



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

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**Date:** August 14, 2015  
**To:** Interested Person  
**From:** Stacey Castleberry, Land Use Services  
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## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 15-109487 EN**

#### **GENERAL INFORMATION**

**Applicant:** Sean O'Neill / Scotia Western States Housing LLC  
6340 N Campbell Avenue, Suite 240 / Tuscon, AZ 85718

**Representatives:** Robert Price / Planning and Development Services  
3935 NE 72<sup>nd</sup> Avenue / Portland, OR 97213

Tom Sisul / Sisul Engineering  
375 Portland Avenue / Gladstone, OR 97027

**Site Address:** SW 10<sup>th</sup> Avenue Right of Way adjacent to, and south of 924 SW Gaines Street and 3724 SW 10<sup>th</sup> Avenue

**Legal Description:** SW 10<sup>th</sup> Avenue Right of Way adjacent to, and south of BLOCK 38 LOT 6, PORTLAND CITY HMSTD; BLOCK 38 W 1/2 OF LOT 7 LOT 8 EXC E 56' OF N 39' & EXC E 64.5' OF S 11', PORTLAND CITY HMSTD; BLOCK 38 E 1/2 OF LOT 7 E 56' OF N 39' OF LOT 8 E 64.5' OF S 11' OF LOT 8, PORTLAND CITY HMSTD

**Tax Account No.:** SW 10<sup>th</sup> Avenue Right of Way adjacent to, and south of R668002240, R668002250, R668002260

**State ID No.:** SW 10<sup>th</sup> Avenue Right of Way adjacent to, and south of 1S1E09DB 02900, 1S1E09DB 02700, 1S1E09DB 02800

**Quarter Section:** 3428

**Neighborhood:** Homestead, contact Anton Vetterlein at 503-866-1667.

**Business District:** None

**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

**Plan District:** None

**Other Designations:** Potential Landslide Hazard, Wildfire Hazard Area.

**Zoning:** R1c, p, OSc, p (Multi-Dwelling Residential 1,000, and Open Space base zones, with Environmental Conservation and Environmental Protection overlay zones)

**Case Type:** EN (Environmental Review)

**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:** The applicant proposes to develop 12 multi-dwelling units, in three buildings of four units each, at 924 SW Gaines Street, and 3724 SW 10<sup>th</sup> Avenue, outside of the City's Environmental Zone. The development of the 12 units on private property is not subject to Environmental Review.

SW 10th Avenue is adjacent to the site, and will be used for access. Street improvements in SW 10th Avenue will include 20 feet of paving with curbs on both sides, a sidewalk on one side and a 36 foot diameter cul-de-sac. Stormwater from SW 10<sup>th</sup> Avenue will flow through a vegetated planter with overflow draining to an existing swale. Because the street must be rebuilt to bring it to an acceptable standard, work in the Environmental zone will be required, but only for stormwater disposal. Disposal of public storm water from the street and other public areas is required by the City. Storm water will be directed downhill within the undeveloped SW 10th Avenue right-of-way.

The undeveloped right-of-way for SW 10th Avenue between undeveloped SW Lane Street and undeveloped SW Thomas Street contains a swale or shallow channel from the end of the existing developed portion of SW 10th Avenue to the bottom of the slope. This swale or channel already directs unrestricted flow of stormwater from the area south of SW Gaines Street. With the rebuilding of a portion of SW 10th Avenue, public stormwater will be controlled, contained and directed downslope within the existing channel. Improvements will be made to the channel to better and more effectively carry the total stormwater flow.

The downslope area of the SW 10th Avenue right-of-way from SW Lane Street south is within the City's Environmental Conservation and Protection overlay zones. No new structures are planned in this area. However, there will be work done in the channel to control stormwater and dissipate the energy of a steep downhill flow.

Only the work proposed in the Environmental Zone is addressed in this Environmental Review.

The existing swale is poorly defined and will require enhancement to more clearly define the downhill channel. The following activities will occur within the channel:

- All construction of the improvements to the downhill swale will be by hand. No mechanized equipment will be used within the Environmental Zone;
- The construction zone for channel improvements will be a corridor six (6) feet in width, which is about the width of the existing downhill channel. However, the temporary disturbance area will be 2-3 feet beyond the actual construction zone on each side;
- This swale will be enhanced along its full route, and 14 willow fascines will be installed across the channel to control the flow of surface water within the swale.
- These live willow fascines will be held in place by five 18 inch stakes driven approximately 8 inches into the ground;
- As the downhill swale is clearly identified, the City Forester and Project Arborist will be asked to inspect the route and provide comments regarding changes in routing and/or construction considerations to preserve trees;
- Should any tree roots be encountered during the construction/installation of the 14 willow fascines, the City Forester and the Project Arborist will be consulted regarding tree roots that may need to be cut;
- Total disturbance area will be 1,576 square feet;
- At the bottom of the swale, where the proposed swale meets the existing creek channel, a rock energy dissipating area will be constructed, again all by hand. Rock used in this process will be transported by hand down the hill.

The site is within the City's Environmental Conservation and Environmental Protection overlay zones. Certain standards must be met to allow the work to occur by right. If the standards are not met, an Environmental Review is required. In this case, the proposed stormwater outfall does not meet the Environmental standards for stormwater outfalls in 33.430.180, as it

exceeds the identified disturbance area width and the maximum slope (15%) identified for open channels or vegetated swales; therefore the work must be approved through an Environmental Review

**Relevant Approval Criteria:**

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

- **Section 33.430.250 A** Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments

**FACTS**

**Site and Vicinity:** The area addressed by this Environmental Review consists of only that portion of the SW 10th Avenue right of way, within the Environmental Zone, adjacent to, and south of 924 SW Gaines Street, that will be affected by the applicant's proposed stormwater disposal.

This portion of SW 10th Avenue is located in Southwest Portland, approximately 200 feet southwest of the OHSU School of Nursing and Campus Services Building. Both SW 10th Avenue and SW Gaines Street are public streets under the jurisdiction of Portland Bureau of Transportation (PBOT). Neither street is fully built out to required city standards in this area, although SW Gaines Street lacks only a standard sidewalk and planting strip, which will have to be provided as part of development of the private 924 SW Gaines Street site. SW 10th Avenue is partially developed, with substandard street improvements, mainly consisting of a driveway which extends to a house just south of the 924 SW Gaines Street site.

