

# CENTRALCITY 2035

**Decision Packet G: Willamette  
River - Environment**

**Decision Packet H: Willamette  
River - Open Space and Trails**

PSC Work Session 2 – 11/16/2016



Bureau of Planning and Sustainability  
Innovative Collaborative Practical Solutions

2000 Commercial Street  
Portland, Oregon 97201 | 503.994.3100



# Presentation Outline

1. Background
2. Summary of Proposed Draft
3. Summary of Testimony Received
4. Discussion Items

H1: Swimming in the River

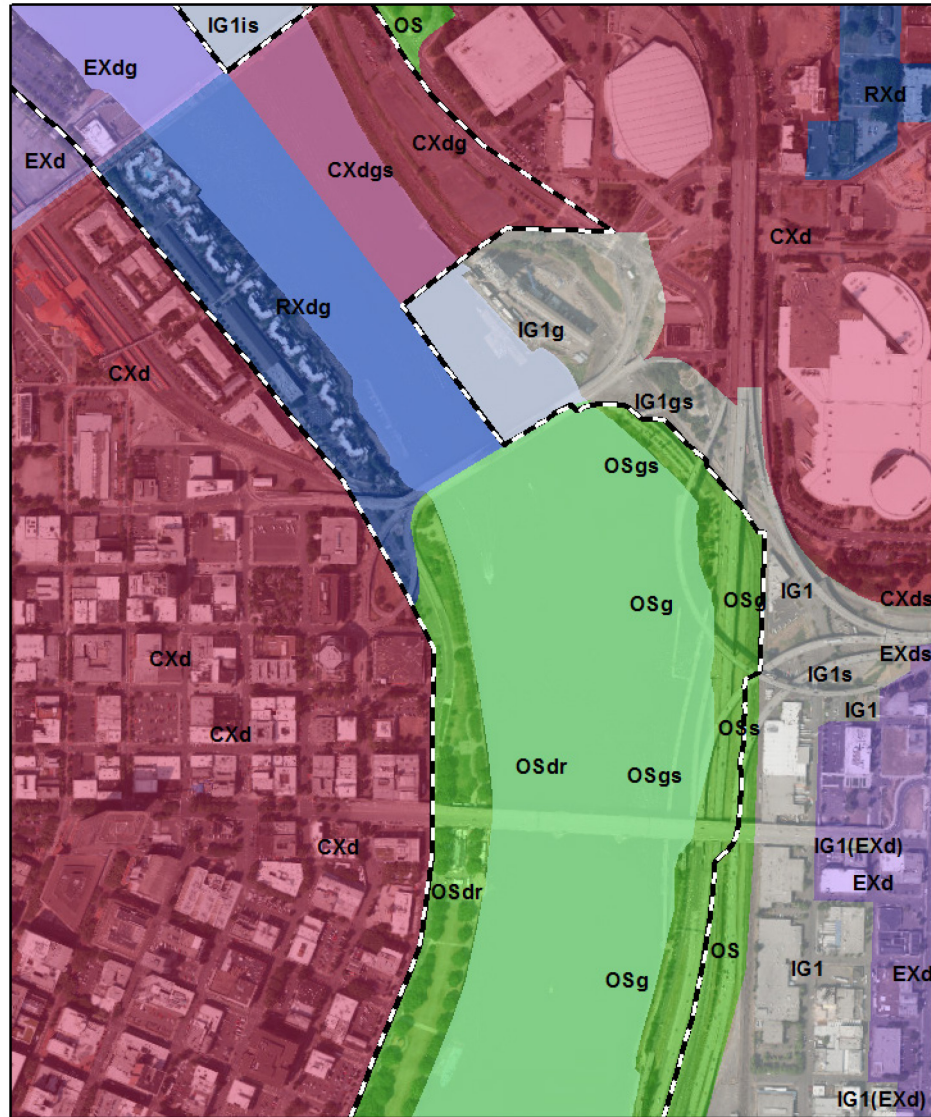
G1: Landscaping Standard



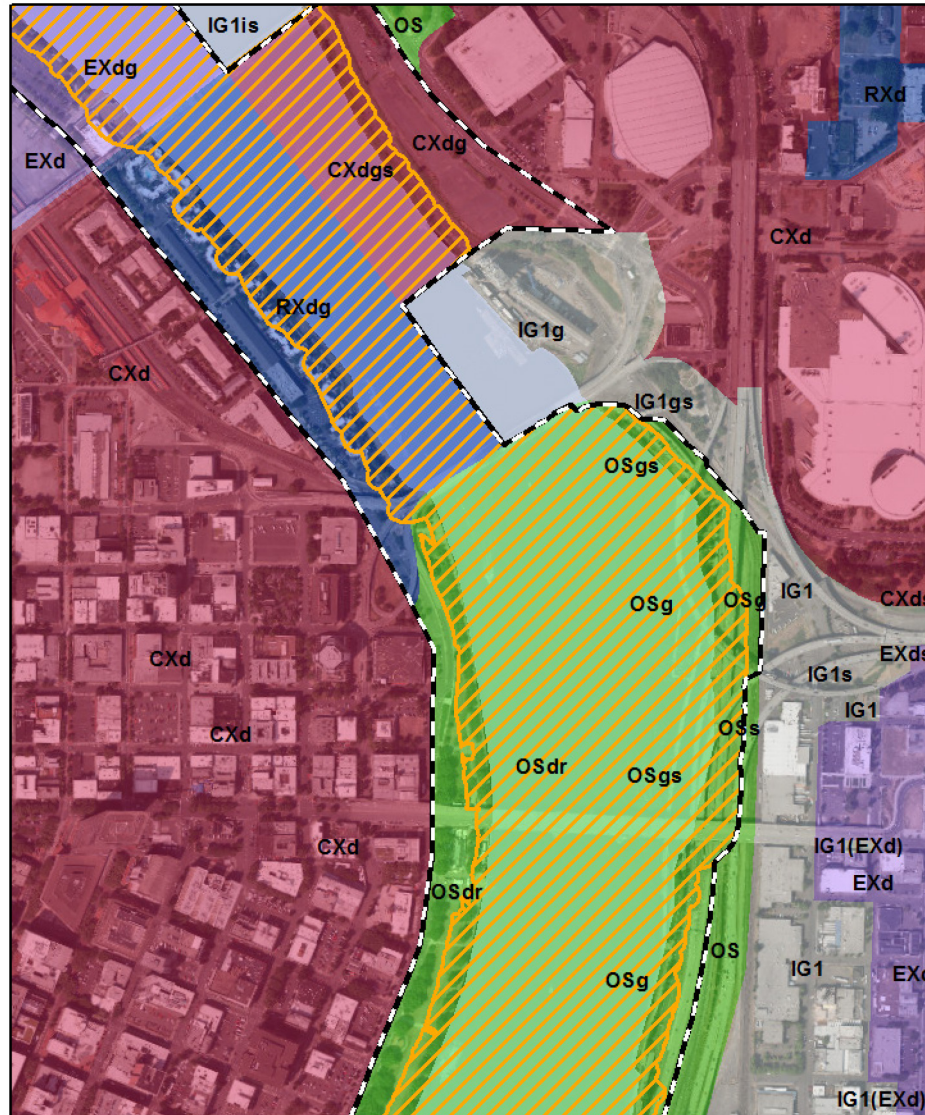
# Background



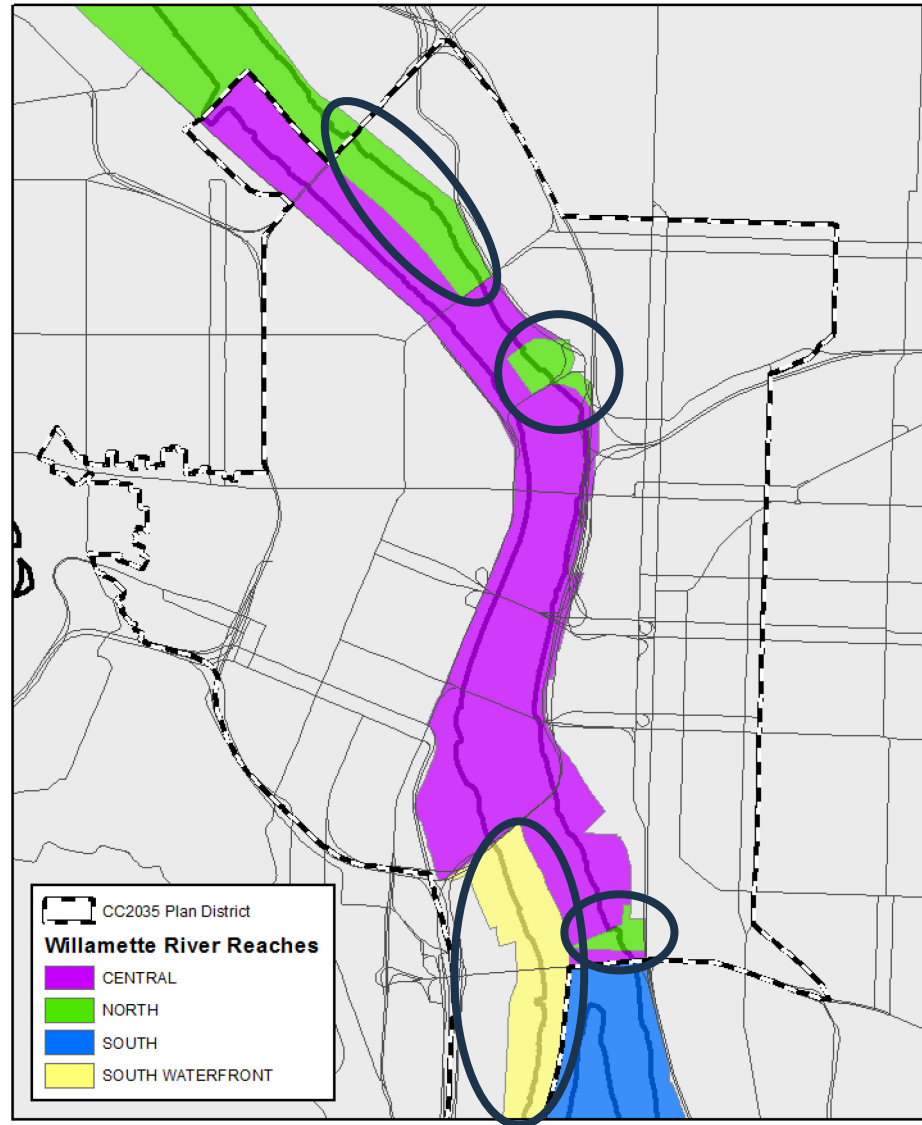
# Background



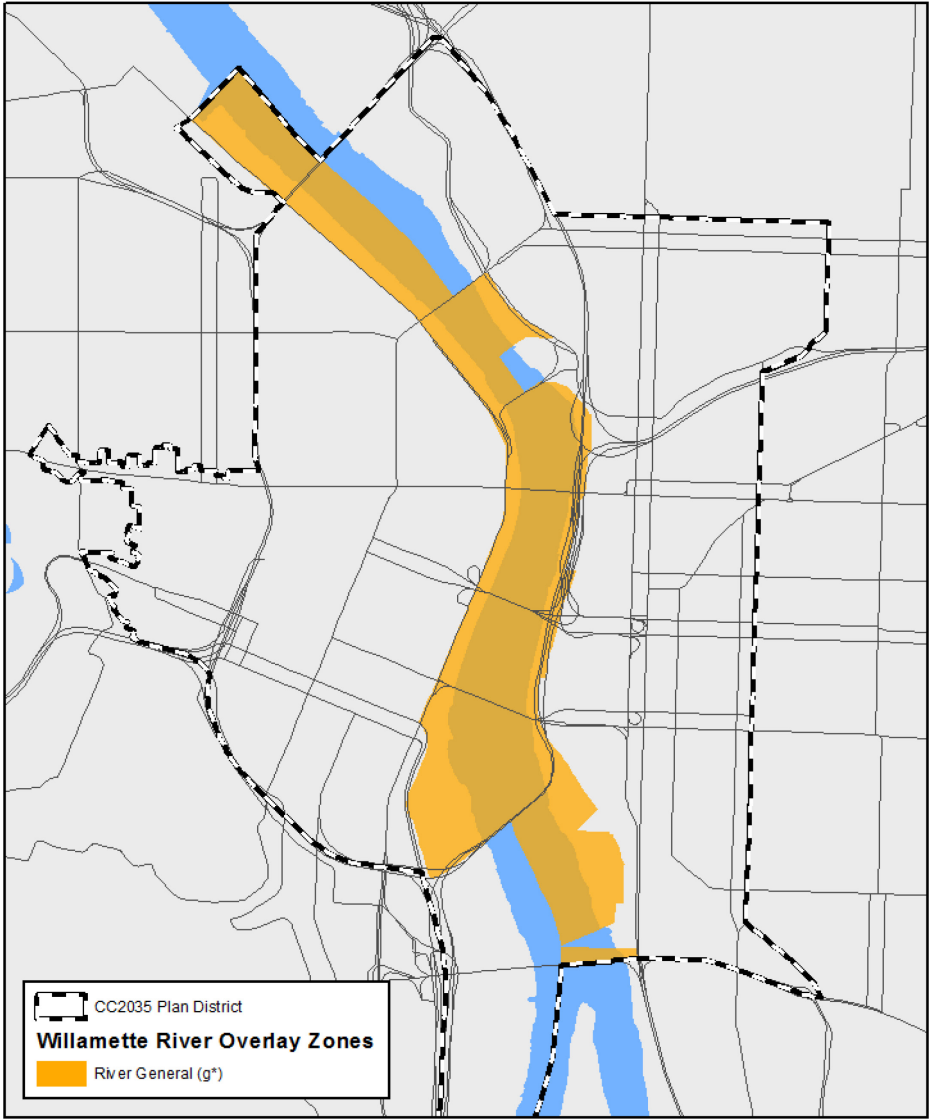
# Background



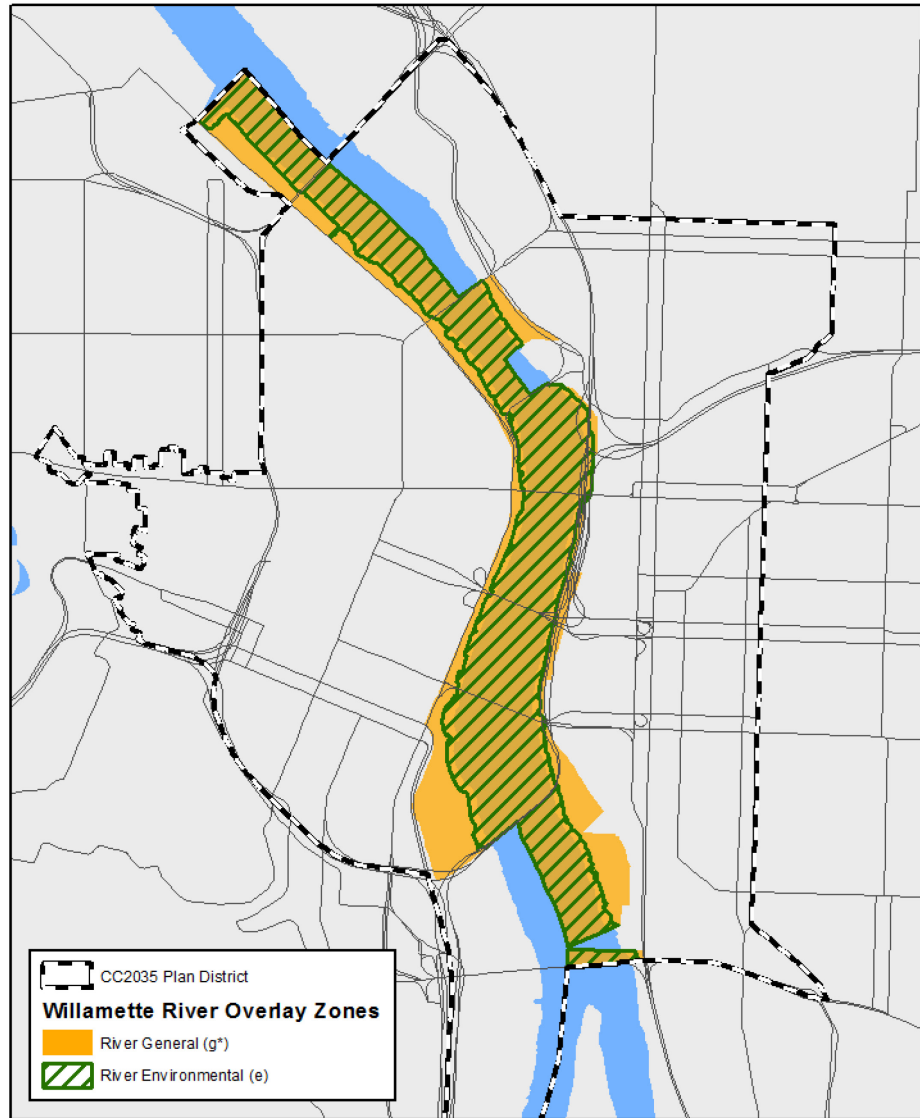
# Central Reach Zoning Code



# Willamette River Overlay Zones

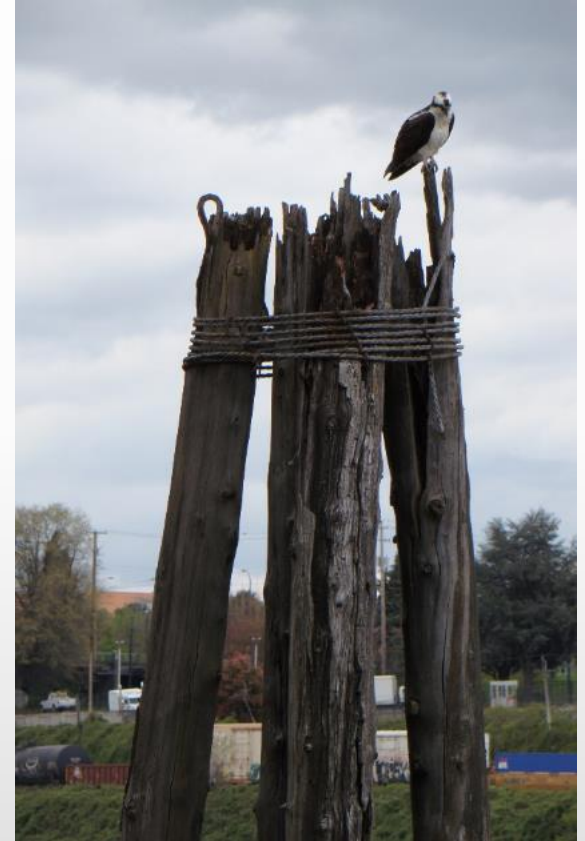


