



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

Dan Ryan, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portland.gov/bds

Date: February 25, 2022
To: Interested Person
From: Timothy Novak, Land Use Services
503-823-5395 / Timothy.Novak@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.

CASE FILE NUMBER: LU 21-023319 PV
UNINCORPORATED MULTNOMAH COUNTY

GENERAL INFORMATION

Applicant: Sarah Radelet | *Strata Land Use Planning*
Po Box 90833 | Portland, OR. 97290
(503) 320-0273 | sarah@stratalanduse.com

Owner: Armando Garcia
1739 NE 155th Ave | Portland, OR. 97230

Site Address: SE JENNE RD (Between 5805 and 5915 SE Jenne Rd)
Legal Description: LOT 28 EXC W 339', JENNELYND AC
Tax Account No.: R428503710
State ID No.: 1S3E18C 02600
Quarter Section: 3647

Neighborhood: Pleasant Valley, contact Steve Montgomery at foxtrotlove@hotmail.com.
Business District: None
District Coalition: East Portland Community Office, contact at 503-823-4550.

Plan District: Pleasant Valley
Other Designations: Unincorporated Multnomah County
Powell-Jenne Valley subarea, [Pleasant Valley Natural Resources Protection Plan \(2004\)](#)

Zoning: Residential Farm/Forest (RF)
Pleasant Valley Natural Resources Overlay Zone (v)

Case Type: Pleasant Valley Natural Resource Review (PV)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant proposes to remove and mitigate for illegally placed fill and grading and the associated installation of a retaining wall within the Pleasant Valley Natural Resource “v” overlay in response to a zoning code violation case. The applicant proposes to remove all fill and the retaining wall and to replant the full extent of the lot within the area within the “v” overlay with 76 native trees, 227 native shrubs, and a native grass seed mix. The sweet cherry trees on the site, which are a listed nuisance species (*Prunus avium*) will be removed. The applicant has submitted an arborist report that includes a tree protection plan for the 63-inch diameter Western Red cedar on the site during the remediation activities.

Standard 33.465.405.B Option One, Remove and Repair, to correct the violation allows for the removal and remediation of a violation using hand-held equipment, but the size of the retaining wall blocks and the volume of fill necessitate the use of larger equipment. Therefore, per 33.465.405, Pleasant Valley Resource Review is required.

Relevant Approval Criteria:

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

- 33.465.250.D Corrections to Violations

ANALYSIS

Site and Vicinity: The site is a 19,991 square foot tax lot. It is undeveloped, but for the work being address through this review. Tree canopy coverage is low except for along the frontage. The most marked natural feature of the site is the 63-inch diameter Western Red cedar that grows at the bottom of the site, near where the retaining wall was placed. The site slopes gently to moderately downward to the west.

The site is about 1,500 feet east/southeast of Powell Butte. Between the Butte and the subject tax lot Johnson Creek meanders through about 40 acres of habitat, restored as part of the East Powell Butte Floodplain project, approved in 2006. The Springwater Corridor runs along the base of Powell Butte, just west of the restoration site. The site’s location, nestled amongst the many buttes of outer southeast Portland (e.g Jenne Butte, Clatsop Butte) make the area an important natural area, with many creeks, wetlands, and forested areas.

Development in the immediate vicinity is rural in character, with large parcels and low-density development. That character contrasts with the more suburban development that has grown in the area in the last few decades; 7 single-family dwelling subdivisions in the R10 zone with single-dwelling development have been developed within less than a half mile of the subject site over the last 25 years. In summary, the area as a whole is a blend of natural spaces, rural development, and suburban development.

It is worth noting that Code Compliance has determined that there was unpermitted fill placed on the abutting property to the north of the subject property; a violation has been issued (21-066834 CC/Exhibit G.7). The fill on the north property line of the subject property cannot be completely removed without a retaining wall unless the fill on the abutting property (R192830) is also removed, see Exhibit A.9 for details. Since retention of a retaining wall within the “v” overlay is not an option on the subject site within the current circumstances, the timing of the removal of the fill along the north property is dependent on resolution of the CC case for the abutting property, which is uncertain at this time. Staff acknowledges that the remediation work on the subject site may best occur in phases (See Condition of Approval E).

