

Other Designations: Resource Site #51 | *Columbia Corridor Environment and Industrial Mapping Project (1989)*

Within lands managed by the -
Smith and Bybee Comprehensive Natural Resource Plan

Zoning: Base Zone - IH (Heavy Industrial)
Overlays - 'c' (Environmental Conservation Overlay Zone)
'k' (Prime Industrial Overlay Zone)

Case Type: (CN) Comprehensive Natural Resource Plan

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

Proposal:

The applicant proposes to replace three aging electric power transmission line pole structures (five poles in all) adjacent to and within identified wetlands. According to the applicant, the project is needed to ensure the long-term structural integrity and reliability of the two transmission lines where they turn into the Rivergate Substation. The project will utilize wide wooden panels called "swamp mats" to provide a stable surface for access of equipment and machinery that will be used to remove the existing poles and install the replacement poles. The swamp mats also minimize impacts to underlying soil structure and soil compaction. The project will result in approximately 12,406 square feet of temporary disturbance and approximately 425 square feet of permanent disturbance. It requires the cutting of brush prior to placing of the swamp mats and will result in the loss of 18 Pacific willow trees with diameters of six inches and greater. To mitigate for impacts, the applicant proposes to plant 496 shrubs, remove invasive species from the vicinity, install two untreated wooden poles with cavities and perch limbs to mimic snags and provide habitat, and to form brush piles from the removed willow trees to provide habitat for smaller forms of wildlife in the area. In addition, disturbed areas will be seeded with a native herbaceous seed mix.

The proposed transmission line improvements do not meet exemptions listed in 33.430.080 and also did not receive final approval per Table 2 of the *Smith & Bybee Wetlands Comprehensive Natural Resource Plan* (CNRP) or tentative approval per Table 3 of the CNRP. Therefore, this proposal triggers an amendment to the previously approved CNRP (LU 12-167334 CN) and must be reviewed through a Type II Comprehensive Natural Resource Plan Review per 33.809.050.B.

Relevant Approval Criteria:

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

- **33.809.200 Approval Criteria for amendments to a Comprehensive Natural Resource Plan**
- **33.430.250.A Approval Criteria for Utilities**

ANALYSIS

Site and Vicinity: The site is a relatively narrow strip of minimally developed land that is about 4,200 feet long and 430 feet wide at its west end, narrowing to about 300 feet wide on its east end. In the 2013 Comprehensive Natural Resource Plan (CNRP) for Smith and Bybee Wetlands, approved under 12-167334 CN, the habitat type on the site is classified as scrub wetlands, dominated by willows. It is an important wildlife corridor between the Willamette River and the waterbodies at and around Smith and Bybee lakes, as evidenced by its inclusion in the CNRP. The land is owned by the Port of Portland and includes utility easements on it to allow for Portland General Electric to install and maintain utility lines and their supports on the property. The lines supported by the existing poles, whose replacement is the subject of this review,

continue across N Time Oil Rd and then across the Willamette River, where they connect into the Harborton Substation about 1.3 miles west of the project area; they connect on the east side into the Rivergate Substation just south of the east end of the subject site. The Smith and Bybee Lakes and wetlands complex is contiguous with the site on its east end where direct access to the slough, wetlands, and lakes is available under the N Lombard St overpass and right-of-way.

Zoning: The project site is in the Heavy Industrial (IH) zone and has the Environmental Conservation (c) overlay zone and Prime Industrial (k) overlay zone designations (see zoning on Exhibit B).

The **Heavy Industrial (IH)** zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The development standards are the minimum necessary to assure safe, functional, efficient, and environmentally sound development. The development under review in this case is associated with a Utility Corridor Use, which is an allowed use in the IH zone. The IH base zone is contiguous to both substations that the utility lines on the site connect to.

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

The **Prime Industrial (k)** overlay zone protects land that has been identified in the Comprehensive Plan as Prime Industrial, and to prioritize these areas for long-term retention. The regulations of the zone protect Prime Industrial land by preventing, or requiring an off-set for conversion of the land to another zone or use that would reduce industrial development capacity.