Properties in the immediate vicinity are primarily multi-dwelling residential, but some single dwelling residential development also exists.

The proposed improvements to the channel for routing stormwater will occur entirely with the undeveloped SW 10th Avenue right of way, south of SW Gaines Street and north of the SW Abernathy Street undeveloped right of way. The environmental review site is the downslope area of the SW 10th Avenue right-of-way to the existing creek at the bottom of the slope. The undeveloped right-of-way of SW 10th Avenue from just north of SW Lane to SW Thomas Street contains an indistinct north-south drainageway channel, commencing at the south end of the existing developed portion of SW 10th Avenue, continuing to the bottom of the slope. This channel already directs unrestricted flow of stormwater from the area south of SW Gaines Street. The area is heavily forested with deciduous and coniferous (cedar, fir) trees. The change in elevation from the end of SW 10th Street to be constructed, down to the existing creek is 73 feet.

**Zoning:** The stormwater outfall swale is to be located in the SW 10th Avenue right-of-way zoned R1cp, and OS p-- Residential 1,000 (R1) and Open Space (OS) base zones, with Environmental Conservation (c) and Protection (p) overlay zones.

The R1 designation is one of the City's multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing. The standards of this zone do not apply to development of a stormwater swale in the right of way and are not addressed in this Environmental Review.

The Open Space base zone is intended to preserve public and private open and natural areas to provide opportunities for outdoor recreation and a contrast to the built environment, preserve scenic qualities and the capacity and water quality of the stormwater drainage system, and to protect sensitive or fragile environmental areas. No new uses are proposed within the OS zone and the provisions of the zone do not apply to the proposal. The OS zone regulations are therefore not addressed through this Environmental Review.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

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

The project site is mapped within the Southwest Hills Resource Protection Plan as Site # 114. Resources and functional values of concern on the project site include wildlife habitat, forest, perennial and seasonal creeks, groundwater recharge, recreational, and open space.

**Land Use History:** City records indicate that prior land use reviews have been conducted for this site, as follows:

LU 07-142028 LDS EN AD – Type III Land Use Review for approval of a Land Division (Subdivision) of a Preliminary Plat for a 10-lot subdivision, Environmental Review of enhancement of drainageway for stormwater outfall and Adjustment Review to reduce rear building setback at the subject site. A final plat was not completed within the required timeframe, therefore, the preliminary decision was voided.

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on June 12, 2015.

**1. Agency Review:** Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. Where they apply, the comments are addressed under the appropriate criteria for review of the proposal.

**2. Neighborhood Review:** No written responses related to the approval criteria have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## **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 approval criteria which apply to the proposed drainageway enhancement (outfall) are found in Section 33.430.250.A. The applicant has provided findings for these approval criteria and BDS Land Use Services staff have revised these findings or added conditions, where necessary to meet the approval criteria.

**A. Public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments and Planned Unit Developments. Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met:**

1. **General criteria for public safety facilities, roads, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments and Planned Unit Developments;**
  - a. **Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;**
  - b. **There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;**
3. **Roads, driveways, walkways, outfalls, and utilities;**
  - a. **The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;**
  - b. **There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and**
  - c. **Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.**

**Findings:** These criteria require the applicant to demonstrate that alternatives were considered during the design process, that there are no practicable alternatives that would be less detrimental to the identified resources and functional values, and requires the protection of resources outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation, erosion of soils off the site, and downstream impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site. (See Portland Zoning Code Section 33.910 for definitions of the term *significant detrimental impact*).

The identified resources and functional values on the site include wildlife habitat, forest, perennial and seasonal creeks, groundwater recharge, recreational, and open space.

The applicant provided an alternatives analysis that can be found in the application case file in Exhibit A.1, and is summarized below.

The site within the SW 10th Avenue right of way, slopes steeply down to the south of SW Gaines Street, as much as 44% as measured from the construction management plan. There is a natural drainageway south of the development site, in SW 10th Avenue. The stormwater management manual hierarchy requires consideration of stormwater disposal to a drainageway first. Since there is a drainageway available, an alternative to a formal storm drainage system is not practicable, given the requirements of the Stormwater Management Manual.

Currently unmanaged drainage from a variety of sources flows south on SW 10th Avenue from SW Gaines Street into the existing channel, and downhill to the stream at the bottom of the “canyon”.

An earlier Environmental Review (LU 07-142028 LDS EN AD) approved a proposal to route stormwater down to the existing creek, via the existing channel in the SW 10<sup>th</sup> Avenue right of way, with geotechnical analysis recommending against on-site stormwater infiltration. In addition, the Site Development Section of Bureau of Development Services did not recommend on-site stormwater infiltration at this location for LU 07-142028 LDS EN AD. Therefore, on-site stormwater infiltration was found to be impracticable.

As also described in LU 07-142028 LDS EN AD, as well as the current application (Exhibit A.1 in the application case file), utilizing a pipe to route stormwater to the existing creek was found to be unacceptable because it does not allow for the environmental benefits that an open drainageway provides. In addition, this design would result in substantial impacts from trenching and backfilling required to install an underground pipe. It would also likely result in tree removal because the trenching and soil stockpiling could impact adjacent tree roots. It

would be an alternative with greater environmental impact than the proposed alternative.

Another alternative is no action, or leaving the existing swale as-is, and finding another solution to the need for storm water retention and disposal. This is impracticable, since such action would render the subject site largely undevelopable, as well as adjacent properties that are already developed, but may be subject to future re-development. As the subject site has been through at least three iterations of development schemes over the past 8 years, and each proposed using the downhill method of storm water disposal, it appears there are very limited alternatives. Review has been done by at least three different engineering firms, and if there is an alternative available that does not involve sending the storm water down the hillside to the existing creek, it has not yet been discovered.

