Recology site operates an approved Waste-Related Conditional Use at the site, BDS and the Portland City Attorney's Office determined that a Conditional Use Review was required in order to amend the original decision. Specifically, the current proposal is to remove an existing UIC well from operation, and drain stormwater from the property into a new proposed bioswale discharging into the wetlands on the adjacent ORRCO property lot. The adjacent tax lot was not identified in the original decision. Therefore, the Hearings Officer finds that Recology is expanding its site area for the facility. This amendment review is limited in scope only as it pertains to the

criteria that directly relates to this proposed stormwater facility. The Applicants did not propose any changes to the approved operation and/or conditions that were imposed for the Recology facility through LU 10-203967 CU AD.

This site is located within the North Portland Harbor, also known as the Rivergate area. It is comprised of many very large industrial properties that are currently used and available for intense industrial use. According to a Portland Development Commission report 2004 Industrial Districts Atlas, there are over 4,000 acres of industrial land in the Rivergate area. The Hearings Officer finds that a stormwater facility that serves both the ORRCO industrial use and the Recology facility, will have negligible impact to this area. There is adequate nearby land that is not environmentally-zoned, that is available for development of more intense industrial uses. The Hearings Officer finds that *this approval criterion is met*.

B. The proposed use will not significantly alter the overall industrial character of the area, based on the existing proportion and type of industrial uses;

Findings: As noted above, there is a significant amount of industrially-zoned land in the immediate vicinity. Recology has recently completed most of the construction of the improvements including new buildings and vehicle areas that were approved through LU 10-203967 CU AD. The food waste processing activities, as well as other exterior activities, are set back at least 300 feet from the public street. The new food-waste processing structure is set back over 100 feet from the south property line.

In Portland, stormwater bioswales are commonly used to manage stormwater for both large and small commercial and industrial developments. This Waste-Related Use does not require a specialized stormwater management system because of the waste products that are transferred and processed on site. The residual liquid waste, aka leachate, will be contained within the processing structure and removed from the site, per Condition D (LU 10-203967 CU AD). It is the new warehouse-like buildings, extensive paving and infiltration characteristics of the Recology portion of the Subject Property, that have led the Applicants to design a new large bioswale facility that will be shared by both Recology and ORRCO. The Hearings Officer finds that *this approval criterion is met*.

C. There will be no significant health or safety risk to nearby uses;

Findings: When analyzing Recology's operational and physical features, in case LU 10-203967 CU AD, that could create potential health or safety risks to nearby uses, the Hearings Officer considered odor, disease transmission, stormwater/water pollution, noise dust/air pollution and traffic safety impacts. Given the limited scope of this proposal, only the stormwater and water pollution impacts need to be considered.

As discussed extensively in findings for the Environmental Review approval criteria, BES and the BDS Site Development Section determined, per their supplemental responses (Exhibits

E.12 and E.14) that the proposal will not create water pollution and flood-related risks. Therefore, the Hearings Officer finds that *this approval criterion is met.*

D. There will not be significant detrimental environmental impacts to any nearby environmentally sensitive areas;

Findings: The Applicants submitted a concurrent Environmental Review application, which applies the criteria for Major Exceptions to the Management Plan. The findings, above, show that with conditions, the Environmental Review criteria can be met. Therefore, the Hearings Officer finds that *this approval criterion is met.*

E. The proposed use adequately addresses potential nuisance-related impacts such as litter;

Findings: As explained in findings above, the proposed stormwater facility will not be used to process and/or dispose of residual liquids from the mixed yard debris/food waste materials. A stormwater bioswale facility, that is designed and maintained per the City's Stormwater Management Manual requirements, will not create nuisance-related impacts. As proposed, the conditions imposed under LU 10-203967 CU AD will continue to apply. The Hearings Officer finds that *this approval criterion will continue to be met.*

F. Public services.

- 1. The proposed use is in conformance with either the street designations shown in the Transportation Element of the Comprehensive Plan;**
- 2. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service or other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access requirements; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; and safety for all modes; and**

Findings: The project site directly fronts N Suttle Road, which terminates 1,600 feet west of the site. North Suttle Road intersects N Portland Road which connects to N Marine Drive. The project site and surrounding area is within a designated Freight District.

The Transportation Element of the Comprehensive Plan designates the abutting and nearby streets as follows:

Rights-of-Way	Traffic Classification	Transit Classification	Bicycle Classification	Pedestrian Classification
N Suttle Road	Local Service	None	Local	Local
N Portland Road	Major City Traffic Street	Community Transit	Off-Street Path	Off-Street Path
N Marine Drive	Major City Traffic Street	Transit Access	Local	Local

PBOT reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33 and Title 17, and for potential impacts upon transportation services. PBOT staff provided the following comments (please refer to Exhibit E.4):

"With regard to this proposal, the described grading, stormwater management facility construction and landscaping will not result in any transportation-related impacts. It is noted that transportation-related conditions of approval from LU 10-203967 CU AD, specifically conditions J and L, remain in effect."

The Hearings Officer finds the PBOT comments in Exhibit E.4, including those quoted above, to be credible. The Hearings Officer finds that *this approval criterion is met*.

3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

Findings: No issues or concerns were raised by Water, Fire and Police Bureau staff. In response to additional information submitted by the Applicants, the BDS Site Development Section and BES staff have determined that the application demonstrates that the proposed stormwater disposal system is acceptable.

In written testimony and at the public hearing, Mr. James Brown, an attorney representing the western abutting property—Triggco Real Estate, raised concerns about the efficacy of the proposed stormwater facility. Specifically, Mr. Brown noted concerns about the existing culverts that will carry the stormwater from the Applicants' shared bioswale to the wetland area. Mr. Brown raised concerns about the maintenance of the culverts. Mr. Brown also questioned whether or not the Applicants have authority to maintain the facilities; such as remove nuisance vegetation and debris. Mr. Brown, in supplemental submissions (Exhibits H.23 and H.24) stated the following:

"Since the July 23 Hearing, we have had the opportunity to meet with the Applicants and their consultants to review the Application and to better understand its scope and potential impacts to Triggco's Property. As a result Triggco amends its position on the Application from one of opposition to one of support for the Applicants' proposal; and, requests the City to approve the Application."

Mr. Brown, despite the supportive comments above, did indicate that Triggco still had concerns with the "functionality of the Port's offsite stormwater management system." (Exhibit H.23)

In response, the July 23, 2012 BES memorandum to the Hearings Officer (Exhibit H.14) states that the system, as proposed, meets BES flow control and pollution reduction requirements, and that adequate details and calculations were provided in the stormwater report supplement.

