



Hearings Office

City of Portland

1900 SW 4th Avenue, Room 3100, Portland, OR 97201

www.portlandoregon.gov/hearings

email: HearingsOfficeClerks@portlandoregon.gov

phone: 503.823.7307

fax: 503.823.4347



DECISION OF THE HEARINGS OFFICER IN UNCONTESTED CASE

File Number: LU 19-267865 EV GW EN (Hearings Office 4200014)

Applicant/Owner: Roger Pollock | Baja Escaped LLC
11724 S Riverwood Road | Portland, OR 97219

Applicant's Representative(s): Tina Farrelly | Pacific Habitat Services
9450 SW Commerce Circle, Suite 180
Wilsonville, OR 97070

Hearings Officer: Gregory Frank

Bureau of Development Services (BDS) Staff Representative: Morgan Steele

Site Address: 11724 S Riverwood Road

Legal Description: LOT 7 TL 2400, Riverwood

Tax Account Number: R711300510

State ID Number: 1S1E35AC 02400

Quarter Section: 4132

Neighborhood: None

Business District(s): None

District Neighborhood Coalition: None

Other Designations: Unincorporated Multnomah County; Resource Site 117
Multnomah County Project; 100-year floodplain; potential
landslide hazard area

Zoning: Base Zone: Residential 20,000 (R20)
Overlay Zones: Environmental Conservation (c)
Greenway River General (g)

Land Use Review: Type III, EV GW EN, Environmental Violation, Greenway
Environmental

BDS Staff Recommendation to Hearings Officer: Approval

Public Hearing: The hearing was opened at 1:30pm on September 21, 2020 via Zoom Teleconference in the third-floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 2:14 pm. The record was closed.

Testified at the Hearing: None

Hearings Officer Decisions: It is the decision of the Hearings Officer to adopt and incorporate into this decision the facts, findings, and conclusions of the Bureau of Development Services in their Staff Report and Recommendation to the Hearings Officer dated September 10, 2020, and to issue the following approval.

Approval of an Environmental Review for:

- Construction of stairs, landing, gangway, and piles

Approval of an Environmental Violation Review for:

- Removal of illegal development within Wetland A and installation of remediation plantings

Approval of a Greenway Review for:

- Construction of a pool, sanitary sewer line, stormwater facility, and stormwater outfall; and
- Construction of a dock and its associated components (access path and stairs, landing, gangway, and piles)

within the Greenway River general and Environmental Conservation overlay zones, and in substantial conformance with Exhibits C.4 through C.12. Approval is subject to the following conditions:

A. A BDS Zoning Permit is required for inspection of required mitigation plantings, and a separate BDS building permit is required for development]. The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc.).

Permit plans shall include the following statement, ***"Any field changes shall be in substantial conformance with approved LU 19-267865 EV EN GW Exhibits C.4 through C.12."***

Building Permits shall not be issued until a BDS Zoning Permit is issued.

Building Permits shall not be finalized until the BDS Zoning Permit for inspection of mitigation plantings required in Condition C below is finalized.

- B.** Temporary, 4-foot high, bright orange construction fencing shall be placed as depicted on Exhibits C.7 to C.9, Construction Management Plan.
1. All measures provided for sediment control, including sediment fencing, shall be placed inside of the temporary construction fence, if required at permit time.
 2. No mechanized construction vehicles are permitted outside of the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the fenced area and existing paved areas, shall be conducted using handheld equipment.
 3. Trees shall be protected according to tree protection measures provided in Title 11 Tree Code, Chapter [11.60.030 Tree Protection Specifications](#), or as specifically depicted on Exhibit C.9 Tree Plan.
- C.** The applicant shall obtain a BDS Zoning Permit for approval and inspection of a mitigation plan for a total of 356 trees, 411 shrubs, 1,725 ground cover species, in substantial conformance with Exhibits C.10 to C.12, Mitigation Plans. Any plant substitutions shall be selected from the *Portland Plant List* and shall be substantially equivalent in size to the original plant.
1. Permit plans shall show:
 - a. Permit plans shall show the general location of the trees, shrubs and ground covers required by this condition to be planted in the mitigation area and labeled as “new required landscaping”. The plans shall include a 40-foot by 40-foot “typical”, scalable planting layout for each planting zone, and shall illustrate a naturalistic arrangement of plants and should include a planting table listing the species, quantity, spacing and sizes of plants to be planted.
 - 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. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
 4. 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.
 5. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Zoning Permit.
 6. All mitigation and remediation 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 mitigation

plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.

D. The land owner shall maintain the required plantings to ensure survival and replacement. The land owner 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 mitigation plantings for inspection. The permit must be finalized no later than 2 years from the final inspection for the installation of mitigation 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.

E. 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.

Basis for the Decision: BDS Staff Report in LU 19-267865 EV GW EN, Exhibits A through H-6, and the hearing testimony from those listed above.



Gregory Frank, Hearings Officer

October 8, 2020

Date

Application Determined Complete:	June 12, 2020
Report to Hearings Officer:	September 10, 2020
Decision Mailed:	October 8, 2020
Last Date to Appeal:	4:30 p.m., October 22, 2020
Effective Date (if no appeal):	October 23, 2020

Conditions of Approval. 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.

Appeal of the decision: The Hearings Officer’s decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing’s Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer’s decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

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 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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 Original Narrative & Site Plans, December 2019
 - 2. Revised Site Plans, June 2020
 - 3. Geotechnical Report, September 2018
 - 4. Sewer & Stormwater Information
 - 5. Multnomah County Driveway Permit
 - 6. Applicant Response to Incomplete Items, June 2020
 - 7. Extension of the 120-Day Review Period
- B. Zoning Map:
 - 1. Existing Zoning
- C. Plans & Drawings:
 - 1. Pre-Existing Conditions Site Plan
 - 2. Violation Conditions Site Plan
 - 3. Post Remediation Existing Conditions Site Plan
 - 4. Proposed Site Plan & Grading Plan
 - 5. Grading Plan, Temporary Disturbance Areas, & Permanent Disturbance Areas
 - 6. Pool Cross Section & Impact Tables
 - 7. Construction Management Site Plan
 - 8. Construction Management Site Plan
 - 9. Construction Management Notes & Tree Protection Plan
 - 10. Mitigation Planting Plan
 - 11. Mitigation Planting Plan
 - 12. Planting Notes & Tables
- 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. Mailing lists
 - 6. Mailed notices
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Life Safety
 - 4. Site Development Review Section of Bureau of Development Services
 - 5. Lake Oswego Fire Department
 - 6. Multnomah County Right-of-Way
- F. Letters:
 - 1. Robert & Judith Palmer, August 10, 2020

G. Other:

1. Original LUR Application
2. Incomplete Letter

H. Received in Hearings Office:

1. Notice of Public Hearing Steele, Morgan
2. Request to Reschedule Steele, Morgan
3. 2nd Request to Reschedule Steele, Morgan
4. Revised Notice of Public Hearing Steele, Morgan
5. Staff Report BDS Hearing Clerk (**attached**) Steele, Morgan
6. Planner PowerPoint Presentation Steele, Morgan



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

STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER

CASE FILE: LU 19-267865 EV GW EN
Unincorporated Multnomah County
PC # 19-232694

REVIEW BY: Hearings Officer

WHEN: September 21, 2020, 1:30 PM

Due to the City's Emergency Response to COVID19, this land use hearing will be limited to remote participation via Zoom. The instructions to observe and participate can be accessed online:

<https://zoom.us/j/91362952330>

Meeting ID: 913 6295 2330

It is important to submit all evidence to the Hearings Officer. The Oregon Land Use Board of Appeals (LUBA) will not accept additional evidence if there is an appeal of this proposal.

BUREAU OF DEVELOPMENT SERVICES STAFF: MORGAN STEELE / MORGAN.STEELE@PORTLANDOREGON.GOV

GENERAL INFORMATION

Applicant/Owner: Roger Pollock | Baja Escapes Llc
11724 S Riverwood Road | Portland, OR 97219-8473

Representative: Tina Farrelly | Pacific Habitat Services
9450 SW Commerce Circle, Suite 180 | Wilsonville, OR 97070
tf@pacifichabitat.com | 503.570.0800

Site Address: 11724 S RIVERWOOD ROAD

Legal Description: LOT 7 TL 2400, RIVERWOOD

Tax Account No.: R711300510

State ID No.: 1S1E35AC 02400

Quarter Section: 4132

Neighborhood: None

Business District: None

District Coalition: None

Plan District: None

Other Designations: Unincorporated Multnomah County; Resource Site 117-*Multnomah County Project*; 100-year floodplain; potential landslide hazard area

Zoning: *Base Zone:* Residential 20,000 (R20)
Overlay Zones: Environmental Conservation (c), Greenway River General (g)

Case Type: EV GW EN – Environmental Violation, Greenway, Environmental Reviews
Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to the Oregon Land Use Board of Appeals (LUBA).

