Portland City Auditor
Hearings Office
1900 SW 4th Avenue, Room 3100, Portland, OR 97201 phone: 503.823.7307
www.portlandoregon.gov/hearings fax: 503.823.4347

DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

I. GENERAL INFORMATION

File Number: LU 18-243135 GW (Hearings Office 4190008)

Applicant: Jorge Villavicencio
Bureau of Parks & Recreation
1120 SW 5th Avenue #1302
Portland, OR 97204

Property Owner: City of Portland Bureau of Parks and Recreation
1120 SW 5th Avenue # 1302
Portland, OR 97204

Appellant: Jory A. Olson
7230 SE 13th Avenue
Portland, OR 97202

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representatives: William Piro and Ethan Brown

Site Address: 7951 SE 7th Avenue

Legal Description: TL 300 16.65 ACRES, SECTION 23 1S 1E; TL 400 6.14 ACRES, SECTION 23 1S 1E

Tax Account Numbers: R991230130 and R991230680

State ID Numbers: 1S1E23 00300, 1S1E23 00400

Quarter Sections: 3730, 3731, 3830, 3831

Neighborhood: Sellwood-Moreland

Business District: Sellwood-Westmoreland

District Neighborhood Coalition: Southeast Uplift

Plan District: None

Zoning: *Base Zone:* Open Space
Overlay Zone: River Natural 'n,' River General 'g,' River Water quality 'q,' Scenic Resource 's'

Land Use Review: Type II, GW – Greenway Review

BDS Administrative Decision: Approval with conditions.

II. BACKGROUND

Public Hearing: The hearing was opened at 1:30 p.m. on April 22, 2019 (the "Hearing"), in the third floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 2:38 p.m. The record was closed at the end of the Hearing.

Testified at the Hearing:
Ethan Brown
Jorell (Jory) Olson
Donald Bolton
Jorge Villavicencio

Summary of BDS Staff Description of the Proposal: (See Exhibit H.3)

> *"During the winter storms of early 2016, a portion of a pedestrian trail in the upper north side of Sellwood Park was severely impacted by heavy rainfall. A landslide that was approximately 35 feet long, 18 feet wide at the top and at the bottom, and 12 feet in depth affected the trail's overall serviceability and led to the closure of the trail between the summer and early winter of 2017 and 2018. In the spring of 2018, due to continued use by the public, Portland Parks and Recreation ("Applicant") elected to repair the site before heavy use of the trail began the following summer. Applicant issued an Emergency Declaration and approved funding in order stabilize the slope and repair the trail."*

Staff Decision. On or about February 19, 2019, the Bureau of Development Services Land Use Services ("BDS") issued a NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD (Exhibit H.3 – the "Administrative Decision"). In summary, BDS approved the Applicant's proposal with conditions.

Appeal. Jory A. Olson ("Appellant") submitted, in a timely manner, an appeal challenging the validity of the Administrative Decision (Exhibit H.2 – the "Appeal").

Appellant, in his Appeal, contended that the Administrative Decision failed to adequately address the following Portland City Code ("PCC") sections:

- 33.440.250
- 33.440.260
- 33.440.300
- 33.480.010

Appellant, in greater detail, argued the Administrative Decision was inadequate or invalid based upon the following reasons:

> *"Insufficient time was given to notify neighbors and the Sellwood Moreland Improvement League (SMILE) of the proposed work and to come up with a compromise solutions that would mitigate the damage done by the landslide without blocking the view. LU 18-243135 GW was postmarked on December 24, 2018 (Figure 1) and was probably not mailed until after Christmas. Appellant didn't even open the notice until January 6, 2019 and the deadline to respond was January 14, 2019. The next SMILE meeting wasn't scheduled until January 16, 2019 and there was no time left on the agenda for that meeting to discuss this notification. The appellant was able to get on the agenda for the February 20th SMILE meeting, but the decision had already been rendered by then. There may not have been an intent to push through a decision during the holidays when nobody was paying attention, but it does give that appearance." (March 5, 2019 Addendum I…)*
>
> *"The location of the proposed work was not clear. There were no street names on the map that would help to locate the actual site of the proposed work. See Figure 2. When the appellant showed the notification to several neighbors none of us were certain where the worksite was. This was clarified by the decision, but it was too late by then." (March 5, 2019 Addendum I…)*
>
> *"Title 33.440.350.A states '**For all greenway reviews**. The Willamette Greenway design guidelines must be met for all greenway reviews.' The appellant believes that the following design guidelines have not been met:*
>
> 1. *Title 33.440.250 provides for the preservation of viewpoints. Scenic Views, sites and Corridors ESEE Analysis and Recommendations, Scenic Corridors – Volume VI SD states that the purpose of SD 38-29 was to protect the "…views of Oaks Bottom, the river, the west hills and the downtown skyline. The open, upper elevations of the bluff provides dramatic glimpses of blue herons feeding in Oaks Bottom." The view from viewpoint BP 38-03 of Oaks Bottom, the river, the wets hills and the downtown skyline will be*

blocked by planting 50 new, extremely large trees in the proposed work area.

2. *Title 33.340.260 states:*

   *'**Purpose:** View corridors provide visual access and connections to the river for neighborhoods and business districts who might otherwise be visually cut-off from the river. View corridors are generally extensions of existing public rights-of-way through to the river. View corridors are one tool used to comply with the public access requirements of the Comprehensive Plan and the Willamette Greenway Plan.'*

3. *Title 33.440.300 states:*

   'The purpose [of] greenway review is to ensure that: ....Development will conserve, enhance and maintain the scenic qualities and natural habitat of lands along the river,....'

   The appellant does not believe that this intent was properly considered as part of the decision of LU 18-243135 GW. The planting of 50 new, extremely large trees will block the view from SD-29.

4. *Title 33.480.010 states:*

   'The Scenic Resource zone is intended to
   - *Protect Portland's significant scenic resources that provide benefits to the public as identified by the City in the Scenic Resources Protection Plan (1991) and the Central City Scenic Resources Protection Plan (2017);*
   - *Enhance the appearance of Portland to make it a better place to live and work;*
   - *Create attractive entrance ways to Portland and its districts;*
   - *Improve Portland's economic vitality by enhancing the City's attractiveness to its citizens and to visitors; and*
   - *Implement the scenic resource policies, goals, and objectives of Portland's Comprehensive Plan.*

The purposes of the Scenic Resource zone are achieved by <u>establishing height limits within view corridors to protect significant views and by establishing additional landscaping and screening standards to preserve and enhance identified scenic resources</u> [emphasis added].'

The applicant acknowledges the fact that the proposed construction is not within the scenic overlay zone. However, in the attached email (Addendum II), Mindy Brooks, City Planner, acknowledges what she terms as a 'mis-match' between the requirements of 33.440 (Greenway Overlay Zone) and 33.340 (Scenic Resource Zone) requirements.

There is an effort underway as part of the South Reach project to balance the requirements of the Greenway Overlay Zone (33.340) with those of the Scenic Resource Zone (33.480).

Planting 50 new, extremely large trees that when mature will absolutely block views inventoried as SDE 38.29 before South Reach has the opportunity to address the 'mis-match' is not prudent or fair.

Desired Resolution: *Note that the proposed work will not affect the view from appellant's property. The appellant is appealing the decision on LU 180243135 GW at his own expense as a public service to the current and future residents of the Sellwood Moreland neighborhood.*

The appellant believes that with more time it is possible to come up with a solution that balances the requirements of the Greenway Overlay Zone Overlay with those of the Scenic Resource Zone Overlay to produce a win-win.

The appellant would like either the BDS or SMILE to host a meeting where we can come together and produce a solution that balances these competing goals.

There is precedent for this type of balancing that Mindy Brooks describes in #2 on the attached Addendum II. The appellant would like to see this kind of compromise."

Staff Response to Appeal. BDS Staff, in summary (Exhibit H.5), responded to Appellant's appeal statements quoted above by stating:

"1. Staff followed the required timeline of a Type II procedure. Notice was mailed on December, 24, 2018 and the comment period ended January 14, 2019.

2. The project site was not on or adjacent to a named street, but located along a trail, as described in the proposal. The site plans could have been more clearly labeled, but staff was working with what had been provided by the applicant.

3. *The appellant states that design guidelines have not been met, but only lists development standards and purpose statements. The Willamette Greenway design guidelines, as well as the standards for public viewpoints and view corridors cited by the appellant, apply only to resources identified in Willamette Greenway Plan.* ***None of the scenic resources adjacent to the project site are included in that plan and are not pertinent to the applicable greenway approval criteria."***

Hearing Testimony. Appellant, during his Hearing testimony, stated that he "basically agreed" with the BDS Staff testimony.

Appellant stated that he felt the notice of the proposal period was "too short" considering it was mailed during the 2018 holiday season (mailed on or about December 24, 2018). Appellant stated that during the 2018 holiday season it was impossible to effectively interact with SMILE and the City. Appellant did not identify any specific sections of the PCC or other relevant law(s) in support of his "notice" argument. BDS Staff testified that all relevant notice/time related laws were followed in this case.

Appellant "stipulated," in his Hearing testimony, that the "project site" for this case is not included within a mapped scenic overlay zone boundary. Appellant argued, at the Hearing, that scenic issues in this case should be considered from recognized scenic corridors and also from the public rights-of-ways such as SE Sellwood Boulevard and SE 7th.

Appellant testified that current planning programs/initiatives, such as the *South Reach Project* referenced in Appellant's Addendum II (see also comments from Mindy Brooks attached to Addendum II), are currently addressing a "mismatch" between goals to protect scenic resources/values and Greenway resources such as trees. Appellant reiterated his desired resolution would be the occurrence of further discussions/negotiations involving the City and SMILE for the purpose of reaching a compromise at the "project site" that better balanced the scenic resources/values and Greenway resources.

BDS Staff, at the Hearing, testified that Appellant's references to *Greenway* design guidelines and purpose statements, while sincere, were not relevant to the approval criteria considered in the Administrative Decision. BDS Staff stated that the "project site" in this case is not within a mapped/identified scenic corridor. BDS Staff stated, therefore, that scenic corridor design related guidelines are not relevant to the decision rendered in the Administrative Decision. BDS Staff also stated, at the Hearing, that "purpose statements" are generally not considered relevant approval criteria.

BDS Staff testified that the trees selected by the City Bureau of Parks and Recreation ("Applicant") included medium and large trees. BDS Staff stated the "project site" is well below the elevation of SE Sellwood Boulevard and SE 7th and should not be noticeable from any recognized view corridor, SE Sellwood Boulevard or SE 7th.

