



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

Ted Wheeler, Mayor  
Rebecca Esau, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER**

CASE FILE: LU 17-275072 CU AD (PC # 17-202316)  
REVIEW BY: Hearings Officer  
WHEN: June 20, 2018, at 9:00 AM  
WHERE: 1900 SW 4<sup>th</sup> Ave., Suite 3000  
Portland, OR 97201

**BUREAU OF DEVELOPMENT SERVICES STAFF: ANDREW GULIZIA / [ANDREW.GULIZIA@PORTLANDOREGON.GOV](mailto:ANDREW.GULIZIA@PORTLANDOREGON.GOV)**

**GENERAL INFORMATION**

**Applicant:** Jim Denson  
Waste Management of Oregon, Inc.  
7277 NE 55<sup>th</sup> Ave.  
Portland, OR 97218

**Project Manager:** Mike Conway  
Wallis Engineering  
215 W 4<sup>th</sup> St.  
Vancouver, WA 98660

**Property Owner:** Wastech, Inc.  
PO Box 1450  
Chicago, IL 60690

**Site Address:** 701 N Hunt St.

**Legal Description:** INC PT VAC ST BLOCK 1, SWINTON; BLOCK 2 INC PT VAC ST LOT 1&4 LOT 2&3, SWINTON; INC PT VAC ST BLOCK 3 EXC S 72.5', SWINTON; BLOCK 2, CANCEL ACCOUNT / SWINTON, BLOCK 2, INC PT VAC ST LOT 1&4, LOT 2&3, MACH & EQUIP SEE R282131 (R816100100) FOR LAND & IMPS

**Tax Account No.:** R816100010, R816100100, R816100200, R816100101  
**State ID No.:** 1N1E10BD 01500, 1N1E10BD 01400, 1N1E10BD 01200, 1N1E10BD 01400A1

**Quarter Section:** 2129  
**Neighborhood:** Piedmont, contact [landuse@piedmontemerald.com](mailto:landuse@piedmontemerald.com)  
**Business District:** Columbia Corridor Association, contact Debbie Deetz-Silva at 503-978-6044

**District Coalition:** North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099

**Zoning:** IHc, h – Heavy Industrial with Environmental Conservation (“c”) and Aircraft Landing (“h”) overlay zones

**Case Type:** CU AD – Conditional Use Review and Adjustment Review  
**Procedure:** Type III, with a public hearing before the Hearings Officer. The decision of the review body can be appealed to City Council.

**Proposal:** The applicant proposes the following waste-related activities for this site:

- Processing of food waste for use in bio-fuel;
- Sterilization and consolidation of medical waste; and
- 10-day storage of other waste products (including hazardous waste) in sealed containers.

The proposed waste processing activities, including storage of waste, would take place inside the existing building on the site. Trucks serving the facility would use the existing paved vehicle area which surrounds the building. The only proposed exterior changes are a new gate for vehicles exiting onto N Albina Avenue, a new overhead truck door on the north side of the building, and approximately 1,200 square feet of additional landscaping in an area that's currently paved.

The applicant expects up to 79 trucks to visit the site daily, and the facility would operate 24 hours a day, 365 days a year. No waste disposal is proposed on this site; all waste would be transported elsewhere after being processed through this facility.

Zoning Code Section 33.254.080.A requires waste-related uses to be set back at least 100 feet from lot lines that abut I (Industrial) zones and at least 200 feet from lot lines that abut the OS (Open Space) zone. In addition, Zoning Code Section 33.254.080.B requires these setback distances to be landscaped to the L1 standard, which requires specific numbers of trees, shrubs, and ground cover plants. A 6-foot-tall fence is required on the interior side of the landscaped setbacks, and an additional row of shrubs and trees is required adjacent to the fence (the L3 standard).

Most of the perimeter of this site abuts I-zoned land, except for part of the west lot line which abuts OS-zoned land. The existing developed area (building and vehicle area) on the site does not meet the minimum setbacks from the lot lines. While the existing developed area is surrounded by trees and vegetation, this vegetated area is not formally landscaped to meet the specific tree and shrub requirements of the Zoning Code. A 6-foot-tall fence also surrounds the developed area of the site, but this fence is not located on the interior side of the landscaped setback, as required.

In order to maintain the existing development, fencing, and vegetation, the applicant requests approval of the following Adjustments:

- To reduce the minimum setback requirements in Zoning Code Section 33.254.080.A (100 feet from I zones and 200 feet from the OS zone) to match the existing setback distances to the building and vehicle area shown in Exhibit C-1; and
- To waive the landscaping and fencing requirements in Zoning Code Section 33.254.080.B.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

- Zoning Code Section 33.815.220.A-I (Conditional Use Review); and
- Zoning Code Section 33.805.040.A-F (Adjustment Review).

## ANALYSIS

**Site and Vicinity:** The site is composed of 3 tax lots and totals about 4.3 acres in area. The site is developed with an approximately 31,250-square-foot, one-story building and surface vehicle area. The developed area of the site is surrounded by vegetation on all sides. A 6-foot-tall cyclone fence also surrounds the developed area. The driveway access to the site is from N Albina Avenue, a paved local service street. The southern boundary of the site also abuts N Hunt Street, which is gravel. The Columbia Slough abuts the site to the north. The surrounding area is characterized by one-story industrial buildings with adjacent paved or unpaved exterior storage or vehicle areas.

North Columbia Boulevard is 2 blocks south of the site, and public right-of-way for a ramp to the I-5 freeway abuts the site to the west.

**Zoning:** The IH zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate, including those not desirable in other zones due to their objectionable impacts or appearance.

The Environmental Conservation (“c”) overlay zone is intended to conserve important environmental features and resources while still allowing compatible development. New development and exterior modifications to existing development must meet environmental standards or are subject to environmental review. In this application, no new development is proposed for the portion of the site within the “c” overlay.

