



City of Portland
Bureau of Development Services
Land Use Services Division

1900 SW Fourth Ave. Suite 5000
Portland, Oregon 97201
Telephone: 503-823-7300
TDD: 503-823-6868
FAX: 503-823-5630
www.portlandonline.com/bds

Date: April 18, 2007
To: Interested Person
From: Kate Green, Land Use Services
503-823-5868

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

The Bureau of Development Services has **denied** a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 06-171821 GW

GENERAL INFORMATION

Applicant: Shawn Karambelas, SK Northwest
1447 NE Sandy Boulevard
Portland, OR 97232

Representatives: Peter Fry
2153 SW Main Street, #104
Portland OR 97205

Richard Allan, Ball Janik LLC
101 SW Main Street #1100
Portland OR 97204-3219

Property Owners: Wayne B Kingsley and Craigievar Invest LLC
110 SE Caruthers Street
Portland, OR 97214

Site Address: 240 WI/ SE CARUTHERS STREET (at the foot of SE Division Place)

Legal Description: TL 300 BLOCK A&G SPLIT MAP 79400-1640, KERNS ADD
Tax Account No.: R448700030
State ID No.: 1S1E10AA 00300
Quarter Section: 3230,3330

Neighborhood: Hosford-Abernethy, Frank Dufay at 503-232-0204
Business District: Central Eastside Industrial Council, Tim Holmes at 503-872-9616
District Coalition: Southeast Uplift, Gary Berger at 503-232-0010

Zoning: Heavy Industrial (IH)
Greenway River General (g)

Plan District: Central City/Central Eastside
Other Designations: Floodplain, Public Recreation Trail

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

Proposal: The applicant proposes to develop a vacant 1.8 acre riverfront lot with a two-story building, parking and loading areas, and a dock. The dock is to be constructed of encapsulated foam and galvanized steel and aluminum, and is to be attached to 18-inch diameter steel pilings. The bank is also to be planted with native vegetation. Uses of the facility are identified as retail, vehicle repair, warehouse, and office.

No new development is proposed on the adjoining lot to the north, which is in the same ownership.

The project site is located in the Greenway River General overlay zone, where new development and in-water structures are subject to **Greenway Review** (33.440.310).

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are: 33.440.350, Greenway Review.

ANALYSIS

Site and Vicinity: The project site is a 1.8 acre [79,683square foot (SF)] parcel along the east bank of the Willamette River at the foot of SE Division Place, between the Marquam and Ross Island bridges. Currently, the only vehicular or pedestrian access to the SK Northwest (SK NW) site is via SE Division Place. *The site plan also shows access via easements across the properties to the north or east; however, there is not sufficient information to clearly demonstrate these easement rights. For example, the information provided by the applicant (Exhibit A.4) indicates that the owner's of Block G have rights to an easement (in a vacated portion of SE Ivon) on the lots to the east of this subject site. The legal description for the subject site indicates that it is made up of Block A and portions of Block G. The portion of the subject site that is within Block G is not contiguous and does not have a direct connection to the area within the noted easement, so it is unclear if the easement is for benefit of the subject site. Further, the applicant for a development on those abutting lots to the east (LU 06-182816 GW) has indicated that his understanding is that the easement is not for the benefit of the subject site, and has proposed development within the easement, which would block access to the subject site. Based on historic records, the lot and block pattern in the area has changed over time. At some point, it appears that Blocks A and G increased in size (Exhibit C.3). There have also been several street vacations that have resulted in changes to the lot configurations. The easement materials refer to access north of the centerline of vacated SE Ivon. Most street rights-of-way in the area appear to have been 60-feet in width; yet, the easement documents appear to refer to an 80-foot wide right-of-way, so the location of the centerline is unclear. Since the applicant proposes to use this easement for general access between the subject site and SE Ivon, and to fulfill a safety requirement for emergency vehicle maneuvering area, it is the applicant's responsibility to clearly demonstrate rights to this easement.*

The site is presently vacant, except for a gravel surface, some fencing along the east lot line, and a remnant concrete structure in the southwest corner of the lot. There is also a grove of cottonwood trees near the southwest corner of the site. Himalayan blackberries and other non-native vegetation cover the balance of the riverbank. A number of pilings are located across the river frontage and appear to be remnants from a previous development. An in-water lease area is noted in the waterway adjacent to the site.

The site is located in an area with a mix of industrial uses within the Central Eastside Subdistrict of the Central City. Development to the north includes a dock facility, which is currently under the same ownership as the subject site, the primary greenway trail (at the foot of SE Caruthers), and the Oregon Museum of Science and Industry (OMSI) and Portland Opera facilities and parking areas. To the east are single story industrial buildings, rail lines and an interim greenway trail along SE Fourth Avenue, and the elevated SE Grand/McLoughlin Boulevard Viaduct. The lot directly to the south is currently under review for a new multi-story building, dock facilities, and a greenway trail (LU 06-182816 GW). As noted above, the neighboring project also includes improvements on the two abutting lots to the east of this subject site. Development to the south includes Ross Island Sand & Gravel, and the primary Greenway/Springwater Trail (south of SE

Ivon/SE Fourth), and Oaks Bottom Wildlife Refuge. The South Waterfront Subdistrict of the Central City is directly to the west across the Willamette River.

Zoning: The project site is in the Heavy Industrial (IH) zone and has a Greenway River General (g) overlay designation.

The **Heavy Industrial (IH)** zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. This 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 **Greenway River General (g)** zone allows for uses and development which are consistent with the base zoning, which allow for public use and enjoyment of the waterfront, and which enhance the river's natural and scenic qualities.

The *Greenway Plan* calls for a 25-foot **greenway setback** at this site, and allows only river-dependent or river-related development to be located within the greenway setback. Other development may be allowed if approved through a Greenway Goal Exception (Statewide Planning Goal Exception). The terms *river-dependent* and *river-related* are defined in the Portland Zoning Code (33.910) as follows:

River-Dependent. *A use which can be carried out only on, in, or adjacent to a river because it requires access to the river for waterborne transportation or recreation. River-dependent also includes development, which by its nature, can be built only on, in, or over a river. Bridges supported by piers or pillars, as opposed to fill, are river-dependent development.*

River-Related. *A use or development which is not directly dependent upon access to a water body but which provides goods or services that are directly associated with river-dependent land or waterway use or development, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Residences (including houseboats), parking areas, spoil and dump sites, roads and highways, restaurants, businesses, factories, and recreational vehicle parks are not generally considered dependent or related to water. Recreational trails and viewpoints adjacent to the river are river-related development. Bridge exit and entrance ramps supported by piers or pillars, as opposed to fill, are river-related development. Removal or remedial actions of hazardous substances conducted under ORS 465.200 through 465.510 and 475.900 are considered river-related development for the duration of the removal or remedial action.*

The greenway setback includes the portion of the site between the top of the riverbank and the area 25 feet landward. The Zoning Code includes several definitions for the top of the riverbank as follows:

Top of Bank. *The first major change in the slope of the incline from the ordinary high water level of a water body. A major change is a change of ten degrees or more. If there is no major change within a distance of 50 feet from the ordinary high water level, then the top of bank will be the elevation 2 feet above the ordinary high water level.*

In order to determine where the top of bank is located on a site with varied shoreline topography, horizontal and vertical measurements are taken between the ordinary high water level and all points 50 feet landward. A bank slope can be expressed in degrees or as a ratio or percentage. The top of bank is the first location where a change of 10 degrees occurs. However, if the first change of 10 degrees or more is more than 50 feet from the ordinary high water level, the top of bank is defined as the elevation 2 feet about the ordinary high water level.

