



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

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**Date:** June 25, 2021  
**To:** Interested Person  
**From:** Kate Green, Land Use Services  
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## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision.

The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 21-010359 EV**

#### **GENERAL INFORMATION**

**Applicant:** Kevin Bone and Marc Peters / Bureau of Environmental Services  
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Portland, OR 97204  
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**Owner:** City of Portland  
1120 SW 5th Avenue #1000  
Portland, OR 97204-1912

**Site Address:** 15007 SE FOSTER ROAD

**Legal Description:** LOT 2 TL 400, JOHNSON CREEK PK; LOT 2 TL 300, JOHNSON CREEK PK  
**Tax Account No.:** R431100410, R431100420  
**State ID No.:** 1S2E13CD 00400, 1S2E13CD 00300  
**Quarter Section:** 3645

**Neighborhood:** Pleasant Valley, contact Steve Montgomery at [foxtrotlove@hotmail.com](mailto:foxtrotlove@hotmail.com)  
**Business District:** Midway, contact [info@midwaybusiness.org](mailto:info@midwaybusiness.org)  
**District Coalition:** East Portland Community Office, contact at 503-823-4550

**Zoning:** Single Dwelling Residential 20,000 (R20)  
Environmental Conservation (c) and Environmental Protection (p)

**Plan District:** Johnson Creek Basin - South  
**Other Designations:** 100-year floodplain

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

**Proposal:** An **Environmental Violation Review** is requested to resolve the following unauthorized activities in the Environmental Conservation and Environmental Protection overlays and Johnson Creek Basin Plan District-South Subdistrict: removal of 10 trees and placement of gravel. To remedy the violation and repair the disturbed area, the applicants propose to remove the gravel and replant the impacted area and an adjacent area with native vegetation.

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are: **33.430.250.G-Corrections to violations.**

## FACTS

**Site and Vicinity:** The subject site includes two tax lots with a combined area of approximately 4.76 acres. The site was formerly occupied by a house and other outbuildings that were removed from the site in 2019. The site terrain is relatively flat, except where it slopes down steeply from SE Foster Road, to the proposed work areas, and along the steep armored banks of Johnson Creek, which bisects the site and the wetland areas adjacent to the stream channel. The site contains many trees, including native and ornamental species.

The surrounding development includes houses on large lots to the east and west, and the Springwater Corridor and Powell Butte Nature Park about the north boundary of the site.

**Environmental Resources:** As noted in the applicant's narrative, *[t]he subject site is covered by the Johnson Creek Basin Protection Plan (BPS 1991) and is identified as part of Resource Site 25. This site makes up approximately 4.76 acres of the 31-acre resource site and is considered of medium significance with a Wildlife Habitat Value of 32. For reference, the range of all resource sites in the Plan is from 18 to 83. The site is predominantly classified as cultivated pastureland, with Palustrine and Riverine habitats, the former seasonally flooded. This land use provides little to no protection against sedimentation or erosion of Johnson Creek's banks, but the creek is reinforced by rockwork through the subject site. Rock-lining the banks of the creek was part of the Works Progress Administration's efforts in the 1930s to deepen and widen the stream channel in order to more quickly convey floodwaters. The vegetated portion of the subject site can function as flood storage and storm drainage/infiltration. Dense blackberry cover exists on both the borders of the onsite pond and along the fence line. Willows, alder, cedar, ash, and some maple trees line the banks of Johnson Creek, providing riparian habitat and mitigating stream temperature. It should be noted that this resource site was last inventoried in July of 1990.*

Specific resources and functional values in Resource Site 25 include:

**Resource Features:** *open water stream/drainageway channels; herbaceous, scrub-shrub and forested wetlands; vegetated flood area; bottomland hard wood forest; grass lands.*

**Functional Values:** *microclimate and shade; stream flow moderation and water storage; bank function, and sediment, pollution and nutrient control; large wood and channel dynamics; organic inputs, food web and nutrient cycling; wildlife habitat; habitat connectivity/movement corridor.*

**Zoning:** The site is situated in the **Single Dwelling Residential 20,000 (R20)** zone. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. Parks and Open Areas uses are also allowed by right; however, parking area for such uses are subject to a Conditional Use Review.

