



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: June 5, 2008
To: Interested Person
From: Kathy Harnden, Land Use Services
503-823-7834

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

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 07-175271 EV

GENERAL INFORMATION

Applicant: Vic Accomando, Consulting Engineer – 503-259-9308
16750 SW Timberland Drive
Beaverton OR 97007

Owner: Andrew Johnson
JRJ Properties LLC
PO Box 17196
Portland, OR 97217-0196

Site Address: 9425 N BURRAGE AVE

Legal Description: INC 1/2 VAC 6TH ST SLY OF & ADJ BLOCK D, PENINSULAR ADD 4
Tax Account No.: R655248220
State ID No.: 1N1E09 00100
Quarter Section: 2027

Neighborhood: Kenton, contact Aaron Gray at 503-753-8075.
Business District: Columbia Corridor Association, contact Land Use at 503-287-8686.
District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Plan District: None
Other Designations: Columbia Corridor Industrial and Environmental Mapping Project Area,
Site No. 40; 100-year Floodplain

Zoning: IHc – Heavy Industrial with the environmental conservation (c) overlay

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

Proposal:

In the early summer of 2007, the applicant began a project to remove invasive species from the riparian area of his property adjacent to the Columbia Slough. In the process, heavy equipment was used to remove Himalayan blackberry vines and to push debris and soil into a large brush pile on the property. Approximately 6,800 square feet of the riparian area was impacted by the grading activity. Erosion controls to contain disturbed soils were not employed. No trees were removed during the brush removal. The grading activity in the Environmental Conservation overlay zone was conducted without the City's required environmental review.

The applicant stated that the impact of the vegetation removal was minimal. The blackberries were growing to a height of 12 feet throughout the conservation resource area. Ivy continues to grow on many of the trees on the site. The combination of the overgrown blackberries and the ivy was to crowd out many natives that would otherwise have grown on this site. The applicant proposes to restore the site by removing the brush pile, and replanting the disturbance area with 40 native shrubs and 200 forbs, as shown on Exhibit C.4. The applicant also intends to scarify (loosen) the top six inches of soil in the disturbance area and mix it with additional top soil prior to planting, and using an herbicide to control new blackberry growth. Finally, the applicant proposes to maintain an existing dirt ramp from the developed upland area down to the remediation area.

Removal of non-native invasive shrubs is generally allowed within the environmental zones if done with handheld equipment and approved through a plan check performed by the Bureau of Development Services. Use of heavy machinery that disturbs the soils on the site, which can lead to other resource impacts, must be approved through a Land Use Review. Because the applicant did not obtain either a Plan Check or Land Use Review approval for use of heavy equipment in the environmental zone, 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. Because the site does not contain enough area to meet the criteria for Correction Options B or C, the applicant was required to proceed with a Type II Environmental Review.

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**

The criteria of Section 33.430.250 G require the violation activity to be examined under the Approval Criteria (33.430.250 A through F) that would have normally applied to the activity if a permit had been applied for. The approval criteria which would have been applied to environmental review of clearing and grading to remove blackberry shrubs in the Environmental Conservation overlay zone are found in:

- **33.430.250.E Other Development in the Environmental Conservation zone or within the Transition Area only.**

If any of the applicable criteria from 33.430.250 A cannot be met, then all of the criteria under Section G must be met, including G.2.a, which requires no permanent loss of any type of resource or functional value (which requires removal of the violation). If all of the criteria from Section A can be met, the development can be permitted to remain. The application did not contain findings for the approval criteria found in 430.250.E. Therefore, only the criteria in Section G are reviewed.

PUBLIC REVIEW COMMENTS

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **May 8, 2008**. The following Bureaus responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau

The Bureau of Environmental Services had no requirements, but noted the importance of native vegetation in riparian zones for providing habitat for native wildlife. BES also noted that native vegetation will buffer the Slough from the existing industrial development and will filter stormwater runoff that flows from the site towards the Columbia Slough. Please see Exhibit E.1 for additional details.

The Site Development Section of BDS responded that the site lies within the 100-year floodplain and that importing top soil will require compliance with the requirements of Chapter 24.50, Flood Hazards, particularly with the balanced cut and fill requirements. In addition, they recommend Third Party Landscape Certification by a landscape architect, licensed landscape contractor or similar professional, certifying that all required plants have been installed in the manner required. Please see Exhibit E.2 for additional details.

The Bureau of Parks-Forestry Division responded that the majority of trees on the site are black cottonwoods (*Populus balsamifera ssp. trichocarpa*), not Lombardy poplars (*Populus nigra*) that were identified in the application and site plans. Please see Exhibit E.3 for additional details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 8, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

SITE INFORMATION

Site and Vicinity: The site is located in a Heavy Industrial zone and contains a manufacturing site, parking area, and a large riparian zone next to the south bank of the Columbia Slough, west of Interstate 5. The site is characterized by two, mostly flat, benches: the lower bench adjacent to the Slough contains riparian vegetation. This is the area of the violation. The second, higher bench, farther south, contains the manufacturing building and parking areas. The environmental conservation area includes the entire lower bench and a small amount of the parking area of the upper bench. None of the manufacturing activities occurs in the resource area.

The approximately 6,800 square foot disturbance area is somewhat circular in area, and is located on the west side of the lower bench. The site is part of a narrow, contiguous, forested riparian zone dominated by black cottonwood (*Populus balsamifera ssp. trichocarpa*) that runs the length of the Columbia Slough's south bank. This site is one of the larger remnants of the once fully vegetated floodplain.

In addition to the cottonwood, the other dominant species on the site are Himalayan blackberry and English ivy. There are no man-made structures or other improvements on this lower bench. Prior to disturbance, the dominant undergrowth species was Himalayan blackberry. English ivy covers the trunks of almost every tree on the site.

Black cottonwood is also the dominant tree species on the property immediately adjacent to the west of the site. The wooded area on this parcel also contains black Hawthorn (*Crataegus suksdorfii*), Oregon ash (*Fraxinus latifolia*) and non-native cherry trees with a dominant understory of blackberry and English ivy. The riparian zone to the east of the site narrows down to almost a single row of trees that are separated by large areas of blackberries.