Land Use History: City records indicate four prior land use reviews at the site. Unless modified through subsequent reviews, the conditions from prior land use cases continue to apply and are the property owner's responsibility:

- LU 12-167334 CN – Approval of Comprehensive Natural Resource Plan for Smith & Bybee Wetlands Natural Area including conditions of approval and guidelines for future review listed below, effective for 10 years from the date of final decision (06/04/2013).
- LU 03-162374 EN - Approval of Environmental Review for the Port of Portland to place large woody debris (LWD) on its existing mitigation sites on an as-needed basis for 8 to 10 years.
- LU 95-012857 EN – Approval to construct a rail bridge crossing through a wetland to expand rail capacity and provide more efficient rail service. Mitigation included rezoning to Environmental Conservation 'c' overlay 2.4 acres at the west end of the subject site.
- LU 1966-100074 (MCF 105-66 ZC) – Approval of a zone change.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **August 3, 2021**. The following Bureaus responded:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Life Safety Section of BDS

Please see the 'E' Exhibits for the complete responses of each of the above review groups.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on August 3, 2021. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.809.200 Approval Criteria (for Comprehensive Natural Resource Plan, or an amendment to a Comprehensive Natural Resource Plan)

A Comprehensive Natural Resource Plan, or an amendment to a Comprehensive Natural Resource Plan, will be approved if it meets the following approval criteria:

- A.** The plan establishes coordinated phasing of the development, disturbance, or resource enhancement actions within the natural resource overlay zones, with the goal of avoiding impacts that might arise if each action were planned separately. The plan includes the timing of anticipated construction access routes, building construction sequencing, and disturbance area boundaries for the site as a whole;

Findings: This proposal is for an amendment to the *Smith & Bybee Wetlands Comprehensive Natural Resource Plan*. Though the CNRP allows for projects to be reviewed through a more coordinated approach, this project was not anticipated at the time the overall plan was crafted in 2012. Yet this project will not conflict with any of the approved projects or diminish the resource protections otherwise afforded by the CNRP, since the impacts from this work will be localized and enhancements will occur in the immediate vicinity of the disturbance. As such, the impacts to the natural resources on the site and within the CNRP boundaries will be tempered as detailed in the applicant's mitigation plan (Exhibits A.4.a & C.5).

There are no separate phases proposed with the project under review; all the work will be done in concert within the same work window. The plan does include the sequencing of work to ensure that protection and erosion control measures are in place prior to ground-disturbing and construction activities and that mitigation will occur during and immediately after installation of the poles and improvements associated with securing them, as well as removal of the temporary staging area materials. Disturbance area boundaries will be clearly delineated with temporary orange construction fencing and the swamp maps will establish permitted equipment routes.

As such, *this criterion is met.*

- B.** The plan will integrate natural resource conservation, protection and enhancement with other site planning plan goals and objectives;

Findings: The applicant has provided an alternatives analysis demonstrating that the project minimizes impacts on and protects natural resources to the extent possible while accomplishing the project's goal to replace the aging power poles. The mitigation plan provides clear enhancements to the resources on the site, such as downed woody debris piles and untreated wooden poles with perch limbs and/or cavities to mimic snag habitat. Both the alternatives analysis and mitigation plan are discussed in more detail in the findings for 33.430.250.A, below.

As an amendment to the CNRP, this project is consistent with the plan's overarching goal to prioritize conservation and protection, while allowing environmentally-sensitive development to occur in alignment with the base-zone designation of the site. As such, *this criterion is met.*

- C.** On balance, the proposed mitigation plan demonstrates that all anticipated significant detrimental impacts on identified resources and functional values will be compensated for within the life of the plan. Each mitigation action is not required to directly correlate with a specific development proposal, but the overall mitigation plan will be evaluated against the overall list of anticipated uses and development actions, including cumulative impacts. The mitigation plan must include performance standards for judging mitigation success, a specific timetable for mitigation actions during the life of the plan, and a specific

monitoring schedule; and

The plan must demonstrate that all relevant approval criteria that would apply if the proposal was proceeding through an Environmental Review, River Review, Pleasant Valley Natural Resource Review, or Greenway Review, including approval criteria from an adopted Natural Resource Management Plan, are met. If the proposed Comprehensive Natural Resource Plan (CNRP) will replace a Natural Resource Management Plan (NRMP), approval criteria from the NRMP do not have to be addressed. An NRMP is being replaced if the CNRP covers at least half of the area covered by the NRMP, and if an ordinance has been adopted that repeals the NRMP.