The Aircraft Landing (“h”) overlay zone provides safer operating conditions for aircraft near Portland International Airport by limiting the height of structures and vegetation. No changes to the existing building height are proposed with this application.

**Land Use History:** City records indicate the following prior land use reviews for this site:

- LUR 99-00900 CU EN AD: 2000 approval of a Conditional Use Review, Environmental Review, and Adjustment Review for a materials recovery facility (waste-related use). The use approved in this review was later replaced with an outright-permitted Manufacturing and Production use, so the Conditional Use rights for the site were lost.
- MCF 7-71 CS: 1971 Multnomah County review for a landfill use. No further information related to this review was found.

**Agency Review:** A “Request for Response” was sent to City agencies May 7, 2018. The following Bureaus responded:

- The Bureau of Environmental Services (BES) reviewed the proposal and stated that “the proposed sanitary waste disposal and stormwater management are acceptable to BES.” (Exhibit E-1)
- The Portland Bureau of Transportation responded to the transportation-related approval criteria. Details of this response are below under “Zoning Code Approval Criteria.” (Exhibit E-2)
- The Water Bureau provided information about water service and raised no objections to the proposal. (Exhibit E-3)
- The Fire Bureau pointed out Fire Code requirements that are applicable to the site, but raised no objections to the proposal. (Exhibit E-4)
- The Police Bureau stated that police services are adequate for the proposed development. (Exhibit E-5)
- The Site Development Review Section of BDS responded with information on erosion control and flood hazard area requirements that would apply at the time of building permit review, but raised no objections to the proposal. (Exhibit E-6)
- The Life Safety Review Section of BDS responded with information on building permit requirements, but raised no objections to the proposal. (Exhibit E-7)

- The Urban Forestry Division of Portland Parks & Recreation responded with no concerns. (Exhibit E-8)

**Neighborhood Review:** A “Notice of Public Hearing” was mailed May 30, 2018. As of the date of this report, staff has received no written responses from notified neighbors or the Neighborhood Association.

## ZONING CODE APPROVAL CRITERIA

### Conditional Use Review

#### **33.815.220 Mining and Waste Related**

These approval criteria allow these uses in locations where their large size and potential nuisance and environmental impacts will not harm surrounding land uses. The approval criteria are as follows:

- A.** There are adequate nearby lands available for the development of more intense industrial uses;

**Findings:** The site is in the IH (Heavy Industrial) zone, which allows various types of industrial use with minimal development standards. The IH zone allows development to cover 100% of the site area (Zoning Code Section 33.140.220.B, Table 140-2).

The applicant’s narrative (Exhibit A-10) includes an aerial photo of the IH-zoned area around this site which shows a significant amount of land that appears open and underdeveloped. The applicant also mentioned the City’s Industrial Lands Atlas ([www.portlandoregon.gov/bps/47561](http://www.portlandoregon.gov/bps/47561)), which identified several vacant or underutilized properties near the site which could be developed with more intensive industrial uses.

Furthermore, the subject site is developed with an industrial building that covers only about 17% of the site area, and the proposed waste processing activities would take place inside this existing building. The only proposed exterior changes are a new gate for vehicles exiting onto N Albina Avenue, a new overhead truck door on the north side of the building, and some additional landscaping. Nothing about the proposal would make this site more difficult to be used or redeveloped with a more intensive industrial use in the future.

For these reasons, staff finds this criterion is met.

- B.** The proposed use will not significantly alter the overall industrial character of the area, based on the existing proportion and type of industrial uses;

**Findings:** The industrial area around the subject site is characterized by one-story industrial buildings with adjacent exterior storage or vehicle areas. The subject site is also developed with a one-story industrial building surrounded by vehicle area. The waste processing activities, including the storage of waste material, would take place inside the existing industrial building, and trucks serving the facility would use the existing paved vehicle area. The only proposed exterior changes are a new gate for vehicles exiting onto N Albina Avenue, a new overhead truck door on the building, and some additional landscaping. Therefore, the proposal would not perceptibly alter the existing industrial character of the subject site, and the proposed use would appear very similar to other industrial uses in the area. Staff finds the proposal would not significantly alter the industrial character of the area, and that this criterion is met.

- C.** There will be no significant health or safety risk to nearby uses;

**Findings:** Waste processing activities and storage of waste materials would take place inside the existing building, and truck trailers would be loaded and unloaded directly from the building using overhead loading doors. The applicant submitted an off-site impacts and nuisance mitigation plan (Exhibit A-11) which addressed health and safety issues, and a recommended condition of approval would require continual implementation of the off-site impacts and nuisance mitigation plan.

To control rodents, insects, and scavenging birds that may be attracted by food waste, the off-site impacts and nuisance mitigation plan requires that loading doors are kept closed and materials are processed in a timely manner. The tip floor and processing equipment would be washed as necessary to prevent vector attraction, and electrical discharge insect control devices would be installed in the tip floor area. In addition, the applicant would contract with an exterminator to provide periodic evaluations and vector control services as needed. The recommended condition of approval for implementation of the off-site impacts and nuisance mitigation plan would require these vector control measures to be maintained.

The applicant proposes – and recommended conditions of approval would require – that all medical wastes are brought into and out of the building in sealed containers, and that all hazardous waste is transported in sealed, Oregon Department of Transportation-approved containers which are never opened on the subject site.

The site would not be open to the public, and the property is surrounded by 6-foot-tall fencing.

For these reasons, and with the conditions of approval, staff finds there would be no significant health or safety risk to nearby uses. This criterion is met.

