



# Oregon

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Department of Land Conservation and Development

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October 8, 2010

TO: Land Conservation and Development Commission

FROM: Rob Hallyburton, Planning Services Division Manager  
Amanda Punton, Natural Resource Specialist

SUBJECT: **Agenda Item 6, October 19–22, 2010, LCDC Meeting**

## **CITY OF PORTLAND REQUEST TO AMEND THE WILLAMETTE RIVER GREENWAY BOUNDARY**

### **I. AGENDA ITEM SUMMARY**

The City of Portland has requested an amendment to the Willamette River Greenway Plan boundary. The city made a request to Oregon Parks and Recreation Department (OPRD) to adjust the greenway boundary in several locations within the North Reach Plan Overlay District so that the boundary will be coincident with property lines and the district boundary.

#### **A. Type of Action and Commission Role**

The boundary of the Willamette River Greenway Plan is established by the Land Conservation and Development Commission (LCDC, or “the commission”), and amendments to the boundary are made via the administrative rule process (OAR 660-020-0065(6)). The commission’s role is to review the city’s request and decide whether it complies with Goal 15.

This matter was heard at the September 2010 commission meeting, and the commission continued the public hearing on the matter to its October meeting. The commission is anticipated to make a decision regarding whether to amend the Willamette River Greenway plan boundary at that time.

A report to the commission from the Department of Land Conservation and Development (DLCD) dated August 8, 2010 is attached to and made a part of this report (Attachment A). The city provided a new set of boundary maps subsequent to the commission’s September public hearing. These replace the maps that were included as part of Attachment B to the August 8, 2010 director’s report and are included as Attachment B to this report.

#### **B. Staff Contact Information**

If you have questions about this agenda item, please contact Amanda Punton, DLCD Natural Resources Specialist, at (971) 673-0961, or [amanda.punton@state.or.us](mailto:amanda.punton@state.or.us).

## **II. SUMMARY OF RECOMMENDATION**

The department recommends that the commission hear public testimony concerning the proposed boundary amendments. At present, based on the record and arguments made to date, the department recommends that the commission approve the request. The city's North Reach River Plan has been developed to preserve and enhance the river related features of the land along the Willamette River, and is consistent with the intent and requirements of Goal 15. The proposed amendments are relatively minor and simplify administration of the Willamette River Greenway protection provisions.

## **III. BACKGROUND**

See section III of the August 9, 2010 director's report to the commission (Attachment A) for a description of the background on this item, which includes a description of greenway boundary criteria and the history of the local action in this case.

Since the September meeting, the department received written testimony from two parties regarding the proposed rule amendment. A summary of the testimony and the department's response is in section V, below.

The primary issue facing the commission is whether the greenway boundary amendments preliminarily adopted by Portland comply with the provisions of Goal 15 and ORS 390.

## **IV. DECISION-MAKING CRITERIA AND PROCEDURES**

### **A. Decision-making Criteria**

The criteria applicable to this review are found in Goal 15, "Willamette River Greenway," and ORS 390.310–390.368. The relevant portions of these provisions are included in Attachment A.

Considerations for evaluating compliance of the proposed boundary amendment with the goal and statute:

- Does the proposed amendment affect the boundary's attribute of including land identified for acquisition or easement for purposes of Goal 15? Currently recognized by the state parks greenway plan? If so does this change detract from the city's and state's ability to achieve the greenway goal?
- Does the proposed boundary amendment remove public land dedicated to scenic and recreational purposes and/or for the purpose of preserving and restoring historical sites, structures, facilities and objects that are currently included within the greenway? If so does this change detract from the city's and state's ability to achieve the greenway goal?
- Does the proposed boundary amendment affect the city's ability to implement its local component of the greenway program? Specifically, does the amendment affect local

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review of intensifications, changes of use, or developments such that there is a conflict with the goal?

- Does the proposed amendment continue to support the intent of Goal 15 as expressed in the initial goal statement?

## **B. Procedural Requirements**

OAR 660-020-0065(5) requires the commission to “review and consider testimony regarding the proposed plan amendment, pursuant to the requirements of ORS Chapter 183.” ORS 183.325 *et. seq.* provides notice and other procedural requirements regarding administrative rule amendments. The commission has adopted the Attorney General’s Model Rules and Uniform Rules of Procedure under the Administrative Procedure Act in OAR 660-001-0005. OAR 660-020-0065 is included in Attachment A.

## **V. ANALYSIS**

See section V of the director’s August 8, 2010 report to the commission (Attachment A) for an analysis of the Portland’s preliminary greenway plan boundary amendment and whether it complies with Goal 15 and ORS 390.

The department received testimony from two parties subsequent to the August report. The issues raised therein are addressed below.

### **A. Testimony from Gunderson, LLC**

**1. Economic Impact.** Information has not been provided by DLCD staff or the city of Portland to enable the commission to assess economic impacts as required by statute (Attachment C, p. 2).

ORS 197.040 (1)(b) requires that in rulemaking the commission do the following:

In accordance with the provisions of ORS chapter 183, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:

- (A) Allow for the diverse administrative and planning capabilities of local governments;
- (B) Consider the variation in conditions and needs in different regions of the state and encourage regional approaches to resolving land use problems;
- (C) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;
- (D) Assess the likely degree of economic impact on identified property and economic interests; and
- (E) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

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Gunderson, LLC argues that the commission has not complied with the provisions of ORS 197.040 (1)(b). ORS 197.040 provides duties of the commission, including those related to adopting rules “necessary to carry out ORS chapters 195, 196, and 197.” Gunderson has not established as a matter of law how the proposed amendments to OAR chapter 660, division 20 that are necessary to carry out the Willamette River Greenway provision of ORS chapter 390 are subject to ORS 197.040(1)(b). However, the department recognizes the importance of economic impacts to the city and affected land owners and has recommended that the city come to the October hearing prepared to provide information to substantively address this issue.

**2. Fiscal Impact Statement Deficiency.** The Fiscal Impact Statement filed with the Secretary of State was deficient for two reasons:

- The Fiscal Impact Statement filed by the department stated that, “. . . there could be significant negative economic impact on a property owner as a result of additional development limitations imposed in the greenway area.” Assessment of this recognized impact, as required under ORS 197.040 (1)(b)(C) and (D), should have been included in the Fiscal Impact Statement.
- The Fiscal Impact Statement did not meet requirements of the Oregon Administrative Procedures Act, since it did not identify state agencies, units of local government and the public which may be economically affected by the amendment as required by ORS 183.335 (Attachment C, p. 2–3).