Donald Bolton ("Bolton") testified at the Hearing. Bolton indicated that he lived in the SE Sellwood Boulevard and Oaks Bottom area. Bolton stated that landslides, in the area, are inevitable. Bolton stated that over his 35 years living in the area, views from his residence to the west and downtown have been degraded by the intrusion of scrub maples.

Jorge Villavicencio ("Villavicencio"), representative of the Applicant, testified at the Hearing. Villavicencio stated that the reason for submitting an application around the 2018 holiday season was that a landslide occurred at, or near, the "project site" and that a trail used to connect SE Sellwood Boulevard/SE 7th and Sellwood Park/Oaks Bottom became unsafe. Villavicencio stated despite warning signs, the public continued to use the unsafe trail and that two persons were injured while attempting to use the trail. Villavicencio stated the City declared an "emergency" to rebuild/repair the trail. Villavicencio stated the rebuild/repair project was undertaken and an application for land use approval was filed.

Written Correspondence. A letter was submitted (Exhibit H.4) into the record by Chuck Martin ("Martin"). Martin stated that in "the notice of appeal" there was a reference to the planting of 50 trees but no clear indication of where those trees would be planted or the mature height of the trees. Martin noted that Sellwood Boulevard is "a prime viewing spot fort the 4th of July fireworks show at Oaks Park." Martin stated that additional trees, as proposed to be planted at the "project site," could make viewing the fireworks show from SE Sellwood Boulevard more difficult.

III. HEARINGS OFFICER'S FINDINGS RELATED TO APPEAL ISSUES.

Notice. The Hearings Officer appreciates Appellant's frustration related to the timing of notices issued by the City in this case. The Hearings Officer acknowledges that many organizations, such as SMILE, do not officially meet around the year-end holiday season. However, the Hearings Officer finds no evidence in the record that any notice issued by the City in this case failed to meet PCC or other relevant law timelines. The Hearings Officer finds that Appellant failed to provide, in the evidentiary record, substantial evidence of a procedural/notice error in this case.

Purpose Sections. Appellant argued that numerous *Willamette Greenway* overlay zone "purpose sections" should have been considered in the Administrative Decision. PCC 33.440.250.A, 33.440.260.A, 33.440.300, and 33.480.010 are PCC "purpose" sections. Generally, under Oregon land use law, "purpose" sections are not considered relevant approval criteria. In limited circumstances, "purpose" sections can be relevant approval criteria if the "purpose" section is clearly identified somewhere in the code to be an approval criterion. The Hearings Officer reviewed the PCC and found no section identifying one or more of the sections referenced above (PCC 33.440.250.A, 33.440.260.A, 33.440.300, and 33.480.010) should be considered as relevant approval criteria in this case. Further, Appellant did not direct the Hearings Officer to any section of the PCC or any other relevant law/rule that would make the above-referenced sections (PCC 33.440.250.A, 33.440.260.A, 33.440.300, and 33.480.010)

relevant approval criteria. The Hearings Officer finds PCC sections PCC 33.440.250.A, 33.440.260.A, 33.440.300, and 33.480.010 are not relevant approval criteria in this case. **Scenic Corridors/Viewpoints.** The Hearings Officer finds BDS Staff and Appellant agree that the "project site" is not within any recognized or mapped City identified scenic viewpoint.[1] The Hearings Officer finds PCC 33.480.040.B is not applicable to this case. The Hearings Officer finds PCC 33.440.250 does not apply to this case.

The Hearings Officer adopts, as additional findings for this section of the Hearings Officer's decision, pages 2 (Proposal; 4th paragraph) and 5 (first full paragraph) of the Administrative Decision. The Hearings Officer also adopts as additional findings for this section of the Hearings Officer's decision the "Staff Response To Appeal" PowerPoint slide (Exhibit H.5, page 9).

Mismatch – Scenic and Greenway. Appellant asserted that there is a "mismatch" between the goals of the Greenway Overlay Zone and Scenic Resource Zone Overlay. The Hearings Officer finds the Appellant failed to clearly identify how his assertion that a "mismatch" between the goals of the Greenway Overlay Zone and Scenic Resource Overlay Zone are legally relevant to this case.

The Hearings Officer finds Appellant did not identify any specific section of a relevant approval criterion, related to his "mismatch argument" that was improperly interpreted by BDS Staff in the Administrative Decision. The Hearings Officer finds Appellant's reference to an ongoing planning effort (South Reach Project) to be irrelevant to the Administrative Decision.

Inadequate Description of the "project site." Appellant argued that "the location of the proposed work was not clear" (Exhibit H.2, page 1 of 4, item 2). The Hearings Officer finds that the original notice referenced by Appellant provided Appellant legal notice that a specific project was being proposed within Sellwood Park. The Hearings Officer finds that the lack of a detailed description of the precise location of the "project site" in the original notice is not a fatal defect of the Proposal Notice.

The Hearings Officer finds Appellant was placed upon legal notice that a project was proposed in Sellwood Park and that the project could potentially impact the Appellant. The Hearings Officer finds the original Proposal Notice included a map (Exhibit H.2, page 2 of 4) identifying the location of the "project site." The Hearings Officer was able, in reviewing the map (Exhibit H.2, page 2 of 4) to identify SE 7th and SE Malden. The Hearings Officer also finds that the Proposal Notice contained contact information that would allow the Appellant, through further inquiry, to accurately determine the precise location of the "project site."

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[1] Exhibit H.2, page 4 of 4 – "The appellant acknowledged the fact that the proposed construction is not within the scenic overlay zone."

The Hearings Officer finds that Applicant's failure to identify the "project site" by "street names on a map" does not make the notice legally inadequate/insufficient.

IV. DECISION

The Appellant did not prevail in this appeal. The Hearings Officer attaches and adopts the Administrative Decision as the Hearings Officer's Order. The Hearings Officer finds the Administrative Decision is valid.

Greg Frank

Gregory J. Frank, Hearings Officer

May 2, 2019

Date

Application Determined Complete:	December 18, 2018
Staff Decision to Hearings Officer:	April 11, 2019
Decision Mailed:	May 2, 2019
Last Date to Appeal:	May 23, 2019

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

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

Appealing this decision. The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

Recording the final decision.

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. If approved, this 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 3 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 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 here.
- All applicable development standards, unless specifically exempted as part of this land use review.
- All requirements of the building code.
- 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. Project Summary, Approval Criteria, Proposed Mitigation
   2. Site Plan, Trail Plan View, Tree Protection Plan, Planting Plan, Erosion Control Details
   3. Geotechnical Engineering Report
   4. 12-18-2019 Project Summary, Approval Criteria, Proposed Mitigation
   5. 12-18-2019 Site Plan, Trail Plan View, Tree Protection Plan, Planting Plan, Erosion Control Details
B. Zoning Map
C. Plans/Drawings
   1. Tree Protection Plan
   2. Construction Access Plan
   3. Tree Planting Plan
   4. Planting Details
   5. Construction Elevation
   6. OHWL and Site Map
D. Notification information
   1. Mailing list
   2. Mailed notice
E. Agency Responses
   1. Bureau of Environmental Services
   2. Bureau of Transportation Engineering and Development Review
   3. Water Bureau
   4. Fire Bureau
   5. Site Development Review Section of BDS
   6. Bureau of Parks, Forestry Division
   7. Life Safety Review Section of BDS
F. Correspondence
   1. Jory Olson, January 16, 2019, comments via email
   2. Jory Olson, January 16, 2019, comments via email
G. Other
   1. Original LU Application
   2. Incomplete Letter
   3. Location of Scenic Resource Map
H. Received in the Hearings Office
   1. Hearing Notice - Brown, Ethan
   2. Type II and IIx Decision Appeal Form w/ attachments - Brown, Ethan
   3. Notice of Type II Decision on a Proposal in Your Neighborhood - Brown, Ethan **(attached)**
   4. Letter dated 4-3-2019 - Martin, Charles

5. PowerPoint presentation printout - Brown, Ethan
6. Record Closing Information - Hearings Office

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

Ted Wheeler, Mayor
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: February 19, 2019

To: Interested Person

From: William Piro, Land Use Services
503-823-6039 / William.Piro@portlandoregon.gov

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

The Bureau of Development Services has approved a proposal in your neighborhood. The 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.

RECEIVED
APR 11 2019
HEARINGS OFFICE

CASE FILE NUMBER: LU 18-243135 GW

GENERAL INFORMATION

Applicant: Jorge Villavicencio | Bureau of Parks & Recreation
1120 SW 5th Ave #1302 | Portland, OR 97204
(971)-347-6104 | Jorge.Villavicencio@portlandoregon.gov

Owner: **City of Portland Bureau of Parks and Recreation**
1120 SW 5th Ave. # 1302 | Portland, OR 97204

Site Address: 7951 SE 7TH AVE

Legal Description: TL 300 16.65 ACRES, SECTION 23 1S 1E; TL 400 6.14 ACRES, SECTION 23 1S 1E
Tax Account No.: R991230130, R991230680
State ID No.: 1S1E23 00300, 1S1E23 00400
Quarter Section: 3730, 3731, 3830, 3831

Neighborhood: Sellwood-Moreland, contact David Schoellhamer at chair.landuse.smile@gmail.com.
Business District: Sellwood-Westmoreland, contact Emily Pinkstaff at emily.pinkstaff@newseasonsmarket.com
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.

Plan District: None
Other Designations: None

Zoning: *Base Zone:* Open Space
Overlay Zone River Natural 'n', River General 'g', River Water quality 'q', Scenic Resource 's'.

Case Type: GW – Greenway Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

CITY OF PORTLAND
HEARINGS OFFICE
Exhibit #H-3
Case # 4190008
Bureau Case # 18-243135 GW

Proposal:
During the winter storms of early 2016, a portion of a pedestrian trail in the upper north side of Sellwood Park was severely impacted by heavy rainfall. A landslide that was approximately 35 feet long, 18 feet wide at the top and at the bottom, and 12 feet in depth affected the trail's overall serviceability and led to the closure of the trail between the summer and early winter of 2017 and 2018. In the spring of 2018, due to continued use by the public, Portland Parks and Recreation (PP&R) elected to repair the site before heavy use of the trail began the following summer. PP&R issued an Emergency Declaration and approved funding in order stabilize the slope and repair the trail.

