



City of Portland, Oregon
Bureau of Development Services
Land Use Services
 FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
 Paul L. Scarlett, Director
 Phone: (503) 823-7300
 Fax: (503) 823-5630
 TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: July 22, 2014
To: Interested Person
From: Kathy Harnden, Land Use Services
 503-823-7318 / Kathy.Harnden@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 14-110725 EV (RELATED TO 13-226430 CC)

GENERAL INFORMATION

Applicant: Dennis O'Connor /Habitat Concepts
 PO Box 91231 / Portland, OR 97291

Owner: Kevin P. Novack /PO Box 17574 /Portland, OR 97229

Representative: Brendan Jamieson /2835 NW Pinnacle Drive / Portland, OR 97229

Site Address: 2835 NW PINNACLE DR

Legal Description: BLOCK 3 LOT 2, SKYLINE SUMMIT
Tax Account No.: R773953530
State ID No.: 1N1W25BC 04200
Quarter Section: 2721
Neighborhood: Northwest Heights, contact Charles Clark at 503-297-6159.
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.
Plan District: Northwest Hills - Skyline
Zoning: R10c – Residential 10,000 base zone with the Environmental Conservation overlay zone

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

Proposal: This land use review is required to correct a violation of the environmental chapter of the Portland Zoning Code (City file #13-226430 CC). The property owners hired a tree service to top and remove trees in the ravine below their house.

Portland Zoning Code Sections 33.430.070 and 332.430.405 require a Type II Environmental Violation review to correct illegal tree cutting. Trees removed included primarily alder and big leaf maple ranging in size from 3 to 30 inches in diameter. Twelve trees were 10 inches in diameter or larger and 2 of these were 20- and 30-inch big leaf maples. Altogether, a total of 70 trees were either “topped” or cut mostly to the ground, impacting approximately 7,000 square feet of the site below the house. Of these trees, 36 were regulated trees (native trees 6 inches and larger in diameter), and 34 were unregulated (less than 6 inches in diameter). Therefore,

the 36 regulated trees, as well as general native plant removal, and the total disturbance area are subject to this review.

Most of the “topped” trees were cut to about 4 to 15 feet in height, although a few are only 2 to 3 feet tall. All of the damaged trees were native deciduous species. Within the cutting area, eight trees were left standing, including 1 Douglas fir, 1 Cascara, 1 Scouler’s willow, and five big leaf maples, two of which are dead, according to the arborist report.

As mitigation for the unapproved tree removal resulting in the cutting of 36 regulated trees and for creating a 7,000 square-foot disturbance area within the Environmental Conservation Zone, the owners propose to plant 136 native trees and 114 native shrubs across the disturbance area, as well as 100 native rushes and sedges in and around the headwater creek on the site. Proposed replacement trees include a mix of big leaf maple, Douglas fir, Western red cedar, Grand fir, Red alder, Western hemlock and Pacific dogwood. The shrub species to be planted include: red-osier dogwood, Pacific ninebark, thimbleberry, salal, red-flowering current, and vine maple. Blue wild rye and western fescue grasses are proposed to be planted throughout the site, and sedges and rushes are proposed to be planted in the headwater creek area on the site.

Native tree removal from within Portland’s Environmental Conservation overlay zone must be approved through a Land Use Review. Because the applicant did not obtain a Land Use Review approval prior to the tree removal, a violation was incurred. Violations are subject to the Correction Options of 33.430.405, and, in this case, subject also to the Approval Criteria of 33.430.250.G.

Relevant Approval Criteria:

To be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- **33.430.250 G Corrections to Violations** (*including the following*)
- **33.430.250 E Other Development in the Environmental Conservation zone**

ANALYSIS

Site and Vicinity: The site is located in Northwest Portland in the Forest Heights neighborhood, between NW Cornell Road and NW Thompson Road, approximately 700 feet west of the NW Skyline Boulevard intersection with NW Thompson. The site is developed with a single dwelling residence at the top of a steep ravine. The surrounding area is fully developed with large, modern houses and street system. The trees were cut in an approximately 7,000 square-foot, vaguely triangular-shaped area at the rear of the house.

The lot is approximately 22,490 square feet in area and is developed with a 2-story home with attached garage and landscaping fronting NW Pinnacle Drive on the less steep portion of the site. The lot is situated at the top of a steep, southwest trending ravine with territorial views to the southwest. The long, steep, vegetated ravine stretches downhill for more than 4,000 feet. The ridges along the ravine are fully developed with residential dwellings. This development is typical of the area, which contains a number of steep, vegetated ravines with development along the ridgelines.

