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## MEMO A-10, Part 2

**DATE:** May 22, 2020  
**TO:** Planning and Sustainability Commission  
**FROM:** Jeff Caudill, Bureau of Planning and Sustainability  
**SUBJECT:** Enforcement/Expanded Monitoring Requirements

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### ISSUE SUMMARY

As discussed in the May 12 work session, stakeholders and PSC commissioners expressed concern with the effectiveness of enforcement of the regulations associated with environmental/greenway overlays, especially in areas along the western riverbank of the Willamette River. Frustration was expressed with a number of steps in the process: (1) difficulty in initiating enforcement actions; (2) the time to resolve environmental violations, (3) the perceived lack of City follow up, and (4) ineffective penalties for repeat offenders.

At the May 12 work session, staff recommended three actions:

- A. Remove Exemptions.** Within the River Setback (33.475.210) and Riparian Buffer Area (Map 475-6) remove proposed exemptions for removal of trees regardless of size, including nuisance and non-native trees, and require approval through standards (33.475.440.K) or River Review (33.865).
- B. Create a Simple Landscaping Permit.** Establish a simple and fast landscaping permit process to allow an applicant to follow the standards of 33.475.440.K.
- C. Increase Monitoring Requirements.** For landscaping or mitigation plantings, extend the monitoring period to three (3) years and at the end of the monitoring period require proof that the code requirements are met.

This memo provides more specific recommendations on updates to the Zoning Code for Recommendation C, Increase Monitoring Requirements.



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## BACKGROUND

Since the May 12 work session, Bureau of Planning (BPS) staff worked with Bureau of Development Services (BDS) staff to determine specific code amendments to strengthen monitoring requirements and expand the monitoring period to at least three years after planting. Vegetation removal and pruning requirements may be met with either via River overlay zone standards (33.475) or through a discretionary River Review (33.865). Therefore, relevant sections of 33.475, River Overlay Zones, and 33.865, River Review, were reviewed to identify and develop specific code changes.

## STAFF RECOMMENDATION

**Expand Monitoring Requirements for Relevant Development Standards and River Reviews, Including Violations.** Expand and strengthen the monitoring requirements in (1) standards for removal or pruning of vegetation (33.475.440.K) and Option 2 for Corrections to Violations of the River Environmental Overlay Zone Regulations (33.475.450); and (2) standards for mitigation (33.475.440.L); and (3) approval criteria for all River Review mitigation and remediation areas (33.865.100.A.) and Corrections to violations of the River Environmental Overlay Zones Regulations (33.865.120).

Recommended updates for each of the code sections are provided below (for additional details see attached code sections):

- 1) **Standards for Removal or Pruning of Vegetation (33.475.440.K) and Option 2 for Corrections to Violations of the River Environmental Overlay Zone Regulations (33.475.450)** – Update existing references to 33.248.090, Mitigation and Restoration Planting, to include a requirement for written proof to be submitted annually by the applicant to BDS which demonstrates that the requirements have been met three years after planting.
- 2) **Standards for Mitigation (33.475.440.L)** – Add a new reference to meeting the requirements of 33.248.090, along with a requirement for written proof to be submitted annually by the applicant to BDS which demonstrates that the requirements have been met three years after planting.
- 3) **Update approval criteria for all River Review mitigation and remediation areas (33.865.100.A.) and Corrections to Violations of the River Environmental Overlay Zones Regulations (33.865.120)** – Add language to clarify the required outcome of the operation and long-term maintenance plan and a requirement to submit annual monitoring reports to BDS for up to 5 years, based on the scope and size of the mitigation or remediation area.

These additional monitoring requirements will require additional BDS resources to ensuring identified follow up is completed per the updated code requirements.

Attachment: BPS Revised 33.475 and 33.865 Code Language (proposed changes highlighted in grey)



## 33.475 River Overlay Zones

475

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Sections:

General

- 33.475.010 Purpose
- 33.475.020 River Overlay Zones
- 33.475.030 Where These Regulations Apply
- ~~33.475.040 When These Regulations Apply~~
- 33.475.050 Supplemental Permit Application Requirements

River General and River Recreational Overlay Zone

- 33.475.200 Use Regulations
- 33.475.210 River Setback
- 33.475.215 Marine Passenger Docks and Marine Passenger Terminals
- 33.475.220 Landscaping
- 33.475.225 Residential Docks
- 33.475.230 Exterior Lighting
- 33.475.235 Bird-safe Glazing
- 33.475.240 Public Viewpoints
- 33.475.245 Archaeological Resources Protection
- 33.475.250 Nonconforming Uses and Development
- 33.475.260 Property Line Adjustments

