

**IN THE CITY COUNCIL OF THE
CITY OF
PORTLAND OREGON**

**IN THE MATTER OF AN APPEAL
BY CARRIE RICHTER REPRESENTING LEONARD GIONET, YVONNE MEEKCOMS, AND
MARY HENRY DE TESSAN OF A DESIGN COMMISSION APPROVAL OF A DESIGN REVIEW
WITH MODIFICATIONS, AN ADJUSTMENT AND GREENWAY REVIEW, PROPERTY
BOUNDED BY SW BOND, SW LANE, SW LOWELL & WILLAMETTE RIVER**

LU 20-102914 DZM AD GW

FINDINGS AND CONCLUSIONS

**ADOPTED BY THE CITY COUNCIL ON
NOVEMBER 18, 2020**

(DENIAL of the Appeal)

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PORTLAND, OREGON

IN THE MATTER OF AN APPEAL
BY CARRIE RICHTER REPRESENTING LEONARD GIONET, YVONNE MEEKCOMS, AND MARY
HENRY DE TESSAN OF A TYPE III DZM AD GW REVIEW FOR THE PROPERTY BOUNDED BY
SW BOND, SW LANE, SW LOWELL & WILLAMETTE RIVER

LU 20-102914 DZM AD GW

FINDINGS AND CONCLUSIONS

The findings and conclusions of the City Council in this matter are set forth below.

I. GENERAL INFORMATION

Applicants: Wade Johns | Alamo Manhattan
3012 Fairmount St., Ste 100 | Dallas, TX 75201
Wade.Johns@alamomanhattan.com

Jeancarlo Saenz | Hensley Lamkin Rachel Architects
14881 Quorum Drive, Suite 550 | Dallas, TX 75254
jeancarlo@hlrinc.net

Owner: The Landing At Macadam LLC
1900 S Norfolk St #150 | San Mateo, CA 94403-1161

Site Address: Property bounded by SW Bond, SW Lane, SW Lowell & Willamette River

Legal Description: TL 300 7.68 ACRES, SECTION 10 1S 1E; TL 400 2.15 ACRES, SECTION 10 1S 1E

Tax Account No.: R991100600, R991100610

State ID No.: 1S1E10DB 00300, 1S1E10DB 00400

Quarter Section: 3430

Neighborhood: South Portland NA., contact Jim Gardner at contact@southportlandna.org.

Business District: South Portland Business Association, contact info@southportlanddba.com.

District Coalition: Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.

Plan District: Central City - South Waterfront

Zoning: CXd, g – Central Commercial zone with Design and Greenway Overlays

Case Type: DZM GW AD – Design Review with Modifications and a South Waterfront Greenway Review and an Adjustment

Procedure: Type III, with a public hearing before the Design Commission. The decision of the Design Commission can be appealed to City Council.

II. INTRODUCTION AND PROCEDURAL HISTORY

Original Proposal:

The applicant requests Design Review approval for a four-block development in the South Waterfront sub district of Central City Plan District. In addition to the buildings, the project includes a greenway trail connection, new streets (SW River Parkway, western portion of Lowell and Abernethy) and river accessways (SW Lane, Abernethy and Lowell east of River Parkway). Overall the project provides approximately 1,200 residential units, 22,000 SF retail and 738 parking spaces. The two riverward blocks will contain high-rise buildings with mid-rise buildings on the two western blocks. More specifically:

Block 41

- One 250' tall building with a tower atop a podium
- 348 residential units, 3,500 SF of commercial space, 270 parking spaces
- Exterior materials – composite metal panel, brick, wood, concrete

Block 44

- One 250' tall building with a tower atop a podium
- 363 residential units, 2,530 SF of commercial space, 278 parking spaces
- Exterior materials – composite metal panel, brick, wood, concrete

Block 42

- One 74' tall building
- 226 residential units, 8,495 SF of commercial space, 190 parking spaces
- Exterior materials – brick and stucco

Block 45

- One 74' and one 55' tall building
- 263 residential units, 7,758 SF of commercial space, 247 parking spaces
- Exterior materials – metal panel, stucco, brick, fiber cement panel (Nichiha)

In order to achieve an additional 125' of height (for a total of 250') for the portion of buildings within the area 150' west of the top of bank, bonus FAR via the South Waterfront Willamette River Greenway Bonus option is required (April 2017 Zoning Code Sections 33.510.210.B and 33.510.210.G). Blocks 41 and 44 each include 2,500 SF of additional public open space abutting the greenway per Section.33.510.210.C.10, which affords each building 7,500 SF of bonus FAR, thus unlocking the additional 125' of height. Additional bonus FAR is achieved by providing affordable housing.

The applicant also requests a South Waterfront Greenway Review to provide improvements within the 100' Greenway setback east of Blocks 41 and 44. Greenway improvements include Greenway trails and Greenway landscaping, a pedestrian overlook riverward of the trail at the SW Abernethy Street terminus, and riverbank enhancements. Separate Greenway bike and pedestrian trails are proposed along the site's river frontage to connect with existing paths to the north and south of the site. The trail system and overlooks are to be lit with shielded lighting.

Native basalt bench seating areas along the pedestrian trail provides views to the river. Street marker inserts in the bike trail at street crossings provide orientation. Retaining walls are needed along the trails and 42-inch high "guard-rail" fencing is proposed along the tops of the retaining walls. A wide paved plaza at the upland edge of the Greenway provides pedestrian seating and a water feature between SW Abernethy and the Greenway.

The project will also remove the dilapidated wooden pier along the site's river frontage, lay back the steeply sloping riverbank and stabilize banks with large woody debris (LWD) and riprap armor. Armored banks, and areas landward of the banks will be restored with riparian

plantings of native trees, shrubs and groundcovers.

The following Modifications are requested:

1. Vehicle Parking – To allow two parking spaces to be stacked (tandem) without having an attendant on-site (Section 33.266.130.F.1.a).
2. Bike Parking – To reduce the width of long-term bike parking spaces from 2’ to 18” (Section 33.266.220.C.3.b).

The following Adjustment is requested:

1. Vehicle Access – To allow vehicle and loading access off of River Parkway, which is access restricted (Section 33.510.267.F.6.b).

Design Review is required for new development per Section 33.420.041. A South Waterfront Greenway Review is required for development in the South Waterfront Greenway that does not meet the standards of Section 33.510.253.E.5, and for construction activities below the top of bank.

Revised Proposal

The following revisions to the original proposal were made by the applicant during the City Council proceedings:

Maker Space Public Plaza

- Added a direct access between the greenway and maker space plaza.
- Modified the grading & removed railing around the maker space.
- Removed the planter on the north edge of the maker space.
- Extended the brick pavers from the Lowell accessway so that it wraps the maker space plaza.
- Replaced the tables and chairs with chaise loungers.

Abernathy Public Plaza

- Modified the shape of the plaza so that the footprint is more sinuous.
- Modified the landscaping and relocated furniture to facilitate a direct at-grade connection between the lawn areas and plaza.
- Paving was added to the wide L-shaped benches east of the foundation so that benches now function as 2-sided seating.
- Extended the brick paving from the plaza across the bike and pedestrian paths to the overlook.

Ecoroofs - Replaced all of the gravel areas on the Block 41 and 44 podium roofs with ecoroofs.

The development described in this approval is collectively referred to as the “Project” or “Proposal” in these findings.

Approval Criteria:

In order to be approved, this Proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- Central City Fundamental and South Waterfront Design Guidelines
- Zoning Code Section 33.825.040 for Modifications Through Design Review
- Zoning Code Section 33.805.040 Adjustment Approval Criteria
- Zoning Code Section 33.851.300 – South Waterfront Greenway Reviews
- South Waterfront Greenway Design Guidelines

Procedural History:Design Commission proceedings

- Project had two voluntary Design Advice Request (DAR) meetings - 2/7/19 & 8/29/19.
- Proposal originally submitted and processed under LU 19-225732 DZM GW with a hearing before the Design Commission on 12/12/19. Applicant withdrew the 2019 application and submitted a new application in 2020 to utilize Zoning Code regulations in effect in April of 2017, which the project can utilize due to state laws for subdivision vesting.
- New application (20-102914 DZM AD GW) was deemed complete on 1/9/20.
- The eastern blocks (41 and 44) and the greenway were discussed at a hearing on 3/5/20.
- The western blocks (42 and 45) were discussed at a hearing on 3/12/20.
- The project was continued to 4/28/20 then rescheduled to 6/11/20 due to complications associated with COVID19.
- At the 6/11/20 hearing, the record was requested to be held open by a member of the public establishing the following process:

June 22 at 9am - deadline for new evidence

June 29 at 9am - deadline for response to new evidence

June 30 at 5pm - one day final argument due, shortened by Applicant at 6/11 hearing

New evidence and responses to new evidence were collected, added to the record and can be found in the A, C and F Exhibits. The applicant did not submit a final argument.

- At the 7/2/20 hearing, which was a closed record hearing, the Commission considered the new evidence and revisions, added a condition of approval for metal panel on Block 41, and approved the project.
- Final Findings and Decision of the Design Commission was mailed on 7/17/20. A revised Final Finding and Decision of the Design Commission was mailed on 7/24/20.
- An appeal of the Design Commission Decision was filed on 8/7/20 by Carrie Richter, representing Leonard Gionet, Yvonne Meekcoms, and Mary Henry De Tessian.

Council proceedings

- A Notice of Appeal was mailed on 8/12/20, which included typical information on how to submit written testimony and more specific details on how to participate in the upcoming virtual public hearing.
- City Council held a de novo public hearing on 9/10/20. The hearing was in the form of a virtual meeting due to COVID 19, consistent with Executive Order 20-16. The Council left the record open for further written submissions due by 9/17/20 and 9/24/20, the latter to consist of rebuttal only. The applicant waived their final rebuttal.
- On 10/6/20, at a closed record virtual public hearing, the City Council conducted its deliberations on the appeal, where they discussed revisions presented by the applicant. The revisions included improving the visual and physical access to the public open space plazas and the addition of ecoroofs atop the podiums of the buildings on Blocks 41 and 44. The Mayor moved, and Commissioner Eudaly seconded the motion, that the appeal be denied and the applications herein be approved as revised. The motion was adopted by a tentative vote of 3-1. The item was continued to 11/18/20 for the final vote and adoption of final findings.

III. ANALYSIS

Site and Vicinity: The site is located in the South Waterfront Sub District to Portland's Central City. The blocks are situated at the edge of the Willamette River abutting the Greenway. Bordering the site to the north is the SW Lane Pedestrian Way, to the south is the SW Lowell Street and future Pedestrian Way and to the west is SW Bond Avenue. SW Abernathy Pedestrian Way will extend through the multiblock site from east to west in the form

of a street and pedestrian way.

The properties to the north consist of the Osprey, a six-story mixed commercial/residential building and the Ardea, a high-rise residential building. The property to the south consists of a large surface parking lot for the Old Spaghetti Factory. The properties to west across Bond are developed with multiple six-story mixed commercial/residential buildings.

South Waterfront is a neighborhood in rapid transition. Historically, the location of industrial activities, the district was rezoned in 1990 to Central Commercial, to allow a greater variety in uses, including residential, commercial and institutional, and to take advantage of the area's unique connection to the Willamette River. In the first decade of the century, several new developments were approved and constructed, establishing the area as a destination neighborhood. Many development opportunities still remain, and it is imagined that in the near future, South Waterfront will be a dense vibrant part of the city.

In 2010, a Design Review approved the South Waterfront Central District greenway improvements that stretch from SW Gibbs Street to SW Lane Street. The proposed improvements include: a trail system consisting of two paths, one for pedestrians and one for cyclists; a renaturalized and stabilized riverbank; pedestrian connections to the trail system at the end of neighborhood streets and accessways; overlooks at both the landward and riverward ends of these pedestrian connections; a system of vegetated swales providing stormwater conveyance and treatment; osprey nest locations; lighting; public art; and various seating options throughout. These improvements recently finished construction fronting the Osprey (adjacent to the north). The landscaping proposed along the greenway trail adjacent to Block 41 has been postponed due to the impending construction on the subject site.

Blocks 41 and 44 include 650 linear feet of South Waterfront Greenway along the west bank of the Willamette River. The South Waterfront Greenway is mapped at the east ends of S.W. Lowell, S.W. Abernethy, and S.W. Lane Streets, including lands within 100 feet of the top of bank of the Willamette River. The site's frontage on the Willamette River consists of steeply sloping rocky banks with cottonwood and pine trees scattered along the top of bank. A large dilapidated wooden pier structure covers approximately 4,000 square feet (stretching 110 feet along the shoreline) 300 feet north of the SW Lowell Street right of way. A vertical concrete block seawall stretches from SW Lowell, approximately 115 north along the riverbank.

The South Waterfront reach of the Willamette River is described in detail in the *Willamette River Central Reach Natural Resources Protection Plan* (NRPP), as Inventory Site WR18—South Waterfront. The NRPP describes the Willamette River as important for dispersal of aquatic and avian species among rivers and streams, upland forests, valleys, floodplains and to and from the Columbia River and the Pacific Ocean. It is part of the Pacific Flyway for migratory birds, and is a key component of the extensive network of spawning streams for anadromous salmon and steelhead. The lower Willamette River is designated critical habitat for upper Willamette River Chinook salmon and steelhead trout; lower Columbia River Chinook salmon, coho salmon, and steelhead trout --all listed as threatened under the federal Endangered Species Act (ESA)

The banks of the river in South Waterfront are a highly varied mix of unclassified fill – concrete, piers and pilings, ramps and riprap. Bioengineered banks with root wads have been installed to provide bank stabilization and in-water structure for aquatic species. The area is sparsely vegetated, and the vegetation is dominated by Himalaya blackberry. A thin strip of shallow water exists in the southern half. Much of the river bottom is hard ground with patches of gravelly sand, sandy mud, muddy sand and sand.

Zoning: The Central Commercial (CX) zone is intended to provide for commercial development within Portland's most urban and intense areas. A broad range of uses is allowed to reflect Portland's role as a commercial, cultural and governmental center. Development is intended to be very intense with high building coverage, large buildings, and buildings placed close

together. Development is intended to be pedestrian-oriented with a strong emphasis on a safe and attractive streetscape.

The “d” overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development are subject to design review. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The South Waterfront Greenway Overlay Zones, protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along the Willamette River within the South Waterfront Subdistrict of the Central City plan district. These regulations increase public access to and along the Willamette River for the purpose of increasing recreational and transportation opportunities; they support the development of the South Waterfront Subdistrict as a vibrant mixed-use neighborhood within the Central City plan district; they ensure a clean and healthy river for fish, wildlife, and people; they embrace the river as Portland’s front yard; they enhance stormwater management in the South Waterfront Subdistrict; they respond to the federal Endangered Species Act and Clean Water Act; and implement the Willamette Greenway Plan and State law.

The Central City Plan District implements the Central City Plan and other plans applicable to the Central City area. These other plans include the Downtown Plan, the River District Plan, the University District Plan, and the Central City Transportation Management Plan. The Central City plan district implements portions of these plans by adding code provisions which address special circumstances existing in the Central City area. The site is within the South Waterfront Sub District of this plan district.

Land Use History: City records indicate that prior land use reviews include

- LU 06-107928 LDS. Approval of preliminary plat for 6-lot subdivision (not platted)
- LU 96-013362 DZ, GW, AD. Type III DZM and Greenway Review
- LU 92-009770 (ref file 92-00651)
- LU 91-008278 (ref file 91-00023)
- LU 88-005337 (ref file GP 028-88)
- LU 88-004258 DZ (ref file DZ 118-88)
- LU 08-116106 DZM. Approval of a new 27-story residential tower (Block 42) (not constructed)
- LU 16-283375 DZM – Design Review approval for two 7-story buildings on Blocks 41 & 44.
- LU 16-283373 DZM - Design Review approval for two 7-story buildings on Blocks 42 & 45.
- LU 17-160442 LD. Land Division (Preliminary Plat) approval concurrent with this subject Land Use Review. Numerous conditions of approval from this review are applicable to the greenway trail and the redevelopment of the site. The final decisions for 17-160442 LD should be referenced for the specific conditions of approval. It should be noted that the greenway improvements approved under this review can be used to satisfy conditions of the land division with regard to the specific improvements required. Requirements regarding the timing of installation and provision of performance guarantees will continue to apply as stated in the land division decision.
- LU 19-22732 DZM GW – Withdrawn Design and Greenway review.

Agency Review and Neighborhood Testimony

1. **Agency Review:** A “Notice of proposal in Your Neighborhood” was mailed February 14, 2020. All of the participating Bureaus responded with no outstanding concerns:
 - *Water Bureau* (see Exhibit E.1)
 - *Fire Bureau* (see Exhibit E.2)
 - *Life Safety Review Section of BDS* (see Exhibit E.3)
 - *Bureau of Parks-Forestry Division* (see Exhibit E.4)

- *Portland Parks & Recreation* (see Exhibit E.10)
- *Bureau of Environmental Services* (see Exhibit E.11)
- *Bureau of Transportation Engineering* (see Exhibit E.7)
- *Site Development Section of BDS* (see Exhibit E.12)
- *Bureau of Transportation Engineering – supplemental response* (see Exhibit I.83)

Neighborhood Testimony: A Notice of Proposal in Your Neighborhood was mailed on February 14, 2020. Forty-three written responses to this land use review were received from either the Neighborhood Association or notified property owners in response to this notice. See F. Exhibits for details. Issues raised in this testimony and additional testimony received during the appeal to Council is discussed in Section VI below. See I Exhibits for details.

IV. ZONING CODE APPROVAL CRITERIA AND FINDINGS

1. DESIGN REVIEW – CHAPTER 33.825

Section 33.825.010 Purpose of Design Review

Design review ensures that development conserves and enhances the recognized special design values of a site or area. Design review is used to ensure the conservation, enhancement, and continued vitality of the identified scenic, architectural, and cultural values of each design district or area. Design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area. Design review is also used in certain cases to review public and private projects to ensure that they are of a high design quality.

Section 33.825.055 Design Review Approval Criteria

A design review application will be approved if the review body finds the applicant to have shown that the proposal complies with the design guidelines for the area.

Findings: The site is designated with a design (d) overlay zone, therefore the proposal requires Design Review approval. Because of the site's location, the applicable design guidelines are the Central City Fundamental Design Guidelines and the South Waterfront Design Guidelines, and the South Waterfront Greenway Design Guidelines for sites with a greenway [g] overlay zone. As explained in the findings below, the purpose section (PCC 33.825.010) is not an approval criterion, but is context for interpreting the approval criteria.

Central City Plan Design Goals

1. Encourage urban design excellence in the Central City;
2. Integrate urban design and preservation of our heritage into the development process;
3. Enhance the character of the Central City's districts;
4. Promote the development of diversity and areas of special character within the Central City;
5. Establish an urban design relationship between the Central City's districts and the Central City as a whole;
6. Provide for a pleasant, rich and diverse pedestrian experience for pedestrians;
7. Provide for the humanization of the Central City through promotion of the arts;
8. Assist in creating a 24-hour Central City which is safe, humane and prosperous;
9. Ensure that new development is at a human scale and that it relates to the scale and desired character of its setting and the Central City as a whole.

South Waterfront Design Goals

The South Waterfront Design Guidelines and the Greenway Design Guidelines for the South Waterfront supplement the Central City Fundamental Design Guidelines. These two sets of guidelines add layers of specificity to the fundamentals, addressing design issues unique to South Waterfront and its greenway.

The South Waterfront Design Guidelines apply to all development proposals in South Waterfront within the design overlay zone, identified on zoning maps with the lowercase letter “d”. These guidelines primarily focus on the design characteristics of buildings in the area, including those along Macadam Avenue, at the western edge, to those facing the greenway and river.

The Greenway Design Guidelines for the South Waterfront apply to development within the greenway overlay zone, identified on zoning maps with a lowercase “g”. These design guidelines focus on the area roughly between the facades of buildings facing the river and the water’s edge.

South Waterfront Design Guidelines, South Waterfront Greenway Design Guidelines and Central City Fundamental Design Guidelines

The Central City Fundamental Design and the South Waterfront Design Guidelines and the Greenway Design Guidelines for South Waterfront focus on four general categories. **(A) Portland Personality**, addresses design issues and elements that reinforce and enhance Portland’s character. **(B) Pedestrian Emphasis**, addresses design issues and elements that contribute to a successful pedestrian environment. **(C) Project Design**, addresses specific building characteristics and their relationships to the public environment. **(D) Special Areas**, provides design guidelines for the four special areas of the Central City.

Findings: Council has considered all guidelines and has addressed only those guidelines that are applicable to this Project. As explained in the findings below, the Central City Plan Design Goals are not approval criteria, but are context for interpreting the approval criteria.

A2. Emphasize Portland Themes. When provided, integrate Portland-related themes with the development’s overall design concept.

Findings: The project incorporates several themes that Portlanders identify with and value, and that reflect our environment. Stormwater planters, native landscaping, bike parking, enhanced pedestrian paths, increased access and enjoyment of the river, weather protection, and landscaping.

This guideline has been met.

A3. Respect the Portland Block Structures. Maintain and extend the traditional 200-foot block pattern to preserve the Central City’s ratio of open space to built space. Where superblocks exist, locate public and/or private rights-of-way in a manner that reflects the 200-foot block pattern, and include landscaping and seating to enhance the pedestrian environment.

Findings: The proposal includes a land division to create the four blocks and the open space tract for the greenway trail. The block dimensions reflect the alignment of the existing streets and pedestrian ways that are identified in the South Waterfront Street Plan. Each of the blocks maintains a 200’ dimension in at least 2 directions. The longer east-west dimension of Block 41 is a typical condition of properties bound by River Parkway and the river as the riverbank undulates creating a range of dimensions and footprints. While the podium of Block 41 is longer than 200’, the tower above is compatible with the 200’ dimension. Blocks 45 and 44 are each close to 350’ in their north-south dimension due to the alignment with Abernethy and Lowell. To address the smaller 200’ block structure, Block 45 opts for 2 buildings to align with the open space and building footprints on the block to the west, while Block 44 carves out of the podium to align with the break between the buildings on Block 45.

This guideline has been met.

A4. Use Unifying Elements. Integrate unifying elements and/or develop new features that help unify and connect individual buildings and different areas.

A4-1 Integrate Ecological Concepts in Site And Development Design. Incorporate ecological concepts as integral components of urban site and development designs.

A4-2 Integrate Stormwater Management Systems in Development. Integrate innovative stormwater management systems with the overall site and development designs.

Findings for A4, A4-1 & A4-2: The consistent treatment of elements within the right-of-way, accessways and the greenway connect this large development with the district. Along the street frontages, street furniture and light fixtures unique to the district are employed. Within the accessways, the project continues the use of distinctive brick paving, raised planters and individual residential stoops that define the east-west accessways. The greenway design and elements are an extension of the greenway to the north with separated bike and pedestrian trails, native landscaping, benches, light fixtures and an overlook.

The Project incorporates ecological and stormwater elements into the building and site design that are common to the South Waterfront district. The stormwater and landscape planters within the east-west accessways are also typical elements within these spaces that manage run-off as well as provide a much needed transition from the public pathways to the individual residential units. Stormwater planters are also provided within the private courtyards, plaza and paseo to treat run-off.

Green roofs are a typical treatment in the district that can be witnessed from neighboring buildings and the west hills and transition the intense built environment to the natural qualities of the riverbank and river. Although ecoroofs are not required under the April 2017 zoning code that is applicable to the Project, ecoroofs are included on the roof terraces atop the 4th floor on Blocks 41 and 44. Stormwater planters within the courtyards and on the rooftop terraces of the buildings will also “green up” the roofs as well provide an ecological function. The ecoroofs and stormwater planters unify the site with the tower development in the district while also providing stormwater management.

For Blocks 42 and 45, rooftops have been treated with colored ballast rocks in patterns to create interest from surrounding vantage points. This roof treatment, while not a sustainability or ecological effort, is consistent with the mid-rise developments at the west and southern ends of the district.

Recently adopted bird-safe glazing standards do not apply to the Project. Testimony encouraged incorporating bird-safe features into the Project. In response, the glass railings on the masonry podium volumes of Block 44 were modified to cable railing to help address the concerns with potential bird strikes at the lower levels of the building that are adjacent to the Greenway. The revisions have been made and result in a coherent railing treatment at all balconies on masonry cladding.

These guidelines are met.

A5. Enhance, Embellish, and Identify Areas. Enhance an area by reflecting the local character within the right-of-way. Embellish an area by integrating elements in new development that build on the area’s character. Identify an area’s special features or qualities by integrating them into new development.

A5-1. Consider South Waterfront’s History and Special Qualities. Consider emphasizing and integrating aspects of South Waterfront’s diverse history in new development proposals. When included in the development proposal, integrate works of art and/or water features with site and development designs.

C10. Integrate Encroachments. Size and place encroachments in the public right-of-way to visually and physically enhance the pedestrian environment. Locate permitted skybridges

toward the middle of the block, and where they will be physically unobtrusive. Design skybridges to be visually level and transparent.

Findings: The supplemental findings below, which are incorporated, include additional detail. The Project addresses these guidelines in the following ways:

- The street design standards of the area will be employed along all public sidewalks enhancing the local character of the right-of-way, which includes specific pedestrian lighting and benches, street trees, stormwater planters and special paving treatment.
- The east-west accessways build upon the enhanced pedestrian connections that exist in the district facilitating movement to and from the greenway trail. The Project continues the elements and transitions that define these pathways with benches, lights, paving, landscaping, and residential front porches. The concrete enclosures of the residential front porches on Block 41 have been revised to open work railing to better complement the transparency of the porches that is characteristic along the accessways. In addition, detailed landscape plans for the plazas, paseo and all accessways demonstrate layered landscaping that includes trees, shrubs and groundcover to buffer the ground floor units and reflect the lush and green characteristic of the area's accessways and open spaces.
- The only building elements that encroach into the public right-of-way are the canopies, which enhance the public realm by providing shelter from the weather and will support the active pedestrian environment in South Waterfront.
- Water features are proposed at the terminus of Abernethy, within the plaza along River Parkway on Block 44 and within the paseo on Block 45. Pier posts to be used as bollards are being incorporated as "found artifacts" that reflect the maritime history of the district. Details of these features demonstrate durable and high-quality elements that will contribute to the history and character of the district.
- The project incorporates building materials, like metal and masonry, that are typical of buildings from the district's industrial and maritime past, while glassy facades clad both towers reflecting the character of the contemporary development of the area.
- The buildings on Blocks 42 and 45 integrate the mid-rise building form that characterizes existing development in the western portion of the district, while the buildings on Blocks 41 and Blocks 44 integrate high-rise development within the district that consists of slender towers atop podiums. The stepping down of the buildings on the eastern blocks from the 250' to 125' to ±45' podiums builds on the character along the greenway where the scale of the built environment transitions down to the more human scale of the natural setting along the river. The articulated facades with bays, recesses and balconies provide further relief along the greenway.
- The layered landscaping, patios and public spaces with amenities (water fountain, seating, gathering areas) and direct access to the greenway trail provide an appropriate transition between the public open space and private development desired for this riverfront district.
- Ecoroofs atop the podiums of Blocks 41 and 44 provide interest to the "5th elevation" of the buildings, which is characteristic throughout the district.
- Active ground floor programs with elements that support the vibrancy and use of the public realm are employed throughout the development and along the greenway consist with the district. The ground floors are largely commercial use with residential uses limited to the east-west accessways. Additional building elements like generous weather protection, layered transitions between public and

private spaces and visually and physically welcoming public spaces build on the character within the public realm, including along the greenway trail.

As discussed here and below, Council finds that this Project, in building form, in its relationship to the greenway and in responding to the historic and present identity of the South Waterfront, meets these guidelines by integrating elements that build on the area's character and special features and qualities and therefore embellish the area. These guidelines have been met.

A9. Strengthen Gateways. Develop and/or strengthen gateway locations.

Findings: The site is not an identified gateway in the South Waterfront district. *The guideline is therefore not applicable.*

A1. Integrate the River. Orient architectural and landscape elements including, but not limited to lobbies, entries, balconies, terraces, and outdoor areas to the Willamette River and Greenway. Develop access ways for pedestrians that provide connections to the Willamette River and Greenway.

A1-2. Incorporate Active Uses Along the River. Integrate active uses along the greenway to encourage continuous use and public “ownership” of the greenway. Program active uses to face and connect with the greenway, expand the public realm, and enhance the experience for greenway users. Develop active ground floor uses at the intersections of the greenway with accessways to the interior of the district to create stronger connections to and activity along the greenway.

B1-2. Enhance Accessway Transitions. Program uses along accessways and at the intersections of accessways and public streets linking the greenway with the interior of the district that activate and expand the public realm. Incorporate private building elements, such as entries, patios, balconies, and stoops, along accessways to expand the public realm from building face to building face. Integrate landscape elements within accessway setback areas with accessway transportation components to enhance transitions from South Waterfront's interior to the greenway.