The applicant has provided a Site Plan (Exhibit C.1), which includes one foot contours between elevation 10 and elevation 43 (which appear to be City of Portland datum). As shown on this plan, there is a relatively consistent slope ratio of 2 horizontal: 1 vertical (26 degrees) across most of the riverfront. In several instances, the horizontal distance of the slope increases or decreases. In these locations the slope changes to a shallower (3.5:1, 16 degrees) or a steeper (1:1, 45 degrees) grade. A change from a 2:1 to a 3.5:1 slope is equivalent to a 10 degree

difference; and a change from a 2:1 to a 1:1 slope is equivalent to a 19 degree difference. The points where these changes occur are designated as the top of the bank. The applicant materials do not delineate the top of the bank and the greenway setback in accordance with the Zoning Code definitions, so a portion of the proposed building is located within the greenway setback, and cannot be allowed in that location, unless approved through a Greenway Goal Exception. This issue is further addressed in the findings below.

The *Greenway Plan* also shows a **public trail** designation on the subject site. There are several *Zoning Code* standards that call for trail improvements on sites with a public trail designation. These include 33.440.240, Greenway Development Standards/Public Recreation Trails, and 33.272, Public Recreation Trails. These standards work in conjunction with one another and call for the dedication of an easement and construction of the trail when new development occurs on a site with a Greenway Trail designation. The requirement for a trail must be applied consistent with constitutional principles.

In a review of an earlier development proposal for this site, the City of Portland Hearings Officer concluded that the *Zoning Code* requirement for a recreational trail dedication is facially unconstitutional. BDS consulted with the City Attorney's Office and was advised that the hearings officer's analysis did not consider whether, despite any deficiencies in the code language, the recreational trail requirement nevertheless can be applied in a constitutional manner. This is a necessary step in a facial constitutional analysis. The recreational trail requirement can be applied in a constitutional manner if it is supported by analysis and findings that show the required trail satisfies the essential nexus requirement of *Nollan v. California Coastal Commission*, 483 U.S. 374 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987) and the rough proportionality requirement of *Dolan v. City of Tigard*, 512 U.S. 3374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994). Accordingly, BDS and the City Attorney's Office contend the *Zoning Code* trail dedication requirement is not facially unconstitutional and BDS will address the nexus and rough proportionality requirements as part of this report. These issues are addressed in the Greenway Review approval criteria below.

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

- ZC 5041: Zone Change for multiple parcels: final decision unknown, case year 1967
- LU 05-178171 GW: Greenway Review for new building and dock-Denied
-

Agency Review: A *Notice of Proposal in Your Neighborhood* was mailed **March 1, 2007**. The following agencies have responded:

- *Urban Forestry and Water Bureau*-No concerns noted (Exhibit E.1)
- *Life Safety Section/BDS*-A separate building permit will be required for the project (Exhibit E.2).
- *Fire Bureau*- Fire department access to this site must be identified. The Fire Code requires access roads within 150 feet of all portions of the exterior wall of the first story of the building, as measured by an approved route around the exterior to the building. If the required access is not available, and the applicant chooses to appeal a requirement, the appeal must be listed as a condition in the decision. Complete details are provided in Exhibit E.3.
- *Site Development/BDS*-Stormwater disposal must comply with the hierarchy identified in the *Stormwater Management Manual*. A DEQ permit is required for properties greater than one acre in size. Development within the 100-year flood plain is subject to the regulations of Chapter 24.50, Flood Hazards, in particular, the balanced cut and fill requirement. Additional information is provided in Exhibit E.43.
- *Bureau of Environmental Services*-Sanitary sewer service is available in SE Division Place. A 10-foot public sewer easement extends across a 30-inch CMP public storm sewer located at the north end of the site. There is also a 15-foot public sewer easement, 7.5 feet of which is on the applicant's property in the vacated SE Ivon Street, along the southern property line. All public sewer easements are exclusive and work within the easements is subject to approval by the Director of Environmental Services. The submitted site plan shows "underground storm water treatment" to manage stormwater from the site. This does not meet the requirements of the *Stormwater Management Manual* without further explanation,

since vegetated facilities are required to the maximum extent practicable. In addition, the applicant has not identified the method of stormwater disposal. Because a specific site plan is approved through this Greenway review, the applicant is advised to identify a method of stormwater management and disposal at this time that meets requirements. Native vegetation should be retained and nuisance vegetation should be controlled. Complete details are provided in Exhibit E.5.

- *Portland Transportation*- SE Division Place is designated as a Traffic Access Street, Transit Access street, City Bikeway, City Walkway, Freight District, Minor Emergency Response street, and local design street in the *Portland Transportation System Plan*. The site also has an Off-Street Path designation for both Bicycles and Pedestrians. The applicant will be required to construct frontage improvements on SE Division Place. Improvements will include curb, paving, planter or stormwater swale, sidewalk, streetlights, and street trees as necessary. Additional requirements for system development charges and driveway improvements are also noted. *Portland Transportation* also provided a detailed analysis quantifying the project impacts to the transportation system, and the proportional trail improvements warranted at the site. Additional details are provided in Exhibit E.6.
- *Portland Parks and Recreation*-A trail on this site should match the materials and size of the trail south of OMSI (a 12-foot wide concrete trail on the river side of the site), and will contribute to the long-term vision for the area. Additional details are included in Exhibit E.7.
- *Department of State Lands*-A lease may be required for the proposed dock, and work in the waterway is subject to permit. Contact information is provided in Exhibit E.8.

Neighborhood Review: A total of 18 written responses have been received. The letters raise concerns about one or more of the following issues: the greenway trail; wildlife and wildlife habitat; and boating activities. These issues are addressed in the findings below.

ZONING CODE APPROVAL CRITERIA

GREENWAY REVIEW

33.440.300 Purpose

Greenway review ensures that all proposed changes to a site are consistent with the Willamette Greenway Plan, the Willamette Greenway design guidelines and, where applicable, the water quality element of Title 3 of Metro's Urban Growth Management Functional Plan. The purpose of greenway review is to ensure that:

- Development will not have a detrimental impact on the use and functioning of the river and abutting lands;
- Development will conserve, enhance and maintain the scenic qualities and natural habitat of lands along the river;
- Development will conserve the water surface of the river by limiting structures and fills riverward of the greenway setback;
- Practicable alternative development options are considered, including outside the River Water Quality zone setback; and
- Mitigation and enhancement activities are considered for development within the River Water Quality zone.

33.440.350 Greenway Review Approval Criteria

- A. Design Guidelines.** The Willamette Greenway Design Guidelines must be met for all greenway reviews.

Findings: 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. The Design Guidelines are grouped in a series of eight Issues:

- Issue A. Relationship of Structures to the Greenway Setback Area
- Issue B. Public Access
- Issue C. Natural Riverbank and Riparian Habitat
- Issue D. Riverbank Stabilization Treatments

- Issue E. Landscape Treatments
- Issue F. Alignment of Greenway Trail
- Issue G. Viewpoints
- Issue H. View Corridors

A complete description of the Design Guidelines and their applicability is provided in pages 45-81 in the *Willamette Greenway Plan*. Each of the Design Guidelines is addressed below:

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:

1. Structure Design
2. Structure Alignment

Response to Issue A: In order to assess if the location and design of the structures compliment the greenway setback it is necessary to first establish the location of the greenway setback itself. As noted in the discussion above, the proposed development plans (Exhibits C.1 and C.2) do not reflect the location of the greenway setback in accordance with the *Zoning Code* definitions, and would place the southwest corner of the building within the required greenway setback. The proposed building does not conform to the *Zoning Code* definition of *river-dependent* or *river-related* development; so all portions of the building must be located landward of the greenway setback. The proposed dock and ramp access, on the other hand, are *river-dependent* development and can be located within and riverward of the greenway setback, if approved through this Greenway Review.