River Environmental Overlay Zone

- 33.475.400 Use Regulations
- 33.475.403 When These Regulations Apply
- 33.475.405 Items Exempt From These Regulations
- 33.475.410 Environmental Report
- 33.475.420 Review Procedures
- 33.475.430 Prohibitions
- 33.475.440 Development Standards
- 33.475.450 Corrections to Violations of River Environmental Overlay Zone Development Standards

Clean Up of Contaminated Sites

- 33.475.500 Removal or Remediation of Hazardous Substances

Map 475-1 ~~Central Reach~~ River Overlay Boundary

Map 475-2 Willamette River Top of Bank

Map 475-3 Governor Tom McCall Waterfront Park and Eastbank Crescent

Map 475-4 Archaeological Sensitivity Areas

Map 475-5 Retail Sales and Service Allowed in OS

Map 475-6 Riparian Buffer Area

3. ~~Tree~~Vegetation removal is allowed as specified in Subsection K.; and
  4. Mitigation is required as specified in Subsection L.
- K. Standards for removal or pruning of vegetation.** The following standards apply to the removal or pruning of vegetation:
1. All vegetation removal activities must be surrounded or protected to prevent erosion and sediment from leaving the site or negatively impacting resources on the site;
  2. The removal or pruning must be conducted with handheld equipment or equipment with a wheel surface-to-ground pressure of no more than 7.5 psi;
  3. Temporary disturbance area located within and riverward of the river setback must be replanted to meet the relevant subarea standards of Table 475-1, and temporary disturbance located outside and landward of the river setback is replanted to meet the subarea 3 standard of Table 475-1;
  4. ~~The~~Vegetation that is removed or pruned is limited to the following:
    - a. Vegetation listed on the *Nuisance Plant List*;
    - b. Dead, dying or dangerous trees or portions of trees when they pose an immediate danger, as determined by the City Forester or certified arborist. All sections of wood more than 12 inches in diameter must be placed in the River Environmental overlay zone of the ownership within which the wood was cut unless the City Forester authorizes the removal because the wood is diseased and will threaten the health of other trees;
    - c. Vegetation that exceeds the height restriction of a view corridor with special height restrictions designated in the *Central City Scenic Resources Protection Plan* or *River Plan / South Reach Scenic Resources Protection Plan*;
    - ~~d. Trees that are not native trees on the *Portland Plant List*; or~~
    - ed. Madrone, Garry Oak or Pacific Yew that are less than 6 inches in diameter, or other native-Trees not listed on the *Portland Plant List*Nuisance Plant List that are less than 126 inches in diameter may be removed if the removal or pruning is in conjunction with development or an exterior alteration approved under the standards of this section as follows:
      - (1) Within a rail right-of-way or within 10 feet of the rail right-of-way;
      - (2) Within a utility line corridor;
      - (3) Within the disturbance area for installation or replacement of stormwater outfalls;
      - (4) Within a ~~major~~ public trail;

- (5) Within a public viewing areas associated with a viewpoints designated in the *Central City Scenic Resources Protection Plan* or River Plan / South Reach Scenic Resources Protection Plan;
  - (6) Within a ~~s~~Scenic ~~{s}~~ overlay zone;
  - (7) Within a resource enhancement area; ~~or~~
  - (8) Within the disturbance area associated with development in a City of Portland park; or
  - (9) Within the disturbance area associated with a residential structure.
- e. Trees less than 3 inches in diameter planted within a resource enhancement area may be removed when the relevant subarea standards of Table 475-1 are met. For the purposes of this standard, approved resource enhancement area means the area meets the resource enhancement standards of Subsection H., or was approved through a land use review.
5. Except for dead, dying and dangerous trees, vegetation removal or pruning within the riparian buffer area is prohibited between April 15 and July 31.
56. Trees removed must be replaced as shown in Table 475-2 and must meet the following:
- a. Replacement vegetation must meet all of the following:
    - (1) Trees must be a minimum ½-inch caliper, bareroot or live stakes, unless they are oak or madrone, which may be one gallon size. No more than ten percent of the trees may be oak or madrone. Shrubs must be a minimum of one gallon size or bareroot. All other species must be a minimum of four-inch pots or equivalent;
    - (2) The planting must occur within the River Overlay ~~Z~~zones. Trees must not be planted within a ~~s~~Scenic ~~{s}~~ overlay zone. If the vegetation is not planted on the applicant's site, then the applicant must own the property or possess a legal instrument, such as an easement or deed restriction, that is approved by the City as sufficient to ensure the right to carry out, monitor, and maintain the mitigation~~the applicant must own the property or have an easement or deed that ensures the vegetated area will not be developed.~~ If tree removal on the project site is located in either the 100-year floodplain or 1996 Flood Inundation Area, tree planting must also be within the 100-year floodplain or 1996 Flood Inundation Area; and
    - (3) The requirements of Section 33.248.090, Mitigation and Restoration Planting must be met except that written proof that all specifications of 33.248.090 have been met must be provided annually to the Bureau of Development Services for three years after planting is complete; and
  - b. Vegetation planted to meet the landscaping requirements of 33.475.220 may be counted towards meeting the tree replacement standard.