Gunderson contends that the Fiscal Impact Statement for this rulemaking that the department filed with the Secretary of State is deficient in that it does not address provisions of ORS 197.040 (1). However, even assuming that ORS 197.040(1) is applicable to this proceeding, nothing in either ORS 197.040 (1) or ORS 183.335 (2)(a)(E) requires the commission to address ORS 197.040 (1) in its notice to its intended action under ORS 183.335. The fiscal impact statement includes information concerning potential negative fiscal effects on property owners for the 51 acres of land being added to the greenway (312 acres are removed). Gunderson has stated that a requirement for a 15% vegetation standard will have such a negative effect, but Gunderson does not identify why the current statement is inadequate to put the public and interested parties on notice concerning the potential negative economic effects of the rule amendment, or what additional information should have been provided in the fiscal impact statement.

Concerning state agencies, units of local government and the public, Gunderson has not identified additional negative economic effects of the proposed amendment that should have been described in the impact statement, and the department is not aware of any that are not already described. For these reasons, the department believes there is no procedural or substantive defect in the proposed rule.

## **B. Testimony from Schnitzer Steel Industries, Inc.**

**1. Goal Amendment.** An amendment to the greenway plan boundary constitutes an amendment to Goal 15, which requires application of the statutory process described in ORS 197.235 and 197.240 (Attachment D, p. 2).

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Schnitzer Steel Industries, Inc. (Schnitzer) first contends that the City of Portland’s proposed amendments to the Willamette River Greenway Plan boundary constitutes an amendment to Goal 15 under ORS 197.245, and as such must follow the procedures for a goal amendment provided in ORS 197.235 and ORS 197.240. The premise of Schnitzer’s argument is that Goal 15 provides in part:

3. The Greenway Program shall include:

a. Boundaries within which special Greenway considerations shall be taken into account[.] \* \* \*

From that provision, Schnitzer concludes that “[a]n amendment to the greenway boundary is necessarily an amendment to Goal 15.”

Schnitzer is not correct. Schnitzer does not establish that Goal 15 includes, directly or by reference, the Willamette River Greenway Plan boundary map. The department agrees that the mapped greenway boundary is the equivalent of a comprehensive plan map designation. An amendment to a comprehensive plan map does not automatically, as a matter of law, entail an amendment to the goal that requires the particular map. For example, although Goal 14 requires that local governments establish and maintain an urban growth boundary, an amendment to any one of those urban growth boundaries does not constitute an amendment to Goal 14.

The Willamette River Greenway Plan boundary is established by rule at OAR 660-020-0060. The rule is adopted to implement ORS 390.322, which requires the commission to review and, if compliant with statute, approve the plan prepared by local governments in cooperation with the Oregon Parks and Recreation Department (OPRD). Goal 15 provides, in part, “Willamette River Greenway Program shall be composed of cooperative local and state government plans for the protection, conservation, enhancement, and maintenance of the Greenway[.]” The “plans” to which Goal 15 refers are the plans prepared by local government in cooperation with OPRD. Contrary to Schnitzer’s contention, commission approval of an amendment to those plans is completed by amending OAR 660-020-0060 and does not necessitate an amendment to Goal 15. As such, compliance with the rulemaking provisions of the Oregon Administrative Procedures Act is required; however, the statutory procedures for goal amendments provided in ORS 197.230 to 197.245 are not applicable to this rulemaking proceeding.

**2. Economic Development Goal.** The proposed amendment does not comply with Goal 9 (Attachment D, p. 3).

This issue statement links Portland’s obligations under Goal 9 to their process for adopting the North Reach River Plan. The letter cites OAR 660-009-0010(4), which is a requirement in the rule implementing Goal 9 that addresses post-acknowledgment plan amendments. Compliance with Goal 9 is not part of the review criteria for amending the state greenway plan boundary. The boundary change on the city’s map is made through a post-acknowledgment plan amendment and that process is the appropriate place to consider compliance with Goal 9.

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**3. Economic Impact.** If the commission adopts the proposed amendment under the Oregon Administrative Procedures Act, Chapter 183, there is not sufficient information provided to allow the commission to complete analysis required under ORS 197.040 (Attachment D, p. 4).

This is the same as Gunderson, LLC’s Issue 1. See subsection V.A.1, above.

**4. Adequate Factual Base.** The commission does not have the information needed to determine compliance with ORS 390.318. Specifically the maps provided by the city did not: confirm that the boundary was at least 150 feet from ordinary low water; show the boundaries of lands to be acquired by State Parks; show the location of lands identified for public acquisition (Attachment D, p. 5).

The narrative provided by the city provides the information needed to assess compliance with ORS 390.318. In addition Tim Wood, director of OPRD, stated in his June 8, 2010 letter, which referred Portland’s request to LCDC, that, “The request appears to be consistent with the purpose and intent of Goal 15, the Willamette Greenway Goal.” Staff has asked the city to come to the October hearing prepared to provide additional clarification of their statements regarding compliance with ORS 390.318 in case the commission requests such clarification.

## **VI. COMMISSION OPTIONS**

OAR 660-020-0065(6) and ORS 390.322(3) provide that the commission *may* amend the Willamette River Greenway Plan boundary, giving considerable discretion to the commission. The commission may approve the boundary amendment as proposed in whole or in part, deny the amendment, or choose not to take any action.

## **VII. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS**

### **A. Department’s Recommended Option**

The department recommends the commission approve the Willamette River Greenway Plan boundary as proposed by the City of Portland.

### **B. Proposed Motions**

**Recommended Motion:** I move that the commission approve amendments to the Willamette River Greenway Plan boundary within the city of Portland as shown in Attachment B of the October 8, 2010 director’s report.

**Alternative Motion:** I move that the commission approve amendments to the Willamette River Greenway Plan boundary as shown in Attachment B of the October 8, 2010 director’s report, with the following changes: \_\_\_\_\_.

**ATTACHMENTS**

- A. August 8, 2010 director's report to the commission, including attachments A–D
- B. Maps of proposed greenway plan boundary amendments (replacing the maps provided to the commission in the August 8, 2010 director's report)
- C. Letter from Gunderson, LLC
- D. Letter from Schnitzer Steel Industries, Inc.



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August 20, 2010

**TO:** Land Conservation and Development Commission

**FROM:** Richard Whitman, Director  
Rob Hallyburton, Planning Services Division Manager  
Amanda Punton, Natural Resource Specialist

**SUBJECT:** **Agenda Item 8, September 1–2, 2010, LCDC Meeting**

## **CITY OF PORTLAND REQUEST TO AMEND THE WILLAMETTE RIVER GREENWAY BOUNDARY**

### **I. AGENDA ITEM SUMMARY**

The City of Portland has requested an amendment to the Willamette River Greenway Plan boundary. The city made a request to Oregon Parks and Recreation Department (OPRD) to adjust the greenway boundary in several locations within the North Reach Plan Overlay District so that the boundary will be coincident with property lines and the district boundary (Attachment A). In accordance with OAR 660-020-0065(2), OPRD has submitted that request to the commission for consideration (Attachment A).