Provided the building is removed from the greenway setback, the balance of the structure appears to be designed with windows and doors oriented toward the greenway setback, and other upland development for parking and exterior work areas are to be screened from the greenway setback. A 5-foot wide walkway is also shown along the north facades, to provide access up to the greenway setback. The building location will also allow views of the river from the SE Division Place right-of-way.

However, without a plan that shows the building landward of the greenway setback, and that the exterior work area and gangway landing will be designed and installed to protect and preserve the trees riverward of the building and paved upland areas, the applicant has not demonstrated that the design and orientation of the development enhances the greenway setback. Furthermore, the plan does not include the greenway trail and access connections from the public right-of-way to the trail, though, as a note on the plan indicates, there is space to provide the greenway trail within the greenway setback. Given these deficiencies, the proposal does not meet this Issue.

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:

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

Response to Issue B: As noted above, the primary greenway trail is identified on the site, in the *Greenway Plan* (the requirements for the trail are addressed in greater detail in Issue F, below). The proposal does not include the trail, so public access to and along the river has not been integrated into the site layout. The applicant’s narrative indicates that a walkway is to be provided along the north side of the site, between the SE Division Place right-of-way and the greenway setback to allow public access to the greenway setback area. The narrative

also notes that access to the trail will be provided through opening in the perimeter chainlink (with a security deterrent top) fencing. However, no direct walkway connection or fence or gate openings are identified on the site plan (Exhibits A.1 and C.1). Plantings will be provided to screen the parking and exterior work areas from the greenway setback; however, plantings must also be provided to separate and screen the parking area from the pedestrian access route. No provisions for signs have been proposed to direct users to the access connection. With regard to access to the water's edge, the applicant has indicated that the proposed dock is only to be used by the employees of the facility, and that public access will not be allowed. Since the riverbank is relatively steep along the entire frontage, public access to the water's edge does not appear practical at this time.

Without a trail, an extension of the on-site walkway, additional plantings to screen the walkway, and signage to mark the access connection, the public access, separation and screening, and signage guidelines will not be satisfied. Based on the foregoing, this Issue is not 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:

1. Natural Riverbanks
2. Riparian Habitat

Response to Issue C: The project area is within Site 19.2A in the *Lower Willamette River Wildlife Habitat Inventory* (LWRWHI). This is a Rank IV (Value 30) Habitat Area, and is noted for medium to high physical and human disturbance. Rank IV sites are noted for having great potential for wildlife enhancement.

With approximately 370 linear feet of river frontage, the site offers opportunities to contribute to the enhancement of the riparian habitat along the shoreline, while also accommodating a dock facility and a public trail. The plans indicate nuisance species, such as Himalayan blackberry, will be removed from the shoreline, and a variety of native species will be installed on the bank. Certainly, the removal of nuisance species and the installation of new plantings, appropriate to the shoreline environment, will contribute to the enhancement of the habitat and scenic values of the riverbank.

However, the plans call for the removal of 25 native cottonwood trees along the shore, even though only 6 of the trees are within the upland development area. The plans note that 7 of the trees are dead, but no information is provided to support the removal of the others. As noted in the comments from BES, the cottonwood stand on the site provides important connectivity habitat for birds along the river, especially because of its proximity to Ross Island, which is a unique natural resource with significant wildlife habitat. BES also notes that it can take many years for newly planted trees to provide the same bank stability and habitat functions afforded by the established trees. The applicant has not provided justification or a rationale to remove mature trees along the shore, especially when the trees are not within the proposed development area. Since many of the native trees are outside of the building footprint and riverward of the proposed upland development, the applicant has not demonstrated that these riparian resources are conserved and enhanced to the maximum extent practical.

In addition, recent projects on both side of the Willamette, within one half a mile upstream and downstream of the site, have included new riparian plantings, which have improved the habitat values of many of the nearby properties. The site is also proximate to many nearby habitat areas in the Oaks Bottom Wildlife Refuge and the Ross Island complex and the Holgate Slough, which is located between Ross Island and the Wildlife Refuge (see rankings in table, below). These areas received some of the highest wildlife values of all the properties within the Willamette Greenway. The noted features include rarity of habitat, scenic quality, educational potential, and diverse vegetation. :

Location	Habitat Site	Value/Rank	Features/Resources
Oaks Bottom shore	21.1A	101/I	Wildlife, flora, scenic qualities, rarity of habitat, educational potential, migratory birds
Oaks Bottom upland	21.1B	114/I	Same as above plus wetlands and marsh
East Island	21.1C	98/I	Beach, wildlife, flora, scenic qualities, rarity of habitat, educational potential, migratory birds
Ross Island-north	22A	95/I	Same as above
Ross Island-east (gravel extraction operations)	22C	65/III	Scenic qualities

The present proposal does not demonstrate that adequate measures will be taken to protect the riparian values of the site, which could place additional pressure on nearby riparian areas. Therefore, this Issue is not 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

Response to Issue D: The shoreline treatment currently consists of a steep rip rapped slope with 27 trees, 2 shrub groupings, and non-native blackberry and grass species. Other features include wood pilings in and along the waterway, and a remnant concrete structure in the southwest corner of the site. The proposal calls for the installation of a dock and gangway, and for the removal of 25 native trees and all nuisance vegetation along the riverbank.

The narrative (Exhibit A.1, p 10-11) notes that no significant changes are proposed to the current bank configuration. As outlined in the narrative, the dock, piles, and ramp are to be fabricated off-site and transported to the site for assembly. Pile driving and assembly are to occur from water-based equipment. Erosion controls are to be installed on the bank during the construction of the concrete pad, which is to support the gangway. A plan has also been provided by a licensed professional engineer, which indicates that construction of the dock will not destabilize the bank (Exhibit C.7). The applicant intends to employ “standard local operating procedures” (SLOPES), in accordance with the requirements of the *US Army Corps of Engineers*, for the in-water structures and construction (Exhibit A.1). These measures will help to minimize impacts to the existing bank stabilization treatment. Conditions, which call for the submittal of plans to comply with City of Portland, Title 10, *Erosion Control and Balanced Cut and Fill* regulations, will provide additional bank stability safeguards during for grading and construction activities within the 100-year floodplain.

Additionally, the removal of invasive non-native species will reduce competition for the proposed plantings, and new plantings will help to improve the appearance of the riverbank. However, as noted in Issue C above, the removal of 25 mature trees, which currently contribute to the stability and scenic and habitat values of the riverbank is not supportive of this Issue. By removing the building from the greenway setback, and shifting the ramp connection slightly to the south, it appears that many of the established trees, and the scenic and habitat values they afford, could be retained. The proposal has not demonstrated how the removal of all existing trees will provide riverbank stabilization while enhancing the appearance and scenic qualities of the riverbank, so this Issue is not 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

Response to Issue E: The Greenway Plantings Standards call for a minimum of one tree per 20-feet of river frontage, one shrub per 2-feet of river frontage, and a sufficient number of groundcover plantings to cover the bank. The site has approximately 370 linear feet of river frontage, so a minimum of 19 trees and 185 shrubs are required to meet the planting standard. The development plans (Exhibits C.2) show all existing vegetation is to be removed, and 50 trees and 1,100 shrubs are to be planted within and riverward of the greenway setback. This scheme provides plantings, which exceed the minimum planting standard. However, as noted in the discussion above, and as directed by the guidelines to create an environment supportive of both human and wildlife use, the removal of native trees is not supportive of the riparian treatment along the river. So, while the new plantings will contribute to the enhancement of the riverbank and nearshore habitat, it can take many years for newly planted trees to provide functions already afforded by the established trees. Without a plan that affords greater protection of the established riparian trees, this Issue is not met.