| <b>Table 475 – 2</b>  |  |   |
|---|--|---|
| <b>Tree Replacement in River Environmental Overlay Zone</b> |  |   |
| Size of tree to be removed<br>(inches in diameter)          | Option A<br>(no. of native trees to be<br>planted) | Option B<br>(combination of native trees and<br>shrubs) |
| At least 1.5 and up to 6                                    | 1  | Not applicable  |
| More than 6 and up to <del>12</del> <u>20</u>               | <del>2</del> <u>3</u>                              | Not applicable  |
| <del>More than 12 and up to 20</del>                        | <del>3</del>                                       | <del>1 tree and 3 shrubs</del>                          |
| More than 20 and up to 25                                   | 5  | 3 trees and 6 shrubs                                    |
| More than 25 and up to 30                                   | 7  | 5 trees and 9 shrubs                                    |
| More than 30  | 10   | 7 trees and 12 shrubs                                   |

**L. Standards for mitigation.** The following standards apply to mitigation required by Subsections A., C., ~~and J., O., and P.~~

1. Mitigation ratio. Mitigation must be provided as follows:
  - a. On-site mitigation and mitigation purchased from a City-approved mitigation bank must occur at a minimum 1.5:1 ratio of mitigation area to project disturbance area;
  - b. All other mitigation must occur at a minimum 3:1 ratio of mitigation area to project disturbance area. ~~Mitigation must occur at a 1.5:1 ratio of mitigation area to project impact area. Project impact area is the total area within the River Environmental overlay zone where structures will be built, vegetation will be removed, or ground disturbance will occur as a result of the proposal. Mitigation area is not counted as part of the project impact area;~~
2. Location of mitigation. The mitigation area must be located as follows:
  - a. If mitigation will be provided as credits from a mitigation bank, the credits must be purchased from a City-approved mitigation bank located along the Lower Willamette River that is as close as possible to the disturbance area;
  - b. All other mitigation areas must be located in the River Environmental overlay zone and if the disturbance area is located within the 100-year floodplain or the 1996 Flood Inundation Area, the mitigation area must also be located within the 100-year flood plain or 1996 Flood Inundation Area. ~~Mitigation must occur in the River Environmental overlay zone within the Central Reach. The boundaries of the Central Reach are shown on Map 475-1.;~~
3. If the mitigation area is not on the site where the ~~project disturbance~~ occurs and is not credits purchased from a City-approved mitigation bank, then the applicant must own the property or possess a legal instrument, such as an easement or deed restriction that is approved by the City as sufficient to ensure the right to carry out, monitor, and maintain the mitigation;

4. Nuisance plants identified on the *Portland Plant List* must be removed within the area to be replanted. Trees removed to meet this Paragraph must be replaced as specified in Subsection ~~J~~K;
5. Plantings required for tree removal, as specified in Subsection ~~J~~K, can be counted towards mitigation if the planting is located within the River Environmental overlay zone or in an area that is contiguous to the River Environmental overlay zone;
6. Required planting density standards are specified in Table 475-3. Trees may be clustered. Trees must not be planted within a view corridor ~~shown on Map 480-1~~. Plants must be selected from the *Portland Plant List*;

| <b>Table 475-3<br/>Planting Density</b> |   |  |   |
|---|---|--|---|
|   | <b>Small Trees[1]</b>   | <b>Medium Trees[1]</b>   | <b>Large Trees[1]</b>   |
| <b>Planting Density</b>                 | One tree and one of the following two options for every 100 square feet:<br><br>Option 1: Three shrubs and seeded with a grass and forb seed mix at a ratio of 30 pounds per acre; or<br><br>Option 2: Three shrub and four other groundcover plants. | One tree and one of the following two options for every 200 square feet:<br><br>Option 1: Six shrubs and seeded with a grass and forb seed mix at a ratio of 30 pounds per acre; or<br><br>Option 2: Six shrub and eight other groundcover plants. | One tree and one of the following two options for every 300 square feet:<br><br>Option 1: Nine shrubs and seeded with a grass and forb seed mix at a ratio of 30 pounds per acre; or<br><br>Option 2: Nine shrub and 12 other groundcover plants. |