PROPOSAL:

The applicant is requesting a Greenway Review and Environmental Review for development including a new pool, stormwater facility, sanitary sewer pipe, and dock/river access on the Willamette River. This application is also intended to provide for the correction of a violation within the Environmental Zone including fill and development within a wetland outside of the necessary approvals – specifically, an Environmental Review. The proposed project is located on the west bank of the lower Willamette River (river mile 18.65) in Unincorporated Multnomah County; approximately 1,000 feet north of Elk Rock Island.

The total anticipated new disturbance resulting from the proposed project, as depicted on the applicant's Site Plan, amounts to 3,788 square feet (beyond that already occupied by the existing development and violation area). In order to meet the landscaping standards per 33.440.230 - *Landscaping* for the Greenway Review and to provide adequate remediation, restoration, and mitigation for project-related impacts within the Environmental and Greenway overlay zones, the applicant is proposing to plant a total of 356 trees, 411 shrubs, 1,725 ground cover species, covering approximately 22,000 square feet within the Greenway and Environmental zones.

The proposed gangway and dock access are considered alterations to existing development and will be in the resource area of the Environmental Conservation (c) overlay zone. Certain environmental standards must be met to allow the work to occur by right. In this case, the proposed development will exceed the standards for maximum disturbance area allowed by 33.430.140.D; therefore, a Type II Environmental Review is required. In addition, the site lies within the Greenway River General (g) overlay zone and the proposed development occur within, landward, and riverward of the greenway setback. Greenway Review applies to changes to the land and structures in the water within the Greenway overlay zones; therefore, Type II Greenway Review is also required. Lastly, violations within the Environmental Zone that include unauthorized fill within a wetland must be processed through a Type III Environmental Violation Review. All three reviews will be processed concurrently through one, Type III review procedure.

RELEVANT APPROVAL CRITERIA:

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

- **Environmental Review 33.430.250.E & .G**
- **Greenway Review 33.440.350**
- ***Willamette Greenway Design Guidelines***

ANALYSIS

Site and Vicinity: The subject property is situated in an unincorporated area of Multnomah County approximately .5 miles north from the city boundaries of Portland and Lake Oswego. The property is situated between S Riverwood Road and the west bank of the Willamette River. The proposed project is located at river mile 18.65 of the lower Willamette River in south Portland, specifically the Dunthorpe neighborhood. The 0.87-acre site includes a single-dwelling residence, attached garage, with expanses of lawn and ornamental landscaping typically found in south Portland neighborhoods. Within the immediate vicinity of the project area, the shoreline is developed with low-density residential homes (1 unit per 20,000 square feet) and private docks.

The site lies on the west bank of the Willamette River. The ordinary high water (OHW) elevation of the river in the project area is approximately 22 feet (City of Portland datum). Ordinary low water (OLW) is recorded at 5-foot elevation (City of Portland datum). In the eastern portion of the project parcel, the riverbank is moderately sloped with grades ranging from 19 percent between the OLW elevation and the ordinary high water OHW elevation to 30 percent between the OHW and top of bank. Site topography is gently sloped (7 percent) on the floodplain terrace above the top of bank and more steeply sloped above the 100-year floodplain elevation (36.2' NAVD88) up to the existing residence (35 percent). The existing home is approximately 150 feet west of the OHW of the river.

One 0.10-acre wetland is located riverward of the top of bank and is protected within the City's Environmental Conservation overlay zone. The entirety of the wetland was filled in and retaining walls and a staircase installed by the applicant outside the necessary approvals (Environmental Review). The Environmental Violation Review portion of this land use review aims to legalize the stairs and restore the wetland to its pre-existing condition while providing uplift to its functional values. Natural resources on and around the site are described in greater detail below, in the "Environmental and Greenway Resources" section of this report.

Zoning: The site is zoned Residential 20,000 (R20) base zone, with Greenway River General (g) and Environmental Conservation (c) overlay zones (see zoning on Exhibit B).

The Residential 20,000 base zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 12,000 square feet. The regulations of this zone will be shown to be met at building permit time; these provisions are not specifically addressed through this Greenway, Environmental, and Environmental Violation Review.

The Greenway overlay zone is intended to protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along Portland's rivers; establish criteria, standards, and procedures for the development of land, change of uses, and the intensification of uses within the Greenway; and implement the City's Willamette Greenway responsibilities as required by ORS 390.310 to 390.368 and Metro's Title 3.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive.

The purpose of this land use review is to ensure compliance with the regulations of the Greenway and Environmental zones, including remediation for past violations.

Environmental and Greenway Resources: The application of the environmental and greenway overlay zones is based on detailed studies that have been carried out within separate areas throughout the City. Environmental resources and functional values present in these zones are described in inventory reports for the separate study areas. This project site is mapped within Resource Site No. 117-A, Dunthorpe in the *Inventory of Natural, Scenic and Open Space Resources for Multnomah County Unincorporated Urban Areas (2002)*.

Natural resources typically observed within the project vicinity as detailed in the *Inventory of Natural, Scenic and Open Space Resource for Multnomah County Unincorporated Urban Areas*, Resource Site 117-A, Dunthorpe, include the following:

Resource Types: Perennial and seasonal streams, palustrine wetlands, springs, forest, fish and wildlife, special status species, groundwater, open space.

Functional Values: Primary: water quality, flood attenuation/storage, fish and wildlife habitat (including special status species), slope stabilization/soil anchoring, groundwater recharge and

discharge, water supply, heritage. Secondary: sediment trapping and pollution/nutrient removal, storm drainage, land use buffering, education, recreation, and scenic amenities.

Terrestrial Habitat: Mixed forest assemblages: Douglas-fir (*Pseudotsuga menziesii*) / vine maple (*Acer circinatum*), – hazelnut (*Corylus cornuta*) / sword fern (*Polystichum munitum*) / English ivy (*Hedera helix*) and Oregon white oak (*Quercus garryana*) – Pacific madrone (*Arbutus menziesii*) / snowberry (*Symphoricarpos albus*).

Aquatic Habitat: Perennial, seasonal streams; springs; lady fern (*Athyrium filix-femina*) – skunk cabbage (*Lysichiton americanus*) and sitka willow (*Salix sitchensis*) / reed canarygrass (*Phalaris arundinacea*) wetlands

- Riverine, Tidal, Open Water, Permanent (Willamette River)
- Riverine, Unconsolidated Bottom, Permanently Flooded
- Riverine, Intermittent Streambed, Seasonally Flooded
- Palustrine, Scrub-Shrub and Emergent, Seasonally Flooded

Habitat Rating: 55 (the habitat rating range for all City and County sites is 6-106)

Impact Analysis and Mitigation Plan: A full description of the proposal was provided on page 2 of this report. The following discusses development alternatives that were considered by the applicant. The following additionally describes the proposed construction management plan and mitigation proposal.

Development Alternatives: The applicant provided an in-depth alternatives analysis which can be found in the Application Case File (Exhibit A.1) and which is summarized below. The applicant's analysis considered alternatives to building the dock as well as alternative dock designs, locations, and layouts. As noted by the applicant in their narrative, requirements from other regulatory agencies (Army Corps of Engineers, National Marine Fisheries Service, Oregon Department of Fish and Wildlife) were considered when determining feasible and practicable alternatives for this proposal.

Alternative Sites:

The applicant purchased the subject property in 2017. At that time, there were two additional single-family residential properties with river access that were available for purchase in the southwest Portland area (11100 and 11350 S Riverwood Road). Neither property available for purchase has an existing river dock. Both properties are constrained by steep slopes and greenway and environmental overlays. As such, the selected property was chosen for non-dock related reasons.

No build:

The no-build alternative would not provide stairs or a river dock to moor the applicant's motorboat or personal watercraft (i.e. jet skis). During the winter months, the applicant would use dry storage for the vessels. During the late spring, summer, and early fall months when recreational river use is high, the applicant would anchor these vessels in the nearshore area adjacent to the property. Access from the residence to the anchored vessels would be by foot down the steep bank slope and through the wetland and shallow-water areas below the OHW. The no-build alternative aligns with the project-specific criteria as follows:

1. Recreational access to the river would be by foot down the steep bank slope and through wetland and shallow water areas. Given the uneven terrain, fluctuating water levels and current velocities, and low water temperatures, the life safety of this type of river access is low compared to the build alternatives. In addition, the no-build alternative is more likely to result in damage to the vessels because they are not as securely anchored as they would be with one of the build alternatives.
2. There would be no permanent structures on the bank or below the OHW; however, the anchored moorage of vessels would occur during much of the late spring, summer, and early fall months. In addition to the wetland and shallow water habitat disturbance that

would result from the vessel anchors, frequent foot traffic down the steep bank and through the wetland and shallow water area is likely to result in vegetation removal, erosion, and localized turbidity/sedimentation.