Those stabilization and repair measures included the installation of 13 cantilevered soldier piles encased in concrete. A reinforced concrete beam is set on-grade that supports a lagging wall constructed of treated lumber. The solider piles are set at a horizontal distance of about 8 feet from the location of the landslide scarp and are imbedded into the hillside up to 18 feet below the ground surface. The lagging wall is backfilled with crushed rock and is set behind a rock fascia. Adjacent to the repaired trail and sitting atop the repair structures noted above, is a 4-foot wood fence set in concrete footings. The gaps between each fence post is covered with a wide metal mesh. The entirety of the repaired slope is covered by a fabric anchoring blanket to further ensure slope compaction and stability. In addition, a total of 3 trees or 53-inches diameter at breast height (D.B.H.) of trees were removed during construction. The applicant has proposed to mitigate for the loss of those trees with a total of 50 trees. Additional mitigation includes 270 shrubs and 2 pounds of seeded ground cover. The mitigation plantings will cover an area of approximately 3,292.65 square feet.

This portion of Sellwood Park lies within the Open Space zone and the River Natural and River Water Quality overlay zone. However, the repairs are not within the River Water Quality overlay zone *setback* nor does this site have river frontage.

In addition, a portion of the site falls within the Scenic Resource overlay, more specifically the north east corner of the site is designated as a scenic corridor SD 38-29 *Sellwood Boulevard* in the *Scenic Resources Protection Plan.* This corridor includes a panorama (VP) and a view of the city (VC). These scenic resources are listed as VC 38-30 *City from Sellwood Park* and VP 38-03 *View from Sellwood Boulevard* as identified in the *Scenic Views, Sites and Corridors - ESEE Analysis and Recommendations* guide. The proposed landslide hazard repairs and mitigation plantings are not located in that portion of the site designated as a scenic corridor; therefore, the regulations for scenic corridors pursuant to 33.480.040.B are not applicable. In addition the viewpoints do not have designated height limits for structures or vegetation.

Pursuant to 33.440 The Portland Zoning Code requires Greenway Review for exterior alterations to development within the Greenway overlay zone, *landward* of the Greenway Setback (33.440.310.B.1). In this case the proposal consists of development landward of the Greenway setback and does not meet any exemptions; therefore, the work must be approved through a Greenway Review.

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

- Greenway Review Approval Criteria, Zoning Code Section 33.440.350; and
- *Willamette Greenway Design Guidelines*

Facts

Description of the Site:

The location of the landslide occurred at the northern portion of Sellwood park approximately 480 feet south west of the Sellwood Park parking lot located on SE 7th Ave. The landslide occurred between the Bluff Trail to the north at a low elevation of 44 feet and the Oaks Bottom

Trail to the south at an upper elevation ranging between 80 and 88 feet. The site is steeply sloped and within a potential landslide hazard area. According to the applicant's geotechnical report, the project area is not within a mapped historic landslide area; however, there are mapped slides 200 feet southwest and 500 feet northeast of the project area on the same general slope. The portion of Oaks Bottom Trail that was damaged by the slide is east and landward of the greenway setback nearly 850 feet from the edge of the Willamette river. In addition, the nearest 100-year flood plain is approximately 230 feet from the lowest point of the site.

Existing vegetation surrounding the slide area consists of deciduous and evergreen trees including: big leaf maple (*Acer macrophyllum),* Oregon Ash (*Fraxinus latifolia),* balsam poplar (*Populus balsamifera),* Douglas fir (*Pseudotsuga menziesii*), grand fir (*Abies grandes*), and western red cedar (*Thuja plicata).*

The site and work zone are comprised of two types of wildlife habitat as identified within the *Portland Lower Willamette Wildlife Inventory.* The southern portion of the site, considered part of Zone 24.4 in Sellwood Park, is classified as Rank III habitat and consists of large grassy areas and mature tree thorough the park and around the perimeter, particularly on the western edge and slope. The park has fair value for wildlife cover and food but does not have any water resources. The location of the slide at the north end of Sellwood Park, transitions downslope into Zone 21.1b, Oaks Bottom. According to the *Portland Lower Willamette Wildlife Inventory,* this area is classified as Upland Mixed Forest and consists of Douglas Fir, Oregon white oak, bigleaf maples, black locust, snowberry, blackberry species, Indian plum, elderberry, and other species.

Zoning: The zoning designation on the site includes Open Space (OS) base zones, with the River General Greenway (g), River Natural (n), River Water quality (q), and the Scenic Resources overlay zones.

The Open Space base zone is intended to preserve and enhance public and private open, natural, and improved park and recreational areas identified in the Comprehensive Plan. These areas provide opportunities for outdoor recreation, provide contrasts to the built environment, preserve scenic qualities, protect sensitive or fragile environmental areas, enhance and protect the values and functions of trees and the urban forest, preserve the capacity and water quality of the stormwater drainage system, and provide pedestrian and bicycle transportation connections.

The Greenway overlay zone is intended to protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along Portland's rivers; establish criteria, standards, and procedures for the development of land, change of uses, and the intensification of uses within the Greenway; and implement the City's Willamette Greenway responsibilities as required by ORS 390.310 to 390.368 and Metro's Title 3.

The overall site is within the River General (g) overlay zone; however, the landslide repairs are located north and outside of this overlay. Therefore, this overlay is not applicable to this project. The River General zone allows for uses and development which are consistent with the base zoning, which allow for public use and enjoyment of the riverfront, and which enhance the river's natural and scenic qualities.

The landslide repairs are within the River Natural (n) overlay zone. The River Natural zone protects, conserves, and enhances land of scenic quality or of significant importance as wildlife habitat. Because the landslide repairs are within the River Natural overlay zone, the greenway approval criteria 33.440.350.C are applicable.

The landslide repairs are also within the River Water Quality (q) zone. The River Water Quality zone is designed to protect the functional values of water quality resources by limiting or mitigating the impact of development in the setback. The landslide repairs are not within the River Water Quality overlay zone setback; therefore, the approval greenway review approval criteria 33.440.350.G are not applicable.

Land Use History: Approvals of quasi-judicial land use reviews run with the land and are transferred with ownership. Associated conditions or restrictions continue to apply. City records indicate that prior land use reviews have been conducted for this site. Prior land use reviews include the following:

- **LU 1974-003495 CU:** Approval of a Conditional Use Review for park improvements in Sellwood Park.
- **LU 1977-001826 CU:** Approval of a Conditional Use Review for a portable restroom in Sellwood Park.
- **LU 1982-005296 GP:** Approval of a Greenway Permit Review to allow construction of a 60-inch diameter water pipe through the greenway and across the Willamette River
- **LU 1993-010188 GW:** Approval of a Greenway Review for restoration of South Fill area of the Oaks Bottom Wildlife Refuge.

1. Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed December 24, 2018. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Portland Bureau of Transportation
- Life Safety
- Fire Bureau
- Portland Parks and Recreation, Urban Forestry Division
- Water Bureau

The Site Development section of the Bureau of Development Services provided comments and conditions for the project, as detailed in Exhibit E.5. Site Development requests as a condition of approval permanent erosion control plan be included as a requirement of the zoning permit application and permanent erosion control measures be installed and inspected prior to approval of the zoning permit final inspection.

Staff Response: As a condition of approval the applicant will be required to provide a permanent erosion control plan with the zoning permit for mitigation plantings and will be required to install permanent erosion control measures prior to approval of the zoning permit final inspection.

2. Neighborhood Review: Two written responses were received via email from a neighbor, Jory Olson on January 16, 2019 and January 17, 2019 (Exhibits F.1 and F.2)

Mr. Olson initially raised concerns that the City was planning to do landscaping on the slope beneath SE 13 Avenue (the eastern bluff of Oaks Bottom) and that this work would obscure views that are protected within the adjacent scenic corridor, inventoried as SD 38-29. In a follow-up email to staff, Mr. Olson further clarified his concerns that the Scenic Corridor extends from the intersection of SE 7th Avenue and Sellwood Boulevard at the north end of Sellwood Park, north along Sellwood Blvd. Along this stretch of the Scenic Corridor there is a designated viewpoint inventoried as VP 38-03. Mr. Olson argues that the installation of 55 new trees (as shown in the planting plan) will block the view from the north end of SE 7th Avenue (the start of SD 38-29) and VP 38-03. In addition, Mr. Olson suggests that the proposed Saskatoon serviceberry (*Amelanchier alnifolia*), designated as part of the applicant's mitigation plan, will get Pacific Coast Pear Rust (a type of fungus, *Gymnosporangium libocedri)* because Mr. Olson has Spring Flurry trees (*Amelanchier laevis)* on his property that are badly infected with this type of fungus and are not thriving. Lastly, Mr. Olson requested that the proposed work be postponed until he and the Sellwood-Moreland Improvement League (SMILE) have had additional time to discuss the proposal.

Staff Response:

As noted above in the discussion of the proposal a portion of the site falls within the Scenic Resource (s) overlay. However, this overlay does not encompass the project area where the landslide repairs were conducted, or where the mitigation trees are proposed. Therefore, the regulations for scenic corridors pursuant to 33.480.040.B are not applicable. Staff clarified the location of the project with Mr. Olson via email on January 17, 2019 (Exhibit F.2, pg. 2 & 3). Although the scenic corridor, identified as SD 38-29 *Sellwood Boulevard* in the *Scenic Resources Protection Plan* includes several viewpoints near the project site; the protection plan does not express view protection conflicts with trees planted for mitigation on the southern bluff of Oaks Bottom nor do these viewpoints have required height limits. The viewpoint (VP 38-03) referenced by Mr. Olson is described in detail in the *Scenic Views, Sites, and Corridors – ESEE Analysis and Recommendations – Volume I* on pg. 24 and is shown in Exhibit G.3. This panorama occurs at approximately SE 11th Avenue and the view includes Oaks Bottom, the downtown skyline, Ross Island, and the west hills. Based on City GIS mapping, this view point is located 1,300 feet to the north east from the project area. The views described above are located west and north of the viewpoint and will not be impacted by the proposed tree plantings to the south. Furthermore, the *Scenic Views, Sites, and Corridors – ESEE Analysis and Recommendations – Volume I* pg. 25 concludes, "There are no conflicts with preservation of the resource. The view is fully protected through the existing zoning mechanisms and the Open Space designation on Oaks Bottom..." The project site remains in Open Space zoning and is further protected by the Greenway overlay.

With regards to the applicant's proposed mitigation plantings, Saskatoon serviceberry (*Amelanchier alnifolia*), also known as Western serviceberry, is designated as a native shrub in the *Portland Plant List* and is therefore compliant with Section 33.248.090, Mitigation and Restoration Plantings. In addition, as a condition of this land use approval, the property owner will be responsible for the ongoing survival of all mitigation plantings during a period of 1 years at which time the property owner will be responsible for obtaining a Zoning Permit for final inspection of the required plantings. Any required plantings that have not survived must be replaced.