Zoning:

Base Zone: Residential Farm/Forest (RF). The RF base zone serves to foster the development of single-dwelling residences on lots having a minimum area of 52,000

square feet. The provisions of the base zone do not directly impact the remediation of the violation that is the subject of this review.

Plan District: Pleasant Valley Plan District. The Pleasant Valley plan district implements the Comprehensive Plan's goals, policies and action measures for Pleasant Valley; creates an urban community as defined by the Comprehensive Plan; and, furthers the Pleasant Valley vision to integrate land use, transportation, and natural resources, including extensive protection, restoration and enhancement of the natural resources.

Overlay Zone: Pleasant Valley Natural Resources (v) overlay. The "v" overlay zone seeks to: protect and conserve significant natural resources among existing uses and limited new development; facilitate restoration of floodplains, riparian areas and forests; protect and enhance connections between upland and riparian habitats between Pleasant Valley and the nearby habitats of Powell and Clatsop Buttes and Butler Ridge; protect stream water quality through revegetation and limits on construction, impervious surfaces, and pollutant discharges; and to conserve the scenic, recreational, and educational values of significant natural resources in the Pleasant Valley. The purpose of this land use review is to ensure compliance with the regulations of the Pleasant Valley Natural Resource zone.

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

The project site is mapped within the *Pleasant Valley Natural Resources Protection Plan (2004)* As Resource Site #28, in the Powell-Jenne Valley subarea. Per the Plan,

The Powell-Jenne Valley subarea is located north of the Kelley Creek basin along Johnson Creek in the vicinity of Jenne Lane. This subarea is situated in a narrow valley between Powell and Jenne Buttes. It contains a broad floodplain with varied wetland habitats. The subarea is 298 acres in size (136 acres within the site); this reach of Johnson Creek is approximately 4,170 lineal feet in length. The subarea contains a variety of wetland, riparian, and upland habitats, and provides high quality amphibian breeding sites. Habitat types include conifer, hardwood and mixed forests (115.07 acres), meadow (12.90 acres), and wetland (13.18 acres).

The Pleasant Valley Natural Resources Protection Plan ("The Plan") has a series of Tables that provide a habitat summary for each subarea. Using a methodology captured in a document known as the Wildlife Habitat Assessment (WHA) survey form, the Powell-Jenne Valley Subarea scored a Habitat Value of 61 out of 108; the Pleasant Valley site as a whole received a score of 63 (pgs 9 and 13 of The Plan).

A Table on page 13 of The Plan also lists habitat types for the subarea, significant species, special features, and sources of stress. Of particular note are the presence of invasives in the subarea, especially Himalayan blackberry, and their suppression of native species. Also notable are the importance of the subarea as a travel corridor between Powell Butte, Johnson Creek, and Jenne Butte and the need to ameliorate habitat fragmentation caused by things such as fences (retaining walls) and mowed fields.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **December 21, 2021**. The following Bureaus reviewed the proposal and submitted responses:

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

The full responses can be found in the “E” Exhibits. None of the reviewers objected to the proposal or requested conditions of approval.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on December 21, 2021. A total of two written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. The comments are summarized below. Where the comments directly speak to an approval criterion that the proposal does or doesn't meet, staff will address those comments in the findings below. Where the comments do not directly speak to applicable approval criteria, staff will respond in the summary of the neighbors' comments below.

1. Potential erosion concerns. Once the removal of fill, retaining blocks, and nuisance species takes place, there is potential for erosion to occur before the new plantings are able to establish a root structure to hold the soil in place. The erosion could encroach onto neighboring property and, especially during the rainy season, potentially undermine stability of the slope. Removal of the two cherry trees will further increase these potential issues, since the trees are the only mature rooted plants on that section of the slope, which is near to the neighboring house. The trees should be kept until the plantings are established.