The applicant's preferred alternative is to enhance the existing channel leading down to the creek. The proposed design of the stormwater collection system, piping, channel-improvements, and outfall is the least impactful design capable of accommodating the future flow of stormwater resulting from development of multi-dwelling project and SW 10<sup>th</sup> Avenue improvements. The use of willow fascines to reduce the energy of the water flowing downhill in the existing channel, will also provide resource enhancement opportunities. These willow fascines will be placed by hand in small hand dug depressions, and all plantings and improvement of disturbed areas will also be done by hand to avoid significant damage to the resource area by mechanized equipment. These "check dams" will be placed approximately every 10 to 15 feet along the course of the downhill swale, or as allowed by physical circumstances. This proposed construction method maintains the environmental benefits of open drainageway channels, which provide wildlife habitat and reduced water temperatures.

Given the location of the existing channel in concert with existing topography, there are no feasible alternatives for stormwater disposal outside the environmental conservation or protection zones. Infiltration is not acceptable in the adjacent rights-of-way or on the private development site, and the existing public storm sewers are located uphill of the improvements making a connection not possible, in addition to not meeting the stormwater management manual.

Construction methods, both within the SW 10th Avenue right-of-way adjacent to the subject site, and within the downhill channel will be carefully planned and conducted, and hand work within the environmental zoned areas will provide greater protection for the identified resource area.

*Regarding placement of the outfall in the environmental protection zone:*

The location of the outfall is within the existing downhill channel which already conveys unmanaged stormwater within the SW 10th Avenue right-of-way. The proposed alignment follows the natural flow of water as it has been doing for years, making it the most practical and effective route. This proposed outfall will continue to provide water to the existing creek, and the creation of a pretreatment planter will improve water quality within the creek. Therefore, the use of the existing downhill channel and creek is the best practical alternative for the management of local stormwater. The proposed design of the outfall is the simplest, most practical, and most utilitarian design to serve the intended purpose. Since the majority of construction of the right-of-way improvements and the planter are not within the resource area, there will be no new construction in the current alignment of the downhill channel. Construction methods will be the simplest and least intrusive methods possible, conducted by hand and without heavy machinery.

*Regarding construction impacts:*

The existing channel leading down to the creek is poorly defined and requires enhancement to route stormwater to the creek. The following describes how the applicant's construction management proposal will protect resources outside the approved construction area:

- All construction of the improvements to the downhill swale will be by hand. No mechanized equipment will be used within the Environmental Zone;

- The construction zone will be a total of six (6) feet, which is about the width of the existing downhill swale area. However, the disturbance area will be 2-3 feet beyond the actual construction zone on each side, for a maximum of 12 feet of width of the construction corridor;
- This swale will be enhanced along its full route, and 14 willow fascines will be installed evenly spaced across the swale.
- As the downhill swale is clearly identified, the City Forester and Project Arborist will be monitoring the project during its course, will be asked to inspect the route, and provide any comments regarding changes in routing and/or construction considerations;
- Should any tree roots be encountered during the construction/installation of the 14 willow fascines, the City Forester and the Project Arborist will be consulted regarding any tree roots that may need to be cut;
- The limits of the 10- to 12-foot wide disturbance area will be staked, and where necessary in the opinion of the City Forester and/or Project Arborist, temporary fencing will be installed;
- Trees within the disturbance area may be removed if they are diseased and/or invasive, but will be replaced by new trees planted in approximately the same location. Otherwise, trees will be protected by temporary fencing where such use of fencing is appropriate based on advice from the City Forester and/or Project Arborist; Note that BDS staff noted lack of protection for several trees in and near the delineated disturbance corridor in findings for the mitigation approval criteria, below.
- Laborers will be carefully and continuously instructed to stay within the disturbance area for the entire downhill length of the project;
- The construction staging area will be on the subject site at Gaines Street, well away from the Environmental Zone and the disturbance area.
- The total disturbance area will be 1,576 square feet;
- At the bottom of the swale, where the proposed swale meets the existing creek channel, a rock energy dissipating area will be constructed, again all by hand. Rock used in this process will be transported by hand down the hill.

An important consideration for construction of the downhill swale is that everything will be done by hand. Individual laborers will carry all hand equipment into and out of the disturbance area for the entire downhill dimension of the swale. No mechanized equipment will be used anywhere within the Environmental Zone.

The area of slight disturbance along the existing channel will be hand planted with replacement and mitigation plantings in order to offset the impacts of any construction on the resource area.

The stream at the bottom of the “canyon” into which the outfall will feed will be protected to allow the migration, rearing, feeding, and spawning of fish through the use of a water quality treatment planter in SW 10th Avenue, uphill of the proposed outfall and stream. This planter will help protect water quality and be part of the provision of clean, cold water for the stream, thus avoiding any significant detrimental impact to the downhill stream.

The proposed outfall for local stormwater will not cross the existing stream at the bottom of the “canyon”. The outfall will be on the north side of the east-west flowing stream, and, thus, will not cross the stream.

These criteria are met.

**A.1.c. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;**

**A.1.d. 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**

**A.1.e. 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:** These criteria require the applicant to assess unavoidable impacts and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace all lost resource functions and values.

The applicant's narrative states that no significant impacts have been identified. Nonetheless, the removal of invasive species (English ivy and blackberries), and the possible removal of diseased and/or invasive trees, should serve to improve and upgrade the disturbance area, thus upgrading the entire Environmental Zone. This activity would offset any unavoidable impacts that may be identified during the course of the project.

These criteria also require that mitigation occur within the same watershed as the proposal, and within the Portland city limits, and that the applicant own the mitigation site or possess a legal instrument approved by the City sufficient to carry out and ensure the success of the mitigation program. The area identified on Exhibit C.5 for replanting is the area where channel improvements will be made and is within the Portland City limits. The applicant will acquire a Public Works Permit from Portland's Bureau of Transportation and Bureau of Environmental Services, that gives the applicant permission from the City Engineer to make the proposed improvements in the right-of-way, and will require them to maintain them for a 2 year warranty period. After that, the applicant will have access to the plantings because they are within the right-of-way. The applicant possesses a legal instrument approved by the City sufficient to carry out and ensure the success of the mitigation program (see Exhibit E.2 in the application case file).

The applicant states on page 4 of the application narrative (Exhibit A.1) that replacement shrubs and trees will meet Standard 33.430.140 K ("Replacement trees must be at least one-half inch in diameter; shrubs must be in at least a 1-gallon container or the equivalent in ball and burlap. All trees and shrubs must be selected from the *Portland Plant List* and planted on the site within the environmental zone. Conifers must be replaced with conifers and shrubs must consist of at least two different species;").