[1] Tree size is based on Title 11.60.020.C Canopy Size

7. For planting areas over 600 square feet, at least two different tree species and sizes, three different shrub species, and four different groundcover species must be used; and
8. Trees must be a minimum ½-inch caliper, bareroot or live stake, unless they are oak or madrone, which may be one gallon size. No more than ten percent of the trees may be oak or madrone. Shrubs must be a minimum of one gallon size or bareroot. All other species must be a minimum of four-inch pots or equivalent; and
9. The requirements of Section 33.248.090, Mitigation and Restoration Planting must be met except that written proof that all specifications of 33.248.090 have been met must be provided annually to the Bureau of Development Services for three years after planting is complete.

**M. Standards for application of soil amendments.** The following standards apply to the application of soil amendments:

1. The depth of the soil amendment must be no more than 12 inches;
2. The soil must not be applied below the ordinary high water mark of the Willamette River, streams, or other water body, or within 30 feet of a wetland;

1. A Property Line Adjustment may not result in any property being entirely in the River Environmental overlay zone, unless that property is entirely in the River Environmental overlay zone before the PLA, or the property will be dedicated or limited by deed restriction to the uses allowed in the OS zone.
2. The amount of area on each property that is outside of the resource area of the environmental overlay zone may not be reduced below the square footage in Table 475-7. A property that contains less than the area listed in Table 475-7 outside of the resource area of the environmental overlay zone may not move further out of conformance with Table 475-7.

| <b>Table 475-7</b>   |                             |                         |                         |   |
|--|-----------------------------|-------------------------|-------------------------|---|
| <b>Minimum Area Required Outside of the River Environmental Overlay Zone</b> |                             |                         |                         |   |
|  | <u>OS through R10 Zones</u> | <u>R7 Zone</u>          | <u>R5 Zone</u>          | <u>All Other Zones</u>                        |
| <u>Maximum Area Required</u>   | <u>5% of site area</u>      | <u>17% of site area</u> | <u>22% of site area</u> | <u>50% of the base zone building coverage</u> |

**33.475.450 Corrections to Violations of the River Environmental Overlay Zone Regulations**  
**Development Standards**

- A. Purpose.** The purpose of the correction regulations is to ensure the timely restoration of natural resources and functional values that have been degraded due to a violation of the River Environmental overlay zone ~~standards~~.

These regulations establish a process to determine which review requirements will be applied to remedy a violation that takes place in the River Environmental overlay zone. The type of review required depends on the circumstances of the violation. Section 33.475.450.B details methods for correcting such violations and Title 3 of the City Code details the enforcement penalties.

- B. Correction Options.** Applicants must choose one of the following options to correct a river environmental code violations.

1. When these options may be used.
  - a. If all of the following are met, the applicant may choose Option One, Option Two, or Option Three:
    - (1) No more than 12 diameter inches of trees were removed;
    - (2) No ground disturbance occurred riverward of the top of bank of the Willamette River (~~top of bank is shown on Map 475-2~~), in the riparian buffer area, or within 30 feet of a wetland or the top of bank of a stream, wetland or other water body. See Map 475-2 for top of bank;
    - (3) The correction will remove all illegal development; and
    - (4) The correction will replant illegal clearing.