#### **A. Type of Action and Commission Role**

The boundary of the Willamette River Greenway Plan is established by the Land Conservation and Development Commission (LCDC, or “the commission”), and amendments to the boundary are made via the administrative rule process (OAR 660-020-0065(6)). The commission’s role is to review the city’s request and decide whether it complies with Goal 15. Commission options are addressed in more detail in section VI of this report.

This matter will be heard at both the September and October commission meetings, with a decision at the October meeting.

#### **B. Staff Contact Information**

If you have questions about this agenda item, please contact Amanda Punton, DLCD Natural Resources Specialist, at (971) 673-0961, or [amanda.punton@state.or.us](mailto:amanda.punton@state.or.us).

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## **II. SUMMARY RECOMMENDATION ACTION**

Staff recommends that the commission hear public testimony concerning the proposed boundary amendments. Staff will make a final recommendation following consideration of testimony received at the September hearing, and prior to the commission's hearing in October. The city's North Reach River Plan has been developed to preserve and enhance the river related features of the land along the Willamette River and is consistent with the intent and requirements of Goal 15. The proposed amendments are relatively minor and simplify administration of the Willamette River Greenway protection provisions.

## **III. BACKGROUND**

In 1973, the Oregon Legislature directed the Oregon Department of Transportation (ODOT) to prepare a plan for the development and management of the Willamette River Greenway (the Oregon Parks and Recreation Division was under ODOT at the time). The plan would delineate a greenway boundary along the length of the Willamette River, and identify lands to be acquired by the state.

The criteria that ODOT used to determine the location of the Greenway boundary included:

1. Land visible from the river with scenic or other Greenway values;
2. Natural barriers such as streets, freeways, railroad tracks, and changes in topography;
3. Ownership lines generally drawn along the upland property line of property having river frontage;
4. The inclusion of historical buildings and public lands particularly public open space whenever possible; and
5. The inclusion of land that could be developed as viewpoints.

While ODOT was preparing the Greenway Plan, local governments were required to review the interim boundary within their jurisdictions, make revisions if necessary, and adopt a Greenway Plan.

The state Willamette River Greenway Plan is a composite of local government plan elements, which identify:

- The greenway boundary;
- The boundaries of areas in which interests in property may be acquired;
- Use intensity classifications for areas acquired by the state, and
- The location of existing public access and access to be acquired (Goal 15, section D)

LCDC approval is required for changes to these local plan elements, which must be consistent with the state plan.

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In addition to the local plan elements described above, Goal 15 requires jurisdictions to establish, by ordinance, provisions for the review of intensifications, changes in use, and new development to insure compatibility with the greenway. In urban areas, the compatibility review area must extend at least 150 feet from the ordinary low water line, but may extend to the greenway boundary where the greenway boundary is further upland (Goal 15, section F.3). Local governments must establish the location of the greenway boundary and determine which areas within the boundary should be subject to development review. The greenway boundary and the boundary delineating areas subject to development review are distinctly different, but Portland has chosen to use one line for both purposes, as explained below.

### **A. History of Action**

The City of Portland adopted its Willamette River Greenway Plan on October 3, 1979. The greenway boundary adopted with the city's plan was very similar to the original boundary adopted by ODOT. The greenway boundary was amended in March 1982 and November 1987. On February 18, 1988 LCDC approved a final order amending the ODOT Willamette River Greenway Boundary and Plan in accordance with the city's November 1987 amendments.

The city adopted an update of the Willamette River Greenway Plan on April 15, 2010 for the area known as the North Reach (the area between the Broadway Bridge on the east side of the river and the Fremont Bridge on the west side of the river to the confluence of the Willamette and Columbia Rivers). The ordinance adopting the amended greenway boundary will not go into effect until January 1, 2011 providing time for LCDC to hold a public hearing, consider testimony, and rule on the request. The proposed amendments would remove 312 acres from within the greenway boundary, and include 51 additional acres. See Attachment B for maps and descriptions of the locations where the city proposes amendments to the boundary.

The properties the city proposes to remove from the boundary are generally not adjacent to the river. The properties the city has preliminarily added are parcels that had a portion outside of the greenway and the remainder of the parcel inside. The city found that the portions outside of the greenway were indistinguishable from the portions inside, and therefore the whole parcel is proposed for inclusion in the boundary.

The City of Portland implements the greenway compatibility review using several greenway overlay zones. In all cases compatibility review is required for development within the entire greenway. That is, the city opted not to establish separate administrative line inside the greenway boundary, but instead requires review of development requests within the entire greenway. Once the River Plan/North Reach Plan is in effect, code provisions associated with the River Plan will implement Goal 15 for the North Reach, and the city's existing greenway code regulations will continue to implement the goal for the remainder of the greenway within the city.

### **B. Major Legal and Policy Issues**

The primary issue facing the commission is whether the greenway boundary amendments preliminarily adopted by Portland comply with the provisions of Goal 15 and ORS 390.

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#### **IV. DECISION-MAKING CRITERIA AND PROCEDURES**

##### **A. Decision-making Criteria**

The criteria applicable to this review are found in Goal 15, “Willamette River Greenway,” and ORS 390.310–390.368. The relevant portions of these provisions are included in Attachment D.

Considerations for evaluating compliance of the proposed boundary amendment with the goal and statute:

- Does the proposed amendment affect the boundary’s attribute of including land identified for acquisition or easement for purposes of Goal 15? Currently recognized by parks plan? If so does this change detract from the city’s and state’s ability to achieve the greenway goal?
- Does the proposed boundary amendment remove public land dedicated to scenic and recreational purposes and/or for the purpose of preserving and restoring historical sites, structures, facilities and objects that are currently included within the greenway? If so does this change detract from the city’s and state’s ability to achieve the greenway goal?
- Does the proposed boundary amendment affect the city’s ability to implement its local component of the greenway program? Specifically, does the amendment affect local review of intensifications, changes of use, or developments such that there is a conflict with the goal?
- Does the proposed amendment continue to support the intent of Goal 15 as expressed in the initial goal statement?

##### **B. Procedural Requirements**

OAR 660-020-0065(5) requires the commission to “review and consider testimony regarding the proposed plan amendment, pursuant to the requirements of ORS Chapter 183.” ORS 183.325 *et. seq.* provides notice and other procedural requirements regarding administrative rule amendments. The commission has adopted the Attorney General’s Model Rules and Uniform Rules of Procedure under the Administrative Procedure Act in OAR 660-001-0005. OAR 660-020-0065 is included in Attachment D.