The applicant's Tree Plan (Exhibit C.4) shows Trees # 15, 16, 17, 30, 38 and an un-numbered 20-inch deciduous tree to be within the disturbance area for the project. No Arborist's report describes the construction procedures to be taken to protect these trees and they are assumed to be proposed for removal. Therefore, a Final Revegetation Plan must be provided to demonstrate mitigation plantings. The current standard for tree replacement would require a total of 26 trees to be planted to replace those removed or damaged by the project.

The applicant's narrative (page 5) also states that Standards 33.430.180 F and I will be met ("Temporary disturbance areas must be planted with native species listed in the *Portland Plant List* according to the following densities: 1. Three different native shrub species are required at a minimum 1-gallon size or bare root, planted at a density of 3 plants per 10 square feet; and 2. The remaining area must be planted with native groundcover using a minimum of 4- inch pots at a density of 8 plants per 10 square feet;" and "If an outfall riprap pad is used it must be planted with live stakes of native plant stock, one half inch in diameter. Stakes must be installed at a density of 2 to 3 stakes per square yard. Detailed specifications for installing live stakes are found in the Erosion Control Manual.").

There are no graphic indications on the site plan that show the location, species, sizes, and quantities of plantings required by these standards.

In order to demonstrate that the revegetation efforts will meet the required standards and will address potential tree removal to compensate for all significant detrimental impacts on resources and functional values, a site specific revegetation plan is required.



Therefore, a Final Revegetation Plan will be required prior to approval of any development permits for the stormwater facilities proposed here, to show complete replanting of the approved temporary disturbance area (three different native shrub species planted at a minimum 1-gallon size, planted at a density of 3 plants per 10 square feet; and native groundcover using a minimum of 4- inch pots at a density of 8 plants per 10 square feet); planting of at least 26 native trees to compensate for those within the construction area, and planting the energy dissipation pad (live stakes of native plant stock, one half inch in diameter, installed at a density of 2 to 3 stakes per square yard).

With conditions for a detailed revegetation plan as described above, these criteria can be met.

### **DEVELOPMENT STANDARDS**

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

The only activities reviewed for this Environmental Review are those proposed to occur within the SW 10<sup>th</sup> Avenue right of way, in the Environmental overlay zone. Activities on adjacent private property, or outside the Environmental zone have not been reviewed or approved by this land use review. Plans submitted for building permits on private property must demonstrate that all development standards of Title 33 and of Title 11 are met by the proposal.

### **OTHER TECHNICAL REQUIREMENTS**

Technical decisions have been made as part of this review process, based on other City Titles, as administered by other City service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical requirements applicable to this proposal. This list is not final, and is subject to change when final permit plans are provided for City review.

<b>Bureau</b>	<b>Code Authority and Topic</b>	<b>Contact Information</b>
Water Bureau	Title 21 - Water availability	503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>
Environmental Services	Title 17; 2008 Stormwater Manual	503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>
Fire Bureau	Title 31 Policy B-1 - Emergency Access	503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>
Transportation	Title 17 - Transportation System Plan	503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>
Development Services	Titles 24 - Building Code, Erosion Control, Flood plain, Site Development	503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>

### **CONCLUSIONS**

The applicant proposes multi-dwelling development on a private lot at 924 SW Gaines Street. Street improvements in SW 10<sup>th</sup> Avenue are required and trigger the need for stormwater management facilities and disposal. Stormwater from SW 10<sup>th</sup> Avenue will flow through a vegetated planter with overflow draining to an outfall at a creek downhill from the street improvements. In order to dispose of treated stormwater to the existing creek, work in the Environmental zone will be required, but only for stormwater disposal.

The undeveloped right-of-way for SW 10<sup>th</sup> Avenue immediately downhill of the street improvements contains a poorly defined channel, from the end of the existing developed portion of SW 10<sup>th</sup> Avenue to the creek at bottom of the slope. This swale or channel already directs

unrestricted flow of stormwater to the creek. Improvements are proposed to the channel to better and more effectively carry the total stormwater flow to the creek.

The applicant proposes minor regrading of the channel and installing live fascine bundles at roughly 15-foot intervals down the slope, to act as “check dams” from the upper slope, to the creek. This will help to slow erosion during large storm events as stormwater travels from the SW 10<sup>th</sup> Avenue improvements, down to the rock outfall pad, at the creek.

The applicant proposes to make all channel and outfall improvements using hand-held equipment, to minimize impacts. The applicant refers to replanting of the disturbance area in and along the improved channel, and at the rock outfall pad at the creek, but does not depict plantings on the site plan. Final planting plans showing these plantings will be required as conditions of approval.

The applicant’s application and the above findings have shown that the proposal meets the applicable approval criteria with conditions. Therefore, this proposal should be approved, subject to the following conditions.

### ADMINISTRATIVE DECISION

**Approval** of an Environmental Review for:

- Construction of improvements to an existing channel in the SW 10<sup>th</sup> Avenue right of way, between SW Gaines Street and the SW Abernathy Street right of way; and
- Construction of a rock energy dissipation pad, roughly 10 feet by 10 feet in area, at the existing unnamed creek in the SW 10<sup>th</sup> Avenue right of way, between SW Lane Street and the SW Abernathy Street rights of way.

all within the Environmental Conservation and Protection overlay zones, and in substantial conformance with Exhibits C.2, C.3, C.4, and C.5, as modified and approved by the City of Portland Bureau of Development Services on **August 12, 2015**. Approval is subject to the following conditions:

- A.** The applicant shall obtain the required permits from the Bureau of Development Services and the City Engineer. A Public Works permit is required. Title 10 provides that Title 10 shall be administered and enforced by the director of the City Bureau that is performing or contracting for development. By extension, regulatory authority of the City Engineer applies to erosion control and floodplain regulations.
- B.** Prior to any activity within the environmental zones on the site, the applicant shall obtain a **Zoning Permit** to ensure the following conditions are met. Copies of the stamped Exhibits C.3 – C.5 from LU 15-109487 EN and Conditions of Approval listed below, shall be included within all plan sets submitted for permits (Public Works, building, Zoning, 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 BDS-approved LU 15-109487 EN Exhibits C.2 – C.5, and conditions of LU approval.”
  1. Temporary construction fencing shall be installed according to tree protection measures in Title 11 Tree Code, chapter 11.60, except as specified below. Temporary, 4-foot high, construction fencing shall be placed along the delineated Temporary Disturbance Limits for the approved channel improvements, as depicted on Exhibit C.3 Construction Management Plan, or as required by inspection staff during the plan review and/or inspection stages.
  2. No mechanized construction vehicles are permitted within the Environmental Zone. All clearing, excavation, installation of live fascine bundles, construction of rock energy dissipation pad, planting work, invasive vegetation removal, and other work to be done within the Environmental Zone, shall be conducted using hand held equipment, as described on Exhibit C.5.
  3. The Project Arborist shall be on site during construction within the channel and shall inspect the route, the trees to be protected, and provide any guidance regarding changes in routing and/or construction methods to protect trees.