Since the original clearing activity occurred, new plant growth has come in. Much of the growth appears to be non-native grass, blackberries, and some native forbs and ferns.

Zoning: The site is zoned Heavy Industrial (IH) with the environmental conservation (c) overlay. The IH zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. This zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The provisions of this zone are not specifically addressed through this Environmental Review as the violation does not impact the IH zone requirements.

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.

Land Use History: City records indicate that a land use application, LUR 97-00471, was submitted in 1997 to excavate and fill in the environmental zone, but the case was withdrawn by the applicant, prior to a decision.

Resources: The site is listed and mapped in the *Inventory and Analysis of Wetlands, Water Bodies and Wildlife Habitat Areas for the Columbia Corridor*, West Columbia Corridor, Site 40. The area of tree removal is in a palustrine forested riparian zone on the south bank of the Columbia Slough. This riparian zone provides bank protection as well as wildlife habitat and is part of a wildlife corridor for a large variety of birds and animals that use the slough and riparian zone.

Riparian zones are transitional areas between the high water marks of streams and the surrounding uplands. Native vegetation in riparian zones provides important habitat such as food, shelter, water, nesting, and traveling corridors for a wide variety of birds, mammals, reptiles, and insects. Native plant riparian zones also help stabilize banks and reduce non-point sources of pollution to streams from adjacent upland areas. The site is valued for flood storage, erosion control, and water quality. The site also has scenic values, providing a continuous forested riparian zone along the Slough, some of which is in view of I-5.

Floodplain. The site is located within a 100-year floodplain. The Site Development section of the Bureau of Development Services regulates proposed development in the floodplain, such as fill dirt such as topsoil. Fill is not allowed to increase the height of the 100-year flood. If topsoil is to be used, balanced cut and fill calculations, prepared by a professional engineer, will be required at the time of the Site Development permit review.

PROJECT ANALYSIS

The mitigation plan proposed by the applicant consists of the following elements:

- Planting the 6,800-square foot disturbance area with 40 shrubs and 200 forbs. The proposed shrub species include those that will range from 6 to 10 feet in height at maturity. The proposed forbs are limited to four species.
- Removal of the shrub pile that was created during the undocumented activities discussed above.
- Controlling future blackberry growth with herbicides.

The applicant's construction management plan consists of the following elements:

- Limits of disturbance. The applicant proposes to delineate the limits of disturbance through the use of 4-foot construction fencing.
- Erosion control. The applicant proposes erosion control fencing to ensure compliance with Title 10 requirements.

- Use of equipment. The type of equipment to be used is not identified in the application, but the applicant has indicated it would be some type of tracked or wheeled dozer.
- Storage, stockpiling and staging. The applicant proposes to use the top bench for construction staging and storage and stockpiling of topsoil.

The application did not contain a monitoring or maintenance plan.

ZONING CODE APPROVAL CRITERIA

33.430.250.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:

Findings: The approval criteria which would have been applied to environmental review of grading land to remove invasive species are found in 33.430.250.E Other development in the Environmental Conservation overlay zone. If any of the six criteria from Section 33.430.250.E cannot be met, with regard to construction in the environmental zone, then all of the criteria under Section G must be met, including the criterion which requires removal of the unpermitted development.

33.430.250 G. Corrections to Violations

1. The remediation is done in the same area as the violation; and

Findings: As shown on Exhibits C.1 through C.4, remediation is proposed within the same physical area as the violation. Therefore, *this criterion is met.*

2. The remediation plan demonstrates that after its implementation there will be:

a. No permanent loss of any type of resource or functional value;

Findings: This criterion requires development in violation of the Portland Zoning Code environmental regulations to be removed and the area to be returned to a natural state. It further requires restoration of resources and functional values that formerly existed in the violation area.

As discussed on page 4 above, the resource identified in this area consists of a palustrine forested riparian area that provides bank protection, wildlife habitat, bank stabilization, erosion control, pollution reduction, flood storage and water quality. The applicant's proposed mitigation plan, described on p. 4, does not satisfy this criterion for a number of reasons. These reasons are outlined below, together with the identification of specific actions that must be taken to address deficiencies.

First, the proposed mitigation plan does not provide sufficient plantings both in terms of number of plants as well as plant types, to mitigate for the loss of resource and functional value that was caused by the violation. The Portland Zoning Code provides legislative guidance on necessary plantings. Section 33.430.405, Corrections to Violations, provides several options for correcting violations. Both Options One and Two require replanting disturbance areas at the following ratio: 1 tree, 1 shrub and 5 groundcover plants for each 50 square feet of disturbance area. On this site, this requirement would result in 136 trees, 136 shrubs, and 250 groundcovers or 522 plants altogether. Given that no trees were removed as part of the violation and that the number of standing trees on the site continues to provide a fairly full canopy in the resource area, tree planting will not be required as remediation for this violation.

However, the applicant proposes to meet the remediation requirement by planting the 6,800 square-foot site with 40 shrubs and 200 forbs, removing the shrub pile, and controlling blackberry growth with herbicides. Planting 40 shrubs and 200 forbs is far less than the 522 plants required by the “corrections to violations” section. Forty shrubs planted in a 6,800 square-foot area would provide each shrub with 170 square feet of space, far more than the 25 to 36 square feet that most 12-foot tall shrubs would utilize. Typical remediation plans require shrubs to provide an 80 percent vegetative cover within one year of planting. Even considering the space occupied by existing trees and the few existing native shrubs and forbs on the site, the applicant’s proposed plant density would not meet the 80 percent coverage goal. To meet this goal, approximately 240 native shrubs are needed, as well as the proposed 200 forbs.

Meanwhile the proposed shrub selection consists of only four species that generally range from 6 to 10 feet tall at maturity. To provide additional habitat diversity, both larger and smaller shrubs must be included in the remediation plan. Hazelnut (*Corylus cornuta*) can grow up to 20 feet tall; Shiny-leaf Spiraea (*Spiraea betulifolia var. lucida*) and Common Snowberry (*Symphoricarpos albus*) grow 1 – 3 feet tall. These three species do well in shady riparian areas and must be incorporated into the remediation plan.

