



Land Use Review Application

File Number:

FOR INTAKE, STAFF USE ONLY

Date Rec \_\_\_\_\_ by \_\_\_\_\_

Type I  Type Ix  Type II  Type IIx  Type III  Type IV

LU Reviews \_\_\_\_\_

[Y] [N] Unincorporated MC

[Y] [N] Flood Hazard Area (LD & PD only)

[Y] [N] Potential Landslide Hazard Area (LD & PD only)

[Y] [N] 100-year Flood Plain [Y] [N] DOGAMI

Qtr Sec Map(s) \_\_\_\_\_ Zoning \_\_\_\_\_

Plan District \_\_\_\_\_

Historic and/or Design District \_\_\_\_\_

Neighborhood \_\_\_\_\_

District Coalition \_\_\_\_\_

Business Assoc \_\_\_\_\_

Related File # \_\_\_\_\_

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

Email this application and supporting documents to: LandUseIntake@portlandoregon.gov

Development Site Address or Location 7900 NW St. Helens Road, Portland, Oregon

Cross Street NW Front Avenue Sq. ft./Acreage 55.35 acres

Site tax account number(s)

R 324165 R 324170 R 324172

R 324159 R 324113 R 324160

Adjacent property (in same ownership) tax account number(s)

R R R

Describe project (attach additional page if necessary)

NW Natural (Owner) requests an adjustment to City of Portland (City) Zoning Code Section 33.258.070.D.2.d(2) to extend the compliance period for greenway landscape requirements to accommodate remediation construction on the NW Natural property. In 2005, NW Natural proposed a project located in the greenway setback zone. The City required NW Natural to provide landscaping in the greenway setback pursuant to Sections 33.440.230 and 33.258.070 to bring the site into conformance with the greenway development standards. In 2006, NW Natural entered into a Nonconforming Development Assessment Covenant with the City to bring the property into conformance with greenway development standards by August 2011, pursuant to Section 33.258.070.D.2.d(2) and Table 258-1. In September 2011, an adjustment was granted through LU 11-156071 AD to extend that compliance period to 2 years after issuance of the January 2017 Portland Harbor Record of Decision. However, remedial activities are still in process with coordination and oversight by the Oregon Department of Environmental Quality and U.S. Environmental Protection Agency and are not yet complete. NW Natural requests an extension to the compliance period until 1 year after upland and in-water remedial activities have been completed. Please see the attached proposal for additional information.

Describe proposed stormwater disposal methods

Not applicable.

Identify requested land use reviews

Adjustment Review (AD)

• Design & Historic Reviews - For new development, provide project valuation. \$ \_\_\_\_\_

For renovation, provide exterior alteration value. \$ \_\_\_\_\_

AND provide total project valuation. \$ \_\_\_\_\_

• Land Divisions - Identify number of lots (include lots for existing development). \_\_\_\_\_

New street (public or private)?  yes  no

• Affordable Housing - For buildings containing five or more dwelling units, will  yes  no  N/A

50% or more of the units be affordable to households with incomes equal to or less than 60% of the median family income for the county or state, whichever is greater?

continued / over

**Applicant Information**

- Identify the primary contact person, applicant, property owner and contract purchaser. Include any person that has an interest in your property or anyone you want to be notified. Information provided, including telephone numbers and e-mail addresses, will be included in public notices.
- For all reviews, the applicant must sign the Responsibility Statement.
- For land divisions, all property owners must sign the application.

**PRIMARY CONTACT:**

Typed Full Name Elizabeth Greene  I acknowledge this typed name as my signature  
 Company/Organization Anchor QEA, LLC  
 Mailing Address 6720 S Macadam Avenue, Suite 125  
 City Portland State Oregon Zip Code 97219  
 Day Phone 503-460-7504 FAX \_\_\_\_\_ email egreene@anchorqea.com

**Check all that apply**  Applicant  Owner  Other

Typed Full Name Robert J. Wyatt  I acknowledge this typed name as my signature  
 Company/Organization NW Natural  
 Mailing Address 250 SW Taylor Street  
 City Portland State Oregon Zip Code 97204  
 Day Phone 503-226-4211 x5425 FAX \_\_\_\_\_ email rjw@nwnatural.com

**Check all that apply**  Applicant  Owner  Other

Typed Full Name \_\_\_\_\_  I acknowledge this typed name as my signature  
 Company/Organization \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
 Day Phone \_\_\_\_\_ FAX \_\_\_\_\_ email \_\_\_\_\_

**Check all that apply**  Applicant  Owner  Other

Typed Full Name \_\_\_\_\_  I acknowledge this typed name as my signature  
 Company/Organization \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
 Day Phone \_\_\_\_\_ FAX \_\_\_\_\_ email \_\_\_\_\_

**Check all that apply**  Applicant  Owner  Other

**Responsibility Statement** As the applicant submitting this application for a land use review, I am responsible for the accuracy of the information submitted. The information being submitted includes a description of the site conditions. I am also responsible for gaining the permission of the owner(s) of the property listed above in order to apply for this review and for reviewing the responsibility statement with them. If the proposal is approved, the decision and any conditions of the approval must be recorded in the County Deed Records for the property. The City of Portland is not liable if any of these actions are taken without the consent of the owner(s) of the property. In order to process this review, City staff may visit the site, photograph the property, or otherwise document the site as part of the review. I understand that the completeness of this application is determined by the Director. By my signature, I indicate my understanding and agreement to the Responsibility Statement.