# Willamette River Overlay Zones

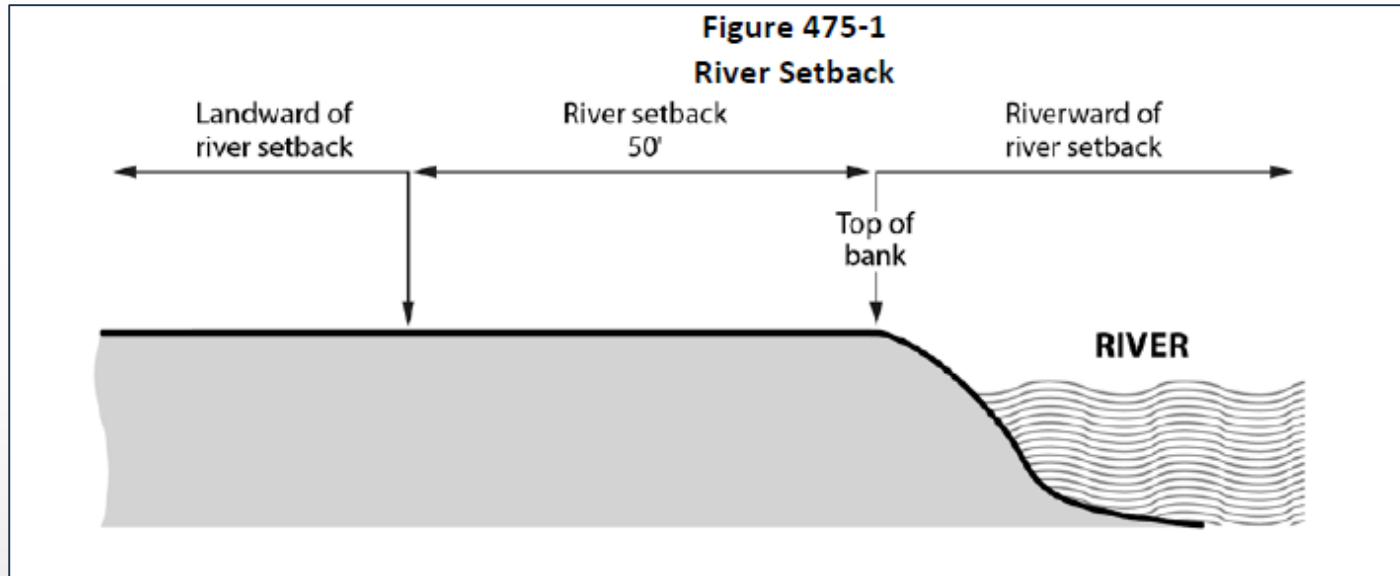




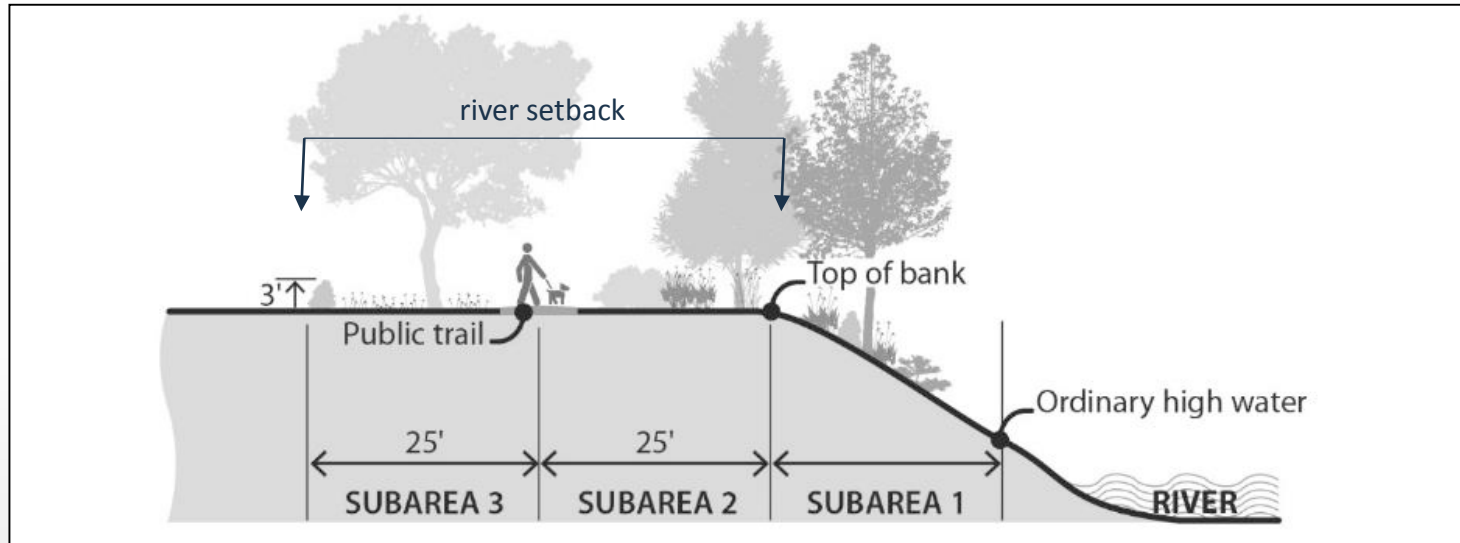
# River Environmental Overlay Zone



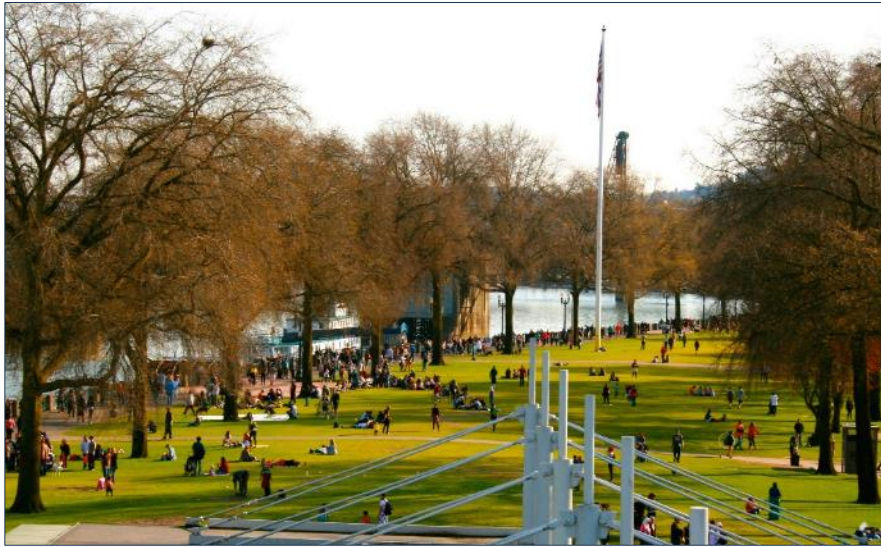
# River Setback



# Landscaping Standards



# Retail in Open Space



# Summary of Testimony

- Swimming
- Landscaping
- Uses in Open Space
- River Setback
- Greenway Trail
- River Environmental Zone
- Others



