



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

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Date: August 26, 2020
To: Interested Person
From: Kate Green, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 20-155964 GW

GENERAL INFORMATION

Applicant: Jake Hofeld | Waterways Consulting, Inc
 1020 SW Taylor Street, Suite 380 | Portland, OR 97205

Owner/Agent: Linnton Water Credits LLC | Attn: Rob Marinai
 337 17th St #200 | Oakland, CA 94612

Site Address: 10504 NW St Helens Road

Legal Description: TL 100 21.15 ACRES, SECTION 02 1N 1W; TL 800 0.91 ACRES, SECTION 02 1N 1W

Tax Account No.: R961021110, R961021120

State ID No.: 1N1W02C 00100, 1N1W02B 00800

Quarter Section: 1919,2019

Neighborhood: Linnton, contact at Richard Barker at chair@linntonna.org

Business District: None

District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

Plan District: None

Other Designations: 100-Year Floodplain; *Lower Willamette River Wildlife Habitat Inventory – Resource Site 5.3 (Rank IV)*

Zoning: *Base Zone:* Heavy Industrial (IH)
Overlay Zones: Greenway River General (g), Greenway River Water Quality (q), Greenway River Industrial (i), Prime Industrial (k), Scenic Resource (s)

Case Type: GW – Greenway Review

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant is requesting to change a condition of approval of a past land use decision, specifically LU 14-239831 GW. On February 3, 2015, an approval for a Greenway

Review was issued for a resource enhancement/future mitigation area at the former Linnton Plywood Mill site. The purpose of this project was to restore the 23-acre industrial site to a more natural condition. This restoration project included a new public pedestrian path to be constructed from the intersection of NW 107th and NW Front Avenues to a location near a designated Greenway Viewpoint at the north end of the site.

The approved Greenway Review (LU 14-239831 GW) for this work included a Condition of Approval (Condition F) requiring the public pedestrian path be constructed of pervious asphalt or concrete surface. Upon construction commencement, it was determined that pervious surfaces are not appropriate for the site conditions as construction activities on the site indicated poor soil drainage. Therefore, the applicant has stated the need to change the trail surface from pervious to impervious material. No other changes to past Conditions of Approval are proposed as part of this review.

Per 33.730.140, requests for changes to conditions of approval are processed using the current procedure assigned to the land use review. Therefore, the request to change the issued condition of approval requires approval through a Type II Greenway Review.

Relevant Approval Criteria:

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

- ❖ 33.440.350, Greenway Approval Criteria
- ❖ *Willamette Greenway Design Guidelines*

ANALYSIS

Site and Vicinity: The Linnton Mill site is a former, highly developed industrial site with approximately 23 acres and over 1,800 linear feet of shoreline along the Willamette River. This shoreline includes aquatic near shore habitat, semi-riparian banks, and highly disturbed upland areas. The site was formerly developed with the Linnton Mill, a dock, in-water pilings, shoreline armoring, a sheet pile wall, small isolated patches of riparian vegetation, and a highly disturbed industrial upland area that was historically used for a plywood mill, and later as a sand and gravel storage and sorting operation. At this time, the former development has been removed and the site is under construction for the regrading and restoration efforts approved in a 2014 Greenway Review.

Greenway Features: The 1986 *Lower Willamette River Wildlife Habitat Inventory* (LWRWHI), identifies the project area as *Site 5.3a*, and notes the site has had high physical and human disturbance. The site enhancement project approved in the 2014 Greenway Review is intended to recreate a natural setting on this site, composed of new stream channels, wetlands and upland areas, and eventually planted with thousands of native trees, shrubs and groundcovers.

Zoning: The site is located near the Willamette River in the Heavy Industrial (IH) zone, with the Greenway River Industrial (i), River General (g) and River Water Quality (q) overlay zones.

The **Heavy Industrial (IH)** zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. This 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, and will be applied to this proposal at the time of building permit review.

The **Greenway River General (g)** overlay zone allows for uses and development which are consistent with the base zoning, which allow for public use and enjoyment of the riverfront, and which enhance the river's natural and scenic qualities.

The **Greenway River Water Quality (q)** overlay zone is designed to protect the functional values of water quality resources by limiting or mitigating the impact of development in the setback.

The **Greenway River Industrial (i)** overlay zone encourages and promotes the development of river-dependent and river-related industries which strengthen the economic viability of Portland as a marine shipping and industrial harbor, while preserving and enhancing the Willamette River's riparian habitat and providing public access where practical.

The **Prime Industrial (k)** overlay is intended to protect land that has been identified in the Comprehensive Plan as Prime Industrial, and to prioritize these areas for long-term retention.

The **Scenic Resource (s)** overlay establishes height limits within view corridors to protect significant views and additional landscaping and screening standards to preserve and enhance identified scenic resources.