The site also has **Environmental Conservation (c)** and **Environmental Protection (p)** overlay designations. The Environmental zones protect resources and functional values that have been identified by the City as providing benefits to the public.

The site is also within **Johnson Creek Basin Plan District-South Subdistrict**. The plan district provides for the safe, orderly, and efficient development of land which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetland, and the lack of streets, sewers, and water services.

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

**Summary of Applicant's Statement:** At the request of BDS staff, BES provided the following information about the overall plans for the subject property:

*Before BES acquired this property, there was an existing gravel disturbance area of 1.5" diameter aggregate that was used for vehicle parking. BES acquired this property in 2018 and demolished the three existing structures on site (primary residence, garage, and shed) in the spring of 2019. As part of this demolition, ¾" graded rock was added on top of the previously disturbed area.*

*In the long-term, this property is part of a land banking effort under the Johnson Creek Willing Seller Land Acquisition program. This and neighboring properties, referred to as the Lower Powell Butte target area, are almost entirely within the Special Flood Hazard Area of Johnson Creek. It is the intention of BES to acquire as many of these remaining properties as feasible, help move people out of areas that frequently flood, and remove the existing structures from the floodplain. Properties that are acquired by BES are used for floodplain restoration projects that increase flood storage, reduce the frequency of flooding on private property, improve water quality, enhance fish and wildlife habitat, restore wetlands, and provide complementary natural resource benefits such as including passive recreational activities for city residents.*

*It is the intention that this site can be a part of a future floodplain restoration project. This would follow on the achievements of the Kelley Creek Confluence project (completed in 2005) and the Schweitzer project (completed in 2008), both of which are located east of 158th Avenue and upstream of this site. In 2018, BES hired a consultant to conduct a hydraulic modeling study of this area in order to gauge potential flood storage benefits. The preferred concept developed in this study included creating a passive, anastomosing channel for flood storage throughout the northern half of this site to the north of the existing creek. It is for this reason that BES proposes that all mitigation for these two violations occurs to the south of Johnson Creek, as evidenced in the attached Site Plans. This ensures that the mitigation plantings have the highest chance of long-term success and would not need to be impacted during the potential future project.*

**Agency Review:** The following Bureaus have responded with no issues or concerns:

- Site Development/BDS
- Life Safety
- Bureau of Environmental Services
- Urban Forestry

The Oregon Department of State Lands (DSL) noted the site has hydric soils; mapped wetlands; and includes or is adjacent to designated Essential Salmonid Habitat. DSL noted work within Johnson Creek and associated wetlands may require a state permit, but the proposed gravel removal and mitigation plantings appear to be outside of those areas subject to a state permit.

**Neighborhood Review:** A *Notice of Proposal in Your Neighborhood* was mailed on **April 19, 2021**. No written responses have been received.

## **ANALYSIS**

**Impact Analysis and Mitigation Plan:** As noted in the proposal description above, the applicant intends to remove unauthorized gravel, repair and replant the impacted area with native vegetation, and to remove nuisance species and replant an adjacent area as additional remediation.

**Development Alternatives:** To address the approval criteria and demonstrate the rationale for selecting their preferred remedial action, the applicant described several alternative remediation actions that were considered, as summarized below:

Alternative 1: Leave gravel disturbance and attempt to legalize the added gravel area

The alternative of maintaining the expanded disturbance area and attempting to legalize the graveled area added to the site is not a viable option because of the long-term environmental impacts to natural resources. Roots and soil underneath the gravel have been impacted by long-term compaction and suffocation. BES wants to remove all gravel from the Environmental Conservation & Protection Overlay Zones and to restore the site by implementing the required mitigation. Leaving the gravel in place would not coincide with the long-term vision BES has for this site as part of a future stream restoration project with increased flood storage in the Lower Powell Butte area.