# Discussion Items

H1: Swimming in the River

G1: Landscaping Standard



# H1: Swimming in the River

## Background

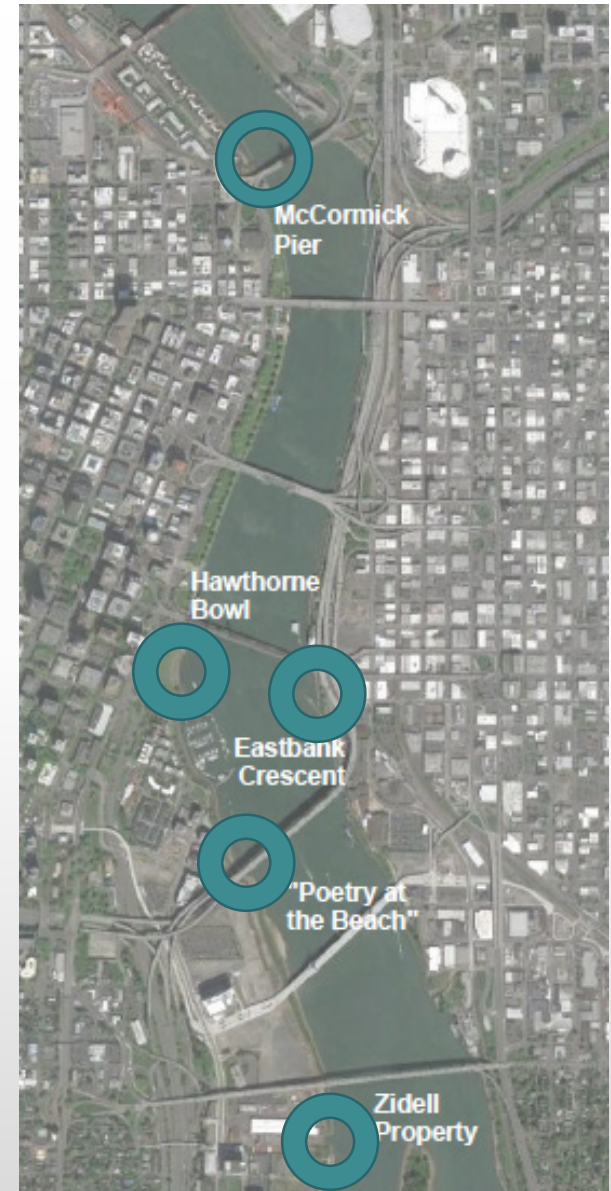
- Willamette River is swimmable.
- Public interest in places to swim.
- CC 2035 Plan addresses public access to, along and in the river.



# H1: Swimming in the River

## Central City Potential Swimming Beach Sites Study (2016)

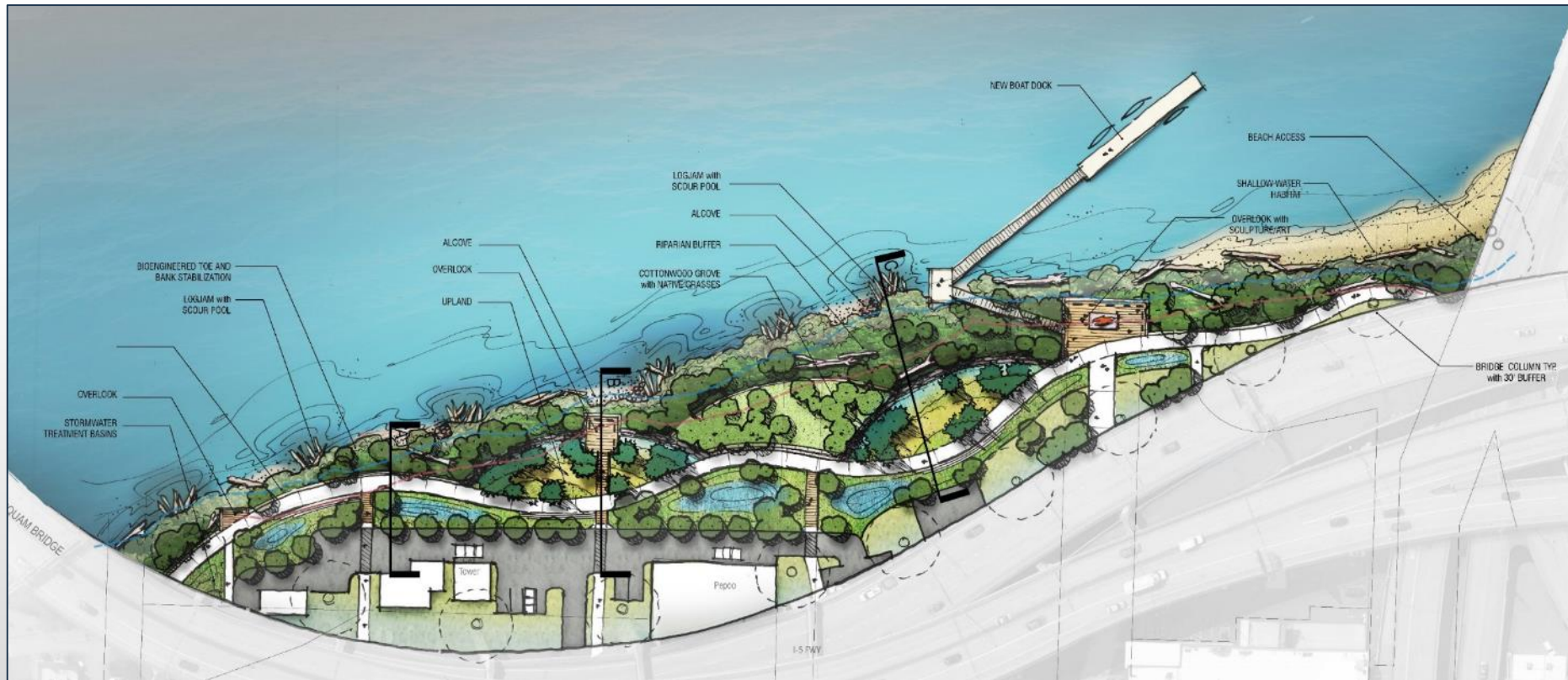
- Evaluated 5 sites for safe family-friendly swimming places
- Researched other public beaches
- Surveyed public
- Ranked sites based on criteria
- Hawthorne Bowl scored highest
- Eastbank Crescent scored lower





# H1: Swimming in the River

## Eastbank Crescent Riverfront Plan



# H1: Swimming in the River



## Testimony (Requests)

1. Establish guidelines for safe swimming in the river.
2. No net loss of river's edge access in the Central City.
3. Parks provides public information on safe swimming locations.

# H1: Swimming in the River

## CC 2035 Plan contains:

- Thorough policy framework for increasing river's edge access.
- District-specific actions for publicly accessible river access.

## CC 2035 Plan lacks:

- An action to establish safe places to swim.
- Public information on safe swimming.

