



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

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**Date:** February 20, 2019  
**To:** Interested Person  
**From:** Leah Dawkins, 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 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 18-206220 EV**

**GENERAL INFORMATION**

**Applicant/Owner:** Carlos C. Cortez  
10710 NE Simpson St. / Portland, OR 97220  
(503) 753-9141

**Consultant:** Brian Perleberg, Northern Resource Consultant, Inc.  
1339 Commerce Avenue, Suite 309b / Longview, WA 98632  
[bperleberg@nrcenv.net](mailto:bperleberg@nrcenv.net)

**Site Address:** 10710 NE SIMPSON ST

**Legal Description:** BLOCK 105 W 90' OF LOT 1 EXC N 119' W 90' OF LOT 2 E 15.1' OF LOT 3 EXC N 119', PARKROSE & RPLT; BLOCK 105 N 119' OF W 90' OF LOT 1 N 119' OF E 15.1' OF LOT 3, PARKROSE & RPLT

**Tax Account No.:** R647325170, R647325180  
**State ID No.:** 1N2E15CD 02100, 1N2E15CD 02000  
**Quarter Section:** 2441

**Neighborhood:** Parkrose Neighborhood Assoc., contact [parkroseneighbors@gmail.com](mailto:parkroseneighbors@gmail.com)  
**Business District:** Columbia Corridor Association, contact at [info@columbiacorridor.org](mailto:info@columbiacorridor.org), Parkrose Business Association, contact [parkrosebusinessassociation@gmail.com](mailto:parkrosebusinessassociation@gmail.com)

**District Coalition:** East Portland Community Office, contact Victor Salinas at 503-823-6694.

**Plan District:** Columbia South Shore - Southern Industrial Subdistrict

**Zoning:** *Base Zone:* General Industrial 2 (IG2)  
*Overlay Zones:* Aircraft Landing (h), Prime Industrial (k), Environmental Protection (p), Portland International Airport Noise Impact (x), Scenic Resource (s)

**Case Type:** EV- Environmental Violation

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

**Proposal:**

This review is part of a corrective action in response to City of Portland code compliance case 17-235415 CC. The code compliance case identified unpermitted disturbance in the Environmental Protection overlay zone abutting the Columbia Slough on the subject property.

The applicant is proposing to remove two unpermitted gravelled areas and restore the areas with native plantings in the southern portion of the site and within the Environmental zone adjacent to the Columbia Slough. The applicant proposes a variety of native shrubs and trees in order to cover 90% of the disturbed area within two growing seasons. The proposed activity is within the Environmental zone of the Columbia South Shore Plan District (CSSPD) and Zoning Code section 33.515.276 B.1 stipulates that disturbance of environmental resources and planting native vegetation in the environmental zones require approval through Environmental Review. Therefore, the proposal is subject to the environmental review requirements of the plan district.

**Relevant Approval Criteria:**

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

**Section 33.515.278** Development Standards in the Columbia South Shore Plan District

**Section 33.515.280** Columbia South Shore Environmental Review Approval Criteria

## FACTS

**Site and Vicinity:**

The 1.26-acre site is located on NE Simpson Street between NE 105<sup>th</sup> and NE 109<sup>th</sup> Avenues. Currently, the site is a vehicle wrecking and storage yard with several detached structures on the site. There is a residential structure at the north end of the site as well. The site is abutted by NE Simpson to the north, the Columbia Slough to the south, and general industrial uses to the east and west. The site is relatively flat with stormwater runoff discharging to the slough.

The site is covered with numerous structures, automobiles, and paved and graveled driveways. From NE Simpson Street to the Columbia Slough, the site lacks cover by vegetation of any type, with the minor exception of three trees along NE Simpson Street, and several black cottonwood trees, English holly, Himalayan blackberry, butterfly bush, and English ivy at the south end of the site, along the slough.

**Zoning:** The zoning designation on the site includes the General Industrial 2 (IG2) base zone with Aircraft Landing (h), Prime Industrial (k), Environmental Protection (p), Portland International Airport Noise Impact (x), and Scenic Resource (s) overlay zones (see zoning Exhibit B).

The General Industrial 2 (IG2) base zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. IG2 areas generally have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street. No new development or uses are proposed on the site, and the requirements of the IG2 base zone do not apply to the project.

The Aircraft landing (h) overlay zone limits the height of structures and vegetation in the vicinity of the Portland International Airport; a height contour map is available for review in the Development Services Center.

No new development or uses are proposed on the site, and the requirements of the h overlay zone do not apply to the project.

The Prime Industrial overlay zone (k) protects land that has been identified in the Comprehensive Plan as Prime Industrial, and to prioritize these areas for long-term retention. Prime Industrial Land is suited for traded-sector and supportive industries and possesses characteristics that are difficult to replace in the region. In Portland, Prime Industrial land consists of the Portland Harbor, Columbia Corridor, and Brooklyn Yard industrial districts. These freight-hub districts include Oregon's largest seaport, rail hub, and airport. Existing and potential multimodal freight access in these districts support interregional transport, exporting industries, and associated industrial businesses and activities. The regulations protect these areas by preventing, or requiring an off-set for, conversion of the land to another zone or use that would reduce industrial development capacity. No new development or uses are proposed on the site, and the requirements of the k overlay zone do not apply to the project.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The purpose of the environmental regulations in the Columbia South Shore Plan District south of NE Marine Drive is to protect inventoried significant natural resources and their functional values; implement the Comprehensive Plan environmental policies and objectives; encourage coordination between City, county, regional, state, and federal agencies concerned with natural resources; and protect inventoried significant archaeological resources where those resources overlap with an environmental protection zone or environmental conservation zone. The purpose of this land use review is to ensure compliance with the regulations of the Environmental Zones.

The Environmental Protection overlay zone ("p") provides the highest level of protection to the most important resources and functional values. These resources and functional values are identified and assigned value in the inventory and economic, social, environmental, and energy (ESEE) analysis for each specific study area. Development will be approved in the environmental protection zone only in rare and unusual circumstances.

