

Decision Table H. Willamette River: Open Space and Development

The testimony received on the River, Open Space and Trails covered in this table relate to:

- *Swimming in the Willamette River*
- *Retail in the Open Space zone*
- *City’s implementation of Nollan/Dolan Supreme Court decisions*
- *Public trail requirements*
- *River-dependent/river-related definitions and a regulation for marine passenger docks*
- *Nonconforming uses and development in the river setback*

Contents of Decision Packet H:

- Decision Table H

Items Marked for PSC Discussion:

- H1: Requests related to access to the Willamette River for swimming.
- H2: Requests related to allowing retail in the Open Space zone.

Ref #	Comment	Commenter(s)	Proposed Draft	Request(s)	Staff recommendation	Staff rationale	Discuss?	PSC decision
H1	20428 20497 20483 20491 20956 21025 21026 21028 21031 21033	Robin Cody Willie Levenson, Human Access Project Che Lowenstein Allyson Medeles Ruth Williams John Ostrander John Ostrander Leah Middlebrook Tom Vandel Mike Lindberg	Swimming in the River The policy framework in the Proposed Draft describes the important role the river/riverfront plays for public access and recreation. See Goals 4A and 4C, and Policies 4.1, 4.2 and 4.5. Specific district policies are also supportive. There is no swimming-related Central City-wide action. However, WR4 calls for efficient use of docks for river access points. There are district-specific actions, in the Central Eastside - UD10 (explore opportunities for open space and recreation) and WR11 (implement Eastbank Crescent concept plan); in Downtown, UD18 (Waterfront Park Master Plan update), and 19 (Hawthorne Bowl river access).	1. Establish guidelines for safe swimming in the river 2. No net loss of river’s edge access in the Central City 3. PPR should provide public information directing people to safe swimming locations	Propose new Central City-wide action – <u>Expand opportunities for safe swimming in the Willamette River in the Central City in places where conflicts with natural resource protection and enhancement can be avoided or minimized.</u> Ongoing, Parks (lead), BES, Private	1. The Proposed Draft policy framework sufficiently addresses this topic, two examples are: Willamette River Policy 4.2 Willamette River Recreation – Provide for safe, enjoyable and valuable active and passive recreational experiences for all users on, along and in the river... and, Policy 4.5 Connections to the River – Increase the community’s enjoyment of and direct experience with the Willamette River. Improve physical and visual connections between the districts and the Willamette River. What is needed is a Central City-wide action that states that the City and others interested in river swimming will continue to work on expanding opportunities for safe river swimming access. 2. Staff does not find the need to address no net loss of river access in the CC2035 Proposed Draft. <ul style="list-style-type: none"> • The policy framework as described above seeks to increase public access and enjoyment of the river in the Central City. • District-specific actions also support river access including swimming. Staff recognizes the importance of preserving and expanding public access into the river and there are related actions. • A no net loss standard would not take into account the quality and distribution of public access areas versus the square footage of area, and address competition with other river’s edge desired outcomes such as habitat restoration and enhancement. 3. Parks is working on an internet page to upload on its web site that would provide public information on river swimming safety.	<input checked="" type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other

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H2	20481 20497 20956	Jeanne Galick Willie Levenson, Human Access Project	Retail in the Open Space Zone proposed draft language that revises 33.510.115.B.1 and states:	<ol style="list-style-type: none"> 1. Limit retail structures in Open Space zone to 2, and limit each structure to less than 1,000 square feet. Encourage retail on the west side of Naito Parkway. 2. Do not allow permanent retail structures in parks. Temporary, (e.g. food carts) okay. 3. Objects to commercial development in Tom McCall Waterfront Park and inner eastside parks – not appropriate locations. Promote/incent retail near these locations. Consult Parks Board. 4. Retail in open spaces inconsistent with FEMA BIOP-related revisions. 5. Revert back to Discussion Draft code: 2,500 square foot retail structure allowance in mapped open space locations, with options for more retail in future parks. 6. America Vicente’s request is to revise zoning code to allow development of squares and parks that have a mix of uses. 	Retain the Proposed Draft version	<p>BPS staff is in consultation with PPR staff.</p> <ul style="list-style-type: none"> • In general, the Zoning Code allows Retail Sales and Service uses in the Open Space zone when approved through a Conditional Use review and when associated with a Parks and Open Areas use. In the Central City Plan District, 33.510.115, one Retail Sales and Services use is allowed per site, up to 2,500 square feet but not larger than 5% of the site. <p>This provision applies only to mapped open spaces – Providence Park, Director Park, O’Bryant Park and Terry Shrunk Plaza.</p> <p>Food carts and other retail uses in a trailer would not be allowed outright in the OS zone unless the Zoning Code specifically allows for Retail Sales and Service uses under the provisions mentioned above and the Proposed Draft recommendation.</p> <ul style="list-style-type: none"> • Through CC2035 outreach, we learned that many people support a limited amount of retail in parks and open spaces that support park-related active and passive recreation. 	<input checked="" type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other
	20688 21037	Ruth Williams Ruth Williams Bob Salinger, Audubon	Additional uses allowed. The following uses are allowed on sites in the OS zone that are also shown on Map 510-10:					
	20701 20846 20911	Michael Jordan, BES Mike Abbate, PPR America Vicente	<ol style="list-style-type: none"> a. On sites that are 5 acres or less, the net building area of each Retail Sales and Service use may be up to 1,000 square feet, but the total amount of Retail Sales and Service uses on the site may not be more than 5% of the total site area. b. On sites that are more than 5 acres in size, the net building area of each Retail Sales and Service use may be up to 1,000 square feet, but the total amount of all Retail Sales and Service uses on the site may not be more than 10,000 square feet. <p>Note: the above text is a clean version of the strikethrough and underline for readability.</p> <p>Map 510-101 was revised to add Governor Tom McCall Waterfront Park, Holladay Park and the Open Space zoned area by OMSI in the Central Eastside.</p>					