#### **V. ANALYSIS**

Although a locally approved post-acknowledgment plan amendment is sufficient for changing some elements of a local greenway implementation, the boundary on the city comprehensive plan map must be consistent with the boundary adopted by the commission. Thus, Portland has requested a change to the state greenway plan boundary and has postponed the effective date for

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the River Plan/North Reach Plan until January 2011 in order to allow time for OPRD and LCDC to review and act on the amendment request.

The boundary of the Willamette River Greenway in Portland is shown on the city's zoning maps as required by Goal 15. The boundary of the Willamette River Greenway Plan and the boundary of the implementing overlay zones, including compatibility review, are coincident. In finalizing the River Plan/North Reach, city staff identified areas where changes in the boundary of the overlay zones are desirable. The proposed changes include additions and deletions of land from within the greenway boundary. The net effect is a reduction of 261 acres. With the proposed amendments, the North Reach portion of the greenway will include 4,205 acres.

The city's reasons for adjusting the greenway review boundary, and hence the Greenway Plan boundary, are:

1. Exclude parcels that do not have river frontage. The land being excluded from the greenway review and Greenway Plan boundaries is separated from the river by a barrier such as a street, railroad track or topographic change, or is separated from the river by other parcels. The excluded land is not necessary to carry out the purpose and intent of the city's greenway program for the North Reach.

The North Reach is a working harbor. The area is primarily zoned industrial or employment, and reserved for river-dependent and river-related uses. The greenway review regulations limit primary uses on river industrial and river recreational sites to river-dependent or river-related uses unless the site is unsuitable for these types of uses. Parcels that do not have river frontage are not suitable for river-dependent or river-related uses because the definition of river-dependent and river-related anticipates adjacency to the river. The greenway review regulations also require vegetation enhancement. The vegetation enhancement standard implements the Goal 15 requirements to protect and enhance the natural vegetative fringe along the river to the extent practicable (subsection C.3.g), and provide the maximum possible landscaped area between the activity and the river (subsection F.3.b(1)). The parcels being removed do not have river frontage, and therefore they are not necessary to meet those requirements of Goal 15.

2. Include the entirety of parcels with river frontage. The amendments will alleviate a split-zoning problem where a portion of a river front parcel is outside of the greenway review and Greenway Plan boundaries while the remainder of the parcel is inside the boundaries. The amended boundaries will be drawn on the upland property line of the river front parcel. The city wishes to avoid split-zoned parcels. Split-zoning can be difficult to implement, especially when the regulations associated with one of the zones on the parcel controls allowed uses. This is the situation for the parcels proposed to be added to the greenway boundary. The parcels being included in the boundaries have river frontage.

The river industrial and river recreational overlay zones limit primary uses on riverfront sites to river-dependent or river-related uses. Inside the greenway boundary the use limitation applies, while outside the boundary it does not. This situation can be confusing

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when it comes to evaluating a development proposal on a parcel that is both in and out of the boundary. In order to avoid this difficult situation, and ensure that river front parcels in the river industrial and river recreation overlay zones are developed with river-dependent or river related uses, the city has included the entirety of riverfront parcels in the greenway boundary.

**A. Goal 15**

Goal 15 is “to protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.”

The natural and scenic qualities of lands along the river in the North Reach are protected, conserved, enhanced and maintained by the city’s greenway vegetation enhancement standard. The standard is intended to implement the Goal 15 requirements to enhance and protect the vegetative fringe along the river (subsection C.3.g), and to provide the maximum possible landscaped area between the activity and the river (subsection F.3.b.(1)). The amended boundaries more consistently capture lands necessary to carry out this purpose.

There are no agricultural lands in the North Reach, and no historical qualities of lands affected by the proposed boundary change have been identified at this time.

The economic qualities of lands along the Willamette River in the North Reach are protected, conserved, enhanced and maintained by the Industrial and Employment zoning designations, and the greenway review regulation aimed at preserving the North Reach for river-dependent and river-related industrial development. Again, the North Reach is primarily a working harbor. The greenway review regulations support that economic function by limiting primary uses on riverfront parcels in the river industrial overlay zone to river-dependent or river-related uses. If a parcel does not have river frontage, this limitation does not apply. Therefore, because the amended boundaries capture the entirety of parcels with river frontage, and exclude parcels that are separated from the river, the boundaries more consistently capture land necessary to carry out this intent and purpose.

The natural qualities of the greenway are also protected, conserved, enhanced and maintained by identifying sites along and near the river in the North Reach that should be acquired by the City and restored to a more natural condition. The City’s updated Willamette Greenway Plan identifies 18 sites for acquisition and natural resource restoration. The sites have been identified based on their riparian and wildlife habitat values, and their potential for improved natural resource functionality. The sites are located throughout the North Reach, and include shoreline and upland areas.

The City’s 1988 Willamette Greenway Plan also identified parcels for public acquisition. In the North Reach, there was one site specifically identified for public acquisition—the wooded portion of the Harborton site (Tax Lot 10 and Tax Lot 3, Section 34, 2N1W). The Harborton site was located partially inside and partially outside of the overall Greenway boundary because a portion of Tax Lot 3 was outside the City boundary in 1988. The 1988 plan also called for

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acquisition of “scenic easements and/or shorelines where necessary to preserve the vegetative fringe, natural shoreline, or public access to the river”. The 1988 plan does not identify specific locations for acquisition for this purpose, however one can assume that the natural shoreline and locations for access to the river were generally located inside the overall Greenway boundary.

The Harborton site is still identified as a public acquisition site in the City’s updated Willamette Greenway Plan adopted by City Council in April, and the site is almost entirely within the greenway review and proposed overall Greenway boundaries. A small portion of the site continues to be outside the proposed overall Greenway boundary because that portion is located outside the City boundary.

As mentioned above, there are 18 sites identified for acquisition for natural resource restoration purposes in the City’s updated Willamette Greenway Plan, and one of those sites was specifically identified for acquisition in 1988. In addition, the 1988 plan generally called for the acquisition of natural shorelines. The city’s updated Greenway Plan identifies specific sites for acquisition and restoration rather than generally call for acquisition of shoreline. All of the natural shoreline identified for acquisition is within the greenway boundary.

Of the 18 sites identified for acquisition for natural resource restoration in the city’s updated Willamette River Greenway Plan, 15 are located outside the greenway boundary. The location of the restoration sites inside or outside of the greenway does not affect the ability of the city to negotiate and acquire the sites from a willing seller. Therefore, amending the greenway boundary will not conflict with this intent and purpose.