Consideration will be given to the level of detail provided with the plan application. Proposals that address most of the relevant approval criteria, but are not detailed enough to address all of the relevant approval criteria may be identified for tentative approval. Conditions of approval may be imposed to list those aspects of the plan subject to tentative approval, and to specify which approval criteria need further evaluation through a later review. The decision may also specify standards for future development or resource enhancement activities.

Findings: In consideration of the unavoidable impacts associated with the long-established use of the site as a utility transmission corridor, the mitigation plan provides the required compensation for all anticipated significant detrimental impacts on the site's identified resources and functional values. To ensure that the mitigation plan includes required performance measures for judging mitigation success, the applicable performance measures listed in Part VI of the CNRP will be conditions of approval of this decision. With these conditions of approval, *this criterion will be met.*

The site is in the Environmental Conservation 'c' overlay. In addition to being subject to the CNRP, which requires this review and the approval criteria of 33.809.200, this proposal is thus subject to the approval criteria of 33.430.250.A; those findings are below. As such, *this criterion is met.*

This project is an amendment to the CNRP and was not included in the list of projects that received tentative or final approval under LU 12-167334 CN. Per that decision and specifically Condition A.7, amendments to the CNRP not listed for tentative or final approval require further review. This project is not increasing the existing disturbance area and will not impact projects or mitigation associated with identified projects in CNRP or more broadly, other locations within the boundaries of the CNRP. *This criterion is met.*

As noted above, the application demonstrates that the three approval criteria under item C are met or will be met with conditions.

TITLE 33.430.250.A Approval Criteria (for Public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments). Within the resource areas of environmental zones, the applicant's impact evaluation must demonstrate that all of the general criteria in Paragraph A.1 and the applicable specific criteria of Paragraphs A.2, 3, or 4, below, have been met:

A.1. General criteria for public safety facilities, rights-of-way, driveways, walkways, outfalls, utilities, land divisions, Property Line Adjustments, Planned Developments, and Planned Unit Developments;

- a. Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone;

Findings: As described in the Alternatives Analysis section of the applicant's narrative (Section 3, pages 13-17) (Exhibit A.4.a), placement of the new poles outside the wetlands, using a crane to minimize encroachments, conducting the work with smaller equipment, and alternative staging and access routes were evaluated. In the narrative, the applicant successfully demonstrates why those alternatives are not practicable or would result in impacts to resources more detrimental than under the preferred alternative.

As such, *this criterion is met.*

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

Findings: As noted on pages 20 and 21 in the 'Construction Management Plan' section (4.3) of the applicant's narrative, the applicant has proposed physical barriers (fencing) and construction techniques specifically intended to prevent disturbance and significant detrimental impacts beyond the limits of disturbance. Contractors will limit equipment maneuvering and staging to the swamp mats. Silt fencing will be placed on the perimeter of construction activities to avoid erosion onto areas designated to be left undisturbed. Orange construction fencing will be placed along the limits of disturbance to clearly communicate to workers the areas that are not to be accessed or disturbed. Trees proposed for removal will be clearly marked to avoid inadvertent removal of trees to be preserved. In addition, the narrative states that a full-time Certified Erosion and Sediment Control Lead will be on-site to monitor BMPs, oversee, report, and document the clearing, brushing, and matting placement activities, as needed. Finally, the applicant has indicated that all construction vehicles will be fueled outside of the project site to avoid potential spills.