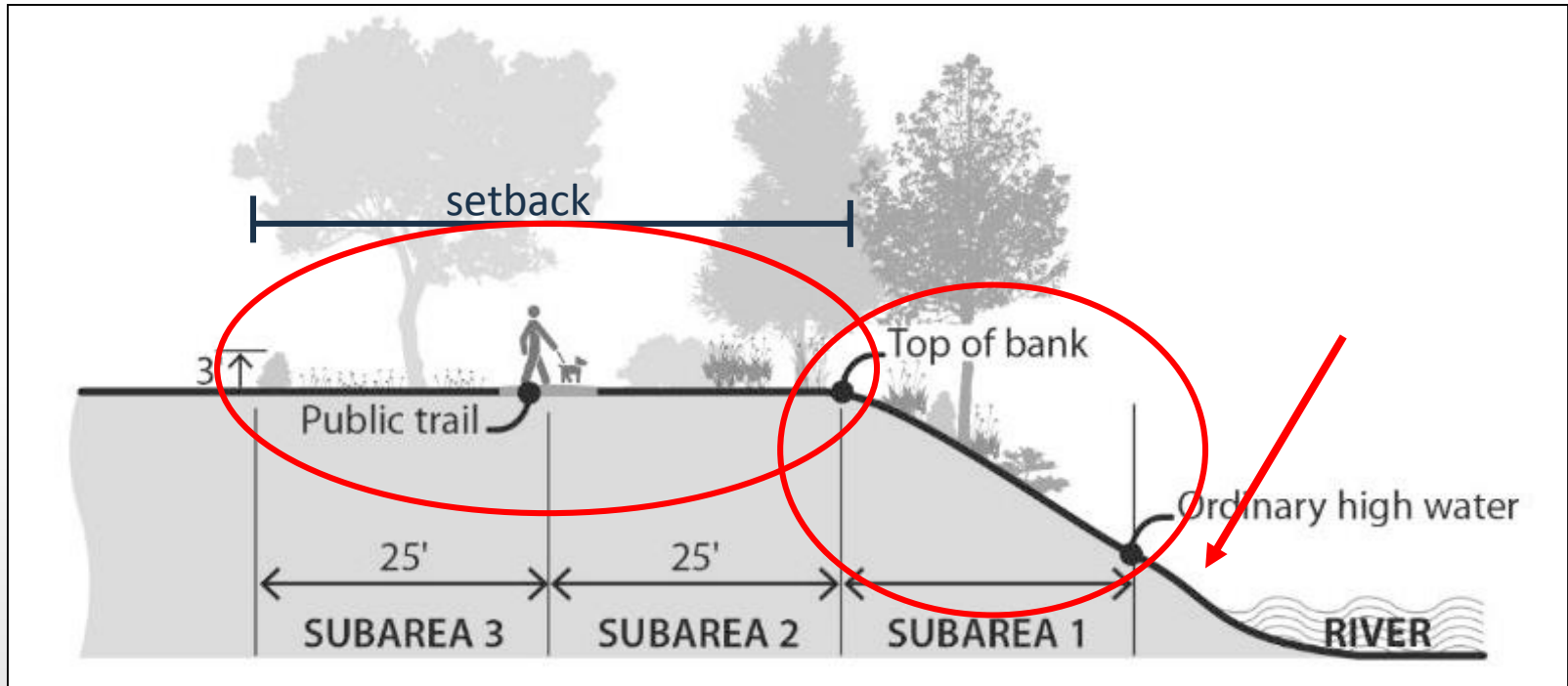


# H1: Swimming in the River

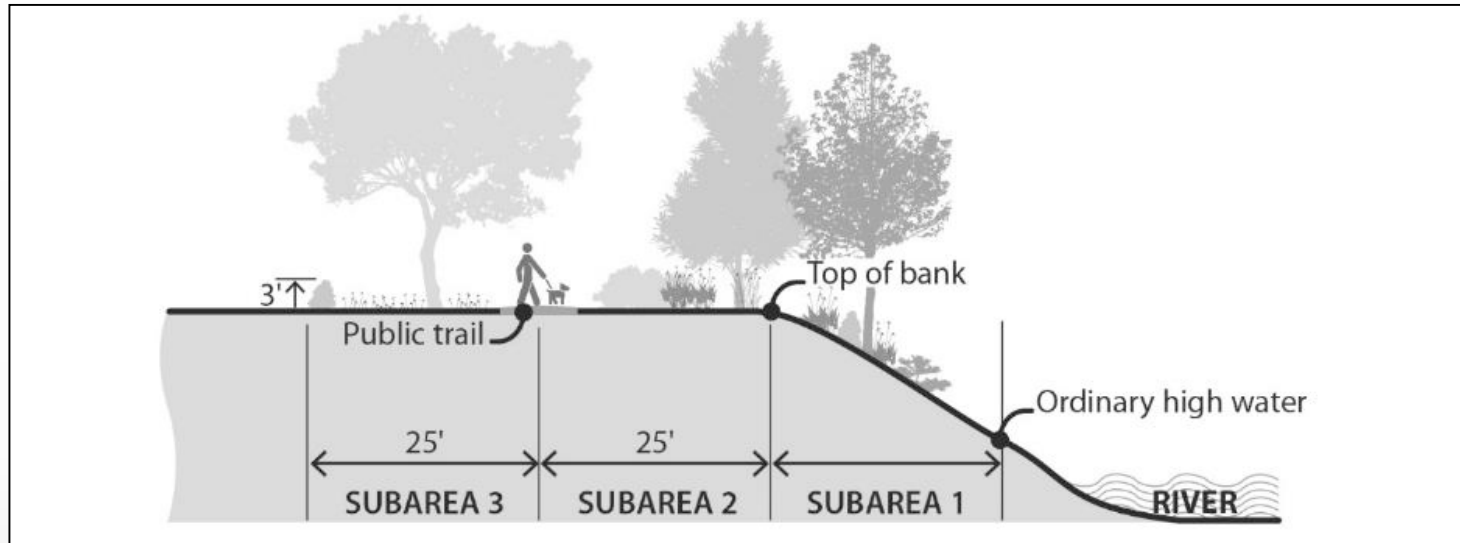
## Responses to Testimony

- Portland Parks and Recreation is updating its website to provide public information on safe swimming in Portland.
- **Propose new Central City-wide action –**  
**“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.”**

# G1: Landscaping Standard



# G1: Landscaping Standard



Request 1: No required landscaping on public beaches.

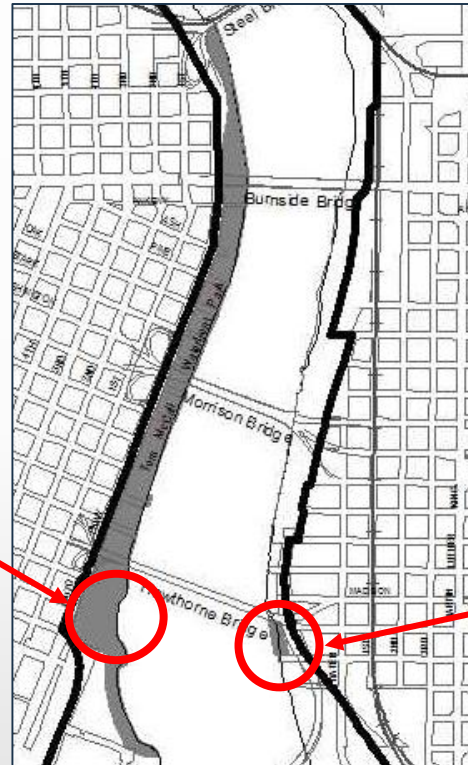
Request 2: Allow flexibility in subarea 1.

# G1: Landscaping Standard

Request 1: Do not require landscaping on public beaches.



Hawthorne Bowl

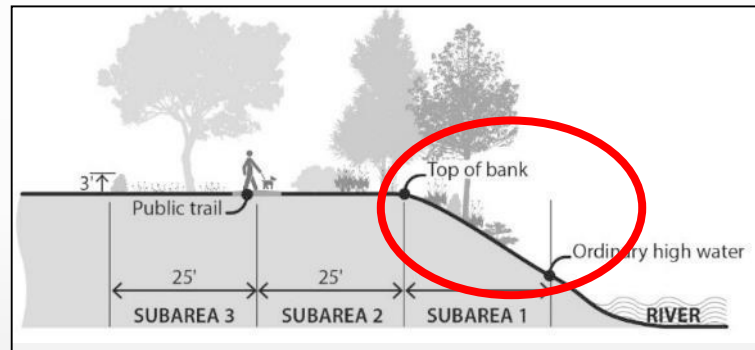


Eastbank Crescent

Recommendation: Exempt Eastbank Crescent, in addition to Hawthorne Bowl, from the landscaping standards.

