



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** July 25, 2014  
**To:** Interested Person  
**From:** Kathy Harnden, Land Use Services  
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## **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 14-119459 GW**

#### **GENERAL INFORMATION**

**Applicant:** Peter Finley Fry, AICP  
2153 SW Main St #105 / Portland, OR 97205

**Owner:** Oregon Yacht Club LTD / c/o Marlynn Hume, Commodore  
6901 SE Oaks Park Way / Portland, OR 97202

**Site Address:** 6901 SE Oaks Park Way

**Legal Description:** TL 200 8.64 ACRES, SECTION 23 1S 1E  
**Tax Account No.:** R991230400, R991230400  
**State ID No.:** 1S1E23 00200, 1S1E23 00200  
**Quarter Section:** 3730  
**Neighborhood:** Sellwood-Moreland, contact Ellen Burr at 503-754-3868.  
**Business District:** Sellwood-Westmoreland, contact Tom Brown at 503-381-6543.  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Other Designations:** 100-year floodplain; areas of 10-20 percent slopes.  
**Zoning:** RFnq – Residential Farm/Forest (RF) with the Greenway River Natural (n) and River Water Quality (q) overlays

**Case Type:** Greenway Review (GW)  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The Oregon Yacht Club requested a Type II Greenway Review after mistakenly removing two dead/dying cottonwood trees per a previously approved Restoration and Maintenance Plan, which had expired. Because no permits had been issued for their removal, a violation of the Greenway Chapter of the Code was incurred, which requires remediation through a Greenway Review.

Beginning in 2001, this site had an approved 5-year-plan to remove invasive species and maintain native species on the site. This plan included manual removal of invasive species as well as the use of spot spraying herbicides to control new growth of invasive species. This plan was developed in conjunction with the Bureau of Environmental Services Watershed Revegetation Program. During this time, BES and the Yacht Club cleared the upland riparian area of non-native invasive species and spread over 200 pounds of native grass and herbaceous

seed and over 20,000 native tree and shrub species. Considerable progress was made in restoring the site to a more natural condition by removing the invasive species. The Plan expired over 5 years ago, although the Club, with BES help, has continued to maintain native vegetation and control invasive species on the site. Therefore, when they realized that two native cottonwoods were listing towards the moorage, they hired a tree specialist to partially cut both trees, leaving snags and downed wood on the site for habitat purposes.

To preserve and maintain native species in this riparian area, the applicants request permission to occasionally use a 2% concentration of Garlon 3A or its equivalent, with the active ingredient Triclopyr, and/or Rodeo or its equivalent (active ingredient Glyphosate), in small areas where invasive species try to emerge. Any herbicide use would be applied by commercial pesticide operators who are licensed by the Oregon Department of Agriculture. These operators would use backpack hand sprayers, and spraying would be limited to individual invasive plants. Broadcast spraying would not be allowed. This spraying would be done as prescribed by the Bureau of Environmental Services (BES). BES has prepared a new Vegetation Management Plan for the site to be effective from 2014 through 2025.

The Yacht Club therefore requests approval to apply herbicides, as needed, under the guidance of the Bureau of Environmental Services for the next 5 years, as well as approval for having cut two dead, and potentially hazardous, trees in the riparian area of the site. The applicants also requested the ability to remove hazardous trees at will on the site, after they have been evaluated by the Club's maintenance manager.

**Relevant Approval Criteria:**

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

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

## FACTS

**Site Description:** The site is located in Southeast Portland, along the Willamette River. The applicant, the Oregon Yacht Club, maintains a linear dock along the shoreline directly northwest of the Oaks Bottom Amusement Park. To the north of the Park, the Club maintains an 8-acre, forested upland area, where the two dead cottonwood trees were removed. This 8-acre site has been included in the Bureau of Environmental Services' Watershed Restoration Program since 2001. At that time, the site was heavily invaded by blackberry, reed canary grass, English ivy, clematis, Canada thistle and other invasive species. A 2001 Greenway Review (LU 01-00118 GW) allowed use of chainsaws, herbicides, and hand pulling to remove those species, and over 200 pounds of native grass and herbaceous seed and over 20,000 native tree and shrub seedlings were planted.

**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 15.9a and gives it a Rank V habitat designation. Rank V sites consist primarily of heavy industrial uses having riprap banks, docks, and wharves. As a Rank V designation, the site is categorized as having little or no value for wildlife at the present time. According to the LWRWH, Rank V sites have potential for wildlife enhancement and rehabilitation efforts should focus on replanting native species of trees and shrubs which will better serve wildlife needs. To the extent practical, the extensive riprap shores and degraded riparian habitat of Rank V sites should be enhanced for wildlife and aesthetic purposes while respecting existing river-dependent and

river-related industrial uses and development.

However, since 2001, the adjacent riparian area has been cleared of non-native invasive species through an on-going process, and the area is now comprised of native species including Black cottonwood, Oregon ash, and Pacific willow; and an understory of red osier dogwood, swamp rose, Douglas spirea, snowberry and other native shrubs and forbs. If this area were to be re-inventoried, its rating would likely be much improved due to the Club's revegetation efforts.

**Zoning:** The zoning designation of the site includes the Residential Farm/Forest base zone with the River Natural (n) and River Water Quality (q) overlay zones (see attached Zoning Map).