ZONING CODE APPROVAL CRITERIA

33.440.350 Greenway Review Approval Criteria

The approval criteria for a Greenway review have been divided by location or situation. The divisions are not exclusive; a proposal must comply with **all** of the approval criteria that apply to the site. A Greenway review application will be approved if the review body finds that the applicant has shown that all of the approval criteria are met.

A. For all Greenway reviews. The Willamette Greenway design guidelines must be met for all Greenway reviews.

Findings: The Willamette Greenway Design Guidelines address the quality of the environment along the river and require public and private developments to complement and enhance the riverbank area. The Design Guidelines are grouped in a series of eight Issues:

Issue A. Relationship of Structures to the Greenway Setback Area: This issue "applies to all but river-dependent and river-related industrial use applications for Greenway Approval, when the Greenway trail is shown on the property in the *Willamette Greenway Plan.*" These guidelines call for complementary design and orientation of structures so that the Greenway setback area is enhanced;

Issue B. Public Access: This issue "applies to all but river-dependent and river-related industrial use applications for Greenway Approval, when the Greenway trail is shown on the property in the *Willamette Greenway Plan.*" These guidelines call for integration of the Greenway trail into new development, as well as the provision of features such as view points, plazas, or view corridors;

Issue F. Alignment of Greenway Trail: This issue "applies to all applications for Greenway Approval with the Greenway trail shown on the property in the Willamette Greenway Plan." These guidelines provide direction for the proper alignment of the Greenway trail, including special consideration for existing habitat protection and physical features in the area of the proposed alignment.

Findings: The *Willamette Greenway Plan* does not show the Greenway Trail on this site. *Therefore, these guidelines are not applicable.*

Issue C. Natural Riverbank and Riparian Habitat: This issue "applies to situations where the river bank is in a natural state, or has significant wildlife habitat, as determined by the wildlife habitat inventory." These guidelines call for the preservation and enhancement of natural banks and areas with riparian habitat;

Guidelines:

1. Natural Riverbanks. The natural riverbank along the Willamette River should be conserved and enhanced to the maximum extent practicable. Modification of the riverbank should only be considered when necessary to prevent significant bank erosion and the loss of private property, or when necessary for the functioning of a river-dependent or river-related use.

2. Riparian Habitat. Rank I riparian habitat areas, as identified in the wildlife habitat inventory, should be conserved and enhanced with a riparian landscape treatment. Other riparian habitat should be conserved and enhanced through riparian landscape treatments to the maximum extent practical. Conservation however does not mean absolute preservation. Some discretion as to what vegetation should remain and what can be removed and replaced should be permitted. Riparian habitat treatments should include a variety of species of plants of varying heights that provide different food and shelter opportunities throughout the year.

Findings: The project site is far removed from the riverbank and riparian habitat areas. Therefore, *these guidelines are not applicable.* However, to satisfy the approval criteria under Section 33.440.350.C *Development within the River Natural zone,* the applicant has proposed a mitigation plan that includes planting 50 native trees, 270 native shrubs, and approximately 2 pounds of seeded groundcover. This landscape treatment will help to ensure the Rank I and Rank III riparian habitats found in Zone 21.1b in Oaks Bottom and in Zone 24.4 in Sellwood Park are conserved.

Issue D. Riverbank Stabilization Treatments: This Issue "applies to all applications for Greenway Approval." This guideline promotes bank treatments for upland developments that enhance the appearance of the riverbank, promote public access to the river, and incorporate the use of vegetation where possible;

Guidelines:

1. Riverbank Enhancement. Riverbank stabilization treatments should enhance the appearance of the riverbank, promote public access to the river, and incorporate the use of vegetation where practical. Areas used for river-dependent and river-related industrial uses are exempted from providing public access.

Findings: The project site is far removed from the riverbank. Therefore, *this guideline does not apply to the proposal.*

Issue E. Landscape Treatments: This Issue "applies to all applications for Greenway Approval which are subject to the landscape requirements of the Greenway chapter of Title 33 Planning and Zoning of the Portland Municipal Code." This Issue calls for landscaping treatments that create a balance between the needs of both human and wildlife populations in the Greenway Setback area or riverward of the Greenway Setback.

Guidelines:

1. Landscape Treatments. The landscape treatment should create an environment which recognizes both human and wildlife use. Areas where limited human activity is expected should consider more informal riparian treatments. Areas of intense human use could consider a more formal landscape treatment. The top of bank may be considered a transition

area between a riparian treatment on the riverbank and a more formal treatment of the upland.

2. Grouping of Trees and Shrubs. In areas of more intense human use, trees and shrubs can be grouped. The grouping of trees and shrubs allows for open areas for human use and has the secondary value of increasing the value of the vegetation for wildlife.

3. Transition. The landscape treatment should provide an adequate transition between upland and riparian areas and with the landscape treatments of adjacent properties.

Findings: The proposal is not subject to landscape requirements. Therefore, *these guidelines do not apply to the proposal.*

Issue G. Viewpoints: This issue "applies to all applications for Greenway Approval with a public viewpoint shown on the property in the *Willamette Greenway Plan* and for all applications proposing to locate a viewpoint on the property". These guidelines provide direction about the features and design of viewpoints, as required at specific locations;

Issue H. View Corridors: This issue "applies to all applications for Greenway Approval with a view corridor shown on the property in the *Willamette Greenway Plan.*" These guidelines provide guidance in protecting view corridors to the river and adjacent neighborhoods;

Guidelines:

1. Right-of-way Protection. View corridors to the river along public rights-of-way are to be protected. These rights-of-way should not be vacated.

2. View Protection. Buildings, structures, or other features must be located to avoid blocking view corridors.

3. Landscape Enhancement. Landscape treatments within view corridors should frame and enhance the view of the river.

Findings: The *Willamette Greenway Public Access Map (Map 5 of 5)* as shown in the *Willamette Greenway Plan* does not identify a viewpoint nor a view corridor on the property; therefore, *these guidelines do not apply.* Please note the *Willamette Greenway Plan* identifies a separate set of viewpoints and view corridors from those identified in the *Scenic Views, Sites, and Corridors – ESEE Analysis and Recommendations – Volume I -VI.*

B. **River frontage lots in the River Industrial zone.** In the River Industrial zone, uses that are not river-dependent or river-related may locate on river frontage lots when the site is found to be unsuitable for river-dependent or river-related uses. Considerations include such constraints as the size or dimensions of the site, distance, or isolation from other river-dependent or river-related uses, and inadequate river access for river-dependent uses.

Findings: The site is not within the River Industrial zone; therefore, *this criterion does not apply.*

C. **Development within the River Natural zone.** The applicant must show that the proposed development, excavation, or fill within the River Natural zone will not have significant detrimental environmental impacts on the wildlife, wildlife habitat, and scenic qualities of the lands zoned River Natural. The criteria apply to the construction and long-range impacts of the proposal, and to any proposed mitigation measures. Excavations and fills are prohibited except in conjunction with approved development or for the purpose of wildlife habitat enhancement, riverbank enhancement, or mitigating significant riverbank erosion.

Findings: The landslide repair occurred within the River Natural zone. To guarantee the safety of the Sellwood Park trail that was eroded during the slide event, the stabilization and restoration of the site incorporated geotechnical recommendations provided by the Bureau of Environmental Services through formal geotechnical evaluation of the site (Exhibit A.3). The recommendations included the installation of steel piles that help to support the slope and to provide a structurally stable system capable of withstanding slide soil failure in the future. A

detailed discussion of these repair measures can be found on page 2 of this report. All work was contained within the immediate vicinity of the landslide and tree protection (Exhibit C.1) and construction access (Exhibit C.2) measures were in place during construction of the stabilization system. However, during a January 13, 2019 site visit, the Site Development section of BDS observed the permanent erosion control measures which were installed as part of the project. Upon inspection, portions of the erosion control measures appeared to be ineffective over much of the slope downhill of the retaining wall. To prevent future erosion and undermining of adjacent portions of the trail, Site Development is requesting that the permanent erosion control measures should be repaired and improved. As a condition of land use approval, the applicant will be required to supply a permanent erosion control plan as a requirement of a Zoning Permit application. Permanent erosion control measures must be installed and inspected prior to approval of the Zoning Permit final inspection.

Pursuant to Title 11 requirements for sites managed by the city, the applicant was required to consult with the City Forester at the preliminary project design phase if city or street tree removal was likely to occur to complete the project. The proposal was reviewed by Urban Forestry in case #18-117911. In order to implement slope stabilization measures, the applicant removed three trees totaling 53-inches diameter at breast height (D.B.H.). In order to mitigate for the tree removal and to restore wildlife habitat, the applicant is proposing to plant 50 trees, 270 shrubs, and 2lbs of ground cover. The applicant's planting plan (Exhibit C.3) demonstrates that plant material selected is native and has been chosen from the *Portland Plant List.* The tree species chosen for the site include bigleaf maple, Oregon white oak, and pacific madrone. Shrub and grass species include: Saskatoon (Western serviceberry) serviceberry, ironwood, red elderberry, common snowberry, Cascade Oregon Grape (Cascade barberry), Pacific bleeding heart, false Solomon's seal, Western sword fern, drops-of-gold, western trillium, and stream violet. No nuisance plants are proposed and there are no nuisance trees located in the mitigation area.

Portland Parks and Recreations will be implementing the permanent slope erosion protection, seeding, and planting of the slope. Due to the type of species, density recommendations, number of trees, shrubs, and ground cover, the applicant is anticipating that if 25% of the trees and shrubs become established/survive, successful replanting will have been achieved. The applicant also states, "If after a year, it is determined that the survival rate is less than 25%, replanting will be required." Although, the applicant has determined a performance benchmark to judge if the plantings are successful, the applicant did not provide sufficient justification regarding why more than 75% of the plants would be allowed to fail after 1-year. Pursuant to 33.248.090.G, *Mitigation and Restoration Plantings, Monitoring and Reporting*, monitoring of landscape area is the ongoing responsibility of the property owner. Plants that die must be replaced in kind and the applicant is required to provide written proof that planting is completed one year after the planting is completed.

Therefore, to ensure mitigation plantings are installed and the proposed plantings survive, the applicant will be required to obtain a Zoning Permit to inspect the proposed plantings. This zoning permit shall include the permanent erosion control plans requested by Site Development. Because the plantings and additional erosion control measures are vital to the stabilization of the slope, the applicant will be required to obtain the first zoning permit within 2 months from the date this land use review is approved. In addition, the applicant will be required to obtain a second Zoning Permit at the end of a 1-year maintenance and monitoring period to ensure that 100% of the proposed plantings have survived during this period.