Alternative 2: Remove gravel disturbance with hand-held equipment

Although removing all the gravel added to the site with hand-held equipment is desirable, it is not viewed a practical solution. The previous landowner added gravel to the site over two decades ago, and after all that time the area has become extremely compacted. The more recent addition of gravel that occurred at the time of the home demolition project in 2019 was placed on top of the gravel that was already present on-site. The approximately 2614 SF disturbance area is up to 12" thick in places. It would not be practicable from a time, cost, and desirable outcome perspective to effectively remove all the gravel and de-compact the soil if hand-held equipment was the only option available. Therefore, this alternative is not a viable option.

Alternative 3: Remove Gravel Disturbance with limited use of mechanical equipment

In order to effectively remove the gravel and de-compact the soil, a mini-excavator with a toothed bucket to scrape, de-compact, and prepare the soil for planting is recommended. This would be the most efficient and effective method for both removing the gravel and de-compacting the soil in preparation for the mitigation plantings. This would not be possible if hand-held equipment was the only option. Therefore, this is the preferred alternative.

The applicant indicates their preferred alternative will best achieve the project goal and have the fewest detrimental impacts to the designated resources. The applicant outlines the proposed construction management, mitigation and monitoring measures for their preferred alternative below:

**Construction Management:** The gravel (also referred to as graded rock in the applicant's narrative) to be removed is located over the root zone of two large diameter trees. The project arborist identified measures to be implemented during the gravel removal to minimize impacts to the tree roots (Exhibit A.3). The arborist recommends the gravel removal be limited to the removal of the approximately 12-inch depth of ¾-inch graded rock, and indicates the removal of the 1.5-inch graded rock and compacted soil below it would likely cause harm to the root zone.

The arborist identified the following trees and root zones within the work area:

Tree 1: 54.5-inch diameter *Cedrus atlantica*

- Critical Root Zone (CRZ) radius from trunk = 27.25 ft.
- Root Protection Zone (RPZ) radius from trunk = 54.5 ft.

Tree 2: 17-inch diameter *Thuja plicata*

- Critical Root Zone (CRZ) radius from trunk = 8.5 ft.
- Root Protection Zone (RPZ) radius from trunk = 17 ft.

To protect these trees and prepare the ground surface for planting, the arborist recommends the following:

*Recommended equipment for work within the RPZ is limited to low ground pressure equipment, such as a tracked excavator. Equipment inside of the RPZ should use the existing gravel as root protection medium and stay on the existing full depth gravel at all times. The excavator can work from the edges of the gravel back toward the driveway, thereby avoiding operating on any bare ground within the RPZ as the gravel being is removed. If the excavator or other equipment needs*

to enter the CRZ (or RPZ where there is no full depth gravel), 3/4 " plywood will be placed on top of existing medium to further limit ground compaction.

*Extreme care should be taken to remove recently placed 3/4" aggregate to minimize root zone impacts. In the larger root protection zone (RPZ), careful removal of most of the 3/4" aggregate may occur using a low impact wide rubber tracked excavator with a bucket. If practicable, 3/4" thick plywood sheets may be laid to further protect the soil under the path of travel by distributing the weight of the tires or tracks.*

*The top 9" of aggregate should be removed in staged 3" lifts. The final lift of 3" should be removed with a spotter to halt work if structural roots are encountered or by hand. Hand removal is required near any structural roots that are identified inside the RPZ. If structural roots larger than 2" in diameter are encountered an arborist should be consulted to address how to proceed with further removal in that location.*

*The equipment should maneuver in such a way that paths remain on the full depth gravel. Machinery should be clean and free of leaks and be assessed for any leaking fluids throughout the process. Spill kit and leak spotter should remain on site for duration of project work. Machinery should be parked and staged only on paved roadway.*

*Efforts to remove the pre-existing 1.5" aggregate and de-compact the soil the in the RPZ are not likely to be effective and are likely to cause more harm to the root zone. After 3/4" aggregate has been completely removed, in order to aerate the roots in the RPZ and mitigate the effects of soil compaction, it is recommended to incorporate vertical mulching. Using a hand auger, install 3 - 4" diameter holes to a depth of 12" or 2" below compacted soil depth, whichever is greater. Holes should be no less than 18" - 24" apart in a grid-like pattern, throughout the impacted area of the RPZ. If roots greater than 1/2" are encountered, the hole shall be moved accordingly. Holes should only be installed in the CRZ outside of the structural root plate.*