With conditions requiring that the construction management plan from Section 4.3 of the narrative be implemented, *this criterion can be met.*

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

Findings:

Recovery of lost resources. As noted in the applicant's narrative, all the Pacific willows on-site have a multiple-stem growth habitat that is likely the result of the routine maintenance to prune tall vegetation that PGE carries out in the vicinity of the transmission lines to prevent vegetation growing into the lines. As such, replacing the trees to be removed within the project area with more trees is not a preferred option. Instead, to compensate for the lost functional values of the trees to be removed, including cover for small mammals, insects, and birds, as well as food for creatures, such as beavers, which eat the inner bark of the willow, the applicant proposes to plant a variety of shrubs, including Sitka willow, an arborescent shrub with a mature growth habit similar to the existing habit of the Pacific willows proposed for removal. With a lower mature height, they are less likely to grow into the utility lines, while still providing the functional benefits of those trees that will be removed.

As noted in Section 3 Native Plants in Detail, in the Portland Plant List, willow species are fast growing and Sitka willow "is considered to be a 'pioneer' species because it adapts readily to disturbed situation and can tolerate difficult conditions". These facts, in concert with the fact that trees will be cut at the surface without removal of roots and with the habit of Pacific willow to respond to pruning and cutting by rerooting and resprouting means that the lost habitat will quickly recover (Exhibit A.4.a, page 18).

Improved species diversity. Based on surveys of the site done by the applicant, species diversity at the site is quite low (Section 2.1, page 9, Exhibit A.4.a). The mitigation plan adds a species (Red-Osier dogwood) and greatly increases the number of a second (Pacific ninebark).

Improved habitat opportunities. In addition to adding plantings and increasing plant species diversity, the applicant is proposing to improve habitat for wildlife by using the downed trees to create woody debris piles. Two untreated wooden poles, each with perching branches and holes to serve as small cavities, will be installed in the project area and serve to mimic the benefits provided by snags. Both the woody debris piles and the engineered snags will provide cover for small mammals and birds, both offsetting the temporary loss of willows and enhancing the project area's overall habitat options.

The above mitigation measures demonstrate that all significant impacts of the project on the site's resources and functional values will be compensated for and in some cases enhanced. To ensure that mitigation efforts are successful over time, the CNRP provides a list of Mitigation Success Criteria in Part VI of the document (pgs 173-174 of Exhibit G.4). The Success Criteria detail minimum survival rates for plantings, a Timetable for carrying out mitigation work, and a monitoring schedule, including what information is to be included in the required monitoring reports. As a condition of approval,

As such, *this criterion is met.*

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

Findings: All mitigation proposed is to occur within or abutting the project area.

Therefore, *this criterion is met.*

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

Findings: The applicant has provided a copy of the Electronic Transmission Line Easement that PGE has at the site, dated March 24, 1969. The easement allows them to conduct transmission line and associated work on the site. In addition, a representative of the owner of the site, The Port of Portland, has signed the application for this review.

This criterion is met.

A.3. Rights-of-way, driveways, walkways, outfalls, and utilities;

- a. The location, design, and construction method of any outfall or utility proposed within the resource area of an environmental protection zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the environmental protection zone;

Findings: The project area is not adjacent to or within an environmental protection zone. Therefore, this criterion is not applicable.

- b. There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and

Findings: The Columbia Corridor Resource Inventory (1989) for the Subject Site (Site 51) ranks the subject site's Fish Habitat as having a 'medium' resource value (pg. 28 of 170). That said, the individual site description on pg 101 of 170 of the 1989 Inventory makes no mention of fish habitat. In addition, the Wetland Delineation Concurrence that the applicant provided in their original submittal package (Exhibit A.1.c) indicates that the subject site is within 'Wetland B' of the delineation and is composed exclusively of seasonally flooded areas and is without non-wetland waters. Furthermore, while BES records indicate an open drainageway that runs

through the site, the drainageway has no connectivity to the Willamette River and is connected to the Slough and larger Smith and Bybee Lakes complex only via a 234-foot-long culvert that goes under the eastern set of rail lines. Finally, the proposed work is not within any waterbodies and will have a minimum footprint at grade. All of these factors together make clear that while the 1989 Inventory may have included fish habitat as an identified resource at the site, the combined evidence indicates that the project will clearly have no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish and thus, *this criterion is met.*

- c. Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts.