C6. Develop Transitions between Buildings and Public Spaces. Develop transitions between private development and public open space. Use site design features such as movement zones, landscape elements, gathering places, and seating opportunities to develop transition areas where private development directly abuts a dedicated public open space.

Findings for A1, A1-2, B1-2 and C6: The Project addresses these guidelines in the following manner:

- Lane and Abernethy accessways and the paseo on Block 45 are all lined with ground floor residential units. The transition to the units include layered landscaping and vertical and horizontal separation in the form of raised entry porches. Additional elements like boardwalks over stormwater planters, entry canopies, front porch light and open- work porch railings all enrich these individual private entries. Trees, benches, pole lights and decorative paving comprise the public through-zone and unify these open spaces. Raised landscape planters define the edges of bike and pedestrian through zones within the Lane and Abernethy accessways. With the exception of fire and emergency vehicles, cars are restricted to these accessways via bollards at the western entries along River Parkway.
- The Lowell accessway at the south end of Block 44 contains live/work units, a bike room and “maker spaces”. Lowell is a more commercially active accessway and is designed accordingly with glazed storefronts and an accessible patio at the eastern end that provides generous spill out space for the maker spaces. The live/work spaces are double height ensuring the live portions of the unit can occur elevated

above the pedestrian realm for privacy and to ensure the active use occurs on the ground floor. The maker spaces contain glazed overhead doors to visually and physically connect these spaces with the public realm. Trees, decorative paving, pole lights are continued along the northern half of the Lowell frontage. Similar to the design of the Abernethy and Lane accessways, landscape planters and bollards define the areas for bike and pedestrians and limit vehicle access via bollards.

- The maker spaces at the southern end of Block 44 wrap the eastern corner along the Greenway. The public nature of the space is emphasized through many elements, including directly connecting the patio to the Greenway trail, including welcoming seating, and using brick pavers that connect the space to other public areas and provide a visual cue that the public realm extends into the patio. The recent shift of the bike and pedestrian path westward increases the visibility and access to these spaces from the greenway trail. The size and design of the maker's space evolved over the public hearing process. Responsive changes included enlarging the patio eastward to accommodate more public use and have more of a presence along the greenway, replacing the patio's rectilinear footprint to a sinuous design to better complement the greenway elements and including layered landscaping. The success and public nature of the now larger patio in the greenway relies on the activity of the adjacent spaces within the building and the accessibility of the patio. Therefore, Council adopts the following two conditions of approval:
 - The maker spaces on the ground floor of Block 44 at the southeast corner must be occupied by commercial uses only (not residential).
 - The patio adjacent to the maker spaces must remain accessible to the public during the commercial business hours and may not be gated.
- The southeast corner of Block 41 and the northeast corner of Block 44 step back, creating a continuation of Abernethy along portions of the greenway. A bike and resident activity space at the ground floor of the southeast corner of Block 41 activates the bonus open space plaza where Abernethy connects directly with the greenway trail. Chaise loungers oriented towards the river, benches, a large fountain and blue lighting set within the pavers distinguish this space as a destination along the river for the public.
- As discussed in detail in the findings below, the eastern façade of the riverward buildings erode to provide more balconies and voids in the mass which articulate and reduce the scale along the river frontage.
- Utility vaults, which are unable to be treated to match decorative paving based upon the utility company's current restrictions, will be located in landscaped areas, which provides screening on all sides of the vaults.

With conditions to ensure the maker spaces remain active uses along the river and the adjacent patio is accessible to the public, these guidelines have been met.

B2. Protect the Pedestrian. Protect the pedestrian environment from vehicular movement. Develop integrated identification, sign, and sidewalk-oriented night-lighting systems that offer safety, interest, and diversity to the pedestrian. Incorporate building equipment, mechanical exhaust routing systems, and/or service areas in a manner that does not detract from the pedestrian environment.

C4-1. Develop Complementary Structured Parking. Develop, orient and screen structured parking to complement adjacent buildings, reduce automobile/pedestrian conflicts and support the pedestrian environment.

Findings for B2 & C4-1: The proposal meets these guidelines in the following manner:

- A variety of building and site lighting is provided that will illuminate the sidewalk and public spaces for safety and enjoyment. The details of the lighting are discussed in detail in the findings below.
- All parking and loading is completely enclosed and internal to the buildings and lined with occupied uses.
- Twenty-foot wide garage entries for all of the buildings are appropriately located on River Parkway and are not overly scaled along the pedestrian realm. The garages align with the street facades to avoid dark holes in the pedestrian realm. Perforated metal paneled overhead garage doors will provide the necessary ventilation for the garages as well as limit views into these spaces. The color of the metal doors will match the surrounding material.
- Electrical meters are within enclosed rooms rather than on the building's façade. Generator rooms have been thoughtfully designed to be minimized and integrated into the façade with louvered storefront for ventilation or elevated into mezzanine levels with ventilation incorporated into the upper transoms on the storefront.
- Louvers for future mechanical ventilation for the ground floor commercial spaces have been incorporated into the upper portion of the storefront systems and will be finished to match the storefront system. The elevated location is both well integrated and well above the pedestrian realm.

These guidelines are met.

B1. Reinforce and Enhance the Pedestrian System. Maintain a convenient access route for pedestrian travel where a public right-of-way exists or has existed. Develop and define the different zones of a sidewalk: building frontage zone, street furniture zone, movement zone, and the curb. Develop pedestrian access routes to supplement the public right-of-way system through superblocks or other large blocks.

B1-1. Facilitate Transit Connections. Orient the main entrances of buildings at streets served by public transit to conveniently and directly connect pedestrians with transit services.

B3. Bridge Pedestrian Obstacles. Bridge across barriers and obstacles to pedestrian movement by connecting the pedestrian system with innovative, well-marked crossings and consistent sidewalk designs.

Findings for B1, B1-1 and B3: The proposal addresses these guidelines in the following ways:

- The public right-of-way along each street frontage will meet the design standards for the district, which include specific pedestrian lighting and benches, street trees, stormwater planters and special paving treatment. These standards are also being employed along the eastern portion of Lowell to provide a continuous treatment along this frontage, which is lined with live/work units and Code-required commercial spaces.
- As discussed in detail in the findings above, accessways of Lane and Abernethy build on the east-west pedestrian and bike connections through the district and specifically to the river and greenway. The design of the accessways are consistent with others in the district providing a generous pathway with layered frontages.
- On Blocks 42 and 45 with frontage on Bond where the streetcar line exists, the residential lobby entrances for all three buildings are located along this frontage to provide direct access to the Streetcar stops at the north and south ends of the site. Curb extensions on each of the block corners will enhance and reduce the distance

for pedestrians to cross the streets.

- The east-west paseo on Block 45 supports pedestrian connectivity through this larger than typical block size and aligns with the paseo on the block immediately west, facilitating movement through the district. The width of the paseo and the pedestrian through-zone extends 15'-7" at the narrowest point to 35' at the widest point, providing a generous area for pedestrian to move through the block and people to occupy the space. The paseo includes a paved entry that is wide and gently sloped, which provides access for users with different mobilities.
- In general, the Project has been designed in a manner that does not result in barriers or obstacles to pedestrian movement. Within the Greenway, where the main pedestrian connection from Abernethy and the public plaza extends to the overlook, an enriched crossing with street markers and stop-bars has been added to slow bicyclists when approaching the pedestrian crossing.

These guidelines are met.

B4. Provide Stopping and Viewing Places. Provide safe, comfortable places where people can stop, view, socialize and rest. Ensure that these places do not conflict with other sidewalk uses.

B5. Make Plazas, Parks and Open Space Successful. Orient building elements such as main entries, lobbies, windows, and balconies to face public parks, plazas, and open spaces. Where provided, integrate water features and/or public art to enhance the public open space. Develop locally oriented pocket parks that incorporate amenities for nearby patrons.

Findings for B4 and B5: The proposal meets these guidelines in the following ways:

- The plaza on Block 45 along Abernathy will be activated by commercial spaces and stairs that access the upper courtyard that flank the space. The glazed storefronts and tenant entries oriented towards the plaza will provide both visual and physical access to further activate the space. Additional landscape details and plaza elements, like raised planters and the decorative vertical landscape screen that shrouds the stairs at the southern end demonstrate this plaza space will be activated, high quality and usable for the residents, public and commercial tenants.
- The paseo's paving on Block 45 extends 15'-7" at the narrowest point to 35' at the widest point providing a generous area for pedestrian to move through the block and people to occupy the space. The landscaping and plaza elements are intentional with trees in raised planters with integrated benches that provide help define the pedestrian path and are part of an entry sequence to the walk-up units on the south. A splash pad with picnic benches provides places for the residents, particularly families. The ground level unit porches and amenity space entries that line both the north and south sides of the paseo will activate the space as well. Windows and balconies on the upper facades of both buildings will provide activity from above.
- The plaza on Block 41 includes seating that is integrated behind the sidewalk, so that it does not interfere with pedestrian movement, providing a place for people to wait for a ride, meet up with someone or for respite along the sidewalk. The glazed storefront and lobby and amenity space entries oriented towards the plaza will provide both visual and physical activity.
- The depth of the plaza at Block 44 has been sized to be inviting. The landscape elements are placed to provide clear access to the live/work units at the southern end and the plaza includes a fountain. The adjacency and orientation of the glazed lobby entry and live work units help to activate the space as will the seating and

water fountain. Given that this is a terminus and focal point from the paseo that extends westward, the treatment of the large 4-story end thoughtfully includes a wall treatment that complements the scale of the wall. A large mural (approximately 31' tall x 20' wide) has been incorporated with custom glass tiles in an image of the Ross Island Bridge that exists to the north of the site. A fast-growing vine (Virginia Creeper) will cover the remainder of the wall.

- All of the public plazas occur on private property with generous and direct and connections to the sidewalk. The design and location of the plazas ensure their use will not conflict with those on the sidewalk.
- As noted findings elsewhere, the bonus open space area between the eastern buildings and the greenway has been enlarged and redesigned as a successful public space to enjoy activity along the river and greenway.

These guidelines are met.

B6. Develop Weather Protection. Develop integrated weather protection systems at the sidewalk-level of buildings to mitigate the effects of rain, wind, glare, shadow, reflection, and sunlight on the pedestrian environment.

Findings: The proposal meets this guideline in the following ways:

- Blocks 42 & Block 45 (northern building) – These buildings include 5' to 6' in depth canopies at commercial and amenity space entries along the street frontages while deeper canopies and recesses occur at main building entries. Residential ground floor entries contain 3' deep canopies at the Lane accessway and the paseo, which are adequate weather protection for an individual tenant entry.
- Block 45 (southern building) – Given the majority of the program is residential units on the ground floor, which necessitates a setback condition for privacy and a buffer, weather protection for pedestrians on the sidewalk along this building frontage is limited but adequate for the proposed programming. For the more public-facing and amenity-serving areas of the building, additional larger canopies are included. The Project includes 6' deep canopies on Bond and wrapping the southeast corner onto Lowell.
- Block 41 – The entries to the residential units along Lane and Abernethy are protected by the projecting floor above. Weather protection for pedestrians is provided along River Parkway and wraps the commercial spaces at both the south and north ends along the accessways.
- Block 44 – The entries to the residential and live/work units that face Lowell and Abernethy are protected by the projecting floor above. Canopies are incorporated along River Parkway and at the commercial space at the northwest corner.

These guidelines are met.

B7. Integrate Barrier-Free Design. Integrate access systems for all people with the building's overall design concept.

Findings: All of common building spaces are designed to be barrier free spaces for equal access for all. The east-west accessways and paseo on block 45 that also provide connections to the greenway trail are at-grade to allow full movement through the site without any steps or barriers. The Project's compliance with the American with Disabilities Act (ADA) will be confirmed through the building permit process.

This guideline has been met.

C1. Enhance View Opportunities. Orient windows, entrances, balconies and other building elements to surrounding points of interest and activity. Size and place new buildings to protect existing views and view corridors. Develop building façades that create visual connections to adjacent public spaces.

Findings: The proposal meets this guideline in the following manner:

- All of the buildings incorporate opportunities for the occupants to take advantage of the views of surrounding points of interest including the river, greenway, bridges, Mt. Hood and the western hills, in all directions via balconies, rooftop decks, porches and extensive glazing, particularly on the towers.
- Extensive storefront glazing and active uses occur along the streets and in some cases extend along the east-west accessways to support interest and activity along these frontages.
- The north-south tower dimensions comply with the 125' width limitation for the district (Block 41 is 65'-6" and Block 44 is 121'-1"), which is intended to support maintaining views from west hills to the river. The Project's towers are located slightly in front of the podiums similar to several developments to the north, consistent with the district context.
- The project site is not within the Scenic Resource Zone nor does the project design block existing public views from public rights of way or from other existing public spaces. As a result, building to the zoning height limit of 250 feet on the eastern blocks does not affect any "significant scenic resources" or a defined view corridor. Therefore, the project protects existing view corridors.

These guidelines have been met.

A1-1. Develop River Edge Variety. Vary the footprint and façade plane of buildings that face the Willamette River to create a diversity of building forms and urban spaces adjacent to the greenway. Program uses on the ground level of buildings adjacent to the greenway and to accessways linking the greenway with the interior of the district that activate and expand the public realm. Design the lower stories of buildings within the greenway interface to include elements that activate uses and add variety and interest to the building facades.

C4. Complement the Context of Existing Buildings. Complement the context of existing buildings by using and adding to the local design vocabulary.

C2. Promote Quality and Permanence in Development. Use design principles and building materials that promote quality and permanence.

C5. Design for Coherency. Integrate the different building and design elements including, but not limited to, construction materials, roofs, entrances, as well as window, door, sign, and lighting systems, to achieve a coherent composition.

Findings: The proposal meets these guidelines in the following ways:

The buildings on the western blocks have strong design concepts with materials and building elements employed logically and consistently in a manner that complement mid-rise buildings in the district. The mid-rise context consists of primarily 6-story residential buildings that utilize a limited material palette of primarily masonry materials with volume and material shifts that are intentional. Punched windows and balconies articulate the exteriors distinguishing them from commercial structures. Specifically:

- The massing on the northern two full block buildings includes u-shape footprint and step downs at the eastern corners for the large outdoor terraces. Planar shifts of 4' that extend vertically up through the facades on these northern buildings provide articulation, while shifts in fenestrations within these facades provide interest and variety. The glass and metal corner treatment in previous designs

have been revised to extend the brick for stronger corners that are more typical of masonry buildings.

- At 5 stories and a half block, the building at the southern end is straight-forward in its rectilinear massing. A wide recess on the northern side provides a large area for outdoor space for the residents along the paseo.
- Windows are punched openings within the brick and stucco providing shadows and depth on the facades. Balconies with awnings and vertical projecting bays further activate the upper facades.
- High quality materials with restrained palettes of brick, 3-coat stucco, Nichiha fiber cement accent panel, 22-gauge metal, aluminum storefront and vinyl windows result in a clear and coherent building with a sense of permanence. Railings on the balconies and patios will be galvanized and painted to resist rusting.
- Brick detailing at the windowsills and heads, floor levels and parapet provides a finer scale detail that enriches the façade.
- Louvers and vents have been minimized and well-integrated into window systems and openings and other building elements.
- The ground level of each building is distinguished by storefronts, canopies, light fixtures, raised porches and railing for individual entries, brick columns and facades providing a strong base that enriches the pedestrian realm.

High-rise redevelopment in the district includes tall slender towers, some with distinct forms. Some towers are located atop a larger base (podium) whereas other building towers extend to the ground. Glassy towers with metal accents and masonry podiums, and where appropriate, articulated with balconies, is the dominant composition of residential high-rise development. Along the greenway, height allowances erode, east to west, reducing the mass and stepping down towards the river.

The building on Block 41 is a strong bar tower atop an articulated podium that fits well into the district's context. Specifically:

- The tower sits proud of the podium with a presence on River Parkway provides a clear main building entry and is designed as a strong rectilinear tower. The tower facades are coherent with similar language employed on all façades, has a discrete "top" and contains more glazing than solid panel, which complements the distinct glazed towers in the area. The combination of recessed and projecting glassy balconies adds texture and finer scale to the tower mass. Where exhaust/air exchange does not occur through the roof, it is discretely integrated in the floor slabs with a flush metal duct vent cover, which is similar on the podium.
- The podium contains a coherent language of dark brick facades with recessed and projecting balconies and two-story white metal clad bays that provide texture and finer scaled elements along the pedestrian realm and greenway. The wood siding within the recessed balconies and within the upper floor glazing systems adds warmth and additional texture, as do the punched windows (recessed 6"). The non-residential facades are consistently treated with continuous storefronts with canopies and glazing above. Dark metal is used for balconies, railings, windows and canopies for clear expression of these building elements. A consistent language defines the ground floor residential units which are enriched with porches, railings, and lighting.
- The main entry is located at the center of the tower's base on River Parkway clearly signifying the lobby entry. The ground floor abuts the sidewalk, creating an urban condition. The podium footprint at the southeast corner is set back from the greenway and provides open space between the building and trail. Outdoor decks

further erode the podium massing along the greenway.

- The limited number and high-quality materials (brick, composite metal panel and glass, wood accent) complement those found in the district. Wood is included in the canopy soffits and privacy screens at the ground floor, which are limited and protected. Metal panel is included in all other soffits and recessed areas.

The building on Block 44 responds to the buildings in the area as well as those that abut the greenway. Specifically:

- The building includes a simplified L-shape tower with significant glazing. Building facades include projecting balconies and window, and that articulation contributes to a sense of lightness. The ends of the “L” employ a consistent language and the building’s other facades share similar fenestrations. The horizontality of the tower is expressed with solid metal panels at the floor levels with staggered glazing and infill panels in a darker tone. The tower steps down at the eastern end towards the river while extending all the way down to the ground on the River Parkway anchoring itself between the two podium brick masses.
- The design concept of the podium is limited to two strong ideas; masonry façade with more formal expression of punched openings and recessed balconies along the street frontages and a glazed and layered façade with projecting balconies along the greenway. Masonry holds the corners for an appropriate urban condition, while the greenway façade is more refined and lighter. The footprint at the northeast corner pulls back from the greenway and the upper floors between the projecting bays provide outdoor terraces. These features, combined with the horizontal expression carried down from the tower, provide a façade along the greenway trail and river that is articulated and appropriately scaled.
- A consistent language defines the ground floor residential units which are enriched with porches, railings, and lighting. The live-work units and maker spaces at the eastern end are also coherent and detailed with large storefront glazing and overhead doors.
- Where exhaust/air exchange does not occur through the roof, it is discretely integrated in the floor slabs with a flush metal duct vent cover, which is similar on the podium.
- The limited number and high-quality materials (brick, composite metal panel and glass, wood accent) complement those found in the district.
- Bird safe glazing is not required for the Project, but in response to testimony the Application incorporated a bird responsive feature. The Project changed the glass railings on the masonry podium volumes to cable railing to help address the concerns with potential bird strikes at the lower levels of the building that are adjacent to the Greenway. The railing treatment at all balconies on the masonry cladding is coherent.

As conditioned for the metal panel on Block 41, these guidelines have been met.

A7. Establish and Maintain a Sense of Urban Enclosure. Define public rights-of-way by creating and maintaining a sense of urban enclosure.

A8. Contribute to a Vibrant Streetscape. Integrate building setbacks with adjacent sidewalks to increase the space for potential public use. Develop visual and physical connections into buildings’ active interior spaces from adjacent sidewalks. Use architectural elements such as atriums, grand entries and large ground-level windows to reveal important interior spaces and activities.

C7. Design Corners that Build Active Intersections. Use design elements including, but not limited to, varying building heights, changes in façade plane, large windows, awnings, canopies, marquees, signs and pedestrian entrances to highlight building corners. Locate

flexible sidewalk- level retail opportunities at building corners. Locate stairs, elevators, and other upper floor building access points toward the middle of the block.

C8. Differentiate the Sidewalk-Level of Buildings. Differentiate the sidewalk-level of the building from the middle and top by using elements including, but not limited to, different exterior materials, awnings, signs, and large windows.

C9. Develop Flexible Sidewalk-Level Spaces. Develop flexible spaces at the sidewalk-level of buildings to accommodate a variety of active uses.

Findings for A7, A8, C7, C8 and C9: The project addresses these guidelines in the following manner:

- The buildings include ground level features that differentiate the base, sidewalk level of the building from the body of the building, like canopies, light fixtures, porches, and large amounts of glazing numerous building entries. The storefront system and doors visually and physically connect the activities within the building to the pedestrian. Benches to support activities at the ground level are also shown.
- Active uses are located at building corners and strong architectural moves support the hierarchy of intersections. The outdoor rooftop terraces at the Abernethy and River Parkway Intersection and the strong masonry corners are two examples.
- On Block 42, residential units are limited to Lane while the other street frontages contain active commercial or amenity spaces for the tenants. The northeast corner includes fitness room, which activates this corner.
- On the northern building on Block 45, the two live/work units fronting Bond have a sufficient depth and height to ensure a residential component can be accommodated away from the street edge. The applicant has provided layouts for these spaces which demonstrate the live-portion can occur on the back half of the unit allowing a commercial use along the sidewalk if used as a live-work. The ceiling height of 15ft and a low wall height of 9ft will allow sufficient light to get to the back of the unit and has provided an option for a translucent wall between the work and live space to allow more light to the live portion at the back. The live/work units are designed to be fully functional as a commercial space when market demands exist in the future.
- The walk-up residential units with stoops, porches, individual entries and raised landscape planters that line the paseo and accessways will activate these more intimate frontages that characterize the district and provide a sense of enclosure.
- The southern building on Block 45 includes a ground floor program along Bond that includes a lobby and amenity spaces that provide an active frontage along the streetcar. The building entry and large storefront windows on the is western façade connect the interior space with the activities along the sidewalk. The walk-up units provide security and comfort for the occupants and a layered and articulated frontage along the sidewalk. The ground floor is setback vertically and horizontally with layered landscaping creating a thoughtful transition between the public and private spaces.
- The main lobby entry on Block 41 is located in the center of the tower on River Parkway, which contributes to the activity along the sidewalk.

These guidelines are met.

C11. Integrate Roofs and Use Rooftops. Integrate roof function, shape, surface materials, and colors with the building's overall design concept. Size and place rooftop mechanical equipment, penthouses, other components, and related screening elements to enhance views of the Central City's skyline, as well as views from other buildings or vantage points. Develop rooftop terraces, gardens, and associated landscaped areas to be effective stormwater management tools.

Findings: The proposal addresses this guideline in the following manner:

- For the buildings on Blocks 41 and 44 the rooftop areas are varied in height and size, activated with amenity spaces for residents, landscaped and oriented to take advantage of the river views and activities.
- The Zoning Code that is applicable to the Project (April 2017) does not require ecoroofs to cover a minimum percentage of the roof. 100% of the site's stormwater management is handled on-site without ecoroofs. However, the applicant has included ecoroofs to supplement stormwater management on site. The large roof terraces atop the 4th floor on Blocks 41 and 44 include ecoroofs. These treatments provide interest to the "5th elevation" of the buildings which is characteristic throughout the district given the sweeping views from the west hills.
- For the buildings on Blocks 42 and 45 (northern building only) the lower roofs are occupied with courtyards on the 2nd floor that are well landscaped and provide stormwater treatment. Roof terraces atop the 5th floor oriented at the eastern ends of the blocks to allow river views and activate the corner of Abernethy and River Parkway below.
- Rooftop elements (stairs, elevator overrun, mechanical units, screening elements, garage exhaust) for all the buildings are minimized and grouped resulting in organized and clean rooftops. Enclosures will be clad in materials and colors that complement those on the corresponding building for a coherent composition.
- Mechanical units will be fully screened with the exception of the cooling towers atop the eastern two buildings. However, these are low profile (8' tall) and will be east of the rooftop enclosure screening them from the elevated views from the west. The set back locations from the roof edges further limit their visibility from other vantage points.

This guideline has been met.

C12. Integrate Exterior Lighting. Integrate exterior lighting and its staging or structural components with the building's overall design concept. Use exterior lighting to highlight the building's architecture, being sensitive to its impacts on the skyline at night.

B2-1. Incorporate Outdoor Lighting That Responds to Different Uses. Place and direct exterior lighting to ensure that the ground level of the building and associated outdoor spaces are well lit at night. Integrate exterior lighting so that it does not detract from the uses of adjacent areas.

When appropriate, integrate specialty lighting within activity nodes at interfaces of accessways and the greenway.

Findings for C12 and B2-1: The proposal addresses these guidelines in the following manner:

- On all five buildings, the building lighting scheme along the ground level and at the podium terraces are well-illuminated with frequent fixtures to provide safe spaces but that focus the light downward or diffuse the light so as not to impact the nighttime sky.
- For the east-west accessways (Lane, Abernethy and Lowell), contemporary pole lights are proposed throughout that will provide illumination to supplement the adjacent building lighting and unify these public spaces throughout the site.
- The Mercado lighting in the east-west paseo between the two buildings on Block 45 has been replaced with bollard lights within the pathway and porch lights at the individual unit entries providing more consistent lighting at a lower level.
- LED downlighting has been incorporated into the upper portion of the railing that

lines the eastern side of the “overlook”.

- Inset blue light bands have been added into the brick paving in the bonus open spaces plaza between the eastern buildings and the greenway providing playful illumination that references to the river.
- The lighting fixtures for each building includes a fixture palette that relates to each building’s design aesthetic.
- To avoid potential impacts to wildlife from lighting, lighting fixtures will be focused downward or shielded to prevent spill over or excessive lighting, particularly along the greenway frontage.

These guidelines are met.

C13. Integrate Signs. Integrate signs and their associated structural components with the building’s overall design concept. Size, place, design, and light signs to not dominate the skyline. Signs should have only a minimal presence in the Portland skyline.

C13-1. Coordinate District Signs. Consider the development of a master sign program that integrates the sign system with the development’s overall design.

Findings for C13 & C13-1: No building or site signage is proposed. *This guideline is therefore not applicable.*

South Waterfront Greenway Design Guidelines:

33.851.100 B.2. Approval Criteria. All proposals must meet Sections II and III of the South Waterfront Design Guidelines.

Findings for South Waterfront Greenway Design Guidelines: As explained in the supplemental findings, a portion of the site is located within the Greenway “g” overlay zone, and because aspects of the proposal could not meet applicable development standards and work occurred riverward of top of bank, the Project is subject to South Waterfront Greenway Review. South Waterfront Greenway review also requires concurrent design review, and the applicable approval criteria for that separate process are Section II (South Waterfront Design Guidelines) and Section III (South Waterfront Greenway Design Guidelines) of the South Waterfront Design Guidelines. PCC 33.851.100.B.2. Section II design guidelines are addressed above and in the supplemental findings. The findings below and in the supplemental findings explain the Project’s compliance with Section III, South Waterfront Greenway Design Guidelines.

1. **Develop a Cohesive Greenway Trail System.** Ensure that pedestrian and bicycle connections to the Greenway trail from the adjacent accessways or urban spaces are safe, convenient and direct. Align the trail to take advantage of the site’s opportunities to enhance the diversity of the trail experiences. Create a continuous Greenway trail system with consistency in design elements that celebrate the area’s history and character. Develop clear and simple signage for shared use, basic rules, wayfinding, and interpretive signage displays.

Findings: The Greenway trail provides five additional access points to the trail: from the north, by connecting to existing trails; to the west through new direct, public accessways via SW Lane, SW Abernethy, and SW Lowell; and to the south, by connecting to an existing trail. The trails are designed in a curvilinear manner to maximize views toward the river and to provide interest and are separated from the bank area by retaining walls and a naturalized bank treatment. The trail has been designed to observe existing topography that falls toward the river and expose concrete retaining walls along the riverbanks. These features illustrate the river-based industrial history of the south waterfront area and provide an experience that differs from other sections of the Greenway trail and adds variety to the Greenway

experience. Street markers are provided at the accessway crossings and changes in materials at crossings are proposed to promote convenience, wayfinding and safety.

The pedestrian trail is a safe distance from the existing concrete block retaining wall at the south end of the Greenway. Approximately 29 feet between the trail and the concrete pad at the top of wall will allow room for leafy evergreen tree (Oregon myrtle) plantings and a 42-inch high guardrail fence to separate pedestrians from the steep wall.

The bike trail's paving material is asphalt and scored concrete is used for the pedestrian trail. These trails align and connect with the existing asphalt bike trail and scored concrete pedestrian trail to the north, and to the path crossing the Old Spaghetti Factory site to the south. The materials for both the pedestrian and bicycle trails match the existing trail materials to the north and south of the site. The continuous alignment and materials contribute to a cohesive Greenway trail.

This guideline has been met.