**Name of person submitting this application agrees to the above Responsibility Statement and acknowledges typed name as signature:**

Elizabeth Greene Date: November 11, 2020

Phone number: 503-460-7504 | Email this application and supporting documents to LandUseIntake@portlandoregon.gov | Submittal of locked or password protected documents will delay intake of your application. **2**

# Memorandum

November 11, 2020

To: Shawn Burgett, Planner, City of Portland Land Use Services Division

From: Elizabeth Greene and Leah Erickson, Anchor QEA, LLC

cc: Robert J. Wyatt, NW Natural; Patty Dost, Pearl Legal Group

**Re: Application for Adjustment to City of Portland Zoning Code Section 33.258.070  
(Nonconforming Development)**

## Proposal

As part of a previous building permit, NW Natural was required to bring development standards up to code per the riverbank landscaping requirement found in City of Portland Zoning Code Section 33.440.230, "Landscaping," subsections A through C. As allowed under Section 33.258.070.D.2.d(2), NW Natural signed a covenant with the City of Portland (City) to complete the required upgrades over a 5-year period that ended August 23, 2011. According to the signed covenant, the greenway landscape standard of one tree per 20 feet and one shrub per 2 feet of river frontage must be met within or riverward of the greenway setback to comply with the landscaping requirement.

Additionally, removal of invasive species, such as blackberry and butterfly bush, will take place within the entire planting area. The plantings are to be installed by the end of the compliance period. There was no request to change the number of plantings or waive the plantings altogether. In September 2011, the City issued a decision (LU 11-156071 AD) to extend the compliance period until 2 years post-issuance of the January 2017 Portland Harbor Record of Decision.<sup>1</sup> The administrative decision LU 11-156071 AD recognized the implementation timeline for remedial activities, with the understanding that intermediate greenway landscape plantings triggered by facility maintenance projects would need to be removed for construction of the ultimate site remedies. NW Natural is now requesting an adjustment to Section 33.258.070 to further extend the compliance period until the upland and riverbank and in-water remedies have been implemented. An adjustment is required because NW Natural wishes to extend the compliance period beyond the time allotted in the code.

Implementation of the required greenway landscaping requirements is not practicable to complete at the present time due to the remedial work that is occurring on the upland property and adjacent in-water sediments. Three separate remedial activities are currently underway, including groundwater source control, upland, and riverbank/in-water remedies. These activities are being completed under

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<sup>1</sup> U.S. Environmental Protection Agency, 2017. *Record of Decision, Portland Harbor Superfund Site, Portland, Oregon*. U.S. Environmental Protection Agency Region 10. January 2017.

agreements with the Oregon Department of Environmental Quality (DEQ) and the U.S. Environmental Protection Agency (EPA). The status of each of these activities is provided in the following sections.

## Source Control

Pursuant to an order from DEQ, NW Natural has been implementing source control measures on its property since 2009 to hydraulically control and contain Alluvium Water-Bearing Zone contaminated groundwater at the shoreline and prevent the associated contamination from reaching the Willamette River. As part of this effort, construction involving a shoreline extraction well system designed to contain upland groundwater occurred in the greenway setback. Currently, a continuous automated monitoring program is being implemented to confirm that the system is functioning properly. Additional source control measures for shallow groundwater and potentially erodible riverbank soils within the greenway setback are anticipated to be constructed as part of the sediment remedy.

## Upland Remedy

In addition to the upland site source control work, NW Natural entered into a voluntary agreement with DEQ to perform a remedial investigation (RI), risk assessment (RA), and feasibility study (FS) to determine the nature and extent of contamination on the uplands area of the Gasco site and directly adjacent northern portion of the Siltronic Corporation (Siltronic) site. The final RI report was submitted to and approved by DEQ in April 2007, and the final RA report was submitted to and approved by DEQ in 2014 and 2015. A *Remedial Investigation/Human Health and Ecological Risk Assessment Addendum*<sup>2</sup> is currently underway and is expected to be completed in 2021. The interim FS is also currently under development. The goal of the FS is selection of a final remedy for the Gasco and northern portion of Siltronic properties. Once the final remedy is selected, design and implementation will occur, which will require additional construction in the uplands up to the shoreline. The planning schedule anticipates development of the FS between 2020 and 2023, remedial design occurring from 2023 to 2025, and remedial implementation occurring in 2025 and 2026. However, this timeline is out of NW Natural's control and is uncertain because it depends on DEQ's reviews and approvals.