3. The no-build alternative would not include riparian plantings or aquatic habitat elements beyond those required for the violation remediation as these features would impede river access from the property.

Given the disturbance required to the shoreline vegetation, Wetland A, and the shallow water habitat to access anchored vessels, the Applicant did not evaluate the use of a permanent mooring buoy to provide vessel anchorage.

Build Alternatives:

The proposed project design was evaluated to determine if it was feasible from an engineering, environmental, and economic standpoint, and that it was consistent with the underlying project purpose to serve the residential property with safe recreational river access. The primary constraining factors for the project design are the steep bank slopes, high speed boat activity adjacent to the project area, shallow depth to bedrock, presence of wetlands below the OHW, large extent of shallow water, and the extreme range of conditions in the Willamette River.

Because of the large extent of shallow water, there is not a build option that will place the dock in water that provides 15 to 20 feet depth below the dock at low water without greatly exceeding the Oregon Department of State Lands (DSL) proprietary limits (25 percent of the channel width) in the project location. Three build alternatives were evaluated. Each of the build alternatives has the following features in common:

❖ *Access to the riverfront down steep riverbank*

The slope between the top of bank and the OHW elevation is approximately 30 percent. The installation of stairs along the 30 percent slope is necessary to provide safe access to the riverfront. To minimize additional slope disturbance, the upper wooden stairs are proposed to remain in place as they are above the OHW elevation and can provide the necessary safe access to the riverfront and proposed landing for the dock.

❖ *Dock size and configuration needed for stability given the high-speed boat activity*

Boat activity in the project reach of the Willamette River results in significant wave action. The waves are generated in the deeper water areas and travel shoreward where the wave amplitude (height) increases and the wave speed and wavelength (distance between wave peaks) decrease as the shallower areas are encountered. As such, the proposed dock in this location must be adequately sized and oriented to remain as stable and as safe as possible for people on its surface and boats attached to it. Two of the build alternatives (Alternatives 1 and 2) include a linear dock that is 40 to 46 feet long, 8 feet wide dock with a landing area for the gangway that is 8 feet long by 4 feet wide (400 square feet / 0.01 acre) and all of the build alternatives orient the dock parallel to flow and the shoreline. The other dock layout (Alternative 3, preferred) is a boat slip option that shortens the dock length, but provides similar stability and vessel protection through its wider float outline. Although other dock configurations are possible, they either decrease the capacity for light transmittance (as with a more massive dock that uses heavier materials and more structural support) or decrease the stability and protective capacity of the dock (as with a dock perpendicular to the shore where waves would vertically displace the dock over a longer distance and boats would not be buffered from waves by the dock).

❖ *Dock size and configuration needed to accommodate Applicant's watercraft*

The proposed dock must be able to accommodate the applicant's watercraft, including a motorboat (25 feet long) and two jet skis (approximately 10 feet long each). Because of shallow water depths during OLW, it is desired to be able to accommodate some or all watercraft on the outer/riverward edge of the dock to minimize maneuvering on the inner/shoreward side of the dock.

❖ *Shore footing above the OHW elevation and wetland*

To avoid impacts to the wetland or substrate in the Willamette River, the shore footing for the build options is located above the wetland boundary and OHW elevation.

❖ *Gangway to span wetland – The length of the shoreward gangway must be adequate to span Wetland A.*

Alternative 1 – Stiff arm to floating, anchored gangway and dock:

Alternative 1 utilizes one elevated gangway segment, a floating gangway segment anchored with concrete blocks, and a dock anchored with concrete blocks. Utilizing anchors avoids the cost and logistical difficulties of drilling piles.

Alternative 1 includes the following:

- Concrete shore footing with an 8-inch diameter guide pipe for the gangway connection;
- One 95-foot long elevated stiff-arm gangway (0.01 acre of elevated overwater structure);
- 120 feet of floating gangway in four 30-foot segments. The floating gangway includes a stiff-arm landing and winch attachment area on the shoreward 30-foot segment and a dock connection and winch attachment area on the riverward 30-foot segment (0.02 acre of floating overwater structure);
- A floating dock with an 8-foot by 46-foot dock area (0.01 acre of floating overwater structure); and
- Four 6-foot by 2-foot concrete block anchors (0.001-acre surface area).

The stiff arm landing and winch attachment area is needed to provide additional floatation material to support the 4-5,000 pounds of load from the stiff arm, to provide an area where the stiff arm can pivot in response to fluctuating river stages, and to provide an attachment site for two of the anchor winches. The dock connection and winch attachment area are needed to provide an attachment site for two of the anchor winches and to provide additional stability to the dock, which as discussed above, will experience significant wave action.

The floating gangway length is the longest possible that will not put the dock so far out in the channel that additional anchoring measures and stability features are needed to protect the dock and its users from the range of flows experienced in the Willamette River and the extreme waves experienced in the area. This distance is also not expected to increase the dock's exposure to floating woody debris that passes downstream during and after storm events relative to other docks in the area.

Alternative 2 – Drilled piles for 2 elevated gangway segments and a linear dock:

The depth to bedrock in the project reach is very shallow. The Geologic Map of the Lake Oswego Quadgrangle shows a basalt map unit (Tgsg) in the project reach, which is consistent with the shallow bedrock layer that the dock designer has encountered for nearby projects. The shallow depth to bedrock precludes standard vibratory and/or impact hammer installation methods for piles that would support an elevated gangway. Pile installation would be accomplished through drilling, which greatly increases the project cost and logistics as it requires the use of specialized equipment and methods (i.e. a rotary drill rig and pipe encasing system). The specialized equipment and operators are not readily available and are significantly more expensive than standard installation equipment and operators.

Alternative 2 includes the following:

- Concrete shore footing with an 8-inch diameter guide pipe for the gangway connection;
- Two 100-foot long 5-foot wide elevated gangway segments (0.02 acres of elevated overwater structure);
- Four (4) 16-inch diameter drilled piles; two (2) positioned at the connection between the two gangway segments and two (2) positioned at either end of the proposed dock (0.0003 acres of surface area); and
- A floating dock with a 46-foot by 8-foot main dock area and an 8-foot by 4-foot gangway landing area (400 square feet of floating overwater structure).

According to the dock designer, a 100-foot long gangway segment can be fabricated in coordination with a registered, professional engineer. The total length of the dock and gangways would be approximately 207 feet, including the two elevated gangway segments and the dock (includes the gangway landing area and dock width). The floating portion of the project would be approximately 120 feet from the OLW line, and the depth of the water beneath the dock at low water would be approximately 5 feet.

The gangway landing area is needed to provide additional floatation material to support the 4-5,000 pounds of load from the riverward gangway segment, to provide an area where the gangway can pivot in response to fluctuating river stages, and to provide additional stability to the dock.

Alternative 3 – Drilled piles for 3 elevated gangway segments and a boat slip dock:

As described above, the depth to bedrock in the project reach precludes standard vibratory and/or impact hammer installation methods for piles that would support an elevated gangway. Pile installation would be accomplished through drilling, which greatly increases the project cost and logistics as it requires the use of specialized equipment and methods (i.e. a rotary drill rig and pipe encasing system). The specialized equipment and operators are not readily available and are significantly more expensive than standard installation equipment and operators.

Alternative 3 includes the following:

- Concrete shore footing with a 10-inch diameter guide pipe for the gangway connection;
- Three 100-foot long 5-foot wide elevated gangway segments (0.03 acres of elevated overwater structure);
- Four (6) 16-inch diameter drilled piles; four (4) positioned at the connections between the three gangway segments and two (2) positioned at either end of the proposed dock (0.0004 acres of surface area), and
- A floating dock with a 35-foot by 20-foot main dock outline and an 8-foot by 4-foot gangway landing area. The central portion of the dock will have a boat slip and the overall surface area of dock will result in approximately 400 square feet of floating overwater structure.

According to the dock designer, a 100-foot long gangway segment can be fabricated in coordination with a registered, professional engineer. The total length of the dock and gangways would be approximately 325 feet, including the three elevated gangway segments and the dock (includes the gangway landing area and dock width). The floating portion of the project would be approximately 200 feet from the OLW line, and the depth of the water beneath the dock at low water would be approximately 10 feet.

The gangway landing area is needed to provide additional floatation material to support the 4-5,000 pounds of load from the riverward gangway segment, to provide an area where the gangway can pivot in response to fluctuating river stages, and to provide additional stability to the dock.