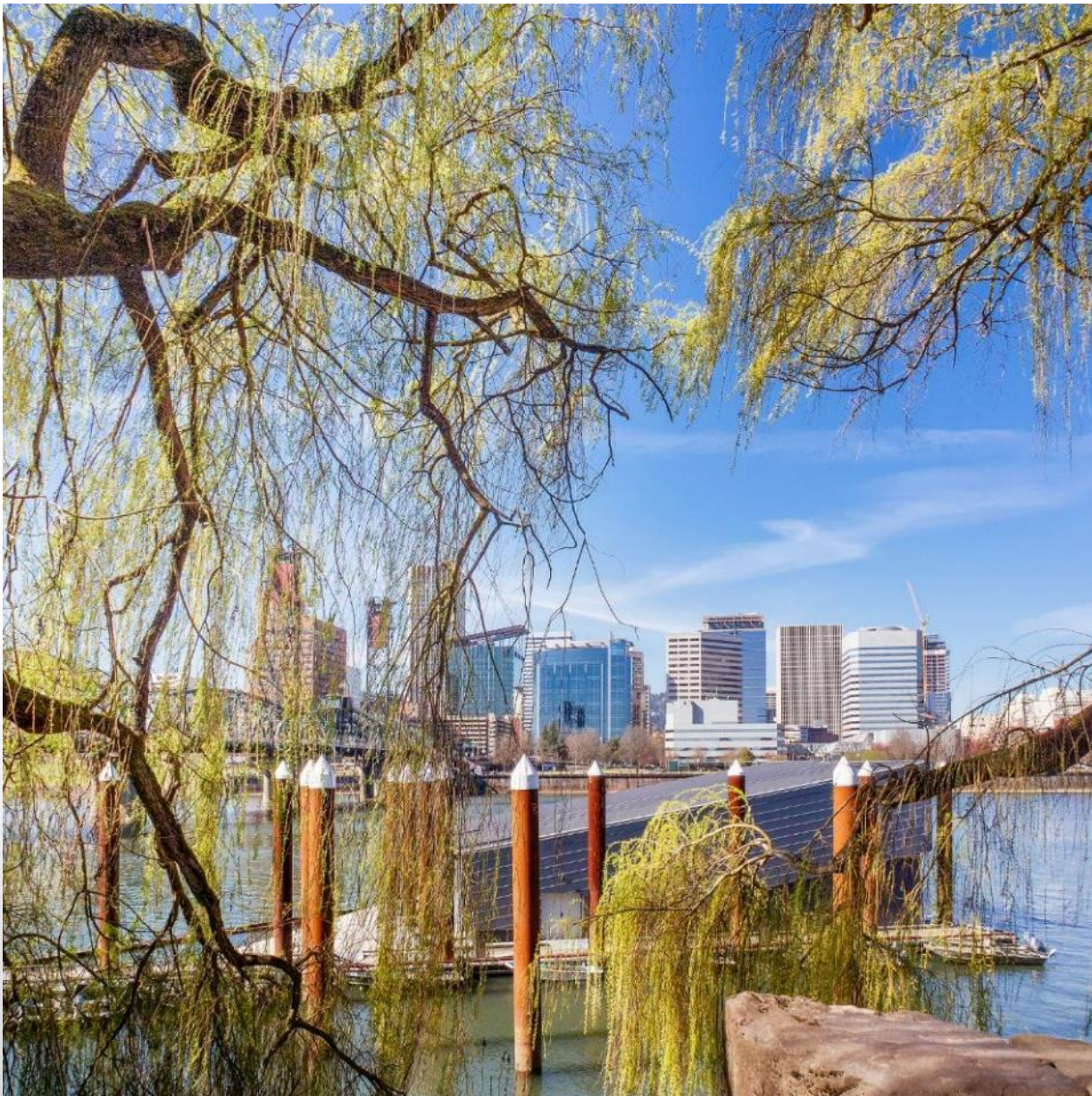
# G1: Landscaping Standard

Request 2: Allow flexibility for subarea 1 when it is steep and armored with rip rap.



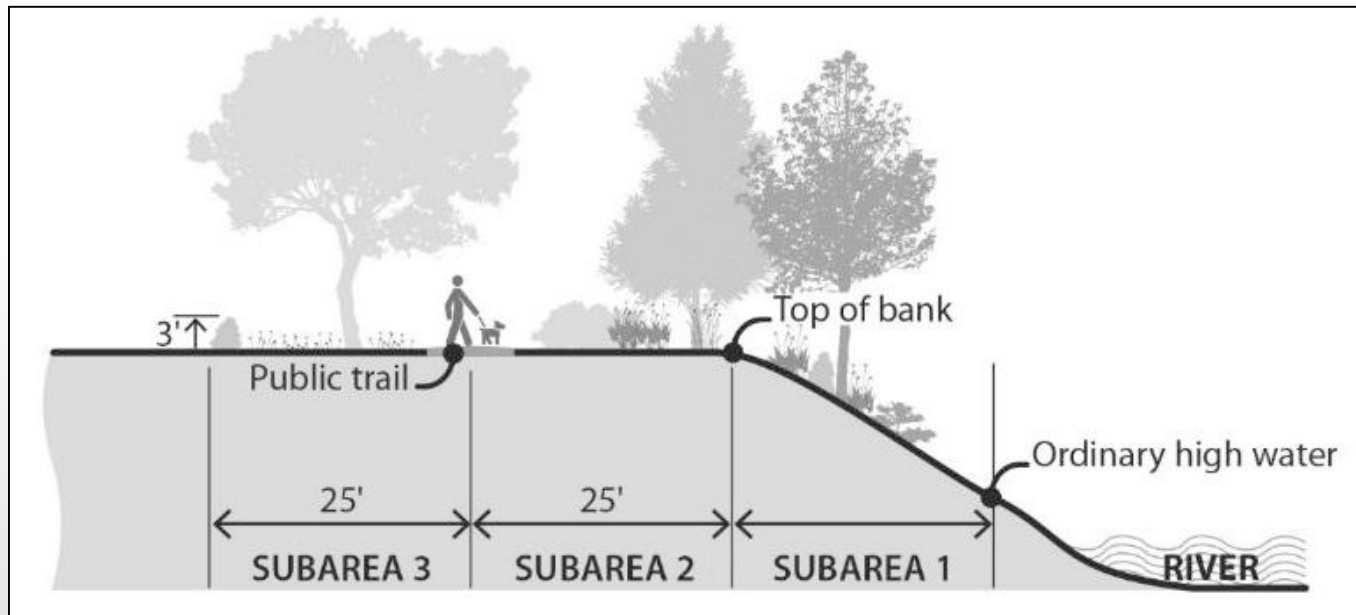
Recommendation: Allow subarea 1 planting to be done elsewhere on site or pay a fee-in-lieu when the bank is steep and armored with rip rap.





# G1: Landscaping Standard

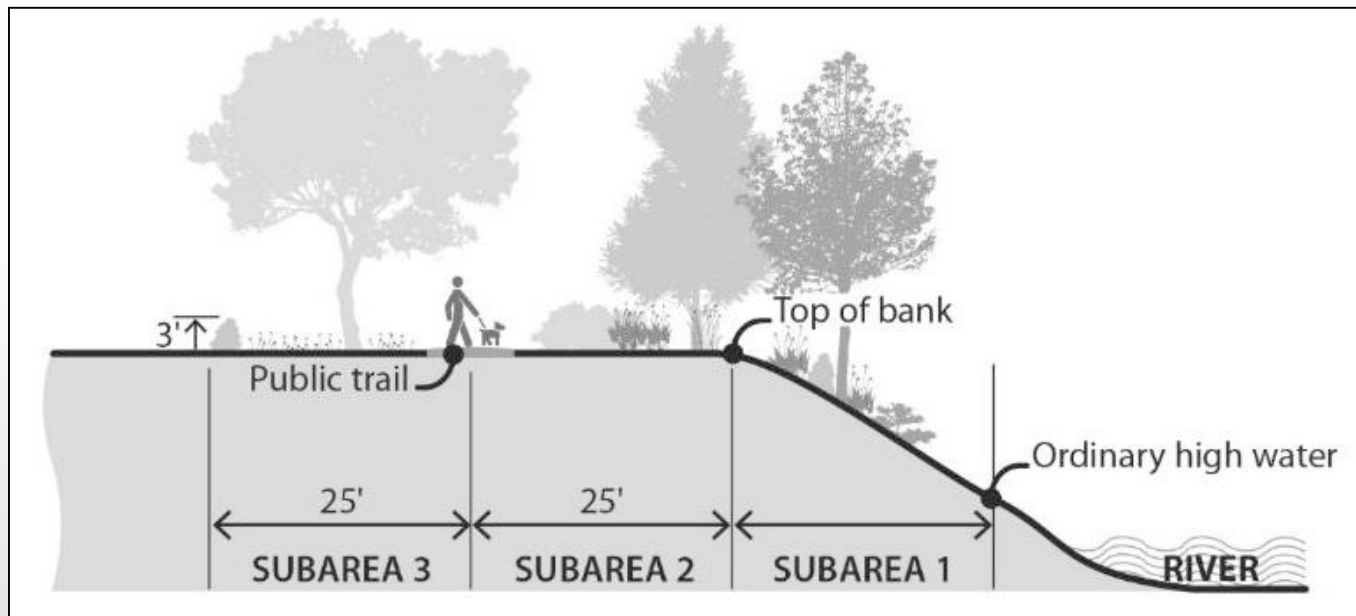
Request 3: Make clear that vegetation planted for resource enhancement, mitigation or contamination clean-up can be counted towards the landscaping standard.



Recommendation: Amend code to clarify.

# G1: Landscaping Standard

Request 4: Require a specific timeframe for installing the landscaping.