The scenic qualities of the Willamette River in the North Reach are protected, conserved and maintained by identifying a greenway trail alignment and greenway viewpoints, and calling for public acquisition and development of the trail and viewpoints. The city’s updated greenway trail alignment is located both inside and outside of the greenway boundary. There are 11 scenic viewpoints identified in the city’s updated plan for the North Reach; eight are located inside the boundary while three are located outside.

The 1988 Willamette Greenway Plan called for acquisition of “the lands, rights-of-way, or easements necessary to construct and landscape the Willamette River Greenway Trail.” In 1988 the greenway trail was both inside and outside of the greenway boundary.

The 1988 plan identified seven viewpoints in the North Reach, but did not call for public acquisition of the viewpoints. All seven viewpoints were located inside of the overall Greenway boundary. As mentioned, the updated plan adopted in April identifies 11 greenway viewpoints. The seven viewpoints from the 1988 plan are still identified in the updated plan, however two of the seven viewpoints are located outside of the City’s greenway review boundary and the proposed overall Greenway boundary. The two viewpoints are located on top of the bluff that runs most of the length of the east side of the Willamette River in the North Reach (in the areas known as Waud Bluff and Mock’s Crest). As with the restoration sites identified for acquisition, the City’s updated Willamette Greenway Plan calls for the acquisition and development of the greenway trail, and all 11 viewpoints. The location of the trail and the viewpoints inside or

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outside of the boundaries does not affect the City's ability to negotiate and acquire them from a willing seller. Therefore, amending the overall Greenway boundary will not conflict with this intent and purpose.

The recreational qualities of lands along the Willamette River in the North Reach are protected, conserved, enhanced and maintained by the Open Space zoning designation, and by the greenway review regulation aimed at preserving open space areas for river recreational uses. The recreational qualities of lands along the river are tied to access to the river. The greenway review regulations support river recreation and public access to the river by limiting the uses allowed on river front parcels in the river recreational overlay zone to river-dependent or river-related recreational uses. If a parcel does not have river frontage, this limitation does not apply. There is one open space site in the North Reach where the greenway review boundary has been amended to exclude the upland portion located on the landward side of a railroad right-of-way (Cathedral Park). Because the amended boundaries more consistently capture the land that would be subject to the use limitation, the boundary more consistently captures land necessary to carry out this intent and purpose.

Goal 15 describes that the Greenway Plan shall have boundaries that "include such lands along the Willamette River as are necessary to carry out the purpose and intent of the Willamette River Greenway through a coordinated management and acquisition program" (section C.2). As described above, the amended greenway boundary will continue to include lands necessary to carry out the purpose and intent of the Willamette River Greenway and will continue to manage land within the boundary through a coordinated program.

## **B. ORS 390**

The portion of ORS 390.310 through 390.368 that relates to the greenway boundary can be found in ORS 390.318(1) (see Attachment D).

The proposed overall Greenway boundary is consistent with ORS 390.318(1) as follows:

The proposed greenway boundary includes land for which the City of Portland has identified an interest in acquisition. The boundary includes 15 sites for acquisition as restoration sites, eight sites for acquisition as scenic viewpoints, and portions of the greenway trail alignment.

The boundary includes all land situated within 150 feet of the ordinary low water line on each side of the Willamette River, and, as described above, the boundary includes all the land that the City of Portland considers necessary for development of the greenway in the North Reach.

The boundary does not include more than 320 acres per river mile on average.

## **VI. COMMISSION OPTIONS**

OAR 660-020-0065(6) and ORS 390.322(3) provide that the commission *may* amend the Willamette River Greenway Plan boundary, giving considerable discretion to the commission.

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The commission may approve the boundary amendment as proposed in whole or in part, deny the amendment, or choose not to take any action.

**VII. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS**

**A. Department's Recommended Option**

The department will prepare a recommendation following the September hearing on this matter.

**B. Proposed Motion**

None at this time.

**ATTACHMENTS**

- A. City of Portland request for Greenway boundary change, April 28, 2010 and Oregon Parks and Recreation Department referral letter, June 8, 2010
- B. City of Portland amendments to the Willamette River Greenway Plan boundary, August 11, 2010 – including Figure 1, Proposed boundary changes
- C. Comments received
- D. Decision-making criteria



City of Portland  
Bureau of  
**Planning and  
Sustainability**

Sam Adams, Mayor  
Susan Anderson, Director

**Planning**

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April 28, 2010

Kathy Schutt  
Oregon Parks and Recreation Department  
725 Summer St, N.E. Suite C  
Salem, Oregon 97301

Dear Kathy,

The City of Portland, Oregon requests that the boundary of the Willamette Greenway Plan within the city be amended consistent with the boundary that was recently adopted by the Portland City Council as part of the River Plan / North Reach. The former and the newly adopted boundaries of the Willamette Greenway in the North Reach are shown on the attached map. The River Plan / North Reach was adopted by ordinance (Ordinance #183694), and the ordinance will not be in effect until January 1, 2011. The City is just now beginning the update of the Willamette Greenway Plan for the Central Reach, and the South Reach will follow.

The boundary of the Willamette Greenway and the regulatory overlay zones associated with the greenway are coincident. With adoption of the River Plan / North Reach the extent of the regulatory overlay zones in the North Reach changed. This means that the boundary of the Willamette Greenway in the North Reach also changed.

The changes adjust the boundaries of the overlay zones so that they do not capture parcels that are not connected to the riverfront or are across a street or rail right-of-way from the river. The changes are minor and technical in nature, and will only exclude parcels that are currently exempt from the greenway regulations because they are disconnected from the river. The extent of the greenway overlay zones, and Willamette Greenway boundary, in the North Reach continues to be at least 150 feet from the ordinary low water mark of the river.

I request that Oregon Parks and Recreation submit the change to the Land Conservation and Development Commission on behalf of the Portland City Council. Please contact Shannon Buono if you have questions, and to inform us of the next steps in the process. Shannon can be reached by phone at (503) 823-7662, by email at [shannon.buono@portlandoregon.gov](mailto:shannon.buono@portlandoregon.gov), or by mail at 1900 SW 4<sup>th</sup> Ave., Suite 7100, Portland, Oregon 97201.