Zoning: This site is zoned Residential 10,000 (R10) with the Environmental Conservation (c) overlay zone (see zoning on Exhibit B). Residential 10,000 (R10) is a low density residential zone, which allows development of single dwelling units at a density of one unit for every 10,000 square feet of net site area.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site’s protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive

urban development where resources are less sensitive. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

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 project site is mapped within the [Skyline West Conservation Plan](#) as Site #145 Cedar Mill Creek Headwaters. Known resources of concern in Site 145 include forest, wildlife habitat, sensitive fauna, perennial creek and creek headwaters, palustrine wetlands, groundwater, and open space. Known resources on the site include creek headwaters, perennial creek, forest, and wildlife habitat.

A number of first and second order creeks pass through steep, forested ravines and merge in the southwest corner of Site 145, to form Cedar Mill Creek, which forms a sub-watershed of the Tualatin River Watershed. The ravines are separated by southwest trending forested ridges or recently developed residential areas which are part of large area subdivisions. The steep, upper basin location of this site provides an important biological link to downstream land and water resources, and it serves as a migratory link for mammals, birds, and herptiles along the West Hills ridge. The ravines and wetlands in the area provide cover and habitat for a variety of bird, mammal, amphibian and reptile species, including two state-listed amphibian and bird species.

Land Use History: City records indicate that prior land use reviews have been conducted for this site. None of those land use reviews have direct bearing on the current proposal.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed May 28, 2014. The following Bureaus have responded with no issues or concerns:

- 1. Agency Review:** Several Bureaus and agencies responded to this proposal, although few had comments. Please see Exhibits E.1 through E.3 for details. The comments are addressed under the appropriate criteria for review of the proposal, where they apply.
- 2. Neighborhood Review:** One written response has been received from a notified property owner in response to the proposal. Their comments included a concern that felled trees and resulting debris would create a fire hazard if left on the site, and requested that it be removed. In addition, they requested that invasive species also be removed and that the appropriate plantings for erosion control be planted in the cleared areas of the site.

ZONING CODE APPROVAL CRITERIA

33.430.250 Approval Criteria for Environmental Review

An environmental review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of **Section 33.430.140 through .190**, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

Findings: The applicant removed a number of native trees and impacted other native vegetation within the Environmental Conservation overlay zone without the City’s required environmental review. Because the work was conducted without prior Zoning Code review and approval, it is considered an environmental violation.

The applicant proposes to leave the majority of the topped and cut tree debris in the cutting area to help provide “lost nesting, hiding cover and substrate for bird, mammal, reptile and amphibian species, while also providing the insects and detritus on which they feed.” The mitigation plan also includes removal of invasive species and installing appropriate native species to control potential erosion on the site.

The Zoning Code approval criteria which must be addressed to correct violations of this chapter are found in Section **33.430.250. G, Corrections to violations**. This section requires that the unpermitted activities first be reviewed according to the applicable Environmental Review

criteria that would have been assessed in the City's standard (pre-development) land use review process. Removal of trees from the Environmental Conservation overlay zone must be assessed against the approval criteria listed in **Section 33.430.250.E. - Other Development in Environmental Conservation zones**. If these criteria cannot be met by the violation activities, then all of the criteria in **33.430.250 G** (G.1 through G.2.c.) must be shown to be met.

The applicant has provided findings for the approval criteria listed above and BDS Land Use Review staff has amended the findings, and added conditions where necessary to meet the approval criteria.

33.430.250.E. Other development in the Environmental Conservation zone or within the Transition Area only. In Environmental Conservation zones or for development within the Transition Area only, the applicant's impact evaluation must demonstrate that all of the following are met:

- 1. Proposed development minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review;**

Findings: The purpose of this approval criterion is to recognize that some form of development is allowed, consistent with the base zone standards. Impacts of the development are measured relative to the impacts associated with the development normally allowed by the base zone. In this case, the applicant cut down or topped approximately 70 native trees (having a total diameter of 357 inches) within an approximate 7,000 square-foot area in the environmental conservation zone located behind the house on his property. The applicant did not go through the City's required environmental review process prior to removing the trees. These trees were primarily alder, with 10 big leaf maples. Approximately 34 of the trees were unregulated at less than 6-inches in diameter, leaving 36 – 6-inch or larger regulated native trees that were cut. These regulated trees varied in size from 6 inches to 30 inches in diameter. Not only trees were removed, but any existing native shrubs and forbs that existed in the cutting area were also impacted by the cutting activity. Of the 36 regulated trees that were cut, most of them (24) were less than 10 inches in diameter.

The applicant stated that an arborist was contracted to “do some tree work in the back yard” and that somehow “in the course of their work,” 70 trees were mistakenly topped or cut down. The applicant did not address how or whether the work minimized the loss of resources and functional values on the site. Almost all of the native vegetation on the site below the house was removed or impacted by the felling of these trees, leaving a fairly devastated landscape in the tree cutting area of the site. The magnitude of the clearing operation is not a use that would be permitted or allowed in the base zone without an environmental land use review for tree removal; nor did it minimize the loss of resources or functional values for the type of use that would generally be permitted or allowed on the site. Therefore, this criterion is not met.