Discussion of considerations for the selected dock alternative:

A nearby dock with a floating gangway has experienced significant sedimentation in the nearshore area, so much so that the dock is not useable during low river stages during much of the summer. It is possible that an increased sedimentation rate would occur with Alternative 1 because of the larger amount of floating material and its location as near as 6 feet from OLW. In contrast, it is not anticipated that there would be a significant increase in sedimentation with Alternatives 2 or 3. Based on recently obtained bathymetric data for the Willamette River adjacent to the subject property, both the stiff arm and the western portion of the floating gangway for Alternative 1 would bottom out during OLW. As this is not an acceptable on-going impact to shallow water habitat, Alternative 1 was rejected.

For Alternatives 2 and 3, although the dock will be in a shallow-water area with a water column depth of less than 15 to 20 feet as measured at OLW, routine maintenance dredging is not proposed nor is it anticipated that routine maintenance dredging will be required with the selection of Alternative 2 or 3. Flow in the project location is believed to be sufficient to dissipate fuels and other pollutants from vessels and water depth is sufficient to prevent the new dock from grounding out during normal low flow conditions. Further, the proposed dock meets the applicable SLOPES IV design criteria for, in-water work period, floatation material, and new or replacement float surface area and will provide mitigation for unavoidable impacts to the riparian and aquatic habitat.

The National Marine Fisheries Service (NMFS) reviewed the proposal for Alternative 2 in coordination with the Army Corps of Engineers (Corps) review of the proposal for a dock. Alternative 2 was the preferred alternative when the Joint Permit Application (JPA) was originally submitted. Based on feedback from NMFS, the project would not be consistent with applicable regulations (SLOPES) unless there is a minimum of 10 feet of water depth beneath the dock at OLW. As such, the owner commissioned a bathymetric survey of the river adjacent to the property to determine if such water depths were present within the 25% channel width limitation imposed by DSL. Based on the survey results, the only location riverward of the subject property is approximately 300 to 325 feet from the OHW elevation at the northeastern corner of the project area. Alternative 3 places a dock in this location and utilizes a boat slip layout that will fit in the small space that is within 25% of the channel width, does not encroach upon the neighbor's river frontage, and has at least 10 feet of water depth at OLW.

To summarize, the proposed dock and gangways (Alternative 3) utilizes a concrete footing with a 10-inch diameter pile above the OHW elevation, three gangway segments supported by four drilled piles, and a dock with a gangway landing area stabilized by two drilled piles. The dock design is with a 35-foot by 20-foot main dock outline and an 8-foot by 4-foot gangway landing area. The central portion of the dock will have a boat slip and the overall surface area of dock will result in approximately 400 square feet of floating overwater structure. These dimensions will accommodate the applicant's watercraft in the boat slip and on the sides of the dock and will be adequately stable, according to the dock designer.

Construction Management Plan: The construction management plan is shown on Exhibits C.7 and C.8. General construction access will be through the existing paved driveway. The temporary construction staging area will be located in a paved area near the garage structure. The access route will continue through the existing lawn and landscaped area on the south side of the home. Construction and sediment fencing will be installed around the access route and the area needed for construction of the proposed pool and storm facility. These fences will be in place for the duration of construction until final erosion control measures (i.e. plantings) are in place and functional. Tree protection/construction fencing will be installed around an existing 15-inch diameter tree that is adjacent to the driveway. Contractors will be instructed to stay within existing developed surfaces, formal landscaped areas, designated staging areas, or permitted temporary disturbance areas and outside of tree protective fencing.

An additional layer of construction and sediment fencing will be installed around the temporary disturbance areas necessary for installation of the proposed landing and sanitary sewer pipe. This fencing will ensure that the newly planted violation disturbance area and other areas to remain undisturbed will not be impacted during project construction. The barrier between the pool and storm facility construction area and the landing and sanitary sewer pipe construction area will be temporarily removed during construction of these features. No mechanized equipment will be allowed in this construction area or riverward of the greenway setback.

Material excavated for the landing will be placed in a contained vessel and transported to the staging area using a wheelbarrow or similar non-mechanized equipment. From the staging area, the excavated material will be transported to an off-site, upland location for disposal. Following excavation, the 10-inch guide pile will be installed and the landing will be cast in place. Concrete mixing will occur within the staging area, and wet concrete will be transported to the landing location in a contained vessel using a wheelbarrow or similar hand operated, non-mechanized equipment. Concrete waste management will adhere to the standards of the City of Portland's Erosion and Sediment Control manual.

For the gangway system and dock, construction access will be from the river, with only the final attachment of the gangway to the landing conducted by hand from the landing area. All heavy equipment necessary for the installation of the dock, gangway, and associated pilings (i.e., crane, drill) will access the project area via a floating barge. Once the landing and sanitary sewer have been installed, construction and sediment fencing within and riverward of the Greenway setback will be removed. The proposed plantings will be installed by hand without the use of machinery or other equipment.

Unavoidable Impacts: The applicant is proposing to disturb a total of 3,788 square feet of the Environmental and Greenway overlay zones for the construction of all elements of the proposal. Of these 3,788 square feet, 2,572 square feet will be permanently disturbed, while the remainder will be temporarily disturbed. Additional unavoidable impacts will include the temporary loss of vegetative cover in the violation disturbance areas, increased impervious surfaces, and an increase in the potential for surface runoff and erosion. Further, the Willamette River adjacent to the project parcel contains shallow water habitat which is particularly important to juvenile salmon due to its protective qualities. The placement of the gangway/dock over shallow water habitat has the potential to impact these juvenile salmon due to shading. Therefore, the applicant has designed the gangway/dock to minimize these impacts. The proposed dock will have at least 50 percent of the float surface composed of grating with 60 percent open surface area and meets the SLOPES IV standard and ODFW recommendation for light transmission. Open areas will not be used for storage, seating, or other activities that permanently reduce light transmission. The two gangway segments will be 5 feet wide and will have a 100 percent grated walk surface.

Proposed Remediation/Mitigation: As described in the applicant's narrative (Exhibit A.1) and as shown on Exhibits C.10 and C.11, Mitigation Site Plan, the applicant proposes to provide remediation of the existing impacted wetland, removal of invasive species, replanting of temporary disturbance areas, and mitigation for both permanent and temporary impacts to resources by planting 356 trees, 411 shrubs, 1,725 ground cover species, covering approximately 22,000 square feet within the Greenway and Environmental overlay zones. The applicant's mitigation plan proposes to plant all temporary disturbance, mitigation, and remediation areas with a diverse selection of native trees, shrubs, and groundcovers in addition to removing nuisance plants throughout the entirety of the planting areas. The proposed plantings consist of native species found on the *Portland Plant List*.

Land Use History: City records indicate there are prior land use reviews for this site, including: LU 90-200509 (MUP 8-90 WRG), approval for a boat dock. This review occurred under Multnomah County jurisdiction and the City of Portland has no additional information regarding this review.

Agency Review: A "Request for Response" was mailed June 17, 2020 and July 31, 2020. The following Bureaus have responded with no issues or concerns regarding the land use review:

- PBOT
- Life Safety
- Site Development
- Lake Oswego Fire Department
- Multnomah County Department of Transportation

The Bureau of Environmental Services responded with the following comment. Please see Exhibit E.1 for additional details.

Based on this additional information [submitted September 1, 2020], BES has determined that sufficient information has been provided to demonstrate a feasible stormwater management plan for this project. BES has no further objections to approval of the land use type application.

Neighborhood Review: A Notice of a Public Hearing on a Proposal in Your Neighborhood was mailed on June 17, 2020 and July 31, 2020. One written response was received in support of the proposal from a notified property owner. The full response can be found in Exhibit F.1.

ZONING CODE APPROVAL CRITERIA

33.430.250 Environmental Review Approval Criteria

Findings: The approval criteria which apply to the portions of the stairs and dock that are within the Environmental Zone are found in Section 33.430.250.E The approval criteria which apply to the violation (fill in a wetland) are found in Section 33.430.250.G. The applicant has provided findings for these approval criteria and BDS Land Use Services staff has revised these findings where necessary to meet the approval criteria.

E. Other development in the Environmental Conservation zone or within the Transition Area only. In Environmental Conservation zones or for development within the Transition Area only, the applicant's impact evaluation must demonstrate that all of the following are met:

- 1. Proposed development minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review; and**

Findings: The purpose of this criterion is to recognize that some form of development is allowed, consistent with the base zone standards. Impacts of the proposed development are measured relative to the impacts associated with the development normally allowed by the base zone; in this case, the Residential 20,000 base zone where household living is allowed by right.