With regard to scenic qualities, the landslide repairs allowed Portland Parks and Recreation to safely reopen the Oaks Bottom trail and includes the installation of a new guardrail along a portion of this steep trail. During an October site visit, staff walked along the trail and noted views of Oaks Bottom and the city to the north that would have been otherwise inaccessible had the trail remained closed. The restored trail, in concert with new mitigation plantings, will help to restore the scenic qualities of the project site.

With the condition to obtain a Zoning Permit for the inspection of mitigation plantings and to ensure permanent erosion control measures have been reviewed and installed, *this criterion can be met.*

D. Development on land within 50 feet of the River Natural zone. The applicant must show that the proposed development or fill on land within 50 feet of the River Natural zone will not have a significant detrimental environmental impact on the land in the River Natural zone.

Findings: The proposed landslide hazard repair is entirely within the River Natural zone; therefore, *this criterion does not apply.*

E. Development within the Greenway setback. The applicant must show that the proposed development or fill within the Greenway setback will not have a significant detrimental environmental impact on Rank I and II wildlife habitat areas on the riverbank. Habitat rankings are found in the *Lower Willamette River Wildlife Habitat Inventory*.

Findings: Oaks Bottom is identified as Rank I wildlife habitat, and Sellwood Park is identified as Rank III habitat, the development is not within the Greenway setback; therefore, *this criterion does not apply*

F. Development riverward of the Greenway setback. The applicant must show that the proposed development or fill riverward of the Greenway setback will comply with all of the following criteria:

1. The proposal will not result in the significant loss of biological productivity in the river;

Findings: The proposed development is not riverward of the Greenway setback; *this criterion does not apply.*

G. Development within the River Water Quality overlay zone setback. If the proposal includes development, exterior alterations, excavations, or fills in the River Water Quality overlay zone setback the approval criteria below must be met. River-dependent development, exterior alterations, excavations, and fills in the River Water Quality zone are exempt from the approval criteria of this subsection

Findings: This site is not within the River Water Quality overlay zone setback; *this criterion does not apply.*

H. Mitigation or remediation plans. Where a mitigation or remediation plan is required by the approval criteria of this chapter, the applicant's mitigation or remediation plan must demonstrate that the following are met:

1. Except when the purpose of the mitigation could be better provided elsewhere, mitigation will occur:
   a. On site and as close as practicable to the area of disturbance;
   b. Within the same watershed as the proposed use or development; and
   c. Within the Portland city limits.

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

3. The mitigation or remediation plan contains a construction timetable and a minimum 1-year monitoring and maintenance plan that demonstrates compliance with Subsection 33.248.090.E and includes the following elements:
   a. Identification of the responsible party or parties that will carry out the mitigation or remediation plan;

b. Identification of clear and objective performance benchmarks that will be used to judge the mitigation or remediation plan success; and
c. contingency plan that indicates the actions to be taken in the event that performance benchmarks are not met.

Findings: The work is not within the water quality zone therefore, no mitigation or remediation is required for the proposal by the approval criteria of this chapter; therefore, *these criteria do not apply.*

Note: To clarify, the applicant did provide a planting plan (Exhibit C.3); however, this plan was submitted to demonstrate appropriate mitigation for the removal of trees and to show why the proposal would not have a significant detrimental environmental impact on wildlife, wildlife habitat, and scenic qualities of the land within the River Natural overlay per 33.440.350.C.

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 11 can be met, and those 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 seeks retroactive approval for the construction of slope stabilization and restoration measures to repair a landslide that occurred in the winter of 2016. These repairs included the installation of 13 cantilevered soldier piles encased in concrete. A reinforced concrete beam is set on-grade supporting a lagging wall constructed of treated lumber. Adjacent to the repaired trail and sitting atop the stabilization structures, is a 4-foot tall wood fence set in concrete footings. The gaps between each fence post is covered with a wide metal mesh. The entirety of the repaired slope is covered by a fabric anchoring blanket for slope compaction and stability. In addition, a total of 3 trees or 53-inches diameter at breast height (D.B.H.) of trees were removed during construction. The applicant has proposed to mitigate for the loss of those trees with a total of 50 trees. Additional mitigation includes 270 shrubs and 2 pounds of seeded ground cover.

The applicant has provided findings for the approval criteria listed above and, with conditions, the applicable approval criteria will be able to be met.

ADMINISTRATIVE DECISION

Approval of Greenway Review for construction of the following:

- Construction of a soldier pile wall, and wood fence.
- Removal of 3 tree trees totaling 53-inches D.B.H.

within the Greenway overlay zones, and in substantial conformance with Exhibits C.1 through C.6, as signed, and dated by the City of Portland Bureau of Development Services on **February 14, 2019**. Approval is subject to the following conditions:

A. All permits: Copies of the stamped Exhibits **C.1, C.2, C.3, C.4**. The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for any required permits. Plans shall include the following statement, ***"Any field changes shall be in substantial conformance with approved LU 18-229144 GW Exhibits C.1 through C.4."***

B. The applicant is required to obtain a BDS Zoning Permit within two months from the date of this land use approval for the inspection of a planting plan for a total of **50 trees, 270 shrubs**, and **2 lbs.** of seeded ground covers, in substantial conformance with Exhibits C.3 and C.4 Tree Planting Plan and Planting Details. Any plant substitutions shall be selected from the *Portland Plant List*, and shall be substantially equivalent in size to the original plant. **In addition, a permanent erosion control plan is to be included with the Zoning**

Permit. Permanent erosion control measures are to be installed, inspected, and approved to the satisfaction of BDS Site Development prior to approval of the zoning permit final inspection.

1. Permit plans shall show:
   a. The location of the trees, shrubs and ground covers 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.

   b. 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. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.
1. Plantings shall be installed between October 1 and March 31 (the planting season).
2. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
3. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Zoning Permit.
2. All required 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; <u>or</u> the applicant shall arrange to accompany the BDS inspector to the site to locate required plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.

C. The land owner shall maintain the required plantings for one year to ensure survival and replacement. <u>The land owner is responsible for ongoing survival of required plantings during and beyond the designated one-year monitoring period.</u> After the 1-year initial establishment period, the landowner shall:

1. Obtain a Zoning Permit for a final inspection at the end of the 1-year maintenance and monitoring period. The applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. The permit must be finaled no later than 1 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. Required plants that die shall be replaced in kind.

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

Note: In addition to the requirements of the Zoning Code, all uses and development must comply with other applicable City, regional, state and federal regulations.
This decision applies to only the City's greenway regulations. Activities which the City regulates through PCC 33.430 may also be regulated by other agencies. In cases of overlapping City, Special District, Regional, State, or Federal regulations, the more stringent regulations will control. City approval does not imply approval by other agencies.

Staff Planner: William Piro

Decision rendered by: _____ **on February 14, 2019.**
By authority of the Director of the Bureau of Development Services

Decision mailed: February 19, 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 September 25, 2018, and was determined to be complete on December 18, 2018.

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 September 25, 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: April 17, 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 5, 2019** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th 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.

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 5, 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.

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

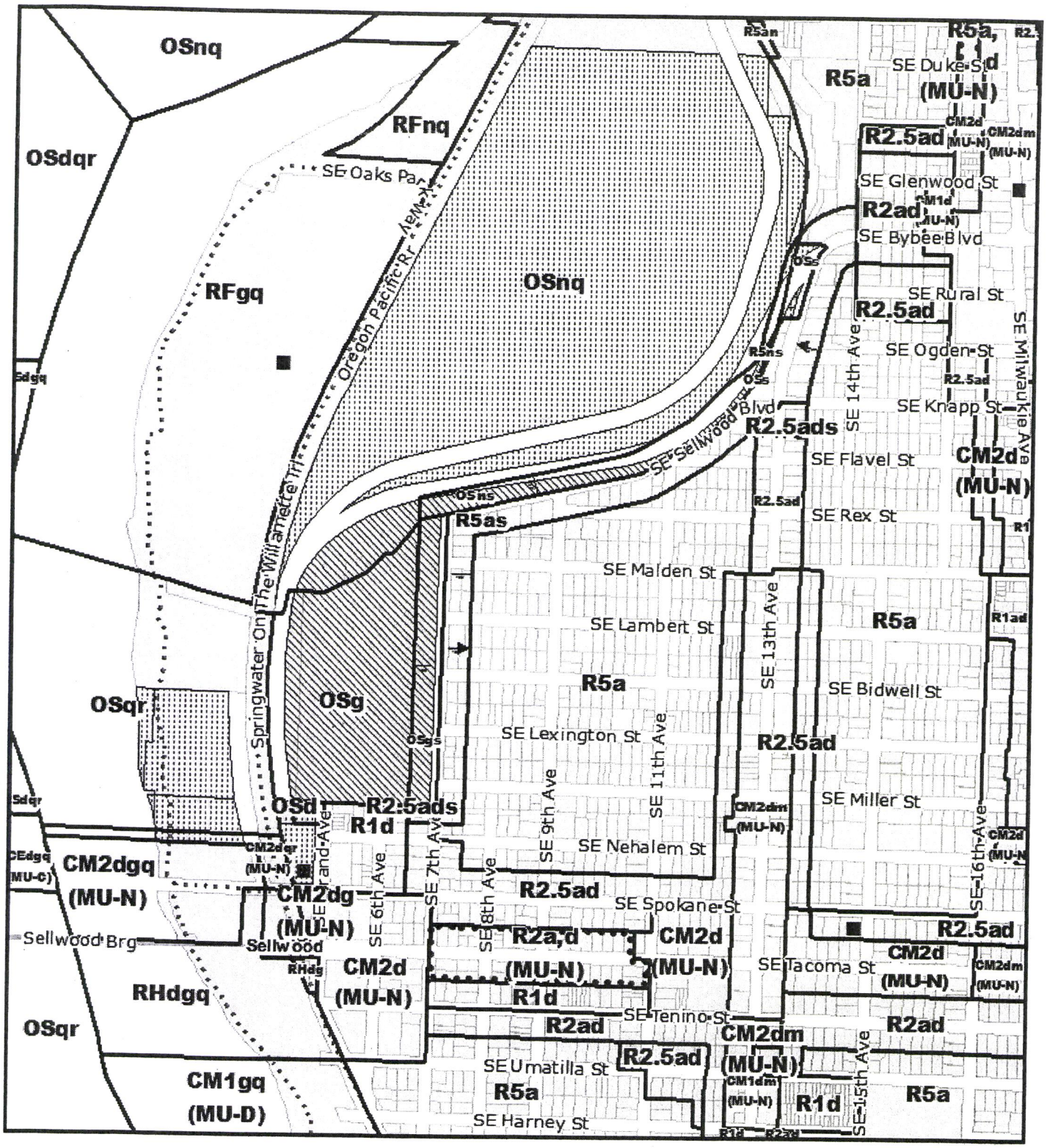
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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. Project Summary, Approval Criteria, Proposed Mitigation
   2. Site Plan, Trail Plan View, Tree Protection Plan, Planting Plan, Erosion Control Details
   3. Geotechnical Engineering Report
   4. 12-18-2019 Project Summary, Approval Criteria, Proposed Mitigation
   5. 12-18-2019 Site Plan, Trail Plan View, Tree Protection Plan, Planting Plan, Erosion Control Details
B. Zoning Map (attached)
C. Plans/Drawings:
   1. Tree Protection Plan
   2. Construction Access Plan
   3. Tree Planting Plan
   4. Planting Details
   5. Construction Elevation
   6. OHWL and Site Map
D. Notification information:
   1. Mailing list
   2. Mailed notice
E. Agency Responses:
   1. Bureau of Environmental Services
   2. Bureau of Transportation Engineering and Development Review
   3. Water Bureau
   4. Fire Bureau
   5. Site Development Review Section of BDS
   6. Bureau of Parks, Forestry Division
   7. Life Safety Review Section of BDS
F. Correspondence:
   1. Jory Olson, January 16, 2019, comments via email
   2. Jory Olson, January 16, 2019, comments via email
G. Other:
   1. Original LU Application
   2. Incomplete Letter
   3. Location of Scenic Resource Map