Staff Note: At the time of permit application for the work to remove the fill and the retaining wall and to regrade the area back to a pre-disturbance condition, Site Development will require that the project comply with City Code Title 10 Erosion and Sediment Control Regulations. The regulations of Title 10 seek to ensure that dirt, mud, sediment, and pollution from development projects are contained on the property where the work is taking place. Site Development will also review the required development permit(s) for compliance with Portland City Code Chapter 24.70 Clearing, Grading, and Retaining Walls, which includes provisions addressing safety and stability of soils and the prevention of damage to adjacent properties from deposition or erosion resulting from adding or removing soils from a site (cut and fill). As such, staff finds that any additional measures that may need to be taken to protect neighboring properties from being negatively impacted by the proposed remediation work can and will be addressed during the permitting stage of the remediation process. For purposes of evaluating the adequacy of the current proposal to demonstrate that the applicable approval criteria can and will be met in a manner that will not preempt application of any additional measures deemed necessary at the time of permit, the project engineer has reviewed the neighbor's statement and responded with the following:

“The area of the two cherry trees lies within the southwest corner of the property. According to the contour data the slope in this area is approximately 5:1 slope which is relatively flat. While there are areas shown on the dept of geology & mineral industries slope stability map and it may lie within the moderate area of slope stability, it is my professional opinion that a slope of 5:1 in this area is not susceptible to sliding or erosion control problems, and after the new planting plan is executed it should be more than stabilized. The work should be done during the dry season as to lessen the susceptibility to any slide action. Here is my location for the slope stability map located at:

*SLIDO: Statewide Landslide Information Layer for Oregon
<https://gis.dogami.oregon.gov/maps/slido/>”*

Staff finds that the engineer's response, along with the future application of Title 10 and Chapter 24.70 during the permitting process, sufficiently address the neighbor's concern in a manner that is consistent with and supportive of the findings below. Staff has also included conditions (C.4

and D.2) that postpone death of the cherry trees to curtail propagation of a listed nuisance species until after the remediation plantings have been installed and require that it be done in the dry season to minimize impacts on soil stability.

ZONING CODE APPROVAL CRITERIA

33.465.250.D Corrections to Violations

For corrections to violations the application must meet all applicable approval criteria stated in Subsections A. through C., above, and D.1, 2.b and 2.c, below. If these criteria cannot be met, then the applicant's remediation plan must demonstrate that all of the following are met:

Findings: The approval criteria in Subsections B and C (*B. Modification of zone boundaries*, and *C. Other development in the Pleasant Valley Natural Resources overlay zone.*) are not applicable to this case, since no zone boundary change is proposed and no development is proposed.

For the approval criteria in Subsection A, *Resource enhancement projects*, one could argue that the remediation of the violation constitutes resource enhancement, but because the condition of the site prior to the violation is not understood in great detail, the applicant cannot demonstrate that criterion #2, which states that there will be no significant detrimental impact on any resources or functional values, can be met. Therefore, the applicant's remediation plan must demonstrate that approval criteria D.1, D.2.a, D.2.b, and D.2.c are met:

D. Corrections to Violations.

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

Findings: The applicant proposes to remediate the whole of the area of the subject tax lot that is in the 'v' overlay, which includes the totality of the area where the violation occurred. Therefore, this criterion is met.

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

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

Findings: As noted above, the resources and functional values in the Powell-Jenne Valley subarea are broad, with habitat types ranging from wetland to riparian to upland. Meadows and forested lands are both common in the area.

It is not possible to know with certainty the full extent of resources and functional values that were present on the site just prior to the violation. Based on available documentation and evidence, such as aerial and Streetview imagery, as well as current conditions adjacent to areas disturbed by the violation work, we can ascertain what those resources and functional values on the site were prior to the violation.

It appears that the predominant ground and shrub cover at the site was contiguous between the subject tax lot and the tax lot to the west. Current conditions are similar except for where the grading and fill associated with the violation occurred. Staff visited the site in March 2021 and found that the predominant shrub and ground cover both on the site to the west and on the undisturbed portions of the subject site was Himalayan blackberry, a listed nuisance species. Exhibit G.3 documents this observation and the applicant's Natural Resource Assessment substantiates it (Exhibit A.8.a, pg. 3).