The Portland International Airport Noise Impact (x) overlay zone reduces the impact of aircraft noise on development within the noise impact area surrounding the Portland International Airport. The zone achieves this by limiting residential densities and by requiring noise insulation, noise disclosure statements, and noise easement. The regulations of this zone apply to residential construction and are not applicable to the current proposal.

The Scenic Resource overlay zone is intended to protect Portland's significant scenic resources. The purposes of the Scenic Resource zone, to enhance the city's appearance and protect scenic views, are achieved by establishing height limits, establishing landscaping and screening requirements, and requiring preservation of identified scenic resources.

The Columbia South Shore Plan District regulations encourage the development of the Columbia South Shore as an industrial employment center which is intended to attract a diversity of employment opportunities. The plan district regulations also protect significant environmental and scenic resources and maintain the capacity of the area infrastructure to accommodate future development. The environmental regulations of this plan district supersede the regulations of 33.430 and are therefore addressed in this review.

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

The project site is mapped within the *Natural Resources Protection Plan for the Columbia South Shore* as Site C. Site C is classified as flushed slough with scrub-shrub wetland. Significant resources and functional values of the site, specific to the project area, include groundwater recharge; discharge, drainage, flood storage, erosion control/sediment trapping, pollution/nutrient retention/removal; fish and wildlife habitat (specifically corridor); potential recreation and visual amenity; long-term nutrient retention, and wildlife (winter waterfowl).

**Impact Analysis and Mitigation Plan:** A full description of the proposal was summarized on page two of this report. The following describes the impacts of work conducted in the Environmental zone, as compared with restoration activities proposed by the applicant to mitigate impacts. This section includes a discussion of the proposed construction methods, mitigation, and a monitoring proposal

**Development Alternatives:**

In this case, the applicant is proposing a correction to development activities that occurred within the Environmental Protection Zone without environmental review. The proposal is to restore previously disturbed areas with removal of gravel, and plantings of native species. No development is proposed an alternatives analysis is not appropriate.

**Construction Management Plan:** The site is relatively flat, so no grading is necessary –only removal of gravel from environmentally zoned areas; On Exhibit C.1, the applicant has shown in detail where the planting zones will be located. No structures remain within the 50-foot protection buffer along the Columbia Slough.

- Vegetative filtration will serve as an erosion best management practice. Very little grading and no excavation is required other than removal of gravel and digging small holes to plant the native vegetation. Less than 1-2 yards of soil will be displaced over the entire area. The sequence of construction will be to prepare the area where planting will occur, remove invasive species from planting areas, install native plant material from Table 1 in the applicant narrative (Exhibit A.2), and ensure no damage from humans or wildlife occurs to the newly planted vegetation.
- Spring planting is preferred. However, many of the mitigation plant species tend to go dormant during November to December so installation of the plants can occur in the winter. No planting will take place during the months of May to October of any year.
- Planting should be completed in one single year. After installation, orange ribbon will be tied on installed vegetation and small flags will be used to identify plants that ribbon will not adhere to.

**Unavoidable Impacts:** This proposal is to correct impacts from unpermitted and unreviewed disturbance within the environmental zone. The impacts within the environmental zone are approximately 780 square feet of gravel area and a large roofed shed structure that was placed partially within the environmental zone but has been removed.

**Proposed Mitigation and Monitoring Plan:** To correct the violation within the environmental zone, the applicant proposes to remove gravel fill and all non-native and invasive species from the area within the environmental zone, retain all existing trees and snags, and plant nine different species of native plants, trees, and seed mix in order to achieve 90% ground cover within the affected area.

The applicant has proposed at nine plant species, including four shrub species along with two trees species (Exhibit C.1). To the greatest extent practicable trees and shrubs will be clustered in groups of 3. The planting area is 5,285 square feet requiring at least 10 trees and 30 shrubs. Hydroseed mix of native grasses and flowers will achieve fifty percent seed mix grass to fifty percent flowers as measured by area covered. Between shrubs this area will be hydroseeded for 4,750 square feet.

The applicant proposes to monitor the mitigation area for five years after installation or until all performance standards have been met. If all the performance standards are achieved in less than five years of monitoring, the applicant may terminate monitoring with approval from the review agencies. Quantitative monitoring will be completed and documented at one, three, and five years after initial plant installation to demonstrate the performance criteria have been achieved. The site should be evaluated informally during the early to late summer following plant installation to evaluate survival rates and document the presence of non-native invasive

species. The City of Portland may also complete informal assessments of the native planting and establish photo points. Monitoring reports will be submitted for review and comment to the appropriate agencies by April in years one, two, three, four, and five.

**Land Use History:** City records indicate that no prior land use reviews have been conducted for this site.

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on January 24, 2019.

**Agency Review:** Several Bureaus and agencies have responded to this proposal. The following Bureaus have responded with no issues or concerns:

- BES
- PBOT
- Water Bureau
- Life Safety
- Fire Bureau
- Site Development
- Urban Forestry

**Neighborhood Review:** No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal.

## **ZONING CODE APPROVAL CRITERIA**

### **33.515.280 Columbia South Shore Environmental Review**

#### **D. Approval criteria.**

- 2. Removal of vegetation in an environmental zone or planting of native vegetation if not required in a protected natural resource will be approved if the review body finds that all activities will result in no loss of resource values identified in Figure 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore*.**

**Findings:** The resource values listed in Figure 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore*, specific to this site, are groundwater recharge; discharge, drainage, flood storage, erosion control/sediment trapping, pollution/nutrient retention/removal; fish and wildlife habitat (specifically corridor); potential recreation and visual amenity; long-term nutrient retention, and wildlife (winter waterfowl).

As described on Page 2 of this report, the proposal is to remove gravel fill and non-native invasive species from the environmental zone and mitigate restore the disturbed area with native plantings. The area of the site within the environmental zone is approximately 5,285 square feet. The specific disturbance includes areas within the environmental zone where gravel fill was placed and a large detached roofed metal structure that was placed on gravel fill. The structure has been removed from the site. The area specifically impacted by gravel and the structure on the site is approximately 780 square feet. All existing development within the environmental zone will be removed, primarily any remaining gravel fill. The disturbance area will then be restored utilizing native plantings from the *Portland Plant List*. The area will be revegetated with a mix of native trees, shrubs, and seed mix. These activities will not result in any loss of resource values identified in Figure 2-3 and discussed on Page 3 of this report. In fact, the activities will increase the functions and values of identified resources by removing the gravel and invasive species followed by the planting of native vegetation. The native vegetation will provide food, cover, and habitat for wildlife that frequent the slough corridor.

