



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

Charlie Hales, Mayor
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: March 22, 2013
To: Interested Person
From: Kathy Harnden, Land Use Services
503-823-7318 / Kathy.Harnden@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 13-109890 GW

GENERAL INFORMATION

Applicant: Mark Jacobson / Portland Bulk Terminals, LLC
15550 N Lombard St / Portland, OR 97203

Consultant: Ronald Waggoner / Hatch Mott MacDonald, LLC
400 SW 6th Ave Suite 914 / Portland, OR 97204

Property Owner: Sebastian Degens / Port of Portland
PO Box 3529 / Portland, OR 97208

Site Address: 15550 N LOMBARD ST

Legal Description: TRACT C&E&BLKS 8&10&12 TL 900, RIVERGATE INDUSTRIAL DIS; BLOCK 10&12&E TL 1100, RIVERGATE INDUSTRIAL DIS; BLOCK 10&12&E TL 400, RIVERGATE INDUSTRIAL DIS; BLOCK 10 TL 100 EXEMPT ORS 307.120, RIVERGATE INDUSTRIAL DIS; BLOCK 10&12&E TL 500 LAND & IMPS SPLIT LEVY R256241 (R708881584) SEE R646396 (R708881941) FOR MACH & EQUIP, RIVERGATE INDUSTRIAL DIS; BLOCK 12 TL 200 LAND & IMPS SEE R646397 (R708882421) FOR MACH & EQUIP, RIVERGATE INDUSTRIAL DIS; BLOCK 12 TL 300 LAND & IMPS SEE R646398 (R708882431) FOR MACH & EQUIP, RIVERGATE INDUSTRIAL DIS; BLOCK 10&12&E TL 1000 LAND & IMPS SPLIT LEVY R256258 (R708881940) SEE R646395 (R708881592) FOR MACH & EQUIP, RIVERGATE INDUSTRIAL DIS

Tax Account No.: R708880036, R708881582, R708881588, R708881930, R708881940, R708882420, R708882430, R708881584

State ID No.: 2N1W26 00900, 2N1W26 01100, 2N1W23C 00400, 2N1W23C 00100, 2N1W23C 00500, 2N1W23C 00200, 2N1W23C 00300, 2N1W26 01000

Quarter Section: 1419, 1420, 1519, 1520

Neighborhood: St. Johns, contact Jennifer Levy at jenniferlevy@stjohnspdx.org.

Business District: Columbia Corridor Association, Peter Livingston at 503-796-2892.

District Coalition: North Portland Neighborhood Serv, Mary Jaron Kelley at 503-823-4099.

Other Designations: 100-year floodplain, shore area only

Zoning: IHhi – Heavy Industrial base zone with the Airport Landing Zone (h) and Greenway River Industrial (i) overlays

Case Type: GW – Greenway

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

Portland Bulk Terminals (PBT) operates Marine Terminal 5 as an importer and exporter of bulk potash (potassium chloride), the primary ingredient in most fertilizers. The potash is imported from Canada, stored on-site and then exported via ocean-going vessels. As part of their on-going operations, PBT proposes to construct a new storage building for storing potash on their Port of Portland industrial site. Prior to constructing the building, however, the site must be prepared by compacting the soil with tons of clean sand and small aggregates. The applicants evaluated the advantages and disadvantages of using barges to transport this material vs truck hauling. They found that trucking had major disadvantages, including increased traffic impacts, increased carbon footprint and longer transport times. Therefore, transport of this material will occur via river barge and the surcharge will be moved to the upland site via a temporary conveyor system, which is subject to a Greenway Review.

The proposal under review is to moor a conveyance barge in the Willamette River and construct a temporary conveyance system to transport the surcharge material approximately 680 feet from the barge to an upland stockpile area located inside the existing rail system on the site. The river end of the conveyor will be located on a spud barge moored off shore in water deep enough to prevent grounding. Other barges will bring the material to the spud barge where it will be loaded into a hopper that will load the material into the conveyor. The conveyor will transport it to an upland stockpile location until it can be moved to the proposed building site. The conveyor will be supported by timber cribbing and/or scaffolding, where needed, which will have limited ground impacts.