As such, even before the violation, the resources and sources of functional values at the site prior to the violation were likely of a moderate to low value. The available evidence from Google Streetview shows that the violation resulted in the loss of at least one large California hazelnut, an arborescent shrub, and the lower canopy of the large Western redcedar, which according to the neighbor's comments (Exhibit F.1) was a source of cover for deer.

Otherwise, the functional values and resources that would be present on a site with a robust canopy, understory, and native groundcovers were most likely minimal or absent.

The project arborist has assessed the health of the large Western Red cedar, which is arguably the highest value resource on the site, and the violation's impacts to the tree's long-term vitality. According to the project arborist, the tree remains in good health and can be adequately protected during the remediation work; damage to the lower canopy and in particular where a 2-foot-thick branch appears to have been ripped off already being compartmentalized by the tree to isolate the wound and prevent the spreading of any potential disease to the rest of the tree. The arborist has provided detailed recommendations to ensure no further adverse impacts occur to the tree (Exhibit A.11). Compliance with the arborist's recommendations will be required as conditions of approval so that the functional values the tree provides will not be lost during and after the remediation work.

Finally, the remediation plan includes 101 native trees appropriate for the site and its proximity to the wetlands and riparian areas of Johnson Creek and the Lower Powell Butte Floodplain. Trees include Black cottonwood, Western redcedar, Bigleaf maple, and Scouler's willow (Exhibit A.8.a). 202 native shrubs are proposed, including Nootka Rose, Indian plum, Western Serviceberry, and vine maple. All of the proposed species are listed in the Portland Plant List as species that are used as food by wildlife. All remaining areas will be seeded with a native seed mix that includes 50% flowering species, providing additional food and habitat for pollinators and other invertebrates.

The planting plan will be in combination with the removal of all nuisance species on the site within ten feet of planting areas and a maintenance and monitoring plan to ensure that native plantings will establish themselves. Once established, remediation plantings will more than compensate for the loss of food for wildlife and for the loss of cover provided by the lower canopy of the Western redcedar, California hazelnut, and other undocumented habitat that was removed or damaged during the violation.

As described above, the proposed remediation plan to remove the unpermitted fill and retaining wall, protect the site's high value Western redcedar, remove invasive species, and to replant the entire 'v' overlay within the site will ensure that there will be no permanent loss of any type of resource or functional value as a result of the violation.

Therefore, with conditions, this criterion is met.

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

Findings: As noted above, evidence indicates that prior to the violation, the site was home to one mature native shrub and the surviving Western redcedar and was otherwise dominated by invasive species, especially Himalayan blackberry. The lack of plant diversity limited cover and shelter options for native vertebrate and invertebrate species. Native plants providing a diversity of forms, heights, and food options, are needed on the site to see a significant improvement in available functional values of food, cover, and shelter for wildlife. Flowering groundcovers provide food for native pollinators. Shrubs like Western serviceberry and Indian plum provide food for a wide range of upland birds and small to large mammals (Portland Plant List, 3.17). A condition of approval will be imposed requiring the applicant to demonstrate that any plant substitutions continue to provide significant functional value as food for wildlife.

In addition to improving the site's functional value of providing food for wildlife, the full palette of plantings will provide a broad range lower and higher canopy coverage that will serve to provide shelter options on the site not currently available. In addition, a condition of approval will require that the nuisance cherry trees on the south side of the property are girdled or felled, but retained on site to provide deadwood habitat, which is an important component of a healthy forest ecosystem (Exhibit G.5).

By removing the invasives and planting a diverse palette of native trees, shrubs, and groundcovers that provide food and a range of shelter and cover options for native wildlife species, the functional wildlife habitat values of food, cover, and shelter will be significantly improved.

With the aforementioned conditions, this criterion is met.

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

Findings: As previously noted, the resources and functional values at the site prior to the violation were most likely compromised, with an abundance of nuisance blackberry dominating the understory and few native shrubs and trees. Of what remains after the clearing associated with the violation, the high value Western redcedar, and overall erosion prevention of the existing groundcover, nuisance species or otherwise.

