

## 33.865 River Review

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### 33.865.010 Purpose

River Review is intended to:

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

### 33.865.020 When River Review is Required

River Review is required in the following situations:

- A. When a development or regulated activity in the River Environmental overlay zone is not exempt from the River Environmental overlay zone regulations and either does not meet the standards of subsection 33.475.440 or there are no development standards applicable to the proposal;

- B. When River Review is required to correct a violation of the River Environmental overlay zone regulations, as described in subsection 33.475.450;
- C. When an applicant wishes to fine tune the boundary of the River Environmental overlay zone based on a detailed environmental study that more accurately identifies the location and quality of resources and functional values. Minor boundary changes are allowed through River Review. Map error corrections are reviewed under 33.855.070, Corrections to the Official Zoning Maps, and removal of the River Environmental overlay zone is processed as a change of overlay zone as stated in 33.855.060, Approval Criteria for Other Changes; or
- D. To modify the boundary of River Environmental overlay zone to reflect permitted changes in the location or quality of resources or functional values. The modification of River Environmental overlay zone procedure does not apply to changes caused by violations of subsection 33.475.440.

### **33.865.030 Procedure**

A River Review is processed through a Type IIx procedure, except as described in 33.475.450.B when River Review is required to correct a violation of the River Environmental overlay zone regulations.

### **33.865.040 Supplemental Application Requirements**

In addition to the application requirements of Section 33.730.060, the following information is required when the River Review application is for development in the River Environmental overlay zone, or for modification of the River Environmental overlay zone boundary:

- A. **Supplemental site plan requirements.** Five copies of each required site plan must be submitted. The site plans must show the entire site, must be drawn accurately to a scale that is between 1 inch to 50 feet and 1 inch to 10 feet, and must show all property lines with dimensions, a north arrow and a date. Additional site plans that show only a portion of the site may be submitted. All copies of site plans must be suitable for reproduction on paper no smaller than 8.5 x 11 inches and no larger than 36 x 48 inches. The Director of BDS may waive items listed in this subsection if they are not applicable to the specific review; otherwise they must be included. Additional information such as wetland characteristics or soil type may be requested through the review process.
  - 1. Existing conditions site plan. The existing conditions site plan must show the following:
    - a. Location of any wetlands or water bodies on the site or within 50 feet of the site. Indicate the location of the top of bank, including structures and topographic contours referenced to determine top of bank, centerline of stream, ordinary high water, or wetland boundary as appropriate. See Section 33.910.030, Environmental-Related Definitions, Top of Bank. In the case of a violation, also identify the location of the wetland or water body prior to alteration;
    - b. 100-year floodplain and floodway boundaries. In the case of a violation, also identify the location of the 100-year floodplain and floodway prior to alteration;
    - c. Drainage patterns, using arrows to indicate the direction of major drainage flow;

- d. Boundaries of the River Environmental overlay zone. These boundaries may be scaled in relation to property lines from the Official City Zoning Maps;
  - e. Within the River Environmental overlay zone:
    - (1) Distribution outline of shrubs and ground covers, with a list of most abundant species; and
    - (2) Trees over 1.5 inches in diameter identified by species and size, including the location and size of the trunk, canopy crown diameter and the root protection zone. In the case of a violation, also identify the trees that were cut or damaged by showing a stump diameter and species;
  - f. Outside of the River Environmental overlay zone, trees over 3 inches in diameter, including the location of the trunk and canopy crown cover, identified by species and size;
  - g. Location and boundaries of designated scenic resources. The location of viewpoints, view corridors and scenic corridors must be show in relation to the property lines, existing and proposed public trails and boundaries of the River Environmental overlay zone;
  - h. Topography shown by contour lines at 2 foot vertical contours in areas of slopes less than 10 percent and at 5 foot vertical contours in areas of slopes 10 percent or greater. In the case of a violation, also identify the topography prior to alteration; and
  - i. Existing improvements such as structures, buildings, utility lines, stormwater systems, septic or sewer facilities, fences, etc.
2. Proposed development site plan. The proposed development site plan must show the following:
- a. Location of the River Environmental overlay zone, the top of bank and river setback areas, and the landscaping area subareas;
  - b. Location of all proposed development including buildings, structures, decks, retaining walls, bridges, trails/pathways;
  - c. Location of proposed utility lines and connections, stormwater systems and septic or sewer facilities;
  - d. Location of protected scenic resources;
  - e. Delineation and total square footage of temporary and permanent disturbance areas including equipment maneuvering areas;
  - f. Delineated areas of vegetation removal and identification of trees to be removed using a bold X;
  - g. Proposed final contour lines at 2 foot vertical intervals in areas of slopes less than 10 percent and at 5 foot vertical contours in areas of slopes 10 percent or greater;

