



## Hearings Office

### City of Portland

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#### DECISION OF THE HEARINGS OFFICER ON RECONSIDERATION

#### I. GENERAL INFORMATION

File Number: LU 20-151838 GW AD (Hearings Office 4200017)

Applicant(s): Laurie Simpson, Connect Architecture  
33 NE Monroe Street  
Portland, OR 97212

Owner/Agent: Stuart Lindquist / Lindquist Development Co. Inc.  
PO Box 42135  
Portland, OR 97242-0135

Hearings Officer: Nancy Hochman

Bureau of Development Services (BDS) Staff Representative: Kate Green

Site Address: S Macadam Avenue (also known as S Riverside Drive and  
State Highway 43)

Legal Description: TL 300 0.40 ACRES, SECTION 26 18 1E

Tax Account Number(s): R991260220

State ID Number(s): 1S1E26CB 00300

Quarter Section(s): 4031

Neighborhood: None

Neighborhood Within 400 Feet:

Business District: None

District Neighborhood Coalition: None

Plan District: None

Zoning: Single Dwelling Residential 20,000 (R20)  
Greenway River General (g)  
Greenway River Water Quality (q)  
Scenic (s)

Other Designations: Flood Hazard Area, Landslide Hazard Area, Public  
Recreational Trail

Land Use Review: Type II, Greenway Review, Adjustment Review

## II. APPEAL BACKGROUND

BDS Administrative Decision: On December 15, 2020, BDS denied Applicant's project proposal in Applicant's Greenway Review and Adjustment Review due to missing information regarding the existing features on the site; insufficient details about potential project impacts and effective mitigation measures; and BDS' determination that the proposal triggered the need for additional land use reviews not applied for, including a Greenway Goal Exception.

A public hearing was opened at 1:00 p.m. on January 25, 2021, on the Zoom platform, and was closed at 2:55 p.m. on January 25, 2021. Applicant was given through February 1, 2021 to file additional evidence. BDS was given through February 8, 2021 to file its rebuttal. At Appellant's request, the deadline for Applicant's rebuttal was February 16, 2021, on which date the record was closed. Applicant requested in writing to extend the 120 day for the Hearings Officer's decision to March 4, 2021.

The Hearings Officer concluded in the Decision of the Hearings Officer on Appeal of Administrative Decision dated March 4, 2021 (Decision) that the location of the proposed single family house location was within the first 25 feet of the Greenway Setback, where non-river-dependent or river-related development requires a Greenway Goal Exception, and that Applicant's proposed project could not be accomplished through the requested Greenway Review. In part for this reason, Applicant's project proposal was denied in the Decision.

Applicant appealed the Decision to the Oregon Land Use Board of Appeals (LUBA). On July 7, 2021, the City of Portland withdrew the Decision for reconsideration.

Reconsideration Public Hearing: A reconsideration hearing was held on August 23, 2021, on the Zoom teleconference platform. Kate Green, BDS Planner (BDS Staff Representative) presented the case for the Bureau of Development Services (BDS). Erin Holsonback of Austen Associates Landscape Architecture (Ms. Holsonback); Paige Miller of civil engineers Humber Design Group, Inc. (Ms. Miller); and Stuart Lindquist of Lindquist Development Co., Inc. (Mr. Lindquist) testified at the reconsideration hearing on behalf of Applicant. Mr. Lindquist, on

behalf of Applicant, waived the rights granted by ORS 197.763(6)(e), if any, to an additional seven day time period to submit written rebuttal into the record. The record was closed to all testimony and/or written submissions on August 23, 2021 at the end of the hearing.

Revised Proposal: The applicant proposes to remove approximately 20 trees and construct a new multi-story residence on a riverfront site within the River General (g), River Water Quality (q) and Scenic (s) overlays. The revised proposal places the location of the multi-story residence and associated retaining walls landward of the rail corridor that bisects the subject site. Water and sewer services are proposed west of the new residence. A new stormwater planter and a new stormwater outfall are proposed to serve the new residence. These activities trigger a Greenway Review (33.440.310.A and B). No changes are proposed to the existing shed and dock, which were formerly owned and operated by Lewis and Clark College.

The applicant also requests the following Adjustments:

- Reduce the Scenic (s) overlay setback from 20 feet to 10 feet (33.480.040.B/ Table 480-1);
- Reduce the R20 front building setback from 20 feet to 10 feet (33.110.220); and
- Increase the R20 building height from 30 feet to 33.5 feet (33.110.215), as measured per Base Point 2 (33.930.050.A.2, Figure 930-7).

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

- 33.440.350 Greenway Approval Criteria
- Greenway Design Guidelines
- 33.805.040 Adjustment Approval Criteria

### III. DECISION SUMMARY

For the reasons that follow, Appellant's proposal is approved with conditions.

### IV. ANALYSIS

The location of the multi-story residence and associated retaining walls in Applicant's revised proposal is, under both the City's and Applicant's, respective, previous determinations of the top of bank, placed landward of the location that would require a Greenway Goal Exception.