Issue F. Alignment of Greenway Trail: This Issue “applies to all applications for Greenway Approval with 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:

1. Year-Round Use
2. Habitat Protection
3. Alignment

Response to Issue F: As noted above, the primary greenway trail is identified on the site, in the *Greenway Plan*. The *Transportation System Plan* (TSP) also shows an alignment for an Off-Street Bike and Pedestrian Path across this site. There is no trail developed on the site at this time, and none has been proposed. The *Zoning Code* requires the construction of the greenway trail when new development occurs on the site with a public trail designation (33.440.240 and 33.272.030.D). As noted previously, the requirement for a trail must be applied consistent with constitutional principles. In examining any project, a trail could only be required if the requirement for a trail is proportional to the impacts of the proposal. The development plans (Exhibit C.1) note that there is sufficient space within the 25-foot greenway setback to accommodate the trail, if the City of Portland decides to dedicate the resources to build the trail in the future.

An exaction for an on-site trail must be based on a demonstrated public need for the improvement, and by a showing that the requested improvement is proportional to the impacts of the development. In this situation, the development site is located on the edge of the river, and physical and topographical barriers limit street and trail access to the site and surrounding area. Currently, the only access to the SK Northwest (SK NW) site is via SE Division Place. So, all employees and customers will enter and exit the site on SE Division Place, and then travel on or across SE Fourth Avenue to connect to other parts of the transportation system.

SE Fourth Avenue currently contains an interim greenway trail (pedestrian/bicycle path). The interim connection takes trail users from SE Caruthers Street at SE Water Avenue, east to SE Fourth Avenue, and south on SE Fourth to the off-street greenway trail just south of SE Ivon Street. The facility for the interim alignment consists of marked on-street bike lanes on SE Caruthers Street and SE Fourth Avenue. Northbound users of the alignment on SE Fourth Avenue must share the travel lane with vehicles for the block between SE Division Place and SE Caruthers Street. There is no separate facility for pedestrians on SE Fourth Avenue. The

provision of an off-street path on the proposed SK NW site will reduce impacts to users of the interim greenway trail on SE Fourth Avenue.

In order to determine what trail improvements may be warranted at the SK NW site, BDS considers the need for bike and pedestrian facilities at the site; the impacts the SK NW development will generate on the existing transportation corridors, including the interim trail on SE Fourth; the demand that SK NW employees and customers will generate for bike and pedestrian facilities; and the trail improvements that are necessary and proportional to the impacts generated by the SK NW development.

Nexus: With respect to "legitimate governmental interest", there is an identified public need for access to and along the Willamette River and for pedestrian and bicycle access routes and connectivity, as outlined in the city's *Comprehensive Plan* and related documents, including:

- *Zoning Code:* The Development Standards (33.272.030/Public Recreation Trails) call for an easement and construction of a public trail when new development occurs. The Greenway Regulations (33.440.240) are intended to *(p)rotect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along Portland's rivers; and to (i)ncrease public access to and along the Willamette River for the purpose of increasing recreational opportunities, providing emergency vehicle access, assisting in flood protection and control, providing connections to other transportation systems, and helping to create a pleasant, aesthetically pleasing urban environment.*
- *Willamette Greenway Plan:* The Primary Greenway Trail designation is identified on the SK NW site on the *Willamette Greenway Public Access Map* (Map 4 of 5).
- *Transportation System Plan:* The SK NW site has Off-Street Bicycle and Pedestrian Path designations.

Several specific citations from the *Comprehensive Plan* note the importance of pedestrian facilities:

Goal 12, Urban Design: *Enhance Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations.*

Policy 12.4 Provide for Pedestrians: *Portland is experienced most intimately by pedestrians. Recognize that auto, transit and bicycle users are pedestrians at either end of every trip and that Portland's citizens and visitors experience the City as pedestrians. Provide for a pleasant, rich and diverse experience for pedestrians. Ensure that those traveling on foot have comfortable, safe and attractive pathways that connect Portland's neighborhoods, parks, water features, transit facilities, commercial districts, employment centers and attractions.*

Objective 12.4.E: *Complete the 40-mile loop and the Willamette Greenway trails and establish links between these trails and Portland's residential neighborhoods and parks.*

The public trail is part of a whole, multi-modal transportation system, along with streets, sidewalks, and public transportation. In this situation, the greenway trail serves a unique function that is not duplicated by other parts of the system. It provides a route separate from motorized traffic and it provides access to and along the river's edge. The Greenway/Springwater Trail is also part of a regional trail system, which provides bicycle and pedestrian connections to surrounding neighborhoods and nearby communities as well.

Non-motorized trails provide numerous values including: economic, health and fitness, social, educational, recreation, environmental, and history and culture benefits (*Oregon Parks and Recreation Department, Benefits of Non-Motorized Trails*, Exhibit G.6). Since a public trail along the river serves multiple purposes, and since these can be provided by a single facility, the value of the trail infrastructure is multiplied many times over.

An on-site trail will provide direct benefits to the property owner as well. An on-site trail will provide direct bicycle and pedestrian access to the SK NW property. This will provide SK NW employees and customers with a link to other trails, nearby businesses, surrounding

neighborhoods, and public transit. The trail will increase public safety along SE Fourth Avenue by providing a separation between general vehicle traffic, freight and delivery trucks, and non-motorized modes of transport. A separated trail will also reduce the demands and congestion on the SE Fourth and SE Division Place rights-of-way, which will improve access for emergency vehicles and reduce emergency response times. Locating the trail within the greenway setback will maximize the development potential of the balance of the upland portion of the SK NW property.

With respect to "essential nexus", a public trail through the SK NW property will advance the identified need for promoting public access to and along the Willamette River, connectivity for non-motorized traffic, and it will contribute to the completion of a significant multi-purpose public trail facility.

Trip Generation: Next, the number of trips the SK NW development will generate, and the impact those have on the existing transportation systems that the SK NW employees and customers will use to travel to and from the site are identified. As outlined in the response from *Portland Transportation*, the trip generation from the SK NW site will be as follows:

Proposed Use	Square Footage	Total Daily Trips (based on 30.67 trips per 1000 s.f.)	Total Daily Pedestrian/Bicycle Trips (5 percent of Daily Total)
Parts Office and Support	6,335 s.f.	194	10
Retail Sales Showroom	2,973 s.f.	91	5
Service and Vehicle Repair	9,004 s.f.	276	14
Total Retail/Service uses*	18,312 s.f.	562	28

*This total building floor area for Retail and Service related uses does not include the Service Reception area (4,567 s.f.) or the Warehouse Storage area (3,724 s.f.). As noted in the applicant's memo, the Service Reception area is essentially a covered drive-through area, and the warehouse space generates a small number of trips. For purposes of this application, the trips calculated are the minimum number of expected daily trips.

Portland Transportation has indicated that it is reasonable to discount the trips from the warehouse and reception area of the building. However, it should be noted that once the site is developed, new or additional uses could be added inside the building, without further land use review or consideration of trail or transportation impacts. Since the IH zone allows a wide range of uses, including retail, restaurant, and medical offices, which could be expected to generate higher pedestrian, bike, and transit use, even greater impacts on the existing systems could be generated from the development of the site. In other cases, the Oregon Court of Appeals found it reasonable that "...the city considers the impact that uses allowed on the property without further approvals would have on the pedestrian transit system". Therefore, it is reasonable to consider impacts from uses which may occur without further review [*Hallmark Inns & Resorts, Inc. v. City of Lake Oswego*, 193 Or App 24, 37-39, 88 P.2d 284 (2004)]. Considering these factors, BDS could consider more intense uses within the proposed SK NW facility. However, even considering the lowest volumes of the traffic, as noted in the *Portland Transportation* response, the SK NW development will generate a minimum of 562 trips per day and at least 28 of those will be made by bike or pedestrian modes.