*As a final step, mulch (or compost and mulch mixed at a rate of 70/30 mulch to compost), should be laid in the holes and to a surface depth of 6-8" throughout the RPZ. Planting of new species can occur through the mulch. Mulch should be coarse and free of green matter or foreign debris. Compost, if used, should be finished, from vegetative sources, and free of foreign debris.*

**Mitigation/Remediation:** Once the gravel is removed and the ground surface is prepared for plantings, BES proposes to install plantings to mitigate for the removed trees and the gravel placement. BES also proposes to remove noxious weeds species and replant an adjacent area. The planting areas and proposed native species are shown on the Mitigation Planting Areas Plan (Exhibit C.3) and the planting materials are further described below:

*Installation of Native Woody Materials: BES will provide and install all native woody plant materials. Materials will consist of native trees and shrubs in the form of bare-root seedlings. Bare root seedlings are generally 0.5 inch caliper, 18-36" in height. All plant materials are collected and/or propagated from a Portland metro area wild population/seed source. Installation of these materials shall occur in winter 2022.*

*Actual numbers of plants may be adjusted, and species substitutions may be made depending on availability of plant stock. Trees will be planted on approximately 10 foot spacing. Shrubs will be planted in clusters of five. A minimum of 60% survival of trees and shrubs is expected. If numbers drop below the final mitigation requirements WRP will interplant to ensure minimum plant numbers at final inspection.*

**Monitoring:** To ensure the remediation measures are successful, BES proposes the following monitoring and maintenance measures:

*Monitoring: BES has prepared monitoring and documentation guidelines for upland, riparian and wetland areas to assess conditions and identify trends in order to increase the continued success of planting projects. Monitoring includes assessment of plant mortality and its causes. BES will*

*interplant areas where stocking falls below a level that will ensure occupancy of the site by native plants within 10 years. BES may prescribe other treatments to reduce further plant mortality or to further enhance project areas.*

*Maintenance: Non-native vegetation will be suppressed by mechanical or chemical means for the duration of the permit period. Cutting, manual control, and/or spraying treatments will occur 1-4 times annually, depending on regrowth of exotic vegetation. If survival of planted seedlings falls below acceptable levels, maintenance will be intensified, and high mortality areas will be interplanted (see below). It is expected that by the end of the permit period native trees and shrubs will be well established.*

At the request of BDS staff, BES provided the following information about the potential use of herbicides:

*BES's Watershed Revegetation Program (WRP) controls invasive plants and promotes the establishment of native plant communities through the use of an integrated pest management (IPM) approach which includes cutting, mowing, seeding, pulling, mulching, and selective herbicide application. WRP's IPM approach is based on Portland Parks & Recreation's IPM policy, a nationally recognized and model pesticide treatment program that contains specific herbicide application practices that have been reviewed by the National Oceanic and Atmospheric Administration (NOAA) to create best management practices for working safely and avoiding negative impacts to wildlife and water quality in natural areas and near waterways. All herbicide crews are State-licensed applicators. The WRP applies only low-toxicity herbicides labelled for use in aquatic areas and uses only low-pressure backpack spray equipment for precise applications with minimal off-target damage and drift.*

#### **ZONING CODE APPROVAL CRITERIA**

**33.430.250.G Corrections to violations. For corrections to violations of this Chapter the application must meet all applicable approval criteria stated in subsections A through F above, and paragraphs 1, 2.b and 2.c, below. If these criteria cannot be met, then the applicant's remediation plan must demonstrate that all of the following are met:**

- 1. The remediation is done in the same area as the violation; and**
- 2. The remediation plan demonstrates that after its implementation there will be:**
  - a. No permanent loss of any type of resource or functional value;**
  - b. A significant improvement of a least one functional value; and**
  - c. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.**

**Findings:** The approval criteria which would have been applied to the tree removal and gravel installation are found in 33.430.250.E, *Other development in the Environmental Conservation zone or within the Transition Area only*, and 33.430.250.F, *Other development in the Environmental Protection overlay zone*. If any of the fourteen criteria from these sections cannot be met, then all of the criteria under Section G must be met, including the criterion which requires removal of the unpermitted development.