The RF designation is a low density, single-dwelling zone that allows detached single dwelling structures and agricultural uses. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The Greenway overlay zones are intended to protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along Portland's rivers; establish criteria, standards, and procedures for the development of land, change of uses, and the intensification of uses within the greenway; and implement the City's Willamette Greenway responsibilities as required by ORS 390.310 to 390.368 and Metro's Title 3.

**Summary of Applicant's Statement:** This 8-acre upland area, fronting the Oregon Yacht Club, has been preserved as a natural area by the Club for a number of years. It is dominated by mature cottonwoods and a few other hardwood species that provides approximately 70 percent canopy cover. The forest and understory vegetation provide shade to minimize warming of stream temperatures, stabilize soil to prevent erosion and landslides, and filter runoff. The site is north of The Oaks Park and west of the Oaks Bottom Natural Area. This site remains undeveloped as the Yacht Club has partnered with the Bureau of Environmental Services to restore it by removing blackberries and other noxious weeds, and planting it with native species including native grasses, herbs, shrubs and trees. A walking path has also been developed in a portion of the area, for the use of Club residents. It contains two delineated wetlands and lies within the Willamette River's 100-year floodplain. The Yacht Club's moorage area lies to the west of this upland natural area.

The applicants state that trees generally are not cut down in this natural area. In this case, however, the two dead trees had begun to list toward the marina starting in 2012, and larger, rotten branches began breaking off in 2013. The applicants called an arborist who confirmed that both trees were suffering significant decay and posed a danger to the surrounding area, including the marina, should they fall. The applicants then had the trees cut down.

**Land Use History:** City records indicate there is one prior land use review, LU 01-00118 GW that approved a 5-year revegetation plan. No other land use reviews have been conducted for this upland portion of the site.

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on March 29, 2012.

**1. Agency Review:** Several Bureaus, including the Bureaus of Environmental Services, Water and Development Services Site Development Section, responded to this proposal with no concerns. Please see Exhibits E.1 through E.3 for details.

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

## **ZONING CODE APPROVAL CRITERIA**

### **33.440.350 Greenway Review Approval Criteria**

The approval criteria for a Greenway review have been divided by location or situation. The divisions are not exclusive; a proposal must comply with **all** of the approval criteria that apply

to the site. A Greenway review application will be approved if the review body finds that the applicant has shown that all of the approval criteria are met.

**A. For all Greenway reviews.** The Willamette Greenway design guidelines must be met for all Greenway reviews.

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

**Guidelines:**

**1. Structure Design.** The Greenway Setback area should be complemented and enhanced by designing, detailing, coloring, and siting structures and their entrances to support the pedestrian circulation system, including both the Greenway trail and access connections.

**2. Structure Alignment.** Where surrounding development follows an established block pattern, alignment with the block pattern should be considered in structure placement. Structure alignment should also take into account potential view corridors from existing public rights-of-way or acknowledged viewpoints. The pedestrian access system should be designed to take advantage of these alignments.

**Findings:** No structures are involved in this “remediation” Greenway review. In addition, the Greenway Trail lies adjacent to the site, but not on the site. Therefore, *this Issue is not applicable to this Review*.

**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 viewpoints, plazas, or view corridors:

**Guidelines:**

**1. Public Access.** New developments should integrate public access opportunities to and along the river into the design of the Project. This includes the Greenway trail, formal viewpoints, access connections to the Greenway trail, and internal site pedestrian circulation.

**2. Separation and Screening.** The pedestrian circulation system, including Greenway trail, viewpoints, and trail access connections, should be designed to ensure adequate separation and screening from parking, loading, circulation routes, external storage areas, trash dumpsters, exterior vents, mechanical devices, and other similar equipment.

**3. Signage.** Access connections should be clearly marked.

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

**Findings:** New development is not proposed in this review. Rather, this review is to correct a tree cutting violation and does not involve any new development on the site. A fully developed Greenway Trail lies adjacent to the property on the east side of the site, and runs along the Oaks Bottom Wildlife Refuge. The privately owned forested area of the site lies between the Greenway Trail and the float-homes of the Yacht Club for a linear distance of about 1,000 feet. This forested area is a natural riparian area adjacent to the bank, and is owned and maintained by the Yacht Club members. However, there is direct public access to the River both immediately adjacent at both the north and south ends of the site, where the Trail follows the riverbank. Since public access points are available only 1,000 feet apart, and no “development” is occurring, plus the Yacht Club moorage facility is well screened from the existing Greenway Trail by the subject riparian forest area, there is no need for additional screening. Therefore, *this Issue is met*.

**Issue C. Natural Riverbank and Riparian Habitat:** This issue “applies to situations where the river bank is in a natural state, or has significant wildlife habitat, as determined by the wildlife habitat inventory.” These guidelines call for the preservation and enhancement of natural banks and areas with riparian habitat.

**Guidelines:**

**1. Natural Riverbanks.** The natural riverbank along the Willamette River should be conserved and enhanced to the maximum extent practicable. Modification of the riverbank should only be considered when necessary to prevent significant bank erosion and the loss of private property, or when necessary for the functioning of a river-dependent or river-related use.