The conveyor envelope will be about 12 feet in width which includes 6 feet for the conveyor itself and three feet on each side for maintenance access. The height will be less than 10 feet within the Greenway jurisdictional area. The equipment for the conveyor system will be staged at the upland end of the existing roadway and will be moved down towards the river as needed for construction. The conveyor will be constructed in stages within the existing roadway area, and will be dismantled in a like manner after all surcharge material is unloaded, which is expected to take about 4 months.

This river location was selected because of an existing, gravel service road, approximately 15 feet wide, which runs from the shore area up to the rail tracks. This roadway is wide enough that additional clearing will not be required for construction or operation of the conveyor system.

Only a portion of the proposal is subject to Greenway Review, which is that portion of the project that includes the spud barge and all proposed development from the spud barge to a point that is 75 feet landward of the Greenway-defined "top of bank" as defined by the Greenway Chapter of the Zoning Code (Ch.33.440). Altogether, the portion of this linear project that is subject to Greenway Review is about 200 feet long, with approximately 120 feet waterward from the tree line, and 75 feet inland from the tree line. The tree line is also the approximate ordinary high water line. The exact distance of the barge from the shore will be determined by the near-shore water depth.

The site is located in the River Industrial Zone, and the proposal includes development that is both riverward of the Greenway Setback and within the Greenway Setback.

Relevant Approval Criteria:

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

Ch. 33.440.350 – Greenway Review Approval Criteria, Zoning Code Section; and
Willamette Greenway Design Guidelines

FACTS

Site Description: The site is located in and adjacent to the Willamette River, approximately 7,500 feet or 1.4 miles upstream from its confluence with the Columbia River, and is east of Sauvie Island. A riparian forest borders the river along this site and varies in width from about 40 feet to nearly 500 feet. The river is fairly shallow for the first 70 feet or so from the bank, and also has a wide, shallow beach leading towards the riparian forest.

The riparian forest consists mainly of cottonwood trees and is approximately 500 feet wide at the project site. An old graveled road runs nearly straight from the bank to the upland area where it terminates at a paved road which encircles the upland area. This road is about 15 feet wide and is punctuated by the occasional grass or weed clump. There is an existing chain-link fence and gate across the gravel road approximately 65 feet inland from top of bank. The *National Wetlands Inventory* shows there are several wetlands located in the southwest corner of the site, and another wetland on the inside of the rail-loop. However, none of these wetlands is located within the subject area and are, therefore, beyond the limits of this review.

Adjacent to the upland site is a large, nearly 130-acre property which contains the area that will receive the surcharge material that will be transported by the proposed conveyor. Street access is via a private drive from N Lombard. The site is developed with potash storage and office buildings, rail and dock facilities, and parking and exterior storage areas.

The surrounding properties are developed with a mix of heavy industrial facilities, often with rail and docking components. Other nearby features include the Columbia Slough and Kelley Point Park to the north, Sauvie Island to the west and the Smith and Bybee Wetlands Area to the east and south.

The area subject to Greenway Review includes the river area below top of bank (which is incorrectly described as the 100-year floodplain by the applicant), the 25-foot wide Greenway Setback as measured landward from the top of bank, and the adjacent 50 feet of roadway landward of the Greenway Setback. The eastern edge of the area subject to Greenway Review is located approximately half way between the top of bank and the existing chain-link fence to the east. Therefore, the area subject to review is all of the proposed activity in the water and within the 100-year floodplain, plus 75 feet landward from the top of bank near the tree line. From the proposed barge location in the River, to the eastward boundary of the area subject to Greenway Review, is approximately 200 feet. The remaining area encompassed by this project lies outside Greenway jurisdiction.

Greenway Resources: The greenway overlay zones protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along Portland's rivers. The greenway regulations implement the City's Willamette Greenway responsibilities as required by ORS 390.310 to 390.368, as well as the water quality performance standards of Metro's Title 3. The purpose of this land use review is to ensure compliance with the regulations of the greenway overlay zones.