**C.** As part of the **BDS Zoning Permit** the applicant shall include a plan depicting the required mitigation plantings as follows:

A Final Revegetation Plan shall be provided for review and approval by Planning and Zoning staff, to show, in addition to those plantings noted on Exhibit C.5:

1. Complete replanting of the approved temporary disturbance area (three different native shrub species planted at a minimum 1-gallon size, planted at a density of 3 plants per 10 square feet; and native groundcover using a minimum of 4- inch pots at a density of 8 plants per 10 square feet);
2. Planting of at least 26, ½-inch caliper native trees—a minimum of 3 species selected from the *Portland Plant List*, at least 5 trees per species--(within 50 feet of the disturbance area in the Environmental Zone) to compensate for trees impacted by the construction area; and
3. Planting the energy dissipation pad (live stakes of native plant stock, one half inch in diameter, installed at a density of 2 to 3 stakes per square yard).
4. Plantings shall be installed between October 1 and March 31 (the planting season).
5. 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.
6. 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.
7. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the **BDS Zoning Permit**.

**D. The owner of the property at 924 SW Gaines Street shall maintain the required plantings** for 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:

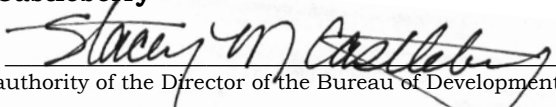
1. Obtain a **Zoning Permit** for a final inspection at the end of the 2-year maintenance and monitoring period. The permit must be finalized no later than 2 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any 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: Stacey Castleberry**

**Decision rendered by:**  **on August 12, 2015.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: August 14, 2015**

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

**Procedural Information.** The application for this land use review was submitted on January 23, 2015, and was determined to be complete **on June 5, 2015**.

*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 23, 2015.

*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 waived the 120-day review period, as stated with Exhibit (Exhibit A.6) Unless further extended by the applicant, **the 120 days will expire on: June 5, 2016**.

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

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

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on August 28, 2015**, 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 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information. The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at

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 31, 2015 – (the first week 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. Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

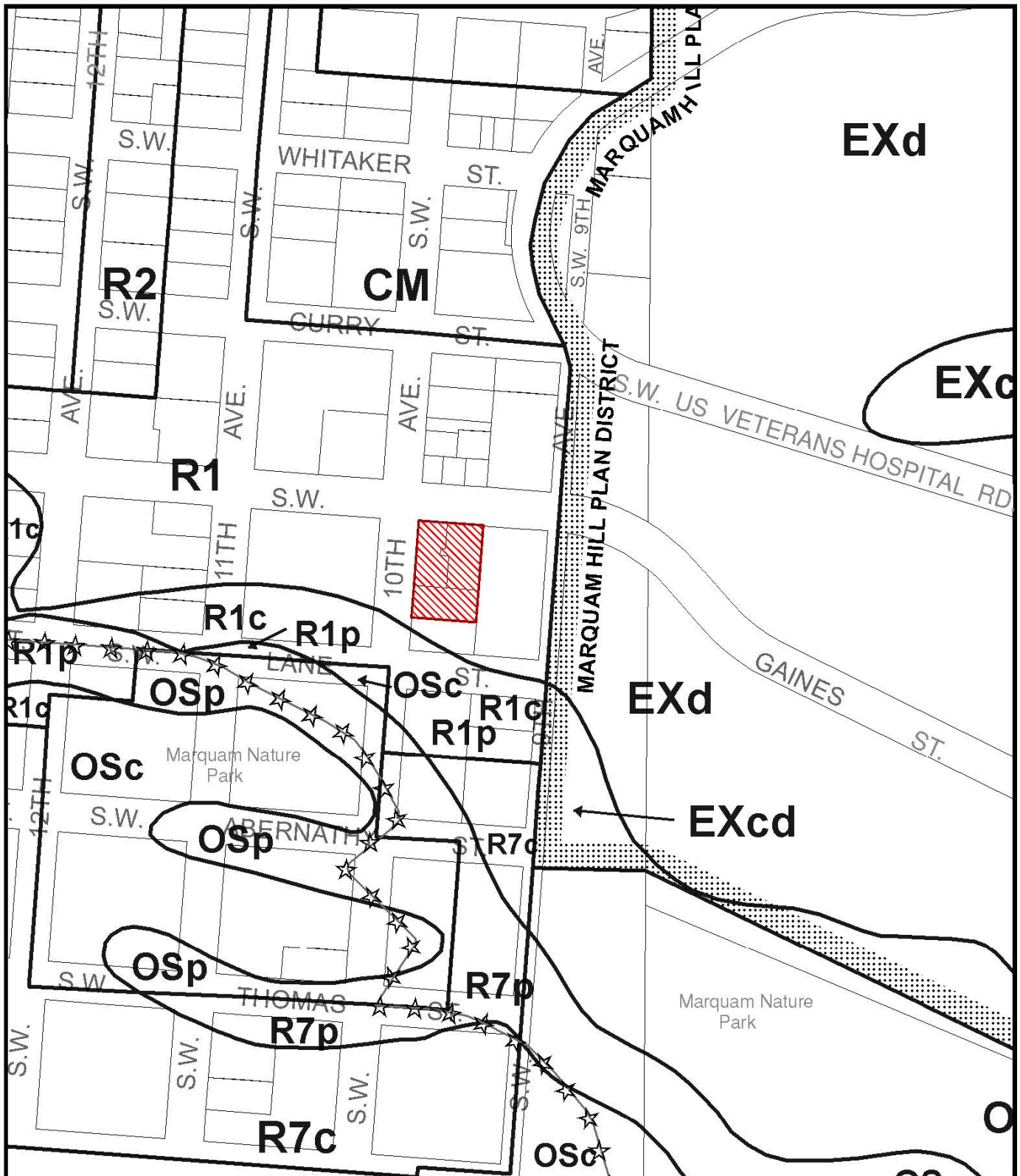
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Existing Conditions Plan
  - 2. Proposed Development Plan
  - 3. Construction Management Plan (attached)
  - 4. Tree Plan (attached)
  - 5. Stormwater swale construction and planting plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Site Development Review Section of BDS
- F. Correspondence: None received.
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete Letter