Since the removal of vegetation in the Environmental Zone will be minimal and fully mitigated for, resulting in no loss, only enhancement, of the resource values identified in Figure 2-3, *this criterion is met*.

**4. The following activities will be approved if the review body finds that the criteria of this paragraph are met: other resource enhancement or alteration or road improvements in public rights-of-way in an environmental zone; or overhead utilities, underground utilities other than sewer connections to individual properties, or recreation or trail facilities identified in the *Columbia South Shore Slough Trail Master Plan* in the protected resource** (emphasis added to sections appropriate to this review):

**a. The proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;**

**Findings:** The proposed correction to the environmental violation and related mitigation within the 5,285 square foot environmental zone on the site will have no significant detrimental impact on the resource area as discussed in Section D.2. In fact, the proposed actions will have a net positive effect on the resource area by restoring the resource through the removal of non-native fill and planting of native species along the Slough.

With conditions that require removal of non-native fills, non-native species, and mitigation within the resource area, as well as long-term maintenance of mitigation plants, *this criterion will be met.*

**b. All detrimental environmental impacts are mitigated in the following manner:**

**(1) All resource values listed in Figure 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore* for the site being altered or destroyed will be replaced at the mitigation site. If the mitigation site is within a protected resource, values that already exist do not count towards mitigation;**

**Findings:** Figure 2-3, referenced above, identifies this waterbody as Site C, a “*Main slough channel. Banks disturbed for the most part, with blackberries predominating. Occasional forested riparian area of cottonwood, willow.*” The environmental resources for the site are further detailed on Page 3 of this report.

The purpose of this review is to repair previous disturbance and no existing resource values within the Environmental Zone are being further altered or destroyed. The impacted area contains some native poplar trees and other native shrubs, as well as invasive English Ivy, blackberry, and butterfly bush shrubs throughout the resource area. The native species are proposed to be left in place and non-natives are proposed to be removed and replaced with native plantings.

The proposed planting plan within the resource area includes two Douglas firs and eight Oregon ash trees for a total of 10 native trees. The plan also includes 90 native shrubs and plants, representing seven species, and a native seed mix. The shrubs include 20 Oregon grape, 25 Douglas spiraea, 10 blue elderberry, 15 salmonberry, 10 red-flowering current, five red-osier dogwood, and 10 snowberry shrubs. In total, the mitigation plan provides nine difference native species with five trees and 90 shrubs to be planted within the approximate 5,285 square foot Environmental Zone, or approximately one plant for each 55 square feet of planting area.

The applicant will be required to 1) remove all invasive species from within the planting area; 2) install the native plants identified in the mitigation plan (Exhibits C.1) within the planting season (October 1 through March 31); 3) preserve all native species remaining within the mitigation area after mitigation activity is completed, and 4) maintain and monitor the mitigation plants for a period of 5-years beginning at the completion of the native plant installation.

*With the above requirements, this criterion will be met.*

**(2) The mitigation area abuts or is within a protected resource;**

**Findings:** As described above, the mitigation area will be located entirely within the resource area. With implementation of the above conditions, *this criterion will be met.*

- (3) If the mitigation area is within a protected resource, mitigation will be provided for all resource values lost, including those lost in the protected resource as part of mitigation efforts.**

**Findings:** The applicant proposes to remove invasive species and plant over 5,000 square feet of environmentally zoned area along the Columbia Slough. The mitigation plan will enhance native species diversity and provide improved cover and food resources for wildlife habitat and wildlife corridor along the slough. No resource values will be lost as part of this project, but, only improved; *therefore, this criterion is met.*

- (4) All detrimental impacts on resource values listed in Figure 2-3 of the Natural Resources Protection Plan for the Columbia South Shore for the site on which the use or activity is taking place will be replaced at the mitigation site;**

**Findings:** Resource values listed in Figure 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore*, specific to this site, are groundwater recharge; discharge, drainage, flood storage, erosion control/sediment trapping, pollution/nutrient retention/removal; fish and wildlife habitat (specifically corridor); potential recreation and visual amenity; long-term nutrient retention, and wildlife (winter waterfowl). All impacts associated with the previous unpermitted disturbances within the environmental zone will be mitigated fully by the removal of unpermitted development, removal of invasive vegetation and restoration plantings in environmentally zoned areas on the site.

Therefore, with the conditions listed above, *this criterion is met.*

- c. A monitoring or maintenance plan has been prepared which ensures the maintenance and protection of resource mitigation areas and associated functions and values for 5 years after success has been achieved. The 5-year period will begin when the Bureau receives and approves a report from the applicant that describes the manner in which mitigation success has been achieved. Success shall be defined in the approved mitigation plan to include:**
- (1) Full achievement of required resource values; and**
  - (2) Compliance with development standards of Section 33.515.278.**

**Findings:** The applicant will monitor the mitigation area for a period of five years after the native plants are installed to ensure the required success criteria are met. This includes controlling weeds and protecting plants from predation by browsing animals; watering the newly installed plants on a regular basis throughout the two-year establishment period; controlling the invasion of non-native species; replacing dead plants; and monitoring and adjusting the above plan as needed over the five-year period.

Further, an initial Zoning Permit will be required to ensure the successful installation of required plantings and a second Zoning Permit will ensure the survival of required plantings. However, staff has concerns about the survival of the required plantings between year 1 and year 5, and thus a monitoring report, supplied by the applicant, will be required two years after the initial Zoning Permit is finalized to demonstrate success of the mitigation plan. This would allow time within the required five-year monitoring period to replace plantings that have not survived.