- D.** There will not be significant detrimental environmental impacts to any nearby environmentally sensitive areas;

**Findings:** The northern portion of the site is within an Environmental Conservation (“c”) overlay zone that abuts the Columbia Slough. However, no new development or ground disturbance is proposed near the Columbia Slough or within the “c” overlay zone. The proposed waste processing activities, including the storage of waste, would take place inside the existing building on the site. A recommended condition of approval would require this. The building is approximately 60 feet from the “c” zone boundary at its closest point and approximately 180 feet from the Columbia Slough. No stormwater or waste would be discharged into the slough. BES noted that stormwater and wastewater are removed from the site by existing sanitary sewer and combined sewer pipes which serve the property (Exhibit E-1).

A portion of the internal truck circulation route illustrated in Exhibit A-14 crosses into the existing vehicle area within the “c” overlay zone. Some of the trucks servicing this site would be carrying hazardous waste. While the hazardous waste would be in sealed containers that are never opened on this site, BES noted in Exhibit E-1 that transporting hazardous waste through “c” overlay zones is prohibited in Zoning Code Section 33.430.090.A. The regulations in Chapter 33.430 do not technically apply since no new development or ground disturbance is proposed in the “c” overlay zone (Zoning Code Section 33.430.070). However, staff finds the Zoning Code’s intent to prohibit hazardous waste transport through “c” overlay zones is relevant to this approval criterion, since any accidental discharge of hazardous waste in the “c” overlay zone, however unlikely, could cause significant detrimental environmental impacts within the “c” overlay zone.

The applicant submitted an alternative circulation plan (Exhibit A-18) which illustrates a circulation path for trucks carrying hazardous waste which avoids the “c” overlay zone. In this revised plan, trucks carrying non-hazardous materials would still cross through the “c” overlay zone. Staff is concerned that a requirement for trucks carrying different types of materials to use different internal circulation routes would be difficult to enforce over time. Staff finds this approval criterion would not be met without a revised plan that removes all truck movements from the “c” overlay zone.

As of the date of this report, staff finds this approval criterion is not met for the reasons described above. However, staff continues to work with the applicant on revisions that staff can support for purposes of this approval criterion. Staff anticipates submitting an additional memo into the record before the public hearing which includes plan revisions and findings that this criterion is met.

- E.** The proposed use adequately addresses potential nuisance-related impacts such as litter;

**Findings:** Since waste-processing activities, including the storage of waste materials, would be inside the existing building, and waste materials would enter and leave the building in sealed containers, no litter issues are expected. The applicant submitted a detailed off-site impacts and nuisance mitigation plan (Exhibit A-11). This plan includes a signed statement from a professional engineer certifying that the proposal complies with the off-site impacts requirements in Zoning Code Chapter 33.262. The requirements in Zoning Code Chapter 33.262 protect neighboring properties from noise, odor, vibration, or glare impacts. Nothing about the waste-processing activities inside the building would cause unusual noise, vibration, or glare impacts, and odor neutralizing equipment would be used in the building for odor control. The applicant’s plan also includes specific measures for vector control, as discussed in the findings for criterion C, above. With a condition of approval that the applicant’s off-site impacts and nuisance mitigation plan contained in Exhibit A-11 is continually implemented and enforced, staff finds this criterion is met.

- F.** Public services.

1. The proposed use is in conformance with the street designations shown in the Transportation Element of the Comprehensive Plan;
2. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, or other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; and safety for all modes; and

**Findings:** The Portland Bureau of Transportation (PBOT) reviewed the application and submitted the following response (Exhibit E-2):

*The transportation related approval criterion related to the proposed Conditional Use that must be addressed are found in Zoning Code Section 33.815.220.F “Mining and Waste-Related Uses”. To address the approval criteria, the applicant submitted a professional Transportation Impact Study(TIS) prepared by Lancaster Engineering.*

*PBOT’s Traffic Engineer reviews the TIS and notified the applicant of several outstanding informational items on January 9, 2018. This included the need for additional information on site circulation and how truck movements through the site would operate in concert with loading bay activities without impacting the egress driveway. To date, the applicant*

*has not provided this additional information. However, in recent communication the applicant has indicated that they intend to submit additional to address staff concerns.*

*Additionally, PBOT is aware that the applicant is working with BDS related to proposed vehicle use within the Conservation overlay zone and that this may result in a change to the proposed vehicle circulation patterns through the site. Due to the outstanding issues related to vehicle circulation through the site and the potential for site plan revisions to address the Conservation overlay zone, PBOT cannot support this request at this time.*

Based on this response from PBOT, and the lack of any other PBOT findings in the record as of the date of this report, staff finds the approval criteria in D.1 and D.2, above, are not met. However, staff continues to work with the applicant on revisions that both BDS and PBOT can support. Staff anticipates submitting an additional memo into the record before the public hearing which includes plan revisions and findings from both BDS and PBOT that these criteria are met.

3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

**Findings:** The Water Bureau reviewed the proposal and raised no concerns, noting that water service is available from an existing main in the abutting public right-of-way (Exhibit E-3). The Police Bureau reviewed the application and stated that police can serve the proposal (Exhibit E-5). The Fire Bureau reviewed the proposal and raised no objections to approval (Exhibit E-4), meaning they are capable of serving the proposed use. The Bureau of Environmental Services stated that “the proposed sanitary waste disposal and stormwater management are acceptable to BES” (Exhibit E-1). For these reasons, staff finds this criterion is met.

- G. The proposal complies with the regulations of Chapter 33.254, Mining and Waste-Related Uses;

**Findings:** Each of the applicable regulations of Zoning Code Chapter 33.254 are either met or would be met with if the Adjustment Review discussed later in this report is approved. Specific findings are below following each standard or group of standards.