2. **Create connections and continuity between the edges of the Greenway and adjacent open spaces, bridges and views.** Address the edges of the Greenway where it interfaces with streets and accessways, public open spaces, and bridge structures using the following Greenway Edge Guidelines (2-1 – 2-3).

2-1. Address Streets and Accessways. Provide clear connections to the Greenway from streets and accessways.

2-2. Address Adjacent Open Space. Ensure continuity of design and movement between the Greenway and adjacent open space.

2-3. Address Bridges. Design the Greenway to address the visual and physical presence of the bridges.

Findings: The design addresses the edges of the Greenway by integrating accessways to the Greenway trail, providing access to adjacent open spaces, and providing views of nearby bridges from the pedestrian plaza at the terminus of SW Abernethy, which provides a viewpoint. Connections are proposed at the southern edge of the site via SW Lowell; in the center of the site at the terminus of SW Abernethy Street, and at the northern edge of the site via SW Lane. The Greenway provides access to the existing trail system to the north and south, continuing elements of the existing trail design as well as pedestrian and bicycle movement and provides access to east-west accessways including the Lowell, Abernethy, and Lane pedestrian corridors.

SW Abernethy Street is a broad, tree-lined pedestrian corridor leading to the Greenway. There is a connection to the east end of Abernethy with an open pedestrian plaza and water feature that includes public art. The pedestrian and bike paths are well lit. Signage will be provided at SW River Parkway to each east-west entry corridor. SW Abernethy and SW Lane Street are lined with rain gardens.

These guidelines are met.

3. **Provide a diverse set of gathering places with seating, art, water features and overlooks** Accommodate a range of special activities oriented toward the Willamette River that offer large and small gatherings, play, watercraft launches, and unique viewpoints as extensions of the Greenway trail. Design gathering places to respond to the character of the specific reach's historical context, urban setting, and particular habitat improvements.

Findings: The design includes a range of small gathering areas that are accessible to the public as extensions of the Greenway trail:

- Plaza: A plaza is located west of the trails at the SW Abernethy terminus. The plaza provides a transition from the more formal open spaces to the west of the Greenway to the more casual, active, and natural spaces to the east. An fountain is included within the SW Abernethy plaza. This fountain and space reserved in the fountain for public art provide a focal point for the plaza.
- Lawn areas: Two open lawn areas flank the SW Abernethy terminus to the west of the bicycle trail. These lawns provide an area for picnicking, resting, or relaxing.
- Overlooks: A viewing platform/overlook is proposed at the east end of SW Abernethy, east of the pedestrian walkway. The overlook is enhanced with illuminated guardrails for nighttime safety and visual appeal. The platform includes bollards to be constructed from the existing wood pier as a reference to the historical industrial context of the site. The proposed cable guard rail further references this industrial history.
- Maker space patio: The ground floor southwest corner of the building on Block 44 includes an active maker space on the corner that is oriented to the Greenway and SW Lowell accessway, and includes expansive windows that visually connect the interior use with the public space. The maker space interior activity spills onto the maker space patio, which provides the transition between the Greenway and the building. The maker space is a use at the intersection of the Greenway and the SW Lowell accessway that will draw in the public, and the adjacent patio expands the public realm beyond the Greenway to the building's edge.
- Benches are to be nestled along the pedestrian trail at regular intervals to provide places to stop, rest, and observe nature along the river or people-watch.
- Greenway Trail: The trail has been designed to observe existing topography that falls toward the river and expose concrete retaining walls along the riverbanks. These features illustrate the river-based industrial history of the south waterfront area and provide an experience that differs from other sections of the Greenway trail.

The gathering areas are diverse and respond to the recreational as well as natural character of the Southern Reach of the river. *This guideline is met.*

4. **Integrate materials such as art, structures, and found objects.** Integrate high quality, contemporary, visible, and easy-to-maintain structures and materials which respond to context and need. Maintain consistency in structures and allow transition in paving materials where new Greenway development abuts existing Greenway. Ensure that the Greenway trail, its access connections, and the accessways are well lit at night to create a sense of activity and security. Place and shield lighting fixtures so that they do not detract from adjacent use areas. Integrate art within the Greenway through evocative forms and materials, including “found objects”.

Findings: Three sitting areas are provided along the pedestrian trail using native basalt benches reflecting local materials. This high quality material is supported by Guideline 1's example 4's depiction that describes, “Native basalt and concrete cut at angles...[as] a nod to the evolving landscape of the river and its industry” in the caption below a photograph of native basalt benches adjacent to the Greenway trail.

Custom large wood benches provided by a local Portland company reflect the South Greenway's legacy of sawmills (described in Guideline 4's background section and example 1) and are located at the end of the Abernethy Mall.

A water feature referencing the connection to the river is shown at the terminus of

the Abernethy Mall. Found material from the wood pier to be removed are used as site bollards at the Abernethy connection to the pedestrian trail, reflecting the industrial past of the site.

The bike trail's paving material is asphalt and scored concrete is used for the pedestrian trail. These trails align and connect with the existing asphalt bike trail and scored concrete pedestrian trail to the north, and to the path crossing the Old Spaghetti Factory site to the south. The proposed materials for both the pedestrian and bicycle trails match the existing trail materials to the north and south of the site, which maintains consistency in the transition from existing Greenway to new Greenway.

Council finds that *this guideline is met*.

5. **Enhance the riverbanks by directing human access and providing bank stabilization that improves ecosystems.** Utilize riverbank stabilization strategies that enhance the river and riverbank ecosystems. Where appropriate, integrate public access to the water that is safe and supportive of adjacent riverbank areas. Provide clearly identified river access within appropriate locations, reducing riparian habitat intrusion.

Findings: The oversteepened riverbanks will be regraded and riverbank stabilization strategies will include class 700 riprap below ordinary high water (OHW) with large wood (LWD) to provide cover and refugia for salmonids. The large wood will be installed during riprap installation and will be anchored by the bank material and some additional ballast boulders. Existing mildly sloped alcove areas where finer sediment persists will be armored and overtopped with 1.5 feet of 2.5 inch, well graded, rounded river rock to provide a substrate that can support benthic invertebrates. Armoring is still required to prevent undermining of the bank during high water-erosion events.

Above ordinary high water the slopes will not be armored and will rely on native vegetation establishment to provide stability. Riparian vegetation is degraded in this reach of the river and robust native plantings will ensure the riverbank's riparian functions are enhanced and restored. Bio-degradable matting will be installed after construction to provide stability until the native trees and shrubs are established. The large wood and the native riparian plantings, such as willows, ninebark, and other native shrubs will provide flow complexity and diversity resulting in cover and refugia (areas of low velocity behind the debris and a slow-moving fringe) for ESA listed species, while also improving the nutrients available to support a healthier benthic invertebrate population to promote rearing.

This guideline requires enhancement of the riverbank ecosystem. The landscape plans include western red cedar, Oregon ash, bigleaf maple, red alder, Oregon myrtle, and Pacific willow in areas near the river, consistent with the South Waterfront Greenway plant lists. Large-form trees are used, consistent with comments from City of Portland Urban Forestry.

The existing concrete block wall, concrete stairs, and slabs in the Greenway at the south end of the site will remain. The seismic and geotechnical analyses addresses the structural stability hazards with removing or changing this structure. Further, the South Waterfront Greenway guidelines applicable to this specific proposal (Section III) of Section III do not necessitate the removal or alteration of the concrete block wall and its components. Guidelines do however address safety and directing human access, which is accomplished here with evergreen tree plantings working in concert with a guardrail/fence and shifting the pedestrian trail farther from the concrete slab and wall. The undulation in the trail created by this shift and the additional vegetation are consistent with Guideline 1, which provides in part "Align the trail to take advantage of the site's opportunities to enhance the diversity of trail

experiences.”

The supplemental findings address the portion of Guideline 3 that describes appropriate river access.

This guideline is met.

6. **Design diverse plant communities, address soil, light and moisture conditions and provide structural diversity, enhance shallow water habitat by providing shade, riparian vegetation, and large woody debris.** Select appropriate species of native plants based on the soil, light, moisture conditions, context and adjacent uses of the site. Create and enhance habitat through renaturalization, encouraging a structurally diverse and ecologically valuable Greenway.

Findings: The Greenway design utilizes diverse plant selections including large shade trees, conifers, and a diversity of understory plants to create a wildlife corridor along the 650 linear feet of Greenway extending from SW Lane to SW Lowell. All of the plants proposed in Subareas 1 and 2 are listed on the South Waterfront Greenway plant list, as required by standard. Subarea 1 plantings include 10 large scale trees to improve riparian and shallow-water fish habitat. Black cottonwood and Oregon ash will provide shade and cover for Subarea 1. Thirteen (13) total species of trees are used in all three Subareas. Nineteen different species of shrubs and ground cover are used throughout the Greenway with the heaviest concentration of trees and diversity of shrubs in Subarea 2—within 45 feet of the riverbank.

The shallow water habitat will be enhanced for the benefit of salmonids and other aquatic organisms by incorporating large woody debris within the bankstabilization design. The large woody debris will be concentrated lower in the bank at ordinary low water where it will provide year-round shade and shelter for aquatic organisms and extends to ordinary high water to provide hydraulic diversity and flow refuge at higher flows to prevent aquatic organisms from washing downstream.

The bank is currently protected from wave erosion by large miscellaneous rubble. While riprap armoring is required to prevent erosion, especially of the underlying contaminated sediment, the incorporation of large woody debris also provides wave attenuation that will allow pockets of finer sediment to accumulate and support aquatic invertebrates, an important food source for salmonids. There are two specific locations on the site at the low water edge that are mildly sloped with existing accumulations of fine sediment. In these alcove locations the bank armoring will be overtopped with fine substrate consisting of clean rounded gravels with a high proportion of fine sediment to support habitat diversity. The combination of mild slopes and incorporated large woody debris will allow this fine substrate to stay in place.

Riparian edges will be enhanced by establishing vegetation within Subarea 1 including groundcover, shrubs, and trees. Shrubs were selected from the South Waterfront plant list that are well suited for the site conditions. The bulk of the shrubs will consist of Pacific willow and western spirea, while Sitka willow and Columbia River willow will make up a smaller portion of the shrubs to provide additional plant diversity. The shrubs and groundcover in Subarea 1 will provide insect and leaf drop to support the aquatic food web while providing direct access to refuge during moderate to high water levels.

Tree groves in Subareas 1 and 2 are proposed in clusters and in conjunction with groundcover and shrubs to provide a multi-level canopy structure for birds and mammals. This canopy will also provide afternoon shading along the water's edge to enhance the refuge provided by the large woody debris and shrubs. Leaf and insect

drop from these tree groves will contribute to the aquatic food web and provide a source of primary nutrition for aquatic invertebrates. Trees in Subarea 1 consist of deciduous black cottonwood and Oregon ash trees that can establish in the lower elevations and provide summer shading and fall leaf drop. The tree diversity is much greater in Subarea 2 where 7 tree species of deciduous and coniferous trees will be established. The coniferous trees will provide year-round canopy for birds and mammals, but if planted too densely will shade out understory plants. Providing the mix of deciduous trees provides more canopy diversity, but also allows for more understory diversity because of the variable light and shade conditions through the year. Understory diversity is also achieved by establishing the trees in clusters. The leaf-drop from the Subarea 2 trees (both coniferous and deciduous) will support the aquatic food web.

The selection of plant species and configuration of plantings in the Greenway, in conjunction with the large woody debris within Subarea 1, enhances the shallow water habitat and riparian fringe, while promoting fine sediment retention in the shallow water to provide substrate for aquatic invertebrates and other aquatic organisms. A selection of native groundcover, shrubs, and trees that are suited for this site will sustainably create diverse multi-level habitat structures that will support the aquatic habitat by providing refuge, shade, and nutrient inputs.

This guideline is met

2. SOUTH WATERFRONT GREENWAY REVIEW – CHAPTER 33.851

In April 7, April 28, and May 18, 2020 revised application submittals, the applicant made the following changes to the proposal within the South Waterfront Greenway:

1. The applicant's April 28 and May 18 plans show 23,060 square feet of shrubs, 67 trees, and 3,310 square feet of ground cover within Subarea 2, exceeding the landscaping required by standards in Zoning Code Section 33.510.253 E.5. Tables listing species to be planted within each Greenway subarea demonstrate that plants listed in Tables 510-2 and 510-3 are used, as required by the landscape standards.
2. DSM buttresses ("ground improvements") will be constructed within a 45-foot wide disturbance area within Subarea 3, with no encroachments within Subarea 2. This design meets the standards for other development within the South Waterfront Greenway area as listed in 33.510.253. E.5.g and does not require Greenway Review.
3. A viewpoint at the terminus of SW Abernethy was added back to the proposal. No formal viewpoint is mapped at the east terminus of SW Abernethy Street by the City (Map 510- 15), and construction of a viewpoint is not specifically required by code. Nonetheless, provision of a river overlook at this location does address the public access requirements of the *South Waterfront Greenway Design Guidelines*. As shown on the applicant's plans, although it is not required to, the Abernethy river overlook technically meets the South Waterfront Greenway standards for "minor viewpoints" (33.515.253 E.5.e.(2)).
4. Additional details are provided depicting construction of pedestrian features as well as bank stabilization and large woody debris (LWD) installation relative to riprap armoring and other bank treatments.
5. Large stature tree species (listed on Tables 510-2 and 510-3) are included on the revised landscape plans, as suggested by Urban Forestry staff, and the May 18 plans meet the species requirements of the South Waterfront Greenway standards.
6. Clarification is provided that no work is proposed to or near the existing concrete wall, and that the existing concrete pier/block wall and adjacent concrete slabs at the south end of the Greenway are to remain.

7. While the South Waterfront Greenway criteria do not specifically require improvements to the existing concrete wall and slabs at the south end of the Greenway, the guidelines do refer to safe access to the river. Added evergreen shrub plantings in concert with shifting the pedestrian trail farther from the concrete slab will help to keep pedestrians away from this structure.
8. Additional narrative findings have been provided addressing the guidelines and criteria below.

Zoning Code Section 33.510.253 E.3 states that South Waterfront Greenway Review is required for activities that do not meet the standards listed in 33.510.253 E.5 and for activities riverward of top of bank of the Willamette River. The May 18, 2020 application, as modified, meets all of the standards with the exception of fence height and trail width. South Waterfront Greenway Review is required for the following four proposed project elements:

1. *Proposed fence over 3 feet high, and less than 45 feet from top of bank;*
2. *Segments of the Greenway Trail less than 12 feet wide;*
3. *Removal of existing wooden pier below top of bank; and*
4. *Excavating, regrading, armoring the riverbank, and placing large woody debris below top of bank.*

Section 33.851.300 Approval Criteria for South Waterfront Greenway Review

Requests for a South Waterfront Greenway Review will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

A. Consistent with the purpose of the South Waterfront Greenway. The following approval criteria must be met for all proposals:

Council finds: These criteria apply to:

1. *Proposed fence over 3 feet high, and less than 45 feet from top of bank;*
2. *Segments of the Greenway Trail less than 12 feet wide;*
3. *Removal of existing wooden pier below top of bank; and*
4. *Excavating, regrading, armoring the riverbank, and placing large woody debris below top of bank.*

1. When compared to the development required by the standards of 33.510.253, the proposal will better enhance the natural, scenic, historical, economic, and recreational qualities of the Greenway;

Findings: The applicant's narrative, which provides evidentiary support for these findings, describes the need for a 42-inch protective guardrail along the retaining walls to provide adequate fall protection near retaining walls, and to improve ADA accessibility along the pedestrian trail. The low-profile guardrails are constructed of natural-appearing cable railing with wood caps and enhance the natural and scenic qualities of the Greenway. The Greenway trail provides economic and recreational qualities by connecting an incremental trail system along the Willamette River and providing continuous access from north to south.

Two trails are proposed: the 10-foot wide pedestrian trail closest to the river and the 12-foot wide bicycle/multimodal trail. The trails were aligned to connect to the existing trails to the north and south. Further, the width of the trails matches the widths of the existing trails to the north and south. The curvilinear design of the trails allows for a dynamic experience as the trail users cross the site and provides visual interest for trail users. The proposed trail location and design adequately accommodate trail users while allowing the design team to respond to significant topography while restoring significantly deteriorated riparian habitat at the river's edge.

Lastly, the Proposal includes the removal of the existing wood pier along the site's river frontage and regrading, excavating, and armoring riverbanks. These activities restore the riverbank to a more natural state, provide additional shallow water and riparian habitat along the bank, and allow for unobstructed views of the river from the site. Council finds that compared with standards in PCC 33.510.253, the Project "better" enhances the natural, scenic, historic, economic and recreation qualities intended to be provided by the Greenway by: removing the dilapidated wooden pilings and pier structure from the river, laying back the river banks, providing a public overlook at the Abernethy terminus at the river, and placing large woody debris and root wads to enhance shallow water habitat in the river— none of which is required by the standards. Council further details its interpretation of the "better meets" standard in the supplemental findings, below. *This criterion is met.*

2. When compared to the development required by the standards of 33.510.253, the proposal will better ensure a clean and healthy river for fish, wildlife, and people;

Findings: While the existing bank condition provides some natural functions, it is largely limited to shallow mildly sloped alcove areas (4H:1V) that exist at the north and south end of the sites below elevation 10 ft. Below elevation 10 ft the existing bank slopes are typically 2H:1V or flatter, while above this elevation the bank is much steeper. The existing bank material consists largely of miscellaneous fill, including large concrete rubble and asphalt pavement. Finer materials are present within the existing alcove areas that can provide limited shallow water habitat. Existing riparian vegetation consists of a row of shore pines at the top of existing bank, with ivy and blackberry. While the shore pines provide some canopy habitat, there is no understory habitat, and groundcover is comprised of dense ivy and blackberry. Any vegetation below top of bank consists of ivy and blackberry that has grown down from the top of bank. There are also several derelict piles along the bank. The bank is relatively steep along the river edge of the site, dropping off at a 2H:1V to 3H:1V slope, meaning that shallow water habitat in this area is limited to the fringes of the river.

The bank will be laid back and stabilized to protect against erosion from high water flood events and from wave and wake damage that can occur during low water periods. For this reason, the bank stabilization must extend below ordinary low water to prevent the bank stabilization measures (riprap) from being undermined. Due to the height of the bank with very steep existing slopes (approximately 22 feet high from elevation 10 feet to elevation 32 feet) and the limited Greenway width that must also provide additional uses (e.g. trails) laying the bank back to a slope flat enough to not require engineered stabilization measures (riprap) is not feasible. Therefore, riprap will be used to stabilize the bank below ordinary high water (elevation 18.22) at a maximum 2H:1V slope while incorporating engineered large woody debris to provide high flow refuge and shelter for fish species.

Where riprap is used below ordinary high water to stabilize more mild slopes the riprap will be overlain with clean river rock and sediment to provide enhanced shallow water habitat. To allow for flatter vegetated slopes above ordinary high water, retaining walls must be used to make up the height to the trail elevation. Retaining walls have been located near the trail and as high up the slope as possible to minimize the inundation duration. The area below the retaining walls will be vegetated with native trees and shrubs that will provide a slow-moving flow fringe during high flow events adjacent to the retaining wall.

While the bank cannot be completely naturalized due to site constraints, including tall, steep existing banks, matching grades to the adjacent properties, and providing trail space, the bank design does incorporate enhancement features that go well beyond the South Waterfront Greenway standards. The standards in PCC 33.510.253 would not require this additional work. Council finds that these added

Project components provide substantial benefits to the river area and therefore better enhance the riverbank, riparian area, water quality and fish habitat than compliance with PCC 33.510.253 would achieve.

- Existing contaminated sediment will be removed and armored to prevent additional erosion of contaminated sediment into the river.
- Existing slopes 2H:1V or flatter will be preserved, and the riprap will be overlain with large river rock, this is largely at the fringe of the river, so the existing shallow water habitat will be preserved while the bed material will be enhanced with river rock to increase ecological function.
- The existing slopes 4H:1V or flatter in the two alcove areas will be preserved and the riprap will be overlain with clean fine river rock and sediment, similar to what exists at those areas now.
- Derelict piles within the work area will be removed.
- Engineered large woody debris will be incorporated into the riprap below proposed ordinary high water to provide refugia and shelter and meet NMFS SLOPES V requirements.
- Engineered large woody debris within the planting requirements of subarea 1 will be configured to maximize retention of fine sediment to create plantingpockets.
- Engineered large wood debris below the planting requirements of subarea 1 will be configured to maximize refugia and shelter for fish.
- Above ordinary high water the slopes will be a maximum of 3H:1V and stabilized with native vegetation. Vegetation stabilization is adequate for these slopes above ordinary high water because the duration of exposure to wave and wake damage is much less than below ordinary high water.
- Bank enhancement and stabilization grading will result in a net cut of 5,260 cubic yards of cut and material removal (1,030 cubic yards below OHW).
- The bank design will also be reviewed and permitted by the USACE and OR-DSL.

The existing steep slopes along the site's riverbanks, the lack of large wood and the lack of healthy riparian vegetation means there are few existing habitat features that need to be protected during construction. There are minor pockets of existing fine sediment in the alcoves that provide some habitat for benthic invertebrates. While this sediment must be removed to install the armoring, fine sediment will be used to overtop the armoring to restore benthic habitat. To provide long term ecological enhancement, pilings and contaminated soils within the riverbank will be removed. Armoring will be placed to prevent additional erosion of contaminated material.

It is anticipated that the majority of the bank regrading will be performed using excavators, which will excavate and regrade from the top of bank down and then install stabilization and large woody debris, while working back to the top of bank. A turbidity curtain will be used to prevent fine sediment from leaving the site. Rock may be placed temporarily and intermittently to build up platforms for excavators to work within the portion of the site below water. The plans call for stabilization to occur to elevation 0, meaning that the depth of water will be approximately 6 feet at the deepest portion of the site during construction periods, which is generally well within the operating reach of a large excavator. Barge mounted equipment may be used if needed, most likely for removal of the deeper pilings, but it is anticipated that most of the work will be performed from the bank. All work will occur during the in-water work window when use by ESA-listed species is minimal.

The Applicant's narrative description and supporting evidence detail how when compared to meeting the development standards of PCC 33.510.253, stabilization strategies will contribute well to and better ensure a clean and healthy river for fish,

wildlife, and people. The Applicant's supportive graphic plans and details demonstrate how the proposal will be constructed. *This criterion is met.*

3. When compared to the development required by the standards of 33.510.253, the proposal will better embrace the river as Portland's front yard; and

Findings: The Proposal will connect and continue the Greenway trails that currently terminate to the north and the south of this property, and provide easy access through Abernathy and Lowell Streets, connecting the trail to South Waterfront businesses, residents, and users.

The Project will remove the large wooden pier structure and miscellaneous pilings will be removed to provide unobstructed views of the Willamette River, Ross Island, and the native vegetation established to the east of the pedestrian trail. This removal activity is not required by the standards in PCC 33.510.253. Council finds that removing these structures will create unobstructed river views, which better enhances and embraces the river as Portland's front yard than a design that merely meets the standards of PCC 33.510.253. Native vegetation will be planted to improve riparian health, provide resiliency of the Greenway, and facilitate connections between users and the natural environment. The wide plaza at the Greenway terminus of SW Abernethy Street invites pedestrians into the Greenway with trails, benches and the Abernethy river overlook providing both active and passive recreation opportunities at the river's edge.

These features will create inviting public spaces at the river, that clearly belong to the public and feel connected to the river, creating a "Portland front yard" experience. *This criterion is met by the proposal.*

4. When compared to the development required by the standards of 33.510.253, the proposal will better provide for stormwater management.

Findings: Stormwater management will be provided for the Greenway according to the City of Portland Stormwater Management Manual, using vegetated pollution reduction facilities to treat runoff from impervious areas. Due to existing site contamination the facilities will be lined to prevent infiltration.

The Greenway trails and Abernethy river overlook have a total of 16,570 square feet of impervious area that must be treated with stormwater facilities according to the City of Portland Stormwater Management Manual. Runoff from 7,790 square feet of impervious area is collected and conveyed to a stormwater facility at the north end of the Greenway and runoff from 8,776 square feet of impervious area is collected and conveyed to a stormwater facility at the south end of the Greenway. While stormwater treatment could be provided using stormwater planters and satisfy PCC 33.510.253, the Project provides stormwater management by using larger and shallower (as well as more naturalistic) swale facilities that provide additional storage and allow the stormwater facility to support greater plant diversity. The plant diversity, location, and configuration of the stormwater swales between the paths also contribute to the habitat and recreational value of the Greenway.

The two swales proposed to provide stormwater treatment are each 6 inches deep and 60 ft long, with a 3 ft bottom width, 7 ft top width, and periodic check dams, resulting in an area of 420 square feet each, or 840 square feet total. This area will consist of two planting zones, Zone A (wet), and Zone B (dry). This design allows multi-story and diverse vegetation structure by combining herbaceous plants, ground cover, shrubs, and trees provides greater habitat diversity and is naturally more sustainable and adaptable.

Finally, the Project includes eco-roofs on the podium roofs, which is not required by 33.510.253 or elsewhere under the Code. As described herein, the Project includes additional stormwater management facilities in excess of those required under 33.510.253. These innovative facilities better provide for stormwater management than the Code-required facilities alone.

This criterion is met.

B. Development riverward of top of bank. If development is proposed riverward of top of bank, the following approval criteria must be met:

- 1. The riverbank will be protected from wave and wake damage; and**
- 2. The proposal will not:**
 - a. Result in the significant loss of biological productivity in the river;**
 - b. Restrict boat access to adjacent properties;**
 - c. Interfere with the commercial navigational use of the river, including transiting, turning, passing, and berthing movements;**
 - d. Interfere with fishing use of the river;**
 - e. Significantly add to recreational boating congestion; and**
 - f. Significantly interfere with beaches that are open to the public.**

Findings: Development riverward of top of bank includes the following:

- Removal of existing wooden pier; and
- Excavating, regrading, and armoring riverbank.

The Applicant has demonstrated how construction will be conducted and how the riverbank, shallow water habitat, and biological productivity will specifically be protected during all pile removal, pier demolition, bank excavation and grading, LWD installation, bank armoring and related construction activities. The site is degraded in its current state and the Proposal will not result in significant loss of biological productivity. Instead, the Proposal will enhance biological productivity by replacing contaminated sediment with clean material, incorporating large woody debris into the stabilization, and providing native plantings to enhance provide riparian vegetation. Removal of the wooden pier structure will enhance the biological productivity as the pilings are contaminated.

To provide cover, slow moving margins, and refuge for salmonids as the water level rises, engineered large woody debris structures will be incorporated into the riprap slope. Below elevation 10 feet the large woody debris will be placed to create refuge and shelter, above elevation 10 feet large woody debris will be placed to create successful planting pockets for vegetation establishment. Multiple types of LWD structures are proposed to provide complexity and diversity. LWD structures will be installed along the entire bank between ordinary high water and a few feet below ordinary low water. Native natural area riparian plantings will be provided above ordinary high water.

The existing riverbank is comprised of miscellaneous fill material, is steep, and does not have a functional riparian area, therefore there is no riparian area to protect. Vegetation below the top of bank line is sparse and consists largely of ivy and blackberry growing down from the top of bank. The top of bank does have sparse shore pines that will be removed in the process of laying back and enhancing the bank. The bank stabilization and enhancement work will occur within the in-water work window to minimize impacts on endangered fish species because they are generally not present during this time.

Erosion control will consist of a turbidity curtain installed in the river along the project site just outside of the work zone, tying into the bank on either side of the work areas. This will keep turbidity in place during construction, which will be

allowed to settle prior to removal of the turbidity curtain after construction. The turbidity curtain consists of a top floating boom that will contain floatable debris that will be cleared and disposed periodically.

The incorporation of large woody debris provides wave attenuation that will allow pockets of finer sediment to accumulate and support aquatic invertebrates, an important food source for salmonids.

Work will occur from the bank with equipment access from the site. Excavators will most likely be used for removal and placement of material. It is anticipated that the bank will be excavated from the top down to allow equipment access to the lower reaches as the slope flattens. Once material is removed the new armoring, consisting of filter blanket, riprap, and river rock in the lower portion, will be placed from the bottom up in lifts. Large logs with intact root wads will be incorporated into the riprap from ordinary low water (approximately elevation 5 ft (CoP) to Ordinary High Water (elevation 18.22 ft (CoP)), with more concentration at Ordinary Low Water.

Excavators will be used to remove the top structure of the wooden pier to the supporting piers, with some hand dismantling as needed. Excavators will then be used to pull the supporting piers from the ground. Additional piers in the work area will also be pulled by excavators. All piers within the work zone will be removed, either by pulling or by digging out during bank excavation. Piers that are not within the work zone will remain in place.