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

- LUR 94-00462 GW – Approval of a Greenway Review for Columbia River Sand & Gravel warehousing and distribution of dredge spoils placed on the site
- LU 01-00430 GW – Approval of a Greenway Review for Glacier Northwest Sand & Gravel compliance review for prior owner's non-compliant developments
- LU 14-239831 GW – Approval of a Greenway Review to remove an existing sawmill and associated pilings; regrade the site; modify stormwater pipes; and install trail and viewpoint elements

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

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Site Development Section of BDS

Neighborhood Review: A "Notice of Proposal in Your Neighborhood" was mailed **July 17, 2020**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

Title 33.440.350 Greenway Review Approval Criteria

The approval criteria for a Greenway review have been divided by location or situation. The divisions are not exclusive; a proposal must comply with **all** the approval criteria that apply to the site. A Greenway review application will be approved if the review body finds that the applicant has shown all the approval criteria are met.

- A. For all Greenway reviews.** The Willamette Greenway design guidelines must be met for all Greenway reviews.
- B. River frontage lots in the River Industrial zone.**
- C. Development within the River Natural zone.**
- D. Development on land within 50 feet of the River Natural zone.**
- E. Development within the Greenway setback.**
- F. Development riverward of the greenway setback.**
- G. Development within the River Water Quality overlay zone setback.**
- H. Mitigation or remediation plans.**

Findings: Criterion C, D and F do not apply since the site is not in or within 50 feet of the River Natural zone and the trail is not located riverward of the greenway setback.

As outlined in the 2014 land use decision, the proposed trail is intended to provide public access to a new viewpoint along the river's edge. A portion of the trail is within the Greenway setback and the River Water Quality setback. Since the trail is considered river-related development and will be installed in a location that aligns with the public trail designation identified on the site, the trail is allowed developed within those setbacks.

Per 33.272.050, the trail must comply with the standards of Portland Parks and Recreation (PPR) for recreational trails. Initially, at the time of the 2014 Greenway Review, PPR had requested a pervious surface for the trail. Based on subsequent evaluations of the site conditions, PPR is now supportive of an impervious surface (Exhibit G.2).

The proposed change to the paving surface will be consistent with the PPR trail standards and continue to provide for public access. Similarly, the Bureau of Environmental Services, has indicated the proposal includes sufficient stormwater management provisions for the impervious trail surface. Based on these factors, the change in paving is not expected to diminish the enhancement to the habitat values of the riverbank or the improvements to the functional values of the River Water Quality overlay, which are to be provided by the balance of the overall project approved in the 2014 review.

As such, the requested change to the paving surface will meet the applicable approval criteria. Therefore, Condition F of LU 14-239831 GW will be changed, as requested.

Instead of the following:

***F.** The proposed trail, from NW 107th to the northwest property line shall be constructed with a permeable asphalt or pervious concrete surface and shall be inspected and approved prior to final approval of Bureau of Development Services' Building, Zoning or Site Development permits for the resource enhancement project.*

The condition will be changed to:

A. The proposed trail, from NW 107th to the northwest property line (per Exhibit C.2) shall be constructed with asphalt or another paving surface, to the satisfaction of Portland Parks and Recreation, and shall be inspected and approved prior to final approval of Bureau of Development Services permits (Building, Zoning or Site Development) for the resource enhancement project.

With the application of the noted condition, the applicable criteria are met.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

The applicant has requested a Greenway Review in order to change the paving material required by Condition F of LU 14-239831 GW, from a pervious surface to an impervious surface. Portland Parks and Recreation, which oversees the trail standards, is supportive of the paving change. Similarly, the Bureau of Environmental Services, has indicated the proposal includes sufficient stormwater management provisions for the impervious trail surface. Otherwise, the balance of the project will remain consistent with the enhancement efforts set forth in the 2014 review, which were found to satisfy all the applicable Greenway approval criteria. Accordingly, this change to the paving surface can be approved.

ADMINISTRATIVE DECISION

Approval of a Greenway Review to change Condition F of LU 14-239831 GW to allow the paving for the public trail to be changed from pervious to impervious, in substantial conformance with Exhibit C.2, as approved by the City of Portland Bureau of Development Services, signed and dated August __, 2020, and subject to the following condition:

- A.** The proposed trail, from NW 107th to the northwest property line (per Exhibit C.2) shall be constructed with asphalt or another paving surface, to the satisfaction of Portland Parks and Recreation, and shall be inspected and approved prior to final approval of Bureau of Development Services permits (Building, Zoning or Site Development) for the resource enhancement project approved in LU 14-239831 GW.

All other conditions of LU 14-239831 GW remain as outlined in that land use decision.

Staff Planner: Kate Green

Decision rendered by:  **on August 21, 2020**
By authority of the Director of the Bureau of Development Services

Decision mailed: August 26, 2020

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on June 16, 2020, and was determined to be complete on July 14, 2020.