### **33.254.020 Limitations**

**A. Accessory uses.** *Concrete batching, asphalt mixing, rock crushing, or clay bulking in connection with a Mining use are prohibited except in IH and IG zones.*

**B. Hazardous wastes.** *The disposal of hazardous wastes, as defined by OAR 340.100 to 340.110, is prohibited.*

**Findings:** No concrete batching, asphalt mixing, rock crushing, or clay bulking is proposed. While some hazardous waste containers would be stored temporarily on the site, no hazardous waste disposal on the site is proposed. A condition of approval is recommended to prohibit the disposal of hazardous wastes. With the condition of approval, the regulations of Zoning Code Section 33.254.020 are met.

**33.254.030 Location and Vehicle Access**

*Uses must be located so that vehicle access is restricted to Major City Traffic Streets or to streets in Freight Districts, as designated in the Transportation Element of the Comprehensive Plan.*

**Findings:** The site is located within a Freight District designated in the Transportation Element of the Comprehensive Plan. This standard is met.

**33.254.040 Operations**

**A. On-site queueing.** *The site layout must include adequate areas to accommodate the peak number of vehicles expected to come to the site at any one time.*

**Findings:** PBOT reviewed the application with respect to on-site queueing and submitted the following response (Exhibit E-2):

*The transportation related approval criterion related to the proposed Conditional Use that must be addressed are found in Zoning Code Section 33.815.220.F “Mining and Waste-Related Uses”. To address the approval criteria, the applicant submitted a professional Transportation Impact Study(TIS) prepared by Lancaster Engineering.*

*PBOT’s Traffic Engineer reviews the TIS and notified the applicant of several outstanding informational items on January 9, 2018. This included the need for additional information on site circulation and how truck movements through the site would operate in concert with loading bay activities without impacting the egress driveway. To date, the applicant has not provided this additional information. However, in recent communication the applicant has indicated that they intend to submit additional to address staff concerns.*

*Additionally, PBOT is aware that the applicant is working with BDS related to proposed vehicle use within the Conservation overlay zone and that this may result in a change to the proposed vehicle circulation patterns through the site. Due to the outstanding issues related to vehicle circulation through the site and the potential for site plan revisions to address the Conservation overlay zone, PBOT cannot support this request at this time.*

Based on this response from PBOT, and the lack of any other PBOT findings in the record as of the date of this report, staff cannot find that the on-site queueing regulation is met. However, staff continues to work with the applicant on revisions that that both BDS and PBOT can support. Staff anticipates submitting an additional memo into the record before the public hearing which includes plan revisions and findings from both BDS and PBOT that this regulation is met.

**B. Processing of waste products.** *In the case of Waste-Related uses other than landfills and composting operations, all activities relating to the receiving, sorting, processing, storage, transfer, and shipping of wastes must take place entirely within enclosed structures. The transfer of waste products from one vehicle or container to another vehicle or container and the cleaning of such vehicles or containers must be done within a containment area designed to ensure that waste materials will be confined so as to not enter the groundwater or any water body.*

**C. Liquid waste pretreatment.** *The use, if other than a sewage treatment facility, must provide pretreatment of any liquids being discharged into the City’s stormwater or sanitary disposal system. The pretreatment must meet the standards of the Bureau of Environmental Services.*

**D. Posted information.** *A sign must be posted near the entrance to the site, stating the telephone number(s) where a representative of the use may be reached at all times.*

**Findings:** All activities relating to the receiving, sorting, processing, storage, transfer, and shipping of wastes would take place entirely within the existing building on the site. The applicant states that all transfers of waste products from one vehicle or container to another vehicle or container and any cleaning of containers would also take place inside the existing building. A condition of approval is recommended to require this.

The applicant states that no liquid waste other than domestic wastewater from the office area will be discharged into the City sewer (Exhibit A-10). A condition of approval is recommended to require this. BES reviewed this proposal and expressed support for approval, though BES noted that pretreatment of liquid waste may be required for future development proposals (Exhibit E-1).

Finally, the applicant stated that the required sign would be posted upon approval of this application. To ensure compliance, a condition of approval for the required sign is recommended.

With stated conditions of approval, staff finds the regulations in B, C, and D, above, are met.

**33.254.050 Traffic Impact Study**

*A traffic impact study must be submitted for the proposed use. As part of the study, measures must be proposed for mitigating traffic impacts resulting from vehicles going to and from the site. The study must also include a plan and mechanisms to ensure that traffic, especially trucks, travel primarily on truck streets or Major City Traffic Streets when near the site. The traffic study must include information on proposed access points, hours of operation, types of vehicles, and number of trips.*

**Findings:** The applicant submitted a traffic impact study (Exhibit A-4) which was reviewed for conformance with this and other regulations by PBOT. Zoning Code Section 33.254.050 is met.

**33.254.060 Nuisance Mitigation Plan**

*The applicant must submit a mitigation plan that addresses potential nuisance impacts which might be created by the proposed use. The plan must include the following components:*

- A. Off-site impacts.** *The plan must document that the use will comply with the off-site impact standards stated in Chapter 33.262;*
- B. Litter.** *For Waste-Related uses, the plan must address litter generated on the site and litter along roadways leading to the use that is generated by vehicles coming to the site. The plan must also address illegally dumped waste products near the site. The plan must provide for regular litter removal. The plan must also include means to limit litter from vehicles coming to site; and*
- C. Dust, mud, and vector control.** *The plan must provide mechanisms to limit impacts from dust, mud, and disease carrying organisms such as rats and mosquitoes.*

**Findings:** The applicant submitted a detailed off-site impacts and nuisance mitigation plan (Exhibit A-11). This plan includes a signed statement from a professional engineer certifying that the proposal complies with the off-site impacts requirements in Zoning Code Chapter 33.262. The requirements in Zoning Code Chapter 33.262 protect neighboring properties from noise, odor, vibration, or glare impacts. Nothing about the waste-processing activities inside the existing building would cause unusual noise, vibration, or glare impacts, and odor neutralizing equipment would be used in the building for odor control.