Therefore, based upon the favorable response from the service bureaus and general support from Mr. Brown, the Hearings Officer finds that *this approval criterion is met.*

G. The proposal complies with the regulations of Chapter 33.254, Mining and Waste-Related Uses;

Findings: Except where modified through an approved Adjustment, the Hearings Officer found that the Waste-Related Use met all the applicable development standards of this Chapter when reviewed under LU 10-203967 CU AD. The proposed stormwater facility will serve both Recology and ORRCO. The stormwater management improvements do not conflict with the regulations of Chapter 33.254. The Hearings Officer finds that *this approval criterion is met.*

H. There is a reclamation or redevelopment plan which will ensure that the site will be suitable for an allowed use when the mining or landfill use is finished; and

Findings: *This is not a mining or landfill project. This requirement does not apply.*

I. Public benefits of the use outweigh any impacts which cannot be mitigated.

Findings: Under LU 10-203967 CU AD, the Hearings Officer found that as long as Recology adhered to the operational plan and the imposed conditions of approval, the benefit of a mixed yard debris/food waste transfer station outweighed any negative impacts.

Criterion D speaks directly to protecting nearby environmentally-sensitive areas from significant detrimental environmental impacts. This proposal is limited in scope, and the Hearings Officer finds that with conditions that mitigate the impacts to the protected resources, there will be no negative impact to the delineated jurisdictional wetland and the other environmental resourced identified in the Management Plan. Therefore, the Hearings Officer finds that there is no need to comparatively weigh the impacts and the public benefits of the facility. The Hearings Officer finds that *this approval criterion is met.*

DEVELOPMENT STANDARDS

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

III. CONCLUSIONS

The Applicants proposed excavation and remedial cleanup of contaminated soils and wetland substrate at the ORRCO site, and construction of facilities to treat and dispose of stormwater from the ORRCO site and the Recology site. The application required, under the Portland Zoning Code, a Conditional Use Review and an Environmental Review.

ORRCO proposes to excavate approximately 30,000 square feet of wetland area to a depth of less than two feet, placing excavated soils on the filled southern portions of the adjacent ORRCO property, where they will be capped with asphalt paving. Wetland and bank soils will be replaced, with up to two feet of silt loam topsoil, to current grade and areas will be planted with wetland and buffer vegetation.

Recology proposes to replace their underground injection control system with water quality swales on their property, and a 270-foot long dual swale on ORRCO property to the south. Stormwater from the Recology site and from the southern part of the ORRCO site will be routed through the swale with release into the wetland on Tax Lot 1400.

Mitigation will occur in wetlands and surrounding bank/or buffer areas on ORRCO property to the south and southwest of the Recology site. Mitigation will include over 31,000 square feet of wetland plantings, 19,000 square feet of buffer plantings, and 7000 square feet of swale plantings. 359 trees, 1,634 shrubs, and 13,800 wetland plugs will be planted.

As late as the July 23, 2012 public hearing, BDS staff maintained that the proposal did not adequately address the following issues:

- the physical extent of proposed remediation excavation (and whether or not Triggco property is included),
- the nature of the wetland restoration plan, and
- technical design elements of the stormwater management plan, and the resulting effect of stormwater plan on neighboring property to the west.

On August 6, 2012, the Applicants revised the proposal to exclude the Triggco property from the project area. The revised proposal involved remediation activities, and proposed stormwater swale only upon the ORRCO and Recology property within the environmental overlay zones.

Supplemental stormwater figures were submitted by the Applicants in response to questions iterated by BES before, during, and following the public hearing. BES responded to new information from the Applicants and from Triggco, that elevation information shows stormwater has the opportunity to flow through the 18-inch pipes leading to the 4-foot culvert leading to Smith Lake, and that the Stormwater Management Manual flow control and pollution reduction standards are met. BES noted that maintenance of the culvert system is not within the purview of BES.

The Hearings Officer found that with the supplemental information provided by the Applicants, as described in findings for the applicable approval criteria listed above, that Applicants demonstrated

that the impacts to environmental resources resulting from the proposal will be offset by removal of contaminated soils, followed by wetland restoration using silty loam topsoil and native plantings of wetland trees, shrubs, and groundcovers. The Hearings Officer found that planting of native upland trees and shrubs would provide a dense buffer between the wetlands and surrounding industrial uses. The Hearings Officer found that health and safety risks would be avoided and that public services, namely stormwater management, would be adequately provided. The Hearings Officer found that with conditions of approval to demonstrate approval by federal and state resource agencies, installation of construction management and erosion control mechanisms, and installation and success of restoration plantings, the Environmental Review and Conditional Use Review approval criteria can be met.

IV. DECISION

Approval of a Conditional Use Review for the expansion of a site with a Waste-Related Use for the construction of an approximate 270-foot long, lined bioswale) in the north corner of Tax Lot 1400 that will replace an existing underground injection control well. The bioswale will be located on Tax Lot 1400 (R323424) and will be shared, jointly by the owner of Tax Lot 1400. Approval is subject to the following condition:

- A. Conditions of approval per LU 10-203967 CU AD, for the Waste-Related Use facility located on Tax Lot 1600 (R237942), shall remain in full force and effect.

Approval of an Environmental Review for:

- Construction of a 270± -foot long lined bioswale in the north corner of Tax Lot 1400;
- Excavation of approximately 30,383 square feet of contaminated wetland soils on Tax Lot 1400 and in BNSF Railroad right-of-way;
- Paving of approximately 35,000 square feet of contaminated soils at the south end of Tax Lot 1700;
- Temporary stockpiling of excavated soils on Tax Lot 1700; and
- Temporary dewatering of wetland areas on Tax Lot 1400;

within the Environmental Conservation overlay zone within the plan area of the Management Plan, as shown on the attached approved Exhibits H.21c, H.11.c, and H.21.e through H.21.j. Approval is subject to the following conditions:

- A. **All permits:** Copies of the approved site plans (see attached) and Conditions of Approval listed below, shall be included within all plan sets submitted for permits (building, grading, Site Development, erosion control, etc.). These exhibits shall be included on a sheet that is the same size as the plans submitted for the permit and shall include the following statement, *"Any field changes shall be in substantial conformance with approved Exhibits H.21c, H.11.c, and H.21.e through H.21.j from LU 12-100368 CU EN."*

1. A construction permit from BDS is required.
2. As part of any BDS permit application for this project, the Applicants shall submit documentation demonstrating Corps approval of proposed work.