- 2. Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;**

Findings: Because approximately 7,000 square feet of native trees, shrubs and forbs were either cut or damaged through the tree-cutting process, the “development” in this case, was not “less detrimental” than the significantly different alternative of leaving native species untouched on the site would have been, or of selectively cutting trees or other options that might have had less impact had the applicant sought approval through an Environmental Review.

The applicant provided a Certified Arborist's report that included a tree table of all the trees that were cut on the site, and measured the tree diameter by the size of the stumps. It shows that 34 trees smaller than 6 inches, and 36 trees primarily between 6 and 11 inches were cut. However, the removed trees also include 6 good-sized big leaf maples between 17 and 30 inches, as well as 5 alders and maples between 10 and 12 inches in diameter. All trees cut on

the site were native species. The total diameter of regulated trees that were cut on the site is 357 inches.

There is no evidence that the tree cutting, and coincident loss of native shrubs and forbs during the process, minimized the loss of resources and functional values on the site, consistent with what would have been allowed by uses that are generally permitted or allowed in the base zone. Just the opposite occurred on this site, as clear-cutting native vegetation to create views is generally not allowed. Therefore, this criterion is not met.

3. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

Findings: As previously stated, almost the entire down-slope area below the house was impacted by removal of native trees, which impacted other native vegetation, including shrubs and forbs, on this site. This resulted in a very significant detrimental impact on the resources and functional values on the site. Although a few trees were left near the top of the tree cutting area below the house and to the west of the cutting area, there are no undisturbed areas or trees left in the 7,000 square-foot tree cutting area below the house.

Further, a large number of trees were cut around the headwaters of a small creek located in the southeast side of the site. Removal of trees around the stream could impact water quality, temperature and flow. The site also lies within a Potential Landslide Hazard Area, has slopes of about 27 percent, and, as noted, is located at the headwaters of a stream. This causes concern that the tree removal could lead to destabilization of the site and that future soil movement could occur when wet weather returns.

Therefore, this criterion is not met.

4. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

Findings: The applicant's Revised Site Plan indicates that in order to mitigate both the upland and stream area impacts, 128 trees and 104 shrubs will be replanted on the site, as well as 100 sedges and rushes to be planted along the stream. The site plan includes a variety of species including 7 native tree species and 7 native shrub species, as well as 100 native rushes and sedges to be planted along the stream.

The remediation plan also includes a shrub species, Red Elderberry (*Sambucus Racemosa*), as a tree species. Staff has removed this species from the list of trees to be planted and added it to the list of shrubs to be planted.

The proposed number and variety of species to be planted will significantly improve the diversity of species on the site and in the area. This diversity will also enhance the site's appeal to wildlife and help preserve slope stability. This diversity may eventually help increase native plant diversity in the surrounding area.

However, installing 128 trees and 104 shrubs within the bounds of the 7,000 square-foot disturbance area would lead to overcrowding on the site and eventually to weak and unproductive trees and shrubs. The applicant's remediation site plan also shows restoration plants in the transition area, which is not allowed. When evaluating the type and amount of mitigation plants that should be installed on a disturbed site, it is necessary to determine the capacity of the site, the resources that were removed and the potential survival of the replacement plants at maturity.

In this case, 128 trees would require that 1 tree be planted for each 54.6 square feet of impact site area. This would lead to a very compact growing area and to overcrowding and possible disease and die-off over time. In addition, big leaf maple trees, one of the applicant's selected tree species, will spread to 75 feet at maturity. Also, Douglas fir will reach 200 feet in height and their branches will extend to 40 feet in width. There is not enough room in the disturbance area of the site for 30 mature big leaf maples, let alone the other tree species to be planted. The disturbance/planting area, at about 70 feet in width, is less wide than the spread

of one mature, healthy big leaf maple or two Douglas firs. One hundred and twenty-eight trees would overwhelm the site and result in stunted and weakened trees.

In this case, the site was fairly saturated with young, small diameter trees that would have naturally thinned itself over time. The large number of small, regulated trees that were cut makes it unfeasible to replant the site with typical quantities of replacement trees of different species that would have enough room to grow and thrive on the site. Therefore, fewer trees that have a smaller spread at maturity should be planted, and a larger number and variety of native shrubs should be planted to complete the revegetation of the site. The shrubs will mature more quickly than the trees, and a healthy understory will be developed on the site much sooner than it would take for the trees to mature. This will result in revegetated site coverage in the shortest amount of time. This understory will help stabilize the slope much more quickly than the trees will. Further, the larger variety of species planted on the site will ensure that it will offer more diversity for wildlife as well as more protection for the creek headwaters.

Therefore, 60 new trees must be planted and must include the following 4 species from the applicant's proposed tree list: Red alder, Pacific dogwood, Western red cedar and Western hemlock. In addition, Bitter cherry (*Prunus emarginata*) and Cascara (*Rhamnus purshiana*) must be included in the proposed tree list. These additional species will add diversity to the site and will help cover the site in a shorter period of time. Ten trees of each species shall be planted.

