

Zoning: Heavy Industrial (IH) w/ Greenway River Industrial (i) Overlay, Prime Industrial Overlay Zone (k), and Scenic Resource Zone (s) Overlay
Case Type: Greenway (GW)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant proposes to remove 93, primarily cottonwood trees, of the 1,625 trees on the site due to ongoing hazardous conditions (tree failures) that pose a risk to the Ash Grove Cement Company Import Terminal operations and employees. Trees proposed for removal are based on condition and risk of striking a target. In addition, black cottonwood saplings less than 6-inches dbh will be removed. Trees will be removed by cutting at the base leaving the root buttress and stump intact to minimize disturbance.

To mitigate for the habitat functions lost by removal of the hazard trees, the applicant proposes to leave some trees as snags and downed wood as habitat features and plant 64 native trees and woody plants. In addition, nuisance species removal will occur within the greenway setback through both mechanical and chemical control. The proposed alterations are both riverward and within the greenway setback and are therefore subject to Greenway Review (33.440.310).

Relevant Approval Criteria:

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

- Greenway Review Approval Criteria, Zoning Code Section 33.440.350; and
- *Willamette Greenway Design Guidelines*

FACTS

Site and Vicinity: The project site is made up of 2 tax lots located along the east bank of the Willamette River, near River Mile 10, north of the Fremont Bridge. The 12.36-acre site is a long (3,800-feet), narrow (approximately 150-feet) piece of land between the river's edge and a large rail yard (Albina Rail Yard) to the east. To the south is the Lower Albina Industrial Area and Swan Island is to the north. The site is also located in an area designated as the Portland Harbor Superfund Area.

The site is developed and actively used to transfer cement and ground, granulated blast furnace slag from ships to bulk storage silos. Material stored in the silos is transferred to rail cars or trucks for delivery to the end users. Vehicle access is from a private tract (Tract A) that was created through an earlier land division (LUR 92-00098 SP) to provide access to the project site as well as the adjacent rail yard. The tract connects to the public street system to the north at N Port Center Way on Swan Island.

The shoreline is relatively steep and includes ship docking facilities, rock, and a mix of native and non-native vegetation. Landward of the top of the bank, the site is relatively flat and has been developed for the industrial operations.

Zoning: The project site is in the Heavy Industrial (IH) zone and has Greenway River Industrial (i), Scenic Resource (s), and Prime Industrial (k) overlay designations.

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

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

The **Scenic Resources (s)** zone is intended to:

- Protect Portland's significant scenic resources as identified in the Scenic Resources Protection Plan;
- Enhance the appearance of Portland to make it a better place to live and work;
- Create attractive entrance ways to Portland and its districts;
- Improve Portland's economic vitality by enhancing the City's attractiveness to its citizens and to visitors;
- Implement the scenic resource policies and objectives of Portland's Comprehensive Plan.

The goals of the Scenic Resources zone are achieved by establishing height limits within view corridors to protect significant views and by establishing additional landscaping and screening standards to preserve and enhance identified scenic resources.

The purposes of the **Prime Industrial (k)** overlay zone are to protect land that has been identified in the Comprehensive Plan as Prime Industrial, and to prioritize these areas for long-term retention. Prime Industrial Land is suited for traded-sector and supportive industries and possesses characteristics that are difficult to replace in the region. In Portland, Prime Industrial land consists of the Portland Harbor, Columbia Corridor, and Brooklyn Yard industrial districts. These freight-hub districts include Oregon's largest seaport, rail hub, and airport. Existing and potential multimodal freight access in these districts support interregional transport, exporting industries, and associated industrial businesses and activities. The regulations protect these areas by preventing, or requiring an off-set for, conversion of the land to another zone or use that would reduce industrial development capacity.

Land Use History: Approvals of quasi-judicial land use reviews run with the land and are transferred with ownership. Associated conditions or restrictions continue to apply. City records indicate that prior land use reviews have been conducted for this site. Prior land use reviews include the following:

- CU 95-79: Conditional Use for improvements within the Greenway Setback. Approved with conditions re: permits and riverbank plantings
- GP 8-83: Greenway Permit for new building. Approved
- LUR 92-00098 SP: Major Partition with a private street. Approved
- LUR 92-00270 GW and LUR 92-00372 GW: Greenway Review for bulk cement terminal. Approved with conditions re: permits
- LUR 93-00701 GW: Greenway Review for bulk cement terminal. Approved with conditions re: plantings.
- LUR 97-00299 GW: Greenway Review for addition to storage building. Approved with conditions re: riverbank plantings
- LUR 97-01091 GW: Greenway Review for riverbank stabilization. Approved
- LUR 98-00475 GW: Greenway Review for bank repair under dock. Approved with conditions re: bank treatment
- LUR 98-00734 GW: Greenway Review for alteration. Withdrawn/Exempt activity
- LU 05-174846 GW AD: Greenway Review for East Side Combined Sewer Overflow (CSO) facility and Adjustment Review for parking standards. Approved with conditions.
- LU 06-101468 GW: Greenway Review for ship unloader equipment. Approved with conditions.
- LU 07-143095 GW: Greenway Review for two outfalls and tree removal. Approved with conditions.
- LU 12-152783 GW: Greenway Review to replace 2 belt conveyors with 2 air slide conveyors, and related earthwork involving approximately 1,120 cubic yards of material (606 cubic yards of cut and 514 cubic yards of fill); installation of retaining walls; and replacement of concrete accessways.

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on December 3, 2021.

1. **Agency Review:** Several Bureaus and agencies have responded to this proposal. Please see E-Exhibit for details. The comments are addressed under the appropriate criteria for review of the proposal.
2. **Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

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: This issue “applies to all but river-dependent and river-related industrial use applications for Greenway Approval, when the Greenway trail is shown on the property in the *Willamette Greenway Plan*.” These guidelines call for complementary design and orientation of structures so that the Greenway setback area is enhanced;

Guidelines:

1. **Structure Design.** The Greenway Setback area should be complemented and enhanced by designing, detailing, coloring, and siting structures and their entrances to support the pedestrian circulation system, including both the Greenway trail and access connections.
2. **Structure Alignment.** Where surrounding development follows an established block pattern, alignment with the block pattern should be considered in structure placement. Structure alignment should also take into account potential view corridors from existing public rights-of-way or acknowledged viewpoints. The pedestrian access system should be designed to take advantage of these alignments.

Findings: The project site has a Greenway Trail designation. However, since the site is occupied by a river-related industrial use, this Issue does not apply.

Issue B. Public Access: This issue “applies to all but river-dependent and river-related industrial use applications for Greenway Approval, when the Greenway trail is shown on the property in the *Willamette Greenway Plan*.” These guidelines call for integration of the Greenway trail into new development, as well as the provision of features such as view points, plazas, or view corridors;

Guidelines:

1. **Public Access.** New developments should integrate public access opportunities to and along the river into the design of the Project. This includes the Greenway trail, formal viewpoints, access connections to the Greenway trail, and internal site pedestrian circulation.
2. **Separation and Screening.** The pedestrian circulation system, including Greenway trail, viewpoints, and trail access connections, should be designed to ensure adequate separation and screening from parking, loading, circulation routes, external storage areas, trash dumpsters, exterior vents, mechanical devices, and other similar equipment.
3. **Signage.** Access connections should be clearly marked.

4. Access to Water's Edge. Where site topography and conservation and enhancement of natural riverbank and riparian habitat allow, safe pedestrian access to the water's edge is encouraged as part of the Project.

Findings: As noted above the facility is occupied by a river-related industrial use. In addition, no development is proposed. Therefore, this Issue is not applicable.

Issue C. Natural Riverbank and Riparian Habitat: This issue “applies to situations where the river bank 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: 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. The shoreline along River Industrial sites is intended to support industrial development while preserving and enhancing riparian habitat where possible.

The site has been identified within Site 14.4a in the Lower Willamette River Wildlife Habitat Inventory (LWRWHI). This is a Rank V (Value 23) Habitat Area, and it is noted for relatively high physical and human disturbance. Rank V sites generally have degraded riparian habitat with little vegetative cover.

Native vegetation on the site is shown on the Existing Conditions Site Plan sheets (C101-C107). The request is to fully remove 73 hazard trees. Additionally, the project proposes to remove the canopy of 15 other hazard trees and retain these as snags. Beyond providing standing snags, the proposal is to remove and place 8 of the hazard trees as downed wood. Mitigation measures are provided on the Mitigation & Remediation Site Plan sheets (L101-L107).