The proposed 200 native forbs will supplement the shrubs. The current forb selection is limited to four species. At least 2 more species should be included to provide additional plant diversity on the site. Both Western trillium (*trillium ovatum*) and Lady Fern (*Athyrium filix-femina*) would do well on this site. No information was provided about the size of the forbs. The environmental code requires that forbs come from 4-inch containers.

Second, the applicant’s proposal does not provide adequate removal of nuisance plants. This element is crucial to ensuring no permanent loss to resources or functional values on the site because plants such as Himalayan blackberry and English ivy are invasive and are detrimental to native plants. This work can be accomplished by cutting the Ivy near the bottom of the tree trunks and by hand pulling it out of the ground. The area surrounding the existing disturbance area also contains blackberries and English ivy. If these remaining invasives are not removed, they will take over the new mitigation plants. Therefore, all the invasive species must be removed from the top of the bench, beginning at the top of the slough bank, south across the site to the slope going up to the next bench, and from the west property line to the slough finger that projects into the property, as illustrated on Exhibit 4. These invasives must be removed using hand tools to avoid damaging any existing natives on the site. This additional area of invasive species removal must be replanted with a native grass/forb seed mix at a rate of 40 pounds per acre.

Third, the applicant’s proposal to remove the woodpile constitutes the removal of an element that has environmental benefit to the resource and functional value of the area. Specifically, woodpiles provide shelter, food, resting and nesting habitat for birds, small mammals, and invertebrates. The woodpile on this site will provide habitat diversity and must remain in-situ.

Fourth, the applicant’s proposal to maintain the existing dirt ramp to access the remediation site implies a need to take vehicles or construction equipment into the planted area. The applicant proposes to use the ramp to access the lower bench during the site restoration and has also requested maintenance of the ramp in order to access and maintain the remediation plants. Once the violation site has been planted, however, there will be no need for vehicles or large machines to enter this area. Remediation plants will be maintained by hand. Access to the bench, therefore, does not need to be wider than two and a half feet for people with wheelbarrows or other handheld equipment to pass through to remove new invasive plants or replace dead or dying native plants. The ramp may be used as it currently exists in order to access the site for the restoration work. After the remediation plants are installed, a permanent barrier must be placed across the top of the ramp with only a two and a half-foot wide opening to discourage future vehicular use. The barrier must be at least four feet high, completely block access to the ramp, be an

immovable chain link fence (not a gate) cemented in place or a rock berm, or other similar barrier, and may have one opening no wider than 2.5 feet. In addition, the ramp will become overgrown with blackberries and other non-native species if left unattended. Therefore, non-natives must be removed from it as well, and it must be seeded with a native grass/forb seed mixture at the completion of the other mitigation plant installation.

Fifth, the applicant's proposal does not include a monitoring and maintenance element, which is crucial to the long-term survival of the mitigation planting and success of the nuisance plant eradication program. The Zoning Code requires remediation plants to survive until maturity. Most shrubs take several years to mature enough to self-maintain. Because this site is so overgrown with both Himalayan blackberry and English ivy, monitoring and maintenance must be continued for five years to ensure the success of the remediation plants. A five-year maintenance and monitoring period will help ensure plant survival during the most critical period of new plant life and allow them to grow tall enough to be dense enough to prevent invasive species from returning. Limiting intrusion into planted areas by invasive species, as well as providing water during the dry summer months for the first few years will also help to ensure survival of the remediation plants. Documentation of these monitoring and maintenance practices must be included in annual monitoring reports to demonstrate the success of the remediation plan.

Sixth, to ensure that the environmental zone is able to perform its flood retention functions, the applicant must demonstrate that the balanced cut and fill requirements of Section 24.50.060 C.8 are met. The applicant has not provided any data demonstrating compliance with this requirement. This decision will be written to require compliance with this requirement. At the time of plan review, the applicant must demonstrate compliance with this requirement. This decision will not allow any building code appeals to grant waivers to that requirement.

Seventh, in order to ensure environmental protection, the applicant's proposed use of herbicides must be limited. Timing of herbicide use is specific to individual weed species of concern, seasonal events, and presence of wildlife. Herbicides used in a remediation site pose the risk of impacting required mitigation species. Therefore, most new invasive plants must be pulled by hand. Only if hand pulling proves insufficient to control invasives may herbicides be used. Herbicides may not be used to mass spray the site. Herbicides that can be used near open water to target invasive weeds are Galron 3A and Round-up. These herbicides must be applied by hand to individual plants and may not be sprayed anywhere on the site. Herbicides can be used only on calm days with little wind and can be applied only in the fall to avoid the nesting and rearing seasons.

Finally, to ensure additional and unnecessary disturbance does not occur in this environmentally sensitive area, an effective yet workable construction management plan must be approved as part of this decision. In order to define the scarification work area, a construction management fence must be installed around the perimeter of the "limits of disturbance area" as shown on Exhibit C.3. Erosion control devices must be installed inside the construction fence to ensure that no soil or debris from this soil disturbing activity will accidentally find its way to the Slough. However, this review has resulted in enlarging the work area to include the full bench and ramp areas (see Exhibit. C.3.) Invasives from this second area must be removed by hand. A second erosion control perimeter must be installed along the top of bank of the slough and finger slough to ensure that no disturbed soil will reach the slough from the second area of invasives removal. The Site Development section of BDS may require more extensive construction management and erosion controls. All construction management fencing and erosion control devices must be installed prior to any soil disturbing activities on the site.