The tree protection measures recommended in the arborist report (Exhibit A.11) will ensure that the resources and functional values provided by the 63-inch Western redcedar will not be lost during the removal work and establishment of the remediation program. To ensure that the arborist's recommendations are followed, they will be incorporated into the conditions of approval.

Erosion and soil movement will be minimized and prevented during the removal and remediation planting. As noted in staff's response to the neighbor's concerns, at the time of permit application for the work to remove the fill and the retaining wall and to regrade the area back to a pre-disturbance condition, Site Development will require that the project comply with City Code Title 10 Erosion and Sediment Control Regulations. The regulations of Title 10 seek to ensure that dirt, mud, sediment, and pollution from development projects are contained on the property where the work is taking place. Site Development will also review the required development permit(s) for compliance with Portland City Code Chapter 24.70 Clearing, Grading, and Retaining Walls, which includes provisions addressing safety and stability of soils and the prevention of damage to adjacent properties from deposition or erosion resulting from adding or removing soils from a site (cut and fill).

By protecting the high-value tree at the site and through the implementation of Title 10 and Chapter 24.70 during the permitting process, staff finds that there will be minimal loss of resources and functional values during remediation until the full remediation program is established.

With conditions addressing tree protection and through the required Site Development permit for the removal and regrading activities, 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.

Nonetheless, it is worth noting that there are references within the application documents to re-using the retaining wall blocks on site, outside of the "v" overlay. The approval of this review does not in any way imply approval of a retaining wall outside of the "v" overlay.

CONCLUSIONS

The applicant proposes to remedy illegal grading, fill, and placement of a retaining wall within the “v” overlay of the subject site by removing the unpermitted retaining wall and fill, regrading to pre-disturbance contours, removing invasive species, and the planting of 101 native trees, 202 native shrubs, and native groundcovers. Two nuisance cherry trees on the site will be girdled or felled and retained for deadwood habitat and to provide additional slope stabilization during the establishment of the native plantings.

The applicant’s submittal materials and the above findings show that the proposal meets the applicable approval criteria with conditions. Therefore, this proposal should be approved, subject to conditions.

ADMINISTRATIVE DECISION

Approval of a Pleasant Valley Resource Review for:

- Removal of all unpermitted fill and all blocks of the unpermitted retaining wall;
- Regrading of areas where removal occurs to pre-violation contours;
- Removal of all nuisance species, except for two identified nuisance cherry trees;
- Retention and girdling or felling of two identified nuisance cherry trees for deadwood habitat;
- Replanting with 101 native trees, 202 native shrubs, and a native seed mix of grasses and flowers;

All within the Pleasant Valley natural resource overlay zone and in substantial conformance with the arborist report (Exhibit A.11) and with approved Exhibits C.6 and C.9, approved by the City of Portland Bureau of Development Services on **February 23, 2022**. Approval is subject to the following conditions:

- A. A BDS Permit is required for the regrading, removal of fill and inspection of required remediation plantings.** The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits (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 21-023319 PV, Exhibits C.6 and C.9.”***
- B.** Temporary, 4-foot high, bright orange construction fencing shall be placed all around the 63-inch Western redcedar at a distance of 32 feet from the trunk, as depicted on Exhibit C.6 and as directed in the Arborist Report, Exhibit A.11. The fencing may be temporarily moved under the direct on-site supervision of a certified arborist during work associated with fill and retaining wall removal, regrading, and mechanized nuisance species removal.
1. Trees shall be protected according to tree protection measures provided in the Arborist Report (Exhibit A.11) and in Title 11 Tree Code, Chapter [11.60.030 Tree Protection Specifications](#), including:
 - a. All work associated with fill and retaining wall removal, regrading, and mechanized nuisance species removal that is within 32 feet of the tree shall occur only under the direct, on-site supervision of a certified arborist. Prior to approval and issuance of the permit, the applicant shall provide a signed contract between the owner and the project arborist for these services.
 - b. After work associated with fill and retaining wall removal, regrading, and mechanized nuisance species removal that is within 32 feet of the tree is complete, 6-inches of wood mulch shall be spread in the area where the fill was removed to protect the tree’s roots and build up the soil.