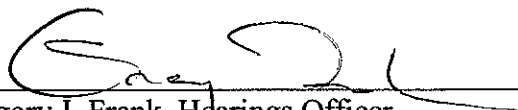
- B.** Temporary construction fencing shall be installed along the “Extent of Project” line for the approved development, as depicted on the attached approved Construction Management Plan (Exhibit H.21.i), or as required by inspection staff during the plan review and/or inspection stages.
1. Tree Protection fencing shall be installed according to Zoning Code Section 33.248.068 (Tree Protection Requirements) around trees designated to remain, and around the perimeter of the newly installed buffer plantings (required by LU 10-203967 CU AD) at the south property line of the Recology property.
 2. No mechanized construction vehicles are permitted outside of the approved “Extent of Project” line delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using handheld equipment.
- C.** A total of 359 trees, 1,634 shrubs, and 13,800 plugs, selected from the *Portland Plant List*, shall be planted, in substantial conformance with Exhibit H.21.j Remediation Landscaping Plan.
1. Ninety-five Oregon ash trees shall be included in the 359 trees to be planted.
 2. Plantings shall be installed between October 1 and March 31 (the planting season).
 3. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
 4. All mitigation and remediation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector/Landscape Professional. All tape shall be a contrasting color that is easily seen and identified.
 5. After installing the required mitigation plantings, the Applicants shall request inspection of Permanent Erosion Control Measures (IVR 210) by BDS, who will confirm that all required mitigation plantings have been installed. A letter of certification from the landscape professional or designer of record may be requested by BDS to document that the plantings have been installed according to the approved plans.
- D. An inspection of Permanent Erosion Control Measures shall be required** to document installation of the required mitigation plantings.
1. The **Permanent Erosion Control Measures** inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described in Condition C above);
- OR--
2. If the **Permanent Erosion Control Measures** inspection (IVR 210) occurs outside the planting season (as described in Condition C above), then the Permanent Erosion Control Measures inspection may be approved prior to installation of the required mitigation plantings – if the Applicants obtain a separate **Zoning Permit** for the purpose of ensuring an inspection of the required mitigation plantings by March 31 of the following year.
- E. The landowner shall maintain the required plantings** for five years to ensure survival and replacement. The landowner is responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period. The landowner shall:

1. Provide a two-year monitoring report to BDS Land Use Services, documenting the restoration of wetland areas and the survival of required plantings. This report shall be submitted two years following final approval of the Erosion Control or Zoning Permit required in Conditions C.5 and D, above.
2. Obtain a Zoning Permit for a final inspection at the end of the 5-year maintenance and monitoring period. The permit must be finalized no later than 5 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.

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

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

This decision applies to only the City's environmental regulations. Activities which the City regulates through PCC 33.430 may also be regulated by other agencies. In cases of overlapping City, special district, regional, state, or federal regulations, the more stringent regulations will control. City approval does not imply approval by other agencies.


Gregory J. Frank, Hearings Officer

9/10/12
Date

Application Determined Complete:	May 2, 2012
Report to Hearings Officer:	June 15, 2012
Revised Report to Hearings Officer:	August 20, 2012
Decision Mailed:	September 11, 2012
Last Date to Appeal:	4:30 p.m., September 25, 2012
Effective Date (if no appeal):	September 26, 2012 Decision may be recorded on this date.

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.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (503-823-7526). Until 3:00 p.m., Tuesday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., and on Mondays, the appeal must be submitted at the Reception Desk on the 5th Floor. **An appeal fee of \$5,000 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000).** Information and assistance in filing an appeal can be obtained from BDS at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chairperson or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

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.

- 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. Applicants' Statements

1. (January 3, 2012) application for 4044 and 4150 N Suttle Road
2. (January 3, 2012) Merit/FPI Remediation and Recology Expansion Natural Resources
3. (January 3, 2012) Jurisdictional Wetland Determination
4. (May 2, 2012) Response to incomplete letter
5. (May 2, 2012) Applicants' amended (CU and EN) narrative
6. (May 2, 2012) Stormwater Management Report
7. (May 2, 2012) Merit/FPI Remediation and Recology Expansion Natural Resources
8. (May 2, 2012) LU 10-203967 CU AD Decision of the Hearings Officer
9. (May 2, 2012) ORRCO/Recology Projects/Impacts on Wetlands
10. (May 2, 2012) DSL wetland concurrence letter
11. (May 14, 2012) Perkins Coie 7-day extension of 120-day clock
12. (May 14, 2012) Dunn Carney Allen Higgins & Tongue 7-day extension of 120-day clock
13. (June 14, 2012) Schott & Associates ORRCO/Recology projects/Impacts on Wetlands
14. (June 14, 2012) DEQ Record of Decision Remedial Action Alternative Merit Oil/Fuel Processors Inc.
15. (June 14, 2012) Recology Mitigation Planting Plan
16. (June 19, 2012) Request for Continuation of Public Hearing
17. (June 26, 2012) Supplemental Narrative
18. (July 2, 2012) Letter from the Applicants with attached letter from St. John's Neighborhood Association
19. Photographs of Posted Notice

B. Zoning Map

C. Plans and Drawings

1. Map depicting site area for LU 12-100368 CU EN
2. Map depicting site area for LU 10-203967 CU AD
3. Site plan of area for LU 10-203967 CU AD
4. (January 3, 2012) Merit/FPI remediation erosion control plan (Site Plan of area for LU 12-100368 CU EN)
5. Recology planting plan
6. (January 3, 2012) Merit/FPI remediation mitigation plan
7. (January 3, 2012) Merit/FPI remediation construction management plan
8. (May 2, 2012) colored zone map exhibit
9. (May 2, 2012) Merit/FPI remediation erosion control plan
10. (May 2, 2012) ORRCO/Recology site plan
11. (May 2, 2012) ORRCO/Recology construction management plan
12. (May 2, 2012) ORRCO/Recology existing conditions plan
13. (May 2, 2012) ORRCO/Recology stormwater areas and flows
14. (May 2, 2012) ORRCO/Recology erosion control plan
15. (May 2, 2012) ORRCO/Recology proposed project