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H3	20183 20944	Sandra McDonough, Portland Business Alliance Richard Allan for American Waterways, Inc. (AWI)	The Proposed Draft addresses Nollan/Dolan US Supreme Court decisions with revised language in 33.272.020 that says the need for additional trail facilities and application of regulations is determined to be roughly proportional to the impacts of the proposed development. Additionally, a draft Administrative Rule, with a methodology for the City to use in determining rough proportionality is included in Volume 5, along with an action to implement the Administrative Rule after the CC2035 Plan is adopted.	1. Plan does not fully address Nollan and Dolan US Supreme Court decisions on takings; silent on nexus test. 2. City’s proposal has flaws relating to constitutional standards for exactions. Local government burden to demonstrate threshold for exaction, proposes addition of code language in 33.272. A “when a development will increase the use of the trail system or will contribute to the need for additional trail facilities and it is determined that <u>the City has demonstrated</u> the exaction required by the regulations is to be logically related and roughly proportional to the impacts of the proposed development.” 3. Rough proportionality test assumes that the nexus test has been met with a one-size fits all formula. Rough proportionality formula only accounts for dedication of land.	Retain the Proposed Draft version but update the commentary to clearly reference the US Supreme Court decisions related to Nollan/Dolan.	According to the City Attorney, case law is clear that it is the City’s burden to demonstrate the need for a public trail exaction with a proposed development. In Proposed Draft, staff added clarifying language to 33.272, where the major public trails regulations apply, that acknowledges the City’s consistency with the Nollan and Dolan US Supreme Court decisions. Therefore, the proposed code language per testimony is unnecessary. However, staff does find that the commentary could be updated to reference the City’s addressing these US Supreme Court decisions. City staff is recommending a consistent approach/formula be applied to determine rough proportionality for proposed development projects that may involve major public trail exactions. The testimony is incorrect. The draft Rough Proportionality test does establish thresholds of proposed development impacts that trigger dedication of an easement only and dedication and construction of a trail segment as part of approving a new development (see Volume 5, page 200). Also, there is an opportunity for an applicant to dispute the number of trips used for the total number of average daily bicycle and pedestrian trips to determine proposed project impacts.	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other