Findings: The Construction Management Plan (CMP) is designed to minimize impacts and will prevent significant detrimental impacts by such methods as: conducting work in the dry season, utilizing swamp mats to prevent compaction of soils, establishing clear disturbance area limits, and by choosing a staging and equipment route that requires that least amount of tree removal and the minimum encroachment into adjacent identified wetlands. Furthermore, the alignments of the power lines and poles can't be altered without requiring the relocation of other poles up and down the lines, which would increase overall disturbance within the resource site and increase cost to the point of impracticability. Thus, moving the poles out of the wetlands is out of consideration. In the alternatives analysis submitted in their narrative and as indicated above in the findings for Approval Criterion A.1.a, the applicant addressed the possibility of conducting at least some of the work with cranes positioned in the right-of-way, outside of the wetlands:

“Using a crane from the overpass was considered an unsafe and unviable option to install new poles and guy anchors around existing poles and wires, which must remain in place while setting the new poles. Pole installation/removal via crane from elevated deck is not standard work practice as there are no known methods written for this type of work. It would be an untested and potentially unsafe method of pole installation, removal, and wire transfer.” (Exhibit A.4.a, page 13)

Also addressed in the alternatives analysis is the possibility of utilizing smaller, lighter equipment that would require less room to stage and operate:

“The proposed work area was designed to accommodate the proposed transmission work scope. PGE, AECOM, and construction contractors met onsite to identify the minimum areas needed for equipment access and operation and transmission line materials staging. This minimum area was surveyed and used to create the construction footprint. It was then reviewed and thoroughly discussed with PGE's engineering and construction management teams. It was determined that the footprint was slightly smaller than what is typically used for pole replacement projects in environmentally sensitive areas. It was concluded that any further reduction in footprint area would not allow for the safe installation of new poles and guy anchors, which are critical to structural integrity.” (Exhibit A.4.a, page 13)

The applicant explored less impactful alternatives to the current proposal and found that they were not practicable, primarily for safety reasons, since the project work is to be done while the transmission lines continue to remain live. The current proposal is thus the most practicable alternative with the least significant detrimental impacts to the wetlands and associated resources. As such, with the application of the noted construction management methods and mitigation measures, *this criterion is met.*

DEVELOPMENT STANDARDS

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

CONCLUSIONS

The applicant proposes work to replace three transmission line pole structures, two single pole and one three-pole structure all within the Environmental Conservation Zone Overlay and within the boundaries governed by the Comprehensive Natural Resource Plan (CNRP) for Smith and Bybee Wetland Natural Area. The applicant has provided a narrative and plans that, with additional findings by staff, detail how the approval criteria for the CNRP and the Environmental Overlay are met or can be met with conditions. As such, staff approves the proposal

ADMINISTRATIVE DECISION

Approval of an amendment to the Smith and Bybee Wetland CNRP to include this project in Table 2 of the CNRP as a Project receiving final approval through the CNRP (LU 12-167334 CN) for the following:

- The removal and replacement of two single-pole transmission line structures and one three-pole transmission line structure, including all associated elements, such as swamp shoes, necessary to secure the new poles;
- The removal of 18 Pacific Willow trees;
- The creation of woody debris piles for habitat using the wood from the removed trees;
- The installation of two untreated wooden poles mimicking snags to enhance habitat opportunities;
- The planting of 520 native shrubs and the seeding of all temporary disturbance areas;

Per the approved site plans, Exhibits C.1 through C.6, and the Applicant's Narrative (Exhibit A.4.a), subject to the following conditions:

- A.** The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc.). Permit plans shall include the following statement, ***"Any field changes shall be in substantial conformance with approved LU 21-058949 CN, Exhibits C.1 through C.6 and Exhibit A.4.a."***

Development Permits shall not be issued until a BDS Zoning Permit is issued.

Development Permits shall not be finalized until the BDS Zoning Permit for inspection of mitigation plantings required in Condition C below is finalized.