- h. Location of excavation and fill and total quantities of each, including balanced cut and fill calculation for any grading in the 100-year floodplain;
    - i. Delineated areas to be left undisturbed; and
    - j. Location and species of existing trees, shrubs, and ground covers to remain including the required root protection zone per Title 11.
  3. Construction management site plan. The construction management site plan must show the following:
    - a. Location of the River Environmental overlay zone;
    - b. Delineation and total square footage of temporary and permanent disturbance areas including equipment maneuvering areas;
    - c. Proposed grading plan with existing and proposed contours. The grading plan must show proposed alteration of the ground at 2-foot vertical contours in areas of slopes less than ten percent and at 5-foot vertical contours in areas of slopes ten percent or greater;
    - d. Location of excavation and fill and total quantities of each, including balanced cut and fill calculation for any grading in the 100-year floodplain;
    - e. Location of all proposed development;
    - f. Delineated areas of vegetation removal and identification of trees to be removed using a bold X;
    - g. Areas where existing topography and vegetation will not be affected by the development proposal;
    - h. Location of trees to remain including the required root protection zone per Title 11;
    - i. Location of site access and egress;
    - j. Material staging and stockpile areas; and
    - k. Erosion control measures.
  4. Mitigation or remediation site plan. A mitigation site plan is required when the proposed development will result in unavoidable significant detrimental impact on the resources and functional values ranked high or medium in the *Willamette River Natural Resources Protection Plan* or when mitigation is proposed in order to meet River Review approval criteria. A remediation site plan is required when significant detrimental impacts occur in violation of the Zoning Code and no permit was applied for. The on-site or off-site mitigation or remediation site plan must show the following:
    - a. Location of the River Environmental overlay zone in relation to the mitigation site;

- b. Distribution outline, species composition, and percent cover of ground covers to be seeded or planted using standard landscape graphics;
- c. Location, species, and size of each individual tree to be planted;
- d. A planting table listing the size, number, and species (common and scientific) of all trees, shrubs, groundcover or seeds to be installed;
- e. The area of the mitigation site in square feet in relation to the project impact area;
- f. The location of the mitigation site in relation to existing, proposed or anticipated future development on the site;
- g. Stormwater management features, including retention, infiltration, detention, discharges, and outfalls;
- h. Location of protected viewpoints and scenic overlay zones;
- i. Water bodies to be created, including centerline, top of bank, wetland boundary and depth;
- j. Water sources to be used, including volumes;
- k. Location of excavation and fill and total quantities of each including balanced cut and fill calculation for any grading in the 100-year floodplain; and
- l. Information showing compliance with Section 33.248.090, Mitigation and Restoration Plantings.

**B. Supplemental narrative.** The following is required:

1. Impact evaluation. An impact evaluation is required to determine compliance with the approval criteria, and to evaluate practicable development alternatives for a particular site. The alternatives must be evaluated on the basis of their impact on identified resources and functional values. Significant resources and functional values are identified in the Willamette River Central Reach Natural Resources Protection Plan (2016), and a supplemental environmental assessment can be provided to more accurately identify resources and functional values on the site. In the case of a violation, the impact evaluation is used to determine the nature and scope of the significant detrimental impacts.
  - a. An impact evaluation includes:
    - (1) Identification, by characteristic and quantity, of the natural resources and their functional values found on the site. The *Willamette River Central Reach Natural Resources Protection Plan* provides site-specific information on the natural resource features including:
      - open water;
      - shallow water (river depth 0-20 feet);
      - beach;
      - riparian vegetation;

- upland and bottomland forest;
- grassland;
- flood area and floodplain;
- wetlands, streams and ponds; and
- special habitat area.

The *Willamette River Central Reach Natural Resources Protection Plan (2016)* provides site-specific information on the functional values provided by the various natural resource features including:

- Microclimate and shade;
- Stream flow moderation and water storage;
- Bank function, and sediment, pollution and nutrient control;
- Large wood and channel dynamics;
- Organic inputs, food web and nutrient cycling;
- Fish and wildlife habitat; and
- Habitat connectivity/movement corridor.