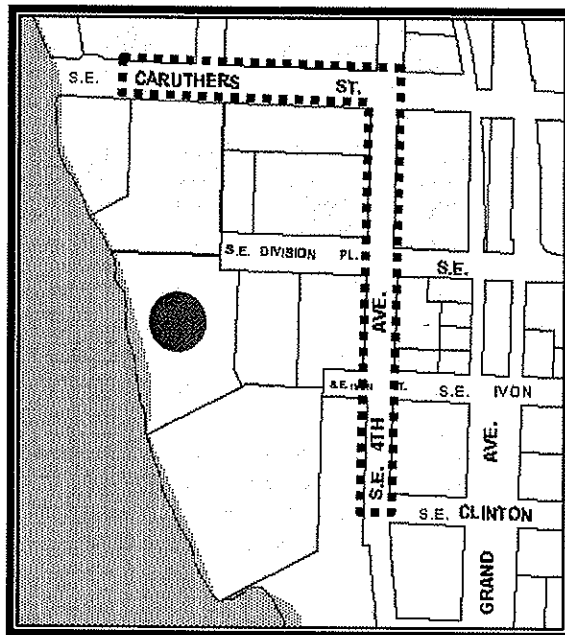
Also, as noted in the *Portland Development Commission, Central Eastside Urban Renewal Area Baseline Report* (Exhibit G.7), the use of alternative modes of transportation is increasing in this area. The existence of pedestrian and bicycle facilities are a primary factor in the high percentage of multi-modal use in this area. Commuter trip mode data from this report indicates that 19 percent of the employees in the Central Eastside Industrial District commute by bicycle and walking. In addition, transit users (24 percent) can also be expected to walk some distance to get to and from a site. This information indicates that even greater bike and pedestrian trips could be generated from the SK NW development, since it is located within an area where the use of and demand for alternative modes continues to increase. The link between access to safe and convenient trail facilities and increased use of those facilities is further reflected in the *Oregon Department of Transportation, Oregon Bicycle and Pedestrian Plan* (Exhibit G.8), which

notes that “examples from around the nation and Oregon indicate a positive correlation between the provision of good bikeway and walkway networks and higher use”.

Impacts and Proportionality: In order to determine the amount of impact that the SK NW development will have on the transportation system, the impact area will be defined and the percentage of impact from the SK NW site will be calculated, as noted in the *Portland Transportation* response (Exhibit E.5). The improvements warranted to minimize or eliminate these impacts will then be identified, and a comparison of these factors will be made to determine whether the trail improvements are proportional to the impacts created by the development.

Proof One

Vehicle/Interim Trail Impact Area – The impact area is determined by identifying the route of travel and portions of the street and trail system that employees and customers will use to get to and from the SK NW site. For purposes of this analysis, the vehicle/interim trail impact area is defined by the area in which all SK NW vehicles will distribute on the street system that affect the interim trail alignment. This area, outlined on the map below, can be defined as the portion of the trail from SE Caruthers at SE Water Avenue, to SE Caruthers at SE Fourth Avenue, to the developed Greenway Trail just south of SE Ivon Street. Beyond that area, vehicles are expected to distribute onto streets that travel away from the alignment.



Impact on the SE Fourth/Interim Trail alignment – The addition of the SK NW trips to SE Fourth Avenue will impact the safety of pedestrians and bicyclists in two ways. First, the increased number of vehicle trips crossing SE Fourth Avenue at the intersection of SE Division Place will directly conflict with pedestrians and bicyclists using the interim trail alignment. Next, every vehicle from the SK NW site that drives northbound on SE Fourth Avenue from Division Place to Caruthers Street will directly conflict with pedestrians and bicyclists using the shared travel lane. *Portland Transportation* notes that it is difficult to quantify the decrease in pedestrian and bicycle safety. However, a ratio of the SK NW site’s impact on the SE Fourth/Interim Trail alignment can be calculated.

In order to assess the impact of the proposed SK NW development on the SE Fourth Avenue trail alignment, two calculations are used. The first ratio compares the number of trips (vehicle, bicycle, and pedestrian) from the SK NW development to those already occurring in an “impact area” to determine to what extent the project will impact the existing transportation system:

Portland Transportation has noted that vehicle counts show the average daily volume in the impact area is between approximately 1000-2100 vehicles per day. *Portland Transportation* has also determined, based on Trail use data from *Portland Parks and Recreation*, that a total of 1860 pedestrian/bike trips are possible for a typical day. The current number of trips in the impact area can be calculated by adding the 2100 vehicle trips (the high-end value of the vehicle volume range) to the 1860 pedestrian/bike trips, for a total of 3,960 trips.

$$\frac{\text{Total SK NW trips}}{\text{Total trips in impact area}} = \frac{562 \text{ trips}}{3960 \text{ trips}} = 0.14 \text{ or } 14\% \text{ impact on the interim trail alignment}$$

The following ratio compares the number of vehicle trips from the SK NW development to those already occurring at the intersection of SE Division Place and SE Fourth Avenue/interim trail.

Portland Transportation notes that the expected number of daily vehicle trips that will be generated by the SK NW development is 534 (562 total trips minus 28 pedestrian/bike trips), and there are current 408 daily vehicle trips on SE Division Place. Based on these counts, and as shown in the equation below, the SK NW development is expected to increase the number of vehicle trips on SE Division Place by 131 percent.

$$\frac{\text{SK NW vehicle trips}}{\text{Division Place vehicle trips}} = \frac{534 \text{ trips}}{408 \text{ trips}} = 1.31 \text{ or } 131\% \text{ impact on SE Division Place/SE Fourth intersection}$$

These ratios indicate that the traffic generated at the SK NW site will result in a 14 percent increase in the total number of trips in the impact area, and the SK NW development will increase the traffic and conflicts at the SE Division Place and SE Fourth Avenue intersection by 131 percent. These vehicle trips directly impact the crossing of the interim trail alignment on SE Fourth at SE Division Place on a daily basis. An off-street path on the SK NW site would minimize or eliminate these additional conflicts, and contribute to the completion of a separated bike and pedestrian trail.

Next, the size of the exaction is calculated to determine the amount of site area required for a 25-foot wide trail easement on the SK NW site. This ratio compares the amount of site area required for an off-street trail to the total development area on the site.

$$\frac{\text{SK NW Exaction Area}}{\text{Total SK NW Site Area}} = \frac{9,250 \text{ sq. ft.}}{79,683 \text{ sq. ft.}} = 11.6\%$$

Comparing these ratios shows that the impacts generated by the SK NW development (14% and 131%) are greater than the amount of site area required for a trail on the SK NW site (11.6%). This demonstrates that the impacts the SK NW development will have on the transportation system are higher relative to the amount of property required for the trail improvements.

Proof Two

As another comparison between impacts and exactions, the pedestrian and bicycle use generated from the SK NW development is compared to the current pedestrian and bicycle use of the interim greenway trail (off-street path). This value is then compared to the size and cost of the trail improvements.