The *Lower Willamette River Wildlife Habitat Inventory* identifies this property as Site 3.4A. The river frontage along the site is part of a Rank II habitat area that includes the shoreline between the Oregon Steel property (to the south) and the adjacent industrial properties (to the north) which extend downstream to the mouth of the Columbia Slough. This shoreline area includes a long, wide beach and a heavily vegetated bank. The uplands are also noted for the Rank II habitat areas provided by the riparian forest and wetlands in the southwest area of the project site (Site 3.4C and 3.4D). The forested area includes Oregon white ash, black cottonwood, willow, St. John's wort, snowberry, creek dogwood, reed canarygrass, Himalayan blackberry and thistle.

The applicant stated that indications of wildlife usage, including beaver and muskrat den holes, and many beaver and shorebird tracks were prevalent. A belted kingfisher nest was also observed.

Zoning: The project site is in the Heavy Industrial (IH) zone and has the Greenway River Industrial (i) overlay designation (see zoning on Exhibit B).

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 development standards are the minimum necessary to assure safe, functional, efficient, and environmentally sound development. The applicant noted that the site will continue to operate as a bulk storage and transfer terminal, which is an allowed use in the Heavy Industrial zone.

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.

Land Use History: City records indicate that prior land use reviews include the following:

- MCF/M 31-69: Land Division Plat for 475 acres
- MCF/M 31-69 IIA: Plat
- MCF/M 31-69 IIB: Plat related to M 31-69 A
- MCF/M 31-69 III: 2-block Plat
- MCF/CU 4-76g: Conditional Use for industrial facility in Rivergate
- PC 6911: City Zoning for Rivergate Annexation/Port of Portland
- PC 6947: City Zoning for Rivergate Annexation/Port of Portland
- PC 7196: City Zoning for Rivergate Annexation/Port of Portland
- GP 16-81: Greenway Permit
- GP 15-88: Greenway Permit for submarine cable facility
- GP 9-89: Greenway Permit for temporary barge unloading
- GP 11-89: Greenway Permit for pier and access trestle
- GP 16-89: Greenway Permit for recreational area in conjunction with factory development
- LUR 95-00288 GW: Greenway Review for multi-commodity bulk transfer terminal
- LUR 96-00444 GW: Greenway Review for riverbank stabilization and plantings
- LU 06-113291 GW: Greenway Review for new rail track and perimeter service road at T5

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **February 11, 2013**. The following Bureaus have responded with no issues or concerns:

The Bureau of Environmental Services responded that the existing service road should be replanted with native vegetation; that all existing wetlands within the site area be adequately protected; and that a sediment and pollution control plan is needed which includes measures to prevent materials from dropping into the Willamette River or the forested wetland while being transported from the moored barge to the upland stockpile area. Please see Exhibit E.1 for additional details.

The Site Development Section of BDS responded with requests for additional requirements for erosion control and information at permitting time. Please see Exhibit E.2 for additional details.

Life Safety commented that a Building Permit will be required for this project. Please see Exhibit E.4 for additional details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on February 11,

2013. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

GREENWAY REVIEW

The applicant's site plans did not provide an elevation for the top of bank. Top of bank must be established in order to determine the location of the Greenway Setback and the area subject to review. The City Zoning Code defines top of bank as: "the first major change in the slope of the incline from the ordinary high water level of a water body." In this case, the top of bank is the top of a steep bank located at the tree line, which is also the ordinary high water. Beyond the steep bank, there is a long, gentle slope with no abrupt grade changes. Therefore, the top of bank will be the elevation at the top of the steep slope.