The *Willamette River Central Reach Natural Resources Protection Plan* also provides information on wildlife and plant special status species that are known or reasonably expected to occur within or use a site. The application must contain current information regarding any special status species known or expected to occur on the site;

- (2) Identification and description of the scenic resources on the site. Scenic resources are mapped on the official zoning maps with the Scenic (s) overlay zone and are described in the *Central City Scenic Resources Protection Plan*;
- (3) Identification of significant unavoidable detrimental impacts on identified natural and scenic resources and functional values. Actions that could cause detrimental impacts and should be identified include:
  - excavation and fill both in the water and above the ordinary high water mark. The quality and source of fill material is an important factor to be considered;
  - clearing and grading;
  - construction;
  - vegetation removal;
  - tree planting;
  - altering bathymetry;
  - altering a vegetated riparian corridor or upland vegetated area;
  - altering the floodplain; and
  - altering the temperature of the river especially the altering of existing cold water sources.
- (4) Evaluation of practicable alternative locations, design modifications, or alternative methods of development that both achieve the project purpose, taking into account cost and technology, and minimize significant

- detrimental impacts on identified natural and scenic resources and functional values; and
- (5) Determination of the practicable alternative that best meets the applicable approval criteria.
- b. An impact evaluation for a violation includes:
- (1) Description, by characteristics and quantity, of the natural and scenic resources and functional values on the site prior to the violation; and
  - (2) Determination of the impact of the violation on the natural and scenic resources and functional values.
2. Biological assessment. A biological assessment developed for the purposes of a federal or state permit may be submitted in place of some or all of the impact evaluation if the biological assessment includes the information described in subparagraph B.1, above. In the event that the applicant submits a biological assessment in place of some or all of the impact evaluation, the applicant must identify which aspects of the impact evaluation are covered by the biological assessment and, if necessary, identify which pieces of information will be included in the impact evaluation.
  3. Supplemental environmental site assessment. A site-specific environmental assessment, prepared by a qualified consultant, to more precisely determine the existence, location, type, extent, and quality of the natural resources and functions on the site can be provided as part of the supplemental narrative. The assessment may verify, supplement, or challenge the information in the City's inventory for the purpose of informing the impact evaluation and identifying mitigation obligations;
  4. Construction management plan. Identify measures that will be taken during construction or remediation to protect the remaining natural and scenic resources and functional values at and near the construction site and provide a description of how areas that are not affected by the construction will be protected. For example, describe how trees will be protected, erosion controlled, construction equipment controlled, and the timing of construction; and
  5. Mitigation or remediation plan. The purpose of a mitigation or remediation plan is to compensate for unavoidable significant detrimental impacts on identified natural and scenic resources and functional values that result from the chosen development alternative or violation. A mitigation or remediation plan includes:
    - a. Natural or scenic resources and functional values to be restored, created, or enhanced within mitigation or remediation area;
    - b. Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies;
    - c. Construction timetables;
    - d. Operation and a long-term maintenance plan;
    - e. Monitoring and evaluation procedures that include periodic reporting;

- f. Remedial actions for unsuccessful mitigation;
- g. Information showing compliance with Section 33.248.090, Mitigation and Restoration Plantings; and
- h. If off-site mitigation is proposed, demonstration that on-site mitigation is not practicable or ecologically beneficial.

**33.865.100 Approval Criteria.**

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

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

- 1. Resource enhancement projects:
  - a. There will be no net loss of total resource area;
  - b. There will be no net loss of functional values; and
  - c. There will be a significant improvement of at least one functional value.
- 2. All other proposals in the River Environmental overlay zone:
  - a. Proposed development minimizes the loss of identified natural or scenic resources and functional values consistent with the uses that are generally permitted or allowed in the base zone without a land use review, or permitted or allowed by an approved conditional use review;
  - b. Proposed development locations, designs, and construction methods are less detrimental to identified natural and scenic resources and functional values than practicable and significantly different alternatives, including alternatives on the same site but outside of the River Environmental overlay zone;
  - c. There will be no significant detrimental impact on areas of the site reserved for mitigation, areas within the River Environmental overlay zone not proposed for development at this time, downstream river habitat within the Central Reach, or other sites in the Central Reach where environmental restoration is in progress or complete;
  - d. Mitigation:
    - (1) The mitigation plan demonstrates that all significant detrimental impacts on identified scenic and natural resources and functional values, and the interim loss of functional value will be compensated for;
    - (2) To the extent practicable, the natural and scenic resources and functional values restored or enhanced as mitigation must be the same kind of resource, performing the same functions as the lost resource;
    - (3) The amount of natural resource mitigation due as compensation must be based on the amount and relative condition of the resources and functional



values impacted by the proposal. The amount of natural resource mitigation required will be at a ratio of no less than 1.5:1 of mitigation area to project impact area, but may be more to address the following:

- the uniqueness of the resources and functional values impacted;
  - the relative condition of the mitigation area;
  - the distance between the impact area and mitigation area; and
  - the time lag between when the resources and functional values are lost due to the impacts and the point when the mitigation site will achieve full functions;
- (4) Mitigation must occur within the River Environmental overlay zone or in an area that is contiguous to the River Environmental overlay zone. The applicant must own the mitigation site, possess a legal instrument that is approved by the City as sufficient to ensure the right to carry out, monitor, and maintain the mitigation (such as an easement or deed restriction);
- (5) Mitigation must occur on-site when practicable, and ecologically beneficial. Factors to be considered when evaluating this criterion include:
- The potential for the long-term success of the restored resources and functional values in the mitigation area;
  - The amount, size, shape, and connectivity potential of on-site mitigation areas;
  - The location of the mitigation area in relation to existing, proposed or future development on the site, and the impact development may have on the mitigation area;
  - Contamination; and
  - Any other site specific issue or constraint;
- (6) If on-site mitigation is not practicable or ecologically beneficial, the applicant may perform mitigation off-site. The off-site mitigation must meet all other approval criteria in this Subparagraph and the following:
- Mitigation must occur at a minimum 3:1 ratio of mitigation area to project impact area; and
  - The mitigation area must be located within the Willamette River Central Reach, shown on Map 475-1; and
- (7) The requirements of Section 33.248.090, Mitigation and Restoration Planting, must be met.

**B. Modification of River Environmental overlay zone boundaries.** Modifications of River Environmental overlay zone boundaries that reflect permitted changes in the location or quality of resource areas will be approved upon finding that the applicant's statement demonstrates that either Paragraph B.1 or B.2 are met. For modification of environmental zone boundaries based on a more detailed site specific environmental study, that confirms the location of natural resource features identified in the adopted Natural Resources Inventory, the applicant's impact evaluation must demonstrate that Paragraph B.3, below, is met:

1. Successful mitigation. An approved mitigation plan has been successful and a new, restored, or enhanced resource exists which should be included in the River Environmental overlay zone; or
2. Approved loss of resource area. All of the following must be met:
  - a. All approved development in a resource area has been completed;
  - b. All mitigation required of this development has been successful; and
  - c. The identified resources and functional values at the developed site no longer exist, or have been subject to a significant detrimental impact.
3. Modification of River Environmental overlay zone boundaries based on a more detailed site-specific environmental study. The River Environmental overlay zone line location may be modified to more accurately reflect the location of natural resources and functional values on the site. All of the following must be met:
  - a. The modified River Environmental overlay zone boundary must include all natural resource features that receive a high or medium rank using the methodology within the adopted Natural Resources Inventory; and
  - b. The modified River Environmental overlay zone boundary must be located no closer than 50 feet from the top of bank of a river, stream, drainageway, wetland or other water body.

#### **33.865.110 Modifications of Site-Related Development Standards**

The review body may consider modifications to site-related development standards that are not otherwise prohibited from being adjusted as part of the River Review process. These modifications are done as part of the River Review process and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor-area ratios, intensity of use, size of the use or concentration of uses) are subject to the adjustment process of Chapter 33.805. In order to approve these modifications, the review body must find that the development will result in greater protection of the resources and functional values identified on the site and will, on balance, be consistent with the purpose of the applicable regulations.

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

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

- A.** The remediation is done in the same area as the violation; and
- B.** The remediation plan demonstrates that after its implementation there will be:
  1. No permanent loss of any type of resource or functional value;
  2. A significant improvement of a least one functional value; and
  3. There will be minimal loss of resources and functional values during remediation until the full remediation program is established.

**33.865.200 Performance Guarantees**

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

**33.865.210 Special Evaluation by a Professional**

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

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*(Added by: Ord. No. 189000, effective 7/9/18.)*