- b. If any of the following occurred, the applicant may not use Option One, but may choose either Option Two or Option Three:
    - (1) More than 12 diameter inches of trees were removed;
    - (2) A Madrone, Garry Oak, or Pacific Yew larger than ~~6~~3 inches was removed; or
    - (3) Disturbance occurred riverward of the top of bank of the Willamette River (~~top of bank is shown on Map 475-2~~), or within 30 feet of a wetland or the top of bank of a stream, ~~wetland~~ or other water body. See Map 475-2 for top of bank.
  - c. If the applicant cannot meet Options One or Two, Option Three must be used.
  - d. If the violation occurred within the riparian buffer area, the applicant must use Option Three. See Map 475-6 for the riparian buffer area.
  - ~~e.~~ If the violation also violates a condition of approval of a land use review, no trees have been removed, and disturbance did not occur riverward of the top of bank of the Willamette River or within 30 feet of a wetland or the top of bank of a stream, ~~wetland~~ or other water body, the applicant may choose Option One or the process described in Section 33.730.140. The applicant may not choose Options Two or Three.
  - ~~ef.~~ If the violation also violates a condition of approval of a land use review, trees have been removed, and disturbance occurred riverward of the top of bank of the Willamette River or within 30 feet of a wetland or the top of bank of a stream, ~~wetland~~ or other water body, the applicant must use the process described in Section 33.730.140. The applicant may not choose one of the options in this section.
2. Option One, Remove and Repair. This option results in removal of illegal development and replanting and repair of any damage. All of the requirements of this paragraph must be met. Adjustments and modifications to these requirements are prohibited.
- a. All items ~~and~~, materials, and fill placed in the area of violation are removed and no new disturbance area is created;
  - b. Any soil compaction resulting from the violation is tilled or otherwise broken up to a depth of 6 inches prior to planting;
  - c. Violation remediation planting. The area to be planted is the area disturbed by the violation. All of the following must be met:
    - (1) The area disturbed by the violation activity must be replanted to meet the standards of Table 475-3;
    - (2) For planting areas over 600 square feet, at least two different tree species and sizes, three different shrub species, and four different groundcover species must be used. All plants must be native;
    - (3) A second area, equal in size to the area disturbed by the violation activity, must also be replanted to meet the standards of Table 475-3;

- (4) Any Nuisance or Prohibited Plants listed on the *Portland Plant List* must be removed from the planting area and within 10 feet of the planting area;
  - (5) Trees must be a minimum ½ inch in diameter, bareroot or live stake, unless they are oak, madrone, or conifer, which may be three- to five-gallon size. No more than 10 percent of the trees may be oak or madrone. Trees must not be planted within a Scenic ~~(s)~~ overlay zone. Trees may be clustered. Shrubs must be a minimum of two-gallon size. All other species must be a minimum of four-inch pots;
  - (6) The requirements of Section 33.248.090, Mitigation and Restoration Planting, must be met; and
  - (7) For violations involving the removal of trees, two times the number of diameter inches removed must be planted on the site, in addition to other remediation vegetation planted. If any tree removed was a Garry Oak, Madrone, or Pacific Yew, the replacement trees must be of the same species. Planted trees must be a minimum ~~one~~-½-inch in diameter unless they are oak, Madrone, or conifer, which may be three- to five-gallon size.
3. Option Two, Retain and Mitigate. This option results in legalizing the illegal development and mitigating for any damage. All of the requirements of this subsection must be met. Adjustments and modifications to these standards are prohibited.
- a. The applicable standards of paragraphs 33.475.440-~~B~~ must be met; and
  - b. Violation remediation planting. The area to be planted is the area disturbed by the violation. Where development is approved for the area disturbed by the violation, an area of the same size elsewhere on the site must be planted. All of the following must be met:
    - (1) The area disturbed by the violation activity must be replanted to meet the standards of Table 475-3;
    - (2) For planting areas over 600 square feet, at least two different tree species and sizes, three different shrub species, and four different groundcover species are used. Plants must be native and selected from the *Portland Plant List*.
    - (3) A second area, equal in size to the area disturbed by the violation activity, must also be replanted to meet the standards of Table 475-3;
    - (4) Any Nuisance or Prohibited Plants listed on the *Portland Plant List* must be removed from the planting area and within 10 feet of the planting area;
    - (5) Trees must be a minimum ½ inch in diameter, bareroot or live stake, unless they are oak, madrone, or conifer, which may be three- to five-gallon size. No more than 10 percent of the trees may be oak or madrone. Trees must not be planted within a ~~s~~Scenic ~~(s)~~ overlay zone. Trees may be clustered. Shrubs must be a minimum of two-gallon size. All other species must be a minimum of four-inch pots; and

- (6) The requirements of Section 33.248.090, Mitigation and Restoration Planting, must be met except that written proof that all specifications of 33.248.090 have been met must be provided annually for three years after planting is complete; and
  - c. For violations involving the removal of trees, two times the number of diameter inches removed must be planted on the site, in addition to other remediation vegetation planted. If any tree removed was a Garry Oak, Madrone, or Pacific Yew, the replacement trees must be of the same species. Planted trees must be a minimum ~~one~~ ½-inch in diameter unless they are oak, Madrone, or conifer, which may be three- to five-gallon size.
4. Option Three, River Review. This option requires River Review, using the approval criteria and procedures below:
    - a. Approval criteria. The applicable approval criteria of Subsection 33.865.120 must be met.
    - b. Review procedures. Reviews are processed as follows:
      - (1) Type III. A Type III review is required for any development, exterior alteration, or exterior improvement within a wetland, stream channel, drainageway, or water body
      - (2) Type II. All other reviews to correct violations are processed through a Type II procedure.
      - (3) All River Reviews must provide the information required in Section 33.865.040, Supplemental Application Requirements