Sincerely,

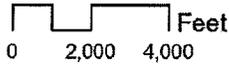
Susan Anderson, Director

cc: Sallie Edmunds, River Planning Manager  
Shannon Buono, City Planner  
Amanda Punton, Oregon Department of Land Conservation and Development

# River Plan / North Reach Willamette Greenway Boundary

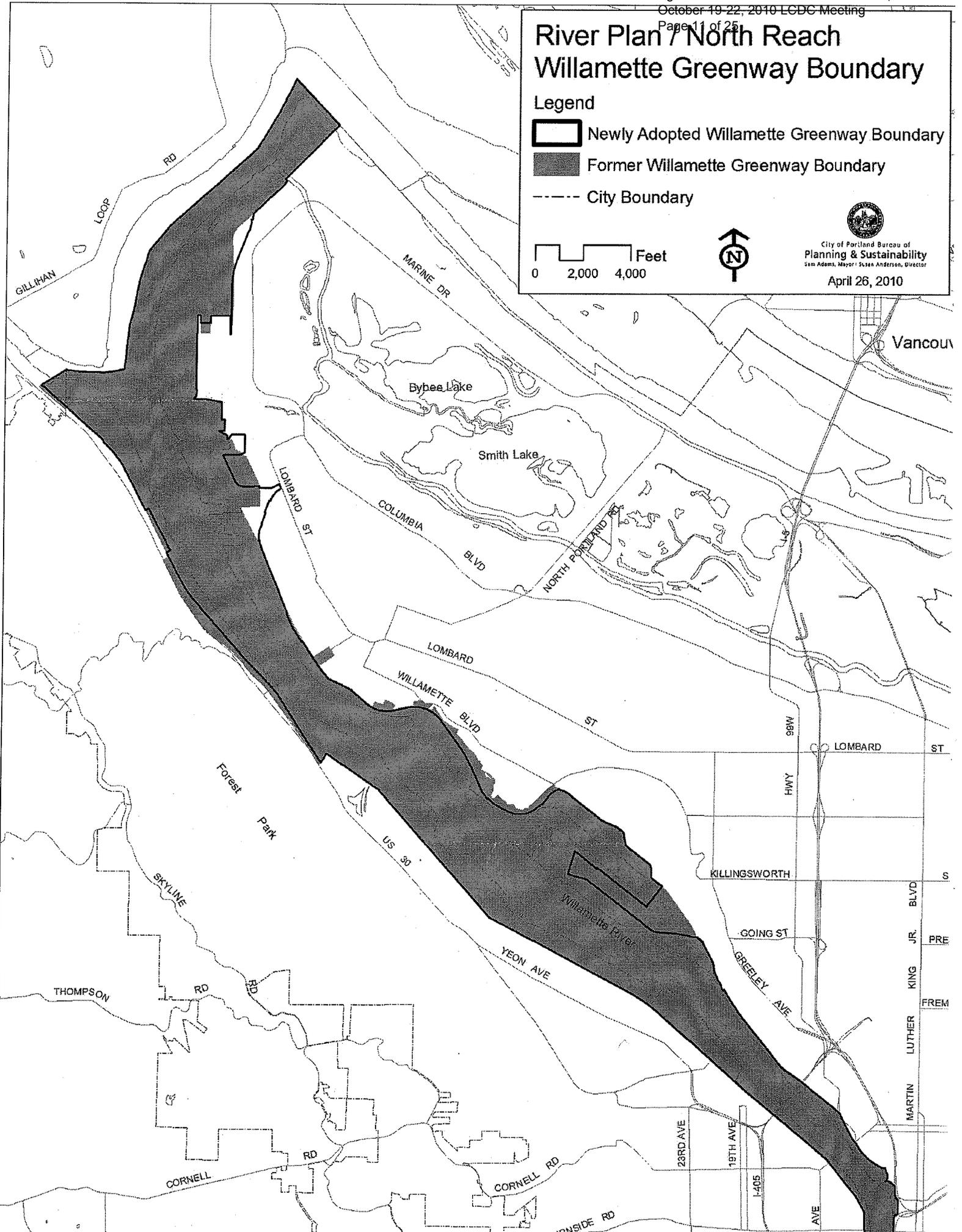
## Legend

-  Newly Adopted Willamette Greenway Boundary
-  Former Willamette Greenway Boundary
-  City Boundary



City of Portland Bureau of  
Planning & Sustainability  
Sara Adams, Mayor; Susan Anderson, Director

April 26, 2010





# Oregon

Theodore R. Kulongoski, Governor

## Parks and Recreation Department

725 Summer Street NE, Suite C

Salem, OR 97301-1266

(503) 986-0707

FAX: (503) 986-0794

[www.oregonstateparks.org](http://www.oregonstateparks.org)

### DEPT OF

JUN 09 2010

LAND CONSERVATION  
AND DEVELOPMENT



Nature  
HISTORY  
Discovery

June 8, 2010

Richard Whitman  
Department of Land Conservation and Development  
635 Capitol Street NE, Ste. 150  
Salem OR 97301-2540

Dear Mr. Whitman:

In accord with the provisions of OAR 660-20-065 the Oregon Parks and Recreation Department (OPRD) has reviewed the City of Portland's request for a Willamette Greenway boundary change, (attached). OPRD staff has discussed the request with City of Portland staff.

This request focuses only on ensuring that parcels within the city's North Reach River Plan and related zoning area, that are partially included in the boundary or are separated from the river by a road or rail, are corrected to include only those that are contiguous with the river. OPRD believes this is a prudent approach to take in defining water-dependent or water related uses. The request appears to be consistent with the purpose and intent of Goal 15, the Willamette Greenway Goal. I am forwarding the city's request to you for your action.

For questions, please contact our Planning Manager, Kathy (Kate) Schutt, at 503.986.0745 or [Kathy.Schutt@state.or.us](mailto:Kathy.Schutt@state.or.us).

Sincerely,

Tim Wood  
Director



**City of Portland, Oregon**  
**Amendments to the Willamette River Greenway Boundary**  
**August 13 , 2010**

**Identification of Issue:**

The City of Portland recently adopted an update of the Willamette River Greenway Plan for the area known as the North Reach (the area between the Broadway Bridge on the east side of the river and the Fremont Bridge on the west side of the river to the confluence of the Willamette and Columbia Rivers). During the planning process, the City identified several locations where the overall Greenway boundary should be amended in order to ensure that it consistently captures lands that are necessary to carry out the purposes and intent of the Willamette River Greenway.

**Background:**

In 1973 the legislature directed the Oregon Department of Transportation (the Oregon Parks and Recreation Division was under ODOT at the time) with the responsibility of preparing a plan for the development and management of the Willamette River Greenway. The plan would delineate a Greenway boundary along the length of the Willamette River, and identify lands to be acquired by the state.