Ms. Miller, on behalf of the Applicant's civil engineer, affirmed that, as indicated in Applicant's Memorandum dated August 23, 2021 (Applicant's Memo) (Exhibit H-25), Appellant does not object to BDS' proposed conditions related to construction.

The Hearings Officer adopts the following analysis and sections of the Report for the Reconsideration filed by the BDS Staff Representative (Reconsideration Report)(Exhibit H-23):

## FACTS

**Site and Vicinity:** The subject property is situated on the west bank of the Willamette River, near River Mile 17, south of the Sellwood Bridge and Powers Marine Park, and approximately 200 feet north of the city border within a residential area known as Dunthorpe.

The property fronts onto S Riverside Drive (also known as SW Macadam Avenue and Highway 43) and is bisected by an approximately 20-foot wide publicly owned rail corridor.

The western portion of the site, between S Riverside Drive and the rail corridor, has a gravel area, which appears to be used as a vehicle area, and a mix of native and non-native trees and understory vegetation. This portion of the site is relatively level and then steeply drops down to the rail corridor. The rail corridor is relatively flat and has tracks running down the center of it, which extend over multiple properties to the north and south. The eastern portion of the site, between the rail corridor and the river, is steeply sloped and also includes a mix of native and non-native trees and understory vegetation. Many of the trees are laden with ivy. A shed and a stairway, which leads to an existing dock on the river, are located near the center of the site. The dock is located within an in-water lease area from the Department of State Lands and was formerly used by *Lewis and Clark College* for a rowing/sailing club.

The owner of the subject site also owns the two adjacent riverfront properties to the north; one is in the R20 zone and another is in an Open Space (OS) zone. Further to the north are properties within the OS zone, including *Powers Marine Park* and *Riverview Cemetery*. Other nearby properties to the south and west are in the R20 and R10 single dwelling residential zones and many are developed with houses. Several of the riverfront residences also have stairs or ramps that lead to boat docks. The property directly across the river is within the City of Milwaukie and is developed as a golf course and country club.

Greenway and Scenic Resources on and around the site are described in more detail in the sections below.

**Greenway Resources:** The project site is mapped within Resource Site 23.7 (Rank III) of the *Lower Willamette River Wildlife Habitat Inventory (1986)*. Identified resources and functional values within these resource sites include the Willamette River, upland and riparian vegetation, fish and wildlife, and special status species.

The functional values of the water quality resource area include: providing a vegetated corridor to separate protected water features from development; maintaining or reducing stream temperatures; maintaining natural stream corridors; minimizing erosion, nutrient and pollutant loading into water; filtering, infiltration and natural water purification; and stabilizing slopes to prevent landslides contributing to sedimentation of water features.

As further described in the initial BES response (Exhibit E.1), the resources in the area include:

- *Endangered Species Act (ESA) Listed Species: The Willamette River provides habitat for 15 ESA listed species including Chinook and coho salmon and steelhead trout. These species rely on intact riparian habitat for feeding, resting, rearing, and migration.*
- *Mature Trees: The site contains mature trees within the Willamette River riparian zone, which functions as critical transition area for both terrestrial and aquatic species. Riparian vegetation provides shade, food and shelter for aquatic organisms and habitat for animals that move between land and water including insects, amphibians and birds. The mature trees the applicant is proposing to remove also provide stormwater benefits as they intercept at least 30% of precipitation that falls on the canopy, filter stormwater, help prevent erosion, and provide shade which cools the air and stormwater runoff. Trees, particularly those in the riparian area, help support Portland's adaptation to climate change. It is difficult to mitigate for the removal of mature trees as it can take decades for new trees to provide equivalent benefits.*
- *Nesting Birds: BES recommends that the applicant avoid disturbance (i.e. tree removal) between primary nesting season, April 15 – July 31. If tree removal is necessary during this time, it is recommended that the applicant survey the trees slated for removal for signs of nesting. If an active nest is found (one with eggs or young), it is recommended that the applicant avoid removing it until the young have fledged. Information on avoiding impacts on nesting birds can be found in [BES's Terrestrial Ecology Enhancement Strategy](#)*

*guidance document. Additional information can be found in the City's [Resource Guide for Bird-friendly Building Design](#).*