Therefore, with the conditions to apply for an initial Zoning Permit and a final Zoning Permit and to submit a two-year monitoring report, *this criterion will be met.*

- d. Except for public improvement projects undertaken by the City, a performance guarantee which meets the requirements of Section 33.700.050, Performance Guarantees, for construction, monitoring, and maintenance of the mitigation site in accordance with the mitigation plan will be filed with the City Auditor prior to issuance of any development or building permit.**

**Findings:** The applicant is required to obtain a Zoning Permit for mitigation plantings prior to installation. The applicant will be required to submit a performance guarantee which meets the requirements of Section 33.700.050 Performance Guarantees for construction, monitoring and maintenance of the mitigation site prior to issuance of the Zoning Permit. With the condition of approval for submittal of a performance guarantee prior to issuance of the Zoning Permit, *the criterion is met.*

**6. Public right-of-way dedication in an environmental zone will be approved if the review body finds that there are no practicable alternatives that have less impact on the protected resource.**

**Findings:** No public right-of-way dedication is proposed for this review, therefore *this criterion is not applicable.*

## DEVELOPMENT STANDARDS

### 33.515.278 Development Standards

- A. Except for temporary uses and as specified in Paragraph A.6, land uses and activities on lots or sites which contain an environmental zone on any portion of them require revegetation of the vegetated transition area as follows:**
- 1. Species must be classified as native on the *Portland Plant List*, and not be identified on the Nuisance Plants List;**
  - 2. Planting must cover 90 percent of the ground within one year or two growing seasons after planting;**
  - 3. At least 8 species of plants must be used. Fifty percent of any seed mix used must be grass and 50 percent flowers when measured by area covered; and**
  - 4. If cover requirements are not met within one year from issuance of an occupancy permit, final inspection, or certificate of completion, replanting is required and the requirements of this section must be met within one year or two growing seasons of replanting.**
  - 5. Plants used for revegetation may also count towards other landscaping requirements.**
  - 6. Exception for sites with an existing nonconforming use, allowed use, limited use, or conditional use. Sites with an existing nonconforming use, an allowed use, a limited use, or a conditional use are subject to the following regulations:**
    - a. Required improvements. When alterations are made to a site that does not meet the standards of A.1-5, above, the site must be brought into conformance with the standards of A.1-5. The cost of meeting the standards of A.1-5 may be counted toward the cost of upgrades required by Subsection 33.258.070.D. However, the standards of A.1-5 must be met first.**
    - b. Area of required improvements. Except as provided in 33.258.070.D.2.c(2), Exception for Site with Ground Leases, required improvements must be made to the entire site.**
    - c. Timing and cost of required improvements. The timing and cost of the required improvements is specified in 33.258.070.D.2.d. However, where 33.258.070.D.2.d refers to the standards listed in subparagraph 33.258.070.D.2.b, the standards of A.1-5 are also included.**

**Response:** The above development standards A.1 through A.5 are being met by the standards listed in 33.515.278.B.1.a-e below. Standard A.6 is being met through the corrective actions required by 17-235415 CC which will bring the site into conformance with allowed uses and remove disturbance from the environmental zone. *This standard is met.*

**B. Land uses, land divisions, and activities within an environmental zone must meet the following standards:**

**1. Revegetation in a vegetated transition area must meet the following:**

**a. Species must be classified as native on the *Portland Plant List*, and not be identified on the Nuisance Plants List;**

**Response:** The herbaceous seed mix, shrubs, and trees identified in the applicant's Mitigation Plan (Exhibit C.1) for the site are classified as native on the *Portland Plant List* and are not classified as prohibited or nuisance plants. Further, all invasive species will be removed from the environmental zone as part of the revegetation plan. *This standard is met.*

**b. Planting must cover 90 percent of the ground within one year or two growing seasons after replanting;**

**Response:** The applicant will monitor the plantings and verify that seeding/planting has achieved 90 percent cover in the first year. *This standard is met.*

**c. At least 8 species of plants must be used. Fifty percent of any seed mix used must be grass and 50 percent flowers when measured by area covered; and**

**Response:** The applicant is proposing to use nine different plant species and a native grass mix with the 50% grass and flowers for mitigation. The plants, shrubs and trees below will be installed.

Common Name	Scientific Name	Where to Plant	Plant Species
Oregon Grape	<i>Mahonia aquifolium</i>	Buffer Enhancement Zone	Native Plant
Douglas spirea	<i>Spiraea douglasii</i>	Buffer Enhancement Zone	Shrub
Blue elderberry	<i>Sambucus nigra ssp. caerulea</i>	Buffer Enhancement Zone	Shrub
Salmonberry	<i>Rubus spectabilis</i>	Buffer Enhancement Zone	Native Plant
Douglas Fir	<i>Pseudotsuga menziesii</i>	Buffer Enhancement Zone	Tree
Red-flowering Current	<i>Ribes sanguineum</i>	Buffer enhancement Zone	Native Plant
Red-Osier Dogwood	<i>Cornus sericea</i>	Buffer Enhancement Zone	Shrub
Snowberry	<i>Symphoricarpos albus (L)</i>	Buffer enhancement Zone	Shrub
Oregon Ash	<i>Fraxinus latifolia</i>	Buffer enhancement Zone	Tree

The Mitigation Plan for this project (Exhibits C.1) identifies species to be used within the Resource Area for a total of two tree species and seven different shrub species. The native hydroseed mix includes a 50/50 mix of native grasses and flowers. *This standard is met.*

**d. If cover and species requirements are not met within one year or two growing seasons from issuance of an occupancy permit, final inspection, or certificate of completion, replanting is required and the requirements of this section must be met within one year of replanting.**

**Response:** The applicant will monitor the area to assess cover requirements and replant if necessary. *This standard is met.*

**e. Plants used for revegetation may also count towards other landscaping requirements.**

**Response:** No plants used for revegetation are being used to count towards other landscaping requirements. *This standard is not applicable.*

**2. Revegetation in a protected resource must meet the following:**

**a. Species must be classified as native on the *Portland Plant List*, and not be identified on the Nuisance Plants List;**