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

NORTH

Site

Also Owned Parcels

Historic Landmark

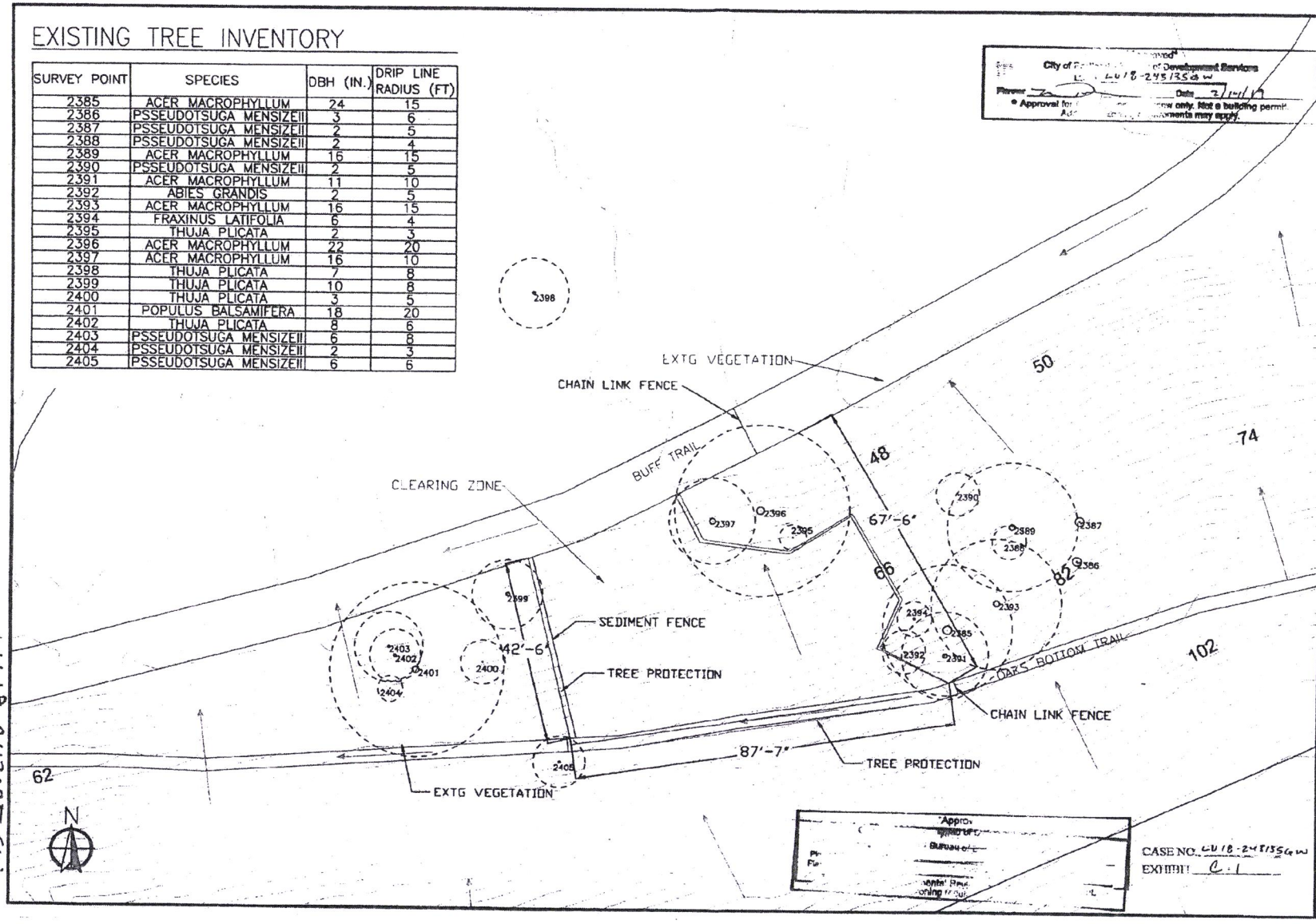
Bridge

Recreational Trails

File No.	LU 18-243135 GW
1/4 Section	3730,3731,3830,3831
Scale	1 inch = 600 feet
State ID	1S1E23 300
Exhibit	B Dec 19, 2018

EXISTING TREE INVENTORY

SURVEY POINT	SPECIES	DBH (IN.)	DRIP LINE RADIUS (FT)
2385	ACER MACROPHYLLUM	24	15
2386	PSSEUDOTSUGA MENSIZEII	3	6
2387	PSSEUDOTSUGA MENSIZEII	2	5
2388	PSSEUDOTSUGA MENSIZEII	2	4
2389	ACER MACROPHYLLUM	16	15
2390	PSSEUDOTSUGA MENSIZEII	2	5
2391	ACER MACROPHYLLUM	11	10
2392	ABIES GRANDIS	2	5
2393	ACER MACROPHYLLUM	16	15
2394	FRAXINUS LATIFOLIA	6	4
2395	THUJA PLICATA	2	3
2396	ACER MACROPHYLLUM	22	20
2397	ACER MACROPHYLLUM	16	10
2398	THUJA PLICATA	7	8
2399	THUJA PLICATA	10	8
2400	THUJA PLICATA	3	5
2401	POPULUS BALSAMIFERA	18	20
2402	THUJA PLICATA	8	6
2403	PSSEUDOTSUGA MENSIZEII	6	8
2404	PSSEUDOTSUGA MENSIZEII	2	3
2405	PSSEUDOTSUGA MENSIZEII	6	6



City of Portland Bureau of Development Services
LU 18-243135 GW
Date 2/14/19
Approval for ... only. Not a building permit. ... may apply.

CASE NO. LU 18-243135GW
EXHIBIT C.1

PORTLAND PARKS & RECREATION
Healthy Parks, Healthy Portland

ENGINEER OF RECORD: JORGE VILLAVICENCIO, PE

APPROVED BY: STEVE TOWNSEN, PE CITY ENGINEER

Portland Parks and Recreation
AMANDA FRITZ, Commissioner Kia Selley, Director

TREE PROTECTION PLAN
SELLWOOD PARK
Portland, Oregon
DATE: 06/2018 SCALE: 1"=20'
PROJECT MANAGER: JORGE VILLAVICENCIO
DRAWN BY: SECTION:

REVISIONS

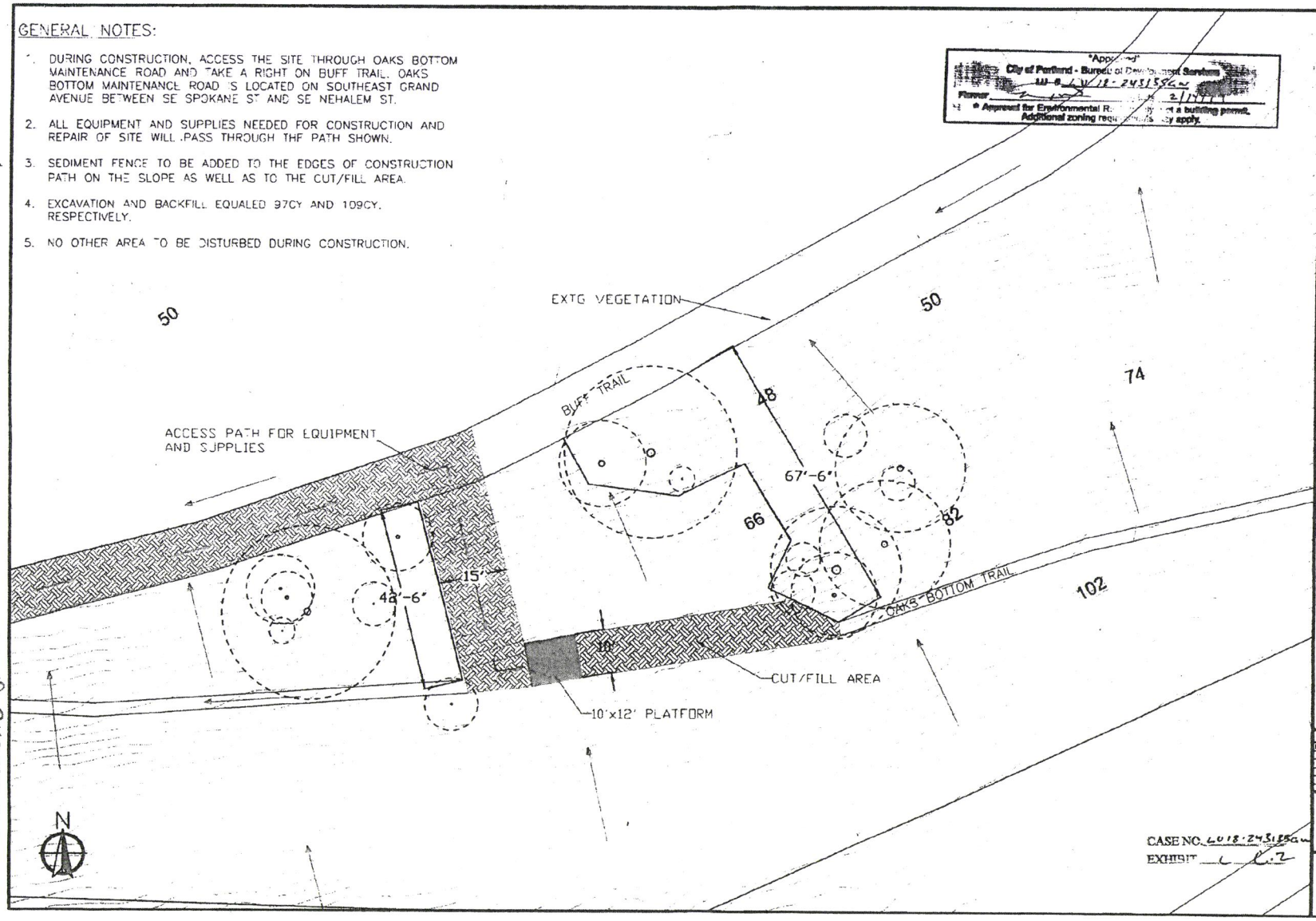
DATE	DESCRIPTION	BY

L8

LU 18-243135 GW

GENERAL NOTES:

1. DURING CONSTRUCTION, ACCESS THE SITE THROUGH OAKS BOTTOM MAINTENANCE ROAD AND TAKE A RIGHT ON BUFF TRAIL. OAKS BOTTOM MAINTENANCE ROAD IS LOCATED ON SOUTHEAST GRAND AVENUE BETWEEN SE SPOKANE ST AND SE NEHALEM ST.
2. ALL EQUIPMENT AND SUPPLIES NEEDED FOR CONSTRUCTION AND REPAIR OF SITE WILL PASS THROUGH THE PATH SHOWN.
3. SEDIMENT FENCE TO BE ADDED TO THE EDGES OF CONSTRUCTION PATH ON THE SLOPE AS WELL AS TO THE CUT/FILL AREA.
4. EXCAVATION AND BACKFILL EQUALED 97CY AND 109CY, RESPECTIVELY.
5. NO OTHER AREA TO BE DISTURBED DURING CONSTRUCTION.



CASE NO. LU 18-243135 GW
EXHIBIT L.2

LU 18-243135 GW

PORTLAND PARKS & RECREATION
Healthy Parks, Healthy Portland

ENGINEER OF RECORD:

APPROVED BY:

STEVE TOWNSEN, PE
CITY ENGINEER

Portland Parks and Recreation
AMANDA FRITZ, Commissioner
Mike Abbett, Director

CONSTRUCTION ACCESS PLAN
SELLWOOD PARK
Portland, Oregon

PROJECT MANAGER: NAME TELEPHONE
DRAWN BY: SECTION:
DATE: 9/2018 SCALE: 1"=20'

REVISIONS

DATE	DESCRIPTION	BY

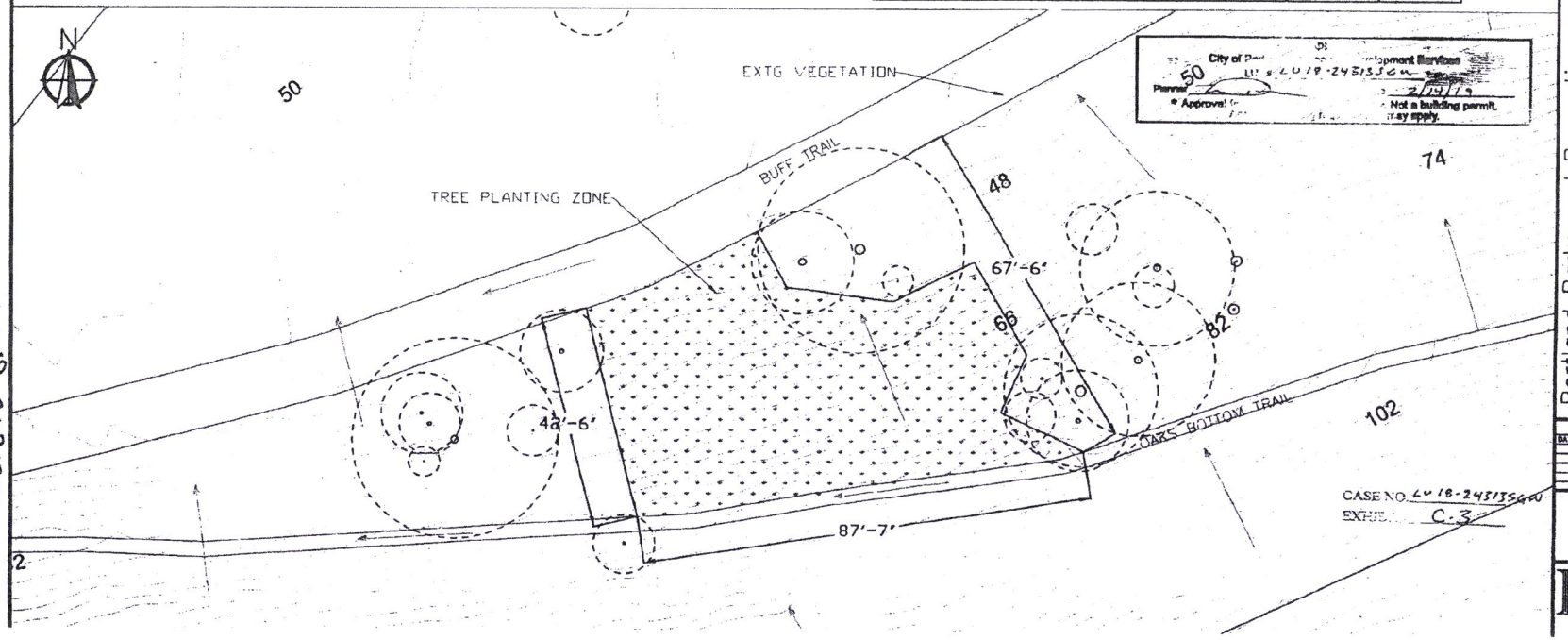
L9

PLANTING SCHEDULE

GENERAL NOTES

1. A TOTAL DBH OF 53" OF TREES WERE REMOVED DURING CONSTRUCTION AND WILL BE MITIGATED FOR. THIS INCLUDED 22" DBH OF ACER MACROPHYLLUM, 16" DBH OF THUJA PLICATA, AND 15" OF DBH FRAXINUS LATIFOLIA.
2. THE PROPOSED PLANTING SCHEDULE INCLUDES 50 TREES, 270 SHRUBS, AND 2LB OF GROUND COVER.
3. PLANTING TO FOLLOW RANDOM PLANTING PATTERN AS SPECIFIED ON PAGE D5.
4. STANDARD NURSERY PRACTICES FOR GROWING LANDSCAPE PLANTS SUCH AS THE USE OF PESTICIDES, FUNGICIDES, OR FERTILIZERS, OF TREES MUST NOT BE EMPLOYED.
5. PLANT MATERIALS MUST SUPPORTED ONLY WHEN NECESSARY DUE TO EXTREME WINDS AT PLANTING SITE. WHERE SUPPORT IS NECESSARY, STAKES OR OTHER MEASURES MUST BE REMOVED AS SOON AS THE PLANT CAN SUPPORT ITSELF.

COMMON NAME	BOTANICAL NAME	SIZE	QUANTITY	SPACING
TREES				
BIGLEAF MAPLE	ACER MACROPHYLLUM	.5"	20	10' O.C.
OREGON WHITE OAK	QUERCUS GARRYANA	2"	20	10' O.C.
PACIFIC MADRONE	ARBUTUS MENZIESII	1"	10	10' O.C.
SHRUBS				
SASKATOON SERVICEBERRY	AMELANCHER ALNIFOLIA	1-GAL	30	5' O.C.
IRONWOOD	HOLODISCUS DISCOLOR	1-GAL	20	5' O.C.
RED ELDERBERRY	SAMBUCUS RACEMOSA	1-GAL	20	5' O.C.
COMMON SNOWBERRY	SYMPHORICARPUS ALBUS	1-GAL	30	5' O.C.
CASCADE BARBERRY	BERBERIS NERVOSA	1-GAL	30	5' O.C.
PACIFIC BLEEDING HEART	DICENTRA FORMOSA	1-GAL	20	3' O.C.
FALSE SOLOMON'S-SEAL	MIANTHEMUM RACEMOSA	1-GAL	20	3' O.C.
WESTERN SWORD FERN	POLYSTICHUM MUNITUM	1-GAL	30	3' O.C.
DROPS-OF-GOLD	PROSARTES HOOKERI	1-GAL	30	3' O.C.
WESTERN TRILLIUM	TRILLIUM OVATUM	1-GAL	20	3' O.C.
STREAM VIOLET	VIOLA GLABELLA	1-GAL	20	3' O.C.
GROUND COVER				
PACIFIC WATERLEAF	HYDROPHYLLUM TENUIPES	SEED	1LB	COVER
FRINGE CUPS	TELLEMIA GRANDIFLORA	SEED	1LB	COVER



LU 18-243135 GW

PORTLAND PARKS & RECREATION
Healthy Parks, Healthy Portland

REGISTERED LANDSCAPE ARCHITECT:

Portland Parks and Recreation
AMANDA FRITZ, Commissioner
KIA SELLEY, Director

TREE PLANTING PLAN
SELLWOOD PARK
Portland, Oregon

PROJECT MANAGER: JORGE VILLAVICENCIO
DRAWN BY:
SECTION:
SCALE: 1"=20'
DATE: 08/2018

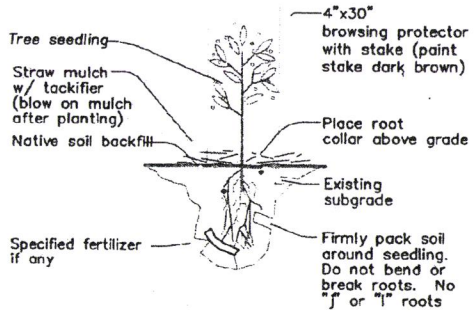
REVISIONS

DATE	DESCRIPTION	BY

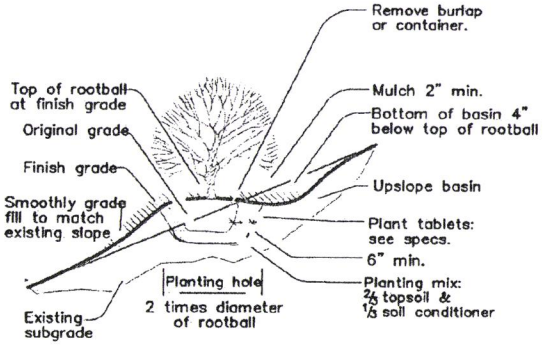
L10

PLANTING DETAILS

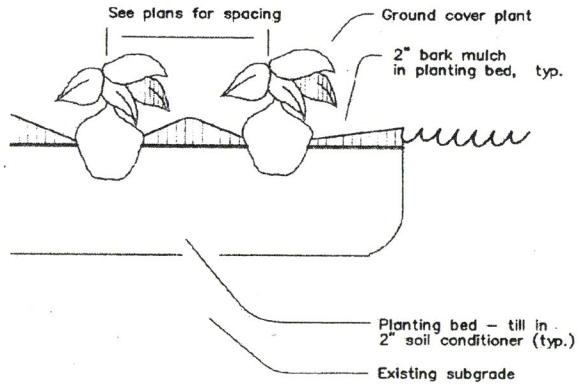
"Approved"
City of Portland - Bureau of Development Services
LU # LU 18-243135 GW
Planner [illegible] Date 2/14/19
* Approval for Environmental Review only. Not a building permit. Additional zoning requirements may apply.