B. CONSTRUCTION MANAGEMENT

Disturbance Limits

1. All project work (including site access; vegetation clearing; excavation; pole replacement; vehicle/equipment laydown, staging, and movement) shall be conducted within the defined disturbance limits shown on Exhibit C.3 to minimize potential impacts to vegetation and ground surfaces.
2. Disturbance area boundaries shall be marked with temporary orange construction fencing to avoid ground disturbance outside of the designated disturbance area. Within wetland areas, all machinery shall operate from temporary swamp mats.
3. Construction vehicles and equipment shall access the project site via the designated access point on N Lombard Street.

Tree Protection

4. Pacific willow trees designated for removal shall be clearly marked in the field to avoid inadvertent removal of additional trees.
5. Trees shall be felled in a manner so as not to damage other trees.
6. Trees to be removed shall be cut at grade; roots shall not be grubbed and shall be kept intact to the extent possible to allow for resprouting after project completion.
7. Root zones of the trees not proposed for removal that are within or adjacent to the disturbance area shall be avoided by only working atop the temporary swamp mats, which shall remain within orange construction fencing. Root protection zones (1 foot for every 1 inch of stem diameter) are shown on Exhibit C.3.

Sensitive Resource Protection

8. Construction vehicles shall not be fueled within the project site to prevent potential fuel spills on-site.
9. Construction vehicles shall be parked outside of the wetland habitat (e.g., on N Lombard Street) (see Exhibit C.3).
10. Tree removal between primary nesting season, April 15 – July 31 shall be avoided. If tree removal is necessary during this time, the applicant shall survey the trees slated for removal for signs of nesting. If an active nest is found (one with eggs or young) in one or more of the trees, those trees shall not be removed until the young have fledged.

Erosion and Sediment Control

11. The applicant must submit grading and erosion control plans with the building permit application. The plans shall be reviewed by Site Development, conform to the applicable Title 10 regulations, and be consistent with the following:
 - a. Erosion control measures (e.g., straw wattles, bio-filter bags) shall be placed at the downslope edges of all work areas to prevent sediment from entering the wetland.
 - b. Spoils piles shall be temporarily staged outside of wetlands or in a waiting bin or truck.
 - c. Dust shall be controlled on-site using watering as necessary. Wind breaks may be installed if unusually high wind is experienced during construction.
 - d. Sediment controls shall be inspected and maintained daily. In the event of a failure of sediment control devices, corrective actions shall be taken immediately.
 - e. During site restoration, disturbance areas shall be hand-seeded with a native erosion control seed mix (Exhibit C.4).

- C. MITIGATION PLANTING.** The applicant shall **obtain a BDS Zoning Permit** for approval and inspection of a mitigation planting plan for a total of 520 native shrubs, the seeding of all temporary disturbance areas, and for the creation of woody debris piles and the installation of two engineered snags, in substantial conformance with Exhibits C.4 and C.5. Any plant substitutions shall be selected from the *Portland Plant List*, and shall be substantially equivalent in size and type to the original plant.

Mitigation actions will occur within one growing season of the completion of the project and will generally follow this schedule:

Timetable

Season	Task	Details
Spring/Summer	Site prep: Non-native vegetation removal	Removal and control of non-native invasive plants. During and after construction.
Summer/Fall	Seed application	Application of native grass seed in disturbance/ mitigation areas. During and immediately after construction and invasive species management.
Fall/Winter	Tree and shrub planting	Installation of native woody plant materials in disturbance/mitigation areas. Typically during dormant season.
Late Summer (for 3 years after planting)	Maintenance and monitoring	Vegetation management and control of non-native invasive vegetation. Annual monitoring in late summer.

1. Permit plans shall show the location of all vegetation 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.
2. Prior to installing required mitigation plantings, non-native invasive reed canary grass and blackberry 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.
4. The applicant shall arrange to accompany the BDS inspector to the project location to locate mitigation plantings for inspection.

D. MONITORING AND MAINTENANCE OF MITIGATION PLANTINGS (from “Mitigation success criteria (performance standards)” Part VI, of the Smith and Bybee CNRP)

Monitoring schedule. Monitoring is a key step in the adaptive management process. To ensure the success of invasive management and native planting efforts, PGE and the Port will assess site conditions, native plant establishment success, and invasive species regrowth over a three year period.