Ordinary high water is determined by examining the shore area to find the line where water occurs frequently enough that upland vegetation no longer grows below that line, and where debris left from high water will accumulate. The "ordinary high water" line is located along the steep bank. Therefore the top of bank elevation will be the ground elevation at the top of the steep bank, which is about 19 feet. The Greenway Setback begins at the top of bank and is measured landward 25 feet. Greenway jurisdiction includes the water areas up to and including the top of bank, the 25-foot wide Greenway Setback, plus 50 feet of the upland roadway area landward of the Greenway Setback, or 75 feet from top of bank. This ending point is about half way between the top of bank and the existing chain-link fence.

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. 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. A complete description of the Design Guidelines and their applicability is provided in pages C-3 through C-49 of the *Willamette Greenway Plan*. The Design Guidelines are grouped in a series of eight Issues; findings for the individual guidelines are included below.

In the River Industrial areas, only the water area and the adjacent upland, up to 50 feet beyond the outer limit of the Greenway Setback, are subject to Greenway Review.

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 for:

1. Structure Design
2. Structure Alignment

Findings for Issue A: The proposed conveyor is a river-related, temporary structure which will supply a product to an existing industrial facility in the upland area. The industrial facility is a river related industrial use, and the site does not have the Greenway Trail designation. Therefore, 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 for:

1. Public Access
2. Separation and Screening
3. Signage
4. Access to the Water’s Edge

Findings for Issue B: As noted above, the site does not have the Greenway Trail designation, so 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.

1. Natural Riverbanks
2. Riparian Habitat

Findings for Issue C: The shoreline along River Industrial sites are intended to support industrial development while preserving and enhancing riparian habitat where possible. The river frontage at this site contains Rank II habitat area (Site 3.4A) from north to south, including the long, fairly wide beach and a forested bank. The uplands are also included as Rank II habitat areas provided by the band of riparian (cottonwood) forest and small wetlands in the southwest corner of the forested area (Site 3.4C and 3.4D respectively).

The construction activities within 75 feet of the top of bank will disturb approximately 3,000 square feet. This area is currently developed with a graveled road that runs from the beach upland to the developed area on the site. There is also a fence that runs parallel with the beach and crosses the gravel road about 75 feet inland from top of bank and about 150 feet from the beach. The upland cottonwood forest and wetlands in the southwest area of the larger site (Site 3.4C and 3.4D) provide habitat for deer, birds and other woodland species.

The applicant stated that the existing riparian habitat along the shoreline will be preserved since all work will occur within the boundaries of the existing roadway, and because no trees or native vegetation will be removed for the installation of the conveyor. In addition, the applicant states that erosion controls will be in place during any required grading and other site preparation work to ensure that construction activities are limited to the areas shown on the site plans (Exhibits C.3 and C.4).

However, to ensure that no trees will be cut down or otherwise damaged during installation or operation of the conveyor system, a condition is needed to require typical orange plastic construction fencing to be installed along the tree line on both sides of the gravel road from the beach line to the end of the Greenway review area. This will provide a visual barrier to remind workers of the need to stay within the boundaries of the existing road’s gravel surface. With this condition, 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.

1. Riverbank Enhancement

Findings for Issue D: No permanent alterations are proposed to the riverbank, which includes a wide sandy beach and wooded bank. The conveyor is a temporary structure that

will be dismantled at the end of the project and removed from the site. Further, existing vegetation will not be removed for this construction activity, although some of the overhanging branches may be trimmed back. As such, the existing habitat and scenic values afforded by the established shoreline vegetation will remain. 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.” These guidelines call for landscaping treatments which create a balance between the needs of both human and wildlife populations:

1. Landscape Treatment
2. Grouping of Trees and Shrubs
3. Transition

Findings for Issue E: The Greenway Planting Standards call for a minimum of one tree and 10 shrubs per 20 feet of river frontage, and a sufficient number of groundcover plantings to cover the bank. However, this proposal does not require removal of any existing vegetation nor any new disturbance area. A mature cottonwood forest comprises the existing vegetation and the proposal calls for no impacts to it. Further, the graveled road is 15 feet wide, leaving almost no area to receive any effective planting area and the Port has stated that the existing gravel road may be used again in the future for other projects. The forest already extends to the ordinary high water mark of the Willamette River. Due to the negligible impacts from this project and the lack of area that could benefit from new vegetation, 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 give direction in the proper alignment of the greenway trail and call for consideration of habitat protection, the physical features of the site and the necessity of maintaining year-round use of the trail:

Response to Issue F: The project site does not have a Greenway Trail designation, so this Issue does not apply.