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H4	20944	Richard Allan for AWI	<p>Federal Marine Transportation Security Act (MTSA) is not addressed in the Proposed Draft since there are no specific regulations or exceptions to regulations that relate to sites that are subject to this federal act.</p>	<p>Requiring a trail across the property of an MTSA regulated facility creates serious compliance issues with the MTSA.</p> <p>Remove trail designation from American Waterways site. Facility security plans cannot be readily shared with the public for security reasons. Requirements under the MTSA are not static and American Waterways Inc. must comply.</p>	<p>Retain the Proposed Draft version with an update to the commentary that mentions MTSA.</p>	<ul style="list-style-type: none"> • MTSA was established after the 9/11 attacks as part of homeland security. It requires security measures to control public access to facilities and vessels that might be vulnerable to an incident that would result in a significant loss of life, damages or disruptions. It requires certain facilities to have an approved security plan. • During the SE Quadrant planning process, the Stakeholder Advisory Committee discussed MTSA and staff promised to follow-up with the City Attorney. <p>The City Attorneys Office verified that nothing in federal law exempts MTSA regulated facilities from local regulations including a regulation that requires a public trail across an MTSA designated facility.</p> <ul style="list-style-type: none"> • The MTSA does not prescribe exact remedies. A property owner develops and submits a facility security plan that contains site-specific measures that address ongoing security and heightened Maritime Security (MARSEC) levels. The US Coast Guard (USCG) reviews and approves a facility security plan on a case-by-case basis. • The City's design review process allows flexibility in how projects are designed. The 2.4 acre American Waterways Inc. site is proposed for EXd zoning and a development proposal for this property would need to go through design review. A public access trail could potentially be incorporated into the site's design and still meet MTSA requirements. For example, the trail segment could go behind the MTSA regulated facility. • Staff acknowledges that there is a confidentiality issue associated with MTSA. A regulated facility's security plan cannot be shared with the general public. However, the City Attorney has found that a security plan could be shared confidentially with a designated representative like a City Attorney. • Staff recommends retaining the trail stars on the zoning map for this property. It preserves the option for public access through the site to connect to existing trail segments to the north and south. It also maintains the requirement if and when alternative uses and development of this site are proposed in the future. 	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other

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H5	20701 20183 20506 20688 20944 20961 21037	Michael Jordan, BES Sandra McDonough, Portland Business Alliance Peter Finley Fry, Central Eastside Industrial Council Bob Salinger, Audubon Richard Allan for AWI Dan Yates, AWI Bob Salinger, Audubon	Zoning code 33.910.030 revises the definition of river-related to add resource enhancement projects and passenger waiting/queuing areas, security checkpoints, cold food storage and machine shops associated with marine passenger terminals. See Volume 2A, Part 2, page 310. This is directly related to the proposed new standard for marine passenger dock uses in the river setback – see Ref# H6 below.	1.Current definition of river-dependent uses should include natural resources restoration projects. 2.Need to more clearly define river-dependent and river-related uses to allow uses that are ancillary to river-dependent and river-related uses on a property. 3.Need to think of terminal from the customer’s perspective. They expect shelter, restrooms, a place to sit, get a drink, get information, bike and luggage storage, ticketing, etc. 4.Do not expand the definition of river-related uses to include Marine Passenger Docks and Terminals. Violates Statewide Planning Goal 15 and could open opportunities for additional development in greenway throughout the Central Reach.	Retain the majority of the Proposed Draft version with one edit that deletes cold food storage as river-related.	1. Natural resource restoration is defined as river-related because it is not dependent on being located in the setback. As a river-related use it is allowed in the setback. 2. Uses that are ancillary to river-dependent and river-related uses need to be located outside of the setback per Statewide Planning Goal 15. These uses, like offices, restrooms and restaurants are not dependent on proximity to the river or river-dependent development such as docks. 3. Statewide Planning Goal 15's water-related definition states that "...uses that provide goods or services that are not directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered." Proposed Draft changes clarify specific uses that meet this definition will support river-dependent transportation in Portland and activate the riverfront. 4. After further review, while cold food storage is important for a passenger ship, it is not a river-related use that needs to be located within the river setback. It is not dependent on proximity to the river and could serve a marine passenger dock if located outside the 50' river setback.	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other

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H6	20944 20961 20688 21037	Richard Allan for AWI Dan Yates, AWI Bob Sallinger, Audubon Bob Sallinger, Audubon	<p>Zoning code 33.475.215 includes a new standard that would allow up to 5,000 square feet of development for river-related marine passenger terminal uses within the river setback. See Volume 2A, Part 2, page 24.</p> <p>The standard is directly related to proposed revisions to the river-related definition – see Ref # H5 above.</p>	<p>1.Remove the limitation on the square footage of allowed marine passenger facilities within the setback. Limiting river-related development such as marine passenger facilities to 5,000 square feet in the river setback violates Statewide Planning Goal 15, which states “the setback line shall not apply to water-related and water-dependent uses.”</p> <p>2.Clarity that the 5,000 square feet standard applies to the footprint of development within the setback, not overall square footage. A multi-story structure within the same footprint could house more of the allowed river-related uses.</p> <p>3.Limitation does not allow for a full-service terminal, and the testifier has plans for 50,000 square foot terminal. Do not undersize the allowance.</p>	<p>1.Retain the majority of the Proposed Draft Version with three amendments:</p> <p>A. Retitle the code section to be: 33.475.215 Marine Passenger Docks, deleting “and Marine Passenger Terminals”.</p> <p>B. Add back proposed deleted language in 33.475.215.B. from July 19, 2016 memo with amendments to PSC: “for subregional travel” and “for regional travel”.</p> <p>C. Clarify that the 5,000 square foot limit applies to the development footprint not total square footage of development within the setback.</p>	<p>1. The City Attorney’s Office reviewed Statewide Planning Goal 15 and concluded that nothing in the planning goal precludes the City from imposing development standards and limitations on uses and development within the Willamette River Greenway boundary, including within the river setback. This notion was tested with the River Plan/North Reach and the Supreme Court of Oregon upheld the City’s ability to regulate development in the Willamette River North Reach in Gunderson v. City of Portland, 352 Or. 658 (2012)</p> <p>2.Staff’s minor amendment recommends changing the title of the code section and adding back clarifying language “for regional travel” and “for subregional travel” to be consistent with use category definitions. Regional travel” (ocean-going) may be associated with a marine terminal and is classified under the Aviation and Surface Passenger category. However, “sub-regional travel” (river) might not need a terminal and could be operated out of a retail shop and be classified as a Retail Sales and Service or Commercial Outdoor Recreation use.</p> <p>3. The intent of the marine passenger dock development limitation is to avoid having this development type totally dominate the river setback area where it’s desirable to implement other greenway goals such as landscaping and public access. The testimony is correct that the building footprint is the most important limitation factor. The proposed amendment allows additional vertical square footage for the river-related defined uses associated with a marine passenger dock. The terminal structure could build up with extra stories, but not out of the 5,000 square foot building footprint.</p>	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other