Further, instead of the 114 shrubs proposed by the applicant, which equals about 1 shrub per 61 square feet, 350 shrubs must be planted within the cut area, which will provide approximately 1 shrub per 20 square feet. This planting plan will result in approximately one new plant for each 18 square feet of disturbance area. With 410 new native trees and shrubs planted this fall and winter, it should quickly recover from the impacts of losing 70 small native trees and the disturbance of approximately 7,000 square feet of environmental resource area.

The applicant's mitigation plan shows replacement trees and shrubs in the transition area of the environmental zone. Although the applicant may install as many plants in this area as is wanted, they will not count towards the requirement to replant the resource area as described above. All trees and shrubs required by this review must be planted in the resource area of the site, not in the transition area. Staff has modified Exhibit C.2, the Proposed Remediation Plan, to show that mitigation plants will not be planted in the transition area.

In addition to replanting the site, the applicant proposes to retain some of the cut material and remove the rest. Usually staff encourages applicants to leave the majority of cut material on-site as it adds diversity to the type of habitat found in the area. In this case, though, wildfire is a concern, and the cut trees and other damaged vegetation will add to the potential fuel load as it dries over time. For this reason, most of the cut material must be removed from the site. However, the applicant has proposed leaving a few of the larger cut logs in some of the more open areas closer to the house on the site to provide a different kind of habitat. Staff concurs with this aspect of the proposal and also finds that a few of the smaller downed limbs, if placed randomly next to the drainageway, would provide herptiles with a few resting, sunning and hiding areas.

No trees should be planted in or immediately adjacent to the drainageway. The sedges and rushes should be planted along the entire length of the stream on the property. With these modifications, the Remediation Plan will demonstrate that the significant detrimental impacts on resources and functional values that occurred on the site will be adequately mitigated.

The applicant has proposed to leave "snags" on the site varying in height from 2 or 3 feet to over 25 feet. Usually a snag is a mature tree that has died or been impacted by wind which broke off its top, and so they are taller and have more perching and nesting access for birds and small mammals. Although a few snags are generally encouraged because they provide perching, resting and nesting areas, the relatively short height of the cut "snags" on this site may not attract many birds or other species. In addition, these trees will be overshadowed by

the restoration plantings fairly soon and will also slowly degenerate, which could create an additional fire hazard on the site. Therefore, the “snags” must be cut down in such a manner that they fall upslope. These snags may be cut with a power saw at the time the site is being cleaned up, and must be removed from the site with the other debris that must be removed.

A letter from a neighbor states that debris from the tree cutting landed in his yard and in that of some of the other downhill neighbors as well. The applicant should consult with neighboring property owners whose property was impacted by this project and work with those neighbors to clean up and remove the tree debris that fell on those sites.

Per the above, the applicant must remove all but 2 or 3 larger log sections of the woody debris from the 7,000 square-foot cutting area on the site and replant the site prior to November 1, 2014. These small logs may be placed in the top area of the site in locations at the applicant’s discretion. In addition, 2 to 4 smaller logs that are 5 to 8 inches in diameter and 8 to 12 feet long must be placed adjacent to, but not within, the stream to create amphibian and herptile habitat.

The applicant must replant the entire disturbance area within the resource area of the Conservation Zone with the wider mix of native species discussed above, and with a planting plan that includes fewer trees and more shrubs as described above, including a native groundcover/native grass seed mix in the requisite amount to cover the entire disturbance area. All of the remediation plants required by this review shall be planted within the Resource Area only, not within the transition area.

City permits and inspections are required for both the debris removal and for the installation of mitigation plants. Prior to September 30, 2014, the applicant must obtain City permits and inspections to ensure that the debris has been removed. Prior to October 31, 2014, the applicant must obtain City permits to install the required mitigation plants and receive approved inspections no later than March 31, 2015, the “planting season,” to verify that planting of all trees, shrubs, and seeds has occurred. Additional inspections shall be required for several years to ensure survival and maintenance of the planted material.

Staff has modified the Remediation Plan to accomplish these goals, and these modified plans must be submitted with the required Zoning Permit application.

The applicant’s Remediation Plan, Exhibit C.2.a, shows mitigation plants in the transition area. All remediation plants must be installed within the Conservation Zone’s resource area. Plants installed in the transition area will not count towards the required plants to be installed in the resource area.

5. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

Findings: The mitigation will occur on the same site as the violation occurred, and therefore, within the same watershed. The site is located within City limits. Therefore, this criterion is met.

6. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: The applicant owns the land where the violation occurred, which is the same land where the mitigation will occur, and therefore has legal authority to implement the required mitigation on the site.

G. Corrections to violations. For corrections to violations of this Chapter, the application must meet all applicable approval criteria stated in subsections A through

F above, and paragraphs 1, 2.b and 2.c, below. If these criteria cannot be met, then the applicant's remediation plan must demonstrate that all of the following are met.