Since waste-processing activities would occur inside the existing building, and trucks would carry waste materials to and from the building in sealed containers, no litter issues are expected.

No dust or mud issues are expected, since the waste processing activities would occur indoors and since trucks would access the building using an existing, paved vehicle area.

To control rodents, insects, and scavenging birds that may be attracted by food waste, the applicant states that loading doors would be kept closed and materials would be processed in a timely manner. The tip floor and processing equipment would be washed as necessary to prevent vector attraction, and electrical discharge insect-control devices would be installed in the tip floor area. In addition, the applicant would contract with an exterminator to provide periodic evaluations and vector control services as needed. vector control services as needed.

With conditions of approval requiring the implementation of the off-site impacts and nuisance mitigation plan, staff finds the requirements in Zoning Code Section 33.254.060 are met.

### **33.254.070 Reclamation Plan for Landfills**

*The applicant for a landfill use in the Waste-Related use category must submit a reclamation plan. The Bureau of Environmental Services and BDS will provide a technical review of the plan. Mining uses are subject to State requirements for reclamation plans.*

**A. Contents of the reclamation plan.** *The reclamation plan must include the following:*

1. *Phasing and schedule of work to be conducted;*
2. *Phasing and schedule of reclamation to be conducted;*
3. *Materials to be used in the reclamation;*
4. *The effect of the reclamation on surface and subsurface drainage patterns;*
5. *Plans for future use of the land; and*
6. *A discussion of how the proposed reclamation plan is consistent with the future potential uses of the land, according to the zoning and the Comprehensive Plan designation.*

**B. Performance guarantee.** *The review body as part of the conditional use review may require the applicant to post a bond or other security with the City to ensure the completion of the reclamation plan. The security must comply with the regulations for performance guarantees stated in 33.700.050.*

**Findings:** Since no landfill is proposed, the regulations in Zoning Code Section 33.254.070 are not applicable.

**33.254.080 Setbacks, Landscaping, and Screening**

*Waste-Related uses are subject to the following setback, landscaping, and screening requirements. Mining uses are subject to State requirements for setbacks, landscaping, and screening.*

**A. Setback distance.** *Waste-Related uses must be set back 100 feet from all property and street lot lines that abut C, E, or I zones. A 200 foot setback is required along all property and street lot lines that abut OS or R zones.*

**B. Landscaping and screening requirements.** *The setback must be landscaped to at least the L1 standard. A fence at least 6 feet high must be provided on the interior side of the setback. The fence must be screened by a high hedge meeting the L3 standard. The landscaping standards are stated in Chapter 33.248, Landscaping and Screening. In addition, gates with fencing at least 6 feet high must be provided across all entrances. The property owner must maintain the fencing and gates in good repair.*

**Findings:** The applicant has requested Adjustments to the setback, landscaping, and fencing requirements in Zoning Code Section 33.254.080. As discussed later in this report, staff finds the approval criteria for the proposed Adjustments are met and recommends approval of the Adjustments. With approval of the proposed Adjustments, these requirements would be satisfied.

**33.254.090 Activities in Required Setbacks**

*Extraction, movement, or stockpiling of mineral and aggregate resources or the disposal or storage of waste products within a required setback is prohibited. The tops and toes of cut and fill slopes must remain outside the required setback. Structures, exterior storage, and parking areas for trucks or equipment are not allowed within the required setbacks. Required setbacks includes all setbacks approved by the State for Mining uses.*

**Findings:** No extraction, movement, or stockpiling of mineral or aggregate resources is proposed. No waste disposal or grading is proposed on the site, either. As discussed in the previous section, the applicant has requested an Adjustment to the setback requirements and staff recommends approval of the Adjustment Review. With approval of the Adjustment Review, there would be no structures, parking, or storage within the required setbacks, and Zoning Code Section 33.254.090 would be satisfied.

**33.254.100 Underground Utilities**

*All underground lines and conduits on a mining or landfill site and within 50 feet of the site must be protected from damage from the use. This includes storm and sanitary sewers, and water, gas, and electric lines*

**Findings:** Since the proposal is not for a mining or landfill use, the regulations in Zoning Code Section 33.254.100 are not applicable.

**H.** There is a reclamation or redevelopment plan which will ensure that the site will be suitable for an allowed use when the mining or landfill use is finished; and

**Findings:** Since the proposal is not for a mining or landfill use, this criterion is not applicable.

**I.** Public benefits of the use outweigh any impacts that cannot be mitigated.

**Findings:** Staff has identified no negative impacts from the proposed use which cannot be effectively mitigated as discussed in the findings above. Therefore, this criterion is not applicable.

### **Adjustment Review**

#### **33.805.040 Approval Criteria**

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

- A.** Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** The proposed waste-related use would utilize the existing building and vehicle area on the site. To minimize the exterior changes that would be required, the applicant requests the following Adjustments to the development standards for waste-related uses:

- To reduce the minimum setback requirements in Zoning Code Section 33.254.080.A (100 feet from I zones and 200 feet from the OS zone) to match the existing setback distances to the building and vehicle area shown in Exhibit C-1; and
- To waive the landscaping and fencing requirements in Zoning Code Section 33.254.080.B.

The purposes of the development standards for waste-related uses are stated in Zoning Code Section 33.254.010:

*These regulations:*

- *Reduce the impacts and nuisances resulting from mining and waste-related uses on surrounding land uses;*
- *Reduce the transportation impacts from these uses;*
- *Ensure that land used for these purposes is restored so that it may be reused; and*
- *Provide security measures so that these land uses are not a safety hazard to other land uses or to nearby residents.*

As discussed above in the findings for the Conditional Use Review, no nuisances or negative impacts on surrounding land uses are expected. Waste processing activities would take place inside the existing building, and the applicant submitted a signed statement from a professional engineer certifying the plans would meet the off-site impacts limits in Zoning Code Chapter 33.262 for noise, odor, vibration, and glare (Exhibit A-11).