Percentage of Pedestrian/Bicycle Trips – As noted in the response from *Portland Transportation*, a minimum of 5 of the 25 SK Northwest employees will travel to and from the site by bicycling and walking. This is equivalent to approximately 3 to 5 percent of the total number of trail users during peak hours, as shown in the following calculation of peak hour use from the SK NW site and that on the greenway trail:

$$\frac{\text{SK NW Pedestrian/Bicycle Trips}}{\text{Trail Pedestrian/Bicycle Trips}} = \frac{5 \text{ PM peak trips}}{150 \text{ PM peak trips}} = 3.3\% \quad \frac{5 \text{ AM peak trips}}{109 \text{ AM peak trips}} = 4.6\%$$

The *Portland Transportation* response includes two ratios comparing the exaction area on the SK NW site to the overall area of the existing trail facilities within two noted (pedestrian and bicycle) impact areas. The pedestrian impact area includes the total Off-Street Path area between the nearest TSP Pedestrian designations in each direction (Figure 1, Exhibit E.E.5). The bicycle impact area is the total Off-Street Path between the nearest TSP Bicycle designation in each direction (Figure 2, Exhibit E.5). These ratios are as follows:

	Exaction Area (25' wide)	Total Trail Impact Area (25' wide)	Percent
Pedestrian Connection	9,250 sq.ft.	385,750 sq. ft.	2.4%
Bicycle Connection	9,250 sq.ft.	233,000 sq. ft.	4.0%

Portland Transportation also provides a comparison between the cost of the trail improvements on the SK NW site and the cost of the established trail corridors, in the noted impact areas, that have already been constructed by others, which shows the following:

	Construction cost of 12-foot wide path in exaction area	Total Cost for 12-foot wide path	Percent
Pedestrian Length Only	\$26,640 (4,440 sq.ft.)	\$1,110,960 (185,160 sq.ft.)	2.4 %
Bicycle/Pedestrian Length	\$26,640 (4,440 sq.ft.)	\$671,040 (111,840 sq.ft.)	4.0%

These ratios show that both the size of the exaction area and the cost of the trail improvements (2.4% to 4%) are smaller than the level of impacts (3.3% to 4.6%) the SK NW development will place on the current transportation facilities.

Conclusion: Based on the analysis above, and as further outlined in the response from *Portland Transportation*, considering the lower range of trips likely to be generated by the SK NW development, the proposal will increase the demand on the existing transportation facilities, increase congestion on the narrow SE Fourth corridor, and increase conflicts between vehicles, cyclists, and pedestrians using the existing facilities. These identified impacts and safety concerns have been quantified, and justify requiring the SK NW development to provide a separated trail to minimize or eliminate the conflicts on SE Fourth created by the additional traffic traveling to and from the SK NW site.

The requirement to provide a 25-foot wide easement, within the greenway setback, and to build a 12-foot wide concrete trail along the site's riverfront is related both in nature and extent to the impacts of the SK NW development. Requiring 11 percent of the SK NW site area to be contributed to the trail improvements is proportional to the 14 percent increase the SK NW development will create on the existing transportation (street and trail) systems. The trail improvements will provide SK NW employees and customers with connections to other transportation and recreation facilities, as well as contribute to the completion of the citywide public trail infrastructure.

A specific trail alignment will need to be provided to ensure the requirements of this Issue can be satisfied. Since that information has not been provided, this Issue is not met.

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:

1. Design
2. Facilities
3. Access to Water's Edge
4. Relationship to Trail

Response to Issue G: No public viewpoints are identified on the property, nor is any public viewpoint proposed. Therefore, this Issue is not applicable.

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.

1. Right-of-way Protection
2. View Protection
3. Landscape Enhancement

Response to Issue H: The *Willamette Greenway Plan* does not identify a designated view corridor on this site, so this Issue is not applicable.

- 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 site is in the River General zone, so 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 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 closest areas with a River Natural (n) zoning designation are approximately 600 feet upstream of the site near the Ross Island Bridge (as noted in Criterion A/Issue C, above). These areas provide significant wildlife habitat and support a number of wildlife species, which could be detrimentally impacted by the proposed development. However, in this case, none of the proposed work will occur within the River Natural zone, so this criterion is not applicable.

- 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: There are no Rank I or II wildlife habitat areas on the site, though there are Rank I and II habitat areas located nearby, at Ross Island and Oaks Bottom Wildlife Refuge, approximately one-half mile to the south.

Development identified within the greenway setback includes a building, a dock ramp, and plantings. The building is not river-dependent or river-related and cannot be allowed within the greenway setback, unless approved through a Greenway Goal Exception. The dock ramp is to be designed and installed to protect nearshore and in-water habitat and species within those areas. However, as noted above, the current site design calls for the removal of all native trees within the greenway setback. These established trees provide habitat values, which

cannot be readily replaced with new plantings. Without resolving how the project will conserve and enhance riparian habitat, the removal of these trees could place additional demand on the nearby Rank I and Rank II wildlife habitat areas. As such, this criterion is not 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:

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: Development proposed riverward of the greenway setback includes the construction of a new dock in the waterway adjacent to the site, and the installation of native plantings on the shoreline.

Comments from boaters note that the construction of and operations at the dock could create detrimental impacts to the aquatic and near shore environment, and add to the boating congestion and conflicts between motorized and non-motorized watercraft.

There are a number of measures, which can be undertaken during the construction activities to avoid and/or limit detrimental impacts to the near shore and aquatic environment, such as:

- Providing work area isolation and containment measures for bank and in-water work areas;
- Implementing a fish salvage program during in-water work activities, to capture and release fish, in accordance with requirements of *Oregon Department of Fish and Wildlife* (ODFW) and *National Marine Fisheries Service* (NOAA);
- Using hydraulic vibratory equipment to install the piles, to limit sediment displacement;
- Performing the construction in accordance with the ODFW established in-water work windows for the lower Willamette River;
- Complying with City of Portland, Title 10, *Erosion Control and Balanced Cut and Fill* regulations for grading activities, and for construction within the 100-year floodplain; and
- Employing City of Portland *Stormwater Management Manual* regulations for ground water and surface water protection.

The narrative (Exhibit A.1, p 13-17) notes that the dock is to consist of concrete encapsulated foam, timbers, and galvanized bolts, rods, and hardware, and will be supported by four 18-inch diameter piles. An aluminum ramp is to be set into place by crane from the water. The narrative indicates that the dock, piles, and ramp are to be fabricated off-site and transported to the site for assembly. As outlined in the narrative, the applicant intends to employ "standard local operating procedures" (SLOPES) for the in-water structures and construction (Exhibit A.1), in accordance with the requirements of the *US Army Corps of Engineers* and the *Department of State Lands*.

The proposed jet-ski testing may result in an increase in wave and wake action on the bank. However, the narrative indicates that the use of the dock will be limited to employees of the facility to perform open water testing, which, the narrative notes, is necessary to troubleshoot and test repairs. Normally up to 4 craft will be tested per day to confirm the repairs were successful (Exhibit A.1, p 3, 5, 8). Limiting the number of in-water jet ski repairs to 4 per day may not reduce conflicts with non-motorized craft; however, at this level, the proposal should not significantly increase boating congestion or interfere with commercial navigation.

With conditions requiring all work areas to be isolated and erosion controls to be installed prior to any construction activities, these measures will help to reduce harm to aquatic

species and the river environment. There may be some temporary limits on access for fishing and recreational boating activities near the site, during the construction activities. Otherwise, the project will not diminish long-term opportunities for fishing and recreational boating, restrict boat access to the neighboring properties, or interfere with commercial shipping. All areas of the river, up to the Ordinary High Water (OHW) line, are generally open to the public; however, there are no public beaches on the site and it is likely that public access will continue to be limited along the site's riverfront.

With the implementation of appropriate construction management methods, as outlined above, and the installation and maintenance of appropriate riverbank plantings, the proposal will meet this criterion.

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 one 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 noted in the findings for Criterion A/Issues C, D, and E above, the removal of native riparian trees from the riverbank will diminish the scenic and habitat values of the site and the greenway setback. There is not sufficient information provided to demonstrate how the removal of those trees, and the riparian functions they provide, satisfies the requirement to conserve and enhance the riparian habitat to the maximum extent practical. Where impacts are unavoidable, mitigation measures may be implemented to replace the resources that will be removed by the development, as a means to satisfy the greenway review criteria. Such information has not been provided, so this criterion is not met.