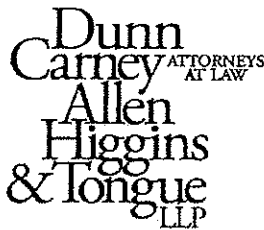
16. (May 2, 2012) Merit/FPI remediation mitigation plan
 17. (May 2, 2012) Merit/FPI remediation proposed project and plant list
 18. (June 26, 2012) Merit/FPI remediation title page
 19. (June 26, 2012) Merit/FPI remediation existing conditions
 20. (June 26, 2012) Merit/FPI remediation site plan
 21. (June 26, 2012) Merit/FPI remediation cross sections and hydraulic profiles
 22. (June 26, 2012) Merit/FPI remediation details
 23. (June 26, 2012) Merit/FPI remediation stormwater management plan
 24. (June 26, 2012) Merit/FPI remediation grading and erosion control plan
 25. (June 26, 2012) Merit/FPI remediation grading and erosion control plan details and notes
 26. (June 26, 2012) Merit/FPI remediation construction management and dewatering plan
 27. (June 26, 2012) Merit/FPI remediation landscape plan
- D. Notification information
1. RFC Routing Slip for Large Plans
 2. Request for response
 3. Posting letter sent to applicants
 4. Notice to be posted
 5. Applicants' statement certifying posting
 6. Mailing list
 7. Mailed notice
 8. June 15, 2012 Staff Report and Recommendation to the Hearings Officer
 9. Mailing List & Notice of Rescheduled Public Hearing on a Proposal in Your Neighborhood
 10. Notice of Rescheduled Hearing to be posted
- E. Agency Responses
1. Site Development Review Section of BDS
 2. BES
 3. DEQ
 4. PBOT Engineering and Development Review
 5. Water Bureau
 6. Site Development Review Section of BDS
 7. BES
 8. The Corps
 9. TRACS Printout showing "No Concerns" from Portland Fire Bureau, BDS Life Safety Section, Portland Parks and Recreation Urban Forestry Section.
 10. BES and DEQ
 11. Revised BES
 12. Supplemental BES
 13. DEQ
 14. Revised Site Development Review Section of BDS
- F. Letters
1. St. Johns Neighborhood Association
 2. James C. Brown and Associates, P.C.
 3. Staff response to Lynne Paretchan
- G. Other

1. Original LUR Application
2. Site History Research with attachments
3. Pre-Application Conference summary notes
4. Background information from LU 10-203967 CU AD
5. Letter of Incompleteness
6. E-mail correspondence and scheduling information
7. Management Plan
8. Environmental Review Submittal Checklist
9. Description of Rafton Series of soil classification
10. Engineering Description of Wetland Soils

H. Received in the Hearings Office

1. 5/14/12 letter from Michael C. Robinson - Poelwijk, Yvonne
2. 5/14/12 letter from Ty K. Wyman - Poelwijk, Yvonne
3. Hearing Notice - Castleberry, Stacey
4. Staff Report - Castleberry, Stacey
5. 6/19/12 letter with attachments - Robinson, Michael C.
 - a. Request to Reschedule - Robinson, Michael C.
6. Rescheduled Hearing Notice - Castleberry, Stacey
7. 7/2/12 letter with attachment - Robinson, Michael C.
 - a. 6/18/12 letter from St. Johns NA - Robinson, Michael C.
8. 7/12/12 Memo - Castleberry, Stacey
9. 7/12/12 Memo from Castleberry - Poelwijk, Yvonne
10. 7/2/12 letter - Clark, Troy
11. 7/19/12 Memo - Castleberry, Stacey
 - a. Email String - Castleberry, Stacey
 - b. 7/13/12 Letter from Roholt to Himes - Castleberry, Stacey
 - c. 7/19/12 Letter from Wyman to Castleberry - Castleberry, Stacey (**attached**)
12. 7/23/12 Letter from Breunig and Rohrbach - Paretchan, Lynne
13. Email from Jim Brown - Castleberry, Stacey
14. 7/23/12 Memo from Steven Himes - Castleberry, Stacey
15. PowerPoint presentation - Castleberry, Stacey
16. Letter from Dale Svart - Robinson, Michael C.
17. Google Earth image - Brown, Jim
18. Photo - Brown, Jim
19. Record Closing Information - Hearings Office
20. 7/24/12 Letter - Robinson, Michael C.
21. 8/6/12 Letter - Wyman, Ty
 - a. Oversize plan - Wyman, Ty
 - b. Oversize plan - Wyman, Ty
 - c. Oversize plan - Wyman, Ty (**reduced size attached**)
 - d. Oversize plan - Wyman, Ty
 - e. Oversize plan - Wyman, Ty (**reduced size attached**)
 - f. Oversize plan - Wyman, Ty
 - g. Oversize plan - Wyman, Ty

- h. Oversize plan - Wyman, Ty
- i. Oversize plan - Wyman, Ty
- j. Oversize plan - Wyman, Ty (**reduced size attached**)
- 22. 8/6/12 Fax Coversheet - Wyman, Ty
 - a. 8/6/12 Letter - Wyman, Ty
- 23. 8/6/12 Letter - Brown, Jim
 - a. Photo printouts - Brown, Jim
 - b. Site Survey - Brown, Jim
- 24. 8/10/12 Letter - Brown, Jim
 - a. Color Photos (13) - Brown, Jim
- 25. 8/17/12 Memo - Himes, Stephen
- 26. Revised Staff Report - Castleberry, Stacey
- 27. 8/23/12 - Robinson, Michael C.
- 28. Tax Lot Map – Hearings Office (**attached**)



July 19, 2012

TY K. WYMAN

DIRECT DIAL
503-417-5478

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Via Mercury Messenger Delivery

Stacey Castleberry
Planner, Land Use Services Division
City of Portland, Oregon
Bureau of Development Services, Land Use Services
1900 SW Fourth Avenue, Suite #5000
Portland, OR 97201

Re: Land Use Review LU 12-100368 CU EN
Our File No.: BRI24-7

Dear Stacey:

Thanks so much for your July 12 memorandum regarding the referenced case; it well crystallizes (and, we are thankful, narrows) the issues presented in the staff report. As to the specific issues that you highlight, we respond as follows:

- 1) Physical Scope of the Project. As we have discussed, this application is borne of the long history of industrial uses along N. Suttle Road. Those industries contaminated the land and this project will clean it up. The lead agency in such clean up actions, DEQ, issued a Record of Decision (ROD) in June 2011 approving ORRCO's remedial effort.

Recology's ownership is not one of those in the area of contamination. However, in issuing the ROD, DEQ asked it to remove the existing UIC there. Recology thus asked ORRCO to install the stormwater outfall that is the subject of this Application. In completing this project, the Applicants will clean up the contamination, accommodate future storm drainage, and enhance a degraded wetland.

From the start of the DEQ process right up to today, the Applicants have tried to cooperate with another affected owner, Triggco. This included submission of drawings including extending the remediation to the Triggco property.