The criteria that ODOT used to determine the location of the Greenway boundary included:

1. Land visible from the river with scenic or other Greenway values;
2. Natural barriers such as streets, freeways, railroad tracks, and changes in topography;
3. Ownership lines generally drawn along the upland property line of property having river frontage;
4. The inclusion of historical buildings and public lands particularly public open space whenever possible; and
5. The inclusion of land that could be developed as viewpoints.

While ODOT was revising the Greenway plan, local governments were required to review the interim boundary within their jurisdictions, make revisions if necessary, and adopt a Greenway plan. The review of the boundary was to address the overall location of the Greenway boundary, and determine which areas within the boundary should be subject to greenway review. The overall Greenway boundary and the boundary delineating areas subject to greenway review are distinctly different.

The overall Greenway boundary:

1. Identifies lands that are necessary to carry out the purpose and intent of the Willamette River Greenway through a coordinated management and acquisition program (*OAR 660-015-0005C.2*); and
2. Must include all land within 150 of the low water mark of the river, plus all other land local jurisdictions consider necessary. The total area within the boundary can not exceed 320 acres per river mile on average (*ORS 390.318(1)*).

The greenway review line serves a different purpose. Projects on land riverward of the greenway review line are subject to City of Portland regulations aimed at ensuring that they provide the maximum possible landscaped area, open space, or vegetation between the activity and the river, and provide necessary public access to and along the river (*OAR 660-015-0005 F.3.b*). Goal 15

requires that the greenway review boundary be a minimum of 150 feet from ordinary low water (*OAR 660-015-0005 E.3.a*).

The City of Portland adopted its Willamette River Greenway Plan on October 3, 1979 (Ordinance No. 148537). The overall Greenway boundary adopted with the City's plan was very similar to the original boundary adopted by ODOT. In addition, the City did not designate separate boundaries for the overall Greenway and greenway review. The greenway review line is aligned with the overall Greenway boundary. As a result, all land within the Greenway boundary is subject to the City's greenway regulations. The City of Portland implements the greenway regulations using greenway overlay zones.

The Greenway boundaries were amended in March 1982 (Ordinance No. 152942), and then again in November 1987 (Ordinance No. 160237). On February 18, 1988 the Land Conservation and Development Commission of the State of Oregon (LCDC) approved a final order amending the ODOT Willamette River Greenway Boundary and Plan in accordance with the City's November 1987 amendments.

In the area north of the Broadway Bridge—the area that generally corresponds with the North Reach—the properties that were excluded from the Greenway boundary were not adjacent to the river, and therefore not subject to the City's greenway regulations. The properties that were added to the boundary were properties that had a portion of the parcel outside of the Greenway and the remainder of the parcel inside the Greenway. The portions outside of the Greenway were indistinguishable from the portions inside, and therefore the whole parcel was proposed for inclusion in the boundary. LCDC found that the amendments to the overall Greenway boundary were "consistent with the intent and purposes of the Willamette River Greenway plan as stated in Goal 15 of the Statewide Goals and ORS 390.310 to 390.368" (*Final Order Amending ODOT Willamette River Greenway Boundary and Plan: City of Portland Segment, signed February 18, 1988*).

#### **Why is a plan change necessary now?**

On April 15, 2010, the City of Portland, Oregon adopted an update to the City's Willamette River Greenway Plan for the North Reach (Ordinance No. 183694). The update resulted in adjustments to the location of the City's greenway overlay zones to more consistently capture land that would be subject to the greenway review regulations. Because the boundary for the City's greenway review is currently aligned with the overall Greenway boundary, the City is asking for the overall Greenway boundary to be amended so that it matches the City's adopted greenway review boundary. This will ensure that the City is accurately showing the overall Greenway boundary on the comprehensive plan as required by Goal 15 (*OAR 660-015-0005 E.1*). The ordinance adopting the amended greenway review boundary will not go into effect until January 1, 2011 providing time for LCDC to hold a public hearing, consider testimony, and rule on amendments to the overall Greenway boundary.

The amendments will exclude 312 acres from within the Greenway boundaries, and include 51 additional acres in the Greenway boundaries. See Figure 1 for maps and descriptions of the locations where the City proposes amendments to the overall Greenway boundary. The City's reasons for adjusting the greenway review boundary, and hence the overall Greenway boundary, are essentially the same now as they were in 1988:

1. Exclude parcels that do not have river frontage. The land being excluded from the greenway review and overall Greenway boundaries is separated from the river by a barrier such as a street, railroad track or topographic change, or is separated from the river by other parcels. The excluded land is not necessary to carry out the purpose and intent of the City's greenway program for the North Reach. The North Reach is a working harbor. The area is primarily zoned industrial or employment, and reserved for river-dependent and river-related uses. The greenway review regulations limit primary uses on river industrial and river recreational sites to river-dependent or river-related uses unless the site is unsuitable for these types of uses. Parcels that do not have river frontage are not suitable for river-dependent or river-related uses because the definition of river-dependent and river-related anticipates adjacency to the river. The greenway review regulations also require vegetation enhancement. The vegetation enhancement standard implements the Goal 15 requirements to protect and enhance the natural vegetative fringe along the river to the extent practicable (*OAR 660-015-0005 C.2.g*), and provide the maximum possible landscaped area between the activity and the river (*OAR 660-015-005 F.3.b(1)*). The parcels being excluded do not have river frontage, and therefore they are not necessary to meet those requirements of Goal 15.
2. Include the entirety of parcels with river frontage. The amendments will alleviate a split-zoning problem where a portion of a river front parcel is outside of the greenway review and overall Greenway boundaries while the remainder of the parcel is inside the boundaries. The amended boundaries will be drawn on the upland property line of the river front parcel.

The City generally avoids split-zoning parcels. Split-zoning can be difficult to implement, especially when the regulations associated with one of the zones on the parcel controls allowed uses. This is exactly the situation for the parcels being included in the greenway review and overall Greenway boundaries in the North Reach. The parcels being included in the boundaries have river frontage. The river industrial and river recreational overlay zones limit primary uses on river front sites to river-dependent or river-related uses. Inside the greenway review boundary the use limitation applies, however outside the boundary the limitation does not apply. This situation can be confusing when it comes to evaluating a development proposal on a parcel that is both in and out of the boundary—does the use limitation apply if the proposal does not include development inside the boundary? In order to avoid this difficult situation, and ensure that river front parcels in the river industrial and river recreation overlay zones are developed with river-dependent or river related uses, the City has included the entirety of river front parcels in the greenway review and proposed overall Greenway boundary.