The Adjustments to the setback, landscaping, and fencing requirements would not cause any additional transportation impacts, since the Adjustments would not increase the size or scope of the operation. The Adjustments would also have no effect on the feasibility of redeveloping the site for a different land use in the future.

While the applicant proposes to maintain the existing vegetation and fencing around the perimeter of the site, staff finds no unusual safety issues that necessitate either large setbacks or a physical barrier. Waste materials would be delivered from closed truck trailers directly into the existing building, and all waste processing activities would take place inside the building. There would be no waste materials visible outside the building or outside the trucks serving the site. Hazardous waste would be subject to State of Oregon safety requirements, and would be in sealed containers that are never opened on the site. For these reasons, nothing about the proposed Adjustments to setbacks, landscaping, and fencing requirements would have any effect on the safety of the operation.

Staff finds the proposed Adjustments equally meet the purposes of the regulations, and that this criterion is met.

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

**Findings:** Because the site is in the IH zone, the applicant must demonstrate that the proposal would be consistent with the classifications of the adjacent streets and the desired character of the area.

Street classifications

The site abuts two street rights-of-way: N Albina Avenue and N Hunt Street. (The site also abuts right-of-way for a ramp to the I-5 freeway, but this is not considered a “street” as defined in Zoning Code Chapter 33.910.) The classifications of the adjacent streets, as identified in the Transportation Element of the Comprehensive Plan, are as follows:

	Traffic	Transit	Bikeway	Pedestrianway	Freight
N Albina Ave.	Local Service	Local Service	Local Service	Local Service	Freight District
N Hunt St.	Local Service	Local Service	Local Service	Local Service	Freight District

Since the proposed Adjustments relate only to setbacks, landscaping, and fencing, and not to the size or scope of the proposed use, approval of the Adjustments would not result in any changes to traffic levels or demand for transit, bike, pedestrian, or freight facilities. Therefore, staff finds the proposal is consistent with the adjacent street classifications and that this aspect of the criterion is met.

Desired character of area

The “desired character” of an area is defined in Zoning Code Chapter 33.910 as the preferred or envisioned character based on the character statement of the zone and any adopted area plans. The site is zoned IH (Heavy Industrial) and is within the boundaries of the Albina Community Plan and the Piedmont Neighborhood Plan.

The character statement for the IH zone in Section 33.140.030.D reads:

*This zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The development standards are the minimum necessary to assure safe, functional, efficient, and environmentally sound development.*

The proposed Adjustments would allow a waste-related use to locate on the site and use the existing building and vehicle area. While the existing setbacks, fencing, and landscaping do not meet the standards of Zoning Code Section 33.254.080, the developed area of the site is still buffered by trees and vegetation on all sides. (However, staff does not find that landscape buffering is necessarily needed in this case to avoid negative impacts on the surrounding area.) Nothing about the proposed Adjustments would make the development less safe, less functional, less efficient, or less environmentally sound.

Staff finds two objectives from the Albina Community Plan to be relevant to the Adjustment for the landscaping and fencing requirements:

*Policy Area I: Land Use, Policy C: A Pattern of Green, Objective 7: Encourage use of native plants and low-maintenance landscape designs which reduce water and energy consumption and the application of fertilizer and pesticides in both public and private areas.*

*Policy X: Environmental Values, Objective 7: Improve water quality in the Columbia Slough to transform the slough into an environmental and recreational resource which is clean enough for swimming and fishing and which provides a significant habitat for wildlife.*

The perimeters of the site, including along the Columbia Slough to the north, are undeveloped and landscaped with established trees and vegetation that require little maintenance. The proposed Adjustment to the landscaping and fencing requirements allow the existing landscaping and fencing to remain undisturbed. Without this Adjustment, the fence would have to be moved to the interior side of the landscaped area, and new trees, shrubs, and groundcover plants would need to be planted to meet the specific Zoning Code requirements for landscaping. Some existing vegetation might need to be removed to accommodate these improvements, and the ground disturbance that would be necessary for this work could affect runoff into the Columbia Slough. Additional water and fertilizer might also be necessary while the new plantings become established. For these reasons, staff finds that leaving the existing, established trees and vegetation undisturbed is more consistent with these policies than the alterations that would be required without the Adjustment.

The site is also within the boundaries of the Piedmont Neighborhood Plan. However, none of that plan's policies or objectives were found to be relevant to either of the proposed Adjustments.

#### Summary

The proposed Adjustments are consistent with the street classifications and with the desired character of the area. Staff finds this 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; and

**Findings:** The applicant requests the following Adjustments to the development standards for waste-related uses:

- To reduce the minimum setback requirements in Zoning Code Section 33.254.080.A (100 feet from I zones and 200 feet from the OS zone) to match the existing setback distances to the building and vehicle area shown in Exhibit C-1; and
- To waive the landscaping and fencing requirements in Zoning Code Section 33.254.080.B.

The purpose of the IH zone is to provide “areas where all kinds of industries may locate, including those not desirable in other zones due to their objectionable impacts or appearance” (Zoning Code Section 33.140.030.D). Waste-related use is listed under the “Industrial Use” category in Zoning Code Chapter 33.920, so the location of the waste-related use on an IH-zoned site is consistent with the purpose of the IH zone. The cumulative effect of the Adjustments does not make the proposal less consistent with this purpose. Staff finds this criterion is met.

