

**NOTICE OF TYPE II DECISION
ODOT - BALL CREEK
STREAMBANK STABILIZATION
SENSITIVE LANDS REVIEW (SLR) 2008-00006**



120 DAYS = 1/8/2009

SECTION I. APPLICATION SUMMARY

FILE NAME: ODOT - BALL CREEK STREAMBANK STABILIZATION
CASE NOS.: Sensitive Lands Review (SLR) **SLR2008-00006**
Tree Removal (TRE) TRE2008-00003 thru TRE2008-00008

PROPOSAL: The applicant is requesting Sensitive Lands Review approval for Ball Creek streambank stabilization to replace an earlier emergency repair along approximately 100-feet of the creek. In addition, the applicant requests approval for Tree Removal permits for six trees proposed to be removed within the project area in the draingeway for Ball Creek.

**APPLICANT/
OWNER:** Oregon Department of Transportation (ODOT)
c/o Sam Hunaidi
6000 SW Raab Road
Portland, OR 97221

**COMPREHENSIVE
PLAN/ZONE**

DESIGNATION: I-H: Heavy Industrial District. The I-H zoning district provides appropriate locations for intensive industrial uses including industrial service, manufacturing and production, research and development, warehousing and freight movement, railroad yards, waste-related and wholesale sales activities. Activities in the I-H zone include those which involve the use of raw materials, require significant outdoor storage and generate heavy truck and/or rail traffic. Because of these characteristics, I-H zoned property has been carefully located to minimize impacts on established residential, commercial and light industrial areas.

LOCATION: ODOT Right-of-Way; adjacent to the Gerber Blades parcel, Washington County Tax Map 2S112AA, Tax Lot 00300.

**APPLICABLE
REVIEW**

CRITERIA: Community Development Code Chapters 18.390, 18.530, 18.775 and 18.790.

SECTION II. DECISION

Notice is hereby given that the Community Development Director's designee has **APPROVED** the above request. The findings and conclusions on which the decision is based are noted in Section V of this Decision.

**THIS APPROVAL SHALL BE VALID FOR EIGHTEEN (18) MONTHS
FROM THE EFFECTIVE DATE OF THIS DECISION.**

SECTION III. BACKGROUND INFORMATION

Site History:

As a result of the December 2007 storms that caused Ball Creek to start eroding the eastern bank at the project site, threatening the retaining wall of the I-5/OR 217 on-ramp. To prevent a slide from closing the on-ramp, in January 2008, ODOT conducted an emergency repair which consisted of placing large rocks and rip-rap that encompassed the failed slope. The emergency repair was intended to be a temporary fix until a more permanent solution could be put in place to stabilize the slope. Because the emergency repair was intended to be temporary, ODOT is concerned that the temporary materials will not hold through another wet winter season which could result in further erosion sliding onto the I-5/OR 217 on-ramp. This facility is crucial to interstate freight mobility and the traveling public. ODOT has designed a project to stabilize the slope bank with a more permanent environmentally sound vegetated solution that will promote bank stability, minimize erosion, and maintain and enhance water quality consistent with all the agencies.

Vicinity Information and Proposal Description:

The Ball Creek stream stabilization project area is located in the I-H zone, along the property line of the Gerber Blades parcel on the west and the ODOT right-of-way on the east. The creek is in a narrow channel as it runs north/south between the parking lot and the I-5 embankment. Just upstream of the project area, the creek emerges from a culvert under I-5; just downstream, the creek leads west between parking lots to its confluence with Fanno Creek approximately 3,000 feet west. Several I-5 drainage outfalls exist in the project area. Various trees and riparian vegetation in the project area are proposed for removal along the east embankment to accommodate the stabilization design.

The applicant is requesting Sensitive Lands Review approval for Ball Creek streambank stabilization to replace an earlier emergency repair along approximately 100-feet of the creek. In addition, the applicant requests approval for Tree Removal permits for six trees proposed to be removed within the project area in the drainageway for Ball Creek.

Circumstances of this Application

Late discovery by ODOT of the Sensitive Lands permit required by the City for the work in a drainageway resulted in an application that was deemed complete on September 9, 2008. Because the project had to be completed within the in-water work window ending September 30, 2008, the project became an emergency repair to a public facility (I-5), which is an allowed use as an exemption under TDC 18.775.020.C.1. Based on this change in status of the project, ODOT was allowed to initiate work on September 15, 2008, prior to the public comment period and prior to issuance of this decision with the understanding that any legal or other issues related to the work would be fully the responsibility of ODOT (Email from Dick Bewersdorff, Tigard Planning Manager, to Marah Danielson, ODOT Senior Planner, September 11, 2008).