**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



Recreational Trail



NORTH

File No. LU 15-109487 EN

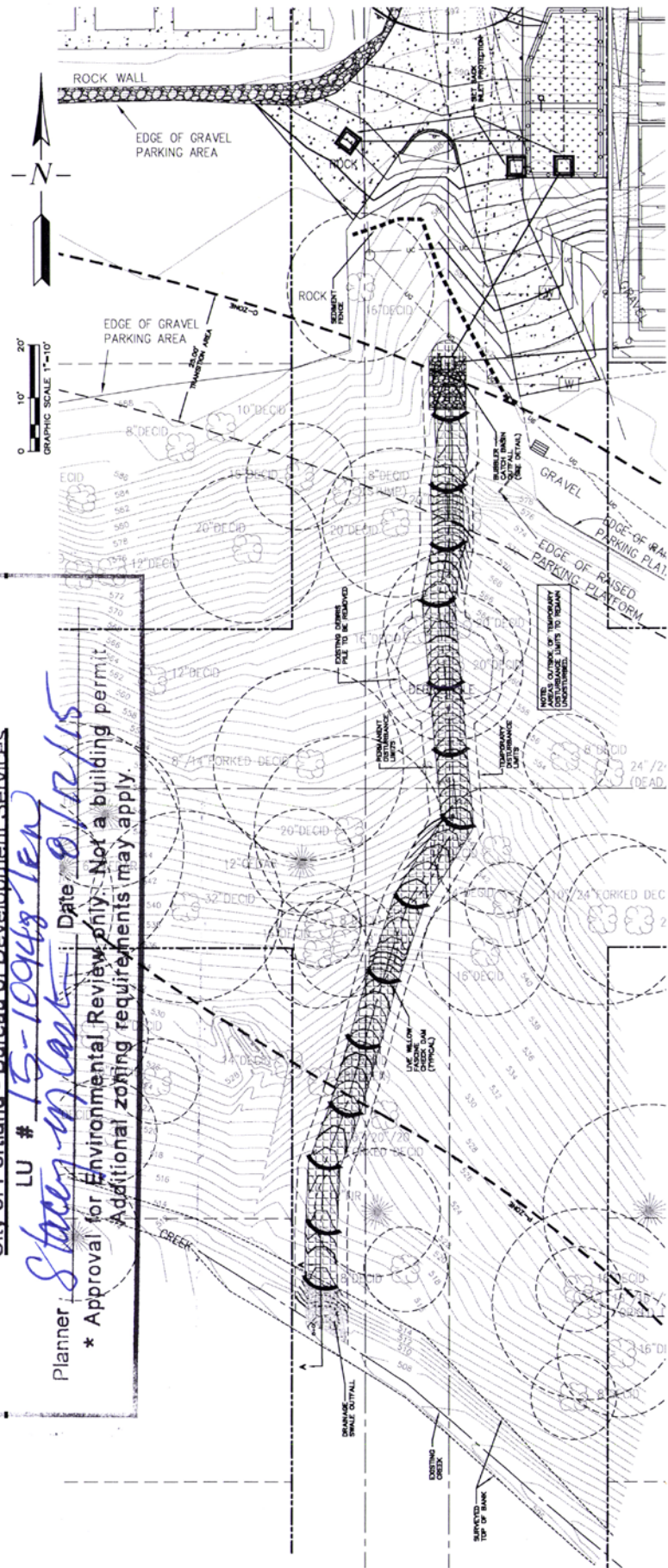
1/4 Section 3428

Scale 1 inch = 200 feet

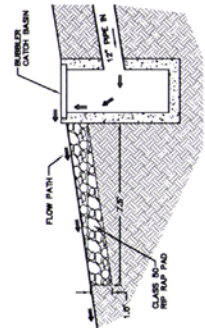
State\_Id 1S1E09DB 2800

Exhibit B (Jan 27, 2015)





DRAINAGE SWALE VOLUMES	
DRAINAGE SWALE CUT	50 cu. yds.
DRAINAGE SWALE FILL	0 cu. yds.
TOTAL SWALE VOLUME	50



BUBBLER CATCH BASIN OUTFALL DETAIL  
N.T.S.