To summarize, in order to meet this approval criterion, the applicant must comply with the following conditions of approval:

- Install all remediation plants and seeds in the quantities, species, and sizes listed above and as described on Exhibit C.4, Remediation Plan;
- Maintain the existing woodpile in situ;

- Erect a permanent barrier across the access ramp;
- Plant the ramp and surrounding areas with a native grass/forb seed mix at a rate of 40 pounds per acre;
- Follow best management practices for herbicide application; and
- Provide balanced cut and fill calculations at the time of the Site Development permit review,

this criterion will be met.

b. A significant improvement of at least one functional value; and

Findings: This criterion requires a remediation plan that not only compensates for the detrimental impacts of the unpermitted work, but also leads to significant improvement of at least one functional value. This improvement is measured against the resource values that existed around the violation area prior to the violation. Essentially, with a correction to a violation, the end result must be an improvement to a resource or functional value that will exceed functional values that were present before the violation occurred, rather than simply compensating for the functional values lost due to the violation.

Non-native invasive species such as Himalayan blackberry and English ivy are a leading cause of the loss of native plant diversity. They spread quickly, displacing native plants and preventing native plant growth. They create monocultures that reduce the quality and quantity of fish and wildlife habitat. A variety of native plants, on the other hand, supports a more diverse and larger wildlife population. English ivy covers most of the trees on the site, both within the disturbance area and outside it. Himalayan blackberry encircles the remediation site. The above analysis established that English ivy must be removed from all trees and both ivy and blackberries must be removed from the larger site to ensure the success of the remediation plants. This larger area must be seeded with a native grass/forb seed mixture.

With these enhancements, a significantly improved riparian zone populated with native species will be created and both the riparian zone and wildlife habitat will be significantly improved.

Therefore, with the removal of all non-native plant species from the existing disturbance area, the ramp area, and the area surrounding the disturbance area, installation of the required number and species of remediation plants and seeds as described above and documented on Exhibit C.4, and maintaining and monitoring the plants for five years to ensure their survival success, *this criterion will be met.*

c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.

Findings: This criterion requires the applicant to protect remaining resources during construction through effective construction management; to install remediation plantings in a timely manner; and to document the establishment of the full remediation plan through monitoring. This criterion also requires minimal loss of resources and functional values during the time between the disturbance to the resource, and full restoration of remediation areas.

To minimize the impacts of lost resources within the violation area, the remediation must occur as soon as practicable. Therefore, the applicant will be required to apply for a Site development permit no later than September 1, 2008. Remediation plants must be installed no later than November 30, 2008.

To demonstrate that the full remediation program does become established in a timely manner, the applicant must document success of the remediation plan approved in this review. To document the success of the required plantings, the applicant must provide annual monitoring reports for five years, and conduct maintenance in the form of watering,

invasive species removal, and replacement of dying plants as described on pages 5 and 6. The specific monitoring and maintenance requirements are listed in conditions of approval.

The remediation plan will compensate for impacts at the site for the following reasons:

- The full remediation area (approximately 15,000 square feet) is more than twice the area of disturbance.
- All disturbance areas will be planted with native vegetation.
- The remediation plantings will increase species diversity to improve wildlife habitat in areas that have minimal native vegetation.
- The plantings will provide assistance with pollution and nutrient retention and removal, sediment trapping, erosion control and water quality.

The proposed remediation plants must be installed and maintained under the regulations outlined in Section 33.248.040.A-D (Landscaping and Screening). A five-year monitoring period requiring an annual report, as described above, will ensure survival of all proposed remediation plantings.

With conditions for installation of the required remediation plants and seeds, for monitoring and maintaining required plantings, and for construction management and erosion controls described above, loss of resource functions and values will be minimized during remediation, and *this criterion 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.

CONCLUSIONS

The applicant used mechanical means to remove Himalayan blackberry vines from a 6,800 square foot area of his property within the environmental resource area without obtaining an environmental review approval. It is unknown, but assumed, that some native plants were also removed during the grading activity as natives were observed on the property during a site visit. The applicant has provided a remediation plan that staff has supplemented to fully restore the site to a natural condition. The site is to be maintained and monitored for a period of five years to ensure the success of the remediation plan.

ADMINISTRATIVE DECISION

Approval of an Environmental Review for correction of a Zoning Code violation in the Environmental Conservation overlay zone in conformance with staff-modified Exhibits C.3 and C.4. Approval is subject to the following conditions:

A. By September 1, 2008, the applicant shall have:

- Recorded this decision with the Multnomah County Recorder; and
- Submitted a complete application for a Site Development Permit for the activities described below.

B. As part of the Site Development permit application submittal, the following development-related conditions (B through G) must be noted on each of the required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 07-175271 EV." All requirements of this review must be graphically represented on the site

plan, landscape, or other required plans and must be labeled "REQUIRED."

- C. Required Mitigation Plantings:** A copy of Exhibit C.4. Remediation Plan, shall be attached to all permit plans. The following conditions shall be shown on all permit plans.
1. Temporary construction fencing shall be placed along the Limit of Disturbance line, as depicted on Exhibit C.3, Construction Management Plan, or as required by inspection staff during the plan review and/or inspection stages. Construction fencing and erosion controls shall be located entirely inside the property lines.
 2. The applicant shall install 240 native shrubs, 200 native forbs and seed all remaining areas of invasive species removal, including the ramp, with a native grass/forb seed mix at the rate of 40-pounds per acre. Forbs shall be in four-inch pots and shrubs will be in 2-gallon containers or the equivalent in ball and burlap.
 3. The following shrubs and forbs shall be added to the remediation plant list: Hazelnut (*Corylus cornuta*) can grow up to 20 feet tall; Shiny-leaf Spiraea (*Spiraea betulifolia* var. *lucida*), Common Snowberry (*Symphoricarpos albus*), Western trillium (*trillium ovatum*) and Lady Fern (*Athyrium filix-femina*), per Exhibit C.4, Remediation Plan.
 4. Any on-site native species used for remediation will be in addition to the required number of plants to be installed.
 5. Erosion controls prescribed by Site Development shall be installed inside the perimeter of the temporary construction fencing around the "limit of disturbance" area.
 6. A second layer of erosion controls shall be placed along the top of bank of the slough and the finger slough the projects into the site.
 7. No mechanized construction vehicles are permitted outside of the approved "Limit of Disturbance" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limit of Construction Disturbance, shall be conducted using hand held equipment.
 8. A small, rubber tired bobcat may be used to scarify the soil within the outlined "Limit of Disturbance" area shown on the Construction Management Plan, Exhibit C.3. The bobcat will access the site by way of an existing dirt ramp at the south end of the disturbance area. All other mechanized tracked or wheeled vehicles are prohibited in the resource area.
 9. The bobcat shall be used to scarify the soil and to mix topsoil with the existing soil inside the existing disturbance area only.
 10. All invasive species removal outside the limit of disturbance demarcation line shall be conducted using hand tools only.
 11. All mitigation planting shall be installed using hand tools only.
 12. The existing brush and log pile shall remain in place on the site.
 13. Invasive species must be removed from the ramp and the surrounding area outside the existing "limit of disturbance area" using hand held equipment (see Exhibit C.4). These two areas must be seeded with a native grass/forb seed mix at the same time as the installation of the remediation shrubs and forbs required by this review.
 14. All plants must bear colored identification tags attached to the top of the plants for easy identification in the field. All tags shall be a contrasting color that is easily seen and identified.
 15. The applicant shall have a registered landscape architect or a registered landscape contractor certify that all the required mitigation plantings were installed as required. After installation, the applicant shall submit a Landscape Certification Form to this effect, signed by the registered landscape professional. The signed Landscape Certification Form shall be submitted to the Site Development Section of the Bureau of Development Services, confirming that all required mitigation plantings have been installed in accordance with these conditions of approval.