Additionally, the 2006 Greenway Review (LU 06-101468 GW) for the site found that the removal of nuisance vegetation (Himalayan blackberry, clematis, and Scot's broom), and the installation of mitigation and required greenway plantings would enhance the riparian functions of the shoreline, and the review included conditions to implement those measures. In addition to the 2006 Greenway Review improvements, the 2012 Greenway Review (LU 12-152783 GW) required removal of six nuisance trees, *Ailanthus altissima* (Tree of Heaven), and the stumps to be treated to prevent regrowth. The conditions of approval requiring these removals serve to limit further proliferation of these nuisance species and reduce competition with native species, which in turn, serve to enhance the shoreline for riparian functions while also allowing for the continued use of the site for the river-dependent industrial facility.

Existing invasive species on the site will be removed as described on the Mitigation & Remediation Site Plan sheets (L101-L107).

Although the proposal will remove 93 small to large hazard trees, retaining some as snags and downed wood, a significant number of smaller trees will remain, well beyond the number required to meet the landscaping standard in 33.440.230.B. Removal of the hazard trees will result in faster growth of retained shrubs and trees by removing competitive pressure. The creation of snags and placement of downed wood will help to offset the loss of habitat resulting in removal of the hazard trees. As remaining shrubs and trees grow larger, they will replace the canopy lost by removing the hazard trees. To facilitate replacement of the lost canopy, Ash Grove also proposes to plant native woody species in several locations where space is available and soil conditions are suitable. As such, this Issue will be met.

Issue D. Riverbank Stabilization Treatments: This Issue “applies to all applications for Greenway Approval.” This guideline promotes bank treatments for upland developments that enhance the appearance of the riverbank, promote public access to the river, and incorporate the use of vegetation where possible;

Guidelines:

1. Riverbank Enhancement. Riverbank stabilization treatments should enhance the appearance of the riverbank, promote public access to the river, and incorporate the use of vegetation where practical. Areas used for river-dependent and river-related industrial uses are exempted from providing public access.

Findings: The site’s existing shoreline consists of a mix of bank protection measures, which have been installed to control erosion (riprap) or to facilitate industrial use (piers, causeways, docks). The site does not currently provide public access to the river. The applicant does not propose any public access. No disturbance to the existing riverbank protection or shoreline is proposed. The application is for removal of hazard trees as shown on the accompanying plans. Therefore, this Issue is 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: This issue applies to all applications for greenway review that are subject to the landscape requirements of Chapter 33.440. Landscaping must be provided to conserve or re-establish vegetative cover within or riverward of the greenway setback, and this landscaping is in addition to any other Code landscape requirements.

Required greenway landscaping must include a minimum of one tree for every 20 feet of river frontage and a minimum of one shrub for every two feet of river frontage. Remaining areas that are not paved surfaces must have living ground cover. All trees and shrubs are to be planted generally within and riverward of the greenway setback, and all landscaping must comply with the native plant requirements of the Willamette Greenway Plan.

Following removal of the hazard trees, over 1,500 native trees will remain on the site. No native shrubs are proposed for removal. The number of retained trees and shrubs far exceeds the landscaping standard.

As part of three prior land use cases (LU 06-101468 GW, LU 07-143095 GW, and LU 12-152783 GW), conditions were imposed that the owner provide plans at the time of permit review to demonstrate the required number of native plants would be planted to meet Code requirements. Specifically, LU 06-101468 GW and LU-07-143095 GW required the planting of 27 trees and 40 shrubs. LU 12-152783 GW required the planting of 194 trees and 1,935 shrubs, removal of six nuisance trees (Tree of Heaven) and removal of all nuisance shrubs and groundcover. The sheets showing the site's existing conditions illustrate the vegetation on the site. Sheet C-108 provides a listing and count of plant species on the site, demonstrating that previous conditions have been met. Nuisance species remain on site and will be removed by the proposed action. This issue is met.

Issue F. Alignment of Greenway Trail: This issue “applies to all applications for Greenway Approval with the Greenway trail shown on the property in the Willamette Greenway Plan.” These guidelines provide direction for the proper alignment of the Greenway trail, including special consideration for existing habitat protection and physical features in the area of the proposed alignment;

Guidelines:

- 1. Year-round Use.** The Greenway trail should be located so as to be open for public use year round. The trail may be constructed along the top of bank, on a floating platform, or in a series of tiers adjacent to the river, provided that at least one of these levels will remain unsubmerged.
- 2. Habitat Protection.** The Greenway trail should be routed around smaller natural habitat areas to reduce the impact on the habitat area.
- 3. Alignment.** The Greenway trail alignment should be sensitive to and take advantage of topographical and environmental features of the site, views of the river, existing and proposed vegetation, and sunlight.