Removal of the pier features and the stabilizing and enhancement work will not restrict boat access to adjacent properties or interfere with the commercial navigational use of the river, including transiting, turning, passing, and berthing movements, because Project activities will not occur in areas used for these purposes. Additionally, once the pier is removed, that portion of the river will be available for recreational purposes (boating and fishing), so the Project enhances recreational opportunities.

The project does not include a boat launch or any activities that would significantly add to recreational boating congestion. The Project does not include or involve impacts to beaches open to the public.

The construction management practices described above meet these criteria, and *these criteria are met.*

C. Proposals that do not meet the requirements of 33.510.253.E. If the proposal does not meet all of the standards of Subsection 33.510.253.E., the following approval criteria must be met:

- 1. The proposal will restore and enhance the natural character of the area adjacent to the river and will allow more significant creation of habitat for fish and wildlife that could aid in supporting the recovery of native species of fish; and**
- 2. The proposal will support or enhance the function of the Greenway area as an active and vibrant waterfront and will provide sufficient opportunities for human interaction with the Greenway.**

Findings: The proposal does not meet 33.510.253 E.5 c and d. These criteria require enhancement of riparian and aquatic habitat to create wildlife habitat and fish habitat. Findings must demonstrate how the design of these project elements contributes to recovery of native fish species. The criteria further require the project to enhance the function of the Greenway as a vibrant waterfront that provides for human interaction with the Greenway.

The unrefuted evidence found that several fish species listed under the federal Endangered Species Act (ESA) occur within the vicinity of the project area. The life stage of these species that are most vulnerable to environmental degradation and

habitat loss are juveniles, which rely on shallow water habitat for shelter and as a food source. The proposed restoration project will remove many of the man-made structures that are currently present along the bank, remove fill material along the shoreline, and make the grade of the riverbank shallower, which will increase the area of shallow water habitat available for juvenile salmonids. The current degraded state of the habitat along this portion of the river is typical for sites in Portland that have been subject to past industrial use. The proposed project will increase both the quantity and the quality of the habitat for native fish species in the City of Portland.

Not only will in-water conditions be enhanced, but the quality and the quantity of riparian vegetation will also be enhanced by increasing the density of native trees and shrubs. Shading on the Willamette River is not as important as providing a source of large wood and biota, which benefit native fish species. Removal of contaminated material and installation of clean materials will further increase the habitat value of the site, as well as incorporating Large Wood into the bank stabilization and providing native riparian plantings.

The Projects north/south extension of the Greenway and three accessways that connect the Greenway to the right of way provides diverse opportunities for passive human interaction with the Willamette River. Three wide, tree-lined pedestrian malls direct the public to the Greenway with signage at the entrance to malls at SW River Parkway. Once there, an interactive fountain plaza at the landward terminus of Abernethy provides a view of the river with maritime custom wood benches. Then a direct path crossing the bike trail and pedestrian trail leads east to the river with an unobstructed view of the river at the Abernethy river overlook - a curved, wooden overlook tying into South Waterfront heritage. This river overlook is adjacent to the pedestrian path, still allowing a smooth, uninterrupted flow of pedestrians.

Two groupings of native stone benches east and west of the pedestrian trail are nestled into trees along the pedestrian trail. There are also provided, adjacent to the fountain plaza, two connected plaza spaces north and south of the fountain. These gathering areas provide wood chaise lounges with comfortable backs facing the river with linear LED blue ground plane light pavers leading from both sides to the central fountain and reflective and symbolic of river adjacency. The maker's space at the SE corner of Block 44 building provides another plaza with benches overlooking the river. The lawn areas flanking the Abernethy Fountain Plaza provide sunning and recreational opportunities. Bicyclists that traverse the Greenway have marker inserts into the bike path that tell them what street they are crossing. The Greenway trails are lit with shielded pedestrian lights and natural areas east of trails to the river are left undisturbed.

The applicant has provided thorough analysis (OTAK memo dated 8/14/20, Exhibit I.8), which Council finds persuasive and relies on for its findings, demonstrating that the proposal will provide for more significant creation of habitat for fish and wildlife that could aid in supporting the recovery of native species of fish, and a thorough discussion of enhancement of the function of the Greenway as a vibrant waterfront that provides for human interaction with the Greenway. *This criterion is met.*

D. Buildings within the South Waterfront Greenway area.

Findings: No buildings are proposed within the South Waterfront Greenway setback. *Therefore, this criterion does not apply.*

E. Trails, viewpoints, and pedestrian connections. If the proposal will include trails, viewpoints, or pedestrian connections that do not meet the standards of Subsection 33.510.253 E.5.d. or e. the proposal must meet approval criteria E.1. and E.2., and either

E.3. or E.4.:

- 1. The proposed trail, viewpoints, and pedestrian connections will safely accommodate expected users;**
- 2. The trail will include one or two paths and the width of the proposed trail, or the combined width of the paths that make up the trail, will be at least 18 feet; and**
- 3. The proposed trail, viewpoints, and pedestrian connections will respond to topographic constraints of the site; or**
- 4. The proposal meets all of the requirements of the South Waterfront Greenway Development Plan and the proposed trail, viewpoints, and pedestrian connections comply with those identified on the site as part of the plan.**

Findings: The trail is designed to match the width of the trail to the north, but it does not meet the width standard of 33.510.253.E.5.d, so these criteria are applicable. The South Waterfront Greenway Development Plan was not pursued, and E.1, E.2, and E.3 must be met. The trail will safely accommodate the expected users because it matches the width and materials of the existing trail to the north (Central Reach) built by Parks and includes two paths with a combined width of 22 feet. The proposed trail responds to the topographic constraints of the site by curving westward.

These criteria are met.

F. Landscaping and non-landscaped area. If the proposal will include landscaping or non-landscaped area that does not meet the standards of Subsection 33.510.253.E.5.a. or 5.f., the proposal must meet either approval criteria F.1. or F.2.:

Findings: The Project will provide 23,060 square feet of shrubs, 67 trees, and 3,310 square feet of ground cover within Subarea 2, exceeding the required amount of landscaping. Tables listing species to be planted within each Greenway subarea demonstrate that plants listed in Tables 510-2 and 510-3 are used, as required by the landscape standards. The applicant's landscape plans are evidence that demonstrate that the standards of 33.510.253.E.5.a and f are met, and the F criteria do not apply.

3. MODIFICATION REQUESTS – CHAPTER 33.825

33.825.040 Modifications That Will Better Meet Design Review Requirements:

The review body may consider modification of site-related development standards, including the sign standards of Chapters 32.32 and 32.34 of the Sign Code, as part of the design review process. These modifications are done as part of design review and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor area ratios, intensity of use, size of the use, number of units, or concentration of uses) are required to go through the adjustment process. Modifications that are denied through design review may be requested as an adjustment through the adjustment process. The review body will approve requested modifications if it finds that the applicant has shown that the following approval criteria are met:

- A. **Better meets design guidelines.** The resulting development will better meet the applicable design guidelines; and
- B. **Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.

Modification #1: *Vehicle Parking* – To allow two parking spaces to be stacked (tandem) without having an attendant on-site.

Purpose Statement: The development standards promote vehicle areas that are safe and attractive for motorists and pedestrians. Vehicle area locations are restricted in some zones to promote the desired character of those zones. Together with the transit street building setback standards in the base zone chapters, the

vehicle area location regulations for sites on transit streets and in Pedestrian Districts:

- Provide a pedestrian access that is protected from auto traffic;
- Create an environment that is inviting to pedestrians and transit users.
- Create a strong relationship between buildings and the sidewalk; and
- Create a sense of enclosure on transit and pedestrian street frontages

Standard: Section 33.266.130.F.1.a states that all parking areas, except stacked parking areas, must be designed so that a vehicle may enter or exit without having to move another vehicle.

- A. **Better meets design guidelines.** The resulting development will better meet the applicable design guidelines.

Findings: The City Council finds that a design “better meets the applicable design guidelines” if the design better meets specific applicable guidelines as compared to a design that meets the Code standard and does not include a modification. Tandem stalls allow for vehicles to be parked in smaller amount of developed footprint while also relieving pressure from surface/street, or above grade structured parking that might otherwise be necessary to accommodate the same number of vehicles. As compared to a theoretical design that does not include the requested modification but shares all other features of the Project (including an identical number of vehicles accommodated, and without a parking attendant) the Project design better meets design guidelines because it concentrates more parking below grade, allowing for more condensed vehicle parking areas and better opportunities for active street uses (Guideline A8 (Contribute to a Vibrant Streetscape)). No other guideline is relevant to this modification request.

- B. **Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.

Findings: Tandem parking spaces are proposed within the garages of Blocks 41, 42 and 45. The amount of parking provided and the tandem configuration is allowed outright; a modification is required only so that the tandem spaces can be allowed without an attendant present. This modification does not relate to how much parking must or can be accommodated by the Project. Rather, the modification allows tandem parking without having an attendant present in the parking area. The quantity of parking spaces allowed is not being modified and the tandem configuration would be allowed outright with an attendant present. The Project will not include attended parking and therefore seeks a modification to the tandem parking regulations

Incorporation of tandem stalls coincides with sustainable development, particularly for projects within dense urban cores because it is efficient and sensible use of space and land. Tandem parking without an attendant will not impact vehicle-pedestrian conflict because the number of vehicles in the parking area will not change. At 0.87 spaces per unit, the project provides less than the maximum allowed number of parking spaces (1.7 spaces per unit).

The tandem stalls are for use within a private residential project with regulated parking garage access for residents, and each pair of tandem stalls is only intended and practical to be leased “in tandem” to the same residential unit tenants. Consequently, the tenants of a residential unit associated with the tandem stalls are

effectively each other's full-time parking attendants and the use of the stalls is not impacted in a substantial manner. The number of tandem stalls will be significantly less than the 2- bedroom and 1-bedroom unit count and so the buildings easily support "in tandem" use.

The modified design is consistent with a safe and attractive environment for motorist tenants by allowing the tenants renting tandem spaces to individually handle their vehicles, rather than relying on an attendant. Self-use of the garage guards against potential safety risks or concerns associated with attendant handling of vehicles. Furthermore, the modified design's use of tandem parking within a garage is consistent with a safe environment for pedestrians and motorists by ensuring vehicles are parked within a compact area within a building that is designed for safe vehicle entry to the street, as discussed in Finding C4-1. Finally, tandem parking use is consistent with vehicle storage as residents utilize other modes for day-to-day activities while storing their vehicles in the garage. Safely storing vehicles in the garage is consistent with a safe and attractive environment for pedestrians.

The Project is within a pedestrian district. The Project provides a single parking entrance for all four blocks, ensuring that the remaining frontages along the blocks provide unimpeded pedestrian access protected from auto traffic entering the parking area. As discussed in the Findings for Guidelines A3, A7, B1, B2, B3, C8, and C9, the Project creates an environment that is inviting to pedestrians and transit users, creates a strong relationship between the buildings and the sidewalk, and creates a sense of enclosure on transit and pedestrian frontages. The Project's design with regards to these elements is not impacted by the modification to allow unattended tandem parking for some residents. The Project is consistent with the purpose of this standard.

Concerns raised about impacts of the Project to the transportation system through congestion or additional traffic generation are not relevant to the approval criteria for this modification. *These criteria have been met.*

Modification #2: Bike Parking – To reduce the width of long-term bike parking spaces from 2' to 18".

Purpose Statement: These standards ensure that required bicycle parking is designed so that bicycles may be securely locked without undue inconvenience and will be reasonably safeguarded from intentional or accidental damage.

Standard: Section 33.266.220.C.3.b states that where required bicycle parking is provided in racks, the racks must provide a 2 feet by 6 feet space for each required bicycle parking space, so that a bicycle six feet long can be securely held with its frame supported so that the bicycle cannot be pushed or fall in a manner that will damage the wheels or components.

- A. **Better meets design guidelines.** The resulting development will better meet the applicable design guidelines.

Findings: The City Council finds that a design "better meets the applicable design guidelines" if the design better meets specific applicable guidelines as compared to a design that meets the Code standard and does not include a modification. The project seeks a modification to reduce the width of long-term bicycle parking spaces by 6 inches. As compared to a design that includes the same number of long-term bicycle parking spaces at the size required by the Code, the proposed functional and space-efficient system better meets the design guidelines because it eases floor plan demands and results in additional opportunities for active uses at the street, such as lobby and retail spaces. The narrower spacing allows for more bicycles to be placed in smaller amount of space, ensuring that there remains plenty of room for

active uses along the street and walkway-facing edges of the building – a development pattern which also fits in well with nearby development and better meets Guideline A8 (Contribute to a Vibrant Streetscape).

- B. Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.

Findings: The Project’s long-term bicycle configuration meets the purpose of the bicycle parking standards by providing sufficient space for bicycle parking that avoids undue inconvenience, and safeguards bicycles from damaged. The Project’s bicycle parking rack configuration requires vertical offset of the racks to ensure bike pedals and handles do not align when hung on the rack, thereby eliminating handlebar and pedal conflicts between hanging bikes. The proposed rack design includes less total space between racks, allowing the same rack footprint to accommodate more bicycles in less floor space than a rack designed to the standard bicycle rack dimensions. The vertical offset design safeguards bicycles from accidental damage, by ensuring that bicycles can safely be placed into the racks without damaging adjacent bicycles.

The proposed rack design allows each bicycle to be securely locked to the racks. The bike room is centrally located, with entrances in a variety of locations around the project for convenient access from the garage and from units at floors above. Multiple access points encourage use of the bike room and ensure users can utilize secure bike storage without undue inconvenience. As explained in these findings, the reduced bike rack width is sufficient for bicycles, so the long-term bicycle storage system is no more inconvenient than a full width shared bicycle parking system.

These racks are proposed to be used for long-term storage in a central controlled-access bike storage room intended for use by residents and tenants. Access safeguards protect against intentional damage or theft of bicycles. Because these racks will be used by residents and tenants, who will be provided with racking instructions as part of their controlled access to the bike room, Council believes that residents will have some familiarity with the rack systems, which will protect against accidental damage to bikes by unfamiliar users and therefore the more generous 24” spacing required by the zoning code is not required. Instead, the manufacturer recommended 18” spacing is sufficient. This spacing has been approved elsewhere in the City as it has been determined to be adequate. Moreover, while not applicable to this Project, Council notes that recent amendments to the zoning code (PCC 33.266.210.C.3.b(2), Figure 266-12) have reduced the required spacing between vertical bicycle racks to 17 inches which is evidence that the 24-inch width for hanging long-term bicycle racks is excessive and the approved 18-inch width meets the purpose of the standard.

For these reasons, the proposed long-term bicycle rack configuration is consistent with the purpose of the bicycle parking standards.

These criteria have been met.

4. ADJUSTMENT REQUEST – CHAPTER 33.805

33.805.010 Purpose

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply citywide, but because of the city’s diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations.

Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

Adjustment #1: Vehicle Access – To allow vehicle and loading access off of River Parkway, which is access restricted (Section 33.510.267.F.6.b).

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A through F have been met:

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified.

Findings: The applicant proposes to locate access to the parking garages of all four buildings along River Parkway. Access to parking areas from Bond Street for the western blocks is not supported by PBOT given the Major City Bikeway designation and bike lane on the eastern side of the street. PBOT considered access from the east/west accessways, however, determined the number of vehicles that would need to utilize the accessways to get to the garage entries would result in potentially more conflicts within these designated pedestrians and bike paths than along actual streets. The eastern frontages of the river blocks are also limited due to the greenway trail abutment, leaving River Parkway as the only possibility for vehicle access to Blocks 41 and 44.

PBOT has reviewed Driveway Design Exceptions (DDEs) for all four blocks, which analyzed turning movements into the garages and their alignment as well as gate locations. PBOT has approved the DDEs with conditions that require fast operating gates at each of the entries to ensure queuing impacts to pedestrian and vehicular traffic is minimal on River Parkway.

The purpose of the parking and access regulations that implement the Central City Transportation Management Plan are intended to manage the supply of off-street parking to improve mobility, promote the use of alternative modes, support existing and new economic development, maintain air quality, and enhance the urban form of the Central City. Moving the parking access to SW River Parkway on this case will equal the purpose of the regulation since these buildings will be located in a dense urban environment. Parking access on busy streets is common on this type of neighborhoods and by locating the access points away from the middle streets in the four blocks, the east-west pedestrian and bike connections through the blocks is preserved.

For these stated reasons, the approval criterion is met.

B. If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area.

Findings: As noted in the findings above, the parking access locations proposed support the street classifications of the adjacent frontages. The proposal is consistent with the desired character of the district which supports and encourages pedestrian and bike movement to the Greenway via east-west accessways that are specifically designated for such modes.

For these stated reasons, the approval criterion is met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone.

Findings: *Only one Adjustment is requested therefore this criterion does not apply.*

D. City-designated scenic resources and historic resources are preserved.

Findings: *The site is not designated as a scenic or historic resource nor does it impact any that are designated. This criterion does not apply.*

E. Any impacts resulting from the adjustment are mitigated to the extent practical;

and Findings: *No impacts have been identified, therefore, this criterion does not apply.*

For these stated reasons, the approval criterion is met.

F. If in an environmental zone, the proposal has a few significant detrimental environmental impacts on the resource and resource values as is practicable.

Findings: *The site is not located within an environmental zone. This criterion does not apply.*

V. 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.

Development standards in Zoning Code Section 33.510.253 D and E apply (unless otherwise modified by this South Waterfront Greenway Review), and must be shown to be met at the time of building permit application:

- Standard 33.510.253.D.4.b allows for deferral of required trail and landscaping improvements for 4 years if a performance guarantee is provided per 33.700.050. Nonetheless construction of one of the Greenway trails must occur *prior to building occupancy* in Block 41 or 44, as LU 17-160442 LDS AD Condition of Approval C.2 requires.
- As part of this Greenway Review plantings in excess of the standards in Zoning Code Section 33.510.253.E.5 are proposed to meet the approval criteria and must be provided as depicted on the approved “Landscape Greenway Planting Plans.”
- Standards in 33.510.253.E.5. b, g, and h are not modified by South Waterfront Greenway Review and must be shown to be met at the time of building permit application.

Requirements of Zoning Code Chapter 33.272 and Section 33.510.253 apply to the Greenway Trail on this site and must be shown to be met at the time of building permit application, except as modified by this South Waterfront Greenway Review or by LU 17-160442.

Conditions of approval required by LU 17-160442 LDS AD apply to development on the site:

- “Prior to occupancy of the first building permit issued on Lots 1 and 4, the applicant must install, at a minimum, one of the required Greenway trails within Tracts A and B,

as approved under LU 16-283375 DZM, and in conformance with the Central City Plan District – South Waterfront Subdistrict standards (33.510.253.E.5). Alternatively, the applicant may submit documentation of an approved development agreement with Portland Parks, to the satisfaction of Parks, PBOT and BDS for construction of the Greenway improvements.” The improvements approved under this review (LU 20-102914) supersede those approved under LU 16-283375, which has now expired. The requirement to build at least one trail prior to occupancy stands.

- If the applicant proposes to defer construction of the remainder of the greenway improvements per 33.510.253. D.4.b, the performance guarantee must be approved by the City Attorney prior to building permit issuance.
- Prior to occupancy of individual buildings on Lots 1-4, the applicant shall provide a No Further Action letter from DEQ indicating that the cleanup work related to environmental contamination for that lot is complete.
- Prior to finaling permits or releasing the performance guarantee for Greenway improvements, the applicant shall provide a No Further Action letter from DEQ indicating that the cleanup work, at a minimum, within the area of the public access easement and landward in Tracts A and B is complete.

LU 17-160442 LDS AD further requires (Condition of Approval A.4):

- “A Public Access Easement shall be shown over Tracts A and B (the Greenway Open Space tracts) for the north-south Greenway trail and pedestrian connections to the trail easement from the eastern termination of accessways at SW Lane, SW Abernethy and SW Lowell Streets. These easements shall provide for the construction, maintenance and public use of the Greenway trail, as specified in PCC 33.510.253.E.”

If this easement is not recorded on the Plat, it must be recorded prior to building permit issuance.

VI. SUPPLEMENTAL FINDINGS TO ADDRESS ISSUES RAISED DURING APPEAL

1. Introduction

A. Incorporation of Findings and Supplemental Findings

The findings above and in this section detail the Project’s compliance with the applicable criteria. To the extent there is a conflict among the findings that are not expressly or implicitly adopted in the alternative, these supplemental findings supersede the findings above.

Council also desires to emphasize what are not findings or evidence. Written or verbal statements by City Councilors or Design Commissioners during the public review process are not findings (unless memorialized in these written findings) or evidence. We do not rely upon those statements as a basis for determining compliance with the approval criteria.

Council attempts to correlate generalized opinions expressed in testimony to applicable approval criteria. Some issues in the testimony overlap several criteria and issue themes. For example, arguments about the diversity of public spaces has some issues in common with arguments that the public areas feel private. Therefore, these findings should be understood to be applied broadly so that findings that address issues in response to a particular criterion are also applied when that issue is raised elsewhere. For example, the character of the area is relevant to arguments related to Appellants’ preferred tower shape and building setback location. Council attempts to expressly cross-reference the applicable findings on related to issues, but Council should be considered to have implicitly incorporated all findings on common issues and themes.

B. Design Review: Applicable Approval Criteria and Context

The Proposal includes several applications that were considered concurrently: design review, South Waterfront Greenway Review, two modifications, and an adjustment. The only approval criteria applicable to the design review component of the Project are compliance with the applicable design guidelines. PCC 33.825.055 states “[a] design review application will be approved if the review body finds the applicant to have shown that the proposal complies with the design guidelines for the area.” That criterion incorporates the applicable design guidelines as approval criteria, which here, include the Central City Fundamental Design Guidelines (“CCFDG”) and the South Waterfront Design Guidelines (“SWDG”). The South Waterfront Greenway Design Guidelines (“SWGWDG”) also apply to design review for the portion of the site within the greenway “g” overlay zone. PCC 33.851.100.B.2. The CCFDG, SWDG and SWGWDG are sometimes referred to as design guidelines, or Guidelines.

Design guidelines are unique standards. As a threshold matter it is important for Council to explain how it interprets the text of the design guidelines and what Council considers to be the purpose and policies of the guidelines, which provide context for Council’s interpretation. Design guidelines are precisely that – guidelines. The guidelines do not contain objective standards that must be satisfied in a singular way, and they do not require a specific project element. Instead, the guidelines are succinct, yet broad concepts related to building and Greenway design. As noted in Section 1 of the South Waterfront Design Guidelines, “Design guidelines are intended to state broad design objectives and to provide guidance; they should not be construed as prescriptive standards.” Similarly, the Central City Fundamental Design Guidelines explain in the “Using Design Guidelines in the Design Review Process” section, “The design review process is flexible. It is intended to encourage designs that are innovative and appropriate for their locations. For this reason, design guidelines are qualitative statements. Unlike objective design standards, there are typically many acceptable ways to meet each design guideline. It is not the City’s intent to prescribe any specific design solution through the design guidelines.”

While the guidelines themselves are considered the approval criteria, each guideline is supported by its own background statement and possible examples of ways to satisfy the guideline, which provide the most relevant context to explain the purpose and overall intent of the guideline. The Central City Design Guidelines explain that “the background statement outlines the reasons for the design guideline and the goals that the City wishes to achieve. The background statement also provides clarification among related or similar design guidelines or adds more detail to the guideline language. The background text is not adopted and can be adjusted and/or updated as new design issues arise.” Each guideline section also provides multiple examples of possible ways to accomplish the guideline that includes both a written description and an image, which also provides context for how a particular guideline should be interpreted and applied. The Central City Design Guidelines explain that “the examples are provided to illustrate each guideline. They are preceded by captions that describe the way the guideline is, or could be, met as shown by the example. The examples must **not** be considered as the **only** possible design solution. They are intended to stimulate new ideas and provide direction for designers and developers. The captions and examples are not adopted and can be easily updated as new proposals get built.” (emphasis in original). The advisory nature of the examples is reiterated by their headings, “this guideline may be accomplished by....”

The South Waterfront Design Guidelines are independently applicable criteria, but they also provide an additional source of context for Central City Fundamental Design Guidelines. The SWDG correlate to CCFDG, but with a geographically specific emphasis. For example, CCFDG A1 (Integrate the River) applies across the Central City. Context for how CCFDG A1 should be interpreted and applied in the South Waterfront are SWDG A1-1 (Develop River Edge Variety) and SWDG A1-2 (Incorporate Active Uses along the River). Not all CCFDGs have nesting SWDGs, but when they do, the SWDG are helpful context for interpreting the CCFDG. This interpretation is supported by the “How to use this document” section of the South Waterfront Design Guidelines, which explains that the CCFDG states the broad objective, and the South Waterfront Guideline builds on the fundamental guideline. Finally, the Guidelines are context

for one another.

Council interprets the text and framework of design guidelines as support for the conclusion that the design review process is flexible and there are many acceptable ways to meet each guideline. This flexibility and the subjective nature of design guidelines means that design review is a highly discretionary process. As with any discretionary process, participants can have differences of opinion about whether a qualitative design guideline is met. Many of the issues raised in this appeal are based upon opinions, and even if reasonable minds may disagree about whether the Project satisfies certain subjective standards, that does not mean that the guidelines are not met.

Each design guideline includes multiple considerations that must be evaluated together to determine if a guideline is met. Testimony that is based upon a term or phrase of a guideline in isolation from the remaining text of the guideline can misconstrue a guideline's meaning. The entirety of the text of a guideline must be considered when interpreting it and applying it to the Project.

Under the current CCFDG, we do not find persuasive testimony asserting that each term or phrase in a guideline is necessarily a required element for this Project. Neither the text nor context of guidelines support such a rigid reading of the guidelines given that the guidelines are intended to guide, not prescribe, development and the fact that some terms in a guideline may not be applicable to a given project. Under the current CCFDG, we do not find persuasive testimony that (1) elevates a guideline's background section or example as applicable approval criteria or (2) testimony that argues a guideline is not met because the Project does not include a feature included in an example. For example, South Waterfront Greenway Design Guideline 3 (Incorporate a Diverse Set of Gathering Places) includes as one of many examples of how Guideline 3 may be accomplished is by "incorporating seating, high-quality materials, interpretive signage, docks, overlooks, and other major amenities" followed by an image of a row of public chaise lounge seating. The approval criterion, Guideline 3, does not include the phrase "major amenities," but Appellants argued that Guideline 3 "requires" providing "major amenities." This argument is inconsistent with the text of Guideline 3 and the context of the design guidelines; Guideline 3 does not require major amenities. Instead, a major amenity may be one of many ways Guideline 3 may be met. The testimony includes many examples of arguments that are dependent upon characterizing examples or isolated terms in a design guideline as being a required Project element. Unless specifically addressed in these findings, Council rejects all arguments that any element suggested in the current CCFDG's list of examples for how it may be accomplished or an isolated phrase in a guideline is required for the Project to meet that guideline.

The South Waterfront Design Guidelines and South Waterfront Greenway Design Guidelines have additional sources of context, which are described in the Introduction/Relevant Documents section of those guidelines ("relevant documents" provide "useful information and insight"), such as the adopted Greenway Development Plan (GPD) (2004). Additionally, the background sections to some South Waterfront Design Guidelines and South Waterfront Greenway Design Guidelines (see Guideline 3) refer to the Greenway Development Option guidelines as context. The Greenway Development Plan Option is also referred to as Section IV of the South Waterfront Design Guidelines and is comprised of Guidelines 7 and 8, which is an optional approach for developing the Greenway. The applicability of the GDP and Guidelines 7 and 8 as context for the guidelines is not dependent upon whether the GDP Option is pursued; the guidelines simply do not impose pursuing the Option as a prerequisite for the GDP or Guidelines 7 and 8 being context. To the contrary; if the option is pursued, Guidelines 7 and 8 are applicable approval criteria.

The South Waterfront Plan adopted in 2002 by ordinance, is an additional source for context. The plan established the vision for the area, which was used to develop the specific zoning regulations in PCC 33.510.252 and the South Waterfront Design Guidelines and South Waterfront Greenway Design Guidelines.

In some situations, when interpreting and applying a particular guideline, Council may need to go beyond a design guideline's background and examples for additional context, or when interpreting the SWDG and SWGWDG, the Greenway Development Plan (and relevant documents). Examples of more general context that may provide guidance for interpreting a guideline is the purpose statement for design review (PCC 33.825.010) and the Goals for Central City Design Review. Both are generally worded purpose statements or aspirational goals for design review, and do not include mandatory approval standards. The only exception is when the purpose statement is expressly imposed as an approval criterion, which in this case is limited to the Adjustment to vehicle and loading access standards.