**2. Riparian Habitat.** Rank I riparian habitat areas, as identified in the wildlife habitat inventory, should be conserved and enhanced with a riparian landscape treatment. Other riparian habitat should be conserved and enhanced through riparian landscape treatments to the maximum extent practical. Conservation however does not mean absolute preservation. Some discretion as to what vegetation should remain and what can be removed and replaced should be permitted. Riparian habitat treatments should include a variety of species of plants of varying heights that provide different food and shelter opportunities throughout the year.

**Findings:** Modification of the riverbank is not requested, so Guideline 1 of Issue C is not applicable.

Guideline C.2, Riparian Habitat. The habitat value of the forested area of this site has a Rank II rating according to the *Lower Willamette River Wildlife Habitat Inventory*. However, the Yacht Club has been restoring and preserving this approximately 8-acre site’s upland forested area’s native vegetation beginning in 2001 by working with the Portland Bureau of Environmental Services’ Watershed Revegetation Program. They have actively worked to control and eliminate non-native invasive species from the site, and replace them with native species. The applicants wish to continue maintaining the progress they’ve made over the years by continuing to hand pull most invasive species and use limited herbicide sprays on individual invasive plants that appear sporadically on the site. Maintaining and preserving native vegetation on the site is consistent with Issue C.2.

This review is required because the applicants cut two dead cottonwood trees without the proper permits. They purposefully left one tree at about 20 feet in height to create a habitat snag and left the other on the ground to create a habitat log, which is consistent with Guideline C.2 that allows discretion regarding which vegetation should stay, and which should be removed. This activity is consistent with dead trees that naturally fall or whose tops break off during storms, creating habitat logs or trees that provide roosting, rearing and perching habitat for small animal, avian and herptile species. However, the applicants should have acquired a City Zoning Permit, which is required prior to undertaking this type of activity, and presented an Arborist Report that detailed the condition and danger posed by the trees to be cut. Although the applicants did not obtain the required Zoning Permit, their goal, for over a decade, has been to reestablish and preserve native riparian vegetation and habitat on the site.

The applicants also requested permission to continue spot spraying individual invasive plants within their natural area, as they have been doing in conjunction with the City’s Bureau of Environmental Services (BES). BES submitted an updated “Vegetation Management Plan” that provides historical context for the resource enhancement that has been on-going in the Yacht Club’s upland riparian area since 2001. The BES 2014-2025 Management Plan states that herbicide treatment remains critical to managing various non-native invasive species, including: ivy, lesser celandine, garlic mustard, yellow flag iris, and thistle. The Plan states that “because previous restoration efforts have been so successful on the site to date, the overall quantity and frequency of future treatments (with

herbicides) will be low.” Further, most weeding will be done by hand and herbicides will only be used on the most intransigent species.

Therefore, *this application is consistent with Guideline 2 of Issue C, and Issue C is 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.

**Findings:** In this case, Riverbank Stabilization Treatments are neither requested nor required. The bank is fully vegetated with native species and maintained by the Yacht Club Owners to preserve the bank’s appearance and functionality as riparian and wildlife habitat. Therefore, *Issue D is met.*

**Issue E. Landscape Treatments:** This Issue “applies to all applications for Greenway Approval which are subject to the landscape requirements of the Greenway chapter of Title 33 Planning and Zoning of the Portland Municipal Code.” This Issue calls for landscaping treatments that create a balance between the needs of both human and wildlife populations in the Greenway Setback area or riverward of the Greenway Setback.

**Guidelines:**

**1. Landscape Treatments.** The landscape treatment should create an environment which recognizes both human and wildlife use. Areas where limited human activity is expected should consider more informal riparian treatments. Areas of intense human use could consider a more formal landscape treatment. The top of bank may be considered a transition area between a riparian treatment on the riverbank and a more formal treatment of the upland.

**2. Grouping of Trees and Shrubs.** In areas of more intense human use, trees and shrubs can be grouped. The grouping of trees and shrubs allows for open areas for human use, and has the secondary value of increasing the value of the vegetation for wildlife.

**3. Transition.** The landscape treatment should provide an adequate transition between upland and riparian areas and with the landscape treatments of adjacent properties.

**Findings:** This application does not contain requests for development; rather, as stated above, it is a request for an “after-the-fact” review for having cut two hazardous trees without prior authorization. In addition, the applicants request permission to be able to cut other hazard trees when necessary, and to apply limited quantities of herbicides to control non-native, invasive vegetative species in the riparian area as necessary to protect and maintain their 8-acre natural area on the Willamette River shoreline. As described above on page 2, over 200 pounds of native grass and herbaceous seed and over 20,000 native tree and shrub species were planted on the site in 2001. At this time, the Yacht Club is actively involved in maintaining this natural area with the help of the Bureau of Environmental Resources. The natural area contains a foot path that allows the Club’s members to walk through the area without disturbing native vegetation. The non-Yacht Club public does not have access to this private property.

Because the site is private property that is fully vegetated with native species and non-native invasive species are being actively controlled; and because the cut portions of the two dead trees remain on the site as habitat logs, staff finds that it is not necessary to plant replacement species on the site at this time.

Non-hazardous tree removal requires Greenway Review. However, removal of hazardous trees may be approved through a Zoning Permit when the removal request is accompanied by an Arborist Report which confirms the hazard presented by the tree(s) to be removed.