▪ *Shoreline, Floodplain, and Riparian Habitat: This site includes shoreline and riparian habitat, which provides habitat for both aquatic and terrestrial species. The shallow water habitat is designated as critical habitat for 5 populations of salmon and trout that are listed as threatened under the Endangered Species Act (ESA). This habitat is also used by 10 additional Columbia Basin populations of fish that are ESA-protected, as well as white sturgeon and Pacific lamprey, which are on conservation alert. The lower Willamette shoreline distinctly provides natal nursery and rearing habitat for juvenile fish, and migratory habitat for adults. Therefore, it serves incredibly important roles for all life stages of salmon and trout. The applicant should consider removing all non-native plant species in the 100-foot riparian setback and densely planting it with native species of trees and shrubs to provide the maximum benefit to these listed species. The floodplain habitat that extends across a portion of the site provides valuable high flow refuge for numerous aquatic species, including these 15 species listed under the ESA. When connected with the river it slows flow, providing flood hazard relief downstream and recharges groundwater that is cooled and slowly released back to the river throughout the year. The floodplain also provides feeding opportunities for salmon. Studies show that salmonids with annual access to functioning floodplain habitat are on average double the size and fitness of those without access. BES recommends the applicant restore floodplain function to the near shore area to mitigate for the habitat loss within the overlay zone. This can be accomplished by densely planting native trees, shrubs, and groundcover and leaving any large woody debris that washes on shore. Trees and shrubs including willow and ninebark create roughness that will catch floating woody debris. Woody debris is prime habitat for salmonids and their food source. Native groundcover also provides habitat for the insects salmonids feed upon during high water events. Disconnecting or eliminating this habitat in the shallow water, riparian area and floodplain may adversely affect these species that are threatened with extinction.*

Scenic Resources: The *Scenic Resources Protection Plan* (Map 23) shows the site is situated along Scenic Corridor 16: SW Macadam/Terwilliger Scenic Drive (SD 38-27). As further described in the *Scenic Resources Inventory* this scenic resource consists of a loop drive framed by trees (Exhibit G.3).

The *Scenic Resources Protection Plan* (Map 23) also identifies the Willamette River as Scenic Corridor 1: Willamette River (SD 01-04). A note on Map 23 indicates the scenic character of SD 01-04 is protected through environmental

zoning regulations, which in this case are the Greenway regulations. However, the *Willamette Greenway Plan* does not identify any required viewpoints or view corridors at this site.

Zoning: The zoning designations on the site include the Single Dwelling Residential 20,000 (R20) base zone, the River General (g) and River Water Quality (q) overlay zones, and the Scenic Resource (s) overlay zone.

The R20 and other single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households.

The River General zone allows for uses and development which are consistent with the base zoning, which allow for public use and enjoyment of the waterfront, and which enhance the river's natural and scenic qualities.

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

The Scenic Resource zone is to be applied to all significant scenic resources identified in the *Scenic Resources Protection Plan* or the *Central City Scenic Resources Protection Plan*. Any changes to land or development, including rights-of-way, within the Scenic Resource zone are subject to the regulations of this chapter.

*As of March 1, 2021, the zoning designations on the property were changed due to the adoption of the River Overlay code by the City Council; however, the proposal is being evaluated based on the regulations in effect at the time of the application, which was June 3, 2020.*

Land Use History: City records indicate that the following land use review was conducted for this site:

- GP 006-80: Greenway Review for addition of a 20-foot by 14-foot boat equipment storage building for Lewis and Clark College.

The site has also been listed as an "also-owned" property under several land use reviews for the primary Lewis and Clark College campus, but none of those reviews appear to address development or activities on the subject site.

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## ZONING CODE APPROVAL CRITERIA

In order to be approved, the proposal must meet the applicable approval criteria, which are addressed in the findings below.

### Part A: Greenway Review Part B: Adjustment Review

As outlined in Zoning Code Section 33.800.060, the burden of proof is on the applicant to show that the approval criteria are met. The burden is not on the City or other parties to show that the criteria have not been met.

## PART A. GREENWAY REVIEW

### 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 of 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 of the approval criteria are met.

- 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:

- Issue A. Relationship of Structures to the Greenway Setback Area
- Issue B. Public Access
- Issue C. Natural Riverbank and Riparian Habitat
- Issue D. Riverbank Stabilization Treatments
- Issue E. Landscape Treatments
- Issue F. Alignment of Greenway Trail
- Issue G. Viewpoints
- Issue H. View Corridors



A complete description of the Design Guidelines and their applicability is provided in Appendix C of the *Willamette Greenway Plan*.

The Guidelines have been regrouped according to similarity of Issues as discussed below:

Summary Findings for Issues A, B and F: The guidelines in Issues A, B and F apply to sites with a Greenway Trail designation. The site has a Greenway Trail designation. However, based on the city's *Administrative Rule: Determination of Rough Proportionality from Major Public Trail Requirements*, the scale of the proposed development is below the threshold that triggers an easement or improvements for the trail, so no trail improvements are triggered at this time. Therefore, the guidelines in Issues A, B and F are not applicable.

Summary Findings for Issues C, D and E: The guidelines in Issues C, D and E call for the protection and enhancement of natural riverbanks and riparian areas, suitable bank stabilization methods, and landscaping treatments that balance human and wildlife needs.

As noted in the Facts section, above, the site is within Resource Site 23.7 (Rank III) of the *Lower Willamette River Wildlife Habitat Inventory (1986)*. Identified resources and functional values within these resource sites include the Willamette River, upland and riparian vegetation, fish and wildlife, and special status species.