The only approval criteria applicable to the design review element of the Proposal are PCC 33.825.055, PCC 33.851.100.B.2, and the applicable guidelines in the CCFDG, SWDG and SWGWDG. The City Council's interpretation of the approval criteria cannot be expressly inconsistent with the sources of context described in these findings. However, that context is not in-and-of-itself a basis for finding that a guideline has not been satisfied or that design review cannot be approved; to the extent that testimony argues otherwise, we reject those arguments. Further, for the reasons explained elsewhere in these findings, with the exception of when a Modification is requested, no applicable design review criteria require the Project to "better" or "exceed" the applicable Guidelines; so testimony that suggests something more than compliance with the Guidelines is required for any aspect of the Project other than its Modification requests is rejected.

C. South Waterfront Greenway Review: Applicable Approval Criteria

There are two independent regulatory bases for the City's review of the Greenway; design review and South Waterfront Greenway Review. A portion of the site is located within the Greenway "g" overlay zone, and because aspects of the proposal could not meet applicable development standards and work occurred riverward of top of bank, South Waterfront Greenway Review is required. The South Waterfront Greenway Review approval criteria are found in PCC 33.851.300. South Waterfront Greenway Review also requires concurrent design review, and the applicable approval criteria for that separate design review process are Section II (South Waterfront Design Guidelines) and Section III (South Waterfront Greenway Design Guidelines) of the South Waterfront Design Guidelines. PCC 33.851.100.B.2. Because the Project is located within the design "d" overlay zone, design review would be required for the Project even if South Waterfront Greenway Review was not required. The design overlay approval criteria are described in the findings above. The differentiation between (1) the South Waterfront Greenway Review process to which the approval criteria in PCC 33.851.300 apply and (2) the separate, but concurrent, requirement that the Project is "also subject to Design Review" that considers the South Waterfront Design Guidelines and South Waterfront Greenway Design Guidelines (as required by PCC 33.851.100(B)) is clear and unambiguous based upon the text of the code.

The distinction between design review and South Waterfront Greenway Review is material because the approval criteria differ and are independent. While some features of the Project's Greenway are relied upon to meet both sets of criteria, such as the Proposal's bank stabilization, that feature's contribution to the Project's compliance with one process' standards is not determinative of compliance with the other process's approval criteria.

An example is illustrative. South Waterfront Greenway Review requires that "when compared to the development required by the standards of 33.510.253, the proposal will better enhance the natural, scenic, historical, economic, and recreational qualities of the greenway." PCC 33.851.300.A.1. That criterion requires an analysis of the baseline qualities (natural, scenic etc.) that PCC 33.510.253 would result in, and whether the Project better enhances those qualities. Whether or not the Project's Greenway complies with South Waterfront Greenway, Design Guideline 5 (Enhance the River) is not relevant to PCC 33.851.300.A.1. While both criteria use the term "enhance," compliance is determined through separate processes (design review and South Waterfront Greenway Review) which evaluate different aspects of the

Greenway. South Waterfront Greenway Design Guideline 5 requires “Utilize riverbank stabilization strategies that enhance the river and riverbank ecosystems. Where appropriate, integrate public access to the water that is safe and supportive of adjacent riverbank areas.” In contrast to this subjective consideration of riverbank stabilization, South Waterfront Greenway Review’s PCC 33.851.300.A.1 requires a comparison between the Project’s features and those objective bank stabilization regulations such as the prescriptive landscaping coverage standards of PCC 33.510.253.E.5.f.

Much of the testimony improperly muddles the distinct approval criteria under these separate reviews. For example, Appellants testified that the South Waterfront Greenway Review approval criterion in PCC 33.851.300 (“better enhance the natural, scenic, historic economic and recreational qualities of the greenway”) was not met, because in their opinion South Waterfront Greenway Design Guideline 3 (Incorporate a Diverse Set of Gathering Places) was not satisfied. They argued that this was, in part, because they believed that the public amenities appeared to be private. Appellants’ conclusion is that this and their other perceived design guideline inadequacies means that the Greenway does not enhance and better meet the riverfront guidelines. Appellants rely upon this alleged failure for the Project to enhance and better meet the design guidelines as a reason the Project (1) does not comply with the design guidelines; and (2) does not meet the South Waterfront Greenway Review criterion PCC 33.851.300 (which does not include design guidelines).

These arguments are flawed for many reasons. First, only a portion of the standard in PCC 33.851.300 is cited; the criterion requires that the stated qualities of the greenway be better enhanced “when compared to the development required by the standards of 33.510.253.” The excluded portion of the criterion is essential to how the criterion is interpreted and applied. PCC 33.851.300 does not require the abstract concept of a better or enhanced Greenway. It requires that certain qualities of the Greenway be better enhanced when compared to PCC 33.510.253. Second, although South Waterfront Greenway Review criterion (PCC 33.851.300) requires the Project to better enhance qualities of the Greenway as compared to PCC 33.510.253, Appellants do not address any of the regulations in PCC 33.510.253 or otherwise correlate their concerns with the Greenway to those standards. Third, Appellants do not explain why the alleged noncompliance with the design review approval criteria (the “riverfront guidelines”) is applicable to South Waterfront Greenway Review, PCC 33.510.253, or the entirety of what PCC 33.851.300 requires. This is one of many examples of Appellants improperly commingling the approval criteria and processes. For the reasons explained above, testimony that does not correlate concerns with South Waterfront Greenway review with the applicable criteria and the required comparison to PCC 33.510.253 is rejected as not addressing the relevant approval criteria.

D. Inapplicable Criteria

(1) Central City Fundamental Design Guideline D2

Central City Fundamental Design Guideline (“CCFDG” or “Guideline”) D2 was cited in testimony as a basis for not allowing towers on Blocks 41 and 44, which are the blocks closest to the river. Council finds that Guideline D2 does not apply to this site or Project, so all Guideline D2-related arguments are rejected.

Guideline D2 is a special area design guideline that applies “only within the identified special areas” (CCFDG, page 5), which are shown on CCFDG Map 2, and detailed on Map 2.2. The Project is not within the identified special area so Guideline D2 does not apply.

While Maps 2 and 2-2 are clear, it is worth noting that not applying Guideline D2 south of the Marquam Bridge and to the site is also consistent with legislative history and the City’s precedent of recent design review approvals for buildings south of the Marquam Bridge. The area-specific design guidelines that apply south of the Marquam Bridge, and to this Project, are the South Waterfront Design Guidelines and South Waterfront Greenway Design Guidelines.

No testimony or evidence was offered to explain how Guideline D2 applies to the site, which is not located within CCFDG Map 2-2.

(2) Statewide Planning Goals and Related Administrative Rules

Statewide Planning Goals were inadvertently applied to the Project by the Design Review Commission. This was an error because the Statewide Planning Goals are additional approval criteria that are required only for projects processed under an unacknowledged zoning code pursuant to ORS 197.625(4)). This Project is subject to the Zoning Code in effect in April of 2017, which is a zoning code that is acknowledged by the LCDC. Acknowledgement under ORS 197.015(1) is LCDC's recognition that the regulations conform with the Goals. Therefore, the Statewide Planning Goals are not directly applicable to the Project. *See*, ORS 197.175(2)(d); *Byrd v. Stringer*, 295 Or 311 (1983) and *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

E. Issues Not Relevant to the Approval Criteria

Appellants and supporters of the appeal raised several issues that the City Council determines are not relevant to the applicable approval criteria or Appeal. If issues raised during the proceedings below are not addressed in these findings, the City Council finds that those issues are not relevant to the approval criteria or to the Appeal. Non-exclusive examples of irrelevant issues include infrastructure improvements that will be constructed with urban renewal funds (such as the extension of SW Bond), whether the City will provide financial assistance for any element of the Project, the Applicant's reasons for filing the application under the vested April 2017 code, or transportation impacts of the Project. No party identified how these issues are relevant to the approval criteria and the Council finds that they are not.

(1) Transportation Impacts.

Council finds that the approval criteria for the Project are the Design Review guidelines, the South Waterfront Greenway Review approval criteria and the approval criteria for modifications and adjustments. The approval criteria do not include any requirement to analyze traffic impacts that may result from the Project's height, FAR, massing or any other aspect of the Project's form that is considered during design review, with the exception of the adjustment. The approval criteria for the adjustment, to allow vehicle access from SW River Parkway, includes demonstrating the "access" meets the purpose of the regulation, which includes managing the supply of off-street parking to improve mobility, promoting the use of alternative modes, maintaining and enhancing the urban form, among others. PBOT analyzed turning movements into the garages and their alignment, as well as, gate locations to ensure queuing impacts to pedestrian and vehicular traffic is minimal on River Parkway. With conditions for the speed of the gate operations, PBOT determined the access, as designed, met the purpose of standard.

Beyond the adjustment criteria which is limited to "access" impacts on traffic, the actual traffic generated or the number parking spaces provided by the Project is not relevant to the applicable approval criteria. A traffic study is not required to analyze potential traffic impacts. As noted above, an analysis of the Project's compliance with Statewide Planning Goals, including any analysis required to meet the Transportation Planning Rule, is not required because the Project is governed by an acknowledged zoning code.

PBOT submitted additional evidence to Council on 9/24/20 (Exhibit I.83) providing further clarification that the transportation adequacy was a requirement of the land division that was recently completed for the project. The land division approval resulted in a condition that the project make improvements to the South Portal. The extension of Bond was not found to be necessary to meet the land division criteria.

2. Success of the Greenway

A. South Waterfront Greenway Review

For the reasons explained above and incorporated here, Council interprets the South Waterfront Greenway Review approval criteria to be limited to PCC 33.851.300, and finds that the South Waterfront Design Guidelines and South Waterfront Greenway Design Guidelines are not South Waterfront Greenway Review approval criteria. Instead, design guidelines are applicable only to design review. Accordingly, Council rejects all arguments raised before Council or the Design Commission that the failure to meet a design guideline or the failure to exceed or better a design guideline is a basis for concluding that the South Waterfront Greenway Review approval criteria are not met. The South Waterfront Greenway Review criteria, particularly those that reference PCC 33.510.253, are detailed and prescriptive. Testimony that fails to correlate generalized opinions about the Project's Greenway or the design guidelines with the development standards of PCC 33.510.253, which are referenced by criteria in PCC 33.851.300, were not sufficiently specific for other participants to respond to the issues, or for City Council to make specific findings in anticipation of what testifiers may have intended. ORS 197.763(1) and (5)(c).

B. Design Review

Testimony included a variety of opinions about the Project's compliance with the various design guidelines that are applicable to the Greenway and how the buildings interact with the Greenway. The themes raised in testimony can be grouped into four categories: (1) size of the Greenway and public space; (2) quality of the public spaces within the Greenway; (3) whether river access is appropriate; and (4) timing of when the Greenway will be installed.

(1) Size of the Greenway and Public Space: Building Setbacks from the Greenway and Enlarging the Public Space Outside of the Greenway

Testimony urged for the buildings on Blocks 41 and 44 to be set further back from the Greenway which would increase the size of the public space outside of the Greenway, citing CCFDG A5 (Enhance, Embellish, and Identify Areas), CCFDG D2 (South Waterfront Area), SWDG A1-1 (Develop River Edge Variety), CCFDG C6 (Develop Transitions Between Buildings and Public Spaces) and bonus FAR and height code sections (PCC 33.510.210.C.10 and G). For the reasons explained above, CCFDG D2 is not applicable.

Appellants do not address PCC 33.510.253.E.5.b, which is the development standard that requires buildings to be setback 100 feet from the top of bank portion of the Greenway or the objective bonus FAR and height criteria in PCC 33.510.210.C.10 and G. Instead, the testimony generally offered opinions that the Block 41 and 44 buildings are too close to the Greenway setback line, which makes the Greenway feel undersized and cramped, negatively impacting the public's use and enjoyment of the Greenway. Appellants suggest that setting the buildings back an additional 50 feet and enlarging the public space outside of the Greenway would be appropriate. For the reasons detailed below, we disagree.

(a) Required Greenway Setback (PCC 33.510.253.E.5.b)

Pursuant to PCC 33.510.253.E.5.b, buildings are not allowed within 100 feet of the top of bank, except in limited circumstances. This setback is the outer/landward edge of the South Waterfront Greenway area, or Greenway. Some testimony questions whether the Block 44 building encroached into the Greenway. It does not. Portions of the public plazas, including the "maker space" patio that is adjacent to the Block 44 building is within the Greenway. However, the Project's buildings are located entirely outside of the South Waterfront Greenway area, in compliance with the setback standard. For the reasons explained below, the text of the design guidelines do not require, or require as applied to this Project, that the buildings be further setback from the 100 foot setback required by PCC 33.510.253.E.5.b based on the design of the buildings and the transition to the greenway. For this particular project Council

found the buildings' relationship to the greenway appropriate, thus meeting the guidelines, and that an additional setback beyond what was proposed was not necessary.

Testimony was offered that correlates the number of units of a particular project with the amount of open space that the project provided in addition to the Greenway (e.g., additional public space landward of the edge of the Greenway setback) in support of the argument that the two projects north of this site create a requirement for an adequate amount of Greenway area under the design guidelines. No objective development standard or Guideline is cited in support of this quantitative approach to excess Greenway, and no explanation of how this ratio approach is consistent with the text of PCC 33.510.253.E.5.b or any guideline is offered. We reject these comparative quantitative arguments.

For the same reasons we are not persuaded by testimony that attempts to calculate a ratio of the number of individuals that can fit in a socially distant configuration in a particular open space, in comparison to the total number of the Project's units. When objective metrics of open space are required, they are expressly included in the code. There is no applicable standard that correlates the number of units to the quantity or dimensions of open space. Design guidelines are flexible.

To the extent that Appellants' efforts to quantify a ratio of open space to resident or comparative open spaces, it is not reliable or reasonable. First, both calculations isolate a portion of the Project's open space, and disregard other recreational areas provided in the Project, such as the rooftop amenities. Further, Appellants have not identified an applicable guideline where such calculations are relevant, or why evaluating only a couple of buildings is informative. Appellants fail to reconcile their interpretation with Guideline 3, which encourages a range of gathering space sizes, and when addressing the size of gathering spaces, the background section describes as "should provide enough space for groups of people to gather without conflicting with the movement portions of the trail system." No ratio is required. Guideline 3's background emphasizes that gathering spaces should relate to "the character of the specific reach's "historical context, urban setting, and particular habitat improvements," which here is informed by Guideline 7-3. Appellants also fail to reconcile their opinion that larger and more active gathering spaces are appropriate with the text and context of Guideline 7-3, which describe the South Reach as "...intended to feature less active gathering spaces and cater to users moving through the greenway, as well as an anticipated high intensity of adjacent residential development."

(b) Required Greenway Public Viewpoint (PCC 33.510.253.E.5.e.2)

Appellants argue that the overlook is undersized because the site includes more than one lot with Greenway frontage and suggests that PCC 33.510.253.E.5.e.2 should be interpreted to require a second overlook. We reject Appellants' interpretation. First, PCC 33.510.253.E.5.e.2 only applies to sites designated in the Central City Scenic Resources Protection Plan. The project site is not designated as a scenic resource, so this criterion does not apply. Even if PCC 33.510.253.E.5.e.2 did apply, its text unambiguously applies per "site" (a term defined in PCC 33.910). Nothing in the text or context provided by the purpose statement suggests discretion or correlating the viewpoint size to the length of the site's river frontage or number of lots. Appellants' conclusion that the intent of the code is to provide one overlook per lot is unsupported.

(c) Bonus FAR and Bonus Height (PCC 33.510.210.C.10 and G)

The criteria that award bonus FAR and height are prescriptive standards that do not include discretion. Instead, if the objective standards are met, the additional FAR and height is earned. Blocks 41 and 44 each include 2,500 square feet of additional public open space abutting the Greenway per PCC 33.510.210.C.10, which affords each building 7,500 square feet of bonus FAR, thus unlocking the additional 125' of height pursuant to PCC 33.510.210.G. No evidence

was submitted that challenged the Applicant's calculations and explanation of how the prescriptive bonus FAR standards in PCC 33.510.210.C.10 are met. Council accepts the Applicant's evidence on this point and finds that PCC 33.510.210.C.10 is met, so the bonus FAR and related height has been earned.

Opponents of the Project testified that because the Proposal earned bonus FAR and bonus height that a subjective increase or qualitative change to public space above and beyond what is required by Code and included in the Project was required; and alternatively, that without their desired changes to the public space, the bonus FAR and bonus height should be denied. Variations on these arguments are that the public space provided to achieve the bonus FAR and height is too fragmented, does not enhance the Greenway enough, and a sufficient public benefit is not provided. Council rejects all of these arguments. The criteria that award the bonus FAR and bonus height are prescriptive and do not include discretion, such as subjective public benefit or enhancement standards (e.g., above and beyond the benefits and enhancement of the additional open spaces that meets the objective standards). Instead, because the objective standards in PCC 33.510.210.C.10 are met, the additional FAR and height is earned. It should be noted that per PCC Section 33.825.035 "...bulk, height, ...and exterior alterations" are factors reviewed during design review giving the City authority to shape and mold buildings and consider the design and quality of open spaces. Because of the City's discretion to review these elements, not all applicants may be able to achieve the full bonus. In this case, Council finds that the mass and height of the buildings on Blocks 41 and 44 with the bonus FAR and height applied and the two 2,500 SF public open spaces provided meet the design guidelines.

(d) CCFDG A5 (Enhance, Embellish, and Identify Areas)

Central City Fundamental Design Guideline A5 (Enhance, Embellish and Identify Areas) requires:

A5. Enhance, Embellish, and Identify Areas. Enhance an area by reflecting the local character within the right-of-way. Embellish an area by integrating elements in new development that build on the area's character. Identify an area's special features or qualities by integrating them into new development.

When interpreting guidelines requiring consideration of an area's character, including CCFDG A5, we must first define the "area" to which the Guideline is applied. For this project, we interpret the area to include the geographic area subject to the South Waterfront Design Guidelines and South Waterfront Greenway Design Guidelines, as depicted on Maps 1 and 2 of those guidelines. The guidelines applicable only to the South Waterfront area were created because Council previously determined that this geographic area has "unique design issues." The South Waterfront Design Guidelines, as compared to the South Waterfront Greenway Design Guidelines and Greenway Development Plan, do not distinguish between geographic areas within the South Waterfront. As a cohesive district subject to the same design guidelines, Council finds that it is reasonable to define the "area" considered by CCFDG A5 and SWDG 5-1 as including the geographic area depicted on Maps 1 and 2 of the South Waterfront Design Guidelines and South Waterfront Greenway Design Guidelines.

For purposes of the local character of the right-of-way, the background statement for A-5, provides context and states that local character includes such unique elements as streetlights and special paving material. As discussed above, the elements of the Project, specific pedestrian lighting and benches, street trees, stormwater planters and special paving treatment, are consistent with the local character for South Waterfront and no issues have been raised about the Project's compliance with CCFDG A5's consideration of the right-of-way.

Testimony that encourages the buildings to set back further from the Greenway are based upon the portion of CCFDG A5 that requires the Project to "Embellish an area by integrating

elements in new development that build on the area’s character. Identify an area’s special features or qualities by integrating them into new development.”

The guideline provides examples that identify some of the elements of the area's character that may be considered such as building elements, local features including historic structures, building materials used in the area, historic themes and identifying elements of the area, like public art, water features and signage. CCFDG A5 applies throughout the Central City and references the character of an area, but there are many areas within the Central City. When there are adopted geographically specific design guidelines for sub districts, those guidelines help to define the character of that particular area, but do not limit the character to the specificity of the sub district guidelines, which is often narrow and focused. Rather adopted Community or Area Plans provide context because they identify the desired character of an area that builds on an area’s past, acknowledges the present and the looks forward to the future. Zoning allowances provide a path to implement the desired character.

The South Waterfront Plan adopted by Council ordinance in 2002, coincidentally identified a vision for the South Waterfront neighborhood in the Year 2020, states “The area derives its character, identity and attractiveness from its exemplary riverfront and high quality open spaces, its compact, mixed use urban developments; and significant employment opportunities.” It continues with the objective to “promote building forms that respect the relationship of the district to the river and adjacent neighborhoods”. Zoning regulations for the district allow development to achieve this character with building heights up to 325’, lower buildings heights near the greenway, building height limitations within designated view corridors, maximum east-west tower dimensions and minimum distances between towers when more than one per site. As noted, CCFDG D2 is not applicable. However, the stepping down of the building height towards the greenway supports the objective of “blending nature into an urban setting” as stated in the South Waterfront Plan. This relationship between the built and natural environment is another key characteristic of the district that is integrated into the Project as discussed below

In some circumstances the character is narrowly defined, such as the “warehouse” character of the Pearl District in River District Design Guideline A5-1. The area-specific design guideline that applies to the “area” relevant here and informs the “character” referred to in CCFDG A5 is South Waterfront Design Guideline A5-1, which is less prescriptive than the Pearl District. The area-specific design guideline that elaborates on CCFDG A5 provides:

South Waterfront Design Guideline A5-1: Consider South Waterfront’s History and Special Qualities

Guideline

Consider emphasizing and integrating aspects of South Waterfront’s diverse history in new development proposals.

When included in the development proposal, integrate works of art and/or water features with site and development designs.

The background section of the guideline describes the “maritime industrial character of South Waterfront” which included the shipbuilding industry, scrap metal and steel fabrication operations and suggests that “functional building elements, such as awnings windows, doors and exterior lighting, can be creatively designed as identifying features to strengthen the character of South Waterfront.” The background section also encourages updated expressions of the area’s history such as public art or water features as project elements that are accessible to the public. The examples for accomplishing A5-1 are (1) Reusing or recycle elements of South Waterfront’s past in new designs; (2) Combining works of art, stormwater management systems, and water features; (3) Developing projects to integrate and enhance historic features; and (4) Using district elements and/or artifacts as inspiration for new works of art.

Additional context for interpreting the character of the area is the reach-specific SWGWDG 7 (Strengthen the Reaches) and 7-3 (Define and Strengthen the South Greenway Reach), which provides:

South Waterfront Greenway Design Guideline 7-3: Define and strengthen the identity and character of the South Greenway Reach.

Guideline

Define and strengthen the identity and character of the South Greenway Reach.

The background of Guideline 7-3 explains “This portion of the greenway is intended to feature less active gathering spaces and cater to users moving through the greenway, as well as an anticipated high intensity of adjacent residential development.” The background also discusses the industrial history of the South Reach as “This area was once home to large sawmills that for decades processed raw timber which floated down the Willamette bundled together in distinctive rafts...Material choices and forms for future design details should reflect this history.” The correlation between material choices and the industrial history is reinforced by Guideline 7-3’s example 2, “taking cues from the area’s timber mill history in forms and material choices.”

As discussed above in the findings for Guideline A-5, the Project responds to these elements of character in the following ways:

- The right-of way elements unique to the district (lights, paving, seating, trees, stormwater facilities) are employed along all public sidewalks, thereby enhancing the area.
- The east-west accessways (SW Lane, SW Abernethy and SW Lowell) build upon the enhanced pedestrian connections that exist in the district by including elements that define the accessways, such benches, lights, paving, individual residential front porches and entries, and layered landscaping
- Features that reflect the maritime history of the district are incorporated throughout the site, including several water features, large-scale permanent art mural of the Ross Island Bridge and pier posts used as bollards. These elements are all within or adjacent to public open spaces consistent with the location of similar elements in the district.
- The project incorporates building materials, like metal and masonry, that are typical of buildings from the district’s industrial and maritime past, while glassy facades clad both towers reflecting the character of the contemporary development of the area.
- The buildings on Blocks 42 and 45 integrate the mid-rise full-block building form that characterizes existing development in the western portion of the district, while the buildings on Blocks 41 and Blocks 44 integrate and build on the character of high-rise development within the district that consists of slender towers atop podiums. The stepping down of the buildings on the eastern blocks from the 250’ to 125’ to ±45’ podiums builds on the character along the greenway where the scale of the built environment transitions down to the more human scale of the natural setting along the river. The articulated facades with bays, recesses and balconies provide further relief along the greenway.
- The layered landscaping, patios and public spaces with amenities (water fountain, seating, gathering areas) and direct access to the greenway trail provide an appropriate transition between the public open space and private development

desired for this riverfront district.

- Ecoroofs atop the podiums of Blocks 41 and 44 provide interest to the “5th elevation” of the buildings, which is characteristic throughout the district.
- Active ground floor programs with elements that support the vibrancy and use of the public realm are employed throughout the development and along the greenway consist with the district. The ground floors are largely commercial use with residential uses limited to the east-west accessways. Additional building elements like generous weather protection, layered transitions between public and private spaces and visually and physically welcoming public spaces build on the character within the public realm, including along the greenway trail.

SWDG A5-1 and SWDGDG 7-3 consider the area’s historic and existing character, and the desired future character of emerging redevelopment in the area. Council finds that SWDG A5-1 and SWDGDG 7-3, and their background and examples help to define the character of the area. Specifically, the character of the larger area reflects its historical identity as a marine and metals industrial area with a South Reach-specific industrial history of sawmills, and that history is expressed through the choice of historically-relevant materials such as brick (a material common in water-front warehouses) metal (which affirms the rich history of ship building and scrap metal recycling) and wood (inspired by the sawmilling heritage of the South Reach). The character of the area also includes works of art and water features, which include stormwater management systems.

The themes in SWDG A5-1 and SWDGDG 7-3 represent in existing development with the area. Testimony included imagery of development within the area that include wood, brick and metal materials that reflect the industrial past, integrate bioswales and include public art.

A development does not need to include each of the elements of the area’s character; instead CCFDG A5 requires that elements of the areas character should be integrated into the development. The Project’s buildings include wood, brick and metal as materials, and brick pavers are used, which reinforces the industrial history of the area. Visible stormwater facilities are incorporated throughout the project as well as several water fountains and opportunities for public art.

One special feature or quality of the area is the relationship of the buildings to the river and greenway. The guidelines themselves do not describe the character of South Waterfront as including any particular shaped tower, additional setbacks or any other design feature targeted at protecting private views. Appellants describe the character of the area in a variety of ways, and as relevant to this issue, as including “the natural river shoreline – a character defining feature of the area” that “recedes in a westerly direction as it moves further to the south,” and that erosion of the river to the west as it goes south is a character that creates an obligation or requirement for buildings to be further set back from the Greenway. Appellants refer to three other Central City Fundamental Design Guidelines (C1, C4 and D2) as informing the character of the area and to require graduated step-downs toward the river, visual and physical river access, and sculpted tower design that maximizes views. As discussed above, CCFDG D2 relates to an entirely different part of the City and is not relevant or applicable to the Project. Therefore, any such character described in guideline D2 is not relevant to the Project’s compliance with CCFDG A5. (Council addresses Appellants’ description of the character of the district’s tower massing as it relates to the context provided by other buildings in the area elsewhere in these findings).

Council agrees that the relationship of buildings to the greenway and river is an important aspect of the area’s character, and Council finds that the Project builds on this character by providing layered and active transitions between the building and the greenway and façades that are articulated with bays, recesses and balconies and that scales down and back as they approach the greenway. For the reasons explained in these findings, Council finds that the Project meets the guidelines and, with the podium design resulting in the towers being set back

from the greenway, and the redesign of the maker space to provide more openness along the greenway, Council disagrees that the area character requires the structures in this Project to be set back further from the Greenway.

The Appellants' efforts to establish that the guidelines require a particular set back from the Greenway has no support in the text of CCFDG A5, the text of SWDG A5-1 or the context of those guidelines. Evidence that some buildings in South Waterfront are set back further from the top of bank or edge of the Greenway is not relevant to whether CCFDG A5 is met, and that evidence does not require that Buildings 41 and 44 be set further back from the river or that the Project's setbacks replicate the nearby buildings. The Council finds that while comparisons to other developments can provide examples of how design guidelines have been met in the past, the options selected by other buildings to meet the guidelines do not themselves become prescriptive (unless so stated by the guidelines). In any event, the setbacks for Buildings 41 and 44 are within the range of nearby buildings. A diagram that depicted the three buildings directly north of the Project demonstrates that buildings are located between 100 and 164 feet from the top of bank. Building 41's distance from top of bank ranges from 109 to 136 feet, and Building 44 is 102 to 136 feet front top of bank; both buildings are within the range of neighboring buildings to the north. Council finds that the closest point of a building to the Greenway does not fully capture how a pedestrian may experience a building while on a trail within the Greenway; the height and massing of that adjacent structure is also relevant to the public's experience on the Greenway. Testimony included an image comparing the setback between the Greenway trail and the tower portions of nearby buildings. The Block 41 and 44 towers are set back from the trail significantly more than the towers to the north are set back from the Greenway trail. Council finds that from an experiential perspective, the towers on Blocks 41 and 44 are set back further from the Greenway than the two towers north of the site.