Project features in the resource area of the Environmental Zone, including stairs, landing, and gangway are accessory to the household living use at the site and were designed and located to minimize the loss of resources and functional values. The stairs and gangway are approximately 3 feet and 5 feet wide and the concrete landing is the minimum size that will provide an adequate anchor point for the gangway. Temporary disturbance areas associated with these features are the minimum necessary to allow for hand equipment and materials to be carried by hand into the work area. No mechanized equipment will be allowed within the Environmental Zone. All temporary disturbance areas will be replanted in accordance with the temporary disturbance replanting standard (33.430.140.I).

The proposed development minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone, *and this criterion is met.*

2. Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;

Findings: This criterion requires the applicant to demonstrate alternatives were considered during the design process, and that there are no practicable alternatives that would be less detrimental to the identified resources and functional values located onsite. According to the *Inventory of Natural, Scenic and Open Space Resources for Multnomah County Unincorporated Urban Areas (2002)*, natural resources typically observed within the project vicinity within Resource Site 117-A, Dunthorpe, include perennial and seasonal streams, palustrine wetlands, springs, forest, fish and wildlife, special status species, groundwater, and open space.

The applicant provided an alternatives analysis (Exhibit A.1) that is summarized in this report on pages 4 to 8. The applicant explored five alternatives, three of which were practicable build alternatives. The alternative site and no-build alternative were rejected and deemed impracticable. The two build alternatives other than the preferred alternative were determined to be too impactful to resources, specifically the Willamette River. For the preferred alternative (Build Alternative 3), the applicant altered the location of the dock structure and minimized the length of the gangway and the size of the dock to the extent practical, decreasing impacts to the Environmental and Greenway overlay zones while still accomplishing the project purpose of providing river recreation to the existing residential use at the site.

While the preferred alternative requires permanent disturbance within the resource area of the Environmental Conservation overlay zone, it also allows for the mitigation and restoration of a large portion of the site within the Environmental Zone outside of development. As shown on Exhibits C.10 through C.12 and noted in the applicant's narrative (Exhibit A.1), 3,558 square feet of site area will be restored by planting native vegetation and removing invasive species. The Preferred Alternative not only satisfies the project purpose, it minimizes impact, to the greatest extent practicable, to identified resources and functional values. *This criterion is met.*

3. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

Findings: The applicant provided a detailed construction management plan (Exhibit A.1), describing access from developed driveways areas, and formal landscaped areas associated with the existing house. The temporary construction staging area will be within the paved parking area adjacent to the attached garage, outside of the Environmental Zone in the western portion of the property. A gravel construction entrance will be installed to minimize the transport of sediment from the project site and straw wattles will be installed downslope of the proposed staging area.

Tree protection fencing will be installed around the sweetgum tree near the landing location. Tree Root Protection Zone (RPZ) signage and/or other access restriction signage will be placed in prominent locations on the tree protective fencing and along the access route between the staging area and the landing site. Contractors will be instructed to stay within existing developed surfaces, formal landscaped areas, or designated staging areas, and outside of tree protective fencing.

Straw wattles will be installed around the area that will be excavated for the concrete footing at the landing. Material excavated for the landing will be placed in a contained vessel and transported to the staging area using a wheelbarrow or similar non-mechanized equipment. From the staging area, the excavated material will be transported to an off-site, upland location for disposal. Following excavation, the concrete footing will be cast in place. Concrete mixing will occur within the staging area, and wet concrete will be transported to the landing location in a contained vessel using a wheelbarrow or similar hand operated, non-mechanized equipment. Concrete waste management will adhere to the standards of the City of Portland's Erosion and Sediment Control manual (most recent version).

For the gangway system and dock, construction access will be from the river, with only the final attachment of the gangway to the landing conducted by hand from the landing. All heavy equipment necessary for the installation of the dock, gangway, and associated pilings (i.e., crane, vibratory hammer, impact hammer, work barges) will access the project area via a floating barge.

Once the landing has been installed and the gangway attached, tree protection and erosion control measures will be removed. Greenway plantings will be installed by hand without the use of machinery or other equipment.

Given these construction management measures, and with conditions ensuring the limits of disturbance are clearly demarcated, it is anticipated that there will be no significant detrimental impacts to resources and functional values in areas designated to be left undisturbed.

This criterion is met.

4. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

Findings: This criterion requires the applicant to assess unavoidable impacts and propose mitigation that is proportional to the impacts, as well as sufficient in character and quantity to replace lost resource functions and values. The proposed Mitigation Plan is described on page 8 of this report. It will offset 2,581 square feet of permanent disturbance area.

The mitigation plan will compensate for impacts at the site for the following reasons:

- ❖ Mitigation plantings will be installed in temporary disturbance areas in addition to 3,558 square feet of site area.
- ❖ The mitigation plantings will increase species diversity to improve wildlife habitat in areas that have minimal native vegetation.
- ❖ The plantings will aid with pollution and nutrient retention and removal, sediment trapping and erosion control.
- ❖ Invasive species will be removed from all planting areas.

Further, the proposed Mitigation Plan will be installed and maintained under the regulations outlined in Section 33.248.040.A-D (Landscaping and Screening). To confirm installation of the required plantings, the applicant will be required to have the plantings inspected upon installation. Then, to confirm maintenance of the required plantings for the initial establishment period, the applicant will be required to have the plantings inspected two years after plantings are installed.

With conditions to ensure that plantings required for this Environmental Review are installed, maintained, and inspected, *this criterion can be met.*

5. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

6. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: The proposed mitigation will occur within the project parcel and the applicant owns the mitigation site. *These criteria are met.*

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

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

Findings: The remediation is proposed in the exact same area as the violation, *and this criterion is met.*

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

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

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

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

Findings: The violation site work will not result in the permanent loss of resources or functional values. In fact, the remediation plan ensures that the resource area of the Environmental Zone will be restored and the expected condition of the area will be improved compared with the pre-existing condition through the planting of native trees, shrubs, and ground covers and on-going nuisance plant management. The proposed remediation plan will ultimately result in significant improvements of the existing wildlife habitat, habitat connectivity/movement corridor, and water quality functions. The overall project, including remediation, mitigation, and additional Greenway and Environmental Zone enhancement plantings, includes the installation of 356 trees, 411 shrubs, 1,725 ground cover species, covering approximately 22,000 square feet within the Greenway and Environmental overlay zones.

The violation site work was conducted during the 2019 In-Water Work Window (IWWW) period for the lower Willamette River. The negative impacts to water quality that resulted from ground disturbance were minimized as rain events were infrequent and low volume. Finally, the remediation work was conducted as quickly as possible, once the applicant received the information necessary from the project's sewer scope contractor, professional land surveyor, and civil engineer. The proposed remediation work included the restoration of original contours, the installation of biobags and jute matting, seeding for temporary erosion control (regreen), and plantings and seeding for permanent erosion control (native trees, shrubs, and seeds. Staff visited the site on August 24, 2020 and observed the remediation area plantings had been installed and were providing significant cover with little die off and a high success rate of survival.

Given the low quality of the pre-existing functional values in the project area, the timing of the violation site work during the dry season, the expected efficiency of proposed temporary erosion control measures (biobags, jute matting, seeding), and the expected establishment of permanent erosion control measures (100 percent coverage of native vegetation), it is reasonably certain that there will be minimal loss of resources and functional values during remediation until the full remediation program is established.

With conditions to ensure that the remediation plantings required for this Environmental Review were installed in accordance with the remediation plan and continue to be maintained during the establishment period, *this criterion can be met.*

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 that all the approval criteria are met.

Response: The proposed project is for a new swimming pool, river dock, stairs, landing, and gangway, stormwater facility, and sanitary sewer line landward, within, and riverward of the greenway setback. The project site does not have a public recreational trail symbol shown on the Official Zoning Map and is not designated with a viewpoint symbol or identified as a view corridor on the Willamette River Greenway Plan map. Further, the subject site is not included in the *Lower Willamette River Wildlife Habitat Inventory* and thus does not have a designated wildlife inventory ranking.

The applicable approval criteria for the proposed project are 33.440.350.A and .F.

33.440.350.A. For all Greenway reviews. The Willamette Greenway design guidelines must be met for all Greenway reviews.

Findings: The Willamette Greenway Design Guidelines address the quality of the environment along the river and require public and private developments to complement and enhance the riverbank area. The Design Guidelines are grouped in a series of eight Issues. Issues A, B and F apply when the Greenway Trail is mapped on the property. Issue D applies to bank treatments. Issues G and H apply to mapped viewpoints and view corridors. Only Issues C and E apply to this proposal.