PLANS AND POLICIES

Willamette Greenway Plan (1988) identifies the purpose and goals for the regulations governing development along the Willamette River. This plan calls for a primary greenway trail on the subject site, and for an interim greenway trail along SE Fourth and SE Caruthers. Interim trails are temporary alternative routes for the greenway trail until such a time as the primary trail is completed (p 7).

Portland Transportation System Plan (TSP) (2004) provides guidance on how Portland's transportation system should function over the life of the *Comprehensive Plan*. As noted in the

comments from *Portland Transportation*, the TSP identifies required street improvements on SE Division Place, and that plan identifies an Off-Street Path for both Bicycles and Pedestrians across the project site. Off-Street Paths are intended to serve as transportation corridors and recreational routes for bicycling, walking, and other non-motorized modes (p 2-12 and 2-14).

Hosford Abernathy Neighborhood Plan (1988) notes that land for river dependent development is in short supply (Policy 5/Commercial and Industrial) and calls for improvements to transportation and recreation facilities to reduce truck/pedestrian conflicts and to increase public access and facilities along the waterfront (Objectives 1.5, 1.7 through 1.11, 3.5, and 3.7 through 3.9).

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 develop a riverfront site for the headquarters office for SK Northwest. The proposed development includes a new multi-story building, an exterior work area, a dock, and associated parking and landscaped areas. As noted in the findings above, in order for the proposal to satisfy the Greenway Approval Criteria, the building must be removed from the greenway setback, a trail corridor must be provided to address transportation impacts, and the specific requirements of the Bureau of Environmental (stormwater), the Fire Bureau (emergency access), and Portland Transportation (off-street trail) must be satisfied. Without resolving these deficiencies, the applicant has not demonstrated how the project meets the Greenway Approval Criteria, so the proposal is denied.

ADMINISTRATIVE DECISION

Denial.

By the authority of the Director of the Bureau of Development Services, this Decision is rendered on April 16, 2007.

Decision mailed: April 18, 2007

Staff Planner: Kate Green

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 October 23, 2006, and the applicant requested it be considered complete on February 26, 2007.

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 October 23, 2006.

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 extended the 120-day review period on two occasions, March 29, 2007 and April 6, 2007 (Exhibit G.7).

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.

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 May 2, 2007** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fourth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-0625 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.

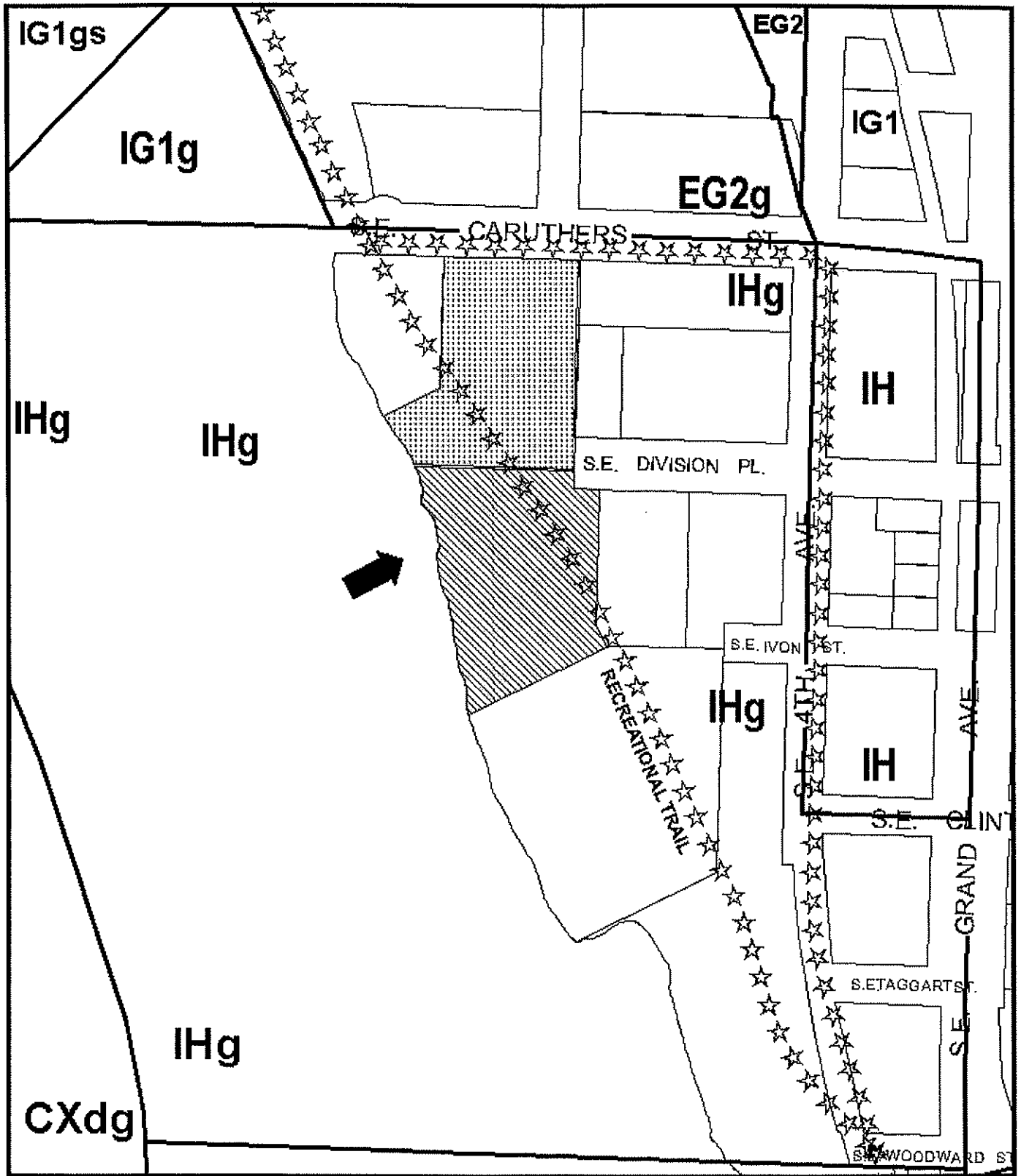
Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Salem, Oregon 97310 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 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.

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative (Approval Criteria, Environmental Report, NOAA-Programmatic Biological Opinion)
 - 2. River Traffic Counts
 - 3. Top of Bank/Greenway Setback
 - 4. Easement Documents
 - 5. Supplemental Narrative
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (Sheet A.1) (attached)
 - a. Overall Site Plan (3/5/2007 and 3/6/2007)
 - 2. Landscape Plans (Sheets L1.0, L1.1, L1.2)
 - 3. Floor Plan (Sheet A2.0)
 - 4. Building Elevations (Sheets A3.0, A3.1)
 - 5. Dock Plan
 - 6. Dock Gangway Details
 - 7. Construction Management Plan
 - 8. Full size plan set (site, landscape, floor, dock)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Urban Forestry and Water Bureau
 - 2. Life Safety/BDS
 - 3. Fire Bureau
 - 4. Site Development/BDS
 - 5. Bureau of Environmental Services
 - 6. Portland Transportation
 - 7. Portland Parks and Recreation
 - 8. Department of State Lands
- F. Correspondence:
 - 1. Ed Birnbaum, 3/22/2007, re: trail safety
 - 2. Christine Cook, 3/22/2007, re: trail requirements
 - 3. Sam Livingston-Gray, 3/22/2007, re: trail safety
 - 4. Ben Schonberger, 3/22/2007, re: trail requirements
 - 5. Bjorn Warloe, 3/22/2007, re: trail requirements
 - 6. Frank Dufay/*Hosford Abernathy Neighborhood Association*, 3/21/2007, re: trail requirements
 - 7. Michelle McDonald, 3/16/2007, re: boat safety
 - 8. Elisabeth Flaum, 3/14/2007, re: trail requirements and boating conflicts
 - 9. Sid Smith, 3/14/2007, re: trail safety and boating impacts on waterway
 - 10. Tom Lea, 3/13/2007, re: trail requirements
 - 11. Ken Nichols, 3/13/2007, re: trail requirements
 - 12. Gayle Norie, 3/13/2007, re: trail requirements
 - 13. Patrick Brandimore, 3/12/2007, re: trail requirements
 - 14. Sean Green, 3/12/2007, re: trail safety
 - 15. Chas Hrastar, 3/12/2007, re: trail safety
 - 16. Savannah Teller-Brown, 3/12/2007, re: trail requirements
 - 17. Jonathan Vinson, 3/12/2007, re: trail requirements
 - 18. Natalie Yager, 3/12/2007, re: trail requirements
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Plat Map-Kern's Addition (pre 1959) and Tax Map (2007)
 - 4. Letter to applicant re: incomplete application
 - 5. Correspondence to/from applicant re: general review issues
 - 6. Correspondence to/from applicant re: easements
 - 7. Correspondence to/from applicant re: review timeline extensions
 - 8. Wetland Notification to DSL
 - 9. Benefits of Non-Motorized Trails, Oregon Parks and Recreation Department
 - 10. Central Eastside Urban Renewal Area Baseline Report, Portland Development Commission
 - 11. Oregon Bicycle and Pedestrian Plan, Oregon Department of Transportation
 - 12. Joint Permit Application