The applicant has indicated that the project has been designed and is to be constructed to limit and minimize potential detrimental impacts to the riverbank and waterway.

As discussed in detail in the findings for Criterion G, below, the proposal will retain or enhance the scenic qualities of the riverbank and provide a landscape treatment that compliments the new residence, while also providing improvements to the native plant diversity and habitat values of the site. Accordingly, these guidelines will be met.

Summary Findings for Issues G and H: The guidelines in Issues G and H apply to sites with a viewpoint or view corridor designation per the *Willamette Greenway Plan*. Though the Scenic Resources inventory identifies the Willamette River as a scenic corridor, no viewpoint or view corridor

designations are applied at this location in the *Willamette Greenway Plan*. Therefore, these issues and the associated guidelines do not apply.

Based on the foregoing and with the implementation of the conditions outlined in the findings for Criterion G, this criterion will be met.

- B.** River Frontage lots in the River Industrial zone
- C.** Development within the River Natural zone.
- D.** Development on land within 50 feet of the River Natural zone

Summary Findings for Criteria B, C, and D. The site is located within the River General and River Water Quality zones and is not within 50 feet of the River Natural zone. Therefore, Criteria B, C, and D do not apply.

- E.** Development within the greenway setback. The applicant must show that the proposed development or fill within the greenway setback will not have a significant detrimental environmental impact on Rank I and II wildlife habitat areas on the riverbank. Habitat rankings are found in the *Lower Willamette River Wildlife Habitat Inventory*.

Findings: The site is shown on Map 5, Zone 23 in the *Lower Willamette River Wildlife Habitat Inventory*, and the nearest Rank I and Rank II wildlife habitat areas are approximately 1+ miles downstream of the site and include the west bank of the river north of the Sellwood Bridge to Willamette Park (Sites 23.4A and 23.5) and the shoreline and uplands at Oaks Bottom (Sites 21.1A, 21.1B) on the east side of river.

The development proposed within the 25-foot greenway setback includes stormwater pipes, a stormwater outfall, and mitigation plantings.

With adequate construction management measures, including tree protection, erosion controls, and delineated work corridors, the nearby wildlife habitat areas should not have significant detrimental impacts. Further, with the successful implementation of the mitigation measures, the habitat values on the site should be significantly improved, which could reduce demand on those other areas. With the application of the conditions outlined in detail in the findings for Criterion G, below, this criterion will be met.

- 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 of the following criteria:

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

Findings: The new features proposed within and riverward of the greenway setback include stormwater pipes and an outfall, north of an existing stairway to the existing dock, and nuisance plant removal and the installation of native plantings throughout the area east of the rail corridor.

These features are proposed above the ordinary high water line, so they are not expected to interfere with commercial navigation, recreational boating activities, or access to beaches that are open to the public.

Provided the pipe and outfall are installed in a manner that protects the existing trees and other resources along the riverbank, the stormwater facilities are not expected to create a significant detrimental impact to the biota of the river or result in wave or wake damage to the riverbank.

With the implementation of the conditions detailed in the findings for Criterion G, below, this criterion will be met.

- G.** Development within the River Water Quality overlay zone setback.
1. Streets, right-of-way dedications, driveways, walkways, outfalls, and utilities. For streets, right-of-way dedications, driveways, walkways, outfalls, and utilities, the applicant's impact evaluation must demonstrate that all of the following are met:
    - a) Proposed development or right-of-way (ROW) locations, designs, and construction methods have the least significant detrimental impact to the functional values of the water quality resource area than other

- practicable and significantly different alternatives including alternatives outside the River Water Quality overlay zone setback;
- b)** The location, design, and construction method of any outfall or utility proposed within a River Water Quality overlay zone has the least significant detrimental impact to the functional values of the water quality resource area than other practicable alternatives including alternatives outside the River Water Quality overlay zone setback;
  - c)** Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts. Where a water body is crossed, the location, design, and construction method of that crossing has the least significant detrimental impact to the functioning of the water body and considering practicable alternatives;
  - d)** There will be no significant detrimental impact on functional values in areas designated to be left undisturbed within the River Water Quality overlay zone setback;
  - e)** All significant detrimental impacts on functional values that cannot be avoided will be mitigated by meeting the requirements of Subsection 33.440.350.H; and
  - f)** The mitigation plan ensures that the proposed development will not contribute to a cumulative loss of functional values over time.
- 5.** Other development, excavations, and fills in the River Water Quality overlay zone setback. Where development, exterior alterations, excavation, or fill is proposed in the River Water Quality overlay zone setback, the applicant's impact evaluation must demonstrate that all of the following are met:
- a.** Proposed development minimizes the loss of functional values, consistent with allowing those uses generally permitted or allowed in the greenway overlay zone without a land use review;
  - b.** Proposed development locations, designs, and construction methods are less detrimental to the functional values of the water quality resource area than other practicable and significantly different alternatives including alternatives outside the River Water Quality overlay zone setback;
  - c.** There will be no significant detrimental impact on functional values in areas designated to be left undisturbed;
  - d.** Areas disturbed during construction that do not contain permanent development will be restored with native vegetation appropriate to the site conditions and found in the *Portland Plant List*;
  - e.** All significant detrimental impacts on functional values will be offset

- through mitigation;
- f.** The mitigation plan meets the requirements of Subsection 33.440.350.H;
  - g.** The mitigation plan ensures that the proposed development will not contribute to a cumulative loss of functional values over time; and
  - h.** Where significant restoration or enhancement opportunities have been identified in City-adopted watershed restoration plans or where previous restoration projects have taken place, the proposed development will not preclude those restoration or enhancement opportunities or damage existing restoration projects.