16. During maintenance of the remediation plants, herbicides such as Galron 3A and Round-up may be used in moderation to hand-paint individual non-native invasive plants such as Himalayan blackberry. Broadcast spraying is prohibited. Herbicides may only be used in the fall and all calm days.
- D. Cut and fill calculations**, prepared by a professional engineer, must be submitted per the requirements of the Site Development permit review.
- E. The existing ramp must be barricaded** after the remediation plants are installed. The barricade must be chain link fence, cemented in place, or a 4 foot high rock wall. This permanent barrier may have a 2.5-foot opening to allow a person and wheelbarrow, or other small, handheld equipment to pass through.
- F. An inspection of Permanent Erosion Control Measures** shall be required to document installation of the required mitigation plantings.
1. The **Permanent Erosion Control Measures** inspection (IVR 210) shall not be approved until the required mitigation plantings have been installed (as described in Condition C above). The Site Development Permit must be finalized no later than November 30, 2008.
- G. The landscape professional or designer of record shall monitor** the required plantings for five years to ensure survival and replacement as described below. The landowner is responsible for ongoing survival of required plantings beyond the designated five-year monitoring period. **The landowner shall:**
1. Provide a minimum of five letters (to serve as monitoring and maintenance reports) to the Kenton Neighborhood Association and to the Land Use Services Division of the Bureau of Development Services (Attention: Environmental Review LU 07-175271 EV) containing the monitoring information described below. Submit the first letter within 12 months following approval of the Permanent Erosion Control Inspection of the required mitigation plantings. Submit subsequent letters every 12 months following the date of the first monitoring letter. All letters shall contain the following information:
 - a. The percent coverage of native shrubs and ground covers. If less than 80 percent of the mitigation planting area is covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
 - b. A list of replacement plants that were installed.
 - c. Photographs of the mitigation area and a site plan, in conformance with approved Exhibit C.4, Proposed Remediation Plan, showing the location and direction of photos.
 - d. A description of the method used and the frequency for watering mitigation shrubs and groundcovers for the first two summers after planting. All irrigation systems shall be temporary and aboveground.
 - e. An estimate of percent cover of invasive species (English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis, etc) within 10 feet of all plantings. Invasive species must not exceed 10 percent cover during the monitoring period.

Decision rendered by: _____ **on (June 2, 2008.)**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 5, 2008

Staff Planner: Kathy Harnden

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 November 7, 2007, and was determined to be complete on May 5, 2008.

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 November 7, 2007.

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 A.5

The applicant provided some of the information contained in this report.

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 date** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the Internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any

further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

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

Recording the final decision.

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

- *Unless appealed*, The final decision may be recorded on or after **June 20, 2008 – (the day following the last day to appeal)**. A Site Development 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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:

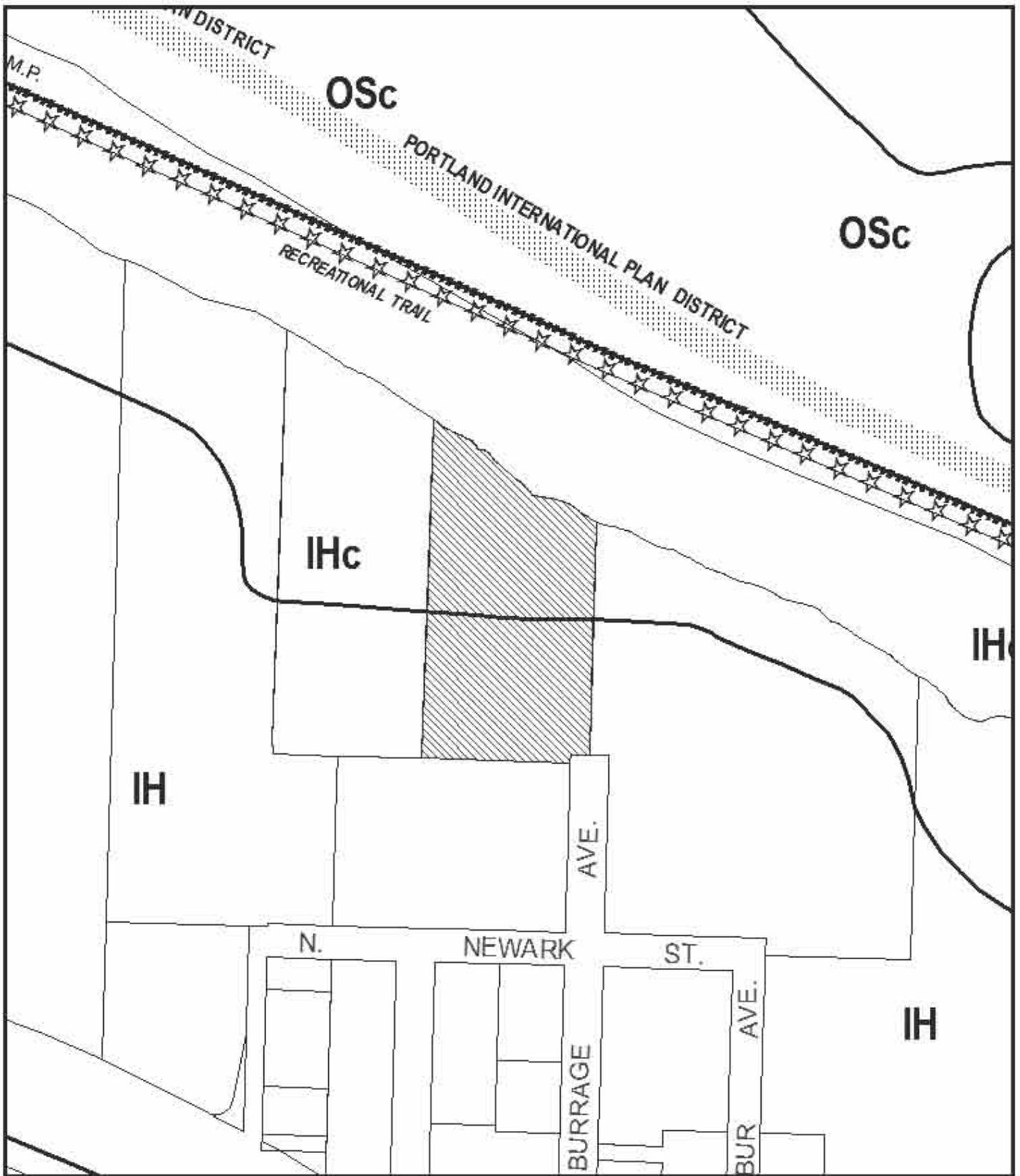
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant's submittal received November 11, 2007
 - 2. Applicant's submittal dated May 5, 2008
 - 3. Tree Inventory Report dated April 5, 2008
 - 4. Arborist Report dated April 10, 2008
 - 5. 120-Day Waiver
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Existing Conditions Site Plan
 - 2. Proposed Development Site Plan (attached)
 - 3. Construction Management Site Plan (attached)
 - 4. Mitigation Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Review Section of BDS
 - 3. Bureau of Parks, Forestry Division
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING

 Site



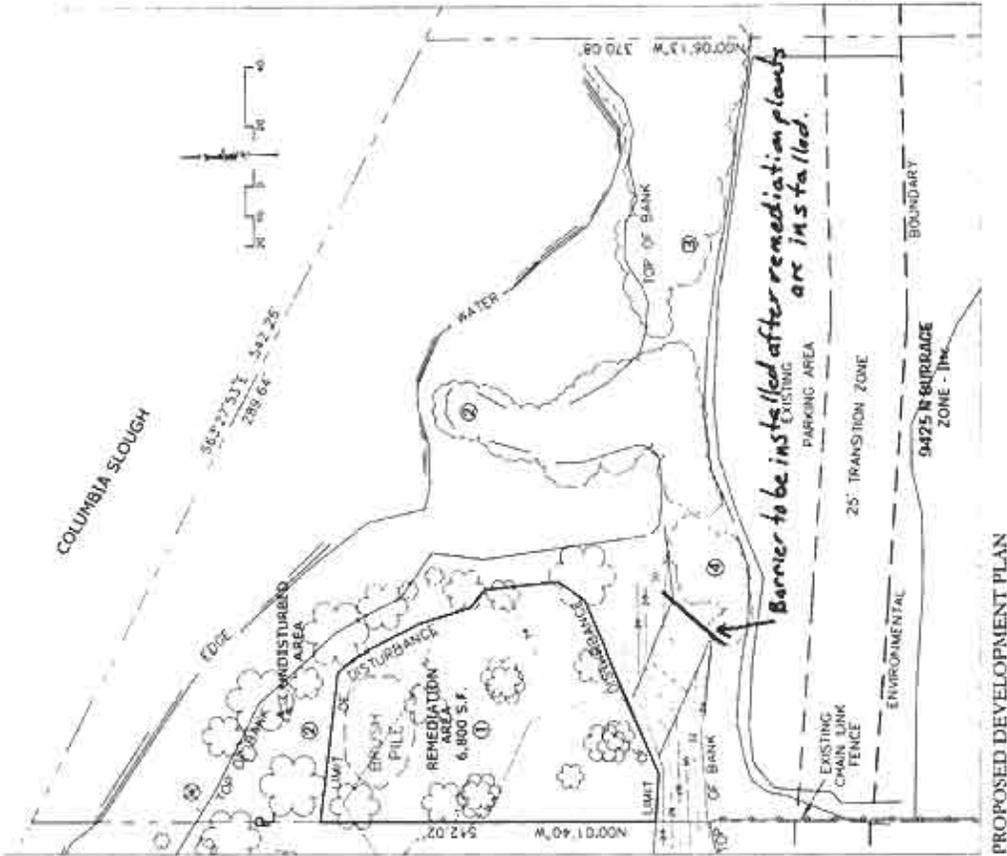
File No.	<u>LU 07-175271 EV</u>
1/4 Section	<u>2027, 2127</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E09 100</u>
Exhibit	<u>B (Nov 13, 2007)</u>

RECEIVED

MAY 05 2008

Case LU07-1752716U

Ex. C.2



PROPOSED DEVELOPMENT PLAN



VIC ACCOMANDO
CONSULTING ENGINEER
10740 SW Timberland Dr
Broomfield, CO 80027
PH: 303.425.3766
FAX: 303.252.9368
vicaccomando@gmail.com

NO.	DATE	DESCRIPTION
1	11-14-07	ISSUED FOR PERMITS
2	11-14-07	REVISED FOR PERMITS
3	11-14-07	REVISED FOR PERMITS
4	11-14-07	REVISED FOR PERMITS
5	11-14-07	REVISED FOR PERMITS
6	11-14-07	REVISED FOR PERMITS
7	11-14-07	REVISED FOR PERMITS
8	11-14-07	REVISED FOR PERMITS
9	11-14-07	REVISED FOR PERMITS
10	11-14-07	REVISED FOR PERMITS

PROPOSED DEVELOPMENT PLAN

ENVIRONMENTAL
REVIEW
APPLICATION

9425 N SURFACE AVE
BROOMFIELD, CO 80027
TEL: 303.425.3766

DATE: 11-14-07
SCALE: 1"=20'-0"

QUARTER SECTION
11-20-08
3127

C3

1. 6,800 sq. ft. Remediation Area is to be rehabilitated with shrubs and grasses. See Sheet 5 for planting plan. All existing trees to remain.
2. No construction to occur in undisturbed areas.
3. No construction to occur in heavily undisturbed areas.
4. 15' from 140' sq. ft. concrete foundation (Below minimum) to be removed within 180 days.