Findings: This issue applies to all applications for greenway review with Greenway Trail shown on the property in the Willamette Greenway Plan. Presently, the site contains a Major Public Trail Designation. No segments of this trail are developed.

A public trail on this site is not feasible or safe. The site is an active industrial operation with heavy equipment and machinery in use during hours of operation. The allowed heavy industrial use is incompatible for a public trail. Additionally, there is inadequate space to accommodate placement of a trail among the buildings, bulk material storage silos, conveyors, other equipment, railroad tracks, driveways, and internal access roads that currently occupy the site. Furthermore, US Department of Homeland Security regulations restrict access onto the site whenever a ship is in berth. This issue is met.

Issue G. Viewpoints: This issue “applies to all applications for Greenway Approval with a public viewpoint shown on the property in the *Willamette Greenway Plan* and for all applications proposing to locate a viewpoint on the property”. These guidelines provide direction about the features and design of viewpoints, as required at specific locations;

Guidelines:

- 1. Design.** Viewpoints should be designed as safe, comfortable, resting places to view the river, a scenic area, or an activity. Viewpoints should be relatively small, with a hard surface, shaped (square or semi-circle for example) with vegetation to frame the view.
- 2. Facilities.** Each viewpoint should be provided with seating and amenities such as drinking fountains, trash collection, interpretive signs, and public art.
- 3. Access to Water's Edge.** Where topography and natural riverbank conditions allow, viewpoints may provide for pedestrian access to the river.
- 4. Relationship to Trail.** Viewpoints should be adjacent to the trail, but separated spatially, preferably between the trail on the river.

Findings: The south end of the site is within a designated scenic view corridor (VC 17-07) which originates on a bluff to the east, and calls for a height limit of 50 feet in the portion of the site within the view corridor. However, there are no public viewpoint designations on the site, and no public viewpoints are proposed or required. Therefore, this Issue is not applicable.

Issue H. View Corridors: This issue “applies to all applications for Greenway Approval with a view corridor shown on the property in the *Willamette Greenway Plan*.” These guidelines provide guidance in protecting view corridors to the river and adjacent neighborhoods;

Guidelines:

- 1. Right-of-way Protection.** View corridors to the river along public rights-of-way are to be protected. These rights-of-way should not be vacated.
- 2. View Protection.** Buildings, structures, or other features must be located to avoid blocking view corridors.
- 3. Landscape Enhancement.** Landscape treatments within view corridors should frame and enhance the view of the river.

Findings: As noted above, the site is within a designated scenic view corridor; however, there are no designated view corridors on the site in the *Willamette Greenway Plan*, so this Issue is not applicable.

- B. River frontage lots in the River Industrial zone.** In the River Industrial zone, uses that are not river-dependent or river-related may locate on river frontage lots when the site is found to be unsuitable for river-dependent or river-related uses. Considerations include such constraints as the size or dimensions of the site, distance or isolation from other river-dependent or river-related uses, and inadequate river access for river-dependent uses.

Findings: Since the facility transports supplies and products by ship and barge, there are no limitations on the use of the site for such activities. As such, this criterion does not apply.

- C. Development within the River Natural zone.** The applicant must show that the proposed development, excavation, or fill within the River Natural zone will not have significant detrimental environmental impacts on the wildlife, wildlife habitat, and scenic qualities of the lands zoned River Natural. The criteria applies to the construction and long-range impacts of the proposal, and to any proposed mitigation measures. Excavations and fills are prohibited except in conjunction with approved development or for the purpose of wildlife habitat enhancement, riverbank enhancement, or mitigating significant riverbank erosion.

Findings: The nearest area with a River Natural (n) zoning designation is at the base of the bluff by the University of Portland, which is approximately two miles downstream of the project site. Since no work or development is proposed in a River Natural zone, this criterion is not applicable.

- D. Development on land within 50 feet of the River Natural zone.** The applicant must show that the proposed development or fill on land within 50 feet of the River Natural zone will not have a significant detrimental environmental impact on the land in the River Natural zone.

Findings: No development is proposed within 50 feet of a River Natural Zone, so this criterion does 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 nearest Rank I and II habitat areas approximately one to two miles downstream of the project area (Site 11.4/Rank II, 9.2/Rank II) within the Swan Island lagoon and at the bluff along the University of Portland campus.

As the site does not abut or occur close to any Rank I or II wildlife habitat areas, the proposed hazard tree removal will have no environmental impact to these habitat areas.