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 June 16, 2020.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: November 11, 2020.**

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

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

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

Appealing this decision. This decision may be appealed, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received by 4:30 PM on September 9, 2020. **Towards promoting social distancing during the COVID-19 pandemic, the completed appeal application form must be e-mailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. An appeal fee of \$250 will be charged. Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations for the appeal of Type II and IIX decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in the file, please contact the planner listed on the front of this decision. The planner can provide some information over the phone. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

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

- *Unless appealed*, the final decision will be recorded after **September 9, 2020** by the Bureau of Development Services.

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

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

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

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a

new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

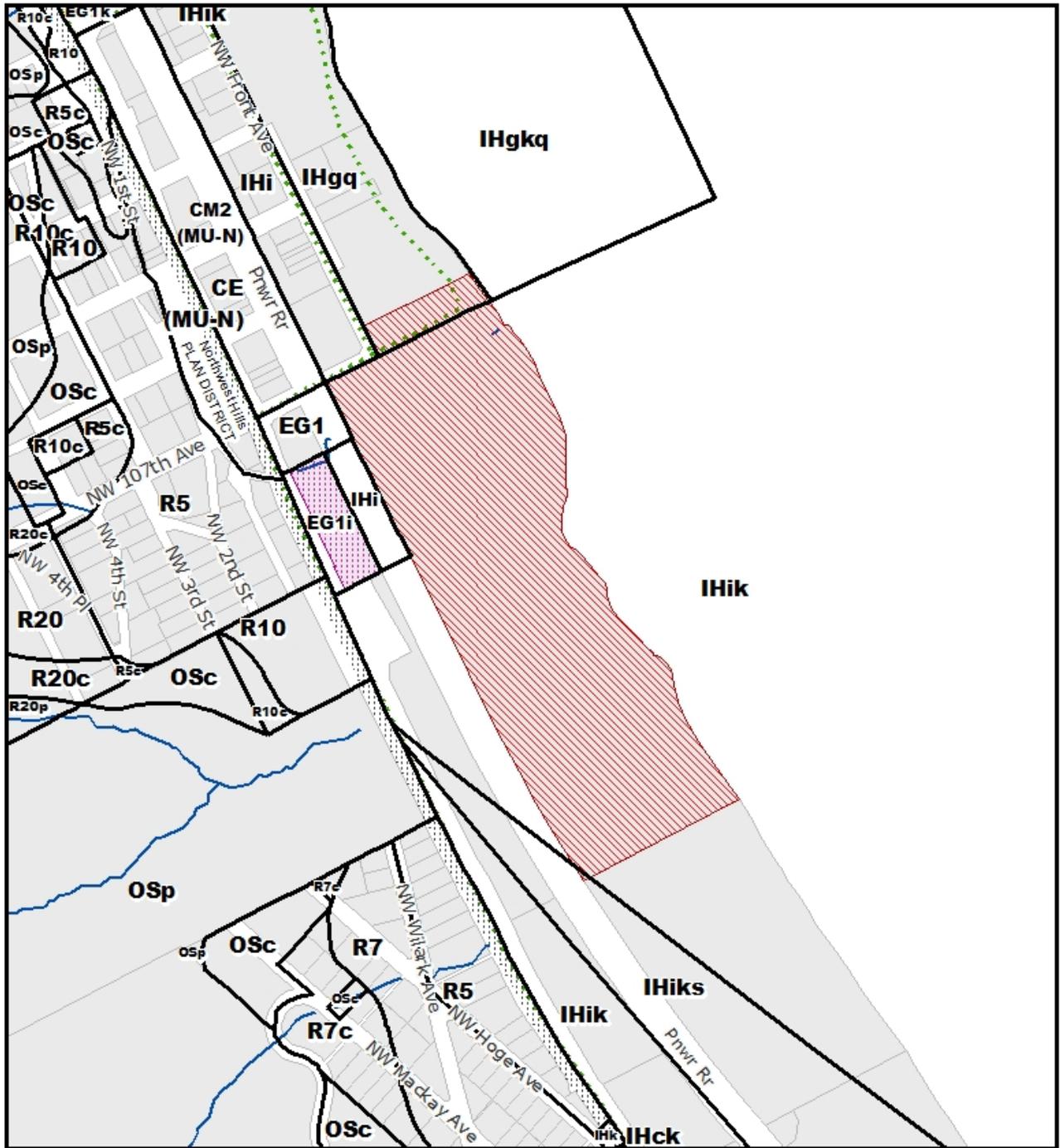
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant's Narrative, June 2020
 - 2. Supplemental Site Plans
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Overall Site Plan
 - 2. Revised Trail Details (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
- F. Correspondence: None Received
- G. Other:
 - 1. Original LU Application
 - 2. Correspondence with Portland Parks and Recreation re: trail surface changes

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
-  Also Owned Parcels
-  Stream
-  Recreational Trails

File No.	LU 20 - 155964 GW
1/4 Section	2019, 1919
Scale	1 inch = 400 feet
State ID	1N1W02C 100
Exhibit	B Jun 30, 2020