1. Monitoring results will be documented in annual monitoring reports prepared by a professional biologist or landscape architect. The first report will be submitted to the Planner reviewing this request (LU 21-058949 CN) or to the Supervisor of the Land Division and Environmental Section of the Land Use Services Division of BDS within 12 months of the final inspection of mitigation plantings, then submitted annually for years two and three. The reports will include the following information:
 - a. One annual count during the late summer for three summers after planting to determine the rate of tree, shrub, and groundcover mortality for that year.
 - b. Photographs of the mitigation area will be taken during the annual visits and a site plan will show where and what direction these photos were taken.
 - c. Planting sites will not typically receive any supplemental irrigation. If draught or other plant health stresses are observed, the report will note planned remedies.
 - d. Reports will note any vegetation management or revegetation measures taken during the reporting period. Revegetation shall be in accordance with the requirements listed in Conditions D.1.a through D.1.c, below.

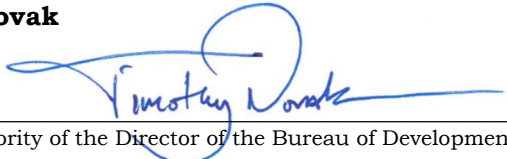
- e. Reports will include the contact name, number and address of the responsible party for the monitoring and maintenance of the site.

E. ZONING PERMIT AT END OF MONITORING PERIOD. The applicant shall maintain the required plantings to ensure survival and replacement. The applicant is responsible for ongoing survival of required plantings during and beyond the designated three-year monitoring period. After the 3-year initial establishment period, the applicant shall:

1. Obtain a Zoning Permit for a final inspection at the end of the 3-year maintenance and monitoring period. The applicant shall arrange to accompany the BDS inspector to the project location to locate mitigation plantings for inspection. The permit must be finalized no later than 3 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 as prescribed below:
 - a. **Woody species (trees and shrubs):** 100 percent survival, after three years. Trees and shrubs planted as part of the mitigation plan that do not survive will be replaced.
 - b. **Seeded areas (ground covers):** 80 percent cover, outside of tree and shrub areas, after three years. Seeded areas in turtle nesting areas (within 30 feet of the Ordinary High Water Level) will achieve 20 to 30 percent cover after three years. Seeded areas that do not meet these standards will be reseeded.
 - c. **Invasive Species:** not to exceed 50% regrowth within managed areas after three years. Managed areas that do not meet this standard will receive additional vegetation management treatment.

F. 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: Timothy Novak

Decision rendered by:  **on November 3, 2021**
By authority of the Director of the Bureau of Development Services

Decision mailed: November 8, 2021

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 June 17, 2021, and was determined to be complete on July 28, 2021.

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 June 17, 2021.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day

review period be extended 60 days, as stated with Exhibit G.3. Unless further extended by the applicant, **the 120 days will expire on: January 24, 2021.**

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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on November 22, 2021. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIx decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

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 **November 22, 2021** 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 Submittals (June 17, 2021)
 - a. Narrative
 - b. Site Plans
 - c. Wetland Delineation Concurrence
 - d. Deed with PGE Easement
 - 2. July 22, 2021 Submittals
 - a. Response to Incomplete Letter
 - b. Revised Narrative
 - 3. Revised Section 6, Tree Mitigation, of Narrative (August 3, 2021)
 - 4. October 19 & 20, 2021 Submittals
 - a. Revised Narrative
 - b. Alternative Analysis Site Plans
 - c. Wooden Pole Snag Diagram
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Location Map
 - 2. Existing Conditions Plan
 - 3. Proposed Development Plan
 - 4. Construction Management Plan (attached)
 - 5. Mitigation Plan (attached)
 - 6. Engineered Snag Elevation Drawing (*same as A.4.c*)
- 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. Life Safety Review Section of BDS
- F. Correspondence: NONE
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter
 - 3. Extension Requests to 120-day timeline (2 total)
 - 4. Smith and Bybee Wetlands Comprehensive Natural Resource Plan (Dec 2013)

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).