## 33.865 River Review

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Sections:

- 33.865.010 Purpose
- 33.865.020 When River Review is Required
- 33.865.030 Procedure
- 33.865.040 Supplemental Application Requirements
- 33.865.100 Approval Criteria
- 33.865.110 Modification of Site-Related Development Standards
- 33.865.120 Corrections to Violations of the River Environmental Overlay Zone Standards
- 33.865.200 Use of Performance Guarantees
- 33.865.210 Special Evaluations by a Trained Professional

### 33.865.010 Purpose

River Review is intended to:

- Protect, conserve and enhance identified resources and functional values in the River Environmental overlay zone, compensate for unavoidable significant detrimental impact to those resources and functional values, and ensure the success of mitigation and enhancement activities;
- Help the City meet existing and future requirements pursuant to federal and state laws including the Clean Water Act, the Safe Drinking Water Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the National Flood Insurance Act;
- Provide flexibility for unusual situations. River Review allows for evaluation of alternative development scenarios that may have less detrimental impact on protected resources, and allows for the evaluation of off-site mitigation proposals;
- Provide a mechanism for the evaluation of detailed, site-specific information on the location or quality of resources and functional values;
- Provide a mechanism for modifying the location of the River Environmental overlay zone to reflect permitted changes in the location or quality of resources and functional values.
- Provide for the replacement of resources and functional values that are lost through violations of the River Environmental overlay zone standards;
- Provide a mechanism to modify the River Environmental overlay zone standards of Chapter 33.475, River Overlay Zones; and
- Allow for modifications to site-related development standards when modification will result in greater resource protection.

### 33.865.100 Approval Criteria.

Requests for a River Review will be approved if the review body finds that the applicant has shown that all applicable approval criteria have been met.

**A. Development within the River Environmental overlay zone.** The applicant's supplemental narrative must demonstrate that all of the following are met:

1. Land divisions, Property Line Adjustments, and Planned Developments:

- a. Except for river-dependent and river-related uses and development, proposed uses and development must be outside the 100-year floodplain and 1996 Flood Inundation Areas except as provided under Subparagraph A.1.d. Other areas of the 100-year floodplain and 1996 Flood Inundation Area must be in environmental resource tracts;
- b. There are no practicable arrangements for the proposed lots, tracts, roads, or parcels within the same site, that would allow for the provision of significantly more of the building sites, vehicular access, utility service areas, and other development on lands outside the River Environmental overlay zone; ~~and~~
- c. Development, including building sites, vehicular access and utilities, within the River Environmental overlay zone must have the least amount of detrimental impact on identified resources and functional values as is practicable. Significantly different but practicable development alternatives, including alternative housing types or a reduction in the number of proposed or required units or lots, may be required if the alternative will have less impact on the identified resources and functional values than the proposed development;
- d. River-dependent and river-related development, rights-of-way, driveways, walkways, outfalls, and utilities;
  1. The location, design, and construction method of any outfall or utility proposed within the River Environmental overlay zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside the resource area of the River Environmental overlay zone;
  2. There will be no significant detrimental impact on water bodies for the migration, rearing, feeding, or spawning of fish; and
  3. Water bodies are crossed only when there are no practicable alternatives with fewer significant detrimental impacts; and
- e. Mitigation:
  - (1) The mitigation plan demonstrates that all significant detrimental impacts on identified scenic and natural resources and functional values, and the interim loss of functional value will be compensated for. In addition, for proposed development within the riparian buffer area that is not river-dependent or river-related, the mitigation plan must result in a significant improvement of at least one of the following functional values: channel complexity, floodplain connectivity, or floodplain complexity;