Additionally, with the maturity of the vegetation that was planted as conditions of approval for the greenway reviews in 2006, 2007, and 2012, the Rank V habitat value of the site has been enhanced. This is evidenced by the numerous shrubs and trees counted during the 2021 assessment. This criterion is 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; and**
 - 4. The request will not significantly interfere with beaches that are open to the public.**

Findings: The site is fully developed as an existing and actively used cement and ground, granulated blast furnace slag storage and transport facility. The proposal is to remove hazard trees. This application does not propose any additions or changes to the site's use, nor does it propose any ground disturbance. No new structures are proposed.

The removal of the hazard trees is not expected have a significant effect on biological productivity in the river. At the Portland Terminal, the Willamette River is over 1,000 feet wide with no functional floodplain given the long history of development in the Portland area. The lack of a functional floodplain eliminates a potential source of allochthonous inputs to the river.¹ Steep armored riverbanks limit the accumulation of woody debris, which is also discouraged by existing uses along the river. The lower Willamette River does receive some coarse particulate organic matter (CPOM) from upstream but the primary organic matter inputs from upstream reaches would be fine particulate organic matter (FPOM) and dissolved organic matter (DOM). Most of the CPOM would be present as branches or tree boles and be transported through the lower river with no residence time. A small portion of the CPOM reaching the lower river would be transient with a residence time dependent on the size of the CPOM and streamflows. The FPOM and DOM along with autochthonous inputs would be the primary sources of energy supporting the food web within the lower river.² Because the river is so wide at the Portland Terminal, the trees along the riverbank are expected to have a small, but overall negligible, impact on aquatic ecosystem functions. The trees are present on the eastern bank of the river, so they provide little to no shade to the river during summer and any area of shading would be small relative to the size of the river. Therefore, the trees have little opportunity to assist with thermal regulation. Terrestrial organic matter (i.e., leaves, needles, and branches) and terrestrial insects falling from the trees onto the riverbank or into the water does provide an allochthonous input to the aquatic ecosystem. This input, however, is quite small relative to the size of the river at the Portland Terminal and inputs coming from upstream. Overall, terrestrial organic inputs from riparian vegetation are expected to be insignificant.^{3,4} Therefore, if removal of the hazards trees has any effect on biological productivity in the river, it would not be considered significant.

Ash Grove is proposing to do some planting of trees where possible to assist with recovery of the tree canopy. Removal of the hazard trees will eliminate shading and competition for resources with numerous existing smaller trees already present along the shoreline, which will allow them to grow faster and fill in spaces left by removal of the hazard trees. Subject to these plantings, this criterion is met.

G. Development within the River Water Quality overlay zone setback. If the proposal includes development, exterior alterations, excavations, or fills in the River Water Quality overlay zone setback the approval criteria below must be met. River-dependent development, exterior alterations, excavations, and fills in the River Water Quality zone are exempt from the approval criteria of this subsection.

Findings: The project site does not have a River Water Quality designation, so this criterion does not apply.

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.

Findings: This criterion is only applicable to projects within the River Water Quality (q) overlay zone. This site does not have a q-overlay, so this criterion does not apply.

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 11 can be met, and those of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

Development standards in Zoning Code Section 33.440.230 require landscaping within or riverward of the Greenway Setback. One tree and 10 shrubs are required for every 20 feet of river frontage. These plantings must be shown on all permit plans.

Trees specifically approved for removal by the land use review are exempt from Title 11 Section 11.50.040 Tree Preservation Standards (11.50.040 B.5). However, the 11.50.050 On-Site Tree Density Standards must be met. The applicant's site plans demonstrate compliance with the On-Site Tree Density Standards.

CONCLUSIONS

The Project will remove hazardous trees and nuisance plant species, leave some trees as snags and downed wood as habitat features, and plant 64 native woody plants. The applicant has provided findings for the approval criteria listed above and, with conditions, the applicable approval criteria will be able to be met.