**Findings:** These criteria require the applicant to demonstrate that alternatives were considered during the design process, that there are no practicable alternatives that would be less detrimental to the functional values of the water quality resource area, and requires the protection of resources outside of the proposed disturbance area from impacts related to the proposal, such as damage to vegetation, erosion of soils off the site, and impacts to water quality and fish habitat from increased stormwater runoff and erosion off the site.

The following findings provide an evaluation of the proposed project purpose; alternatives; impacts; and mitigation measures.

**Project Purpose:** The applicant's narrative notes the project purpose is to develop a single-family residential structure, with a minimum area of living space (Exhibit A.2.a). The applicant's narrative explains that the location of the proposed project is constrained by steep topography; geotechnical considerations; a rail corridor that bisects the property; and an existing stairway and boat slide.

Given the unique site configuration, the applicants have modified their initial proposal to include only one option for the house location, which is landward of the rail corridor. In this location, a portion of the house, garage, vehicle entry court, an access stairway and a stormwater planter will be within the 50-foot River Water Quality setback, but landward of the 25-foot River General and River Water Quality setback. Other features proposed riverward of the rail corridor and within and riverward of the noted greenway setbacks include stormwater pipes and a stormwater outfall to provide a route of disposal from the stormwater planter to the river, and mitigation plantings.

**Potential Project Impacts, Construction Management, and Mitigation:** The proposed placement of the house, garage and entry court, will result in the

removal of a grove of native trees and will also result in the house extending into the front building setback and scenic setback along the site frontage, as further addressed in the Adjustment Review section, below.

Given the site configuration, placing the residence landward of the rail corridor appears to be the only feasible location available on the site. The size of the house, and the garage and associated vehicle court needed to meet ODOT requirements, appear to be configured to fit the site in a manner that limits impacts to the q-overlay resources to the extent practicable. The applicant's construction management plan shows the entire portion of the site, landward of the rail corridor will be a temporary disturbance area. The area is currently occupied by a grove of native trees, which are proposed for removal for the house. With adequate replacement of the removed trees, the impacts from the tree removal will be mitigated. The applicant has proposed a mix of ornamental and native species for the replanting around the immediate perimeter of the house. With a condition that the plantings include only native species this will support and enhance the value of the replacement plantings for both scenic and wildlife habitat values.

As noted in the BES response, the location of the sewer connection is still pending the public works review, so it is unknown at this time if the proposed location is feasible or if another location, outside of the designed disturbance area, may be needed. The applicant has been made aware that a subsequent land use review could be triggered if the sewer cannot be installed in the proposed location noted on the project plans. If the sewer work can be performed, as proposed, then no additional impacts to the q-overlay resources are anticipated.

The project plans also show an extensive area on the riverside of the rail corridor as a designated disturbance area. Yet the only new facility proposed riverward of the house is the stormwater outfall and associated pipe between the stormwater planter and the outfall, and the construction management plan shows a corridor for the piping to be installed under the rail line and tree protection along the piping route down to the proposed outfall. The balance of the area east of the rail corridor is proposed to have nuisance plantings removed and ivy cut from the trees, and new native plantings installed to mitigate for the construction impacts and to enhance the health and improve the value of the riverbank habitat. BDS Staff have requested the applicant

distinguish the planting areas from the piping and outfall areas, but no updated plans have been received to date.

Additionally, BDS Staff have cited concerns about the applicant's proposed construction methods for installing the piping and outfall. The applicant's narrative indicates several potential construction methods for the construction of the stormwater pipe and outfall, including a backhoe/crane, hand-digging, and directional drilling under the rail corridor. However, the plans do not show where any of that equipment or work would be staged and the narrative provides limited details about how the work could be conducted in a manner protective of the shoreline and waterway.

Therefore, to ensure the piping and outfall are installed in a manner that is protective of the q-overlay resources, a condition will be applied that the piping must be installed by directional drilling or hand-digging, and the outfall must be installed by hand-digging only. Additionally, the condition will limit the drilling and hand-digging to the area noted on the BDS-Staff Modified Construction Management Plan (attached). Further, instead of the chain-link tree protection fencing noted on the applicant's plan, BDS Staff will call for the use of flexible orange construction fencing instead. This type of fencing is easier to install on steep terrain and will alert the construction workers to the designated work zone.