- (2) To the extent practicable, the natural and scenic resources and functional values restored or enhanced as mitigation must be the same kind of resource, performing the same functions as the lost resource. In addition, the mitigation plan must demonstrate that mitigation for tree removal in the 100-year floodplain or 1996 Flood Inundation Area must meet or exceed the replacement requirements of Table 475-2 and occur within the 100-year floodplain and or 1996 Flood Inundation Area;
- (3) Mitigation must occur on-site when practicable, and ecologically beneficial. Factors to be considered when evaluating this criterion include:
- The potential for the long-term success of the restored resources and functional values in the mitigation area;
  - The amount, size, shape, and connectivity potential of on-site mitigation areas;
  - The location of the mitigation area in relation to existing, proposed or future development on the site, and the impact development may have on the mitigation area;
  - Contamination; and
  - Any other site-specific issue or constraint;
- (4) The amount of natural resource mitigation due as compensation must be based on the amount and relative condition of the resources and functional values impacted by the proposal. The amount of natural resource mitigation required will be at a ratio of no less than 1.5:1 of mitigation area to project disturbance area for onsite mitigation or when mitigation bank credits are purchased and no less than 3:1 of mitigation area to project disturbance area for offsite mitigation, but may be more to address the following:
- the uniqueness of the resources and functional values impacted;
  - the relative condition of the mitigation area;
  - the distance between the impact area and mitigation area; and
  - the time lag between when the resources and functional values are lost due to the impacts and the point when the mitigation site will achieve full functions;
- (5) Location of mitigation. The mitigation area must be located as follows:
- If mitigation will be provided as credits from a mitigation bank, the credits must be purchased from a from City approved mitigation bank located along the Lower Willamette River that is as close as possible to the disturbance area;
  - All other mitigation areas must be located in the River Environmental overlay zone and if the disturbance area is located within the 100-year floodplain or the 1996 Flood Inundation Area, the mitigation area must also be located within the 100-year floodplain or 1996 Flood Inundation Area.

(6) The operation and long-term maintenance plan ensures the ongoing maintenance and protection of the mitigation or remediation areas and associated resources and functional values. Plants that die must be replaced in kind. Ongoing monitoring and evaluation of the mitigation or remediation area must occur and monitoring reports must be submitted to the Bureau of Development Services annually for up to 5 years based on scope and size of the mitigation or remediation area.

~~12.~~ Resource enhancement and mitigation bank projects:

- a. There will be no net loss of total resource area;
- b. There will be no net loss of functional values; ~~and~~
- c. There will be a significant improvement of at least one functional value; and
- d. For mitigation banks, the applicant must possess a legal instrument, such as a conservation easement or deed restriction, that is approved by the City as sufficient to ensure the right to carry out, monitor and maintain the mitigation.

~~23.~~ All other proposals in the River Environmental overlay zone:

- a. Proposed development minimizes the loss of identified natural or scenic resources and functional values consistent with the uses that are generally permitted or allowed in the base zone without a land use review, or permitted or allowed by an approved conditional use review;
- b. Proposed development locations, designs, and construction methods are less detrimental to identified natural and scenic resources and functional values than other practicable and significantly different alternatives, including alternatives on the same site but outside of the River Environmental overlay zone;
- c. There will be no significant detrimental impact on areas of the site reserved for mitigation, areas within the River Environmental overlay zone not proposed for development at this time, downstream river habitat ~~within the Central Reach~~, or other sites ~~in the Central Reach~~ where environmental restoration is in progress or complete;
- d. Mitigation:
  - (1) The mitigation plan demonstrates that all significant detrimental impacts on identified scenic and natural resources and functional values, and the interim loss of functional value will be compensated for. In addition, for proposed development within the riparian buffer area that is not river-dependent or river-related, the mitigation plan must result in a significant improvement of at least one of the following functional values: channel complexity, floodplain connectivity, or floodplain complexity;

- (2) To the extent practicable, the natural and scenic resources and functional values restored or enhanced as mitigation must be the same kind of resource, performing the same functions as the lost resource. In addition, the mitigation plan must demonstrate that mitigation for tree removal in the 100-year floodplain or 1996 Flood Inundation Area must meet or exceed the replacement requirements of Table 475-2 and occur within the 100-year floodplain and or 1996 Flood Inundation Area;
- (3) Mitigation must occur on-site when practicable, and ecologically beneficial. Factors to be considered when evaluating this criterion include:
- The potential for the long-term success of the restored resources and functional values in the mitigation area;
  - The amount, size, shape, and connectivity potential of on-site mitigation areas;
  - The location of the mitigation area in relation to existing, proposed or future development on the site, and the impact development may have on the mitigation area;
  - Contamination; and
  - Any other site-specific issue or constraint.
- (4) The amount of natural resource mitigation due as compensation must be based on the amount and relative condition of the resources and functional values impacted by the proposal. The amount of natural resource mitigation required will be at a ratio of no less than 1.5:1 of mitigation area to project disturbance area for onsite mitigation or when mitigation bank credits are purchased and no less than 3:1 of mitigation area to project disturbance area for offsite mitigation, but may be more to address the following:
- the uniqueness of the resources and functional values impacted;
  - the relative condition of the mitigation area;
  - the distance between the impact area and mitigation area; and
  - the time lag between when the resources and functional values are lost due to the impacts and the point when the mitigation site will achieve full functions;
- (5) Location of mitigation. The mitigation area must be located as follows:
- If mitigation will be provided as credits from a mitigation bank, the credits must be purchased from a from City approved mitigation bank located along the Lower Willamette River that is as close as possible to the disturbance area;
  - All other mitigation areas must be located in the River Environmental overlay zone and if the disturbance area is located within the 100-year floodplain or the 1996 Flood Inundation Area, the mitigation area must also be located within the 100-year flood plain or 1996 Flood Inundation Area.