Issue C. Natural Riverbank and Riparian Habitat: This issue “applies to situations where the riverbank is in a natural state, or has significant wildlife habitat, as determined by the wildlife habitat inventory.” These guidelines call for the preservation and enhancement of natural banks and areas with riparian habitat;

Guidelines:

1. Natural Riverbanks. The natural riverbank along the Willamette River should be conserved and enhanced to the maximum extent practicable. Modification of the riverbank should only be considered when necessary to prevent significant bank erosion and the loss of private property, or when necessary for the functioning of a river-dependent or river-related use.

2. Riparian Habitat. Rank I riparian habitat areas, as identified in the wildlife habitat inventory, should be conserved and enhanced with a riparian landscape treatment. Other riparian habitat should be conserved and enhanced through riparian landscape treatments to the maximum extent practical. Conservation however does not mean absolute preservation. Some discretion as to what vegetation should remain and what can be removed and replaced should be permitted. Riparian habitat treatments should include a variety of species of plants of varying heights that provide different food and shelter opportunities throughout the year.

Findings: The riverbank within the project area is in a natural state in that it does not contain existing development. The proposed project includes the installation of a dock and associated landing, gangways, piles, and stairs. These proposed project elements provide for river access and recreation and are considered river-dependent development. All other portions of the riverbank will be enhanced through the planting of native trees, shrubs, and ground covers and the on-going management of nuisance plants.

Rank I riparian habitat areas are “those sites which, if left unaltered, have an extremely significant combination of features which attract a diverse array of wildlife. The sites are essentially natural in character, although some disturbance (natural or human) exists in all of these sites.” *The Lower Willamette River Wildlife Habitat Inventory* did not include the project area. Even so, the project area does not meet the description of a Rank I riparian habitat area given the surrounding residential land use; narrow width; and dominance of nuisance, non-native plants.

The proposed project enhances the existing riparian habitat to the maximum extent practical by minimizing the project footprint and providing native landscape treatments. The landscape treatment will provide a variety of species of plants of varying heights that provide different food and shelter opportunities throughout the year. The area beneath the proposed gangway will be planted with native ground covers and low shrubs, *and these guidelines are met.*

Issue E. Landscape Treatments: This Issue “applies to all applications for Greenway Approval which are subject to the landscape requirements of the Greenway chapter of Title 33 Planning and Zoning of the Portland Municipal Code.” This Issue calls for landscaping treatments that create a balance between the needs of both human and wildlife populations in the Greenway Setback area or riverward of the Greenway Setback.

Guidelines:

1. Landscape Treatments. The landscape treatment should create an environment which recognizes both human and wildlife use. Areas where limited human activity is expected should consider more informal riparian treatments. Areas of intense human use could consider a more formal landscape treatment. The top of bank may be considered a transition area between a riparian treatment on the riverbank and a more formal treatment of the upland.

2. Grouping of Trees and Shrubs. In areas of more intense human use, trees and shrubs can be grouped. The grouping of trees and shrubs allows for open areas for human use and has the secondary value of increasing the value of the vegetation for wildlife.

3. Transition. The landscape treatment should provide an adequate transition between upland and riparian areas and with the landscape treatments of adjacent properties.

Findings: The landscape treatments issue applies to all applications for Greenway Approval which are subject to the landscape requirements of the Greenway chapter of Portland’s Zoning Code. The subject property has approximately 120 feet of river frontage, requiring 6 trees and 60 shrubs to meet the standards of Subsections 1 and 2. The applicant is proposing to plant the required number of plantings to meet this standard in addition to other plantings to satisfy mitigation and remediation requirements. The landscape treatment includes native tree, shrub, and ground cover plantings, seeding and on-going nuisance plant management in the remediation and mitigation area to enhance the wildlife value of the existing riparian habitat.

These landscape guidelines are met.

Summary of Issue Findings: The design guidelines in Issues A, B, D, F, G, and H are not applicable. Issues C and E are met by the proposal. *Therefore, this criterion is met.*

33.440.350.F. Development riverward of the Greenway setback. The applicant must show that the proposed development or fill riverward of the Greenway setback will comply with all the following criteria:

1. The proposal will not result in the significant loss of biological productivity in the river;

Findings: The overall effects of the proposed project are negligible in the context of the overall watershed; however, there will be modest, local improvements to the functions and values of the riparian area of the Willamette River. The proposed riparian plantings will increase the riparian reserve, contributing to improved hydrologic, geomorphic, biological, and chemical and nutrient functions.

The Willamette River adjacent to the project parcel contains shallow water habitat which is particularly important to juvenile salmon due to its protective qualities. The placement of the gangway/dock over shallow water habitat has the potential to impact juvenile salmon due to shading. Therefore, the applicant has designed the gangway/dock to minimize these impacts. The proposed dock will have at least 50 percent of the float surface composed of grating with 60 percent open surface area and meets the SLOPES IV standard and ODFW recommendation for light transmission. Open areas will not be used for storage, seating, or other activities that permanently reduce light transmission. The two gangway segments will be 5 feet wide and will have a 100 percent grated walk surface. Except for the recommended float size, the new dock will also comply with the ODFW 2016 Residential Dock Guidelines. Adherence to these guidelines ensures that the proposed project will not result in the significant loss of biological productivity in the river. In addition, the following

conservation measures have been incorporated into the proposed project design to minimize and avoid adverse effects to ESA-listed fish species and their designated Critical Habitat elements:

General

- All proposed work within the Willamette River channel will occur between July 1 and October 31 or December 1 and January 31 (the ODFW-approved In-Water Work Window [IWWW]), the time of year when ESA-listed species are least likely to be present.
 - If piles are installed during the winter IWWW, the installation will be conducted in late December or early January (per NMFS' recommendation).
- A Pollution Control Plan (PCP) will be prepared by the Contractor and carried out commensurate with the scope of the project that includes the following:
 - Best management practices to confine, remove, and dispose of construction waste.
 - Procedures to contain and control a spill of any hazardous material.
 - Practices to prevent construction debris from dropping into any waterbody.
 - Steps to cease work under high flow conditions, except for efforts to avoid or minimize resource damage.
 - At a minimum, the PCP will include the following details:
 - Surround work areas with a floating boom and/or absorbent boom to capture floating debris, oil, and other materials.
 - All debris that is collected shall be disposed of in an approved upland disposal site.
 - Inspect pollution control measures daily and make necessary repairs when Best Management Practices (BMPs) are not functioning properly.
- Only enough supplies and equipment to complete the project will be stored on site.
- All heavy equipment (i.e., crane, drill) will access the project site via floating barges.
- All equipment will be inspected daily for fluid leaks, any leaks detected will be repaired before operation is resumed.
- Stationary power equipment (i.e., cranes) operated within 150 feet of the Willamette River will be diapered to prevent leaks.

Piles

- Drilling to install piles will be conducted within a temporary casing to prevent sediment from entering the waterway.

New Float

- The use of steel grating will reduce shading and velocity refuge associated with overwater structures that can attract salmonid predators.
- The new dock will have an open area of grating that is at least 50 percent of the total surface area.
- The new gangways will be 100 percent grated
- All synthetic floatation material will be permanently encapsulated to prevent breakup into small pieces and dispersal in water.

With these construction practices the project will not result in the significant loss of biological productivity in the river, *and this criterion is met.*

2. The riverbank will be protected from wave and wake damage;

Findings: The riverbanks within the project area experience significant wave and wake action from boat traffic on the Willamette River. The existing riverbank does not include armoring to protect it from wave and wake damage, and the proposed project does not include protection measures. Although the applicant's use of the proposed dock will increase the local boat activity, boat speeds in the vicinity of the dock will be slow and are not expected to increase the amount of wave and wake action in the project area. As such, there is expected to be no change in the amount of wave and wake damage to the riverbank in the project area resulting from the proposed project, *and this criterion is met.*

3. The proposal will not:

a. Restrict boat access to adjacent properties;

Findings: The proposed dock will be situated riverward of the project parcel and is approximately 80 feet south and 470 feet northeast of the nearest docks on adjacent properties. This is expected to be an adequate distance to allow boat access to adjacent properties, *and this criterion is met.*

b. Interfere with the commercial navigational use of the river, including transiting, turning, passing, and berthing movements;

Findings: The proposed dock will be approximately 200 feet riverward of the OLW line, which is roughly 25 percent of the channel width at high water. The Department of State Lands allows for in-water structures that do not extend past 25 percent of the channel as this distance or less will not unreasonably interfere with the public trust rights of commerce, navigation, fishing and recreation (OAR 141-082-0260.6(g)), *and this criterion is met.*

c. Interfere with fishing use of the river;