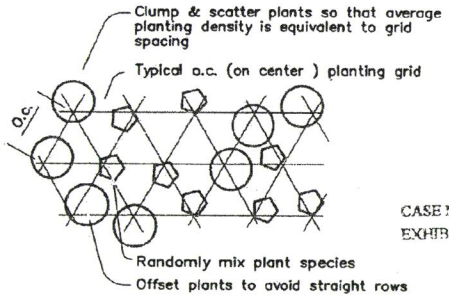
SEEDLING PLANTING



SLOPED AREA SHRUB PLANTING



GROUNDCOVER PLANTING



RANDOM PLANTING PATTERN

CASE NO. LU 18-243135 GW
EXHIBIT C.4

LU 18-243135 GW

PORTLAND PARKS & RECREATION
Healthy Parks, Healthy Portland

REGISTERED LANDSCAPE ARCHITECT:

Portland Parks and Recreation
AMANDA FRITZ, Commissioner
KIA SELLEY, Director

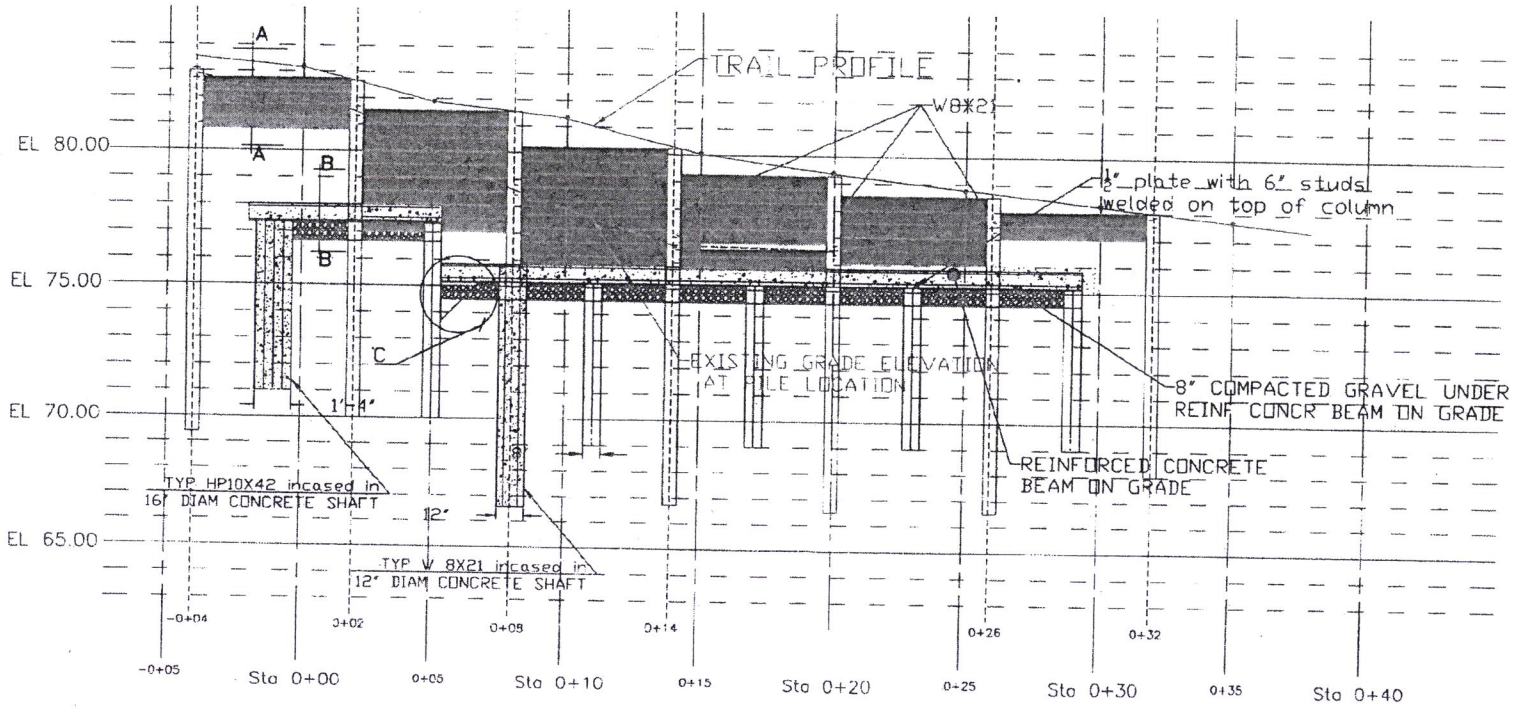
PLANTING DETAILS
SELLWOOD PARK
Portland, Oregon

PROJECT MANAGER: JORGE VILLAVICENCIO
DRAWN BY:
SECTION:
SCALE:
DATE: 09/2018

REVISIONS		
DATE	DESCRIPTION	BY

D5

"Approved"
City of Portland - Bureau of Development Services
LU # 18-243135 GW
Planner _____ Date: 7/14/17
* Approval for Environmental Review only. Not a building permit.
Additional zoning requirements may apply.



TRAIL ELEVATION VIEW

CASE NO. 18-243135 GW
EXHIBIT C.5

LU 18-243135 GW

PORTLAND PARKS & RECREATION
Healthy Parks, Healthy Portland

ENGINEER OF RECORD:
EXPIRES 06/30/2018
JORGE VILLAVICENCIO, PE

APPROVED BY:
STEVE TOWNSEN, PE
CITY ENGINEER

Portland Parks and Recreation
AMANDA FRITZ, Commissioner
KIA SELLEY, Director

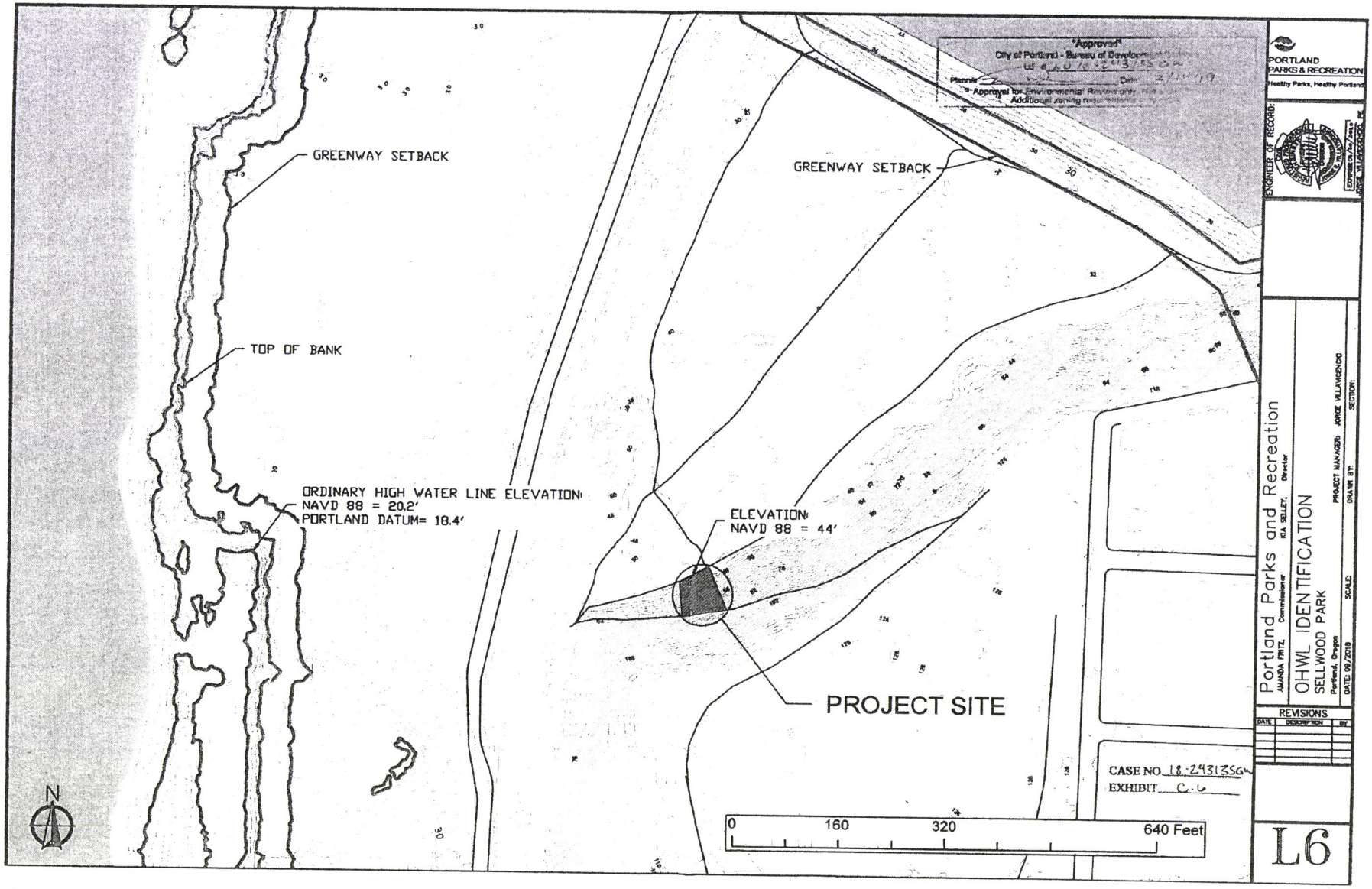
TRAIL ELEVATION VIEW
SELLWOOD PARK
Portland, Oregon

PROJECT MANAGER: JORGE VILLAVICENCIO (971)347-8104
SECTION:
DRAWN BY:
SCALE:
DATE:05/2018

REVISIONS

DATE	DESCRIPTION	BY

L2



LU 18-243135 GW