SECTION IV. NEIGHBORHOOD COMMENTS

The Tigard Community Development Code requires that property owners within 500 feet of the subject site be notified of the proposal, and be given an opportunity for written comments and/or oral testimony prior to a decision being made. Notice of the Pending Decision was mailed to property owners on September 12, 2008. In addition, on September 15, 2008, staff posted a notice at the driveway to the site, visible from SW 72nd Avenue. The City did not receive any comments from neighbors or interested parties.

SECTION V. APPLICABLE REVIEW CRITERIA AND FINDINGS

COMPLIANCE WITH COMMUNITY DEVELOPMENT CODE SECTIONS:

Development Standards (18.530.040):

All development must comply with:

1. All of the applicable development standards contained in the underlying zoning district, except where the applicant has obtained variances or adjustments in accordance with Chapters 18.370.
2. All other applicable standards and requirements contained in this title.

The proposed streambank stabilization does not involve construction of any structures. Therefore, the development standards for the heavy industrial zone do not apply. However, as reviewed below, the proposed stabilization is consistent with the applicable standards in the Sensitive Lands (18.775) and Tree Removal (18.790) chapters.

Sensitive Lands (Section 18.775):

Section 18.775 states that the Director shall have the authority to issue a sensitive lands permit in the following areas by means of a Type II procedure, as governed in Section 18.390.040, using approval criteria contained in Section 18.775.070 C-E:

- ◆ Drainageways;
- ◆ Slopes that are 25% or greater or unstable ground; and
- ◆ Wetland areas which are not regulated by other local, state, or federal agencies and are designated as significant wetlands on the Comprehensive Plan Floodplain and Wetland Map.

Drainageways. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit within drainageways based upon findings that all of the following criteria have been satisfied:

The extent and nature of the proposed land form alteration or development will not create site disturbances to the extent greater than that required for the use;

As shown in the applicant's submittal, the site disturbances are the minimum necessary to provide the desired bank stabilization.

The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;

The applicant has submitted an erosion control plan that shows erosion control measures will be employed during the construction period. In addition, the Clean Water Services and US Army Corps of Engineers permits regulate erosion control. The purpose of the action is to prevent catastrophic failure of the stream bank and associated adverse impacts to the creek.

The water flow capacity of the drainageway is not decreased;

According to the applicant's narrative, the proposed project will slightly increase the flow capacity of the draingeway resulting from removal of material placed for the initial emergency repair.

Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening;

The applicant's narrative states that natural vegetation will be replanted upon completion of the project. Clean Water Services Service Provider Letter (08-002746) requires the vegetated corridor to be enhanced to meet or exceed good corridor condition as defined in R&0 07-20, Section 3.14.2, Table 3-3. Pursuant to 18.745.060.C.1.b, CWS enhancement provides at least equivalent protection, and is therefore acceptable.

The drainageway will be replaced by a public facility of adequate size to accommodate maximum flow in accordance with the adopted 1981 Master Drainage Plan;

The drainageway is not being replaced, but restored. Therefore, this standard does not apply.

The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands (DSL) approvals shall be obtained;

The applicant has submitted DSL permit 41125-GA and Corps Permit NWP-2008-479, consistent with this standard.

Where landform alterations and/or development are allowed within and adjacent to the 100-year floodplain, the City shall require the consideration of dedication of sufficient open land area within and adjacent to the floodplain in accordance with the Comprehensive Plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the floodplain in accordance with the adopted pedestrian bicycle pathway plan.

The project area, at elevation 155, is approximately 3,000 feet east of the Fanno Creek floodplain at elevation 135. The area of alteration is not within or adjacent to a floodplain; therefore this standard does not apply.

FINDING: Based on the analysis above, the applicant's plan is consistent with the Sensitive Lands standards for alterations in drainageways.

Tree Removal (18.790.050):

Tree removal permits shall be required only for the removal of any tree which is located on or in a sensitive land area as defined by Chapter 18.775. The permit for removal of a tree shall be processed as a Type I procedure, as governed by Section 18.390.030, using the following approval criteria:

Removal of the tree must not have a measurable negative impact on erosion, soil stability, flow of surface waters or water quality as evidenced by an erosion control plan which precludes:

- a. **Deposits of mud, dirt, sediment or similar material exceeding 1/2 cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge or as a result of the action of erosion;**
- b. **Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes where the flow of water is not filtered or captured on site using the techniques of Chapter 5 of the Washington County Unified Sewerage Agency Environmental Protection and Erosion Control rules.**

The trees proposed for removal are within the project area. The project involves excavating the streambank and reconstructing it with coir logs and vegetation to provide long-term stabilization of the bank. The plan includes replanting the bank with trees and other vegetation pursuant to CWS's enhancement standards. The erosion control measures required by CWS will ensure the proposed tree removal and excavation will not have a measurable negative impact on erosion, consistent with these standards.