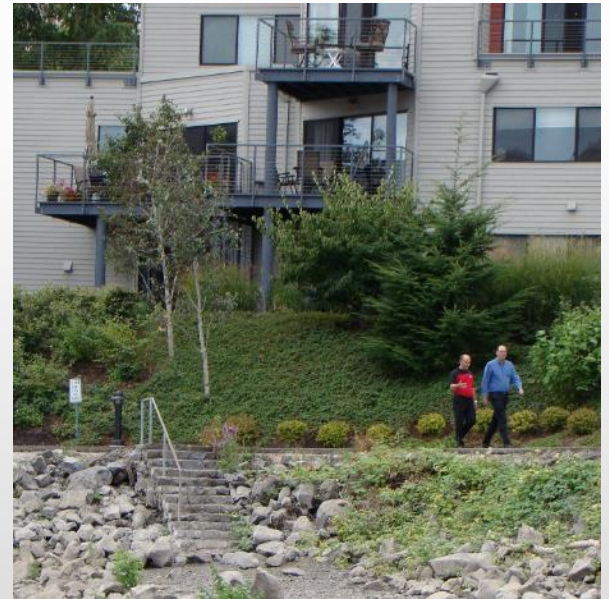


Recommendation: Retain Propose Draft version.

# H3: Nollan/Dolan US Supreme Court Decisions

## Background

- Land use regulation is not a taking when it substantially advances public interests and does not deny a property's economic viability.
- It's a jurisdiction's burden to demonstrate that the need for a public infrastructure exaction is roughly proportional to the impacts of development.



# H3: Nollan/Dolan US Supreme Court Decisions

## CC 2035 Plan

- Updates Zoning Code 33.272, Major Public Trails, with text that addresses rough proportionality.
- Includes a draft Administrative Rule with a uniform methodology for City use to determine when an exaction is triggered.
- Includes Action TR118 for BDS to implement the Administrative Rule post-Plan adoption.

# H3: Nollan/Dolan US Supreme Court Decisions

## Testimony (Requests)

- Plan does not fully address Nollan and Dolan US Supreme Court decisions.
- Proposal has flaws related to exactions. It's the local government's burden. Suggests additional language in 33.272.A.
- Rough proportionality test assumes the nexus test has been met and only accounts for dedication of land and not trail construction.



# H3: Nollan/Dolan US Supreme Court Decisions

## Responses to Testimony

- Case law is clear and new text in 33.272 acknowledges decisions.
- Draft Administrative Rule addresses nexus test and thresholds for exaction.
- Administrative Rule approach provides consistent application citywide.



# H4: Maritime Transportation Security Act (MTSA) and Public Trails

## MTSA:

- Federal law to protect U.S. ports and waterways from a terrorist attack.
- Requires measures to control access to facilities and vessels.
- U.S. Coast Guard under Dept. of Homeland Security implements.
- Requires regulated facilities to produce security plans.
- Facility security plans can be flexible.



# H4: Maritime Transportation Security Act (MTSA) and Public Trails

## Testimony From American Waterways, Inc. (AWI):

- Concerns about requiring a trail across an MTSA regulated facility.
- Requests removal of trail designation from site.
- Notes that security plans cannot be shared with the public for security reasons.
- Reminds that MTSA rules are not static and AWI must comply.



# H4: Maritime Transportation Security Act (MTSA) and Public Trails

## **Proposed Draft is Silent on MTSA because:**

- City Attorneys verified that MTSA does not exempt regulated facilities from local regulations.
- AWI is a 2.4 acre site with proposed EXd zoning– flexibility to design public access trail with a facility security plan.

## **Other Responses to Testimony**

- City respects confidentiality.
- Retain public trail designation across property; preserves option.

# H5: River-Dependent and River-Related

- Statewide Planning Goal 15: Willamette River, defines terms narrowly.
- City adopted definitions with Willamette Greenway Plan in 1987.



# H5: River-Dependent and River-Related

## Proposed Draft:

- Minimal clarifications to river-dependent definition.
- Changes to river-related definition –
  - \*bullet-listed existing examples,
  - \*expanded definition for resource enhancement projects, and
  - \*expanded definition for specific development associated with marine passenger docks and marine passenger terminals.

# H5: River-Dependent and River-Related

## Testimony Summary (Requests):

- Include natural resources restoration projects in river-dependent definition.
- More broadly define river-dependent and river-related uses to allow all ancillary uses.
- Do not expand the definition to include Marine Passenger Terminal Docks and Terminals.



# H5: River-Dependent and River-Related

## Staff Responses to Testimony

- Natural resources restoration is not necessarily river-dependent; see river-related definition.
- Ancillary uses may not be river-related, would locate outside of river setback.
- Delete cold food storage from proposed definition with a few other minor edits.



# H6: Size of River-Related in Setback

## Proposed Draft Regulation in 33.475:

- Limits river-related development associated with Marine Passenger Docks and Marine Terminals to 5,000 square feet within the river setback.



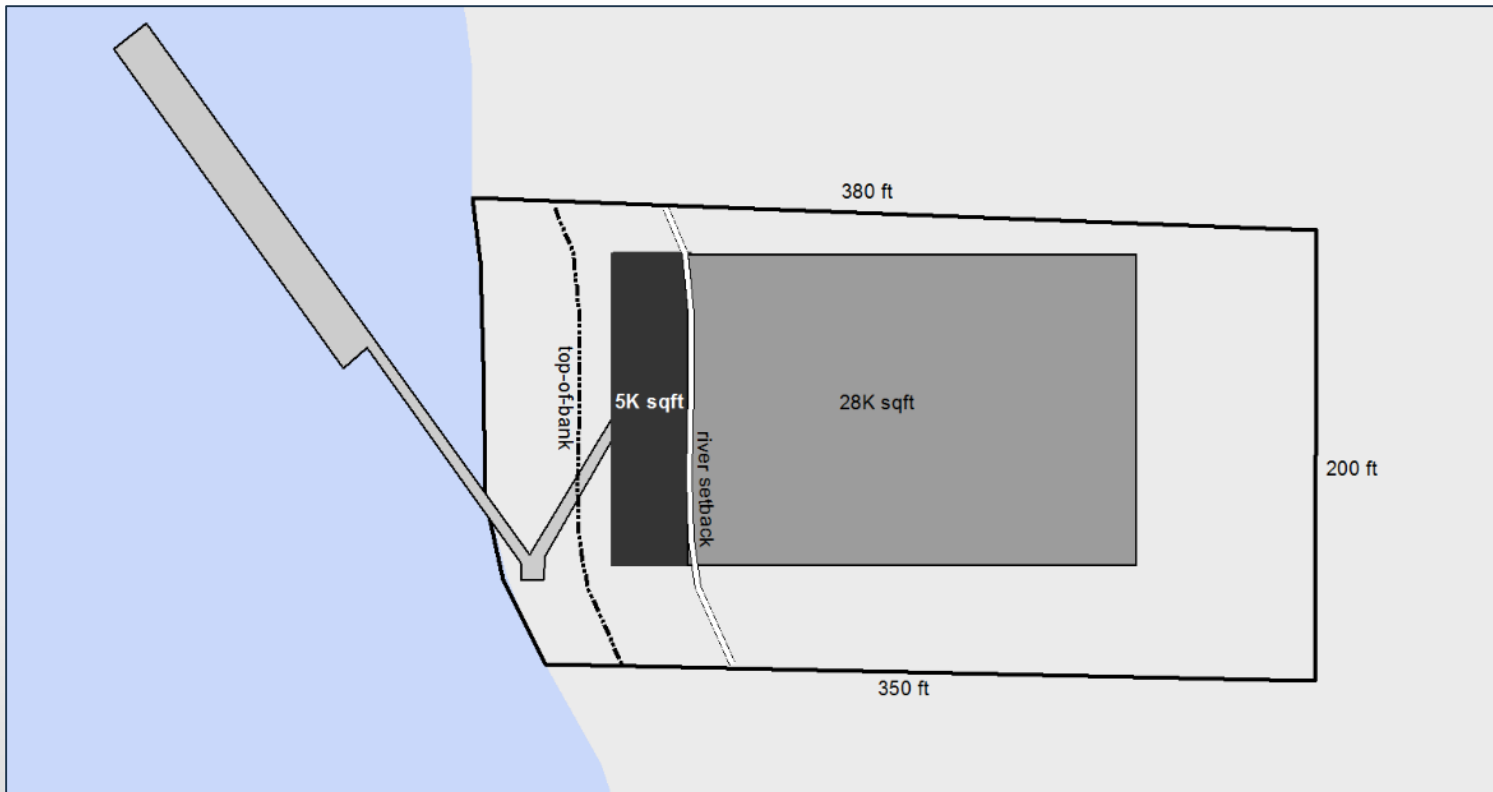
# H6: Size of River-Related in Setback

## Testimony (Requests)

- Remove the square footage limitation for allowed marine passenger facilities; it violates Statewide Planning Goal 15.
- Clarify that the standard applies to the building footprint; a multi-story structure could have more river-related development.
- Allow for a full-service terminal. Do not undersize the allowance.



# H6: Size of River-Related in Setback



# H7: Nonconforming Development

## Background

- Legal situations at the time of development but later made nonconforming due to adopted regulations.
- Nonconforming situations may continue but can't expand/move further into non-compliance with current code.
- The proposed 50' river setback will increase the number of nonconforming developments.