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H7	20464 20481 21036 20486 20501 20688 21037	Dana Coffee Jeanne Galick Dee Walsh Meredith Savery Bob Salinger, Audubon Bob Salinger, Audubon	<p>The Proposed Draft does not change the approach to nonconforming development within the Greenway Setback. Nonconforming development (buildings existing today that would be brought into the setback by expanding the setback from 25 to 50 feet) would be allowed to stay and be maintained, repaired or replaced.</p> <p>In the July 19, 2016 BPS staff memo to the PSC, staff proposed an amendment to 33.475, River Overlay Zones, that added a nearly identical Nonconforming Uses and Development regulation to that in 33.440.270. It states:</p> <p><u>Nonconforming uses and development in the River General (g*) overlay zone are subject to the regulations and review of Chapter 33.258, Nonconforming Situations. The additional regulations stated below apply to development within or riverward of the river setback that is not river-dependent or river-related.</u></p> <p><u>A. The development may continue.</u> <u>B. The development may be changed to an allowed river-dependent or river-related development by right.</u> <u>C. The development may be changed to another nonconforming development if within the existing building. If it is outdoors, it may not be changed to another nonconforming development.</u> <u>D. The development may be expanded, but not within or riverward of the river setback unless expansion is limited to adding square footage to an existing building within the boundary of the existing footprint.</u></p>	<p>1. Prohibit replacement of nonconforming development within the setback when the property owner voluntarily removes a substantial portion of the structure.</p> <p>Old building footprints should not be the rationale for letting new building setbacks be less than the minimum setback requirements.</p> <p>There needs to be a mechanism to move existing development out of the 50-foot river setback over time. Existing development should be removed and existing footprints should not be allowed to redevelop (within the setback).</p> <p>2. Prioritize landscaping with native plants as the first option when exceeding the nonconforming threshold.</p>	<p>1. Retain the Proposed Draft amendment submitted to the PSC on July 19, 2016 with one amendment:</p> <p><u>D. The development may be expanded, but not within or riverward of the river setback. Expansion includes adding additional floor area, unless expansion is limited to adding square footage to an existing building within the boundary of the existing footprint.</u></p> <p>2. Retain Proposed Draft version, which allows the applicant to choose strategies from a list of desired nonconforming upgrades, to bring the structure closer to conformance.</p>	<p>1. Expanding the setback from 25 to 50 feet from top-of-bank brings many new structures into nonconformance. The proposed amendment would prohibit expanding nonconforming development in the River Setback. Per this amendment, a building could be replaced on its existing footprint but could not expand within or riverward of the setback including adding additional floor area vertically. For example, additional floor area such as a second or third story to a building could only be added outside the River Setback.</p> <p>2. When more than \$153,400 is invested in a nonconforming building, the site must be brought more into compliance with the existing regulations (see 33.258.070 in Volume 2A, Part 2, page 318). There is a list of options to choose from to come more into conformance including landscaping, pedestrian circulation, screening, etc. Staff doesn't recommend prioritizing landscaping before any other option because in some cases site-specific conditions might warrant use of another option such as pedestrian circulation or screening.</p>	<input type="checkbox"/>	<input type="checkbox"/> Support staff rec. <input type="checkbox"/> Other