## Riverbank and In-Water Sediment Remedy

The final component of NW Natural's remediation work is the riverbank and in-water sediment remedy occurring pursuant to an Administrative Settlement and Order on Consent for Removal Action from EPA. This work will include riverbank modifications and sediment cleanup. Although the sediment remedy will occur on the riverbank and within the Willamette River, staging may occur in the uplands. NW Natural is presently preparing a basis of design report (BODR) that is expected to

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<sup>2</sup> Anchor QEA, LLC, 2019. *Remedial Investigation/Human Health and Ecological Risk Assessment Addendum*. NW Natural Gasco Site. Prepared for NW Natural. November 2019.

be approved by EPA in 2021. After EPA approves the BODR, the remedial design phase will begin, followed by remedy implementation. The planning schedule anticipates remedial design occurring between 2021 and 2022 and remedial implementation initiating after EPA determines remedial sequencing for Portland Harbor. Remedy construction is anticipated to last several years. Again, this timeline is out of NW Natural's control and is uncertain because it depends on EPA decisions and approvals and judicial consent decree approval.

As described in the previous paragraphs, significant remedial activity is planned to occur on the Gasco site, including in the greenway setback, over the next 5 to 6 years (or longer depending on the process and agency review times). As such, planting landscaping in the greenway now would require it to be removed and replanted after all remedial construction has been completed. A realistic extension would allow NW Natural enough time to complete all remedial activity and additional time to design and construct the necessary landscaping in accordance with the greenway development standards. NW Natural commits to implement landscape standards per the signed covenant with the City but requests a deferment to the compliance timeline until 1 year after completion of the upland and in-water remediation construction activities.

The site is zoned as an "IH—Heavy Industrial" base zone with River Industrial "i" Greenway and Scenic Resource "s" overlay zones.

## **Adjustment Approval Criteria**

The criteria for approval of an adjustment according to the City's Bureau of Development Services<sup>3</sup> are presented in italic text as follows, with NW Natural's response in roman text following each criterion.

*A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified.*

The regulation to be adjusted is for Section 33.258.070.D.2.d(2), regarding development that must be brought into conformance. The purpose of the nonconforming development regulation, according to Section 33.258.070.A, is to "[upgrade] nonconforming development elements that affect the appearance and impacts of a site. It is not intended to require extensive changes that would be extremely impractical, such as moving or lowering buildings." The development element that must be brought up to the current code is the riverbank landscaping requirement found in Section 33.440.230, subsections A through C. NW Natural is requesting to extend the compliance period beyond the time allotted in the code. The requested adjustment is consistent with the stated purpose of Section 33.258.070 because the nonconforming upgrade will still be performed by NW Natural to address the appearance of the property, but it will be completed at a later time to accommodate the more immediate demands of DEQ- and EPA-mandated remedial work. Delaying

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<sup>3</sup> City of Portland, 2018. "Adjustment Approval Criteria, Zoning Code Chapter 33.805." Bureau of Development Services. Last updated April 17, 2018. Available at: <https://www.portlandoregon.gov/bds/index.cfm?a=71803>.

compliance with the riverbank landscaping requirement found in Section 33.440.230, "Landscaping," will allow for the Gasco site to better achieve conformance as described in the following paragraphs.

The reason for this request is the remedial activity underway at the site: groundwater source control, upland, and riverbank/in-water sediment remedies. These activities include upland and riverbank/in-water construction projects that will reconfigure or disturb the riverbank and the greenway setback area. As such, any landscaping installed now would need to be removed during remediation, and the area would need to be replanted. In addition, there is existing contamination within the greenway setback area that should be addressed prior to planting landscaping to improve overall plant survival and minimize risk of exposure for landscaping crews. Deferring the compliance timeline until after the upland and in-water remediation construction activities are complete will avoid the need to plant twice, avoid worker safety issues with planting in contaminated soil, and improve the overall survival of the plants. Because of these benefits of delaying compliance, granting the adjustment would better meet the purpose of bringing the site into conformance with the greenway riverbank landscaping requirements.

*B. If [...] in an OS, C, E, I, or CI zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area.*

The site is zoned "IH—heavy industrial." The adjacent street classification and desired character of the area will not be changed by the proposed adjustment that will delay site compliance with the greenway riverbank landscaping requirement. In addition, the riverbank is likely not visible from the adjacent street. The adjustment will not alter the existing condition of the site. After upland and in-water remedial activities are complete, the landscaping requirements will be implemented to bring the site into conformance with the greenway riverbank landscaping requirement.

*C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone.*

Only one adjustment is being requested.

*D. City-designated scenic resources and historic resources are preserved.*

There are no historic resources on the Gasco site. There is a scenic resource overlay on the parcel at the northwest end of the NW Natural property, related to a view corridor for the St. Johns Bridge. This view corridor will not be affected by the requested adjustment because it will not alter the existing condition of the site and will only delay landscape planting. After upland and in-water remedial activities are complete, actions will be implemented to bring the site into conformance with the greenway riverbank landscaping requirement, and the scenic resource will need to be considered when planting landscaping.

*E. Any impacts resulting from the adjustment are mitigated to the extent practical.*

The requested adjustment is to delay bringing the site into conformance with the greenway riverbank landscaping requirement until after upland and in-water remediation is complete. This delay will not change the existing condition at the site and does not require mitigation.

*F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.*

The site is not located within an environmental overlay zone (i.e., environmental protection overlay zone or environmental conservation overlay zone). Therefore, this criterion does not apply.