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:

Response to Issue G: No public viewpoints are identified on the property, nor is any public viewpoint proposed; so this Issue does not apply.

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.

Response to Issue H: There are no designated view corridors on the site, so this Issue does not apply.

- 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: The existing upland Canpotex facility is a river-related use because it receives and transports product via ocean barge. This proposal is a river-related development allowing expansion of a river-related use. Therefore, 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 apply 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 site is not located within a River Natural (n) zoning designation, and the nearest such zone, at Kelley Point Park, is approximately half a mile downstream of the project site. Since no work or development is proposed in a River Natural zone, this criterion does not apply.

- 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: As previously discussed, this project, as proposed, will have negligible impacts on existing resources in the area. The development consists of constructing scaffolding to support a conveyor on top of an existing gravel road, and there is no fill associated with it.

Aerial photographs since 1999 show that the road has existed since at least the late 1990s, and that the riparian forest has grown up and filled in the general area around the road over this time period. The uplands are also noted for the habitat areas provided by the cottonwood forest and wetlands in the southwest area of the site (Site 3.4C and 3.4D). The roadbed consists of compacted gravel and will experience very little in the way of impacts from installation of the conveyor system. In addition, only minor pruning of a few branches from existing trees lining the roadway will be required. When all the surcharge material has been delivered, the conveyor system will be dismantled. To ensure that any spilled surcharge material, debris from deconstruction of the conveyor, or other items that might be left over from this project are adequately cleaned up/removed, a condition should require that the conveyor system be dismantled and completely removed from the site, the road be returned to its pre-conveyor condition, and before and after photos of the project site should be taken and submitted to City Staff to confirm the road's condition at the end of the project.

With this set of conditions, this criterion will be satisfied.

- 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 riverward portion of this proposal involves mooring one barge in-place approximately 100 feet off-shore. This barge will remain in place for the duration of the project. The surcharge material will be delivered by another barge that will transfer the material to the moored barge. From there, it will be fed into a hopper that will move it onto the conveyor where it will be conveyed over approximately 120 feet of open water and beach area, and across approximately 75 feet of upland area. Because the main barge will be moored in place, and other slow-moving barges will bring in new material for off-loading, wave damage is not considered to be an issue for this proposal. However, tons of sand and gravel will be transferred from one barge to the other, transferred again from the spud barge to the conveyor, and then transported across shall water, a large spill could affect biological productivity in the river. A condition to have an in-water cleanup plan in place prior to commencement of the project is needed.

The barge will be moored near the bank, just beyond the shallows and will not have any impacts for either commercial or fishing vessels in the main channel. The river, at over 2000 feet wide, is more than wide enough to accommodate recreational boating, fishing and commercial navigation. Therefore, the barge will have no significant affect on the use of the remaining channel and will not add to recreational boating congestion.

The conveyor will split the beach. However, because the upland is a very large industrial site, with other large industrial sites adjacent to the north and south, the only access to the beaches are from the river. The entire “beach” area at this location is located below ordinary high water. Therefore, anyone using the beach from their boats can go around the barge to access other areas of the beach.

Because of the nominal impacts the barge and conveyor will have on biological productivity, riverbank ecology, and the use of the river and beach, this criterion is met.

G. Development within the River Water Quality overlay zone setback.

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.
2. The applicant owns the mitigation or remediation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation or remediation plan; or can demonstrate legal authority to acquire property through eminent domain;
3. The mitigation or remediation plan contains a construction timetable and a minimum 1 year monitoring and maintenance plan that demonstrates compliance with Subsection 33.248.090.E and includes the following elements:
 - a. Identification of the responsible party or parties that will carry out the mitigation or remediation plan;

- b. Identification of clear and objective performance benchmarks that will be used to judge the mitigation or remediation plan success; and
- c. A contingency plan that indicates the actions to be taken in the event that performance benchmarks are not met.