(e) SWDG A1-1 (Develop River Edge Variety)

Appellants argue that SWDG A1-1 requires "human scale" development, which in their opinion can be accomplished only if the buildings on Blocks 41 and 44 are set back further from the river, with an additional 50-foot setback suggested. This is another example of testimony isolating a single phrase out of context and improperly attempting to elevate a guideline's background or example into a requirement, which Council rejects for the reasons explained elsewhere in these findings. SWDG A1-1 is directed at how a building façade, ground level and lower stories relate to the Greenway. The guideline, which is the approval criterion, does not include the phrase "human scale." The background describes articulating building facades with human-scale elements, and one of the many examples suggests articulating building facades that face the Willamette River with human scale elements and activity, with an image that is described as incorporating human-scaled elements "including large expanses of window glazing, terraces oriented to the street, and large canopies" which are elements that "help to bring the scale of large buildings down to the scale of the people that live, work or visit in them." There is no basis in the text or context of SWDG A1-1 to require the buildings on Blocks 41 and 44 to be set further back from the Greenway.

Council also rejects the generalized assertion that SWDG A1-1 "call[s] for development that recedes from the greenway." This argument is not developed with sufficient specificity for Council to respond, other than to find that SWDG A1-1 is directed at how a building's façade and ground floor uses interact with the Greenway. While a varied footprint is encouraged, the guideline does not relate to a wholesale setback along the entirety of a building's frontage on the Greenway, as suggested in some testimony.

(f) CCFDG C6 (Develop Transitions Between Buildings and Public Spaces)

Some testimony relies upon CCFDG C6 in support of the opinion that the building on Block 44 should be set further back from the Greenway. Guideline C6 provides:

C6. Develop Transitions between Buildings and Public Spaces. Develop transitions between private development and public open space. Use site design features such as movement zones, landscape elements, gathering places, and seating opportunities to develop transition areas where private development directly abuts a dedicated public open space.

Council finds that Guideline C6 requires transitions between private development and “public open space,” which here includes the Greenway and SW Lowell, SW Abernathy and SW Lane accessways. Council finds that neither the text nor context of Guideline C6 support additional setbacks from the Greenway for this project. Instead, the guideline recognizes that there are multiple ways to transition between public and private space. As applied here, the private development is the building on Block 44, and its includes expansive windows that reveal active ground floor uses, consistent with the background Section of C6 (“building elements that contribute to the distinction between private and public spaces include...large window openings...spaces for active retail use.”) The southeast corner of the building is the building’s closest point to the Greenway, which is also adjacent to where the SW Lowell accessway intersects with the Greenway. The maker’s space patio provides the transition between both public open spaces and the building. The patio is a gathering space that extends seamlessly over the Greenway setback line and connects directly to the SW Lowell accessway and Greenway trail. The brick pavers cue that it is a public gathering area and chaise lounge seating on the patio further invites the public into the transition area. As described in findings elsewhere, the maker space patio feels public.

The maker space patio, seating and building 44 façade creates a transition that complies with the text of CCFDG C6, which describes using site design features such a gathering places and seating as a transition area. This transition is precisely what is described in the background section of Guideline C6, which explains, “a different type of transition occurs when a building is pulled back from the property line creating a transition zone in the form of a privately-owned open space that is accessible to the public. In these situations, the open space complements the building components of the development and typically shares the same design vocabulary and concept.” Alternatively, if due to the proximity between the building and the Greenway the transition is considered the situation “where private development directly abuts a publicly-owned open space without a public right-of-way separating the two” the background section explains, that “it is critical that the open space remains public in character. This is often accommodated by the development of small gathering areas, movement zones, landscaping, and/or seating that function together as a buffer between the public and private spaces.”

Testimony included an opinion that the Project should replicate other development and separate the buildings from the Greenway by a densely planted stormwater swale/planter. While that can be a successful transition tool and is expressly noted as an option in CCFDG C6 and supported by the background and examples, we conclude that is not the appropriate transition for this Project. The transition between the buildings and public open space must accommodate the three accessways and the Greenway, which is successfully accomplished by the gathering space, as explained above. We find that the gathering area transition more effectively reinforces the public character of the open space than would be accomplished if the buildings were separated from the Greenway by significant vegetation because the intersection of SW Lowell and the Greenway is celebrated and emphasized by a gathering space, which is further activated by the active ground floor use. A vegetated swale would interfere with this synergy and serve as a buffer.

(g) Potential Other Bases for Larger Public Areas

During Council deliberations we discussed whether the proximity of the building on Block 44 to the Greenway creates the impression of private space intruding on the public’s experience of the Greenway, contrary to SWGWDG 1 (Develop a Cohesive Greenway Trail System). Our findings above explain why the public spaces within and near the Greenway satisfy other guidelines related to the public realm. As to SWGWDG 1, we find that it is not relevant to the

issue of whether a public space “feels” too private. The only portion of the text of Guideline 1 that could support an interpretation that building setbacks are relevant to the Guideline is its description of a “continuous Greenway trail.” However, when the Guideline is read in its entirety, the continuous nature of the Greenway trail is addressed through consistency in design elements, not the extent to which a building is setback from the Greenway. Moreover, the only description of adjacent urban spaces in the text of Guideline 1 is that and bicycle connections should be “safe, convenient and direct;” considerations that are not related to whether the location of a building suggests that a space may be private.

Guideline 1’s background supports our interpretation that Guideline 1 is not relevant to the size of the Greenway, adjacent public space or a building’s setback from the Greenway. The “North-South Continuity” section acknowledges that the Greenway will be constructed incrementally, and Greenway design “should strive to create a seamless and continuous greenway trail systems,” which suggestions including “unifying” “consistent furnishings and transitions in paving materials” and pursuit of a “cohesive character” of the district through forms that are inspired by the history of the area. Example 5 is additional contextual support for our interpretation that Guideline 1 is not relevant to a building’s setback. Example 5 suggests accomplishing Goal 1 by “Maintaining consistency in site furnishing and materials throughout the greenway, allowing transitions to occur where materials change.”

(2) Quality of the Public Spaces within and Adjacent to the Greenway

The Project’s public spaces within and adjacent to the Greenway and accessways to the Greenway evolved throughout the design review process, including revisions to the public plazas in response to Council feedback. Despite these changes, some testimony opined that some of the Project’s open spaces felt private instead of being a part of the public realm and criticized the diversity, functionality, and details of the public areas. (Testimony related to the size of public spaces within and adjacent to the Greenway is addressed above).

The guidelines mentioned in testimony include SWDG A1-1 (Develop River Edge Variety) and A1-2 (Incorporate Active Uses Along the River), CCFDG B4 (Provide Stopping and Viewing Places), B5 (Make Plazas, Parks and Open Space Successful), CCFDG C6 (Develop Transitions Between Buildings and Public Spaces), SWGWDG 1 (Design a Cohesive Greenway Trail System), SWGWDG 2 (Address Greenway Edges) and SWGWDG 3 (Provide a Diverse Set of Gathering Places with Seating, Art, Water Features and Overlooks). However, the only arguments that are developed with sufficient specificity to allow a response are comments on the Greenway correlated to SWGWDG 3 (Provide a Diverse Set of Gathering Places with Seating, Art, Water Features and Overlooks), SWDG A1-2 (Incorporate Active Uses Along the River) and CCFDG C6 (Develop Transitions Between Buildings and Public Spaces).

Some testimony advocated for the Project to create a Greenway design that is equal in quality and performance to that of the Greenway to the north in South Waterfront. This argument is not developed with sufficient specificity to allow Council to respond. No comparative facts or examples are offered in support of this opinion. Moreover, no relevant approval criteria are cited, and we find that no applicable criteria require equality in quality and performance of the Greenway.

Some testimony criticized the Project for not selecting the GDP Option and accepting public funds associated with the GDP Option. The testimony argued that an enhanced Greenway would be provided if the GDP Option were pursued and features that the City could not otherwise require (such as removing the existing retaining wall) would be implemented. The GDP Option is voluntary, and whether or not an application chooses to pursue it does not impact our consideration of the Project that is before us, and whether it complies with the applicable guidelines.

(a) Private Feel of Public Spaces

No private uses extend into the Greenway. Public areas within the Greenway include pedestrian and bicycle trails, portions of the Abernathy public plaza (which includes public art and a water feature) and overlook, lawns for recreational use, portions of the maker space plaza and significant landscaping and habitat restoration work. The SW Lane, SW Abernathy and SW Lowell accessways are public spaces that abut and extend from the Greenway, connecting it to SW River Parkway.

Council finds that special attention was paid to avoiding having the maker space plaza perceived as a private space, and to create a strong connection between the Abernathy public plaza and Greenway. Examples of design features that make those spaces clearly public spaces that invite the public in and activate the greenway include:

Maker Space (also referred to as the maker space patio or plaza)

- Modifying the grading between the Greenway and maker space plaza to accommodate a direct access between the Greenway and maker space, which reinforces the connection between the public spaces, consistent with Guideline 3.
- Removed railing around the maker space plaza so that space is visually and physically more open and visually connected to the Greenway, consistent with SWDG A1-2 and CCFDG C6.
- Removed the planter on the north edge of the maker space patio, which could have been perceived as a barrier between the public and the maker space patio, consistent with SWDG A1-2, CCFDG C6 and Guideline 3.
- Extended the brick pavers from the SW Lowell accessway so that it wraps the maker space patio and connects the maker space patio to the Greenway trail with brick paver stairs and a path, which are visual cues that the public space of the accessway and Greenway continue into the maker space patio. The brick pavers are also used in the SW Abernathy and SW Lane accessways, Abernathy plaza and overlook, which, like the Lowell accessway are extensions of the Greenway trail. Consistent with Guideline 3, the extension of the Greenway trail is furthered by the materials used on the maker space.
- Removed the tables and chairs, which could be perceived as private seating, and replaced with more accessible chaise lounge chairs. The chaise lounge chairs are used elsewhere in the greenway public spaces, so this seating is a visual cue that the maker space is open to the public, consistent with SWDG A1-2 (particularly example 3) and Guideline 3 (particularly example 2).

Abernathy Plaza

- The shape of the plaza was changed so that the footprint is more sinuous, which reflects the movement of the river and is more informal and welcoming than a geometric shape, consistent with CCFDG C6.
- A direct at-grade connection between the lawn area and plaza is facilitated by modifying landscaping and intentionally relocating furniture. As a result, access between the grass and plaza is not blocked. The more permeable boundary between the plaza and lawn area increases public access and the public feel of the plaza, consistent with SWDG A1-2, CCFDG C6 and Guideline 3.
- Paving has been added to the wide L-shaped benches east of the foundation so that benches now function as 2-sided, which allows people to sit facing or away from the river, consistent with SWDG A1-2, CCFDG C6 and Guideline 3.

- The fountain, at the eastern edge close to where the plaza connects to the Greenway is an amenity for the public immediately accessible off the public trail.

Appellants' opinion is that despite these features, the maker's space patio and Abernathy plaza and overlook appear to be extensions to the private development that belong to the building rather than extensions of the Greenway that are in an easement for public access. The only supporting details for these opinions are:

- Appellants believe that the use of paving stones matching the building surround rather than concrete matching the pedestrian path signals to the public that the spaces are private building spaces. Council disagrees. The brick pavers used on the maker's space plaza (including on the stairs and pathway from the Greenway), Abernathy plaza and overlook are the same paving materials as the three public accessways that lead to the Greenway. The brick paving material signals that the spaces are public.
- Appellants believe that heavy landscaping surrounding the south patio, the use of elevated planter boxes and large trees surrounding the plaza reinforces the idea that these amenities are private. Council disagrees. An elevated planter north of the maker space patio, which could have read as a barrier, was removed. The grade change between the Greenway and maker's space requires a retaining wall, and the landscaping surrounding the retaining wall softens the edge of the wall and softens that potential barrier to the public.
- In Appellants' opinion, the private feeling is exacerbated by the use of chaise lounge seating that they describe as being typical of a private patio, not a public park. Council disagrees. The design guidelines depict chaise lounge seating at least twice as examples of appropriate Greenway seating, including SWGWDG 3, example 2 and SWGWDG 4, example 1. While we interpret the guideline examples as not being required in order to meet a guideline, we reject the argument that the use of exemplary seating is a basis for arguing that a guideline is not met.

Appellants' generalized opinion that the maker's space plaza, Abernathy plaza and overlook feel too private was loosely correlated to the following design guidelines: SWDG A1-2 (Incorporate Active Uses Along the River), CCFDG C6 (Develop Transitions between Buildings and Public Spaces), and SWGWDG 3 (Incorporate a Diverse Set of Gathering Places). The extent to which Appellants have articulated an interpretation of these guidelines, Council disagrees.

A1-2. Incorporate Active Uses Along the River. Integrate active uses along the greenway to encourage continuous use and public "ownership" of the greenway. Program active uses to face and connect with the greenway, expand the public realm, and enhance the experience for greenway users. Develop active ground floor uses at the intersections of the greenway with accessways to the interior of the district to create stronger connections to and activity along the greenway.

Appellants isolate the phrases "integrate active uses" and "public 'ownership'" in support of the complaint that the maker space patio, Abernathy plaza and overlook feel private. Council rejects such picking and choosing; the entire guideline must be considered when interpreting it. SWDG A1-2 focuses primarily on what occurs outside of the Greenway; it promotes the integration of active uses "along" the Greenway and "to face and connect with" the Greenway, and to expand the public realm beyond the Greenway. The overlook and portions of the maker space patio and portions of the Abernathy plaza are located within the Greenway, so SWDG A1-2 applies only to the portion of the Abernathy plaza and maker space that are located outside of the Greenway.

As noted elsewhere in these findings, the ground floor southwest corner of the building on Block 44 includes an active maker space on the corner that is oriented to the Greenway and SW Lowell accessway, and includes expansive windows that visually connect the interior use

with the public space. The maker space interior activity spills onto the maker space patio, which provides the transition between the Greenway and the building. The maker space is a use at the intersection of the Greenway and the SW Lowell accessway that will draw in the public, and the adjacent patio expands the public realm beyond the Greenway to the building's edge. This integrated connection between the active interior and Greenway complies with SWDG A1-2, and includes elements in examples 1, 2, 3 and 5.

The Abernathy plaza and overlook activates the Greenway through the gracious plaza space that connects the SW Abernathy accessway and the Greenway, includes an integrated fountain and public art feature, as well as outdoor seating, which are all oriented toward the river, consistent with examples 3 and 4. The overlook is a destination that draws the public into the Greenway, which further encourages continuous public use of the Greenway.

C6. Develop Transitions between Buildings and Public Spaces. Develop transitions between private development and public open space. Use site design features such as movement zones, landscape elements, gathering places, and seating opportunities to develop transition areas where private development directly abuts a dedicated public open space.

Our findings above detail how the maker space patio provides a transition between the Block 44 building and adjacent open spaces (the Greenway and SW Lowell accessway) in compliance with CCFDG C6 and are incorporated herein.

Guideline 3 Provide a diverse set of gathering places with seating, art, water features and overlooks Accommodate a range of special activities oriented toward the Willamette River that offer large and small gatherings, play, watercraft launches, and unique viewpoints as extensions of the Greenway trail. Design gathering places to respond to the character of the specific reach's historical context, urban setting, and particular habitat improvements.

Appellants' criticism of the private feel of the public spaces based upon Guideline 3 focuses on the portion of the Guideline's background that describes gathering spaces as "extensions or supportive components of the greenway trail." However, other than the three criticisms described and rejected above, Appellants do not explain how the public spaces fail to extend or support the Greenway. We find that the maker space patio, Abernathy plaza and overlook comply with Guideline 3 (also see the Guideline 3 findings below, related to the diversity of types of public space, which are incorporated here). The gathering spaces are extensions of the Greenway trail. Each gathering space connects to the trail directly with brick pavers, which cue the continuation of public space. Each gathering space is at the end of a public accessway, which is analogous to a street, and is a locational pattern consistent with the Guideline's background description of plazas and example 1 (developing gathering places as distinct areas that can be understood as extensions of the Greenway trail, aligning with major east-west connections).

(b) Diversity of Types of Gathering Spaces (Guideline 3)

Appellants allege that the Project's public spaces are not adequately diverse as directed by Guideline 3 because the public spaces are largely singular in character: building-adjacent, hardscaped plaza and patio with a singular type of lounge patio furniture as well as a singular, small overlook. Appellants' criticism is rejected because it fails to acknowledge the full range of gathering place types and range of features incorporated into the Project's public spaces, or the variety of seating offered (custom heavy wood timber benches, basalt benches, chaise lounge chairs). For example, the gathering spaces also include usable lawn areas, a fountain with integrated public art and nearby seating, gathering spaces of a range of sizes and functions and a variety of seating areas. This diversity of gathering spaces closely tracks the text and context of Guideline 3. The text Guideline 3 includes a list of potential gathering spaces, such as different size spaces, play areas and viewpoints. The background section describes short

duration stop facilities and gathering space enhancements such as places to sit, integrated water features and public art. The Project includes elements from each of the 6 examples of how Guideline 3 may be accomplished.

While the gathering spaces comply with the text of Guideline 3 and that guideline's directly supportive context (background and examples), the gathering spaces are also consistent with the context provided by Guideline 7-3. As described in the background of Guideline 7-3 explains "This portion of the greenway is intended to feature less active gathering spaces and cater to users moving through the greenway, as well as an anticipated high intensity of adjacent residential development."

We also reject Appellants' criticism that Guideline 3 "requires" the overlook to take advantage of a river view, and that view is negatively impacted by the habitat restoration vegetation between the overlook and river. First, we disagree with Appellants' interpretation that a river view is required. Guideline 3 describes orienting activities toward the river. While the background section describes river vantage points, unobstructed views are not required, and a view framed or even partially blocked by habitat and vegetation (which may attract wildlife) is unique. Overlooks that are "located and designed" to protect habitat (example 6) are encouraged. Second, Appellants speculate that the habitat will significantly block views from benches, but points to no objective data (e.g., height of the vegetation, viewshed from particular points) in support of that assertion. We also reject Appellants' opinion that the overlook is not a suitable stopping, resting and gathering place because it does not include seating. While seating can enhance a gathering space, and is an example of Guideline 3 compliance, seating is not determinative of whether a space is a gathering space. The representative image of an overlook in Guideline 3's background section does not include seating. Moreover, while not applicable to this site, the required South Waterfront Greenway improvements standards overlook standards in PCC 33.510.253.E.5.e.2 provide context; those detailed and prescriptive standards do not require public overlooks to include seating.

(3) Appropriateness of River Access

Appellants opined that providing human connection with the river, such as a small beach, is critical to the success of this stretch of the Greenway and that Guidelines 3 and 5 prioritize physical public access to the river. We disagree.

Text and Context of Guidelines 3 and 5

Guideline 5 (Enhance the Riverbank) directly addresses river access, but the text expressly prioritizes enhancing the river and riverbank ecosystems. Access is a secondary objective, and it may be introduced only "where appropriate," and when riparian habitat intrusion is minimized. The context of Guideline 5 supports this hierarchy. Guideline 5's background includes three paragraphs that detail ecological functions and habitat values. When access to the river is described, it is with caveats:

"To ensure the viability of riverbank renaturalization, human access to the river's edge should be restricted to street-end locations, docks, overlooks, and plazas generally identified in the Greenway Development Plan. River access should be provided in clearly identified but limited locations, to provide human access to the river in a manner that will reduce indiscriminate intrusion into the riparian edge. Elevated overlooks above habitat areas will separate people from habitat and reduce the number of people who attempt to reach the river's edge. Docks should be designed in a way that minimizes impacts on riparian habitat, with gangways elevated above vegetation and descending clear to floating docks anchored by 'piles.'"

The Guideline 5 examples depict an overlook cantilevered over the riverbank to minimize impacts to a continuous habitat corridor, and a dock that is extended and raised from the riverbank to minimize habitat intrusion. Appellants' suggestion that river access is the priority

in Guideline 5 or that a beach access (as opposed to an elevated river access) is appropriate is contrary to the text and context of Guideline 5.

Guideline 3's reference to a watercraft launch as an example of a special activity does not overcome the text or context of Guideline 5. Instead, the guidelines must be read harmoniously: when river access is appropriate (Guideline 5), then a watercraft launch may be gathering space to include in the Greenway (Guideline 3). But, as Guideline 3 notes, that special area should respond to "the character of the specific reach's historical context, urban setting, and particular habitat improvements." Guideline 3's background explains that "the Greenway Development Plan should be used as a guide in the location of these special areas."

The Greenway Development Plan (GDG) is described in Section IV, Guidelines 7 and 8 of the South Waterfront Design Guidelines and South Waterfront Greenway Design Guidelines. The GDP is the vision and concept plan for the entire South Waterfront Greenway and strives to balance the needs of the public and the health of the Willamette River. The GDP accomplishes this by approaching each reach of the river differently (Guideline 7) and by having a guideline dedicated to creating and enhancing habitat (Guideline 8).

Guideline 7's background explains that the South Reach "is envisioned to include a mix of highly enhanced habitat areas while also providing opportunities for human interaction with the river's edge through an overlook or perhaps light watercraft boat ramp. As with other reaches, the bicycle and pedestrian trail network circulates through this reach and is supported with occasional places for people to sit and enjoy the greenway and river." The background and examples for Guideline 7-3 (Define and Strengthen the South Greenway Reach) provide additional context for when river access may be appropriate in the South Reach. As relevant to the issue of appropriate public areas, the background section explains:

"this portion of the greenway is intended to feature less active gathering spaces and cater to users moving through the greenway, as well as an anticipated high intensity of adjacent residential development...The river's edge at Lowell will provide an opportunity for a variety of habitats including coves, tree groves and shallow water environments. The primary open space of the South Greenway Reach should be located at the terminus of SW Lowell Street. A lawn will offer quiet, passive recreation opportunities and views of Ross Island. This space is envisioned as a neighborhood use area including a play area and restroom."

The examples and imagery for Guideline 7-3 include using the existing concrete wall as either an outlook plaza or to support a gangway down to a floating dock. They also include a quiet passive recreation and views of Ross Island and the Willamette River (example 1) and creating a neighborhood use area, including a play area and restroom (example 4). Appendix B of the Greenway Development Plan includes an Illustrative Site Plan that depicts these potential South Reach elements.

Because the Applicant did not elect to pursue the GDP Option/Section IV, Guidelines 7 and 7-3 are not applicable approval criteria, but they nevertheless provide context for how Guidelines 3 and 5 should be interpreted and applied. Testimony noted that the City offered the Applicant financial assistance to pursue the GDP Option, but the Applicant declined. Council finds that fact to be irrelevant to how the applicable guidelines are applied, and it has no bearing on the context for interpreting the guidelines.

The GDP, as context, provides information on the habitat-emphasis of the South Reach, when human interaction with the river may be appropriate, an appropriate location for a beach, and grades that are sensitive to habitat when a beach is provided. The GDP's "The Project Design" section explains, "The north/south orientation of the landscape is based on the opportunities and constraints analysis that indicated that north and south thirds of the greenway contain the highest characteristics for functional habitat and the Central area contains the best values for human habitat in the forms of people places such as the Civic Beach, Lawn and Plazas

flanking Gibbs Street.” This “Civic Beach” is detailed in Section 3 as a “Primary Gathering Area,” and is located on the Zidell property, which is located in the Central Reach. The GDP’s “Proposed Habitat Elements”, describes the appropriate grade for a beach as “preserve and enhance beaches (provide 7H:1V and flatter slopes to ensure relative stability.” This context is relevant when Council evaluates whether river access is appropriate at the site, as detailed below.

Council has considered the express text of Guideline 5 (“where appropriate” and when “riparian habitat intrusion is minimized”) as well as the text of Guideline 3 that special activities should be responsive to particular habitat improvements, and interprets those Guidelines to prioritize enhancing the river and riverbank ecosystems. While river access is encouraged, it is subordinate to habitat enhancement. Council also finds Guideline 5’s use of the phrase “where appropriate” is significant. The Guideline does not require river access where “feasible,” or require river access unless it is “infeasible.” We interpret this to mean that Guideline 5 is highly discretionary and whether or not river access is appropriate is a judgement call. While that exercise of discretion requires the consideration of facts (as detailed in the findings below) and opinions, it is not an exclusively technical or evidentiary-dependent criteria. Appellants’ interpretation that river access is required by Guidelines 3 and 5 or that river access is a rebuttable presumption that requires proof of infeasibility is inconsistent with the text and context of Guidelines 3 and 5 and is rejected.

Council’s interpretation is consistent with the voluminous context for Guidelines 3 and 5. We find no support for requiring river access at this site. The only river access that the context supports as being potentially appropriate is a floating dock that extends into the river from a gangway that extends from the concrete wall on site. There is no express or implied support for beach access on the site, or in the South Reach.

Evaluation of Whether River Access is Appropriate at this Site

Council finds that river access, such as the beach requested by Appellants or a floating dock, is not appropriate at the site. The appropriate location for beach access in the long-planned public access areas in the Central Reach, such as the Civic Beach. Council’s judgement that river access is not appropriate is based upon several considerations, including the habitat-restoration focus of the South Reach, the topographical challenges with providing ADA-accessible shoreline accesses due to the site’s oversteeped banks, and habitat and seismic concerns associated with utilizing the concrete wall to connect to a floating dock. The evidence that supports our conclusion includes topographic maps of the site, opinions from Greenway and habitat advocates, and seismic and geotechnical analyses of the concrete wall. We also base our conclusion upon our interpretation of Guidelines 3, 5, 7-1, 7-3 and the GDP that providing continuous habitat corridors enhances riparian areas, which is why river access is repeatedly described as needing to be limited and provided through an elevated means that avoids impacting habitat. One of many examples in the context of the guidelines that supports the conclusion that human access can interfere with habitat functions and values is the background to Guideline 5 that explains, “Elevated overlooks above habitat areas will separate people from habitat and reduce the number of people who attempt to reach the river’s edge.”

Additionally, we find that shoreline access would be particularly disruptive to habitat at this site. Even with the stabilized and laid-back riverbank, the grade change through the site’s riverbank area is significant, especially in the shore area (4:1). The GDP’s recommended grade for a beach is 7:1. Providing an ADA-compliant access to the river over this topography is challenging, and if achievable, would require extensive additional grading, multiple switchbacks and retaining walls, including within Greenway subareas 1 and 2. As compared to the repeated emphasis in the context that habitat corridors are protected when avoided (e.g., with a cantilevered overlook or elevated gangway to a floating dock), it is self-evident that achieving an accessible beach access on the site is inconsistent with and would interfere with the habitat objectives of the South Reach and is not appropriate at this location. Whether or not beach access is feasible is not the metric.

Because a beach is not appropriate at the site, the other alternative for river access described in the text and context of the guidelines and in testimony is a small watercraft floating dock that is accessed by a gangway that connects to the site's concrete wall. We conclude that this type of river access is also not appropriate for the site. No testimony or evidence has been provided that supports the conclusion that a floating dock is appropriate at this location. Instead, the testimony and evidence describes the risk that because of the river's hydrology in this location (the site abuts the river's thalweg, which is the line of fastest flow or deepest water along a river's course) there is a very high potential that a dock would pose a significant risk to the large woody debris that will be installed, as well as other in-water habitat issues, such as detrimental impacts to juvenile salmonids. Additionally, connecting a gangway to the concrete wall is not appropriate because the geotechnical and seismic analyses of the wall supports the conclusion that even if seismic upgrades are installed, an unacceptable level of risk of failure persists post-upgrade. For these reasons, we conclude that the floating dock connected by gangway to the concrete wall is not appropriate river access for the site.

As noted elsewhere in these findings, river access is not required by the Guidelines. We recognize that the floating dock concept is described and depicted in the context of the guidelines many times. We interpret the context to mean that if we found that river access was appropriate, the context supports the conclusion that floating dock that connects to the concrete wall best protects habitat while providing river access. However, when we apply the Guideline to the site based upon the testimony and evidence presented to us, we conclude that the floating dock river access is not appropriate. When drafted, the contextual documents did not have the benefit of the seismic and geotechnical evidence provided as a part of this application, or the testimony that reflects current-thinking on how a floating dock would interfere with habitat restoration at the site. This refinement in thinking over time is consistent with the GDP Option, which explains in the introduction, "Because site conditions may present challenges to the specific placement of habitat types, structures or activity areas, their explicit locations outline in the GDP and the Greenway Development Plan Option are to be used as a guide for development. Alterations to the concepts offered in the GDP should carefully consider subsequent impacts on the integrity of the complete greenway vision and should meet the intent of the guidelines." Because this Project is not subject to the GDP Option and the background language is permissive ("should" not "shall"), not including the floating dock does not require consideration of the subsequent impacts on the Greenway's vision. Instead, the GDP Option background is simply context that supports our interpretation and application of the guidelines. Moreover, for the reasons explained throughout these findings, the Greenway improvements included in the Project meet the guidelines.