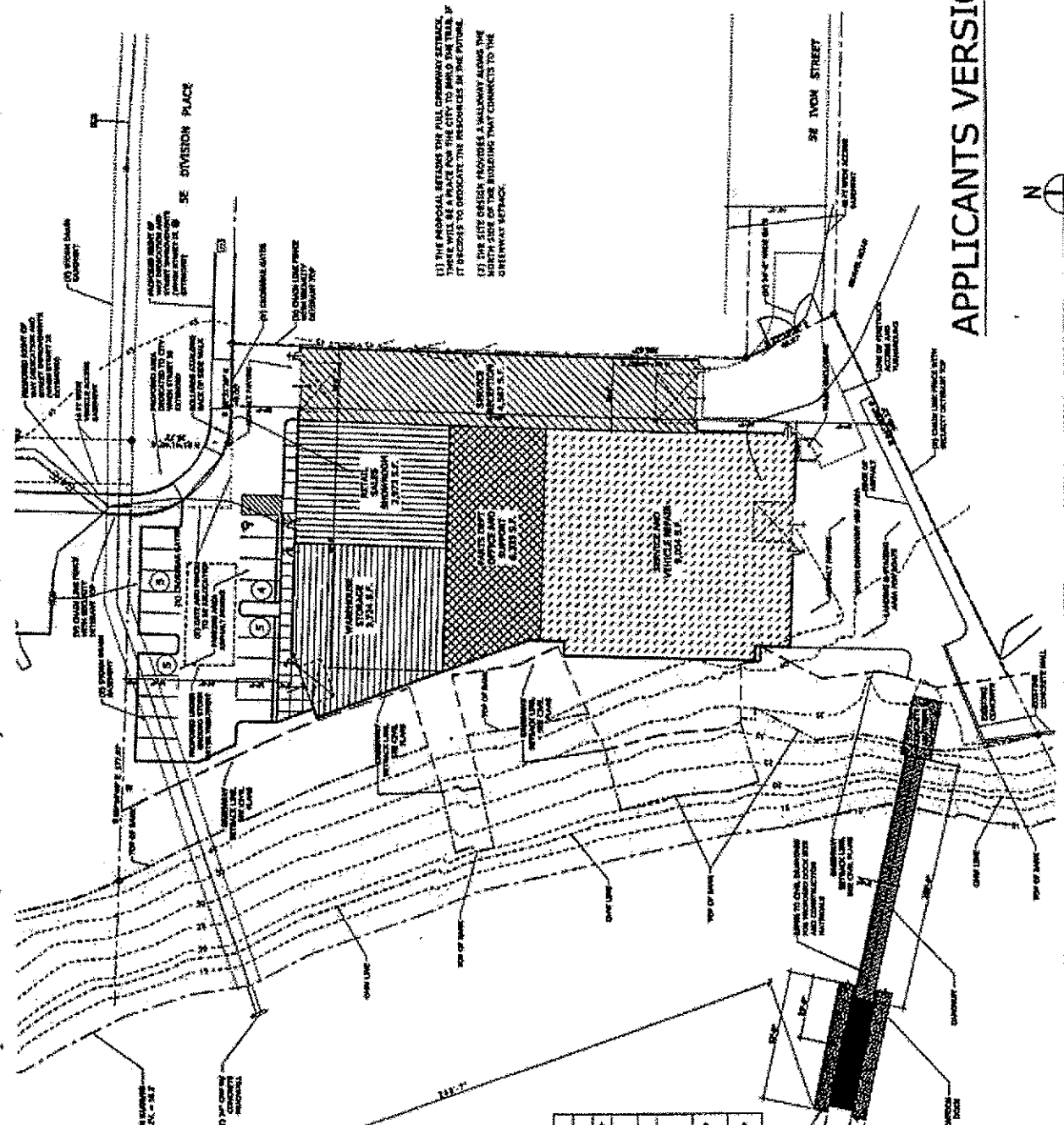
ZONING

-  Site
-  Also Owned



This site lies within the:
CENTRAL CITY PLAN DISTRICT

File No. LU 06-171821 GW
 1/4 Section 3230,3330
 Scale 1 inch = 200 feet
 State_Id 1S1E10AA 300
 Exhibit B (Oct 24,2006)



(1) THE PROPOSAL EXTENDS THE PAUL CERRIERWAY EXTRACT. THERE WILL BE A SPACE FOR THE CITY TO BUILD ONE TRAIL IF IT DECIDES TO DEGRADATE THE RESOURCES IN THE FUTURE.
 (2) THE SITE DESIGN PROVIDES A WALKWAY ALONG THE NORTH SIDE OF THE BUILDING THAT CONNECTS TO THE GREENWAY EXTRACT.

APPLICANTS VERSION



SITE PLAN
SCALE 1" = 30'-0"

LOAD (APPROX. POSITION)

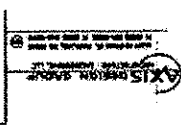
WILLAMETTE RIVER

LU 06-171821 GW
 Exhibit G1

APPLICANT'S DESCRIPTION	LOT SIZE	ZONING CODE	USE CATEGORY
Parcel 1 (Main Warehouse)	2,973	Primary Commercial (C-1)	Warehouse and Office
Parcel 2 (Service and Vehicle Repair)	2,304	Primary Commercial (C-1)	Vehicle Repair
Parcel 3 (Retail Store, Office and Business Entry)	4,129	Secondary or Primary Commercial	Retail Store
Parcel 4 (Industrial Warehouse)	4,620	Secondary or Primary Industrial	Warehouse
Parcel 5 (Warehouse)	3,704	Industrial (I-1)	Warehouse
Parcel 6 (Warehouse)	3,492	Industrial (I-1)	Warehouse
Parcel 7 (Warehouse)	3,144	Industrial (I-1)	Warehouse

DATE: 10/17/06	DATE: 10/17/06
BY: [Signature]	BY: [Signature]
PROJECT: [Project Name]	PROJECT: [Project Name]
SCALE: 1" = 30'-0"	SCALE: 1" = 30'-0"

SK NORTHWEST
 240 W/ SE CARUTHERS
 PORTLAND, OR



EX-15 DESIGN SHOP
 1111 SW 10TH AVE, SUITE 100
 PORTLAND, OR 97205