Findings: With the implementation of the previously noted conditions calling for orange construction fencing to be installed along both sides of the gravel road to better protect existing vegetation, and for it to be removed at the end of the project; to have a sediment and pollution control plan that includes measures to prevent materials from dropping into the Willamette River; for the applicant to clean up all spills and construction debris in the upland areas above ordinary high water at the end of the project and to completely remove the conveyor system; and an in-water clean-up plan in place to immediately clean up any spills that might occur below ordinary high water and that are large enough to impact aquatic species, this criterion will be met.

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 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.

CONCLUSIONS

The applicant proposes to install a temporary conveyor system that will take surcharge material from a barge moored in the Willamette River to an upland location where it will eventually be used to compact the ground of a future building site. The conveyor system will be constructed on top of an existing gravel roadway and extend into the River to the barge location, approximately 120 feet waterward of the top of bank as measured from the upland area described elsewhere in this report.


ADMINISTRATIVE DECISION

Approval of a Greenway Review for the construction and use of a temporary conveyor system to be installed from a barge located in the Willamette River up through and beyond the Greenway Setback, to convey surcharge material composed of sands and gravels to an upland site located beyond the jurisdiction of this review, as shown on Exhibits C-1 and C-2, signed and dated March 20, 2013, subject to the following conditions:

- A. A Building Permit is required to install the proposed conveyor. As part of the building permit application submittal, the following development-related conditions (B through F) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 13-109890 GW." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. The proposed turbidity curtain must be installed prior to any surcharge material being transferred to the spud barge.
- C. Typical orange plastic construction fencing shall be installed prior to construction activity along the tree line on both sides of the gravel road from the beach line to the end of the Greenway area, which is 75 feet west of the existing fence line, and shall be removed following completion of the project.

- D. A sediment and pollution control plan with measures to prevent materials from dropping into the Willamette River must be submitted to Land Use Services and approved prior to application for a Building Permit.
- E. The applicant shall have an in-water clean-up plan in-place to immediately clean up any spills that might occur below ordinary high water that are large enough to impact aquatic species or riverbed contours.
- F. The conveyor system must be dismantled and completely removed from the site following completion of the transfer of surcharge material as described in this proposal.
- G. Any spilled surcharge material, debris from deconstruction of the conveyor, construction fencing, or any other items that might be left over from this project shall be cleaned up and removed from the site within one week following completion of the transfer of surcharge material.
- H. At the end of the transfer of surcharge material, the road shall be returned to its pre-conveyor condition.
- I. Photos shall be taken of the graveled road and existing shore area prior to construction of the conveyor system and again upon completion of all clean-up activities, and shall be submitted to the LUS Planner to confirm the road's condition at the end of the project. Photos shall include processing dates.

Staff Planner: Kathy Harnden

Decision rendered by:  **on March 20, 2013**
By authority of the Director of the Bureau of Development Services

Decision mailed: March 22, 2013

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 January 29, 2013, and was determined to be complete on **February 11, 2013**.

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 January 29, 2013.

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 extended by the applicant, **the 120 days will expire on: June 12, 2013.**

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, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 5, 2013**, at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **April 8, 2013**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.

- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
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:

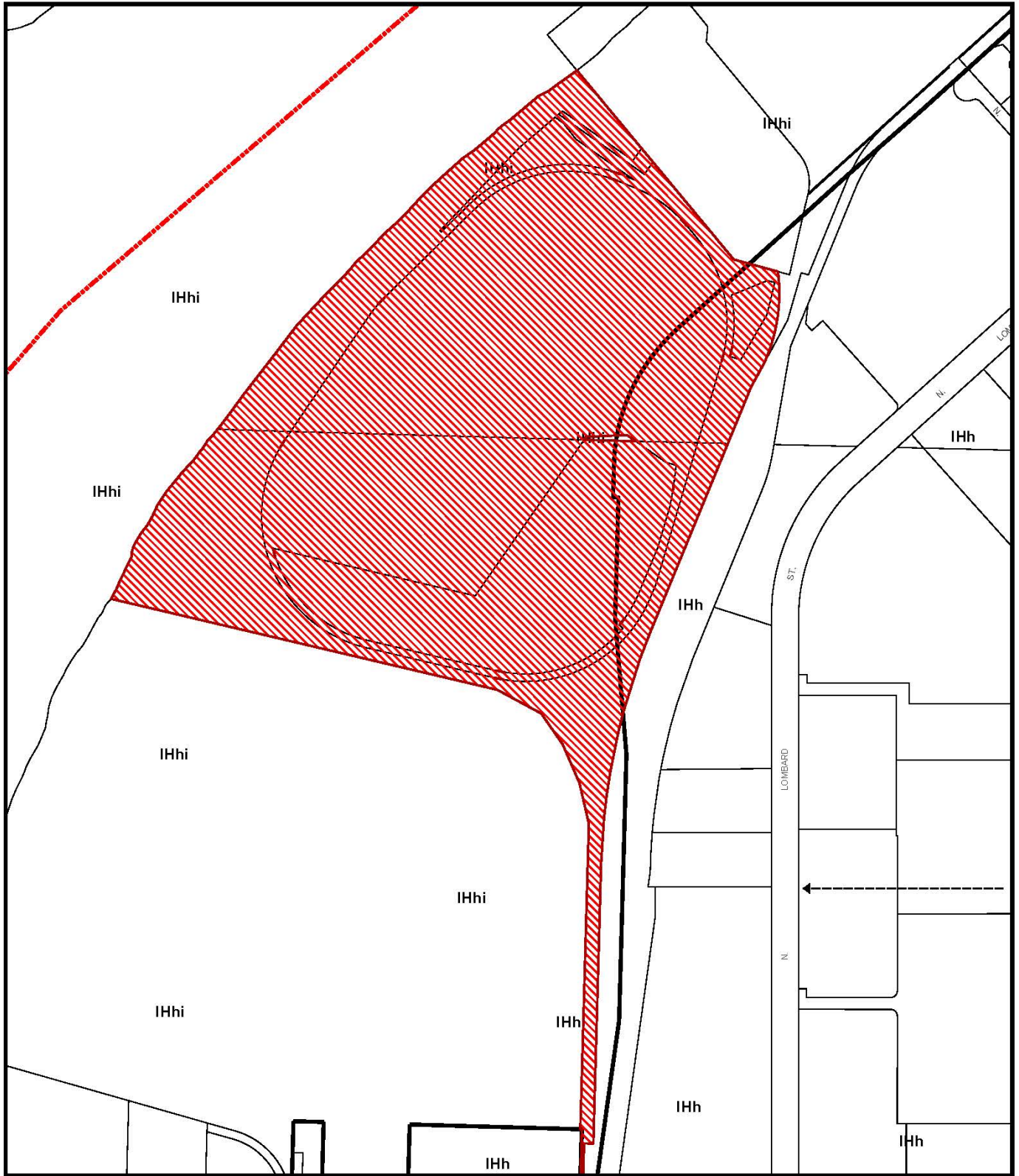
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Sediment Containment Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Site Development Review Section of BDS
 - 4. Life Safety
- F. Correspondence: NONE
- G. Other:
 - 1. Original LU Application
 - 2. 120-Day Review Extension

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).