**Response:** The herbaceous seed mix, shrubs, and trees identified in the applicant's Mitigation Plan for the site are classified as native on the *Portland Plant List* and are not

classified as prohibited or nuisance plants. Further, all invasive species will be removed from the environmental zone as part of the revegetation plan. *This standard is met.*

**b. Planting must cover 90 percent of the ground within one year;**

**Response:** The applicant will monitor the plantings and verify that reseeding has achieved 90 percent cover in the first year. *This standard is met.*

**c. Figure 2-3 of the *Natural Resources Protection Plan for the Columbia South Shore* lists all protected natural resources in the plan district and identifies their resource values. If a site is a riparian area, Subsubparagraph (1) must be met. If a site is not a riparian area, but is a meadow or open space without trees, Subsubparagraph (2) must be met. All other sites must meet Subsubparagraph (1).**

**(1) Planting requirements with trees:**

- At least 8 species of plants must be used;
- At least 2 species must be shrubs and 2 must be trees;
- Fifty percent of any seed mix must be grass and 50 percent flowers when measured by area covered;
- One tree and 3 shrubs are required for every 500 square feet of planting area; and
- Trees and shrubs must be planted in clusters of at least 3.

**(2) Planting requirements without trees:**

- At least 8 species of groundcover plants must be used; and
- Fifty percent of any seed mix used must be grass and 50 percent flowers when measured by area covered.

**Response:** The applicant's proposal meets subsubparagraph (1). The portion of the site located within the environmental zone will be planted with at least eight species of plants, including a 50/50 seed mix with half wildflowers and half grasses when measured by seed count. Additionally, one tree and three shrubs will be planted for every 500 square feet of mitigated Resource Area, resulting in the planting of at least 10 trees and 30 shrubs, planted in clusters of three. Seven different species of shrubs and two species of trees are proposed to be planted. The proposed Mitigation Plan has demonstrated it meets all items in the above standard; therefore, *this standard is met.*

**d. If cover and species requirements are not met within one year from issuance of any occupancy permit or final inspection, replanting is required and the requirements of this section must be met within one year of replanting.**

**Response:** The applicant will monitor the area to assess cover requirements and replant if necessary. *This standard is met.*

**e. Plants used for revegetation may also count towards other landscaping requirements.**

**Response:** No plants used for revegetation are being used to count towards other landscaping requirements. *This standard is not applicable.*

**3. Herbicides used for removal of vegetation must be listed by the U.S. Environmental Protection Agency as appropriate for application in aquatic areas and use must be in accordance with directions for application.**

**Response:** No herbicides will be applied to any vegetation within the Environmental Zone, therefore *this standard is not applicable.*

**4. Areas of cleared vegetation must be reseeded or replanted within one year of vegetation removal.**

**Response:** The only areas of vegetation proposed for removal consist of areas where there are invasive species within the environmental zone. All areas cleared of vegetation, both native and invasive, will be re-vegetated within one year of removal as shown on the applicant's Mitigation Plan (Exhibit C.1). *This standard is met.*

- 5. All development or activities which disturb ground or remove vegetation must conform to Chapter 24.70, Clearing, Grading, and Erosion Control, and to follow the *Erosion Control Technical Guidance Handbook*. In addition, the following standards must be met:**
- a. Wet weather. All development between November 1 and April 30 of any year, which disturbs more than 500 square feet of ground, requires wet weather measures described in the *Erosion Control Technical Guidance Handbook*. These measures must be met until issuance of any occupancy permit or final inspection;**
  - b. Maintenance. Erosion control measures must be maintained until 90 percent of all disturbed ground is covered by vegetation;**
  - c. Self inspection. Areas where the ground is disturbed must be inspected by or under the direction of the owner at least once every 7 calendar days, within 24 hours of any storm event greater than one-half inch of rain in any 24-hour period, or at any time when water runoff occurs. These measures must be met until issuance of any occupancy permit or final inspection; and**
  - d. Record keeping. Records must be kept of all inspections. Instances of measurable erosion must be recorded with a brief explanation of corrective measures taken. This record must be available to the City and retained until final inspection.**

**Response:** This project will be designed and implemented in accordance with the requirements of Chapter 24.70 and the general practices described in the City's Erosion Control Manual. Additionally, the applicant will comply with the standards outlined above for wet weather construction, maintenance, inspection, and record keeping. *This standard is met.*

- 6. Stormwater discharge must pass through water quality facilities which conform to Chapter 17.38, Drainage and Water Quality.**

**Response:** No stormwater discharge or outfalls are proposed, therefore *this standard is not applicable.*

- 7. Stormwater discharge into a mitigation area is not allowed unless it is part of a mitigation plan.**

**Response:** No stormwater discharge into the mitigation area is proposed, therefore *this standard is not applicable.*

- 8. Except for stormwater discharges, industrial or sanitary discharges, including wastewater and overflow, into the slough system is not allowed.**

**Response:** The project does not involve industrial, sanitary, or other wastewater discharges into the slough system. *This standard is met.*

- 9. Construction and ongoing maintenance for overhead or underground utilities, including sanitary sewer connections to individual properties and stormwater outfalls, cannot affect more than a 25-foot wide corridor across the resource. These activities cannot result in the killing or removal of trees over 6 inches in diameter measured 4-1/2 feet above the ground.**

**Response:** The proposed project will not create a utility corridor within the resource, therefore *this standard is not applicable.*

- 10. Road improvements across the slough must be by bridge unless a water control structure is a necessary part of the design.**

**Response:** The proposed project does not involve road improvements across the Columbia Slough. *This standard is not applicable.*

- 11. Water quality monitoring facilities may be up to 100 square feet in area.**

**Response:** The proposal does not include any water quality monitoring facilities. *This standard is not applicable.*

**12. In Employment and Industrial zones, new lots completely within the EP zone are exempt from minimum lot size and shape requirements of Section 33.140.200, Lot Size. All other new lots must meet the minimum size and shape requirements of Section 33.140.200, Lot Size, outside of land zoned EP.**

**Response:** The proposed project does not involve the creation of new lots. *This standard is not applicable.*

**13. Location and design of any trail or recreation facilities must conform to standards of the Columbia South Shore Plan District. All new trail easements must be in the outer 25 feet of the environmental zone except as necessary to connect to existing easements or trails on adjacent sites.**