With a condition that the applicants must apply for a Zoning Permit with submittal of an arborist report for future removal of hazardous trees, *this proposal is consistent with this issue.*

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

**Findings:** The developed Willamette Greenway Trail runs adjacent to the east property line of this site, and therefore, *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.

**Findings:** There is a public viewpoint identified in the *Willamette Greenway Plan*, which is located approximately 450 feet to the southwest of the property. The viewpoint area is located on the shoreline associated with The Oaks Amusement Park, south of the subject site. There is no constructed viewpoint at this location, and, *therefore, 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.

**Findings:** There are no view corridors identified in the Willamette Greenway Plan in or adjacent to the project area. The nearest view corridor is south of Sellwood Park looking west along the Sellwood Bridge. It, too, is unaffected by the project and *this issue does not apply.*

#### **B. River frontage lots in the River Industrial zone.**

**Findings:** The project is located in the River Natural and River Water Quality zones and not the River Industrial zone. *Therefore, this criterion is not applicable.*

#### **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 criterion applies to the construction and long-range impacts of the proposal, and to any proposed mitigation measures. Excavations and fills are prohibited except in conjunction with approved development or for the purpose of wildlife habitat enhancement, riverbank enhancement, or mitigating significant riverbank erosion.

**Findings:** The “development” involved the partial cutting of two dead cottonwood trees on the site. These trees had been dead for several years and were beginning to lean towards the float homes in the Yacht Club marina.

Trees die and fall in natural areas and create different types of habitat. The Club has been actively involved in nurturing and protecting their 8-acre natural area where the trees existed. They cut the trees only because they posed a threat to real property. No other trees were impacted by the cutting of these two trees. One of the trees was only partially cut in order to create a snag for habitat purposes. The other was cut down due to its deteriorated condition. Wood from both trees was left on the ground to provide additional habitat resources. Cutting these two trees within the natural area does not appear to have imposed any “significant detrimental environmental impacts on wildlife, wildlife habitat or scenic

qualities.” Rather, the trees were cut in a way that attempts to create different types of habitat, creating snags and downed logs on the site. Therefore, *the action meets this criterion.*

**D. Development on land within 50 feet of the River Natural zone.**

**Findings:** The tree cutting area lies *within* the River Natural zone, but as described above, the cutting of two dead trees did not have a significant detrimental environmental impact on this zone, as described in findings for Criterion C, above. *This criterion is met.*

**E. Development within the Greenway setback.** The applicant must show that the proposed development or fill within the Greenway setback will not have a significant detrimental environmental impact on Rank I and II wildlife habitat areas on the riverbank. Habitat rankings are found in the *Lower Willamette River Wildlife Habitat Inventory*.

**Findings:** The area of the site impacted by the tree cutting appears to lie within a Rank II Wildlife Habitat Area within the 50-foot Greenway Setback of the River Water Quality Zone. However, no structural “development” occurred on this site. As described above, the site has been actively rehabilitated by the Yacht Club, with the help of Portland’s Bureau of Environmental Services since 2001. The Club has planted thousands of trees and shrubs within this 8 acre site and has removed acres of non-native invasive species from the site. It continues in its mission to maintain the area as a natural area that is free of invasive species. If the Club had obtained zoning permits from the City, they would have been allowed to cut the two dead cottonwood trees whose decay and ultimate failure could have meant the destruction of property and perhaps life if they had fallen in the direction they were leaning. The applicants thought that the trees’ removal was allowed via a Vegetation Management Plan that was first enacted in 2001. Because one tree was partially cut to create a snag and the wood of both trees was left on the ground to provide other sources of habitat, there has not been a significant detrimental environmental impact on Rank I or II wildlife habitat on or near the riverbank. One tree was not cut all the way down; just the crown was removed and the remainder of the tree was left as a habitat tree. Wood from both trees was left on the ground where it will provide habitat for smaller ground animals and avian species.

*This criterion is met.*

**F. Development riverward of the Greenway setback.** The applicant must show that the proposed development or fill riverward of the Greenway setback will comply with all of the following criteria:

Development did not occur riverward of the Greenway setback. Therefore, this approval criterion does not apply.

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

**Findings:** The two dead, native trees that were cut were located in the River Water quality overlay zone. Approval for other development in the River Water Quality overlay zone setback is listed in Zoning Code section 33.440.350. Approval Criteria G.5 a through h apply.

**G.5. Other development, excavations, and fills in the River Water Quality overlay zone setback. Where development, exterior alterations, excavation, or fill is proposed in the River Water Quality overlay zone setback, the applicant's impact evaluation must demonstrate that all of the following are met:**



**a. Proposed development minimizes the loss of functional values, consistent with allowing those uses generally permitted or allowed in the greenway overlay zone without a land use review;**

**Findings.** In this case, the applicant had no control over the location of the “development,” i.e., tree cutting. There were two dead trees that had begun to die over the previous 2 years prior to their being cut down. Because the trees had begun to lean toward the moorage, they posed a threat to existing development, as confirmed in the Arborist Report contained in Exhibit A.2. One tree was cut high enough to create a snag to provide habitat to birds and other wildlife, and wood from both trees was left on the ground to provide nutrients to the soil and habitat to ground wildlife. In addition, a land use review would not have been required if the applicants had obtained Zoning Permit approval to cut the two trees. Therefore, this Criterion is met.