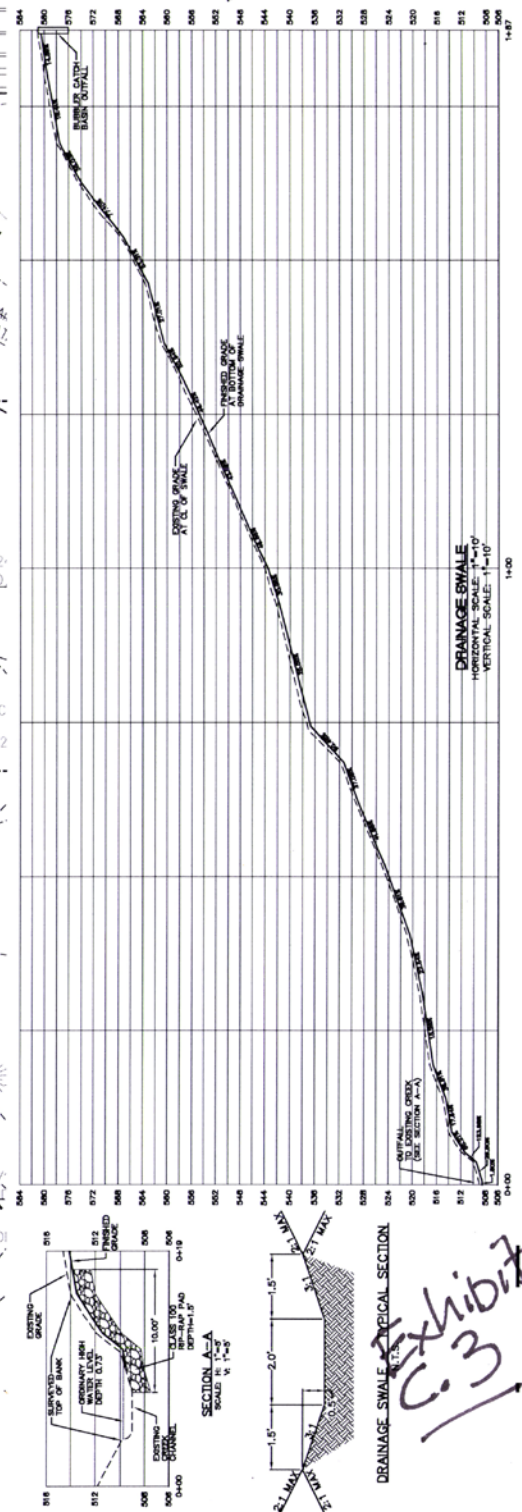


Exhibit  
C.3



REVISIONS	BY

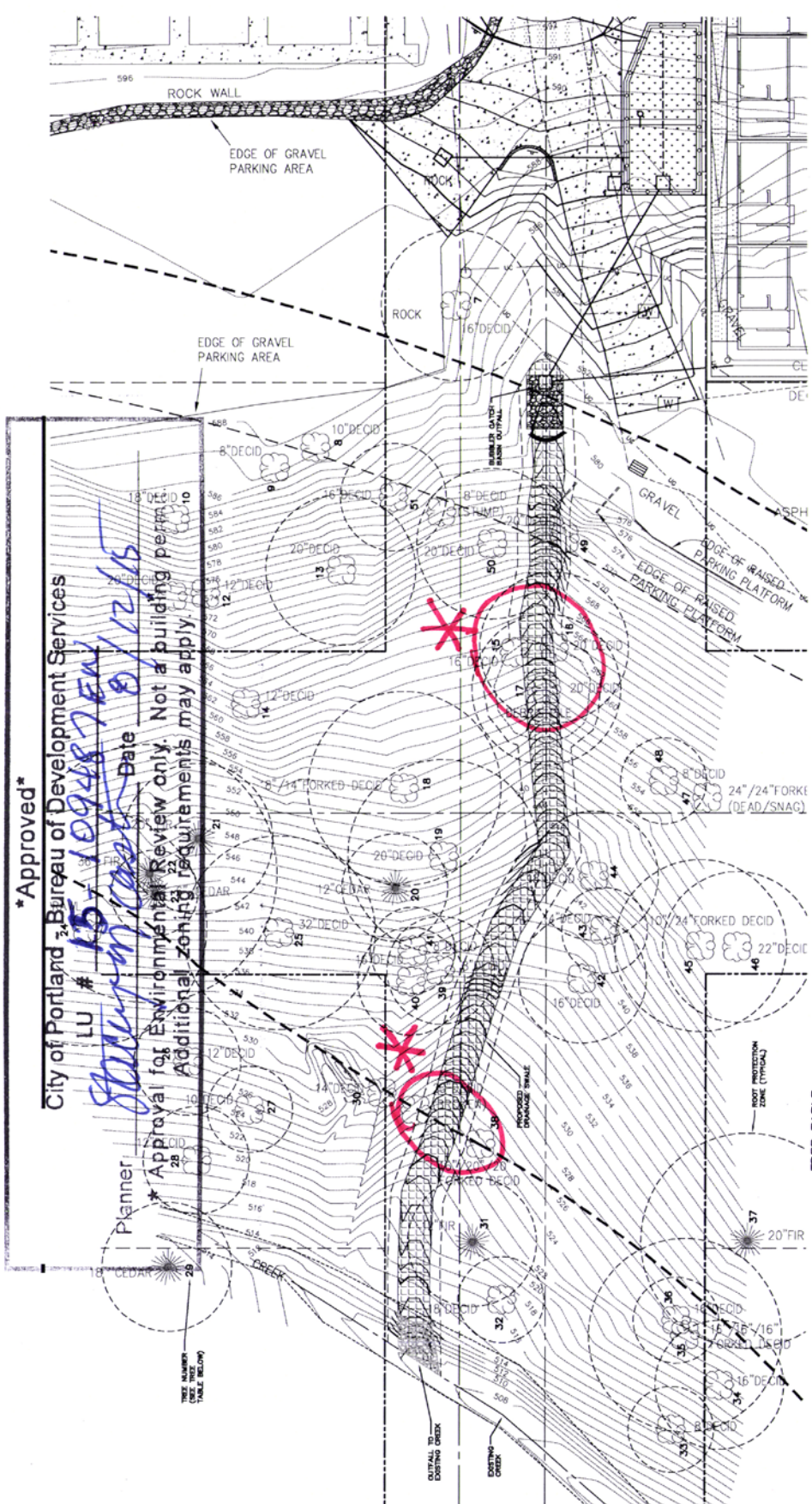
SW GAINES STREET APARTMENTS  
SCOTIA WESTERN STATES HOUSING, LLC

Tree Plan

ISUL ENGINEERING  
175 PORTLAND AVENUE  
GLASTONBURG, MD 21203  
(301) 657-0188

DATE: MAY 2015	SCALE: 1"=10'
DRAWN: DJ	ASB: SOL 14-083
SHEET: 4	OF 4 SHEETS

PRELIMINARY



NOTE: TREES TO BE REMOVED MUST BE STAKED IN THE FIELD. CENTERLINE MUST FOLLOW THE NATURAL DRAINAGE SWALE LOCATION. TREES TO BE REMOVED MUST BE STAKED IN THE FIELD. CENTERLINE MUST FOLLOW THE NATURAL DRAINAGE SWALE LOCATION. TREES TO BE REMOVED MUST BE STAKED IN THE FIELD. CENTERLINE MUST FOLLOW THE NATURAL DRAINAGE SWALE LOCATION.