**Response:** The proposed project does not include any trails or recreation facilities. *This standard is not applicable.*

**14. Construction of the trail or recreation facilities cannot result in the removal of trees more than 6 inches in diameter, measured 4-1/2 feet above the ground and are not required to be located within wetlands subject to state or federal regulations.**

**Response:** The proposed project does not include any trails or recreation facilities. *This standard is not applicable.*

**15. Staging areas for slough and drainageway maintenance may have up to 5,000 square feet of gravel, paving, structures, or other ground-disturbing uses or activities exclusive of an access road. Access roads within an environmental zone may be up to 300 feet in length.**

**Response:** The proposed project does not include any slough or drainageway maintenance. *This standard is not applicable.*

**16. Water levels in the slough will be maintained at an elevation of between 5 and 10 feet mean sea level in order to preserve wetlands that are protected by an Environmental zone. An exception to this standard is for maintenance or emergency situations when a lower level is necessary.**

**Response:** The proposed project does not include any elements which will impact water levels in the slough. *This standard is not applicable.*

**17. Nonconforming situations**

**a. Required improvements.**

**(1) Paved areas in Environmental Overlay Zones. When the value of proposed alterations on the site, as determined by BDS, is more than \$158,400, paved areas that do not meet plan district regulations must be removed from environmental zoned areas. The value of the alterations is based on the entire project, not individual building permits.**

**(2) Unpaved exterior areas. When development is proposed or alterations are made to a site, unpaved exterior improvements must comply fully with development standards.**

**(3) The cost of meeting the standards of B.17.a(1) and (2), above, may be counted toward the cost of upgrades required by Subsection 33.258.070.D. However, the requirements of B.17.a(1) and (2) must be met first.**

**b. Area of required improvements. Except as provided in 33.258.070.D.2.c(2), Exception for Sites with Ground Leases, required improvements must be made to the entire site.**

**c. Timing and cost of required improvements. The timing and cost of the required improvements is specified in 33.258.070.D.2.d. However, where 33.258.070.D.2.d refers to the standards listed in subparagraph 33.258.070.D.2.b, the standards of B.17.a(1) and (2), above, are also included.**

**d. Removal of existing bridges, utilities, or public improvements is not required.**

**Response:** The proposed project is not an addition to or expansion of an existing nonconforming situation. The proposed project is a corrective action for a nonconforming situation. *This standard is not applicable.*

**18. Land divisions. The following standards apply to land divisions where at least half of the site is within an environmental zone:**

**a. In residential zones, at least 40 percent of the land division site not in streets must be devoted to open areas;**

**b. In nonresidential zones, at least 20 percent of the land division site not in streets must be devoted to open areas; and**

**c. In all zones, at least half of the open area must be in common ownership.**

**Response:** This proposal is not a land division. *This standard is not applicable.*

#### 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.

Bureau	Code Authority and Topic	Contact Information
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; 2014 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	Title 24 - Building Code, Flood Plain, Site Development; Title 10 - Erosion and Sediment Control	503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>
Urban Forestry	Title 11 - Trees	503-823-8733 <a href="http://www.portlandoregon.gov/trees/">http://www.portlandoregon.gov/trees/</a>

#### CONCLUSIONS

The applicant proposes to remove two areas of gravel fill and provide mitigation plantings to the southern portion of the site within the environmental zone adjacent to the Columbia Slough. Additionally, the applicant will plant a variety of native shrubs and trees in order to cover 90% of the disturbed area within two growing seasons.

No significant impacts to the protected resource (Columbia Slough and its banks) are expected; removal of invasive species and installation of native plantings will result in overall improvements to the environmental functions and values of the site. Subject to conditions related to mitigation and on-going maintenance activities, the project is expected to result in improved riparian and upland habitat within the project area.

The applicants 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:

- Removal of non-native fill gravel and invasive species from the environmental zone; and
- Revegetation of the impacted environmental zone subject to the Development Standards of 33.515.278

all in substantial conformance with Exhibit C.1, as approved by the City of Portland Bureau of Development Services on **February 19, 2019**. Approval is subject to the following conditions:

**A. BDS Zoning Permits are required for the removal of non-native gravel and for the inspection of required mitigation plantings.** The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc.). Plans shall include the following statement, "**Any field changes shall be in substantial conformance with approved LU 18-206220 EV Exhibits C.1**

**B.** The applicant shall obtain a BDS Zoning Permit for approval and inspection of the revegetation/mitigation plan for a total of at least 10 trees, 70 shrubs, 5,285 square feet of native seed mix, and the removal of gravel fill and invasive species throughout the environmental zone on the subject site, in substantial conformance with Exhibit C.1. Any plant substitutions shall be selected from the *Portland Plant List*, and shall be substantially equivalent in size and structure to the original plant.

1. Permit plans shall show:

- a. The location and size of areas of gravel to be removed from the environmental zone.
- b. The location of the trees, shrubs and seed mix required by this condition to be planted in the mitigation area and labeled as "new required landscaping." The plans shall be to scale, and shall illustrate a naturalistic arrangement of plants and should include the location, species, quantity and size of plants to be planted.
- c. The applicant shall indicate on the plans selection of either tagging plants for identification or accompanying the BDS inspector for an on-site inspection.
- d. As part of the application for Zoning Permit for installation of mitigation plantings, the applicant shall provide a performance guarantee for the installation, monitoring for a period of **five years**, and maintenance of the revegetation/mitigation site in accordance with the Mitigation Plan (Exhibits C.1) and with Conditions C and D, and according to the requirements of Section 33.700.050, Performance Guarantees. The performance guarantee shall be reviewed by BDS and the City Attorney and filed with the City Auditor.

Pursuant to section 33.700 of the Portland Zoning Code, unused portions of the required performance guarantee will be returned/released to the applicant only after BDS determines compliance based on the final Zoning Permit (Condition D.1).

2. Prior to installing required mitigation plantings, all gravel fill and non-native, invasive plants shall be removed from the entire resource area, using handheld equipment.
3. Plantings shall be installed between October 1 and March 31 (the planting season).
4. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Zoning Permit.