Within stream or wetland corridors, as defined as 50 feet from the boundary of the stream or wetland, tree removal must maintain no less than a 75% canopy cover or no less than the existing canopy cover if the existing canopy cover is less than 75%.

The streambank stabilization project is located within the Ball Creek stream corridor. According to the applicant's narrative, 1,875 square feet of riparian vegetation including six trees will be removed to reconstruct the embankment. As a result, the canopy will be removed and offer no cover in the project area. The purpose of the project is streambank stabilization, which has been conditioned by the applicant's CWS Provider Letter to provide corridor enhancement to meet or exceed good corridor condition as defined in R&0 07-20, Section 3.14.2, Table 3-3, consistent with this standard.

FINDING: Based on the analysis above, the applicant's plan is consistent with the applicable Tree Removal standards.

SECTION VI. OTHER STAFF COMMENTS

The City of Tigard Engineering Department commented that the proposed work is within the Ball Creek drainageway regulated by TDC 18.775.070 D. 1.-7. The applicant's submittal is an adequate showing of compliance with these standards. In particular, all proposed work is intended to maintain the conveyance capacity of the drainageway and restore disturbed ground to prevent erosion and provide for improved water quality.

City of Tigard Arborist provided comments which is addressed in the Tree Removal section of this decision.

SECTION VII. AGENCY COMMENTS

Clean Water Services issued a Service Provider Letter (08-002746) dated September 4, 2008 with conditions regarding erosion control and vegetated corridor enhancement, among others.

The Oregon Division of State Lands has approved the streambank stabilization project in letter dated August 12, 2008, under permit number 41125-GA.

The US Army Corps of Engineers has permitted the streambank stabilization project in a letter dated August 5, 2008 under permit number NWP-2008-479.

Oregon Department of Fish and Wildlife and the City of Lake Oswego have had an opportunity to review this proposal and offered no comments or objections.

SECTION VIII. PROCEDURE AND APPEAL INFORMATION

Notice:

Notice mailed to:

- The applicant and owners
- Owner of record within the required distance
- Affected government agencies

Final Decision:

THIS DECISION IS FINAL ON SEPTEMBER 29, 2008 AND EFFECTIVE ON OCTOBER 14, 2008 UNLESS AN APPEAL IS FILED.

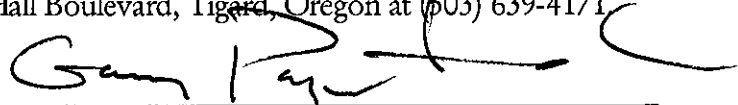
Appeal:

The Director's Decision is on a Type II review final on the date that it is mailed. Any party with standing as provided in Section 18.390.040.G.1. may appeal this decision in accordance with Section 18.390.040.G.2. of the Tigard Community Development Code which provides that a written appeal together with the required fee shall be filed with the Director within ten (10) business days of the date the Notice of Decision was mailed. The appeal fee schedule and forms are available from the Planning Division of Tigard City Hall, 13125 SW Hall Boulevard, Tigard, Oregon 97223.

THE DEADLINE FOR FILING AN APPEAL IS 5:00 PM ON OCTOBER 13, 2008.

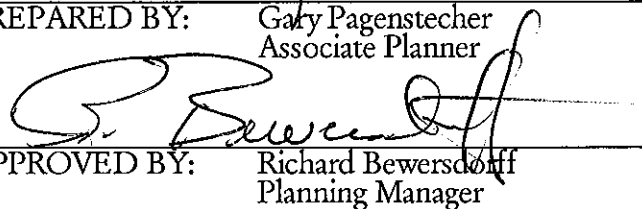
Questions:

If you have any questions, please call the City of Tigard Planning Division, Tigard City Hall, 13125 SW Hall Boulevard, Tigard, Oregon at (503) 639-4171.