Findings: The Willamette River channel is approximately 1,300 feet wide adjacent to the project parcel during high water and 650 feet wide at OLW. The proposed dock will be approximately 325 feet riverward of the OHW line (~25 percent of the channel OHW width) and 200 feet riverward of the OLW line. As such, it is reasonably certain that the proposed dock will not interfere with fishing use of the river, *and this criterion is met.*

d. Significantly add to recreational boating congestion; and

Findings: The Willamette River in the project reach is frequently used by paddle craft and motorized fishing and recreational boats. The Portland Spirit, Christmas Ships on the Milwaukie/Oregon Yacht Club route, and Willamette Jet boat tours each pass the project area. The Willamette River channel is approximately 1,300 feet wide adjacent to the project parcel at high water. The portion of the river used by motorized watercraft during summer low water is approximately 650 feet wide, defined by the limits of existing docks and shallow water areas. The proposed dock will not encroach into the portion of the channel used by motorized boats and is only intended to service the applicant's personal watercraft. As such, it is reasonably certain that the proposed project will not result in a significant increase in recreational boating congestion in the project area, *and this criterion is met.*

4. The request will not significantly interfere with beaches that are open to the public.

Findings: The nearest public beach is on the opposite bank of the Willamette River at the Milwaukie Riverfront Park, approximately 1,400 feet northeast of the project area. As such, it is reasonably certain that the proposed dock will not interfere with beaches that are open to the public, *and 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 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 proposes new access stairs, gangway, and boat dock on the Willamette River to allow river recreation and private boat moorage. The applicant further proposes a new pool, stormwater facility and outfall, and sanitary sewer line landward of the Greenway Setback. And to remediate for past violations, the applicant proposes to restore and enhance the 0.10-acre wetland located below top of bank.

The applicant considered alternative locations and designs to determine that the proposed dock and gangway location and design were practicable and would minimize impacts to the resource area of the Environmental Zone. The applicant proposes mitigation plantings, as well as invasive species removal to mitigate for impacts to resources and functional values. The applicants and the above findings have shown that the proposal meets the applicable approval criteria with conditions. Therefore, this proposal should be approved, subject to the following conditions.

TENTATIVE STAFF RECOMMENDATION

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

Approval of an Environmental Review for:

- Construction of stairs, landing, gangway, and piles

Approval of an Environmental Violation Review for:

- Removal of illegal development within Wetland A and installation of remediation plantings

Approval of a Greenway Review for:

- Construction of a pool, sanitary sewer line, stormwater facility, and stormwater outfall; and
- Construction of a dock and its associated components (access path and stairs, landing, gangway, and piles)

within the Greenway River general and Environmental Conservation overlay zones, and in substantial conformance with Exhibits C.4 through C.12. Approval is subject to the following conditions:

- A. A BDS Zoning Permit is required for inspection of required mitigation plantings, and a separate BDS building permit is required for development].** The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc.).

Permit plans shall include the following statement, ***"Any field changes shall be in substantial conformance with approved LU 19-267865 EV EN GW Exhibits C.4 through C.12."***

Building Permits shall not be issued until a BDS Zoning Permit is issued.

Building Permits shall not be finalized until the BDS Zoning Permit for inspection of mitigation plantings required in Condition C below is finalized.

- B.** Temporary, 4-foot high, bright orange construction fencing shall be placed as depicted on Exhibits C.7 to C.9, Construction Management Plan.

1. All measures provided for sediment control, including sediment fencing, shall be placed inside of the temporary construction fence, if required at permit time.
 2. No mechanized construction vehicles are permitted outside of the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the fenced area and existing paved areas, shall be conducted using handheld equipment.
 3. Trees shall be protected according to tree protection measures provided in Title 11 Tree Code, Chapter [11.60.030 Tree Protection Specifications](#), or as specifically depicted on Exhibit C.9 Tree Plan.
- C.** The applicant shall obtain a BDS Zoning Permit for approval and inspection of a mitigation plan for a total of 356 trees, 411 shrubs, 1,725 ground cover species, in substantial conformance with Exhibits C.10 to C.12, Mitigation Plans. Any plant substitutions shall be selected from the *Portland Plant List* and shall be substantially equivalent in size to the original plant.
1. Permit plans shall show:
 - a. Permit plans shall show the general location of the trees, shrubs and ground covers required by this condition to be planted in the mitigation area and labeled as “new required landscaping”. The plans shall include a 40-foot by 40-foot “typical”, scalable planting layout for each planting zone, and shall illustrate a naturalistic arrangement of plants and should include a planting table listing the species, quantity, spacing and sizes of plants to be planted.
 - 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. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
 4. 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.
 5. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Zoning Permit.
 6. All mitigation and remediation 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 mitigation plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.
- D. The land owner shall maintain the required plantings** to ensure survival and replacement. The land owner 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 mitigation plantings for inspection. The permit must be finalized no later than 2 years from the final inspection for the installation of mitigation 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.
- E.** 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.

Procedural Information. The application for this land use review was submitted on December 20, 2019, and was determined to be complete on June 12, 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 December 20, 2019.

ORS 215.427 (1) 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 requested that the 120-day review period be waived as stated with (Exhibit A.7). Unless further extended by the applicant, **the 120 days will expire on: May 12, 2021.**

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

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the 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 Fourth Avenue, Suite 3100, Portland, OR 97201, faxed to 503-823-4347 or e-mailed to HearingsOfficeClerks@portlandoregon.gov, or testify during the hearing. Please see link to instructions on how to testify at the top of this staff report or contact the Hearings Office at 503-823-7307 or the email listed above.

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. 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. If you are interested in viewing information in the file, please contact the planner listed on the front of this staff report. The planner can provide information over the phone or via email. Please note that due to COVID-19 and limited accessibility to files, only digital copies of

materials in the file are available. A digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

Appeal of the decision: You can appeal the decision of the Hearings Officer to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of 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 for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

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 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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: Morgan Steele