Over the lengthy public design process there has been extensive input from individuals, environmental groups, BDS and the Parks Department. The collaborative process resulted in a Greenway design that carefully and successfully balances habitat restoration and spaces for people to recreate. That balance is delicate because introducing humans to riparian areas typically degrades the habitat. The balance was struck here by providing pedestrian and bike trails, an overlook, lawn areas and two public plazas for human recreation (one of which includes a fountain/water feature that is a play area), and habitat restoration through environmental remediation of the riverbank, removal of the wooden pier, bank stabilization that includes laying back the steeply sloped riverbank, adding large woody debris in shallow water for habitat, and installing extensive and continuous native vegetation.

(4) Timing of Greenway Installation

Testimony raised concerns that the Greenway may be installed four years after a building within the Project receives occupancy, and offered opinions that such a deferral was unacceptable. Council finds that the Code allows deferral but the Project site's land division condition of approval C2 requires the installation of at least a temporary greenway trail prior to the first occupancy permit. LU 17-160442 LDS AD.

3. Preserving Private Views

Testimony from residents of nearby buildings urged Council to protect their private views. The primary themes of the view protection testimony are (1) buildings must step down to the river on a block by block relative basis; and (2) the character and context of the area requires (a) protecting private views, and (b) a more sculpted tower shape instead of the bar tower on Block 41 and L-tower on Block 44. The Guidelines relied upon include SWDG A1-1, CCFDG A5, CCFDG C1, CCFDG C4 and CCFDG D2.

We address each issue and cited guideline below. However, Council would like to emphasize that over the years it has consistently interpreted the design guidelines and applied the design review process to not protect private views. For the reasons detailed below, we reject the arguments that private views are required to be protected.

A. Step Down of Buildings Toward the River (CCFDG D2 and SWDG A1-1)

Appellants' opinion that the buildings must step down to the river on a block by block and relative basis was based almost exclusively on CCFDG D2 (South Waterfront Area). For the reasons explained above and incorporated here, CCFDG D2 does not apply to the site, so any argument based upon Guideline D2 is rejected. Appellants make passing reference to SWDG A1-1 (Develop River Edge Variety) in support of their opinion that the buildings should step down toward the river. The height step down argument based upon SWDG A1-1 is not developed with sufficient specificity for Council to respond.

While the Council finds that guideline D2 does not apply to the Project, in the alternative if D2 were found to be applicable, the Council finds that guideline D2 is met. Guideline D2 provides:

“D2. South Waterfront Area. Develop a pedestrian circulation system that includes good connections to adjacent parts of the city and facilitates movement within and through the area. Size and place development to create a diverse mixture of active areas. Graduate building heights from the western boundary down to the waterfront. Strengthen connections to North Macadam by utilizing a related system of right-of-way elements, materials, and patterns.”

Council finds that the text of Guideline D2 is ambiguous, with some testimony interpreting it to apply on a block-by-block basis, and the Design Commission determining that the reference to graduated height across the district is accomplished through height limits within the Code. The operative text is “graduate building heights from the western boundary down to the waterfront.” We find that the graduated height across the district is applied first through the height allowances in the Code, which are highest to the west and graduate down to the east. Guideline D2 does not require that every building on each block step down to the next and the next as development moves towards the river. Rather, we interpret the guideline to be aimed at creating an overall step-down toward the river within the South Waterfront district. This guideline is achieved in part through constructing projects consistent with allowed zoning heights, and in part by creating step-downs within each building near the river. The existing buildings within the South Waterfront supports this interpretation and the Applicant's evidence shows that older shorter buildings line the western portion of the district, while newer, taller towers are interspersed on waterward sites. The opposite interpretation of guideline D2 urged by the Appellant, a block-by-block step down controlled by existing development, would not have allowed the development of these newer tall towers in areas closer to the river. The Appellant's interpretation is therefore not consistent with the how Guideline D2 has been previously interpreted and applied.

In sum, even if Guideline D2 applies to the Project, it is met by requiring the Project design to fit within a district-wide step down toward the river. In order to ensure that the district is allowed to develop to its planned height and density over time, this step-down pattern is based on potential development heights under the Code, not the as-built heights in the district. This

interpretation is consistent with the existing district precedent, while not universal, includes taller towers waterward of smaller building. This interpretation does not “nullify” the design guidelines by removing the Design Commission’s jurisdiction to determine if the Project meets the guidelines; rather it provides the context within which the Design Commission should consider appropriate heights in the district.

B. Character and Context of South Waterfront (CCFDG A5, CCFDG C1, and CCFDG C4)

While view protection, including from private residential units, is a priority for many nearby residents who offered testimony, it is unclear precisely which views Appellants believe must be protected. For example, in testimony to City Council, Appellants explain,

“...This appeal is also not about protecting the pristine, unobstructed river views that many existing tower residents currently enjoy in perpetuity. The appellants fully acknowledge that they hold no non-possessory right to their existing views. Rather, it is the design and greenway guidelines that serve as a guarantee that the character of the South Waterfront – access to the river both visually and physically, coupled with sculpted tower design maximizing these views – remain for the benefit of appellants, the existing and future residents of the South Waterfront, as well as for the public.”

We understand Appellants to recognize that individual residential units do not have a right to view protection, but in their opinion, the applicable design guidelines protect the character of the South Waterfront, which includes river views. The location from which these river views are enjoyed, is not clear, given the concession that unobstructed river views from residential views are not protected. Notwithstanding this ambiguity, Council responds to the various view protection arguments presented in testimony.

(1) CCFDG A5 (Enhance, Embellish, and Identify Areas)

Appellants describe the character of the area in a variety of ways, and as relevant to this issue, as including but not limited to “tower design in the South Waterfront is characterized by graceful, sculptural and sleek tower designs that engage the pedestrian directly below as well as when viewed from the east side of the river,” hi-rise development is characterized as “sculpted and narrow” instead of towers that extend the full length of a frontage and similar descriptions of the “light and airy” character of the district’s tower massing. Appellants rely upon Central City Fundamental Design Guidelines C1 and C4 in support of their interpretation of “character” and CCFDG A5. For the reasons explained below and elsewhere in these findings, we disagree with Appellants’ description of the character of the area, and whether character as considered in CCFDG A5 requires a particular building shape or the protection of private views.

As detailed in our findings above, and incorporated here, we interpret the text and context of Guideline A5 so that the character of the Project’s area includes building form, transitions between public greenway and private development, among others, as well as the more specific characteristic regarding its historical identity and South Reach location. The text and context of the guidelines do not describe the character of South Waterfront as including any particularly shaped tower; rather the objective is to promote building forms that respond to the relationship of the district to the river and adjacent neighborhoods. The zoning code allowance provide minimum and maximum parameters that can then result in different shapes, as evident in the district. The guideline requires that new projects integrate elements that build on the area’s character, but they do not have to imitate existing buildings. Council finds that this Project, in building form, in its relationship to the greenway, and in responding to the historic and present identity of the South Waterfront, meets CCFDG A5 by integrating elements that build on the area's character and special features and qualities.

(2) CCFDG C4 (Complement the Context of Existing Buildings)

Appellants believe that the context of the existing buildings, particularly residential structures, are unique sculpted, rounded, elegant narrow forms that retain some views for neighboring properties. Conversely, Appellants believe that the bar towers located elsewhere in the South Waterfront district are not appropriate context because they do not have the same view-inhibiting effect and are not residential. Appellants conclusion is that the L shaped building on Block 44 is without precedence, and the east-west massing of both towers do not complement the existing context. We disagree with Appellants' opinions and conclusions for the reasons stated below.

Central City Design Guideline C4 provides:

C4. Complement the Context of Existing Buildings. Complement the context of existing buildings by using and adding to the local design vocabulary.

The guideline includes subjective terms that must be interpreted before they can be applied. "Complement" does not require replication. We define "complement" to mean how it is described in the background to Guideline C4, "the design of a new building need not mimic or imitate the context of existing buildings to be complementary." This interpretation is supported by the subsequent text in Guideline C4, which encourages "adding to the local design vocabulary." A design cannot both replicate and add to design vocabulary. Accordingly, "complement" is a subjective analysis that is accomplished when there is compatibility, harmony or a lack of conflict with the design vocabulary. To the extent that Appellants argue that the Project's towers do not comply with Guideline C4 because they do not imitate Appellants' interpretation that the applicable context is rounded or sculpted towers, or their opinion of view preservation, we reject those arguments.

"Local design vocabulary" and "context" are related concepts. The C4 background describes, and we adopt as our interpretation, design vocabulary as including "building proportion, scale, rhythm, and construction materials, as well as smaller-scale elements, such as windows and/or door styles, color and roof shape(s)." Based upon the examples of how context is described, we interpret "context" may include, but is not limited to, considerations of proportions, massing, roof shapes, exterior styles, materials, window design and patterns. Neither the text nor context of "local design vocabulary" or "context" suggest that the use of a building is relevant. We find no meaningful difference between "local design vocabulary" and "context," because both describe what is considered when evaluating whether buildings have a common expression of design themes or details. We find that "character" is a closely related, but not interchangeable, term or concept with "context" and "local design vocabulary" as applied in the design guidelines. While there are some overlapping elements between the terms, such as materials, as compared to context/local design vocabulary, character is derived about the past, present and future of an area, rather than the current built environment. Some testimony blends the concepts of context and character and use the terms interchangeably. We reject that interpretation. For example, context, not character, is relevant when interpreting and applying CCFDG C4. Regardless, we attempt to respond to the themes presented in the arguments, even though they do not carefully correspond to the relevant guideline.

Appellants focuses exclusively on building shape and massing, and their perception that narrow rounded buildings protect views and provide more light than other tower typology. We find that is an unduly narrow interpretation of "context" and "local design vocabulary," and does not account for significant design features such as materials. For example, elsewhere in these findings we determined that the towers' limited palette of high-quality materials (brick, composite metal panel and glass, wood accent) complement those found in the district. Appellants' complaints about massing and shape ignore materials, and other indicia of context.

Implicit in interpreting CCFDG C4 is the appropriate proximity for evaluating context and local design vocabulary. We find that the geographic range of the context analysis is, well, contextual. For example, a quarter block infill project in a fully built-out neighborhood may only need to consider the abutting properties on that block, or possibly the immediately adjacent blocks. Generally speaking, for larger projects such as a full-block building, the area should encompass a larger area.

There are unique factors to consider when determining the geographic range of the context analysis for this Project. First, Appellants' criticisms are limited to the Project's towers, so the geographic range must be large enough so that there are adequate reference points for identifying context and local design vocabulary of a tower. Towers are distinct from a common "5 over 1" or midrise construction, so for the purposes of this analysis, we assume that a tower is a building over 75' in height per PCC 33.510252.A.3. Additionally, the Project site is the southern and eastern edge of tower development within the South Waterfront, so relevant existing towers are located only to the north and west. The South Waterfront as an urban mixed-use neighborhood is relatively young, is only partially redeveloped and only some of the new development includes towers. Accordingly, the immediate block or two radii from the Project site only captures a few existing towers. However, the towers that have been redeveloped have been subject to the same or similar design guidelines as the Project, so they are relevant and desirable context. As detailed in our findings that interpret the term "character" in Guideline A5, the geographic area subject to the South Waterfront Design Guidelines is a unique subdistrict with its own set of design guidelines, which lends support to considering all towers within the district as context. While the GDP Option Guidelines are more geographically limited and differ among the reaches in the South Waterfront, the Project will be the first towers within the South Reach, so that geographic range is not instructive.

After careful consideration, we conclude that regardless of whether the contextual analysis area is limited to the two most adjacent towers, is widened slightly to encompass an approximately two block radius from the site (4 towers), is further widened to include the South and Central Reaches (roughly between the Project site and the Ross Island Bridge) (10 towers), or includes the entire South Waterfront District (13 towers), the local design vocabulary and context for towers have consistent themes. Specifically, the towers' proportions include narrow north/south width and wider east/west length. Towers are typically located atop a podium, with the podium having little to no setback on the main north/south streets (SW River Parkway, SW Bond Avenue, or SW Moody), and the development (building, accessways and open space) occupies a full block (as compared to other areas in the Central City which include full, half and quarter block developments). The towers are setback varying distances from one another, with the distances ranging from about 74 feet to about 174 feet. The towers incorporate significant glazing. The material palettes are limited, and include durable and high-quality materials such as brick, glass, metal and wood. The overall style is sleek and modern. While mimicry is not required, the Project's towers include all of this context. Other than Appellants' complaints about the massing, we do not understand Appellants to challenge whether the Project's towers are complementary with the contextual themes/local design vocabulary.

While specific tower shape, massing and building form are not determinative for evaluating whether the Project's towers complement the context of the existing buildings, we find that the proportion of rounded/sculpted buildings to rectilinear buildings is equally split in the smaller ranges, and predominately rectilinear as the geographic range expands. Specifically:

- Two most adjacent towers: 1 sculpted; 1 rectilinear
- Approximately two block radius from the site (4 towers): 2 sculpted; 2 rectilinear
- South and Central Reaches (roughly between the Project site and the Ross Island Bridge) (10 towers): 3 sculpted; 7 rectilinear
- Entire South Waterfront District (13): 3 sculpted; 10 rectilinear

(Exhibits G8, G.9 and I.29)

Appellants' description of the context for towers as a rounded or sculpted building form is not supported by the data. We acknowledge that south of the Ross Island bridge there are three elegant curved towers, and they are a part of the area's context; they do not define it. Instead, the context for towers must consider all of the existing buildings within proximity, which here, regardless of which concentric circle of geographic area is considered, includes a mix of unique towers, with at least as many rectilinear towers as sculpted towers. Those rectilinear towers are comprised of bar shaped towers (e.g., Riva on the Park) and towers with varied facades (e.g., Meriwether West). We find that to be a distinction without a difference. The differing building planes add to the local design vocabulary, but the form remains rectilinear.

Appellants believe that the L-shaped building form of the tower on Block 44 does not complement the context of the existing buildings because there is no L-shaped existing building precedent. We reject that conclusion. The Block 44 tower adds to the local design vocabulary, as contemplated by Guideline C4. While the building shape is new, it is complementary to the existing buildings because it is tall and slender and adds to the variety of tower shapes in the district.

Appellants also criticize the Project's tower building lengths as not being contextual because other towers do not extend the full length of the block. We find that considering a building length in isolation does not reflect the nature of contextual proportions. In the South Waterfront district, the dimensional standards require a narrow north-south façade and there is no maximum east-west dimension, which allows for views from the west hills to the river. The Project towers' north-south widths are less than the 125' maximum (Block 41 is 65'-6" and Block 44 is 121'-1") and the east-west tower dimensions are longer but similar to other towers in the district. The relative proportions are the contextual elements of the district; precise length comparisons are not persuasive or determinative. We find that the Project towers' narrow north-south profile, as compared to a wider east-west profile is compatible with the proportional context within the district.

Appellants final criticism is that the Projects towers' shape and massing blocks air, light and views, and suggests that moving the towers inland to Blocks 42 or 45 would maximize views. While relocating the towers may maximize Appellants' views, we find that the approved tower placement is contextually compatible and consistent with other tower locations within the district and avoids crowding the Ardea. Applicant provided a "Contextual Tower Location" exhibit which depicts the relative distances between towers. The greater the distance between towers, the more light and air is maintained. The towers south of the Ross Island bridge are set back varying distances from one another, with the distances ranging from about 74 feet to about 174 feet. The Block 41 and 44 towers provide even more generous setbacks. The closest setback is building 41's tower distance from the Ardea tower (which is on the southern edge of its block), which is about 175 feet. If building 41 were shifted west to Block 42, as suggested by Appellants, it would be on the block immediately adjacent (to the south) to the Ardea, which would reduce the light and air to Ardea. Moreover, the subjective notion of preserving light, air and private views is not relevant to any applicable approval criterion, including Guideline C4 or C1 (as detailed below and incorporated here).

(3) CCFDG C1 (Enhance View Opportunities)

Testimony relies upon CCFDG C1 in support of the opinion that the Project towers improperly block views. Guideline C1 provides:

C1. Enhance View Opportunities. Orient windows, entrances, balconies and other building elements to surrounding points of interest and activity. Size and place new buildings to protect existing views and view corridors. Develop building façades that create visual connections to adjacent public spaces.

The only portion of the guideline relevant to the issues raised is "Size and place new buildings

to protect existing views and view corridors.” “View corridor” is defined in PCC 33.910. “View” is not defined, and we determine that term and what it requires in this Guideline are ambiguous. For example, from where is the protected view enjoyed? A ground floor commercial space? A penthouse condominium? A public park? A designated viewpoint? All of those locations? Only some of them? While special building height corridors and tower orientation and width regulations of PCC 33.510.252 ensure development provides visual access to and from the greenway and west hills, beyond that it is unclear what object or feature is considered a view worth protecting Mt. Hood? Iconic buildings like Big Pink? The ambiguity in how “views” should be interpreted and applied is reflected in the above quoted portion of Appellants’ testimony, which acknowledges that not all private views are protected, but continues to argue that existing river views should be maximized.

City Council interprets the view protection afforded by the Guideline C1 to extend only to two types of public views: (i) significant views and view corridors identified in the City’s Scenic Resources Plan, and (ii) views of other public spaces affected by new development, which include public rights-of-way, parks, and open spaces. Such protection does not extend to existing private views. There are no public views or corridors designated within or through the site, so the portion of C1 that indicates “size and place new buildings to protect existing views and view corridors” does not apply to the Project.

This interpretation and application of C1 is consistent with the guideline’s context. The C1 background explains, “Significant existing public views of both the natural and built environments are preserved in the Central City through building height limitations and other mechanisms adopted as a part of the city’s *Scenic Resources Plan*.” Further, the Code’s definition of “view corridor” relates to the Scenic Resources Plan. Further, without the clarification of which “existing views” are protected by C1, the standard would be impossible to implement because all views would be protected, which conflicts with the development allowances provided by the Code, and would apply Goal 5 scenic resources protections to properties without going through the Goal 5 process.

Council’s interpretation does not insert words into the guideline or rely upon context to create ambiguity in an otherwise clear guideline. The text of C1 is facially ambiguous and must be interpreted in order to be applied to this Project. C1 in isolation, and when considered with the other design guidelines applicable to this Project, do not expressly or implicitly protect private views.

5. Procedural Objection

Staff provided a memo to City Council on September 29, 2020 (the “memo”). The following day Appellants’ counsel raised a procedural objection to the memo and requested that the memo be rejected or that the record be re-opened. Applicant’s counsel responded the same day, September 30, and no reply was submitted. Council rejected the procedural objections because there was no legal basis for the objection, and the Appellants failed to explain how the memo prejudiced their substantial rights. On October 1, 2020, Council held a public hearing where it deliberated and voted to approve the Project.

The memo does not include new evidence and is permissible.

LUBA has consistently held that a memo that is submitted after the record closes that includes only staff advice regarding what conclusions the city council could reach based on the evidence in the record is not itself “new evidence” that might trigger the obligation to re-open the record to allow other participants an opportunity to respond. *Gooley v. City of Mt. Angel*, 56 Or LUBA 319 (2008). Also see *Ploeg v. Tillamook County*, 50 Or LUBA 608, 617 (2005) (“It is certainly permissible, even during a non-evidentiary phase of the proceedings, for staff to assist the decision maker by expressing the staff position with respect to whether evidence in the record demonstrates compliance with applicable criteria.”)

Therefore, the crux of the admissibility issue is whether the memo includes new evidence. ORS 197.763(9)(b) defines evidence as “facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.” LUBA has recognized that “the line between permissible staff advice and impermissible new evidence may frequently be unclear,” but a memo that consists “only of staff advice regarding what conclusions the city council could draw from the evidence already in the record” includes no new evidence. *Gooley*, slip op 14. In contrast, an example of a memo improperly including new evidence after the record closed is when it included a new methodology and new facts (e.g., number of homes, acre per home, farm-related use of each home) that were not in the record. *Ploeg*, slip op 7-8.

In this case, the line is clear. The memo does not include any new evidence. The memo simply includes links to the record, summarizes the appeal process, approval criteria (including clarifications about the applicability of some criteria), revisions to the Project, PPR and PBOT testimony, and concludes with the alternative decisions before Council. The memo does not advise on the application’s compliance with the applicable criteria. It does not recommend a particular outcome. It does not include new facts, documents, data or other information. The memo is analogous to a verbal summary that staff may give prior to deliberations, or staff’s response to questions during deliberation, which also are not entitled to rebuttal. *Thornton v. City of St. Helens*, 31 Or LUBA 287 (1996).

Appellants’ objection does not point with specificity to a single fact or statement that is allegedly new evidence. Two generalized complaints are raised, but neither support a conclusion that the memo includes new evidence.

Appellants’ objection to a statement about the applicability of a particular approval standard presumably refers to the summary in the memo about the inapplicability of Design Guideline D2 and the Statewide Planning Goals. The inapplicability of both criteria was addressed in testimony and memos while the record was open. No new facts are offered. Moreover, whether a criterion is applicable is not an evidentiary matter.

Appellants also object to the memo’s “recommendations as to how the Council should view the last-minute changes in the application.” That characterization of the memo is inaccurate. The memo lists issues that Council raised at the September 6 hearing and summarizes the evidence that the applicant submitted in response to those issues. Staff offered no opinion as to whether the applicant’s materials satisfied the criteria. Even if staff did offer advice on whether the evidence complies with the criteria, that advice is not evidence and LUBA has confirmed that such advice is admissible after the record has closed.

The timing of the memo was a harmless error

Even if a staff memo summarizing the evidence submitted and the options available to Council could be construed as a staff report subject to ORS 197.763(4), providing the memo two days prior to Council’s deliberation hearing instead of seven days in advance was a harmless error that was not a basis to reject the memo or continue the hearing.

The requirement of ORS 197.763(4)(b) that the memo be available seven days prior to a land use hearing is a procedural requirement. Providing less than seven days is a technical procedural error, which is grounds for reversal or remand only if a party can demonstrate that their substantial rights were prejudiced. ORS 197.835(9)(a)(B) and *Simonds v. Hood River County*, 31 Or LUBA 305 (1996).

The substantial rights protected in ORS 197.835(9)(a)(B) include an adequate opportunity to prepare and submit evidence, and a full and fair hearing. *McLaughlin v. Douglas County*, 70 Or LUBA 314 (2014). Here, the time to prepare and submit evidence had passed. The full and fair public hearing occurred on September 9 (as well as many prior Design Commission hearings) and was followed by a two-week period where the record remained open. The record had closed and the hearing on October 1, for which this memo was produced, was limited to

Council deliberation and a tentative vote.

Finally, Appellants alleged, without specification, that they had been prejudiced and deprived the full opportunity to present their case due to the content and timing of the memo. Council rejects this argument. Because the only remaining portion of the public process was Council deliberation and vote, with no opportunity submit evidence, Appellants did not explain how having two days, instead of seven, to review the two and a half page memo summary is more than a harmless error.

VII. CITY COUNCIL DECISION

It is the decision of City Council to deny the appeal of the Design Commission decision (LU 20-102914 DZM AD GW) and approve the **Design Review** for 5 buildings and associated site improvements and a **South Waterfront Greenway Review** for:

- Proposed fence (guard rail) over 3 feet high, and less than 45 feet from top of bank;
- Segments of the Greenway Trail less than 12 feet wide;
- Removal of existing wooden pier below top of bank; and
- Excavating, regrading, armoring the riverbank, and placing large woody debris below top of bank.

As modified by and subject to the revised design materials submitted by the Applicant on 9/24/20.

Approval of the following **Modification** requests:

1. *Vehicle Parking* – To allow two parking spaces to be stacked (tandem) without having an attendant on-site (Section 33.266.130.F.1.a).
2. *Bike Parking* – To reduce the width of long-term bike parking spaces from 2' to 18" (Section 33.266.220.C.3.b).

Approval of the following **Adjustment** request:

1. *Vehicle Access* – To allow vehicle and loading access off of River Parkway, which is access restricted (Section 33.510.267.F.6.b).

Approvals per Exhibits C.1 - C.272, signed, stamped, and dated 11/18/20, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through K) must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE- Case File LU 20-102914 DZM AD GW." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. At the time of building permit submittal, a signed Certificate of Compliance form (<https://www.portlandoregon.gov/bds/article/623658>) must be submitted to ensure the permit plans comply with the Design/Historic Resource Review decision and approved exhibits.
- C. The maker spaces on the ground floor of Block 44 at the southeast corner must be occupied by commercial uses only (not residential).
- D. The patio adjacent to the maker spaces at the southeast corner of Block 44 must remain accessible to the public during the commercial use business hours and may not be gated.

- E. The accent metal panel above the ground floor on Block 41 shall be:
- 6” wide or match the width of a wood plank;
 - At least 14-gauge aluminum or 22-gauge steel; and
 - A solid warm color finish (not a textured wood grain image).
- F. No field changes allowed.
- G. A BDS Site Development Permit is required for this project. The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc.). Plans shall include the following statement, "Any field changes shall be in substantial conformance with approved LU 20-102914 DZM AD GW Exhibits C.259 through C.266."
1. The Site Development Permit must be issued prior to issuance of buildings on the site.
 2. Prior to occupancy of the first building permit on the site, all greenway improvements approved under this review must be installed in conformance with Exhibits C.259 through C.266. Or, if improvements are deferred, a performance guarantee must be provided per 33.510.253.D.4.b and all improvements must be installed within 4 years of occupancy of the first building on the site. Note: LU 17-160442 LDS, condition C.2 requires the applicant to install, at a minimum, one of the required greenway trails prior to occupancy of buildings on Lots 1 and 4 (Blocks 41 and 44).
 3. A Public Access Easement shall be shown over Tracts A and B (the Greenway Open Space tracts) for the north-south greenway trail and pedestrian connections to the trail easement from the eastern termination of accessways at SW Lane, SW Abernethy and SW Lowell Streets. These easements shall provide for the construction, maintenance and public use of the greenway trail, as approved and shown on 20-102914 DZM AD GW Exhibits C.259 through C.266. The Easements shall be recorded with the County Recorder on the final plat for the site or prior to issuance of building permits on the site.
- H. Prior to any construction activity within the Greenway, turbidity curtains, sediment fences and straw waddles shall be placed, as depicted on Exhibits C.264 through C.266, the applicant's Greenway Construction Management Plans, or as required by BDS Site Development reviewers or inspectors.
- I. The Site Development Permit review shall include inspection of Greenway plantings as shown on Exhibits L.001 through L.005, the applicant's Greenway Planting Plans. Any plant substitutions shall be selected from the South Waterfront Greenway Plant List Tables 510-2 and 510-3 and shall be substantially equivalent in size and character to the original plant.
1. Permit plans shall show:
 - a. The location of the trees, shrubs and ground covers required by this condition and labeled as "new required landscaping". The plans shall be to scale and shall illustrate a naturalistic arrangement of plants and include the location, species, quantity and size of plants to be planted.
 - b. The applicant shall indicate on the plans selection of either tagging plants for identification or accompanying the BDS inspector for an on-site inspection.
 2. Plantings shall be installed between October 1 and March 31 (the planting season).
 3. 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.

4. After installing the required plantings and other improvements, the applicant shall request inspection of plantings and final the Site Development Permit.
 5. All required shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector; or the applicant shall arrange to accompany the BDS inspector to the site to locate required plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.
- J. The landowner shall monitor the required plantings for two years to ensure survival and replacement. The landowner is responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period. After the 2-year initial establishment period, the landowner shall:
1. Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The applicant shall arrange to accompany the BDS inspector to the site to locate plantings for inspection. The permit must be finalized no later than 2 years from the final inspection for the installation of planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.
 2. All required landscaping shall be continuously maintained, by the landowner in a healthy manner, with no more than 15% cover by invasive species. Required plants that die shall be replaced in kind.
- K. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

Note: In addition to the requirements of the Zoning Code, all uses and development must comply with other applicable City, regional, state and federal regulations. This decision applies to only the City's greenway regulations. Activities which the City regulates through PCC 33.510.253 may also be regulated by other agencies. In cases of overlapping City, Special District, Regional, State, or Federal regulations, the more stringent regulations will control. City approval.