The BDS Staff Modified Construction Management Plan also notes that the areas outside of the designated work zone, and outside of the existing stair, deck and shed, may not be used for any construction activities, other than ivy and nuisance plant removal and the installation of native plantings. This will ensure the q-overlay resources are protected and enhanced to the greatest extent.

With the application of these conditions, as noted on the BDS Staff Modified Construction Plan, the impacts to the q-overlay resources will be minimized or can be effectively mitigated. As such, these criteria will be met.

- H.** Mitigation or remediation plans. Where a mitigation or remediation plan is required by the approval criteria of this chapter, the applicant's mitigation or remediation plan must demonstrate that the following are met:
1. Except when the purpose of the mitigation could be better provided

elsewhere, mitigation will occur:

- a. On site and as close as practicable to the area of disturbance;
  - b. Within the same watershed as the proposed use or development; and
  - c. Within the Portland city limits.
2. The applicant owns the mitigation or remediation 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 or remediation plan; or can demonstrate legal authority to acquire property through eminent domain;
3. The mitigation or remediation plan contains a construction timetable and a minimum 1 year monitoring and maintenance plan that demonstrates compliance with Subsection 33.248.090.E and includes the following elements:
  - a. Identification of the responsible party or parties that will carry out the mitigation or remediation plan;
  - b. Identification of clear and objective performance benchmarks that will be used to judge the mitigation or remediation plan success; and
  - c. A contingency plan that indicates the actions to be taken in the event that performance benchmarks are not met.

Findings: The proposal includes mitigation measures on the subject site and the mitigation is proposed to be implemented and maintained by the property owner. A timetable and performance benchmarks have been identified, along with a contingency plan to be enacted if the benchmarks are not met. With the implementation of the conditions noted above regarding the removal of ivy and other nuisance plants and the use of native plant species for the replanting measures, and the requirement for the submittal of monitoring reports to document the status of the mitigation efforts, this criterion will be met.

## PART B. ADJUSTMENT REVIEW

### 33.805.040 Adjustment Review Approval Criteria

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.

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



Finding: The site is situated along Scenic Corridor 16: SW Macadam/Terwilliger Scenic Drive (SD 38-27), which consists of a loop drive framed by trees (Exhibit G.3). The applicant requests Adjustments to reduce the scenic corridor setback (33.480.040.B/Table 480-1) and the R20 front building setback (33.110.220), so several portions of the proposed multi-story residence, including the garage and entry gate/fence, can be placed 10 feet from the front lot line instead of the 20 feet required by these standards. The applicant also requests an Adjustment to allow the building height to be over the 30-foot maximum limit (33.110.215).

In order to meet this criterion, the proposal must equally or better meet the purpose of these standards, which are as follows:

*33.480.040.B. Scenic Corridors.*

*1. Purpose. The scenic corridor designation is intended to preserve and enhance the scenic character along corridors, and where possible, scenic vistas from corridors. This is accomplished by limiting the length of buildings, preserving existing trees, providing additional landscaping, preventing development in side setbacks, screening mechanical equipment, and restricting signs. Property owners and others are encouraged to make every effort to locate buildings, easements, parking strips, sidewalks, and vehicle areas to preserve the maximum number of trees.*

*33.110.220 Setbacks*

*A. Purpose. The setback regulations for buildings and garage entrances serve several purposes:*

- They maintain light, air, separation for fire protection, and access for fire fighting;*
- They reflect the general building scale and placement of houses in the city's neighborhoods;*
- They promote a reasonable physical relationship between residences;*
- They promote options for privacy for neighboring properties;*
- They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;*
- They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and*
- They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.*

*33.110.215 Height*

*Purpose. The height standards serve several purposes:*

- *They promote a reasonable building scale and relationship of one residence to another;*
- *They promote options for privacy for neighboring properties; and*
- *They reflect the general building scale and placement of houses in the city's neighborhoods.*

Given the unique configuration and constraints of the site, and with the proposed replanting design, the proposal will replace impacted scenic resources, fit the topography and diverse character of the nearby development, and provide space and separation from neighboring homes for privacy and fire fighting access. As such, the proposal will equally meet the purpose of these noted regulations, and this criterion is met.

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

Finding: The subject site is a steeply sloped lot in a residential zone, R20. When a lot is steeply sloped, features, such as street-facing doors and windows, which generally contribute to livability by allowing for a visual connection between the street and the residence, do not apply. Therefore, the expansive nearly blank street-facing façade of the proposed development does not necessarily conflict with the livability or detract from the appearance of the residential area, as allowed by these exceptions. Certainly, the removal of a grove of native trees along the scenic corridor will diminish the wooded appearance of the residential area. However, the Scenic provisions generally allow for the removal of trees within a building footprint (33.480.040.B.2.h) and with the implementation of a robust replanting treatment, the wooded character will be replaced.