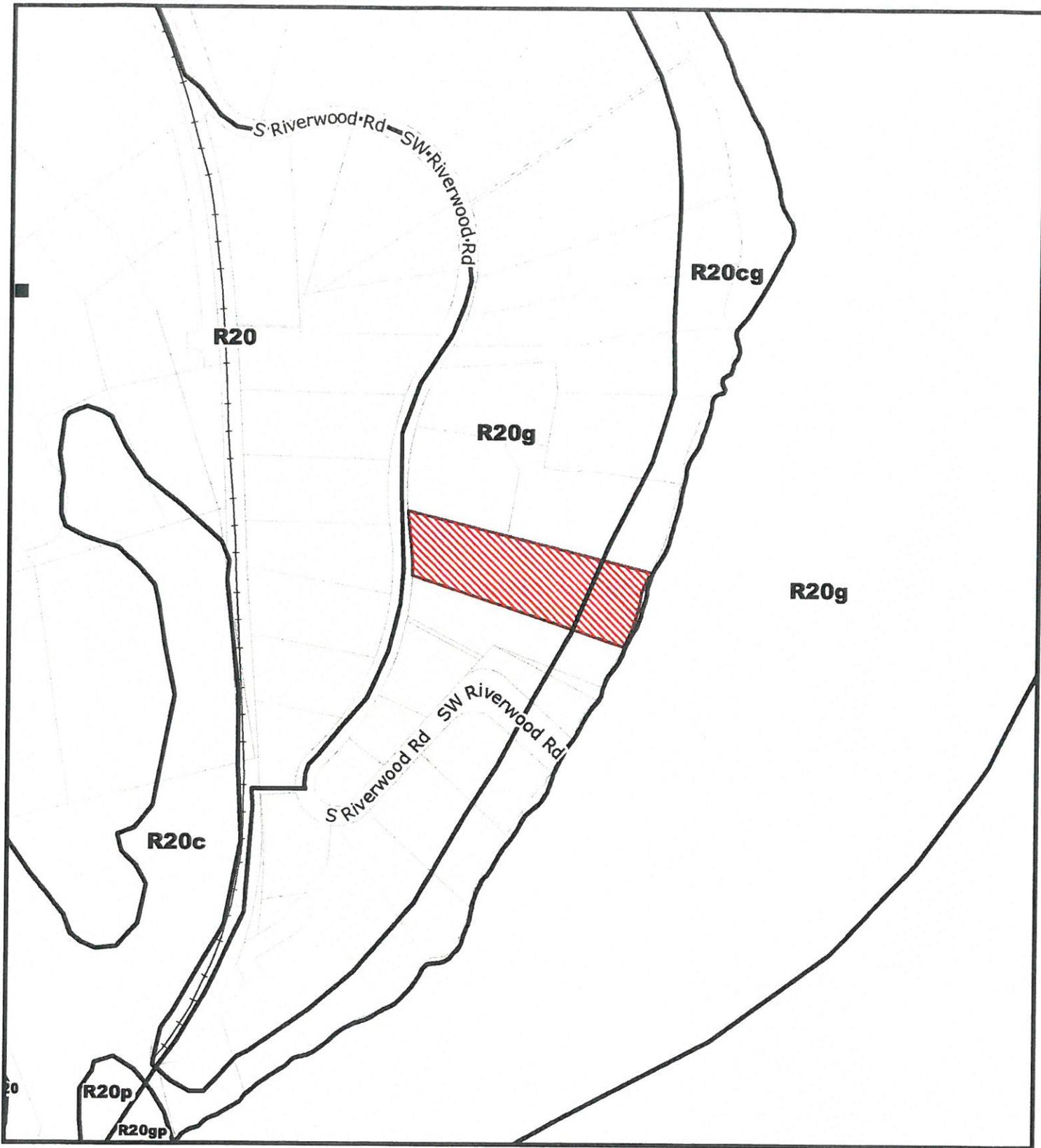
Date: September 10, 2020

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Applicant's Original Narrative & Site Plans, December 2019
 - 2. Revised Site Plans, June 2020
 - 3. Geotechnical Report, September 2018
 - 4. Sewer & Stormwater Information
 - 5. Multnomah County Driveway Permit
 - 6. Applicant Response to Incomplete Items, June 2020
 - 7. Extension of the 120-Day Review Period
- B. Zoning Map (attached):
 - 1. Existing Zoning
- C. Plans & Drawings:
 - 1. Pre-Existing Conditions Site Plan
 - 2. Violation Conditions Site Plan
 - 3. Post Remediation Existing Conditions Site Plan
 - 4. Proposed Site Plan & Grading Plan (attached)
 - 5. Grading Plan, Temporary Disturbance Areas, & Permanent Disturbance Areas
 - 6. Pool Cross Section & Impact Tables
 - 7. Construction Management Site Plan
 - 8. Construction Management Site Plan
 - 9. Construction Management Notes & Tree Protection Plan
 - 10. Mitigation Planting Plan (attached)
 - 11. Mitigation Planting Plan
 - 12. Planting Notes & Tables
- 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. Mailing lists
 - 6. Mailed notices
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Life Safety
 - 4. Site Development Review Section of Bureau of Development Services
 - 5. Lake Oswego Fire Department
 - 6. Multnomah County Right-of-Way
- F. Letters:
 - 1. Robert & Judith Palmer, August 10, 2020
- G. Other:
 - 1. Original LUR Application
 - 2. Incomplete Letter
- H.

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

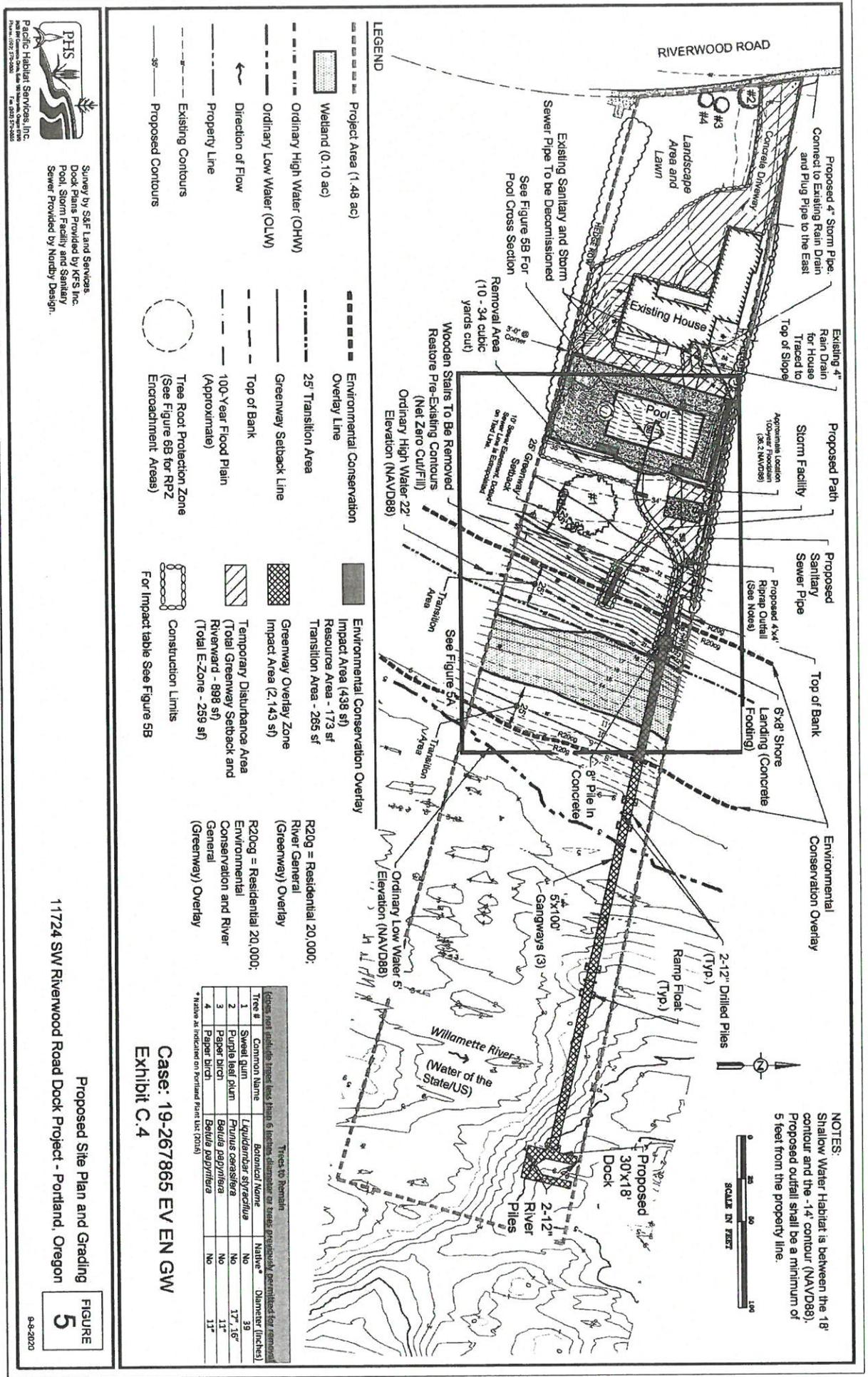


Site

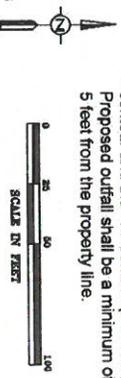


Historic Landmark

File No. LU 19 - 267865 EV EN GV
 1/4 Section 4132
 Scale 1 inch = 200 feet
 State ID 1S1E35AC 2400
 Exhibit B Jun 12, 2020



NOTES:
 Shallow Water Habitat is between the 18' contour and the -14' contour (NAVD88). Proposed outfall shall be a minimum of 5 feet from the property line.



LEGEND

- Project Area (1.48 ac)
- Wetland (0.10 ac)
- Ordinary/High Water (CHW)
- Ordinary Low Water (OLW)
- Direction of Flow
- Property Line
- Existing Contours
- Proposed Contours
- Environmental Conservation Overlay Line
- 25' Transition Area
- Greenway Setback Line
- Top of Bank
- 100-Year Flood Plain (Approximate)
- Tree Root Protection Zone (See Figure 6B for RPZ Encroachment Areas)
- Environmental Conservation Overlay
- Impact Area (438 sf)
- Resource Area - 173 sf
- Transition Area - 265 sf
- Greenway Overlay Zone
- Impact Area (2,143 sf)
- Temporary Disturbance Area (Total Greenway Setback and Riverward - 898 sf)
- (Total E-Zone - 259 sf)
- Construction Limits
- For Impact table See Figure 5B

R20g = Residential 20,000: River General (Greenway) Overlay
 R20cg = Residential 20,000: Environmental Conservation and River General (Greenway) Overlay

Trees to Remain			
Tree #	Common Name	Botanical Name	Native* Diameter (Inches)
1	Sweet gum	<i>Liquidambar styraciflua</i>	No
2	Purple leaf plum	<i>Prunus caroliniana</i>	No
3	Paper birch	<i>Betula papyrifera</i>	No
4	Paper birch	<i>Betula adpressiflora</i>	No

*Native as indicated on Portland Plant List (2004)



Pacific Habitat Services, Inc.
 11724 SW Riverwood Road, Portland, Oregon 97205
 Phone: (503) 273-2000
 Fax: (503) 273-2000

Survey by S&F Land Services
 Dock Plans Provided by KFS Inc.
 Pool, Storm Facility and Sanitary Sewer Provided by Nurdy Design.

Proposed Site Plan and Grading
 11724 SW Riverwood Road Dock Project - Portland, Oregon

FIGURE 5