4. Blank plot to be submitted.
- Block contours and
Existing Topography (shown in grey)
- Tree symbol
- Line graph symbol

LEGEND

C2



VTC ACCOMANDO
CONSULTING ENGINEERS
16700 SW Timberland Dr
Beaverton, OR 97007
P.O. Box 500, 5766
Fax: 503.233.0000
www.vtcaccomando.com

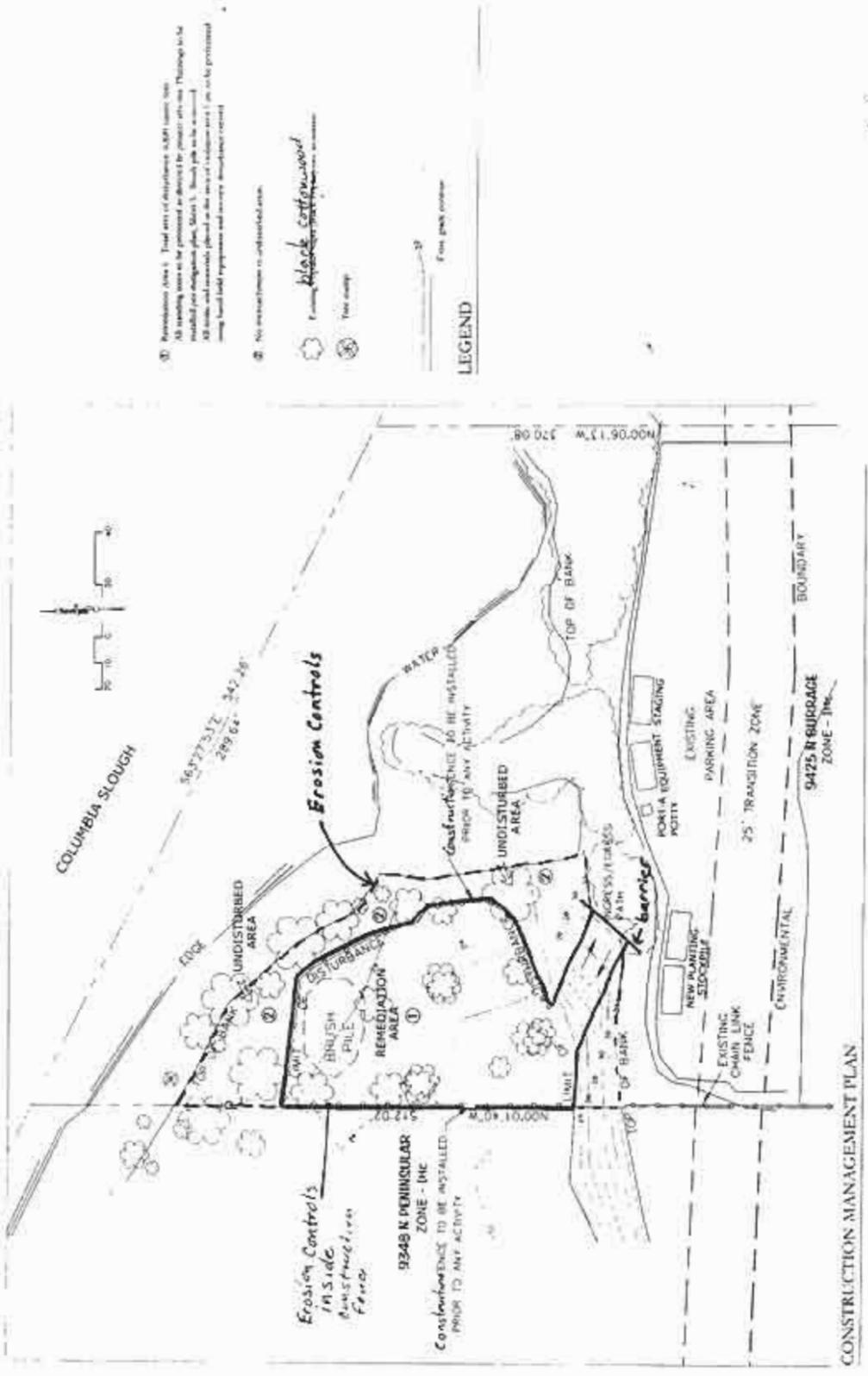
NO.	DATE	DESCRIPTION
1	05/05/08	ISSUED FOR PERMIT
2	05/05/08	REVISED PER COMMENTS
3	05/05/08	REVISED PER COMMENTS
4	05/05/08	REVISED PER COMMENTS
5	05/05/08	REVISED PER COMMENTS
6	05/05/08	REVISED PER COMMENTS
7	05/05/08	REVISED PER COMMENTS
8	05/05/08	REVISED PER COMMENTS
9	05/05/08	REVISED PER COMMENTS
10	05/05/08	REVISED PER COMMENTS