As its letter opposing the Application makes apparent, Triggco refuses to play ball. Such recalcitrance notwithstanding, Triggco simply has no



INDEPENDENT MEMBER OF MERITAS
WITH AFFILIATED OFFICES IN MORE THAN 250 CITIES AND 60 FOREIGN COUNTRIES

CITY OF PORTLAND
HEARINGS OFFICE
Exhibit #H-11c
Case # 4120011
Bureau Case # 12-100368 CU EN

Stacey Castleberry
July 19, 2012
Page 2

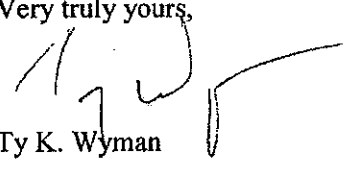
place to hide; DEQ's remediation order will force it to clean up its site. Relevant to this process, we will submit, either at or shortly after the hearing, plans modified to eliminate any improvements to Triggeo's ownership; it will be forced to file its own land use application.

- 2) Wetland Restoration Following Excavation of Toxic Substrate. I understand that the reference, in the Applicants' drawing noted as Exhibit C.21, to replace contaminated sediment with "clean sand" was in error. In fact, the contamination will be replaced with two feet of topsoil. This correction is reflected on the attached, corrected C.21 drawing prepared by our PE, Rob Roholt.
- 3) Stormwater Management Facility Design. You were unable to attend with Stephen Himes the July 10 project meeting convened by DEQ. I understood at that time that our team had addressed all of the issues identified in the June 15 BES memo that you reference. I understand that Mr. Roholt has called Mr. Himes to confirm as much.

One item listed by BES was an objection that Susan Barthel voiced to a particular planting (Rosa Piso Carpa). We told Ms. Barthel that we will remove this particular plant from our plans. She tells us that, because she has already sent her comments to Mr. Himes, she will not send additional comments directly to you.

Thanks again for your assistance. Please forward this letter to the Hearings Officer. We will see you at the hearing.