- 1. The remediation is done in the same area as the violation; and**
- 2. The remediation plan demonstrates that after its implementation there will be:**
 - a. No permanent loss of any type of resource or functional value;**
 - b. A significant improvement of at least one functional value; and**

Findings: As described above in Section E.2. – E.6, the remediation will occur on the same site and in the same area of the site as where the violation activity occurred.

The installation and required inspection of the remediation plants will ensure that there will be no permanent loss of any type of resource or functional value. Because the site will be planted with a diverse selection of native plants, and composed of native trees, shrubs and groundcovers, where the site was previously dominated by alders, the results of the remediation should produce a much more varied, and therefore ecologically diverse vegetative site.

Therefore, the remediation plan, as amended by staff, is significantly different from leaving the site "as is" and letting surrounding vegetation re-populate the site. The applicant provided a significantly different alternative of re-planting the site with a variety of native tree and shrub species that will provide a much higher quality of diverse native species on this site. However, the applicant proposed a mitigation plan to remediate the damage by planting 136 native trees and 114 shrubs in the disturbance area. Staff amended this plan by reducing the number of trees to a more sustainable level (60) and increased the number of shrubs to 350, to more rapidly cover the site. Further, staff added habitat logs and increased the number of species to be planted in the open areas near the top of the violation site and near the headwaters of the creek on the site. This amended remediation plan will minimize the loss of resources and functional values in the quickest amount of time. Therefore, the staff amended planting plan will ensure there will be no permanent loss of resources or functional values, and further, the modified plan will enhance resources and functional values on this site.

Further, the staff-amended revegetation plan as outlined in 33.430.250.E.4 has deadlines and permit requirements to ensure that all the required plantings are installed in a timely manner. Therefore, and this criterion is met.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

The applicant removed or topped 70 native trees on the steep slope below his house and in the process impacted approximately 7,000 square feet of native shrubs and forbs as well. This activity was performed without benefit of the required environmental review. The applicant was consequently cited for an environmental violation for illegal tree cutting and disturbance to the resource area of the Environmental Conservation zone on his property. The applicant's remediation plan included far too many replacement trees for the capacity and size of the disturbance area, and staff has prepared findings and conditions of approval that will restore and enhance the quality of the natural resources on this site. Therefore, this proposal, should be approved, subject to the following conditions.

ADMINISTRATIVE DECISION

Approval of an Environmental Review to correct the unpermitted cutting and removal of 70 regulated native trees and the disturbance of approximately 7,000 square feet of resource area within the Environmental Conservation zone, in substantial conformance with Exhibits A.4 and C.2 as signed and dated by the City of Portland Bureau of Development Services on **July 15, 2014**. Approval is subject to the following conditions:

A. A BDS Zoning Permit is required for inspection and approval of debris removal prior to October 1, 2014.

B. A separate BDS Zoning Permit is required for inspection and approval of remediation plantings prior to installation. Plants shall be installed by November 1, 2014. Copies of the stamped Exhibits C.1 through C.4 from LU 13-224619 EV and Conditions of Approval listed below, shall be included within all plan sets submitted for permits (building, grading, Site Development, Zoning Permits, 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 C.1 through C.4."**

1. Temporary surveyor's flagging tape shall be installed to delineate the Resource Impact Area depicted on Exhibit C.2 to clearly show City inspectors where remediation plantings, as modified by staff in Conditions C, below, must be planted.
2. No disturbance activity in the Resource Area is permitted outside of the approved Impact Area, as delineated by the required surveyor's flagging tape. All planting work, invasive vegetation removal, and other work to be done as approved in this Decision, shall be conducted using hand held equipment; provided that invasive species may be removed from resource areas outside the disturbance areas when removal is done using only hand held, non-motorized equipment, and native species beyond those required by this review may be planted anywhere on the site, also using only hand-held, non-motorized equipment. Herbicides are prohibited.

C. A minimum of 60 native trees, 350 native shrubs, and a native grass/forb seed mix seeded at a rate of 1 pound per 5,000 square feet of planting area, shall be planted in substantial conformance with Exhibits A.4, Approved Tree and Shrub Plant & Quantities List, and C.2, Remediation Site Plan, as amended by staff.

1. Plantings shall be installed between October 1 and March 31 (the planting season).
2. Prior to installing required mitigation plantings, the following shall occur:
 - non-native invasive plants shall be removed from all areas within the designated mitigation area, using handheld equipment only;
 - all of the created "snags" must be cut down;
 - bright orange or yellow flagging tape must be installed around the perimeter of the Resource impact area.
3. Sedges and rushes shall be planted along the entire length of the stream on the property.
4. Trees shall not be planted in or within 15 feet of the drainageway.
5. All required remediation plants shall be installed only in the disturbance area of the Resource Area of the Conservation Zone. Plants installed in the Transition Area shall not count towards the total number and species of plants required to be installed on the site.
6. Deciduous trees to be installed shall include Red alder (*Alnus rubra*), Pacific dogwood (*Cornus nuttallii*), Bitter Cherry (*Prunus emarginata*) and Cascara (*Rhamnus purshiana*). Conifers shall include only Western red cedar (*Thuja plicata*) and Western hemlock (*Tsuga heterophylla*).