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

**Findings:** City-designated scenic resources are identified on the official zoning maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

- E.** Any impacts resulting from the Adjustment are mitigated to the extent practical; and

**Findings:** As discussed previously, waste materials would be delivered from closed truck trailers directly into the existing building, and all waste processing activities would take place inside the building. There would be no waste materials visible outside the building or outside the trucks serving the site. Hazardous waste would be subject to State of Oregon safety requirements, and would be in sealed containers that are never opened on the site. Therefore, the larger setbacks, relocated fencing, and more formal landscaping plan that would be required without the Adjustments would not prevent any negative impacts. Since no negative impacts are identified which would require mitigation, staff finds this criterion is not applicable.

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

**Findings:** The northern portion of the site is within an Environmental Conservation (“c”) overlay zone. However, no new development is proposed within this area, and the proposed Adjustments would not cause any new ground disturbance within or near the environmental zone. In fact, as discussed in the findings for approval criterion B, above, the Adjustment to the fencing and landscaping requirements would prevent further disturbance in this area. Staff finds this criterion is met.

## DEVELOPMENT STANDARDS

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

## CONCLUSIONS

The proposal is for a waste-related use on an existing industrial site. There are adequate nearby lands available for more intense industrial uses, and the proposed use would not significantly alter the industrial character of the area. The proposal would not create unusual nuisances or health and safety impacts on neighboring properties.

The proposed Adjustments to the setback, fencing, and landscaping standards are consistent with the purposes of the standards, with the desired character of the area, and with the overall purpose of the IH zone. The Adjustments would have no negative impacts on the surrounding area or on the environmental zone that would require mitigation.

Staff is working with the applicant on revisions which remove truck movements from the existing vehicle area in the Environmental Conservation (“c”) overlay zone, since some of the material delivered to the facility would be hazardous waste containers. With revisions that remove truck movements from the “c” overlay zone, staff anticipates a finding that the Conditional Use Review approval criterion related to environmental zones (Zoning Code Section 33.815.220.D) is met. Since staff is unable to find that this approval criterion is met as of the date of this report, staff recommends denial of the proposal at this time. However, staff anticipates submitting an

additional memo into the record before the public hearing which includes plan revisions and findings that this criterion is met. Staff anticipates recommending approval of the proposal with conditions at that time.

### **TENTATIVE STAFF RECOMMENDATION**

(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)

Denial of a Conditional Use Review for the waste-related use described in this report and in Exhibit A-10; and

Denial of the following Adjustments:

- To reduce the minimum setback requirements in Zoning Code Section 33.254.080.A (100 feet from I zones and 200 feet from the OS zone) to match the existing setback distances to the building and vehicle area shown in Exhibit C-1; and
- To waive the landscaping and fencing requirements in Zoning Code Section 33.254.080.B

However, if the applicant submits revisions which allow staff to find that Conditional Use approval criterion 33.815.220.D is met by the time of the public hearing, staff will recommend:

Approval of a Conditional Use Review for the waste-related use described in this report and in Exhibit A-10; and

Approval of the following Adjustments:

- To reduce the minimum setback requirements in Zoning Code Section 33.254.080.A (100 feet from I zones and 200 feet from the OS zone) to match the existing setback distances to the building and vehicle area shown in Exhibit C-1; and
- To waive the landscaping and fencing requirements in Zoning Code Section 33.254.080.B

per the approved site plan, Exhibit C-1, subject to the following conditions:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C-1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 17-275072 CU AD."
- B. The off-site impacts and nuisance mitigation plan in Exhibit A-11 must be continually implemented and enforced.
- C. The applicant must post a sign near the entrance to the site with the telephone number where a representative may be reached at all times.
- D. All medical waste must be brought into and out of the building in sealed containers.
- E. All hazardous waste must be transported in sealed containers approved by the Oregon Department of Transportation. Hazardous waste containers must not be opened on the site.
- F. No hazardous waste disposal is permitted on the site.
- G. All storage of waste material must be inside the building.

- H. All transfers of waste material from one vehicle or container to another and any cleaning of containers must be done inside the building.
- I. Except for stormwater and domestic wastewater from the office area, no liquid waste may be discharged into the City sewer.

**Procedural Information.** The application for this land use review was submitted on November 27, 2017, and was determined to be complete on May 2, 2018.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on November 27, 2017.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120 days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant extended the 120-day review period by 245 days (Exhibit A-2). With this extension, **the 120 days will expire on: May 2, 2019.**

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the recommendation of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**This report is not a decision. The review body for this proposal is the Hearings Officer, who will make the decision on this case.** This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The review body may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the record. Your comments to the Hearings Officer can be mailed c/o the Hearings Officer, 1900 SW 4<sup>th</sup> Ave., Suite 3100, Portland, OR 97201 or faxed to 503-823-4347.

You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant. This staff report will be posted on the Bureau of Development Services website. Look at [www.portlandonline.com](http://www.portlandonline.com). On the left side

of the page use the search box to find Development Services, then click on the Zoning/Land Use section, select Notices and Hearings. Land use review notices are listed by the District Coalition shown at the beginning of this document. You may review the file on this case at the Development Services Building at 1900 SW 4<sup>th</sup> Ave., Suite 5000, Portland, OR 97201.

**Appeal of the decision:** The decision of the Hearings Officer may be appealed to City Council, who will hold a public hearing. If you or anyone else appeals the decision of the Hearings Officer, City Council will hold an evidentiary hearing, one in which new evidence can be submitted to them. Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision. This additional time allows for any appeal of this proposal to be held as an evidentiary hearing.

**Who can appeal:** You may appeal the decision only if you write a letter which is received before the close of the record on hearing or if you testify at the hearing, or if you are the property owner or applicant. Appeals must be filed within 14 days of the decision. **An appeal fee of \$5,000 will be charged** (one-half of the BDS application fee, up to a maximum of \$5,000).