- c. Within 63-feet of the Western redcedar, anywhere that machinery will be used, wood chip mulch shall be spread to a depth of 6-inches prior to machinery entering the site to help prevent compaction of soil within the work zone, excepting at locations on top of fill to be removed; in those locations, wood chip mulch shall be applied once the fill is removed.
 - d. Excepting remediation plantings, all work within the Western redcedar's RPZ (within 63-feet of the trunk) shall be done during the summer, when the soil is dry, to minimize the negative impacts of soil compaction on the tree's root system.
- C.** The BDS Permit shall include a mitigation planting plan for a total of 101 trees, 202 shrubs, the seeding of the remaining area of the site within the "v" overlay with a native blend of grasses and flowering species, and the removal of all invasive shrubs, vines, and groundcovers in substantial conformance with Exhibit C.9, the Remediation Planting Plan. (Girdling or felling of two nuisance cherry trees (*Prunus avium*) to provide deadwood habitat will be a requirement of the 1st monitoring and maintenance report). Any plant substitutions shall be selected from the *Portland Plant List* and shall be substantially equivalent in size to the original plant. Plants listed in the Portland Plant List as being used as food by wildlife shall be replaced with species that are also demonstrated to provide food for wildlife.
1. Permit plans shall show:
 - a. The general location of the trees, shrubs and ground covers required by this condition to be planted in the remediation area and labeled as "new required landscaping". The plans shall include a 40-foot by 40-foot "typical", scalable planting layout and shall illustrate a naturalistic arrangement of plants and should include a planting table listing the species, quantity, spacing and sizes 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.
 2. Shrub and tree plantings shall be installed between October 1 and March 31 (the planting season) and after all work associated with fill and retaining wall removal, regrading, and mechanized nuisance species removal (excepting the two cherry trees) is completed within ten feet of the planting area. Seeding shall also occur within these parameters, except that sowing seed shall not be restricted to the planting season so that it may more effectively be utilized, as needed, as erosion control.
 3. Prior to installing required plantings, non-native invasive plants shall be removed from all areas on the site that are within 10 feet of mitigation plantings, excepting the two cherry trees mentioned in Condition C.4, below.
 4. The two nuisance species cherry trees (*Prunus avium*) on the south side of the property shall not be removed, but shall instead remain on site and be girdled or felled to provide deadwood habitat. The girdling or felling shall occur in the dry season, after the required plantings have been installed to minimize the time between the loss of the trees' root structure and the establishment of the new plantings roots so that slope stabilization is maximized, while also addressing nuisance species propagation; Condition D.2 provides additional details on timing of the work. Girdling shall be performed according to best practices, as provided in Exhibit G.4.
 5. If plantings are installed prior to completion of construction, a temporary bright orange, 4-foot high construction fence shall be placed to protect plantings from construction

activities. This may be appropriate if remediation on the south half of the property occurs prior to completion of the work on the north side of the property.

6. After installing the required remediation plantings, the applicant shall request inspection of the plantings and final the BDS Permit.
7. All remediation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector; or the applicant shall arrange to accompany the BDS inspector to the site to locate mitigation plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.

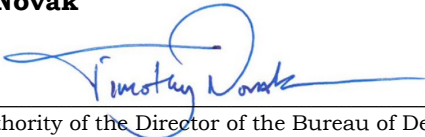
D. The landowner shall monitor the required plantings for two years to ensure survival and replacement as described below. The landowner is responsible for ongoing survival of required plantings beyond the designated two-year monitoring period. The landowner shall:

1. Submit two annual monitoring and maintenance reports for review and approval to the Land Use Services Division of the Bureau of Development Services containing the monitoring information described below. Submit the first report within 12 months following the final inspection approval of the initial Zoning Permit required under Condition A. Submit a second report 12 months following the date of the first monitoring report. Monitoring reports shall contain the following information:
 - a. A count of the number of planted trees that have died. One replacement tree must be planted for each dead tree (replacement must occur within one planting season).
 - b. Specify plant replacement location. The first monitoring report shall specify if the alternative planting location was utilized due to inability to establish plants in the preferred planting location.
 - c. The percent coverage of native shrubs and ground covers. If less than 80 percent of the mitigation planting area is covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
 - d. A list of replacement plants that were installed.
 - e. Photographs of the remediation area and a site plan, in conformance with approved Exhibit C.9 Remediation Planting Plan, showing the location and direction of photos.
 - f. An estimate of percent cover of invasive species within 10 feet of all plantings. Invasive species must not exceed 15 percent cover during the monitoring period.
2. The 1st monitoring and maintenance report shall provide photo-documentation and written verification that the girdling or felling of the two nuisance cherry trees (*Prunus avium*) to provide deadwood habitat has occurred in conformance with Condition C.4.

E. Removal of fill at and around the north property line is not possible at this time because it is supporting the unpermitted fill on the abutting property (see Exhibits A.9 & G.7). If the applicant chooses, the remediation work can be carried out in two phases, under two permits. The first phase can be the removal of the fill within the dripline of the 63-inch Western redcedar, removal of the retaining wall, and all nuisance species removal and plantings that are not in a location that conflicts with the work required in phase 2. Phase 2 can be the removal of the fill around the north property line and any remaining nuisance species removal and remediation plantings. Other than allowing the work to occur in two phases, this condition does not alter the other conditions of approval, which continue to be in effect, regardless of the number of phases. Correction of the violation requires that all phases of the remediation work are complete.

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 February 23, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed: February 25, 2022

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 March 8, 2021, and was determined to be complete on September 3, 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 March 8, 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 a total of 137 days (Exhibits A.4.e, A.6, A.7, & A.10) Unless further extended by the applicant, **the 120 days will expire on: May 18, 2022.**

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 March 11, 2022. 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.

Appeal fee waivers. Multnomah County may cover the appeal fees for their recognized associations. An appeal filed by a recognized association must be submitted to the City with either the appropriate fee or the attached form signed by the County. Contact Multnomah County at 503-988-3043, 1600 SE 190th, Portland, OR 97233.

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 **March 11, 2022** 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, 03/08/2021
 - a. Narrative
 - b. Natural Resource Assessment

2. Engineering Report and Plans, Submitted 6/14/2021
3. Request to deem application complete
4. Revised Submittals, 11/15/2021
 - a. Natural Resource Assessment
 - b. Signed Grading Report
 - c. Plan Set
 - d. Arborist Report
 - e. Extension Request #1
5. Revised Submittals, 12/14/2021
 - a. Revised and Signed Grading Report
 - b. Plan Set
 - c. Arborist Report
6. Extension Request #2
7. Extension Request #3
8. Revised Submittals, 1/26/2022
 - a. Natural Resource Assessment (with Planting Plan)
 - b. Plan Set
 - c. Arborist Report
9. Final Engineering and Grading Report
10. Extension Request #4
11. Final Arborist Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Cover sheet
 2. Existing site plan
 3. LiDAR data sections
 4. Calculation of amount of illegal fill
 5. Removal of existing retaining wall
 6. Proposed erosion control (attached)
 7. Erosion control general notes and details
 8. Proposed new site plan
 9. Remediation planting plan (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Fire Bureau
 4. Site Development Review Section of BDS
 5. Life Safety Review Section of BDS
- F. Correspondence:
 1. Hebner Comments, 01/06/2022 encountersuit@gmail.com
 2. Pleasant Valley Neighborhood Association, 01/11/2022 foxtrotlove@hotmail.com
- G. Other:
 1. Original LU Application
 2. Incomplete Letter
 3. Photographic Documentation of present and historical presence of nuisance blackberry at and adjacent to the subject tax lot.
 4. USFS girdling guide
 5. Report on importance of standing deadwood and logs to forest health
 6. PT 250 Seed mix specs
 7. Notice of Violation letter to abutting neighbor to the north for unpermitted fill (21-066834 CC)

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).