7. The eight 5-gallon red elderberry listed in the Plant List shall be deleted from the Tree Table and added to the list of shrubs in the Shrub/grasses Table, as amended by staff and attached to this Decision.
8. 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. All tape shall be a contrasting color that is easily seen and identified.
9. All woody debris from the tree cutting must be removed from the site, except that up to 3 habitat log sections, 8 to 12 feet long, are to be placed in open areas below the house; and 2 or 3 smaller 4-to 8-inch diameter by 8 to 12-foot long habitat logs shall be placed lengthwise adjacent to the drainage way or at an angle to the drainageway, but not in the drainageway.
10. After installing the required mitigation plantings, the applicant shall request inspection of Permanent Erosion Control Measures (IVR 210) by the Bureau of Development Services, which 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 the Bureau of Development Services to document that the plantings have been installed according to the approved plans.
11. All mitigation plants must be installed and inspections approved by March 31, 2015.
12. The Remediation Plan submitted with the required Zoning Permit application must be revised to reflect these requirements.
13. All trees and shrubs required by this review shall be planted in the resource area of the site.

D. The land owner shall maintain the required plantings for a minimum of two years to ensure survival and replacement. The land owner is responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period. The landowner shall:


Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The permit must be finalized no later than 2 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.

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

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.

Staff Planner: Kathy Harnden

Decision rendered by:  on July 18, 2014
By authority of the Director of the Bureau of Development Services

Decision mailed July 22, 2014

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits

may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on January 28, 2014, and was determined to be complete on **May 28, 2014**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 28, 2014.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended for a period of 4 weeks. Unless further extended by the applicant, **the 120 days will expire on: October 22, 2014**.

Some of the information contained in this report was provided by the applicant.

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

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

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

Appealing this decision. This decision may be appealed to the Hearings Officer, who will hold a public hearing. Appeals must be filed **by 4:30 PM on August 5, 2014** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

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

- *Unless appealed*, The final decision may be recorded on or after **August 6, 2014– (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

For further information on recording, please call the County Recorder at 503-988-3034.

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

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

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

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Applicant's Original Narrative
 2. Applicant's Revised Narrative
 3. Applicant's Cut/Removed Tree Table
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Existing Conditions Post Tree Cutting
 2. Required Remediation Plan (attached)
 3. Approved Tree & Shrub Planting & Quantities List (attached)
 4. Site Photos

D. Notification information:

1. Mailing list
2. Mailed notice

E. Agency Responses:

1. Bureau of Environmental Services
2. Site Development Review Section of BDS

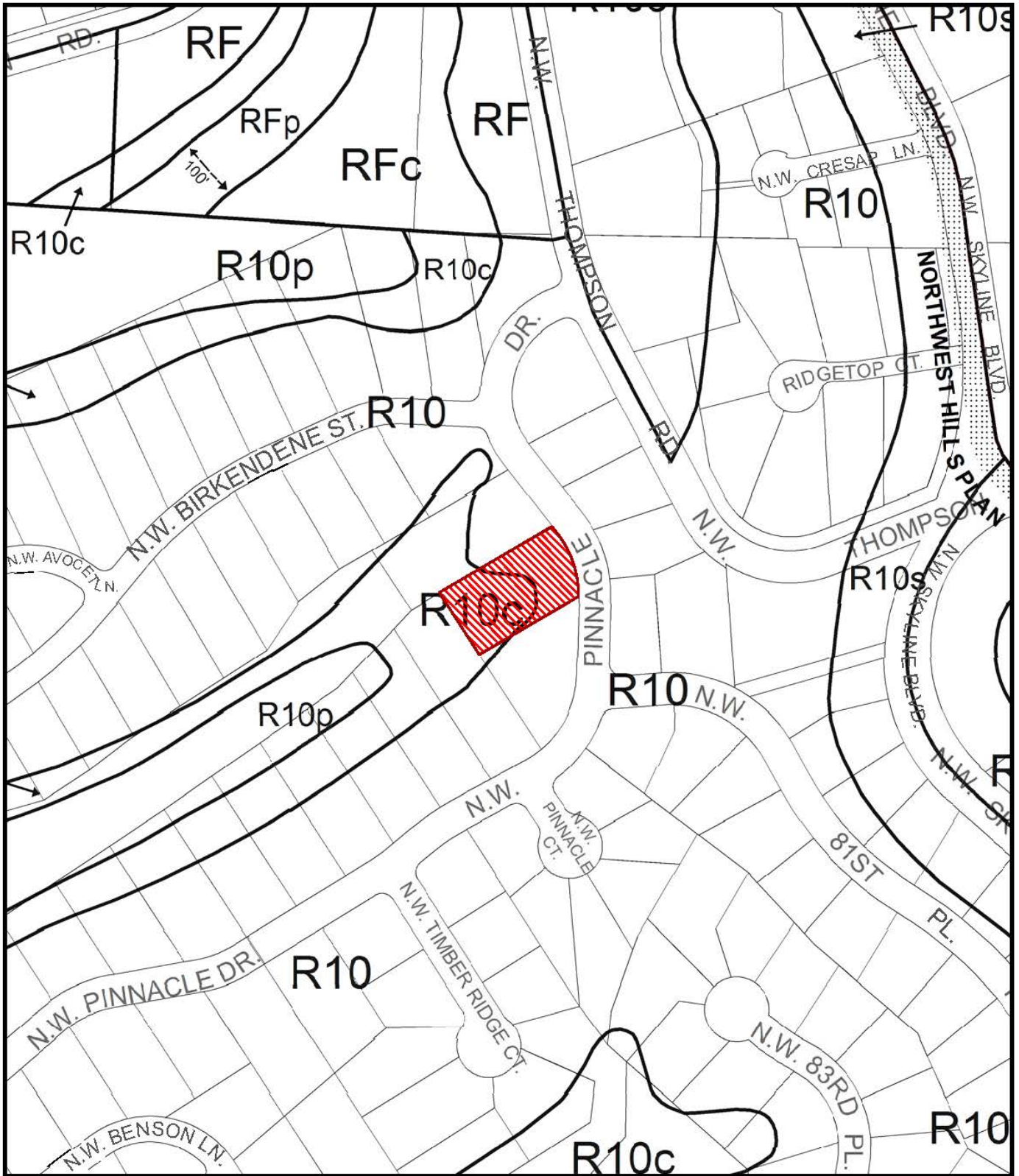
F. Correspondence:

1. David Wilkinson, June 15, 2014, wants site and impacts to this site cleaned up

G. Other:

1. Original LU Application
2. Incomplete Letter to Applicant
3. Applicant's Review Period Extension Request
4. Applicant's 2nd Review Period Extension Request.

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



ZONING



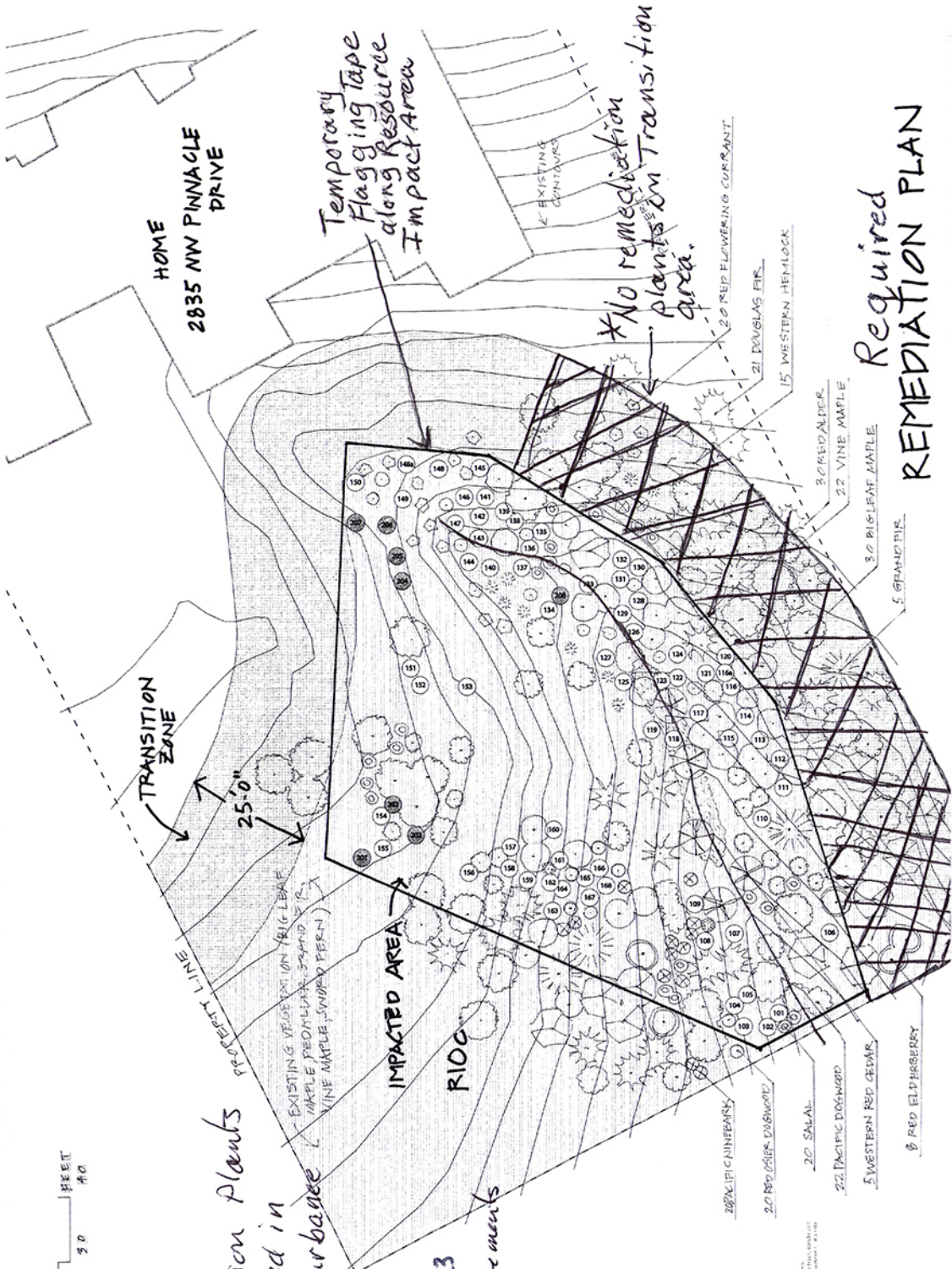
Site



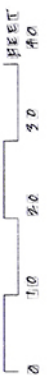
NORTH

This site lies within the:
NORTHWEST HILLS PLAN DISTRICT
SKYLINE SUBDISTRICT

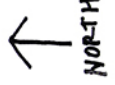
File No.	<u>LU 14-110725 EV</u>
1/4 Section	<u>2721</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1W25BC 4200</u>
Exhibit	<u>B (Jan 30, 2014)</u>



**Required
REMEDICATION PLAN**



SCALE



*All Remediation Plants
to be installed in
Resource Disturbance
Area only.

See Exhibit C.3
for Tree & Shrub
Plant requirements

- 1. TREE
- 2. SHRUB
- 3. PALM
- 4. PALM
- 5. PALM
- 6. PALM
- 7. PALM
- 8. PALM
- 9. PALM
- 10. PALM
- 11. PALM
- 12. PALM
- 13. PALM
- 14. PALM
- 15. PALM
- 16. PALM
- 17. PALM
- 18. PALM
- 19. PALM
- 20. PALM
- 21. PALM
- 22. PALM
- 23. PALM
- 24. PALM
- 25. PALM
- 26. PALM
- 27. PALM
- 28. PALM









1. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 2. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 3. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 4. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 5. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 6. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 7. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 8. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 9. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 10. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 11. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 12. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 13. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 14. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 15. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 16. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 17. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 18. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 19. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 20. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 21. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 22. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 23. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 24. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 25. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 26. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 27. All plants shown on this plan are to be installed in the Resource Disturbance Area only. 28. All plants shown on this plan are to be installed in the Resource Disturbance Area only.

LU 14-110725 EV
Exhibit C-2


Approved Tree & Shrub Plant & Quantities List

Plant List

Trees

Sym	Qty	Botanical name/Common	size	conditions
	5	Abies grandis/Grand fir	50-0"	cont/b&b delete
	30	Acer macrophyllum/Big leaf maple	1.5" cal	cont/b&b delete
	21	Pseudotsuga menziesii/Douglas fir	5'-0"	cont/b&b delete
	30	Alnus rubra/Red alder	1.5" cal	cont/b&b
	22	Cornus nuttallii/Pacific dogwood	1" cal	cont/b&b
	8	Sambucus racemosa/Red elderberry	5 gal	container move shrub
	5	Thuja plicata/ Western red cedar	5'-0"	cont/b&b
	15	Tsuga heterophylla/Western hemlock	1.5" cal	cont/b&b
	10	Prunus emarginata/Bittercherry	Size	To be determined by applicant and be similar to the above.
	10	Rhamnus purshiana/Cascara		

Shrubs/grasses

	20	Physocarpus capitatus/Pacific ninebark	2 gal	container
	20	Cornus stolonifera/Red osier dogwood	2 gal	container
	22	Acer circinatum/Vine maple	5 gal	container
	20	Gaultheria shallon/Salal	2 gal	container
	20	Ribes sanguinum/Red flower currant	2 gal	container
	12	Rubus parviflorus/Thimbleberry	2 gal	container
	50	Carex obnupta/Slough sedge	4"	container
	50	Juncus effuses/Common rush	4"	container
	8	Sambucus racemosa/Red elderberry	5 gal	container ←
note 2		Elymus glaucus/Blue wildrye	seed	
note 2		Festuca occidentalis/Western fescue	seed	

Notes:

- Plants shall be non-clonal in origin seed sources for grass from local growers.
- Seeded areas to be determined in the field. Seed all bare ground areas after trees, shrubs and sedges/rushes are planted and the non- native, invasive plants have been removed. at a rate, of 1 lbs per 5,000 square feet.

Exhibit C.3

2014-110725 EV