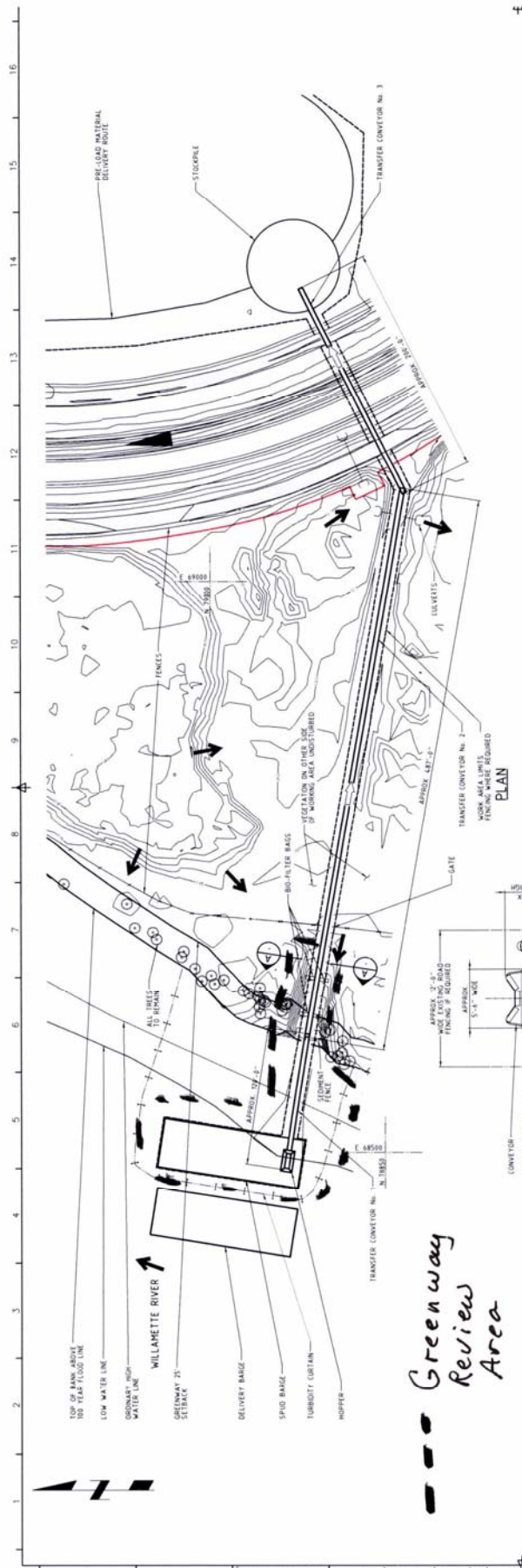


ZONING

 Site

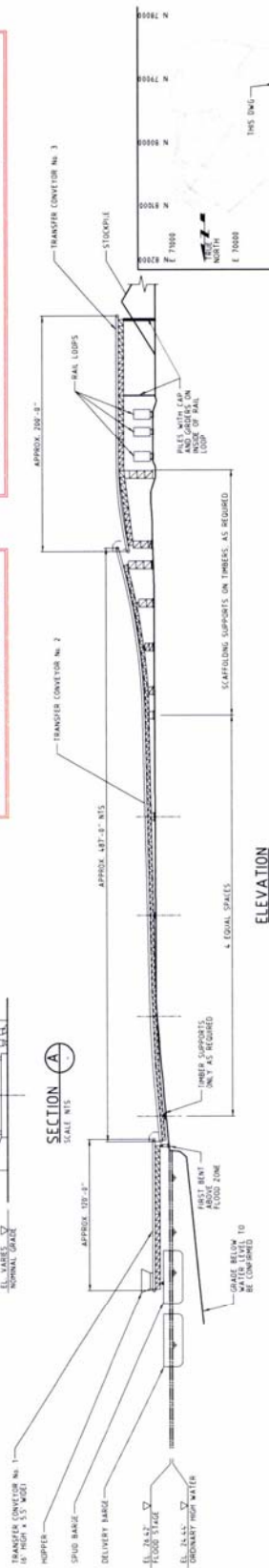


File No. LU 13-109890 GW
 1/4 Section 1419,1420,1519,1520,1620
 Scale 1 inch = 600 feet
 State_Id 2N1W23C 500
 Exhibit B (Jan 29,2013)



PRELIMINARY

NOT FOR CONSTRUCTION

[illegible]

LU 13-109890 GW
Exhibit C.1

DETAIL 2
N.T.S.