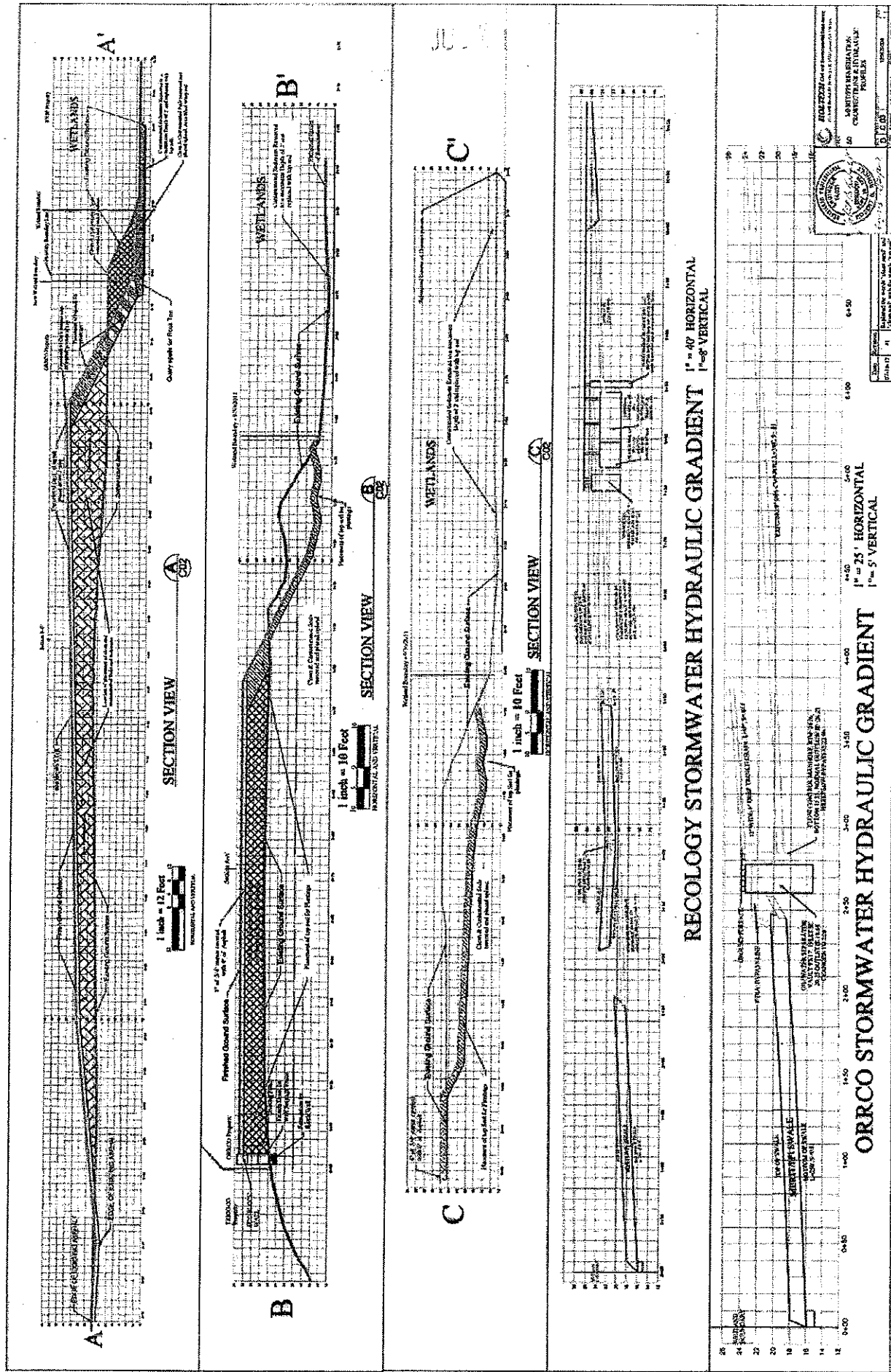
Very truly yours,


Ty K. Wyman

TKW:car
Enclosure

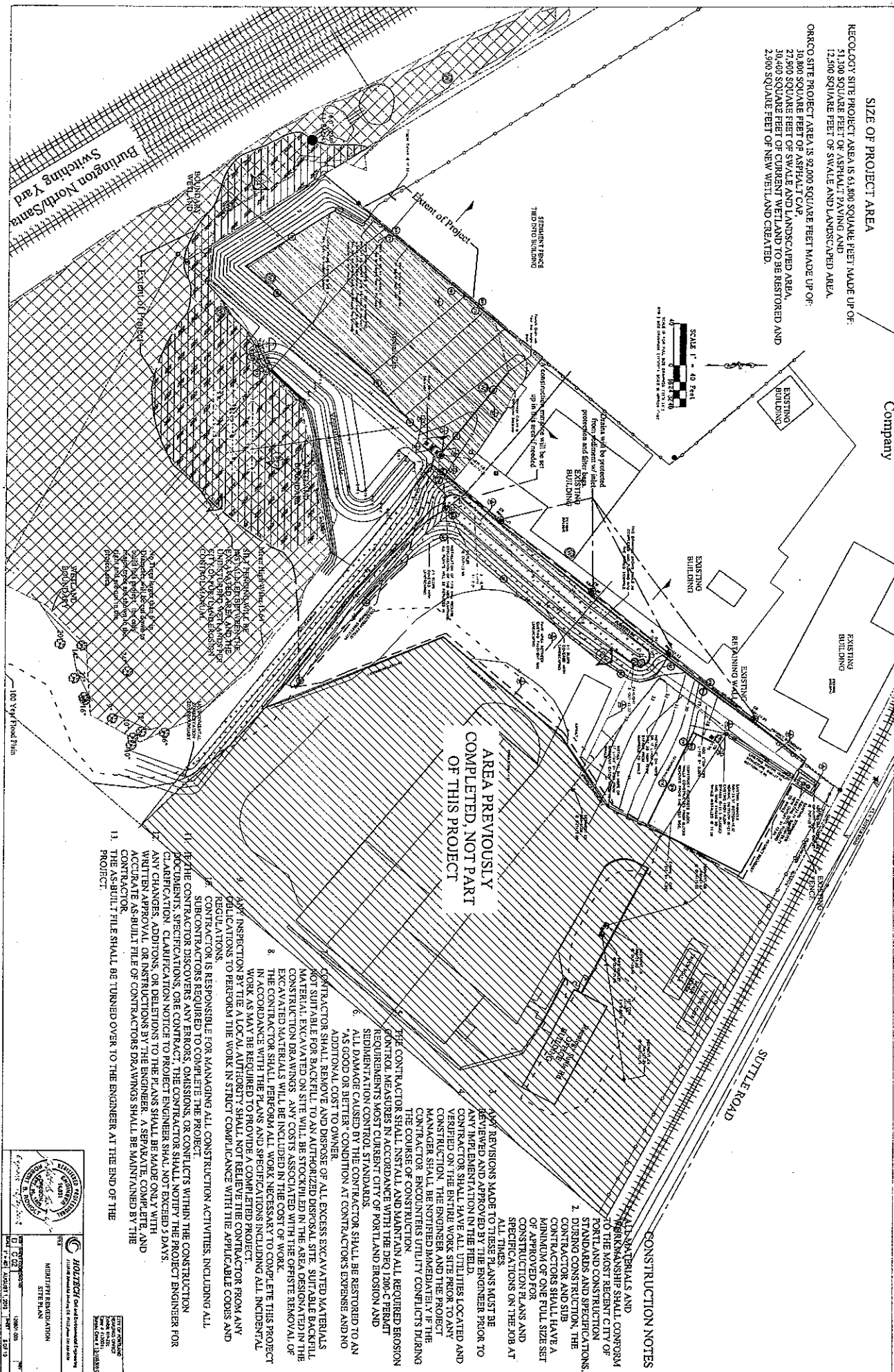
cc: Mr. Michael Robinson, Attorney for Recology, Inc. (via e-mail)
Mr. Dale Svart, Friends of Smith & Bybee Lakes (via e-mail)
Mr. Dan Moeller, Metro Smith & Bybee Management Committee
(via e-mail)
Ms. Yvonne Poelwijk, City of Portland, Oregon Bureau of Development
Services, Records Management (via e-mail)
Mr. Bill Briggs (via e-mail)
Mr. Rob Roholt (via e-mail)
Mr. Martin Schott (via e-mail)

DCAPDX_813497_v1



SIZE OF PROJECT AREA

ORCAO SITE PROJECT AREA IS 92,000 SQUARE FEET MADE UP OF:
10,800 SQUARE FEET OF ASPHALT PAVING,
37,000 SQUARE FEET OF SWALE AND LANDSCAPED AREA,
34,400 SQUARE FEET OF CURRENT WETLAND TO BE RESTORED AND
2,900 SQUARE FEET OF NEW WETLAND CREATED.



AREA PREVIOUSLY
COMPLETED, NOT PART
OF THIS PROJECT

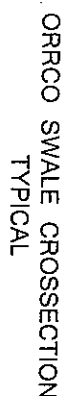
CONSTRUCTION NOTES

2. DURING CONSTRUCTION, THE CONTRACTOR AND SUB CONTRACTORS SHALL HAVE A MINIMUM OF ONE FULL SIZE SET OF APPROVED FOR CONSTRUCTION PLANS AND SPECIFICATIONS ON THE JOB AT ALL TIMES.