1. FINAL DRAINAGE SWALE LOCATION TO BE STAKED IN THE FIELD. CENTERLINE MUST FOLLOW THE NATURAL DRAINAGE SWALE LOCATION. TREES TO BE REMOVED MUST BE STAKED IN THE FIELD. CENTERLINE MUST FOLLOW THE NATURAL DRAINAGE SWALE LOCATION.
2. PROTECTION FENCING SHALL NOT BE USED.
3. ONCE THE DRAINAGE SWALE IS STAKED, THE CITY FORESTER AND PROJECT ARCHITECT SHALL WALK THE ROUTE TO EVALUATE ANY DAMAGE TO CITY TREES.
4. CONTACTED BY ANY TREE ROOTS NEED TO BE CUT.

No.	Species	Code	Remarks	Action
1	20/000			

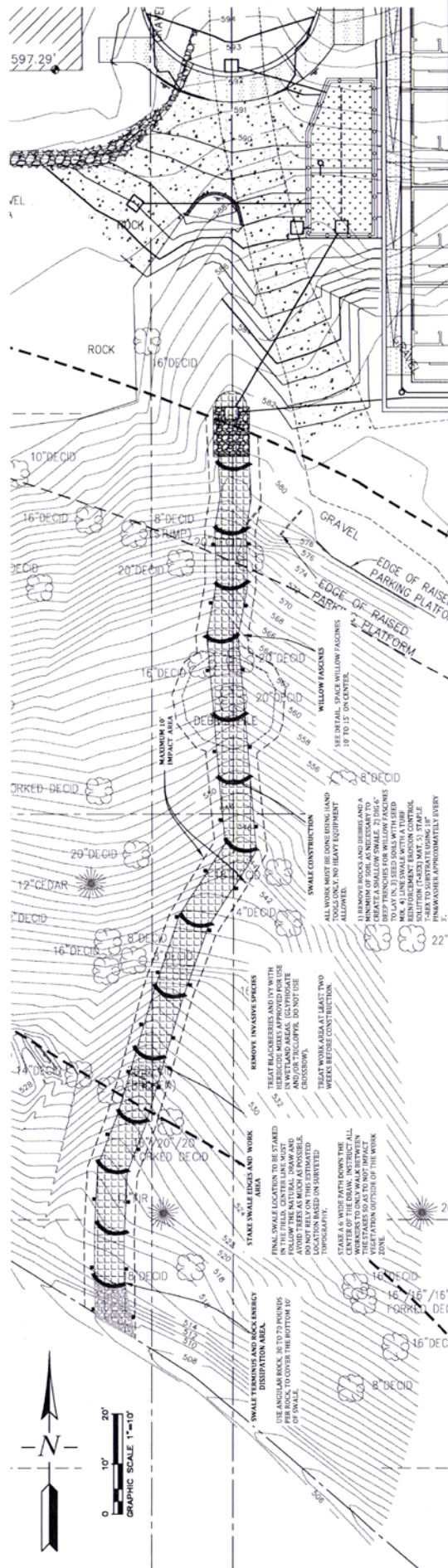
No.	Species	Code	Remarks	Assess
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4	20" long	10	10" long	poor
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97	20" long	10	10" long	poor
98	20" long	10	10" long	poor
99	20" long	10	10" long	poor
100	20" long	10	10" long	poor

\*Trees impacted by disturbance area. To be replaced with 26 trees.

\*Approved\*  
City of Portland, Bureau of Development Services  
LU # 15-109487 EN  
Date 8/12/15  
Planner: [Signature]  
Approval for Environmental Review only. Not a building permit. Additional zoning requirements may apply.

Exhibit C.4

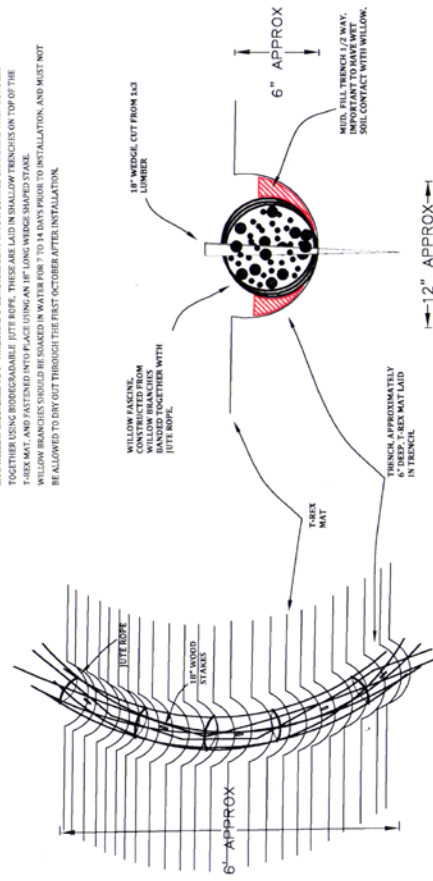




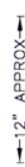
## STORM WATER SWALE CONSTRUCTION AND PLANTING PLAN.

LIVE WILLOW FASCINE.

LIVE WILLOW BRANCHES TO 1" THICK AND 6' LONG ARE BENT INTO A CURVED SHAPE AND THEN BUNDLED TOGETHER USING BIODEGRADABLE JUTE ROPE. THESE ARE LAID IN SHALLOW TRENCHES ON TOP OF THE T-BEAM MAT, AND FASTENED INTO PLACE USING AN 18" LONG WEDGE SHAPED STAKE.



**CROSS SECTION VIEW**



## PLAN VIEW

**\*Approved\***

City of Portland - Bureau of Development Services

AREA = 1576 SF

APPROVALS: *[Signature]* Date: *[Signature]*

Approved Review: *[Signature]*

**Learning Objectives**

PROF. CITY ENGINEER REC. PROF. ENG. STUDENT

BUREAU OF

TRANSPORTATION

COMMISS  
CITY EN  
CITY, EN  
P. E.

1000

100

375 Portland Ave  
Gladstone, OR 97027

360-596-4803 [www.escenvironmental.net](http://www.escenvironmental.net)  
DRAWING: 14-083 ETC PLANTING PLAN