IX. APPEAL INFORMATION

Appeals to the Land Use Board of Appeals (LUBA)

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of the decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period or this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

EXHIBITS – NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Original project narrative, zoning analysis, approval criteria responses received 1/8/20
 2. Otak memo to PBOT dated 1/6/20
 3. Otak memo to Site Development dated 1/6/20
 4. Otak memo to BES dated 1/6/20

5. GeoDesign memo on Greenway Ground Improvements dated 12/17/19
 6. Revised project narrative and zoning analysis received 2/7/20
 7. Revised approval criteria responses received 2/7/20
 8. Responses to Design Commission comments from 12/12/19 hearing for 19-225732 DZM GW.
 9. Itemized changes since 12/20/19 hearing dated 2/7/20
 10. South Waterfront Greenway Review Approval criteria responses dated 2/7/20
 11. Otak memo in response to PP&R and Urban Greenspaces comments dated 2/7/20
 12. Revised Stormwater Report dated 2/6/20
 13. GeoDesign memo regarding Greenway concrete piers dated 2/6/20
 14. Otak memo on back stabilization & enhancement dated 2/6/20
 15. Email from Allison Reynolds dated 1/21/20 regarding Greenway bonus options
 16. Otak memo to Parks dated 4/3/20
 17. Otak memo to Site Development dated 4/3/20
 18. Otak memo to BES dated 4/3/20
 19. Block 41 Energy Code Analysis
 20. Block 44 Energy Code Analysis
 21. Otak memo to Stacy Castleberry with Greenway responses dated 4/28/20
 22. Revised Greenway narrative & approval criteria responses dated 4/28/20
 23. Revised Stormwater Report dated 4/28/20
 24. Email from applicant regarding adjusted greenway setback dated 4/30/20
 25. Responses to Commission & Staff concerns dated 5/18/20
 26. Response to greenway standards regarding enlarged patio at SE corner of Block 44
 27. Before and After images of revisions from 6/11/20 hearing
 28. Applicant response to Audubon dated 6/29/20
 29. Exhibits dated 7/1/20 that were replaced with updated exhibits (see C exhibits below)
 30. Block 41 drawings dated 2/6/20
 31. Block 44 drawings dated 2/6/20
 32. River Blocks Landscape drawings dated 2/6/20
 33. River Block appendix dated 2/6/20
 34. City Block Landscape drawings dated 2/6/20
 35. Block 42 drawings dated 2/6/20
 36. Block 45 drawings dated 2/6/20
 37. Block 41 drawings dated 5/29/20
 38. Block 44 drawings dated 5/29/20
 39. River Blocks Landscape drawings dated 5/29/20
 40. River Block appendix dated 2/6/20
 41. City Block Landscape drawings dated 5/29/20
 42. Block 42 drawings dated 5/29/20
 43. Block 45 drawings dated 5/29/20
- B. Zoning Map (attached)
- C. Plan & Drawings
- C.01 L01 Floor Plan – Block 42 (attached)
 - C.02 L01 Lighting Plan – Block 42
 - C.03 L01 Canopy Diagram – Block 42
 - C.04 L02 Floor Plan – Block 42
 - C.05 L03-5 Floor Plan – Block 42
 - C.06 L06 Floor Plan – Block 42
 - C.07 Roof Plan – Block 42
 - C.08 L00 Floor Plan – Block 42
 - C.09 Block 42 – West Elevation (attached)
 - C.10 Block 42 – South Elevation (attached)
 - C.11 Block 42 – East Elevation (attached)
 - C.12 Block 42 – North Elevation (attached)
 - C.13 Block 42 – Roof Element Elevations

- C.14 Block 42 – W-E Overall Section
- C.15 Block 42 – N-S Overall Section
- C.16 Block 42 – N-S Overall Section
- C.17 Block 42 – Enlarged West Elevation
- C.18 Block 42 – Enlarged West Elevation
- C.19 Block 42 – SW Bond Street Sections
- C.20 Block 42 – SW Bond Street Sections
- C.21 Block 42 – SW Bond Street Sections
- C.22 Block 42 – Enlarged South Elevation
- C.23 Block 42 – Enlarged South Elevation
- C.24 Block 42 – SW Abernethy Street Sections
- C.25 Block 42 – SW Abernethy Street Sections
- C.26 Block 42 – Enlarged East Elevation
- C.27 Block 42 – Enlarged East Elevation
- C.28 Block 42 – SW River Parkway Street Sections
- C.29 Block 42 – SW River Parkway Street Sections
- C.30 Block 42 – Enlarged North Elevation
- C.31 Block 42 – Enlarged North Elevation
- C.32 Block 42 – Patio Height Plan Diagram
- C.33 Block 42 – SW Lane Street Sections
- C.34 Block 42 – SW Lane Street Sections
- C.35 Block 42 – SW Lane Street Sections
- C.36 Block 42 – Details
- C.37 Block 42 – Details
- C.38 Block 42 – Details
- C.39 Block 42 – Details
- C.40 Block 42 – Details
- C.42 Block 42 – Product Data
- C.43 Block 42 – Product Data
- C.44 Block 42 – Product Data
- C.45 Block 42 – Product Data
- C.46 Block 42 – Product Data
- C.47 Block 42 – Product Data
- C.48-49 not used
- C.50 L01 Floor Plan – Block 45 (attached)
- C.51 L01 Lighting Plan – Block 45
- C.52 L01 Canopy Diagram – Block 45
- C.53 L02 Floor Plan – Block 45
- C.54 L03-5 Floor Plan – Block 45
- C.55 L06 Floor Plan – Block 45
- C.56 Roof Plan – Block 45
- C.57 L00 Floor Plan – Block 45
- C.58 Block 45a – West Elevation
- C.59 Block 45a – South Elevation (attached)
- C.60 Block 45a – East Elevation (attached)
- C.61 Block 45a – North Elevation (attached)
- C.62 Block 45b – West Elevation (attached)
- C.63 Block 45b – South Elevation (attached)
- C.64 Block 45b – East Elevation (attached)
- C.65 Block 45b – North Elevation (attached)
- C.66 Block 45a – Roof Element Elevations
- C.67 Block 45b – Roof Element Elevations
- C.68 Block 45a – N-S Overall Section
- C.69 Block 45a – N-S Overall Section
- C.70 Block 45b – N-S Overall Section
- C.71 Block 45b – N-S Overall Section
- C.72 Block 45a – Enlarged West Elevation

- C.73 Block 45a – Enlarged West Elevation
- C.74 Block 45a – SW Bond Street Sections
- C.75 Block 45a – SW Bond Street Sections
- C.76 Block 45a – Enlarged East Elevation
- C.77 Block 45a – Enlarged East Elevation
- C.78 Block 45a – SW River Parkway Street Sections
- C.79 Block 45a – SW River Parkway Street Sections
- C.80 Block 45a – SW River Parkway Street Sections
- C.81 Block 45a – Enlarged North Elevation
- C.82 Block 45a – Enlarged Plaza Elevation
- C.83 Block 45a – Plaza Diagram
- C.84 Block 45a – SW Abernethy Street Sections
- C.85 Block 45a – Plaza Sections
- C.86 Block 45a – Plaza Sections
- C.87 Block 45b – Enlarged West Elevation
- C.88 Block 45b – SW Bond Street Sections
- C.89 Block 45b – Enlarged South Elevation
- C.90 Block 45b – Enlarged South Elevation
- C.91 Block 45b – SW Lowell Street Sections
- C.92 Block 45b – SW Lowell Street Sections
- C.93 Block 45b – Enlarged East Elevation
- C.94 Block 45b – SW River Parkway Street Sections
- C.95 Block 45 – Paseo Diagram
- C.96 Block 45a – Enlarged South Elevation
- C.97 Block 45b – Enlarged North Elevation
- C.98 Block 45 – Paseo Sections
- C.99 Block 45 – Paseo Sections
- C.100 Block 45 – Paseo Sections
- C.101 Block 45 – Paseo Sections
- C.102 Block 45a – Details
- C.103 Block 45a – Details
- C.104 Block 45a – Details
- C.105 Block 45a – Details
- C.106 Block 45a – Details
- C.107 Block 45a – Details
- C.108 Block 45b – Details
- C.109 Block 45b – Details
- C.110 Block 45b – Details
- C.111 Block 45b – Details
- C.112 Block 45b – Details
- C.113 Block 45 – Product Data
- C.114 Block 45 – Product Data
- C.115 Block 45 – Product Data
- C.116 Block 45 – Product Data
- C.117 Block 45 – Product Data
- C.118 Block 45 – Product Data
- C.119 Block 45 – Product Data
- C.120 Block 45 – Product Data
- C.121-124 not used
- C.125 L01 Floor Plan - Block 41
- C.126 L01 Floor Plan - Block 41 (attached)
- C.127 Lighting Plan - Ground Level - Block 41
- C.128 L02 Floor Plan - Block 41
- C.129 L03 Floor Plan - Block 41
- C.130 L04 Floor Plan - Block 41
- C.131 L05 Floor Plan - Block 41
- C.132 Lighting Plan - Amenity Deck - B41

- C.133 L06-20 Floor Plan - Block 41
- C.134 L21 Floor Plan - Block 41
- C.135 L22-23 Floor Plan - Block 41
- C.136 Roof Plan - Block 41
- C.137 Block 41 - West Elevation (attached)
- C.138 Block 41 - South Elevation (attached)
- C.139 Block 41 - East Elevation (attached)
- C.140 Block 41 - North Elevation (attached)
- C.141 Block 41 - N-S Building Section
- C.142 Block 41 - E-W Building Section
- C.143 Block 41 - West Enlarged Elevation
- C.144 Block 41 - West Enlarged Section
- C.145 Block 41 - West Enlarged Elevation
- C.146 Block 41 - West Enlarged Sections
- C.147 Block 41 - South Enlarged Elevation
- C.148 Block 41 - South Enlarged Sections
- C.149 Block 41 - South Enlarged Elevation
- C.150 Block 41 - South Enlarged Section
- C.151 Block 41 - East Enlarged Elevation
- C.152 Block 41 - East Enlarged Sections
- C.153 Block 41 - North Enlarged Elevation
- C.154 Block 41 - North Enlarged Sections
- C.155 Block 41 - Enlarged Elevation Level 5 Amenity
- C.156 Block 41 - Enlarged Section Level 5 Amenity
- C.157 Block 41 - Enlarged Elevation Penthouse
- C.158 Block 41 - Enlarged Section Penthouse
- C.159 Block 41 - Enlarged Elevation Penthouse
- C.160 Block 41 - Enlarged Section Penthouse
- C.161 Block 41 - Additional Details
- C.162 Block 41 - Product Data
- C.163 Block 41 - Product Data
- C.164 Block 41 - Material Board
- C.165 Block 41 - Material Board
- C.166-169 not used
- C.170 L01 Floor Plan - Block 44 (attached)
- C.171 Lighting Plan - Ground Level - B44
- C.172 L02 Floor Plan - Block 44
- C.173 L03 Floor Plan - Block 44
- C.174 L04 Floor Plan - Block 44
- C.175 Lighting Plan - Amenity Deck - B44
- C.176 L05 Floor Plan - Block 44
- C.177 L06-12 Floor Plan - Block 44
- C.178 L13 Floor Plan - Block 44
- C.179 L14-21 Floor Plan - Block 44
- C.180 L22-23 Floor Plan - Block 44
- C.181 Roof Plan - Block 44
- C.182 Block 44 - West Elevation (attached)
- C.183 Block 44 - South Elevation (attached)
- C.184 Block 44 - East Elevation (attached)
- C.185 Block 44 - North Elevation (attached)
- C.186 Block 44 - N-S Building Section
- C.187 Block 44 - E-W Building Section
- C.188 Block 44 - West Enlarged Elevation
- C.189 Block 44 - West Enlarged Sections
- C.190 Block 44 - West Enlarged Elevation
- C.191 Block 44 - West Enlarged Section
- C.192 Block 44 - South Enlarged Elevation

- C.193 Block 44 - South Enlarged Section
- C.194 Block 44 - East Enlarged Elevation
- C.195 Block 44 - East Enlarged Section
- C.196 Block 44 - East Enlarged Elevation
- C.197 Block 44 - East Enlarged Sections
- C.198 Block 44 - North Enlarged Elevation
- C.199 Block 44 - North Enlarged Section
- C.200 Block 44 - North Enlarged Elevation
- C.201 Block 44 - North Enlarged Section
- C.202 Block 44 - West Enlarged Elevation
- C.203 Block 44 - West Enlarged Section
- C.204 Block 44 - Enlarged Elevation Level 5 Amenity
- C.205 Block 44 - Enlarged Section Level 5 Amenity
- C.206 Block 44 - Enlarged Elevation Level 13 Amenity
- C.207 Block 44 - Enlarged Section Level 13 Amenity
- C.208 Block 44 - Enlarged Elevation Penthouse
- C.209 Block 44 - Enlarged Section Penthouse
- C.210 Block 44 - Additional Details
- C.211 Block 44 - Product Data
- C.212 Block 44 - Product Data
- C.213 Block 44 - Material Board
- C.214 not used
- C.215 Landscape - Greenway Development Plan- Overall REVISED SHEET DATED 9/22/20 (attached)
- C.216 Landscape - Greenway Development Plan- South REVISED SHEET DATED 9/22/20
- C.217 Landscape - Greenway Development Plan- North REVISED SHEET DATED 9/22/20
- C.218 Landscape - Greenway Planting Plan- South REVISED SHEET DATED 9/22/20
- C.219 Landscape - Greenway Planting Plan- North REVISED SHEET DATED 9/22/20
- C.220 Landscape - River Blocks - B41 & B44 REVISED SHEET DATED 9/22/20
- C.221 Landscape - City Blocks - B42 & B45
- C.222 Greenway / Pedestrian Mall Enlargement Plan REVISED SHEET DATED 9/22/20
- C.223 Material Selections For Site / Pedestrian Mall
- C.224 Landscape - Roof Terraces 41 & 44 REVISED SHEET DATED 9/22/20
- C.225 Landscape - Roof Terraces - B42 & B45
- C.226 Typical Patio Sections
- C.227 Typical Patio Sections
- C.228 Landscape - Greenway Section REVISED SHEET DATED 9/22/20
- C.229 Landscape - Greenway Section REVISED SHEET DATED 9/22/20
- C.230 Landscape - Greenway Section REVISED SHEET DATED 9/22/20
- C.231 Landscape - Greenway Section REVISED SHEET DATED 9/22/20
- C.232 Landscape - R.O.W. - Pedestrian Mall/Lighting- River Blocks- B41 & B44
- C.233 Landscape - R.O.W. - Level 5 Planting Chart - River Blocks B41 & B44
- C.234 Landscape - R.O.W. Planting - City Blocks - B42 & B45
- C.235 Landscape - R.O.W. / Level 2 Planting Chart - City Blocks - B42 & B45
- C.236 Public Open Space / Bonus Plan - B41 & B44
- C.237 Landscape - Lawn Exhibit - B41 & B44 REVISED SHEET DATED 9/22/20
- C.238 Landscape - Block 45 Paseo / Pocket Park Enlargement / Lighting Plan
- C.239 Landscape - Block 42 Lane Street Enlargement / Lighting Plan
- C.240 Construction Details - Greenway
- C.241 Construction Details - Greenway
- C.242 Construction Details - Mural Wall
- C.243 Construction Details - Mural Wall
- C.244 Construction Details - Mural Wall
- C.245 Landscape - Construction Details - City Blocks

- C.246 Landscape – Construction Details – City Blocks
- C.246-249 not used
- C.250 Notes And Legend
- C.251 Existing Conditions And Demolition Plan
- C.252 Tree Protection Plan
- C.253 Block 41 Utility Plan
- C.254 Block 44 Utility Plan
- C.255 Block 41 Grading Plan
- C.256 Block 44 Grading Plan
- C.257 Block 41 Stormwater Plan
- C.258 Block 44 Stormwater Plan
- C.259 Greenway Existing Conditions - South
- C.260 Greenway Existing Conditions - North
- C.261 Greenway Site Plan - Overall
- C.262 Greenway Site Plan - South
- C.263 Greenway Site Plan - North
- C.264 Greenway Construction Management Plan - Overall
- C.265 Greenway Construction Management Plan - South
- C.266 Greenway Construction Management Plan - North
- C.267 Block 42 Utility Plan
- C.268 Block 45 Utility Plan
- C.269 Block 42 Grading Plan
- C.270 Block 45 Grading Plan
- C.271 Block 42 Stormwater Plan
- C.272 Block 45 Stormwater Plan
- D. Notification information:
 1. Request for response
 2. Posting letter sent to applicant
 3. Notice to be posted
 4. Applicant’s statement certifying posting
 5. Mailed notice
 6. Mailing list
- E. Agency Responses:
 1. Water Bureau dated 2/11/20
 2. Fire Bureau dated 1/22/20
 3. Life Safety Review Section of BDS dated 2/10/20
 4. Bureau of Parks-Forestry Division dated 2/19/20
 5. Portland Parks and Recreation dated 2/20/20
 6. Bureau of Environmental Services dated 2/20/20
 7. Bureau of Transportation Engineering dated 2/20/20
 8. Site Development Section of BDS dated 2/20/20
 9. Trimet email dated 1/16/20
 10. Portland Parks and Recreation dated 4/29/20
 11. Bureau of Environmental Services dated 5/27/20
 12. Site Development Section of BDS dated 5/28/20
- F. Letters
 1. Joan Meyer, email dated 1/16/20, noting concerns with noise associated with trash activity in the area and requesting that it be internalized for this project
 2. Sidonie & Gordon Caron, email dated 1/18/20, stating support for comments from Mike Houck of the Urban Greenspaces Group under 19-225732 DZM GW
 3. Lisa Neirheim-Chereck, letter dated 2/21/20, stating support for the project.
 4. Sara Vonde Veld (OSHU), letter dated 2/24/20, stating support for the project.
 5. James Gardner, SPNA, email dated 2/25/20, stating support for some of the revisions and concerns for items unchanged.
 6. Jeanne Galick, letter dated 3/2/20, stating concerns primarily related to the greenway.
 7. Mike Houck (Urban Greenspaces), letter dated 2/29/20, stating greenway concerns.

8. Tyler Hannay, Metlife, letter dated 3/2/20, stating support for the project.
9. Douglas Bean, letter dated 3/3/20, stating support for the project.
10. Dan Valliere, Reach Community Development, letter dated 3/2/20, stating support for the development specifically the affordable housing component.
11. Neil & Annette McFarlane, letter dated 2/25/19 & 12/5/19, stating a lot of concerns.
12. John Casey Mills – letter dated 2/27/20, stating traffic concerns.
13. Mike Houck (Urban Greenspaces), letter dated 3/10/20, stating concerns with bonus open space, timing of the greenway improvements, wood pilings and the concrete pier.
14. Jeanne Galick, letter dated 3/10/20, stating concerns with the with bonus open space, timing of the greenway improvements.
15. Tom Lipton, letter dated 3/5/20, stating concerns with the lack of ecoroofs.
16. Micah Meskel, letter dated 3/5/20, stating concerns with the greenway improvements and lack of bird safe glazing.
17. Thomas Gornick, letter dated 3/9/20, stating concerns with the bonus open space, timing of the greenway improvements, and the need to follow the Greenway Master Plan.
18. John Malosh (Old Spaghetti Factory), letter dated 3/4/20, stating support for the project.
19. Jim Steffek, email dated 3/16/20, stating objection to the tower location.
20. Carrie Richter (Bateman and Siedel on behalf of Mary Henry de Tessian and Yvonne Meekoms), letter dated 3/5/20, stating concerns with the locations, lengths and designs of the towers, lack of ecoroofs, amount of residential at the ground floor and lack of commercial space, quality of the paseo, overlook and greenway, and lack of compliance with statewide planning goals.
21. Carrie Richter (Bateman and Siedel on behalf of Mary Henry de Tessian and Yvonne Meekoms), letter dated 6/9/20, stating concerns with the locations, lengths and designs of the towers.
22. Jeanne Galick, letter dated 6/10/20, stating concerns with the timing of the greenway improvements, setback of the buildings along the greenway, and the need for a more enhanced greenway design.
23. Mike Houck (Urban Greenspaces), letter dated 6/10/20, stating support for recent changes made and outstanding concerns with the building setback from the greenway, concrete pier, greenway landscaping and wood pilings.
24. Robert Ackers (40 Mile Loop), letter dated 6/10/20, stating concerns with timing of the greenway improvements and the concrete pier.
25. James Gardner (SPNA), email dated 6/11/20, stating support for some revisions and outstanding concerns for the bonus open space plaza at Abernethy terminus and the building footprint proximity to the greenway.
26. Micah Meskel (Portland Audubon), email dated 6/21/20, stating concerns with lighting and bird safe glazing.
27. Carolyn Weinstein, email dated 6/21/20, stating concerns with the residential units along the greenway noting they should be restaurants.
28. Carl Polesky, email dated 6/28/20, stating concerns with traffic, parking, location of the towers and design exceptions.
29. Chris Loucks, email dated 6/22/20, stating concurrence with Kenneth Fransen email.
30. Ellen Lippman, email dated 6/29/20, stated concerns with location of the towers.
31. Mike Houck (Urban Greenspaces), letter dated 6/25/20 to Prosper Portland Board of Directors stating additional enhancements needed for the greenway.
32. Jeanne Galick, email dated 6/25/20 to Prosper Portland Board of Directors stating additional enhancements needed for the greenway.
33. Kenneth Fransen, email dated 6/28/20, stating concerns with the location of the towers.
34. Laura Ramirez, email dated 6/28/20, stating concerns with traffic, parking, location of the towers and design exceptions.

35. Mark Fischer, email dated 6/23/20, stating concerns with the tower location and proximity of the building to the greenway at the SE corner of the site.
 36. Martin Ramirez, email dated 6/28/20, stated concerns with traffic and location of towers.
 37. Mary Geary, email dated 6/28/20, stating concerns with traffic, parking, location of the towers and design exceptions.
 38. Michael Lee, email dated 6/28/20, stating concerns with the location of the towers.
 39. Michael Parks, email dated 6/29/20, stating concerns with the location of the towers.
 40. Penny Greenwood, email dated 6/28/20, stating concerns with traffic, parking, location of the towers and design exceptions.
 41. Renee Hohimer, email dated 6/28/20, stating concerns with location of the towers, traffic and parking in the area.
 42. Saunders Jones, email dated 6/28/20, stating concerns with traffic, parking, location of the towers and design exceptions.
 43. Scott Bernstein, email dated 6/25/20, stating concerns with the location of the towers and traffic in the area.
 44. Testifier List from 3/5/20 hearing
 45. Testifier List from 3/12/20 hearing
 46. Testifier List from 6/11/20 hearing
- G. Other
1. Original LUR Application
 2. Signed 120-Day Waiver and Evidentiary Hearing Form dated 1/23/20
 3. Staff Report and Recommendation dated 2/24/20
 4. Staff Memo to Commission dated 2/24/20
 5. Copy of Staff Presentation from 3/5/20 hearing
 6. Staff Report and Recommendation dated 3/5/20
 7. Staff Memo to Commission dated 3/5/20
 8. Applicant Presentation Block 44 for 3/5/20 hearing
 9. Applicant Presentation Block 41 for 3/5/20 hearing
 10. Applicant Presentation Landscape & Greenway for 3/5/20 hearing
 11. Applicant Presentation Block 42 for 3/12/20 hearing
 12. Applicant Presentation Block 45 for 3/12/20 hearing
 13. Applicant Presentation Landscape for 3/12/20 hearing
 14. Copy of Staff Presentation from 3/12/20 hearing
- H. Post 1st hearing
1. Staff Report and Recommendation dated 6/4/20
 2. Staff Memo to Commission dated 6/4/20
 3. Copy of Staff Presentation from 6/11/20 hearing
 4. Staff Report and Recommendation dated 7/2/20
 5. Staff Memo to Commission dated 6/25/20
- I. Appeal

[Evidence received before the first City Council appeal hearing on September 10, 2020]

1. Final Finding and Decision of the Design Commission, sent 7/17/20
2. Mail list of Final Finding and Decision of the Design Commission, sent 7/17/20
3. Revised Final Finding and Decision of the Design Commission, sent 7/24/20
4. Mail list of Revised Final Finding and Decision of the Design Commission, sent 7/24/20
5. Appeal Statement and Appeal Form, received 8/7/20
6. Mailed Notice of Appeal, sent 8/12/20
7. Notice of Appeal Mailing List from 8/12/20
8. OTAK AM Blocks Bank Stabilization Code Requirement, 8/14/20
9. Council Packet, 8/24/20
10. CAB Packets, 8/24/20

11. Testimony from Roger Gertenrich, 9/1/20
12. Testimony from Karl Keener, 9/2/20
13. Testimony from Neil McFarlane, 9/4/20
14. Testimony from Donna Severson, 9/4/20
15. Testimony from Diana Harris & Gary Piercy, 9/4/20
16. Testimony from Korleen Kraft, 9/8/20
17. Testimony from Ellen Lippman 9/8/20
18. Testimony from Tony Cooper, 9/8/20
19. Testimony from Bonnie Losick, 9/8/20
20. Testimony from Martin Ramirez, 9/8/20
21. Testimony from Mary Henry de Tesson, 9/8/20
22. Testimony from Reach, 9/8/20
23. Testimony from Oregon Smart Growth, 9/8/20
24. Testimony from Portland Business Alliance, 9/8/20
25. Testimony from OSF, 9/9/20

[Evidence received the day of and during the first City Council hearing on September 10, 2020]

26. Testimony from Jeanne Galick, 9/10/20
27. Letter from Appellant's representative Carrie Richter, 9/10/20
28. Staff presentation to Council, 9/10/20
29. Applicant's presentation to Council, 9/10/20
30. Appellant's presentation to Council 9/10/20
31. Testimony Sign-up Sheet from 1st hearing, 9/10/20

[Evidence received after the first City Council hearing on September 10, 2020 with the record held open until September 17, 2020]

32. Testimony from Anna Bar, 9/14/20
33. Testimony from Erin Foster, 9/14/20
34. Testimony from Jeanne Galick, 9/14/20
35. Testimony from Myriam Loyo Li, 9/14/20
36. Testimony from Mike Houck Urban Green Spaces, 9/14/20
37. Testimony from Jeff Steffeck, 9/15/20
38. Testimony from Alison Small, 9/16/20
39. Testimony from Mike Herzog, 9/16/20
40. Allan Gladstone email, 9/26/20
41. Testimony from Allan Gladstone, 9/26/20
42. Testimony from Charles Neerdaels, 9/16/20
43. Testimony from Charles Stake, 9/16/20
44. Testimony from Claudia Barnard, 9/16/20
45. Testimony from Dennis Steinman, 9/16/20
46. Testimony from James Herb Chonghee Suh, 9/16/20
47. Testimony from Jill Neuwelt, 9/16/20
48. Testimony from John Judkins, 9/16/20
49. Testimony from Kathy Lucas, 9/16/20
50. Testimony from Kenneth Kaneko, 9/16/20
51. Testimony from Kit Archie, 9/16/20
52. Testimony from Leslie Roman, 9/16/20
53. Testimony from Mary Kallenberg, 9/16/20
54. Testimony from Mueez Deen, 9/16/20
55. Testimony from Natalia and Charles Neerdaels, 9/16/20
56. Testimony from Neil, 9/16/20
57. Testimony from Nicolas Knapp, 9/16/20
58. Testimony from Patricia Knapp, 9/16/20
59. Testimony from Rick Roman, 9/16/20
60. Testimony from Ruth Bach, 9/16/20

61. Tom Gornick email, 9/16/20
62. Testimony from Tom Gornick, 9/16/20
63. Testimony from William Savery, 9/16/20
64. Testimony from Craig McCoy, 9/17/20
65. Testimony from Ivy Glick, 9/17/20
66. Testimony from Jeffrey Lang NP Greenway, 9/17/20
67. Testimony from Meredith Savery, 9/17/20
68. Testimony from Micah Meskel Portland Audubon, 9/17/20
69. Testimony from Michael Parks, 9/17/20
70. Testimony from Pat Scruggs, 9/17/20
71. Testimony from Richard Glick, 9/17/20
72. Testimony from SPNA, 9/17/20
73. Testimony from Tucker Geerds, 9/17/20
74. Applicant's letter with new evidence including proposed revisions, 9/17/20
75. Applicant's concepts for revisions to Abernethy Plaza, 9/17/20
76. Applicant's concepts for revisions to Ecoroofs, 9/17/20
77. Applicant's concepts for revisions to Greenway, 9/17/20
78. Applicant's concepts for revisions to Maker Space Place, 9/17/20
79. Applicant's renderings of revised concepts, 9/17/20

[Rebuttal evidence allowed until September 24, 2020]

80. Testimony from Laura Ramirez, 9/23/20
81. Testimony from Mike Houck Urban Green Spaces, 9/23/20
82. Testimony from Ruth Percival, 9/24/24
83. Bureau of Transportation (PBOT) statement, 9/24/20
84. Appellant's Rebuttal letter, 9/24/20
85. Appellants Rebuttal email with video link, 9/24/20
86. Applicant's Rebuttal letter, 9/24/20
87. Exhibit B of Applicant's Rebuttal letter, 9/24/20
88. Attachment A to Exhibit B of Applicant's Rebuttal letter, 9/24/20
89. Applicant's Revised Detailed Plans, 9/24/20

[Documents received after the record closed on September 24, 2000]

90. Staff memo to Council, 9/29/20
91. Appellant letter to City Council, 9/30/20
92. Applicant letter to City Council, 9/30/20
93. Commissioner Fritz statement, 10/6/20