CONSTRUCTION MANAGEMENT PLAN

ENVIRONMENTAL
REVIEW
APPLICATION

9425 N BURGAGE AVE
PORTLAND, OR 97227
TEL: 503.233.0000

DATE	05/05/08
SCALE	AS SHOWN
PROJECT NO.	07-1752716V
SECTION	C4

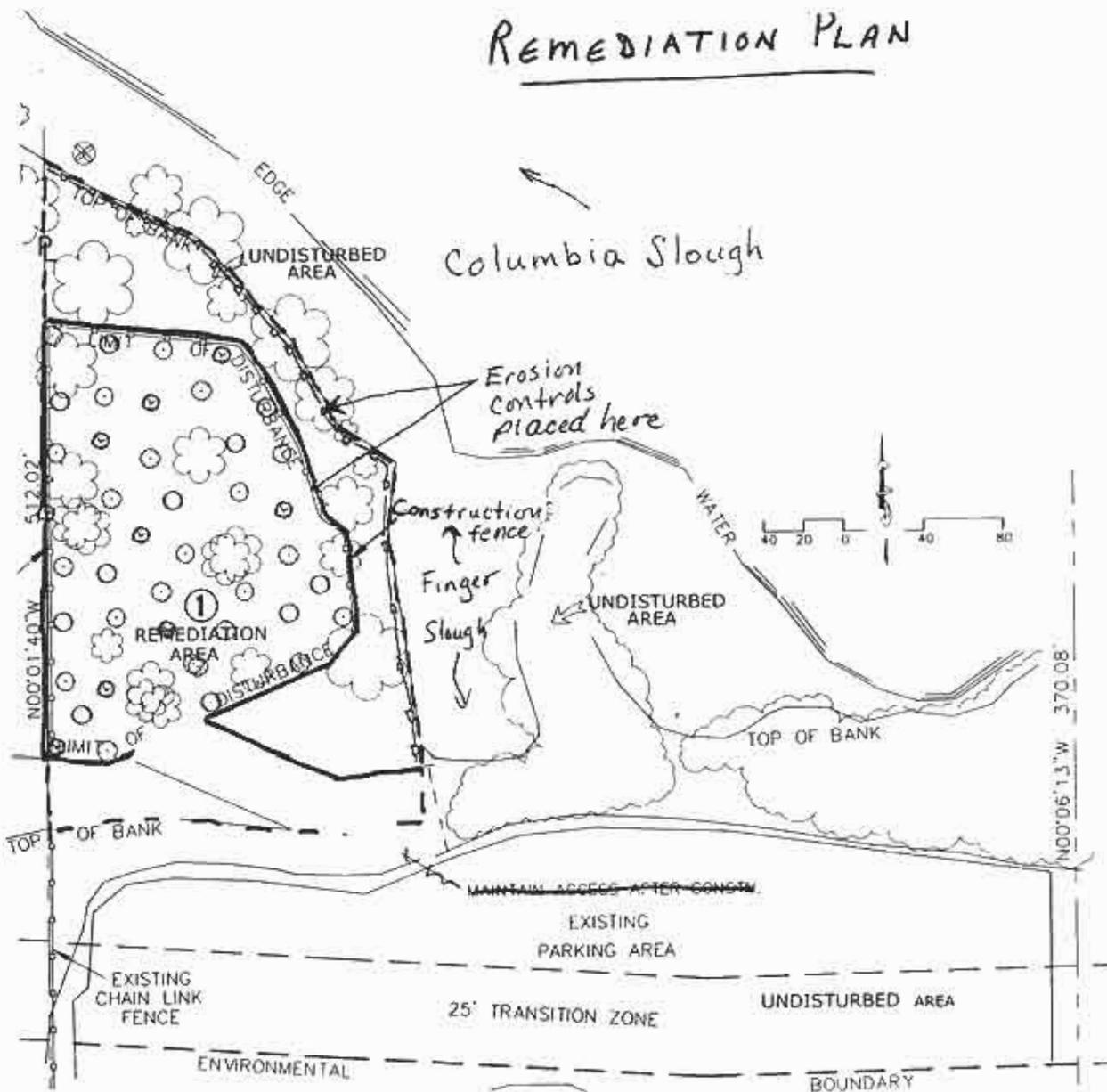


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MAY 05 2008

Case LU07-1752716V
EX. C.3

REMEDIATION PLAN



- black cottonwood
Existing *Populus nigra* (Black Poplar) tree
- Tree stamp

LEGEND

REMEDIATION NOTES:

1. Apply Garlon 1A herbicide to blackberry cane growing tips for 3 oz. per 1 gallon water with backpack sprayers - August to late October. Follow up annually.
2. All plantings shall be tagged for dormant season identification. Tags to remain on plant material after planting for monitoring purposes.
3. Topsoil shall be natural loam, sandy loam per ASTM D 5268-02 "Standard Specification for Topsoil Used for Landscape Purposes"

- Area outside "limit of disturbance"
- Non-native invasives to be removed by hand - No vehicular equipment
- Seed with native grass/forb seed mix at a rate of 40 lbs/acre

GROUNDCOVER PLANTING PLAN

Symbol	Scientific Name	Common Name	Number	Stock	Spacing
	<i>Blechnum spicant</i>	Deer fern	33	4" round	5 per cluster
	<i>Azaron caudatum</i>	Wild ginger	33	4" round	5 per cluster
	<i>Impatiens capensis</i>	Orange balsam	33	4" round	5 per cluster
	<i>Polygonum persicaria</i>	Lady's thumb	33	4" round	5 per cluster

Trilecium ovatum western reille um 33 4" pot "

Athyrium felix-femina Lady fern 33 4" pot "

VIOLET AREA 1 SHRUB PLANTING PLAN

Symbol	Scientific Name	Common Name	Number	Stock	Spacing
	<i>Rubus parviflorus</i>	Thimbleberry	40	2 gal.	1 ft. OC
	<i>Philadelphus lewisii</i>	Mockorange	40	2 gal.	1 ft. OC
	<i>Ribes sanguineum</i>	Red currant	40	2 gal.	1 ft. OC
	<i>Ribes bracteosum</i>	Blue currant	40	2 gal.	1 ft. OC

Corylus cornuta Hazelnut 40 " all = 28' on center

Spiraea betulifolia shiny-leaf 40 " "

Spiraea var. lucida Spiraea 40 " "

Symphoricarpos albus Common Snowberry 40 " "

Case LU 07-17527164 EX. C4