As measured per Base Point 2 (33.930.050.A.2), which is used with the highest grade of a site is more than 10 feet above the lowest grade, the building will exceed the maximum allowed height limit by 3.5 feet. This minor increase in height is not expected to significantly impact the livability or appearance of the residential area, since the house will appear to be within the allowed limit on the street facing façade, and several of the large diameter trees to be retained on the riverside of the site are of a height comparable to the house, which will help to temper the additional building height.

Overall, with the implementation of the replanting scheme discussed previously, this criterion will be met.

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

Finding: Three Adjustments are requested. As noted in the findings above, with the implementation of the replanting scheme along the street side of the residence and the retention of large mature trees on the riverside, the placement and scale of the proposed residence will remain consistent with the overall purpose of the zone, which is to provide for residential development. As such, this criterion is met.

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

Finding: There are no City-designated historic resource on the site. As discussed above, the scenic resources of Scenic Drive, SD 38-27, will be significantly altered by the removal of a grove of native trees and the installation of a tall nearly blank façade. However, with the implementation of the planting measures noted above, the scenic qualities will be replaced. Therefore, with the noted conditions, this criterion will be met.

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

Finding: As noted in the findings above, conditions will be applied to replace the trees removed from the scenic corridor setback and to protect other large trees on the site. Accordingly, those measures should mitigate for the reduction in the setbacks and the minor increase in building height, and this criterion will be met.

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

Finding: The site is not located within an environmental zone, so this criterion does not apply.

## V. CONCLUSION

Applicant's revised proposal for a new multi-story residence, in substantial conformance with Attachments C1-C4 of the Reconsideration Report (Exhibit H-23), will meet the Greenway and Adjustment approval criteria, and should be approved with the BDS staff-recommended CONDITIONS, as set forth here:

- "A. The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for permits (building, Zoning, grading, Site Development, erosion control, etc.).
1. Permit plans shall include the following statement, *"Any field changes shall be in substantial conformance with approved LU 19-218415 EN GW Attachments C1 through C4."* Building Permits shall not be finalized until the BDS Zoning Permit for inspection of mitigation actions required in Condition C is finalized.
- B. Temporary, 4-foot high, bright orange construction fencing shall be placed as depicted on the BDS Staff Modified Construction Management Plan (C3).
1. All measures provided for sediment control, including sediment fencing, shall be placed inside of the temporary construction fence, as required at permit time.
  2. No mechanized construction vehicles are permitted within the designated work area riverward of the rail corridor. All piping and outfall work to be conducted within or riverward of the rail corridor shall be conducted with direction drilling equipment or hand-held equipment and shall only be allowed within the designated work area shown on the BDS Staff Modified Construction Management Plan (C3). All planting work, and nuisance vegetation removal shall be conducted using handheld equipment.
  3. Trees shall be protected with 4-foot tall flexible orange construction fencing, as depicted on BDS Staff Modified Construction Management Plan (C3); or in accordance with according to tree protection measures provided in Title 11 Tree Code, Chapter [11.60.030 Tree Protection Specifications](#).
- C. The applicant shall obtain a Zoning Permit for the removal of nuisance species vegetation and the installation of the required mitigation plantings, as depicted on the BDS Staff Modified Plan (Attachment C4 to Exhibit H-22)(Sheet no. L1.03)).

1. Native plants shall be installed within the designated planting area in substantial conformance with the BDS Staff Modified Plan (Attachment C4). All plantings shall be selected from the *Portland Plant List*.
  - 1) Plantings shall be installed between October 1 and March 31 (the planting season).
  - 2) Prior to installing the required mitigation plantings, non-native nuisance plants shall be removed from all areas within 10 feet of remediation plantings, using handheld equipment. No herbicides or mechanized construction vehicles are permitted.
  - 3) Ivy shall be removed from all tree trunks in all mitigation/planting areas, as noted on the BDS Staff Modified Plan (Attachment C4), as follows: *Girdle the ivy by using loppers or a pruning saw to cut through every vine clinging to the tree trunk at shoulder height and at ankle height. Strip the ivy away from the tree between the two cuts – carefully, so the bark is not damaged. After girdling the ivy from the tree, also clear the surrounding ground ivy vines and roots within a 6-foot radius around the tree. Remove all cut ivy vines and roots from the site.*
  - 4) After removing the nuisance species from the planting areas; removing ivy from the tree trunks; and installing the required mitigation plantings, the applicant shall request inspection of mitigation actions and final the BDS Zoning Permit.
  - 5) All ivy cleared trees and mitigation trees and shrubs 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 and nuisance plant removal for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.
  