**Appeal fee waivers:** Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

**Recording the final decision.** If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

Planner's Name: Andrew Gulizia

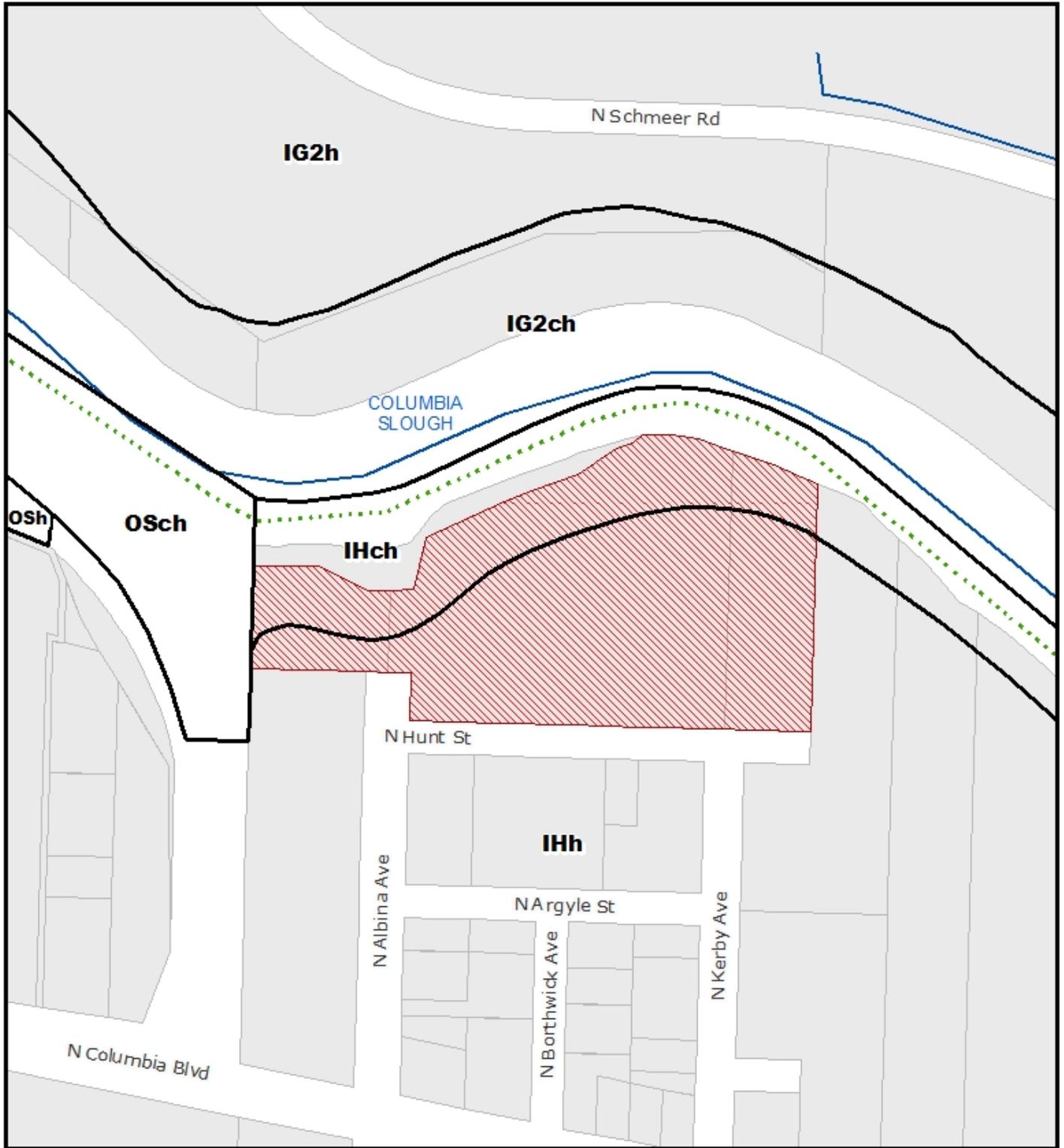
Date: June 8, 2018

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
  - 1. Applicant's original narrative
  - 2. Request for evidentiary hearing and waiver of 120-day decision deadline
  - 3. Applicant's revised narrative, received April 24, 2018
  - 4. Transportation impact study
  - 5. Approved driveway design exception
  - 6. Applicant's letter in response to incompleteness determination letter, received April 24, 2018
  - 7. Original off-site impacts and nuisance mitigation plan
  - 8. Industrial and commercial survey
  - 9. Originally submitted plans, prior to revision (superseded by Exhibits A-12 through A-16 and Exhibit C-1)
  - 10. Applicant's final revised narrative, received May 15, 2018
  - 11. Revised off-site impacts and nuisance mitigation plan, received May 18, 2018
  - 12. Plan cover sheet
  - 13. Existing conditions plan
  - 14. Circulation plan
  - 15. Utility plan
  - 16. Tree plan
  - 17. Building photographs
  - 18. Alternative circulation plan, received June 5, 2018
  - 19. Letter from applicant's transportation engineer to PBOT, received June 7, 2018
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site plan (attached)
- D. Notification Information:
  - 1. Request for Response, dated May 7, 2018
  - 2. Posting letter sent to applicant, dated May 8, 2018
  - 3. Applicant's statement certifying posting
  - 4. Mailing list for Notice of Public Hearing
  - 5. Mailed Notice of Public Hearing
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Portland Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Police Bureau
  - 6. Site Development Review Section of BDS
  - 7. Life Safety Review Section of BDS
  - 8. Bureau of Parks, Urban Forestry Division
- F. Correspondence – none received
- G. Other:
  - 1. Land use application form and receipt
  - 2. Incompleteness determination letter, dated December 18, 2017
- H. Hearing Exhibits

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING



-  Site
-  Stream
-  Recreational Trails

File No.	LU 17-275072 CU AD
1/4 Section	2129
Scale	1 inch = 200 feet
State ID	1N1E10BD 1400
Exhibit	B Nov 30, 2017