5. All mitigation and revegetation 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; or the applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.
- C.** The applicant shall submit a two-year monitoring report to ensure interim survival of the required plantings of 10 trees, 70 shrubs, 5,285 square feet of native seed mix, and removal of invasive species in the resource area, in substantial conformance with Exhibit C.1. Any required plantings that have not survived must be replaced and documented on the two-year monitoring report.
1. All required landscaping shall be continuously maintained, by the land owner in a healthy manner, with no more than 15% cover by invasive species. Plants that die shall be replaced in kind.
- D. The land owner shall maintain the required plantings** to ensure survival and replacement. The land owner is responsible for ongoing survival of required plantings during and beyond the designated five-year monitoring and maintenance period. After the 5-year initial establishment period, the landowner shall:
1. Obtain a Zoning Permit for a final inspection at the end of the 5-year maintenance and monitoring period. The permit must be finalized no later than 5 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.
  2. All required landscaping shall be continuously maintained, by the land owner in a healthy manner, with no more than 15% cover by invasive species. Plants that die shall be replaced in kind.
- 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.

**Staff Planner: Leah Dawkins**

**Decision rendered by:**  **on February 15, 2019**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: February 20, 2019**

**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 July 20, 2018, and was determined to be complete on January 11, 2019.

*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 July 20, 2018.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: May 11, 2019.**

**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 March 6, 2019** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **March 6, 2019** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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

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

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

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

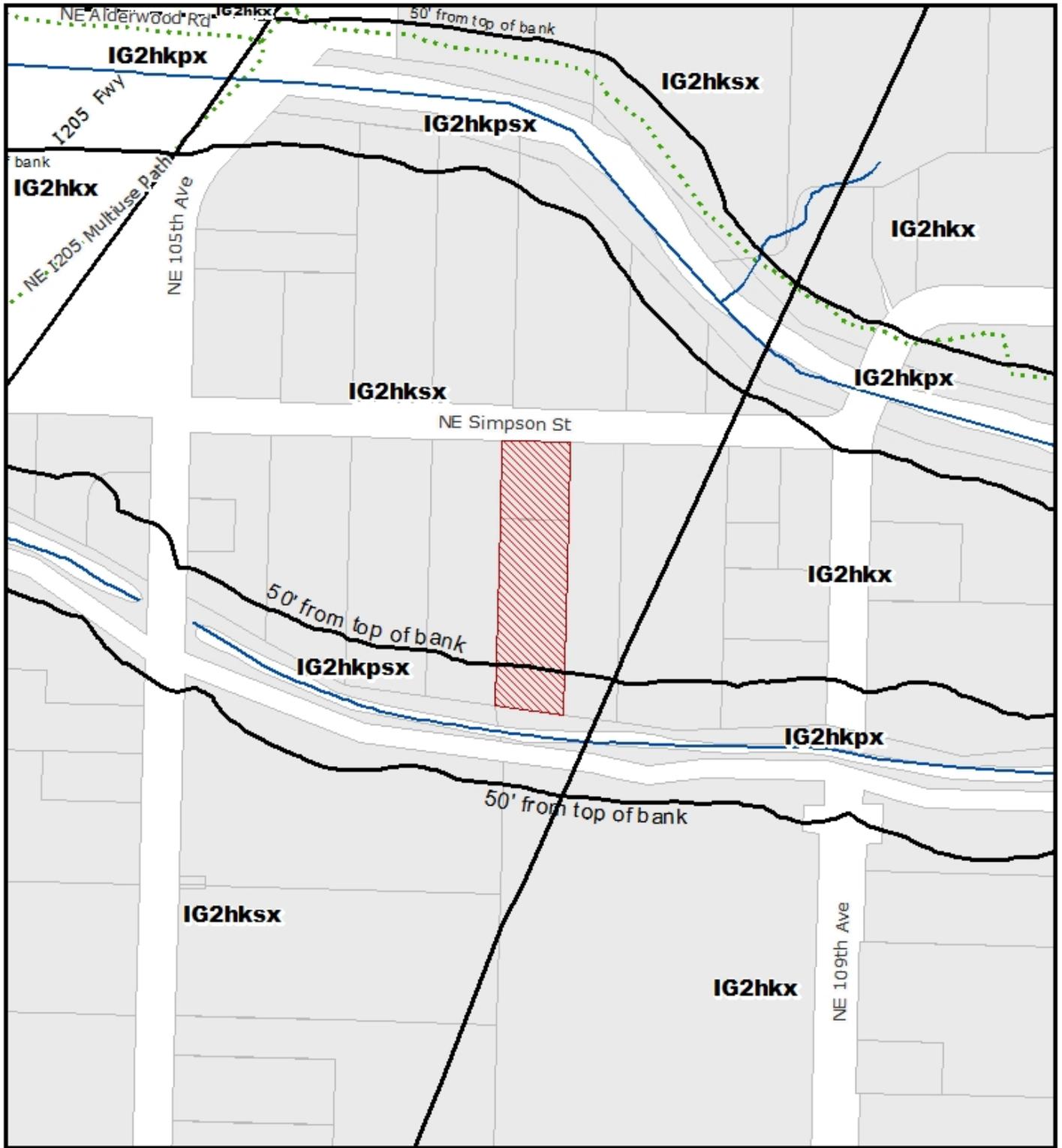
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Original Narrative
  2. Revised Narrative
  3. Neighborhood Meeting Memo
  4. Vicinity Maps and Site Context
  5. Site Photos
  6. Site Plans
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Mitigation Plan (attached)
  2. Existing Conditions Plan
- D. Notification information:
  1. Mailing List
  2. Re-notice Mailing List
  3. Mailed notice
  4. Mailed Re-notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Bureau of Transportation Engineering and Development Review
  3. Water Bureau
  4. Fire Bureau
  5. Site Development Review Section of BDS
  6. Bureau of Parks, Forestry Division
  7. Life Safety Section of Bureau of Development Services
- F. Correspondence: None Submitted
- 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