**b. Proposed development locations, designs, and construction methods are less detrimental to the functional values of the water quality resource area than other practicable and significantly different alternatives including alternatives outside the River Water Quality overlay zone setback;**

**Findings.** The location of the project was based on the location of the two leaning trees on the site. The cut trees did not impact the water, and their wood was left on-site to provide habitat to other wildlife. There were no other “practicable and significantly different alternatives” to cutting the trees if the applicants wanted to preserve their homes and dock. Therefore, this Criterion is met.

**c. There will be no significant detrimental impact on functional values in areas designated to be left undisturbed;**

**Findings.** No other areas on the site were impacted by the cutting down of the two trees. This 8-acre site is a natural area owned by the Yacht Club for the pleasure and use of the Club members. One tree was not fully cut down, but was instead left to provide habitat for birds and other wildlife that use snags and downed logs. Wood from both trees was left on the ground to provide habitat for ground animals. Therefore, this Criterion is met.

**d. Areas disturbed during construction that do not contain permanent development will be restored with native vegetation appropriate to the site conditions and found in the *Portland Plant List*;**

**Findings.** No areas were disturbed by construction activity. The applicants have planted over 20,000 native tree and shrub seedlings and over 200 pounds of native grass and herbaceous seed. The cut trees remain on the site and have habitat value as either a habitat tree snag, or as a fallen log. The debris from the cut trees will provide additional and a different type of habitat on the site, adding to the diversity of wildlife that accesses the site. Therefore, this Criterion is met.

**e. All significant detrimental impacts on functional values will be offset through mitigation;**

**Findings.** Significant detrimental impacts to functional values on the site have not been identified.

Dead or dying trees fall to the ground as a consequence of losing vitality. The applicants sped-up this process in order to protect their float homes. However, they left one tree as a habitat tree that will provide some perching and perhaps some nesting cavity possibilities as the tree further degrades. The other tree, which will be left on the ground, will also slowly decay over time, providing additional habitat to small mammals and invertebrates. These processes increase the type and quantity of habitat available on the site. Due to the added value that the cut trees will provide to a site that has

received over 20,000 new native tree and shrub seedlings in the past 13 years, additional mitigation is not necessary in this instance.

Further, in partnership with the BES Watershed Revegetation Program, they have planted Grand fir, big leaf maple, Black Hawthorn, Oregon ash, Western crabapple, Black cottonwood, Douglas fir, Cascara, Pacific and Scouler willow, and Western red cedar trees throughout the site. They have also planted red-osier dogwood, tall Oregon grape, Indian plum, Pacific ninebark, red currant, swamp rose, salmonberry red elderberry and common snowberry throughout the site. Many areas that once were dominated by English ivy and reed canary grass are now occupied by a mix of native grasses and broadleaf herbs.

The applicants, again in partnership with the WRP, are continuing to treat the site to contain and eliminate such invasive species as garlic mustard, lesser celandine, yellow flag iris and Japanese knotweed, as well as clematis and Himalayan blackberry.

Although none of the above has happened or will happen as a consequence of the current tree cutting violation within the Greenway overlay, the Club deserves recognition for its work with the BES WRP for removing acres of invasive species and planting acres of native species throughout the site. When the two groups are finished with this revegetation plan for the site, it will be a dramatic improvement over past conditions and many new native trees, including many new cottonwoods will have been planted. The BES WRP plan is a carefully thought out program for the site and its conditions. Planting a few additional trees and shrubs will have only slight impact in comparison to the larger project.

Therefore, *this condition is met.*

**f. The mitigation plan meets the requirements of Subsection 33.440.350.H;**

**Findings.** The applicants have become good stewards of their land, and in partnership with the Bureau of Environmental Services, have worked hard to remove all non-native invasive species from their property. Per the BES Watershed Revegetation Program, they have planted over 20,000 native trees and shrubs on their 8-acre site during this voluntary program, and continue the work to fully clear the site of invasive species. BES, through its Watershed Revegetation Program, has an on-going plan for the next 11 years to continue this project as the site. As the native species mature, they will be able to out-compete the invasive species and will eventually out-compete those species for sun and nutrients.

Therefore, *this condition is met.*

**g. The mitigation plan ensures that the proposed development will not contribute to a cumulative loss of functional values over time; and**

**h. Where significant restoration or enhancement opportunities have been identified in City-adopted watershed restoration plans or where previous restoration projects have taken place, the proposed development will not preclude those restoration or enhancement opportunities or damage existing restoration projects.**

**Findings.** The mitigation plan is an on-going plan in partnership with the Portland Bureau of Environmental Services Watershed Restoration Program (WRP). Significant progress has already been made in eliminating invasive species and restoring native species throughout the 8-acre site as described above. The applicants will continue their work with the WRP to remove invasive species and plant native species as part of their on-going site rehabilitation activities. The BES WRP program ecologist for this site, Darian Santner, has provided written comments regarding the Vegetation Management Plan for the next 11 years.

Because the work to date has been so intensive, it is not clear where invasives should be removed and mitigation plants should be installed. Therefore, because there has been a City restoration plan in progress on this site, and a new Vegetation Management Plan for 2014-2025 is also now in place, additional mitigation is not required.