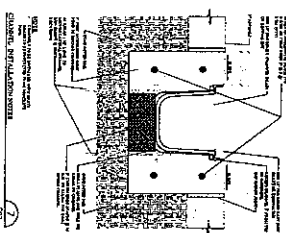
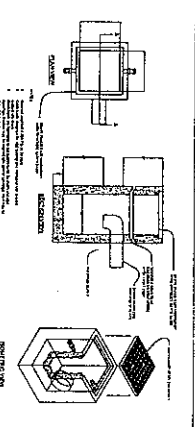
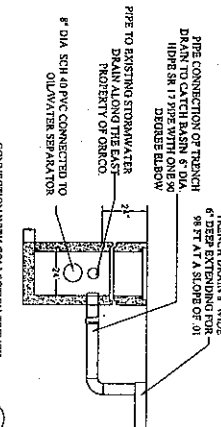
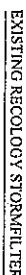
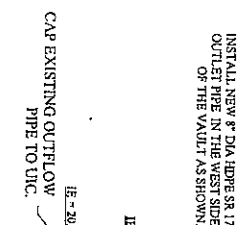
1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MANAGING ALL CONSTRUCTION ACTIVITIES, INCLUDING ALL SUB-CONTRACTORS REQUIRED TO COMPLETE THE PROJECT.
2. IF THE CONTRACTOR DISCOVERS ANY ERRORS, OMISSIONS, OR CONFLICTS WITHIN THE CONSTRUCTION DOCUMENTS, SPECIFICATIONS, OR CONTRACT, THE CONTRACTOR SHALL NOTIFY THE PROJECT ENGINEER FOR CLARIFICATION. CLARIFICATION NOTICE TO PROJECT ENGINEER SHALL NOT EXCEED 14 DAYS.
3. ANY CHANGES, ADDITIONS, OR DELETIONS TO THE PLANS SHALL BE MADE ONLY WITH WRITTEN APPROVAL OR INSTRUCTIONS BY THE ENGINEER. A SEPARATE, COMPLY WITH, AND ACCURATE AS-BUILT FILE OF CONTRACTORS DRAWINGS SHALL BE MAINTAINED BY THE CONTRACTOR.
4. THE AS-BUILT FILE SHALL BE TURNED OVER TO THE ENGINEER AT THE END OF THE PROJECT.
5. ANY REVISIONS MADE TO THESE PLANS MUST BE REVIEWED AND APPROVED BY THE ENGINEER PRIOR TO CONSTRUCTION ON THE FIELD.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE ENTIRE WORK SITE PRIOR TO ANY CONSTRUCTION. THE ENGINEER AND THE PROJECT MANAGER SHALL BE NOTIFIED IMMEDIATELY IF THE COURSE OF CONSTRUCTION.
7. THE CONTRACTOR SHALL INSTALL AND MAINTAIN ALL REQUIRED EROSION CONTROL MEASURES IN ACCORDANCE WITH THE DCP 1200-C PERMIT REQUIREMENTS MOST CURRENT CITY OF PORTLAND EROSION AND SEDIMENTATION CONTROL STANDARDS.
8. ALL DAMAGE CAUSED BY THE CONTRACTOR SHALL BE RESTORED TO AN "AS GOOD OR BETTER" CONDITION AT CONTRACTOR'S EXPENSE AND NO ADDITIONAL COST TO OWNER.
9. CONTRACTOR SHALL REMOVE AND DISPOSE OF ALL EXCESS EXCAVATED MATERIALS NOT SUITABLE FOR BACKFILL TO AN AUTHORIZED DISPOSAL SITE. SUITABLE BACKFILL MATERIAL EXCAVATED ON SITE WILL BE STOCKPILED IN THE AREA DESIGNATED IN THE CONSTRUCTION DRAWINGS. ANY COSTS ASSOCIATED WITH THE OFFSITE REMOVAL OF EXCAVATED MATERIALS WILL BE INCLUDED IN THE COST OF WORK.
10. THE CONTRACTOR SHALL PERFORM ALL WORK NECESSARY TO COMPLETE THIS PROJECT IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS INCLUDING ALL INCIDENTAL WORK THAT MAY BE REQUIRED TO PROVIDE A COMPLETED PROJECT.
11. THE CONTRACTOR SHALL NOT BE HELD RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES OR STRUCTURES THAT OCCUR WHILE PERFORMING THE WORK IN STRICT COMPLIANCE WITH THE APPLICABLE CODES AND REGULATIONS.
12. THE CONTRACTOR IS RESPONSIBLE FOR MANAGING ALL CONSTRUCTION ACTIVITIES, INCLUDING ALL SUB-CONTRACTORS REQUIRED TO COMPLETE THE PROJECT.
13. IF THE CONTRACTOR DISCOVERS ANY ERRORS, OMISSIONS, OR CONFLICTS WITHIN THE CONSTRUCTION DOCUMENTS, SPECIFICATIONS, OR CONTRACT, THE CONTRACTOR SHALL NOTIFY THE PROJECT ENGINEER FOR CLARIFICATION. CLARIFICATION NOTICE TO PROJECT ENGINEER SHALL NOT EXCEED 14 DAYS.
14. ANY CHANGES, ADDITIONS, OR DELETIONS TO THE PLANS SHALL BE MADE ONLY WITH WRITTEN APPROVAL OR INSTRUCTIONS BY THE ENGINEER. A SEPARATE, COMPLY WITH, AND ACCURATE AS-BUILT FILE OF CONTRACTORS DRAWINGS SHALL BE MAINTAINED BY THE CONTRACTOR.
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HOLTECH Civil and Environmental
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www.holtech.com