The applicant provided findings for criterion 33.430.250.E and F (Exhibit A.2), which indicate criteria 33.430.250.F.3: *There is a public need for the proposed use or development*, is not met, since a hydraulic study would be required to evaluate the impacts of the unpermitted fill within the 100-year floodplain and leaving the gravel disturbance in place is not consistent with the long-term restoration program BES has for the site. The applicant therefore addressed the criteria in 33.430.250.G.1 and 2, as follows:

#### **G. Corrections to violations.**

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

*Mitigation plantings will occur within the gravel disturbance area to the maximum extent practicable. All remaining mitigation plantings will occur elsewhere on the subject site.*

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

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

*Following the implementation of the remediation plan there will be no permanent loss of any type of resource or functional value. The gravel disturbance area currently serves no functional value.*

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

*The remediation plan will include the application of native seed to establish a native herbaceous ground cover and the installation of all woody materials (bare-root trees and bare-root shrubs) on approximately 0.5 acres surrounding and including the disturbance area. 225 trees will be planted on a rough grid at 10' spacing. 1,000 shrubs will be planted in clusters of five shrubs, with 10' between clusters. Final established plantings at the end of the 5-year establishment period are expected to consist of at least 135 trees and 600 shrubs.*

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

*A minimum of 60% survival of trees and shrubs is expected. If numbers drop below the estimated survival quantities, the BES Watershed Revegetation Program will interplant to ensure minimum plant numbers at final inspection. Monitoring will include assessment of plant mortality and its causes. BES will interplant areas where stocking falls below a level that will ensure occupancy of the site by native plants within 10 years. BES may prescribe other treatments to reduce further plant mortality or to further enhance the project area. Non-native vegetation will be suppressed by hand-held mechanical or chemical means for the duration of the permit period. Cutting, manual control, and/or spraying treatments will occur 1-4 times annually, depending on regrowth of exotic vegetation. If survival of planted seedlings falls below acceptable levels, maintenance will be intensified, and high-mortality areas will be interplanted. It is expected that by the end of the permit period the native trees and shrubs will be well established.*

BDS LUS Staff concur with the findings presented. The proposed 60 percent survival rate is below a more typically accepted rate of 80 percent; however, based on the proposed higher initial planting densities, the final minimum numbers of at least 135 trees and 600 shrubs are within an acceptable range. Overall, the proposed remediation actions are expected to replace the values of the removed trees; enhance the habitat diversity along the creek; and improve many functional values on the site, including: bank functions, microclimate and shade; wildlife habitat; and habitat connectivity/movement corridor.

Based on the foregoing, with the application of conditions for permits, inspections and monitoring to ensure the work is performed as proposed, these criteria will be met.

## **CONCLUSIONS**

The applicant requests approval of remediation for a Zoning Code violation which occurred within the Environmental overlay zone. The applicant proposes to remove unauthorized gravel and install native plants to repair and restore the impacted area. These actions will remove fill (gravel) from the 100-year floodplain and improve the habitat values of the lands adjacent to Johnson Creek. Construction management practices will be implemented to protect the creek and nearby trees during the gravel removal and soil decompaction activities. Noxious weeds will be removed from 2 remediation planting areas and new native plants will be installed to remediate the tree removal and gravel disturbance.

Based on the findings in this report, the applicant's proposal meets the criteria for remediation of violations. With the noted conditions for specific permitting and monitoring requirements, this proposal should be approved.

## ADMINISTRATIVE DECISION

**Approval** of an Environmental Review for correction of a Zoning Code violation in the Environmental Conservation and Protection overlay zones in conformance with Exhibits C.1 through C.4. Approval is subject to the following conditions:

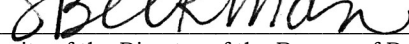
- A. Within twelve weeks of the final day of the appeal period of this decision**, the applicant shall:
1. **Apply for a BDS Zoning Permit** for the removal of unauthorized gravel and noxious vegetation; soil decompaction; and the installation of the required remediation plantings, as depicted on the Construction Management Plan (Exhibit C.2), the Mitigation Planting Areas Plan (Exhibit C.3), the Planting Spacing Schematic (Exhibit C.4), and as specified in the Arborists Report, Exhibit A.3.
    - a. No other BDS Permits shall be finalized until the BDS Zoning Permit for inspection of the remediation plantings is finalized.
    - b. The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permit. Plans shall include the following statement, *"Any field changes shall be in substantial conformance with approved LU 21-010359 EV Exhibits C.1 through C.4."*
      - (1) Prior to any ground disturbing activities, temporary straw wattles shall be installed, as depicted on Exhibit C.2 Construction Management Plan.
      - (2) Onsite supervision shall be provided for any mechanized construction vehicles within the root protection zone of Tree 1 and Tree 2.
      - (3) All invasive vegetation removal and planting work shall be conducted using hand held equipment.
      - (4) A total of 225 trees, 1,000 shrubs, and a native seed mix (applied at 7.6 pounds/acre) shall be installed in substantial conformance with the Mitigation Planting Areas Plan (Exhibits C.3) and the Planting Spacing Schematic (Exhibit C.4). All plantings and any plant substitutions shall be selected from the *Portland Plant List*, and shall be substantially equivalent in size to the original plant.
        - (a) Permit plans shall show:
          1. The general location of the trees, shrubs and ground covers required by this condition to be planted in the remediation areas and labeled as "new required landscaping". The plans shall include a 40-foot by 40-foot "typical", scalable planting layout for each planting zone, 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.
          2. The applicant shall indicate on the plans selection of either tagging plants for identification or accompanying the BDS inspector for an on-site inspection.
      - (5) Plantings shall be installed between October 1 and March 31 (the planting season).
      - (6) Prior to installing required remediation plantings, non-native invasive plants shall be removed from all areas within 10 feet of remediation plantings, using handheld equipment.
      - (7) 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.
      - (8) After installing the required remediation plantings, the applicant shall request inspection of remediation plantings and final the BDS Zoning Permit.
      - (9) All remediation trees and shrubs 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 remediation plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.

- B. 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 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 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) to ensure a minimum of 135 trees are thriving in the remediation planting areas.
    - The percent coverage of native shrubs and ground covers. If less than 600 shrubs or 80 percent of the remediation 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).
    - A list of replacement plants that were installed.
    - Photographs of the remediation area and a site plan, in conformance with approved Exhibits C.3 to C.4, Mitigation Planting Areas and Planting Spacing Schematic, showing the location and direction of photos.
    - An estimate of percent cover of invasive species (English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis) within 10 feet of all plantings. Invasive species must not exceed 15 percent cover during the monitoring period.
- C.** Any herbicides used within the remediation planting areas shall be selected and applied in accordance with BES's Watershed Revegetation Program (WRP) integrated pest management (IPM) approach, which applies only low-toxicity herbicides labelled for use in aquatic areas and uses only low-pressure backpack spray equipment for precise applications with minimal off-target damage and drift.
- 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.

**Staff Planner: Kate Green**

**Decision rendered by:**  **on June 23, 2021**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: June 25, 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 February 2, 2021, and was determined to be complete on April 14, 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 February 2, 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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: August 12, 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 July 9, 2021. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto: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 **July 9, 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. Initial Submittal, February 2, 2021
    - a. Narrative
    - b. Arborist Report
    - c. Site Plans
    - d. Revegetation Plan
  - 2. Revised Submittal, April 13, 2021
    - a. Narrative
    - b. Revegetation Plan
  - 3. Revised Arborist Report, June 11, 2021
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Existing Conditions (attached)
  - 2. Construction Management (attached)
  - 3. Mitigation Planting Areas (attached)
  - 4. Planting Spacing Schematic (attached)
  - 5. Planting Table
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Fire Bureau
  - 3. Site Development/BDS
  - 4. Urban Forestry/Parks
  - 5. Life Safety/BDS
  - 6. Division of State Lands-Wetland Notice Response
- F. Correspondence: (none received)
- G. Other:
  - 1. Original LU Application
  - 2. Letter to applicant re: incomplete application
  - 3. Correspondence to/from applicant

**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).**