**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:

**H.1. Except when the purpose of the mitigation could be better provided elsewhere, mitigation will occur:**

- a. On site and as close as practicable to the area of disturbance;**
- b. Within the same watershed as the proposed use or development; and**
- c. Within the Portland city limits.**

**Findings:** The applicant's mitigation proposal to reinitiate its agreement with the BES Watershed Restoration Program has been confirmed via a new agreement provided by Darian Santner, a BES Natural Resources Ecologist. The new 2014-2025 Vegetation Management Plan does not include planting additional plants on the site because of all the species planted since 2001. According to Mr. Santner, the primary concern at this point is not additional vegetation, but protection of the existing vegetation. The new Management Plan requires continued removal and control of invasive species on the site. The site's current needs are to continue suppression of new or expanding populations of non-native species through hand-pulling or the spot application of herbicides on small patches of invasive species when necessary. The Watershed Revegetation Program of the Bureau of Environmental Services remains actively engaged in the management of this site.

All remediation activities will occur on the 8-acre site where the two cottonwood trees were cut. Plantings proposed in the new "Oregon Yacht Club Riparian Vegetation Management Plan, 2014-2025," will be installed within the project site, which is inside the Portland city limits and *this criterion is met.*

**H.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;**

**Findings:** The entire natural area where the two dead cottonwoods were cut down is owned by the applicant, the Oregon Yacht Club. *This criterion is met.*

**H.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:** As stated above, the continued maintenance of the plants installed during the 2001 Revegetation Management Program, under the auspices of the Portland Bureau of Environmental Services, will ensure that this site remains a natural area into the distant future. The new 2014-2025 Riparian Vegetation Management Plan, which focuses on invasive species suppression and removal over the next 11 years, will ensure that the site retains an almost pristine natural environment. The applicant must remain responsible for carrying out this Management Plan, whether or not the BES WRP is involved. In addition, the Yacht Club must provide annual reports to the Bureau of Development Services (BDS)

that specify which invasive species were targeted for removal, and how many square feet of each invasive species was removed each year for the next three years. These annual reports must be delivered to the Bureau of Development Services by October 1<sup>st</sup> of each year beginning in 2015 and continue through 2017. These reports must be noted and placed within the case file LU 14-119459 GW. If these reports are not received as required, the Yacht Club will be in violation of this review, and a new land use review will be required to determine compliance with this current review.

Further, for any additional hazardous tree removal situations, the applicant must submit an arborist report that identifies the tree's species, its condition, and what hazard it poses and to what. This report must be submitted with the applicants' application for a Zoning Permit, which is required prior to removal. Dead trees that do not pose a hazard to life or property may not be removed without being evaluated through the Greenway Review process.

With the above conditions of approval, *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, the Oregon Yacht Club, cut two native trees, both black cottonwoods, which had been dead for several years and had started to list toward the float homes moored along the shoreline of the site. The Club hired an arborist who assessed the condition of the two trees, and confirmed that the trees were dead and rotting, and posed a hazard due to their proximity to nearby float homes (Exhibit A.2). The arborist recommended immediate action to reduce the potential hazard by cutting down the two dead trees. This portion of the Club's property has been part of the City's Watershed Restoration Project (WRP) since 2001, and the Club assumed it was permissible to remove the hazard trees without a City permit. However, this was not the case as the site lies within the City's Greenway Overlay Zone and any tree cutting must receive City authorization prior to removal. Since they did not obtain City approval to remove the two trees, they incurred a Greenway violation and a Greenway Review was required to determine whether the tree removal was consistent with Greenway regulations.

The applicants have entered into a new WRP with the Bureau of Environmental Services to continue the eradication of non-native invasive species throughout the upland site through 2025. As part of that process, and as approved by this review, chemical sprays will be used on individual plants.

The above findings have shown that although the two dead cottonwoods were removed from the Greenway overlay zone without prior authorization, their rotten condition and the fact that they were leaning towards the float home moorage made them a threat to life and property. Further, the applicants have been good stewards of the property since their involvement from 2001 to the present with the Bureau of Environmental Services revegetation program. They have planted over 20,000 native trees and shrub seedlings on the 8-acre property. Therefore, with conditions that require the applicants to provide annual reports to the Bureau of Development Services, Land Use Services, regarding the success of the Yacht Club's Vegetation Management Plan each year for the next 3 years, and that require the applicants to obtain a City Zoning Permit prior to any proposed hazardous tree removal, this proposal should be approved.

### **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.

## ADMINISTRATIVE DECISION

**Approval** of a Greenway Review to correct unpermitted removal of 2 dead and hazardous cottonwood trees from within the Greenway Natural (n) and Water Quality (q) Overlay zones, and to continue herbicide application, in substantial conformance with Exhibit C.1 as signed, and dated by the City of Portland Bureau of Development Services on **July 23, 2014**. Approval is subject to the following conditions:

- A.** The applicants shall obtain a BDS Zoning Permit prior to removal of any hazardous trees from the site. An arborist report must be submitted with the Zoning Permit application to document the tree's condition and the hazard it poses.
- B.** Non-hazardous tree removal, including non-hazardous dead trees, requires Greenway Review approval prior to any removal activity.
- C.** Herbicides may be applied to individual invasive plants, as defined in the Portland Plant List, for a period of 5 years from the date of this approval.
- D.** Spot spraying will be done with either a 2% concentration of Garlon 3A or its equivalent, with the active ingredient Triclopyr, or with Rodeo or its equivalent (active ingredient Glyphosate).
- E.** Any proposed herbicide use after this 5-year period concludes will require authorization through a new Greenway Review.
- F.** All herbicides shall be applied by commercial pesticide operators who are licensed by the State of Oregon Department of Agriculture. These operators shall use backpack hand sprayers, and spraying shall be limited to individual invasive plants. Broadcast spraying is not allowed.
- G.** Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

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

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

**Staff Planner: Kathy Harnden**

**Decision rendered by:**  **on July 23, 2014**  
By authority of the Director of the Bureau of Development Services

**Decision mailed July 25, 2014**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. 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 February 21, 2014, and was determined to be complete on **May 30, 2014**.