- (6) The operation and long-term maintenance plan ensures the ongoing maintenance and protection of the mitigation or remediation areas and associated resources and functional values. Plants that die must be replaced in kind. Ongoing monitoring and evaluation of the mitigation or remediation area must occur and monitoring reports must be submitted to the Bureau of Development Services annually for up to 5 years based on scope and size of the mitigation or remediation area.
- ~~(3) The amount of natural resource mitigation due as compensation must be based on the amount and relative condition of the resources and functional values impacted by the proposal. The amount of natural resource mitigation required will be at a ratio of no less than 1.5:1 of mitigation area to project impact area, but may be more to address the following:~~
- ~~• the uniqueness of the resources and functional values impacted;~~
  - ~~• the relative condition of the mitigation area; the distance between the impact area and mitigation area; and~~
  - ~~• the time lag between when the resources and functional values are lost due to the impacts and the point when the mitigation site will achieve full functions;~~
- ~~(4) Mitigation must occur within the River Environmental overlay zone or in an area that is contiguous to the River Environmental overlay zone. The applicant must own the mitigation site, possess a legal instrument that is approved by the City as sufficient to ensure the right to carry out, monitor, and maintain the mitigation (such as an easement or deed restriction);~~
- ~~(5) Mitigation must occur on site when practicable, and ecologically beneficial. Factors to be considered when evaluating this criterion include:~~
- ~~• The potential for the long term success of the restored resources and functional values in the mitigation area;~~
  - ~~• The amount, size, shape, and connectivity potential of on-site mitigation areas;~~
  - ~~• The location of the mitigation area in relation to existing, proposed or future development on the site, and the impact development may have on the mitigation area;~~
  - ~~• Contamination; and~~
  - ~~• Any other site specific issue or constraint;~~
- ~~(6) If on-site mitigation is not practicable or ecologically beneficial, the applicant may perform mitigation off-site. The off-site mitigation must meet all other approval criteria in this Subparagraph and the following: • Mitigation must occur at a minimum 3:1 ratio of mitigation area to project impact area; and • The mitigation area must be located within the Willamette River Central Reach, shown on Map 475-1; and~~
- ~~(7) The requirements of Section 33.248.090, Mitigation and Restoration Planting, must be met.~~

### **33.865.120 Corrections to violations of the River Environmental Overlay Zone**

#### **StandardsRegulations**

For corrections to violations of the River Environmental development standards the application must meet all applicable approval criteria stated in Subsection 33.865.100.A, ~~above~~, and all of the approval criteria listed below in Subsections A through D except the criterion in Paragraph C.1 Subsection A, and Paragraphs 2 and B.3, below. If these criteria cannot be met, then the applicant's remediation plan must demonstrate that all of the following are met:

- A.** The remediation is done in the same area as the violation; and
- B.** A second area, equal in size to the area disturbed by the violation activity, must also be replanted to meet the standards of Table 475-3.
- C.** The remediation plan demonstrates that after its implementation there will be:
  1. No permanent loss of any type of resource or functional values;
  2. A significant improvement of a least one functional value; and
  3. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.
- D.** The operation and long-term maintenance plan ensures the ongoing maintenance and protection of the remediation area and associated resources and functional values. Plants that die must be replaced in kind. Ongoing monitoring and evaluation of the remediation area must occur and monitoring reports must be submitted to the Bureau of Development Services annually for up to 5 years based on scope and size of the remediation area.

### **33.865.200 Performance Guarantees**

The Director of BDS may require performance guarantees as a condition of approval to ensure mitigation or remediation. See Section 33.700.050, Performance Guarantees.

### **33.865.210 Special Evaluation by a Professional**

A professional consultant may be hired to evaluate proposals and make recommendations if the Director of BDS finds that outside expertise is needed due to exceptional circumstances. The professional will have expertise in the specific resource or functional value or in the potential adverse impacts on the resource or functional value. A fee for these services will be charged to the applicant in addition to the application fee.