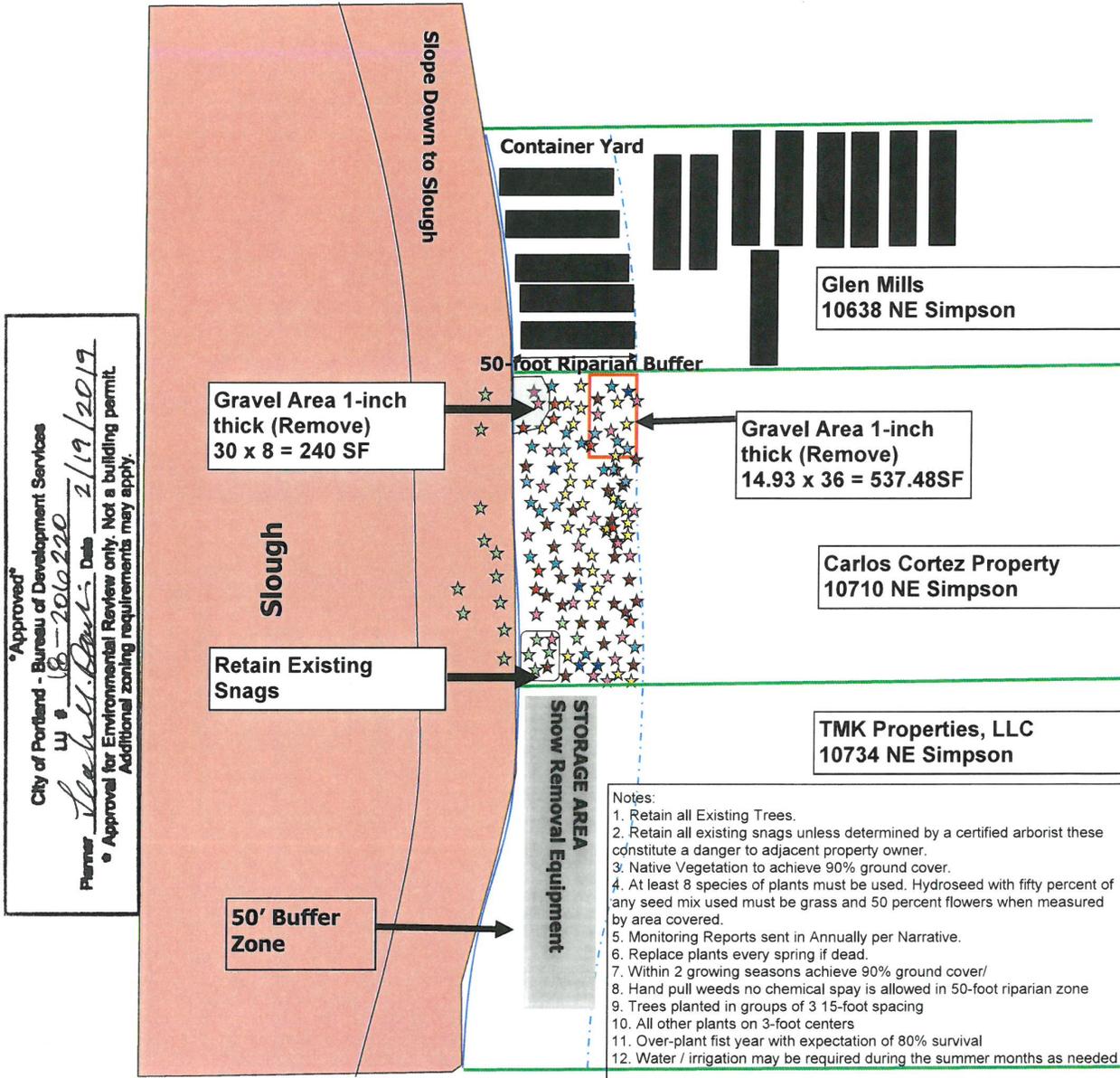


THIS SITE LIES WITHIN THE:  
 COLUMBIA SOUTH SHORE PLAN DISTRICT  
 SOUTHERN INDUSTRIAL SUBDISTRICT

-  Site
-  Stream
-  Recreational Trails

File No.	LU 18-206220 EN
1/4 Section	2441
Scale	1 inch = 200 feet
State ID	1N2E15CD 2000
Exhibit	B Jul 24, 2018

# Figure 1. Mitigation Site Plan



Common Name	Scientific Name	Where to Plant	Plant Species	#
★ Oregon Grape	<i>Mahonia aquifolium</i>	Buffer Enhancement Zone	Native Plant	20
★ Douglas spirea	<i>Spiraea douglasii</i>	Buffer Enhancement Zone	Shrub	25
★ Blue elderberry	<i>Sambucus nigra ssp. caerulea</i>	Buffer Enhancement Zone	Shrub	10
★ Salmonberry	<i>Rubus spectabilis</i>	Buffer Enhancement Zone	Native Plant	15
★ Douglas Fir	<i>Pseudotsuga menziesii</i>	Buffer Enhancement Zone	Tree	2
★ Red-flowering Currant	<i>Ribes sanguineum</i>	Buffer enhancement Zone	Native Plant	10
★ Red-Osier Dogwood	<i>Cornus sericea</i>	Buffer Enhancement Zone	Shrub	5
★ Snowberry	<i>Symphoricarpos albus (L)</i>	Buffer enhancement Zone	Shrub	5
★ Oregon Ash	<i>Fraxinus latifolia</i>	Buffer enhancement Zone	Tree	8

• 10 native trees  
• 30+ native shrubs  
• 5,285 SF native 50/50 seed mix.

Applicant: Carlos Cortez  
Adjacent Property Owners:  
Address: 10710 NE Simpson Street, Portland, OR 97220  
In: Along Columbia Slough  
Near: City of Portland in Multnomah County  
Date: January 10, 2019

Northern Resource Consulting, Inc.  
ENVIRONMENTAL SERVICES  
1339 Commerce Ave., Suite 309B  
Longview, Washington 98632  
Phone: (360)414-5239  
Fax: (360)414-4021

1 Inch = 40 ft.

CASE NO. 18-206220  
EXHIBIT C.1