*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 February 21, 2014.

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 requested that the 120-day review period be extended for 8 weeks, as stated with Exhibits G.6 and G.7. Therefore, as extended by the applicant, **the 120 days will expire on: November 21, 2014.**

**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 City Hearings Officer, who will hold a public hearing. Appeals must be filed **by 4:30 PM on August 8, 2014** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 2:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 2:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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](http://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 City Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the City 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 **August 11, 2014 – (the first business day following the last day to appeal)**.
- 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, or
- In situations involving only the creation of lots, the land division has been recorded.

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

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

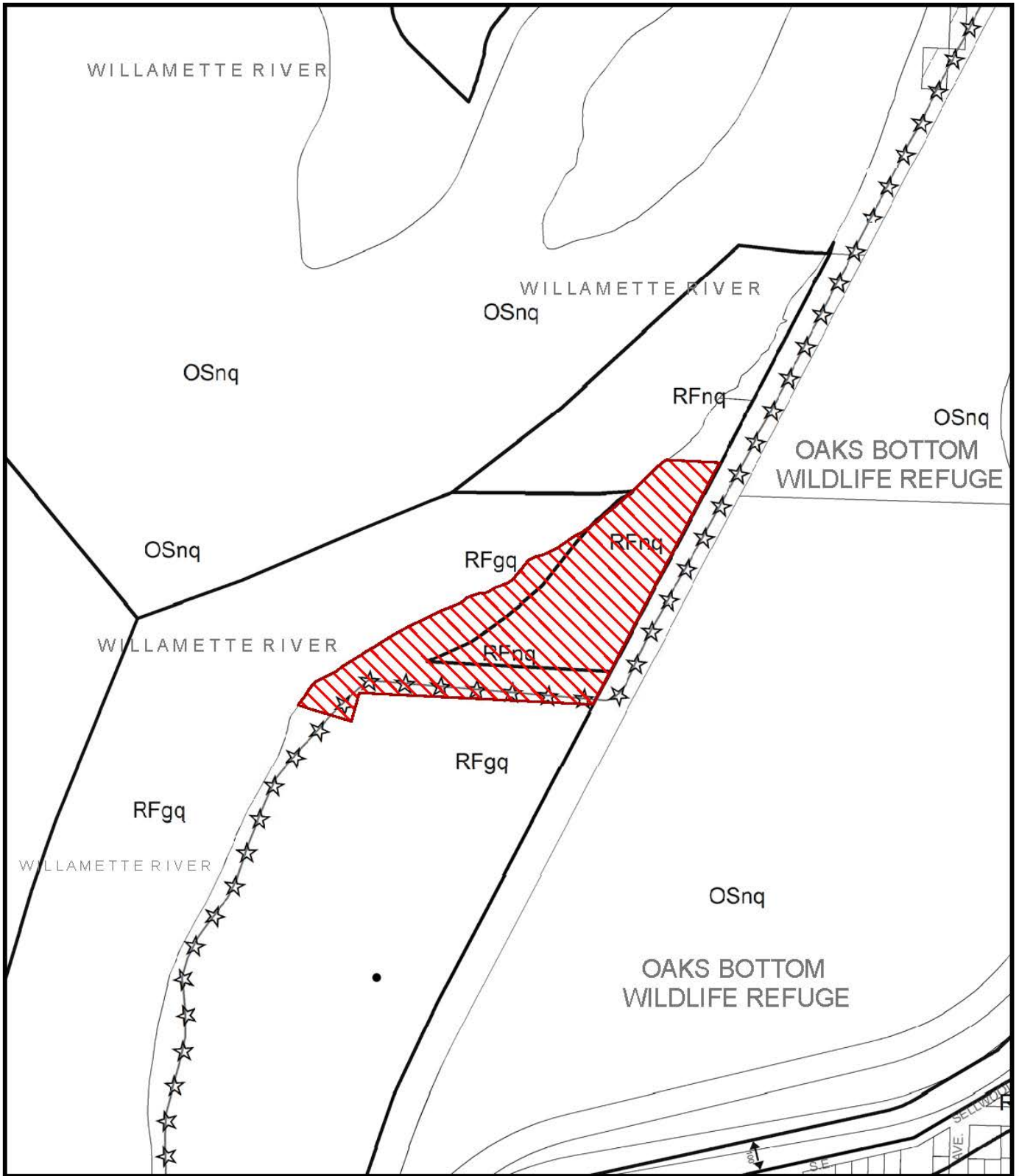
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Original Narrative
  - 2. Revised Narrative, Part 1
  - 3. Revised Narrative, Part 2/Oregon Yacht Club Riparian Vegetation Management Plan, 2014-2015
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan showing location of cut trees (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
- F. Correspondence: NONE
- G. Other:
  - 1. Original LU Application
  - 2. Violation Photos
  - 3. Notice of Violation
  - 4. 2001-2005 Watershed Revegetation Project
  - 5. Incomplete Letter, sent March 14, 2014
  - 6. Time-line Extension, 28 days
  - 7. Time-line Extension, 28 days