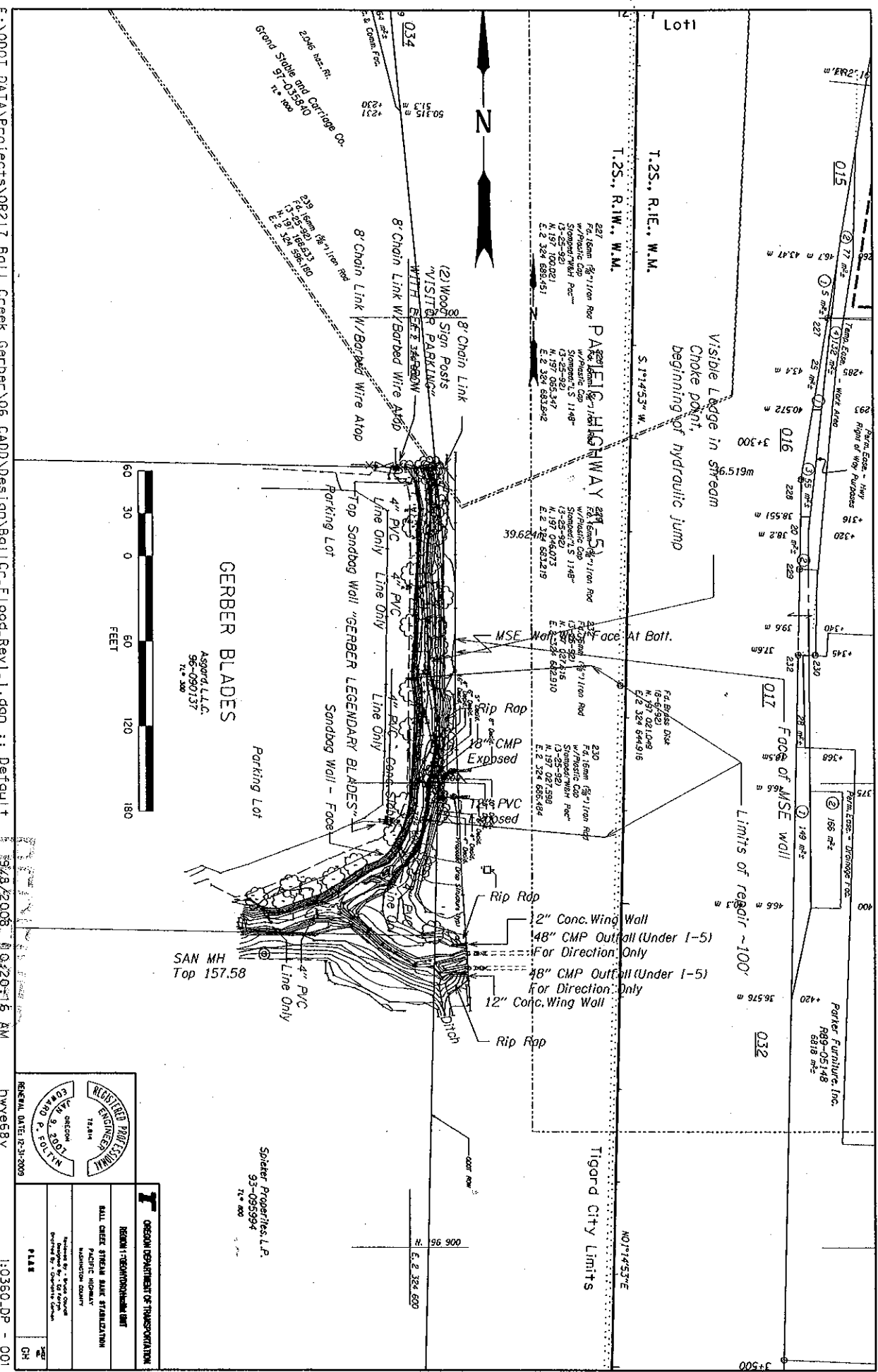
PREPARED BY: Gary Pagenstecher
Associate Planner

September 29, 2008
DATE



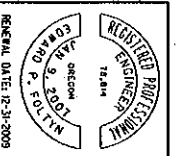
APPROVED BY: Richard Bewersdorff
Planning Manager

September 29, 2008
DATE



CERBER BLADES
 Agard LLC
 96-090137
 12' x 200'

Spieter Properties, L.P.
 93-085994
 12' x 200'



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| OREGON DEPARTMENT OF TRANSPORTATION REGION 1 (TACOMA) DISTRICT RAIL CROSS STREAM BANK STABILIZATION PACIFIC COAST PROJECT NO. 93-085994 DRAWING NO. 10360-DP-001 | |
| DATE | 12/31/2009 |
| SCALE | AS SHOWN |
| DESIGNED BY | DAVID S. AGARD |
| CHECKED BY | DAVID S. AGARD |
| DATE | 12/31/2009 |

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