# H7: Nonconforming Development

## Proposed Draft Amendment

- July 19 memo with proposal replicates most of existing code from 33.440, Greenway Overlay Zones to 33.475, River Overlay Zones.
- Table H7 requests deletion of text in D. so that nonconforming development does not increase square footage within the setback.

# H7: Nonconforming Development

## Testimony (Requests)

Prohibit voluntary replacement of nonconforming development when a substantial portion of the structure is removed.

Move existing development out of the 50-foot river setback over time.

Prioritize landscaping with native plants as the first option when exceeding the nonconforming threshold.



© Andrew Hall Portland Bridges.com

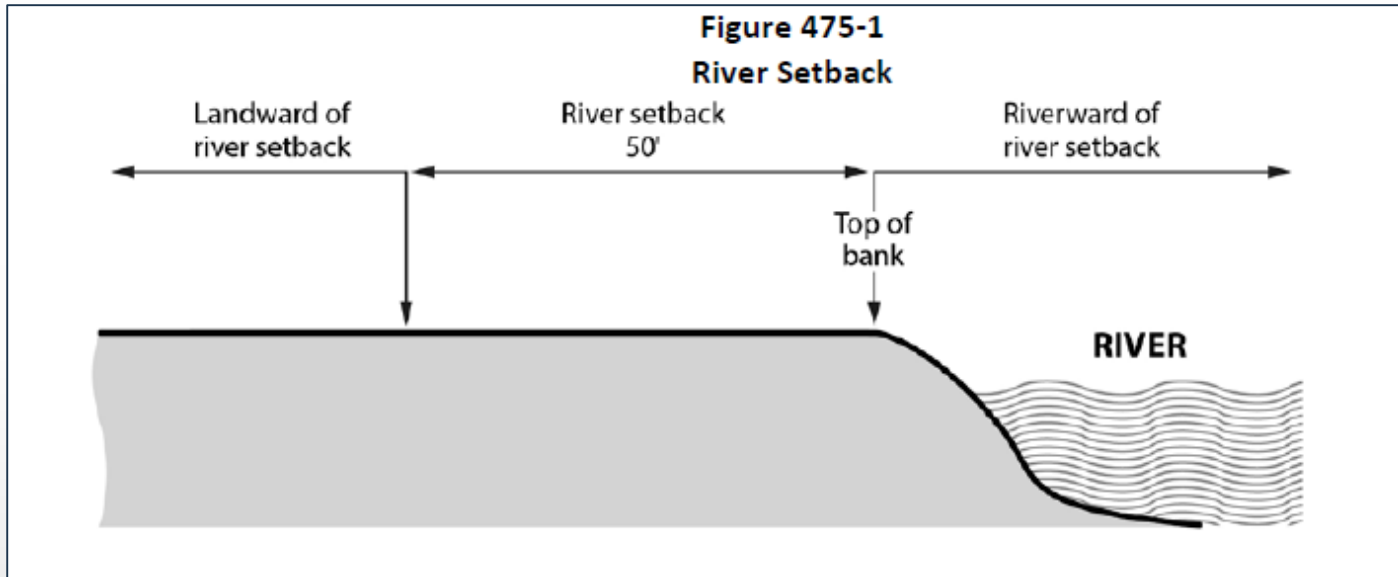
# H7: Nonconforming Development

## Staff Responses to Testimony

- Retain existing proposal per Table H7.
- Do not recommend removal of nonconforming situations over time; costly and difficult to implement.
- Do not prioritize landscaping as part of nonconforming upgrades; other upgrades may be priority for a site.

# G2: Width of River Setback

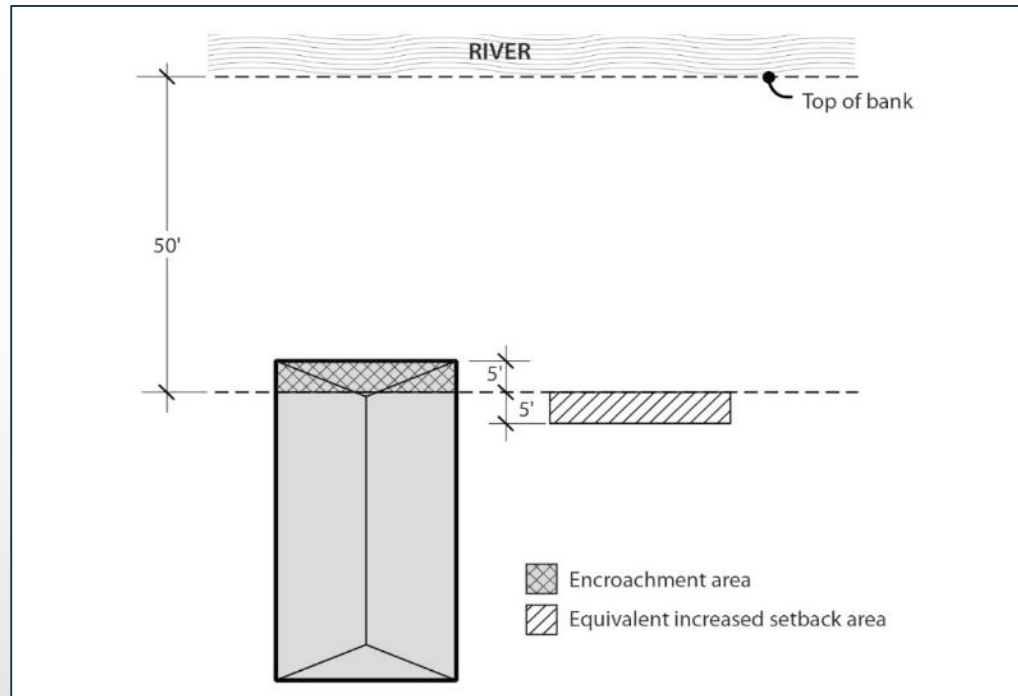
Request – Expand setback to 75 feet.



Recommendation – Retain Proposed Draft version

# G3: Encroachment into the Setback

Request: Do not allow encroachment into the river setback.



Recommendation – Retain Proposed Draft version

# G4: Tree and Vegetation Removal

Request 1: Move the exemption to a standard to ensure a plan check with BDS.

Request 2: Reduce the size of tree allowed to be removed from 6 inches to 1.5 inches in diameter.



# G4: Tree and Vegetation Removal

Request 1: Move the exemption to a standard to ensure a plan check with BDS.



Recommendation – Update the exemption to apply to minor vegetation maintenance and move the rest of the exemption to a standard



# G4: Tree and Vegetation Removal

Request 2: Reduce the size of tree allowed to be removed from 6 inches to 1.5 inches in diameter (aka caliper).



*This size tree would have to be replaced. A 1.5" tree would be slightly smaller.*

Recommendation – Reduce the size of tree allowed to be removed to 1.5 inches

# G5: Tree Removal outside of Central City

Request 1: Require that temporary disturbance be replanted.

Request 2: Clarify the difference between the types of views corridors and tree removal.

Request 3: Reduce the size of tree allowed to be removed from 6 inches to 1.5 inches in diameter (aka caliper).

# G5: Tree Removal outside of Central City

Request 1: Require that temporary disturbance be replanted.



Recommendation – Amend the code to require areas of bare soil to be replanted.

# G5: Tree Removal outside of Central City

Request 2: Clarify the difference between the types of views corridors and tree removal.



Recommendation – Amend the code to clarify between the view corridors.

# G5: Tree Removal outside of Central City

Request 3: Reduce the size of tree allowed to be removed from 6 inches to 1.5 inches in diameter (aka caliper)..

Recommendation – Retain the Proposed Draft version

# G6: Required Mitigation

Request 1: Clarify and make consistent when mitigation is required and when it is not.

Request 2: Do not require mitigation for other development within a park.

Recommendation – Retain the Proposed Draft version

# G7: Standards for Viewing Areas

Request: Increase the size allowed by standard to allow larger viewing areas in the river e-zones.



Recommendation – Retain the Proposed Draft version





# G8: Resource Enhancement Standards

Request 1: Add that standards for tree removal must be met.

Request 2: Revise the commentary to be consistent with the standard.

Recommendation – Amend the code to require tree replacement and remove commentary.

# G9: Trail Construction Equipment Use in E-zones

Request: Remove limitations on tree removal with equipment.

Recommendation – Amend the code to remove the limitation on equipment.

# G10: Title 11 Updates

Request: Update Title 11 to reference the new e and g\* overlay zones.

Recommendation – Amend Title 11.

# G11: Natural Resources Protection Plan

Recommendation – Expand the Willamette River Central Reach Natural Resources Inventory into a Natural Resources Protection Plan.