SECTION VIEW
RECOLOGY SWALE



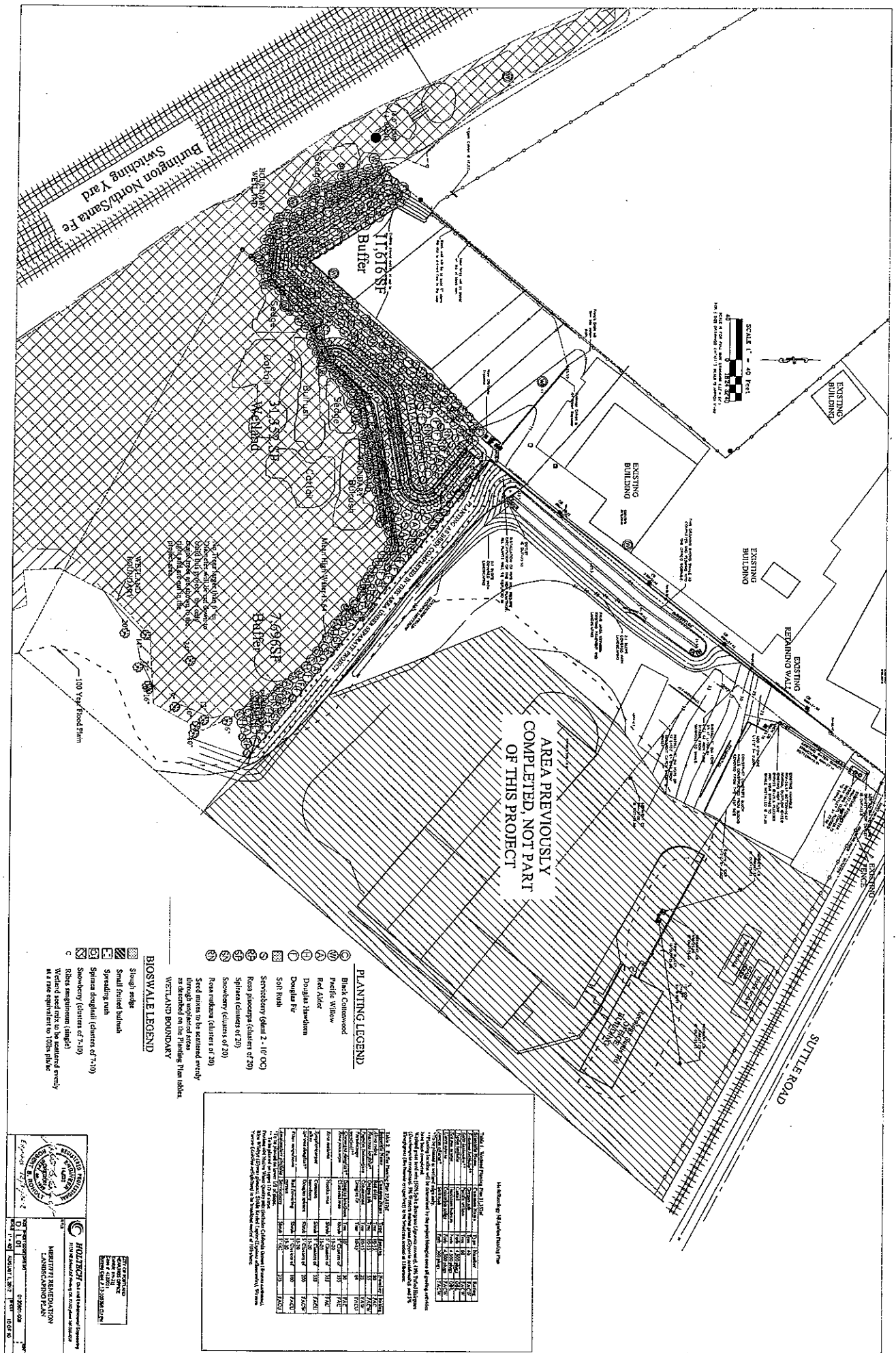
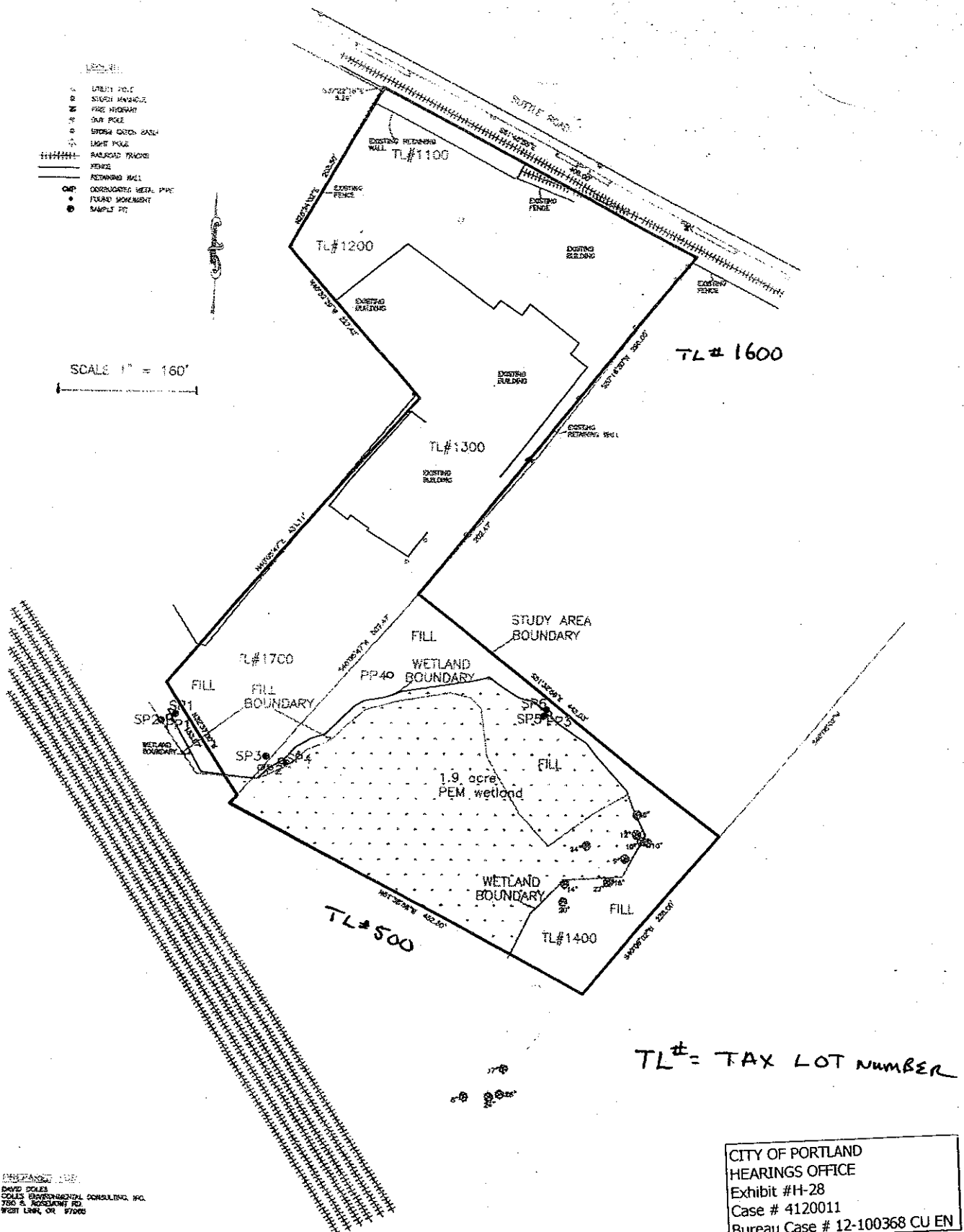


Figure 6 SITE SURVEY

LOCATED IN THE NE & SE 1/4 OF SECTION 32, T.2N, R.1E, W.M.,
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON
SURVEYED: SEPTEMBER, 2011



PREPARED BY:
DAVID DOLES
COLLS ENGINEERING CONSULTING, INC.
750 S. ROSEMONT RD.
WEST LANE, OR 97003

NOTE:

ELEVATIONS ARE BASED OFF OF STATION NAME "MORN"
DATUM 1980.1225, CITY OF PORTLAND WETLANDS
CONTROL DATA, SURVEY POINTS ELEVATION = 28.174'
THIS SURVEY DOES NOT CONSTITUTE A BOUNDARY SURVEY
AND SHOULD NOT BE CONSIDERED AS SUCH. PROPERTY LINES
ARE BASED ON RECORD INFORMATION.

JOB NAME: FUEL PROCESSORS, INC. SITE SURVEY

JOB LOCATION: PORTLAND, OREGON

DRAWN BY: ACB

DATE DRAWN: 08/30/11

CHECKED BY: ACB

DATE SURVEYED: SEPT. 2011

DESIGNED BY:

REVIEWED:

CITY OF PORTLAND
HEARINGS OFFICE
Exhibit #H-28
Case # 4120011
Bureau Case # 12-100368 CU EN

PROPERTY SURVEYS • TOPOGRAPHIC/SITE SURVEYS
SUBDIVISION PLATS • ALLEYS SURVEYS • CONSTRUCTION STAKING
BENTHIN
ENGINEERING, INC.
LICENSED PROFESSIONAL ENGINEER
P.O. BOX 100, SHERWOOD, OR 97140
TEL: 503.625.1100 FAX: 503.625.1101