- D. The landowner shall monitor the required ivy and nuisance plant removal, and the mitigation plantings for two years to ensure the ivy remains clear of the trees within the plantings areas, and to ensure survival and replacement of native plantings in the planting area, as described below. The landowner is responsible for ongoing survival of required plantings beyond the designated two-year monitoring period. The landowner shall:
  1. Submit two annual monitoring and maintenance reports for review and approval to the Land Use Services Division of the Bureau of Development Services containing the monitoring information described below. Submit the first report within 12 months following the final inspection approval of the permit required under Condition C. Submit a second report 12 months

following the date of the first monitoring report. Monitoring reports shall contain the following information:

- A count of the number of planted trees that have died. One replacement tree must be planted for each dead tree (replacement must occur within one planting season).
- The percent coverage of native shrubs and ground covers. If less than 80 percent of the planting area is covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
- A list of replacement plants that were installed.
- Photographs of the mitigation area and a site plan, in conformance with the permit plans approved per Condition A, showing the location and direction of photos.
- An estimate of percent cover of nuisance species (English ivy, Himalayan blackberry, reed canary grass, teasel, clematis) within 10 feet of all plantings. Nuisance species must not exceed 15 percent cover during the monitoring period. Herbicides are not approved for nuisance control.”

In addition:

E. The work area shall be limited, with the exception of ivy removal and plantings on the river side of the rail corridor, to the areas shown within the red lines on the BDS Staff Modified Construction Management Site Plan (Attachment C3 to Exhibit H-25 (Sheet C2.01)). and mechanical equipment may be located only within those lines. On the river side of the rail corridor, only boring may be used for the pipes to the outfall, and only hand digging may be used for the outfall and associated features.

## VI. DECISION

Approval of a Greenway Review to remove approximately 20 trees and to construct a new multi-story residence on a riverfront site within the River General (g) and River Water Quality (q) and scenic resource (s) overlays, with conditions A through E set forth above.

Approval of an Adjustment to reduce the Scenic (s) overlay setback to 10 feet.

Approval of an Adjustment to reduce the R20 front building setback to 10 feet.

Approval of an Adjustment to increase the R20 building height to 33.5 feet.

*N E Hochman*

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Nancy Hochman, Hearings Officer

September 2, 2021

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Date

Application Determined Complete: November 3, 2020  
Staff Reconsideration Report to Hearings Officer: August 20, 2021  
Decision Reissued: September 2, 2021

The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed.

Last Date to File a Copy of Reconsideration Decision with LUBA: (7 days after decision on reconsideration is issued -- per OAR 661-010-0021(3), found at <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=279425>.) Please contact LUBA at 1-503-373-1265 for further information.

Recording the final decision.

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

- *Unless appealed*, the final decision will be recorded after the last day to appeal 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. If approved, this 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 3 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 here.
- All applicable development standards, unless specifically exempted as part of this land use review.
- All requirements of the building code.
- 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. Initial Submittal, June 3, 2020
  - 2. Revised Submittal, November 3, 2020
    - a. Narrative
    - b. Arborist Report
    - c. Deed
    - d. DSL Letter from applicant
    - e. Geotech Letter
    - f. ODOT email from applicant
    - g. Storm Report
    - h. Survey Trace and Slope Determination
    - i. Photos
- B. Zoning Map
- C. Plans/Drawings:
  - 1. Coversheet
  - 2. Proposed Development Site Plan
  - 3. Construction Management Site Plan
  - 4. Civil Details
  - 5. Proposed Site Plan-Floor Plans & Staging Diagram
  - 6. Alternative Design Options-Floor Plan & Vicinity Diagram
  - 7. Building Elevations / Sections
  - 8. Existing Conditions Site Plan
  - 9. Tree Removal and Protection Plan
  - 10. Mitigation and Remediation Plan
  - 11. Survey
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development/BDS
  - 6. Urban Forestry/Parks
  - 7. Life Safety/BDS
  - 8. Division of State Lands
- F. Correspondence:

1. James Alderman, November 26, 2020, re: concerns about the project details, trees, traffic impacts, and review requirements

G. Other:

1. Original LU Application
2. Correspondence to/from applicant
3. Scenic Resource Inventory description

H. Received in Hearings Office:

1. Notice of Appeal Hearing
2. Hearings Office COVID 19 Order
3. Appeal Submittal
4. LU\_20\_151838\_GW\_AD DEC(DEC17)
5. Revised Appeal
6. Planner PowerPoint
7. Riverside Updated Site Plan
8. 21-02-21 Additional Applicant Evidence
9. Ben slope profile section current
10. 9401 Riverside TOPO 1-27-21
11. A1 01 Revised Site Plan & Sections
12. Lewis & Clark Riverside – LS 2-1-21
13. PHS Determination Memo 9923 S. Riverside
14. Riverside – Arborist Tree Survey
15. Memo to Hearings Officer
16. 21-02-16 Riverside Rev5.pdf
17. TOPO of site and adjacent site
18. 21-02-06 Riverside Rev5
19. Email requesting an extension

New Documents on Request for Reconsideration:

20. Notice of Hearing
21. Notice of Withdrawal of Decision for Reconsideration
22. 7/12/21 LUBA Letter acknowledging Withdrawal for Reconsideration
23. Staff Reconsideration Memo
24. Staff PowerPoint Presentation
25. Response to Report for the Reconsideration
26. Record Closing Information