**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).**



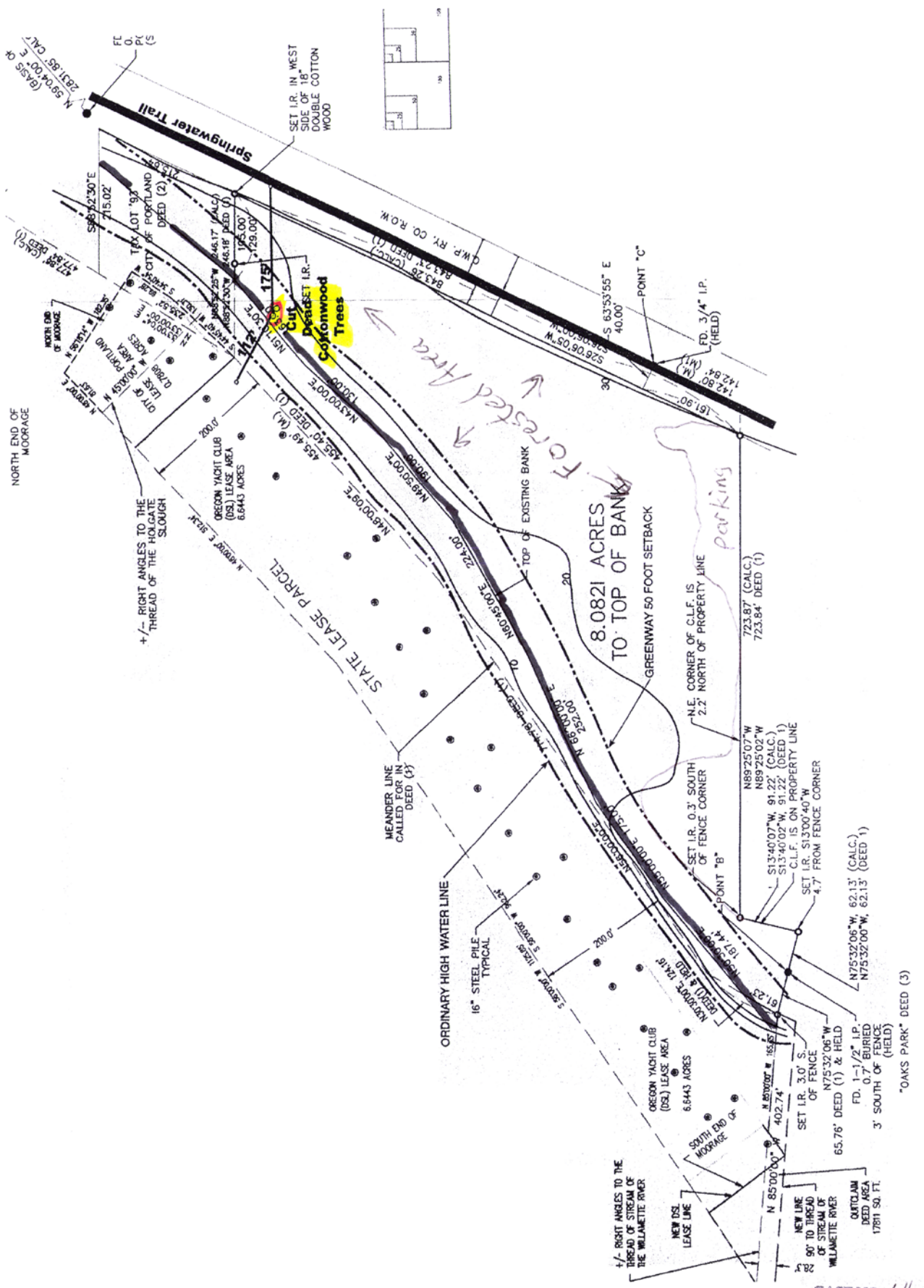


# ZONING

-  Site
-  Recreational Trail
-  Historic Landmark



File No. LU 14-119459 GW  
 1/4 Section 3631,3730,3731  
 Scale 1 inch = 400 feet  
 State\_Id 1S1E23 200  
 Exhibit B (Feb 25, 2014)



REGISTERED PROFESSIONAL LAND SURVEYOR  
 OREGON  
 JULY 17, 1989  
 CHRIS FISCHBORN  
 RENEWAL DATE: 1/1/2022

**ZTEC ENGINEERS INC.**  
 3737 S.E. 8TH AVE., PORTLAND, OREGON 97202  
 PH: (503) 235-8795 FAX: (503) 233-7889

JOB#:	12169-1
DATE:	1/12/11
SCALE:	1"=100'
DRAWN:	JWS
CHECK:	CFE
FILE:	

0 50 100  
 SCALE: 1"=100'

OREGON YACHT CLUB  
 EXHIBIT

CASE NO. LU-14-119459 GW  
 EXHIBIT C.1