ADMINISTRATIVE DECISION

Approval of Greenway Review for the following:

- Removal of 93 hazardous trees with some being left as snags or downed wood;
- Planting of 64 native trees and woody plants; and
- Removal of nuisance plant species.


all within the Greenway overlay zones, and in substantial conformance with Exhibits C.1-C.25, signed and dated by the City of Portland Bureau of Development Services March 9, 2022. Approval is subject to the following conditions:

- A. A BDS Zoning Permit is required for inspection of required plantings.** The Conditions of Approval listed below, shall be noted on appropriate plan sheets submitted for the Zoning Permit. Plans shall include the following statement, ***"Any field changes shall be in substantial conformance with approved LU 21-087367 GW Exhibit C."***
- B.** The applicant shall obtain a BDS Zoning Permit for approval and inspection of a planting plan for a total of 64 native trees and woody plants, in substantial conformance with Exhibit C (L101-L108). 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. The location of the trees and plants required by this condition to be planted in the mitigation area and labeled as "new required landscaping". The plans shall be to scale, and shall illustrate a naturalistic arrangement of plants and should include the location, species, quantity and size of plants to be planted.
 - b. The applicant shall indicate on the plans selection of either tagging plants for identification or accompanying the BDS inspector for an on-site inspection.
 2. Plantings shall be installed between October 1 and March 31 (the planting season).
 3. 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. Some trees removed shall be left as snags or downed wood.
 5. After installing the required mitigation plantings, the applicant shall request inspection of mitigation plantings and final the BDS Zoning Permit.
 6. All required trees and plants shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector; or the applicant shall arrange to accompany the BDS inspector to the site to locate required plantings for inspection. If tape is used it shall be a contrasting color that is easily seen and identified.
- C. The land owner shall maintain the required plantings** for two years 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 land owner in a healthy manner, with no more than 15% cover by invasive species. Required plants that die shall be replaced in kind.
- D.** Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

Note: In addition to the requirements of the Zoning Code, all uses and development must comply with other applicable City, regional, state and federal regulations.

This decision applies to only the City's greenway regulations. Activities which the City regulates through PCC 33.430 may also be regulated by other agencies. In cases of overlapping City, Special District, Regional, State, or Federal regulations, the more stringent regulations will control. City approval does not imply approval by other agencies.

Staff Planner: Sean Williams

Decision rendered by:  **on March 9, 2022**
By authority of the Director of the Bureau of Development Services

Decision mailed: March 11, 2022

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

Procedural Information. The application for this land use review was submitted on September 16, 2021 and was determined to be complete on November 19, 2021.

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 September 16, 2021.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: March 19, 2022.**

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

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

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

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

Appealing this decision. This decision may be appealed to the Hearings Officer, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on March 25, 2022. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this**

decision. If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIX decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

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

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

Recording the final decision.

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

- *Unless appealed*, the final decision will be recorded after **March 25, 2022** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder. For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

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

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

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

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and

- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative (11/18/21)
 - 2. Arborist Report
 - 3. Photos
 - 4. Original Application Submittal
- B. Zoning Map (attached)
- C. Site Plans
 - 1. C-001 Cover Sheet
 - 2. C-002 Zoning Map
 - 3. C-101 Existing Conditions Site Plans
 - 4. C-102 Existing Conditions Site Plans
 - 5. C-103 Existing Conditions Site Plans
 - 6. C-104 Existing Conditions Site Plans
 - 7. C-105 Existing Conditions Site Plans
 - 8. C-106 Existing Conditions Site Plans
 - 9. C-107 Existing Conditions Site Plans
 - 10. C-108 Existing Plant Community Table
 - 11. C-201 Proposed Development and Construction MGMT Site Plans
 - 12. C-202 Proposed Development and Construction MGMT Site Plans
 - 13. C-203 Proposed Development and Construction MGMT Site Plans
 - 14. C-204 Proposed Development and Construction MGMT Site Plans
 - 15. C-205 Proposed Development and Construction MGMT Site Plans
 - 16. C-206 Proposed Development and Construction MGMT Site Plans (attached)
 - 17. C-207 Proposed Development and Construction MGMT Site Plans
 - 18. L-101 Mitigation and Remediation Site Plans
 - 19. L-102 Mitigation and Remediation Site Plans
 - 20. L-103 Mitigation and Remediation Site Plans
 - 21. L-104 Mitigation and Remediation Site Plans
 - 22. L-105 Mitigation and Remediation Site Plans (attached)
 - 23. L-106 Mitigation and Remediation Site Plans
 - 24. L-107 Mitigation and Remediation Site Plans
 - 25. L-108 Mitigation and Remediation Details
- 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. Site Development Review Section of BDS
 - 4. Bureau of Parks, Forestry Division
 - 5. Fire Bureau; Life Safety Plans Examiner
- F. Correspondence: NONE
- G. Other:
 - 1. LUR Application
 - 2. Incomplete Letter

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).