**Is the plan change consistent with the intent and purposes of Goal 15 and ORS 390.310 – 390.368?**

In 1988 LCDC found that the City's boundary amendments were consistent with the intent and purposes of Goal 15 and ORS 390.310 through 390.368. The amendments to the overall Greenway boundary that the City of Portland recommends today are also consistent with the intent and purposes of Goal 15 and ORS 390.310 through 390.368 as they relate to the overall Greenway boundary.

The intent and purposes of Goal 15 are "to protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway" (*OAR 660-015-0005*).

- The natural qualities of lands along the Willamette River in the North Reach are protected, conserved, enhanced and maintained by environmental overlay zoning. The City has inventoried the natural resource qualities of lands along and near the Willamette River, and applied environmental overlay zoning to protect and conserve the natural resource functions. The environmental zoning applies regardless of where the greenway review boundary, and the overall Greenway boundary fall. Therefore, amending the overall Greenway boundary will not conflict with this intent and purpose.

The natural qualities of the greenway are also protected, conserved, enhanced and maintained by identifying sites along and near the river in the North Reach that should be acquired by the City and restored to a more natural condition. The City's updated Willamette Greenway Plan identifies 18 sites for acquisition and natural resource restoration. The sites have been identified based on their riparian and wildlife habitat values, and their potential for improved natural resource functionality. The sites are located throughout the North Reach, and include shoreline and upland areas.

The City's 1988 Willamette Greenway Plan also identified parcels for public acquisition. In the North Reach, there was one site specifically identified for public acquisition—the wooded portion of the Harborton site (Tax Lot 10 and Tax Lot 3, Section 34, 2N1W). The Harborton site was located partially inside and partially outside of the overall Greenway boundary because a portion of Tax Lot 3 was outside the City boundary in 1988. The 1988 plan also called for acquisition of "scenic easements and/or shorelines where necessary to preserve the vegetative fringe, natural shoreline, or public access to the river". The 1988 plan does not identify specific locations for acquisition for this purpose, however one can assume that the natural shoreline and locations for access to the river were generally located inside the overall Greenway boundary.

The Harborton site is still identified as a public acquisition site in the City's updated Willamette Greenway Plan adopted by City Council in April, and the site is almost entirely within the greenway review and proposed overall Greenway boundaries. A small portion of the site continues to be outside the proposed overall Greenway boundary because that portion is located outside the City boundary.

As mentioned above, there are 18 sites identified for acquisition for natural resource restoration purposes in the City's updated Willamette Greenway Plan, and one of those sites was specifically identified for acquisition in 1988. In addition, the 1988 plan generally called for the acquisition of natural shorelines. The City's updated Greenway Plan identifies specific sites for acquisition and restoration rather than generally call for acquisition of shoreline. All of the natural shoreline identified for acquisition is within the greenway review and the proposed overall Greenway boundaries.

Of the 18 sites identified for acquisition for natural resource restoration in the City's

updated Willamette River Greenway Plan, 15 are located outside the greenway review and proposed overall Greenway boundaries. The location of the restoration sites inside or outside of the greenway review and overall Greenway boundaries does not affect the ability of the City of Portland to negotiate and acquire the sites from a willing seller. Therefore, amending the overall Greenway boundary will not conflict with this intent and purpose.

- The natural and scenic qualities of lands along the river in the North Reach are protected, conserved, enhanced and maintained by the City's greenway vegetation enhancement standard. As described above, the standard is intended to implement the Goal 15 requirements to enhance and protect the vegetative fringe along the river (*OAR 660-015-0005 C.3.g*), and to provide the maximum possible landscaped area between the activity and the river (*OAR 660-015-0005 F.3.b.(1)*). The amended boundaries more consistently capture lands necessary to carry out this purpose.
- The scenic qualities of the Willamette River in the North Reach are protected, conserved and maintained by identifying a greenway trail alignment and greenway viewpoints, and calling for public acquisition and development of the trail and viewpoints. The City's updated greenway trail alignment is located both inside and outside of the greenway review and the proposed overall Greenway boundaries. There are 11 scenic viewpoints identified in the City's updated plan for the North Reach; eight are located inside the boundaries, and three are located outside of the boundaries.

The 1988 Willamette Greenway Plan called for acquisition of "the lands, rights-of-way, or easements necessary to construct and landscape the Willamette River Greenway Trail". In 1988 the greenway trail was both inside and outside of the overall Greenway boundary.

The 1988 plan identified seven viewpoints in the North Reach, but did not call for public acquisition of the viewpoints. All seven viewpoints were located inside of the overall Greenway boundary. As mentioned, the updated plan adopted in April identifies 11 greenway viewpoints. The seven viewpoints from the 1988 plan are still identified in the updated plan, however two of the seven viewpoints are located outside of the City's greenway review boundary and the proposed overall Greenway boundary. The two viewpoints are located on top of the bluff that runs most of the length of the east side of the Willamette River in the North Reach (in the areas known as Waud Bluff and Mock's Crest). As with the restoration sites identified for acquisition, the City's updated Willamette Greenway Plan calls for the acquisition and development of the greenway trail, and all 11 viewpoints. The location of the trail and the viewpoints inside or outside of the boundaries does not affect the City's ability to negotiate and acquire them from a willing seller. Therefore, amending the overall Greenway boundary will not conflict with this intent and purpose.

- The economic qualities of lands along the Willamette River in the North Reach are protected, conserved, enhanced and maintained by the Industrial and Employment zoning designations, and the greenway review regulation aimed at preserving the North Reach for river-dependent and river-related industrial development. Again, the North Reach is primarily a working harbor. The greenway review regulations support that economic

function by limiting primary uses on river front parcels in the river industrial overlay zone to river-dependent or river-related uses. If a parcel does not have river frontage, this limitation does not apply. Therefore, because the amended boundaries capture the entirety of parcels with river frontage, and exclude parcels that are separated from the river, the boundaries more consistently capture land necessary to carry out this intent and purpose.

- The recreational qualities of lands along the Willamette River in the North Reach are protected, conserved, enhanced and maintained by the Open Space zoning designation, and by the greenway review regulation aimed at preserving open space areas for river recreational uses. The recreational qualities of lands along the river are tied to access to the river. The greenway review regulations support river recreation and public access to the river by limiting the uses allowed on river front parcels in the river recreational overlay zone to river-dependent or river-related recreational uses. If a parcel does not have river frontage, this limitation does not apply. There is one open space site in the North Reach where the greenway review boundary has been amended to exclude the upland portion located on the landward side of a railroad right-of-way (Cathedral Park). Because the amended boundaries more consistently capture the land that would be subject to the use limitation, the boundary more consistently captures land necessary to carry out this intent and purpose.
  
- There are no historical or agricultural lands in the North Reach.

Goal 15 describes that the Oregon Department of Transportation Greenway Plan shall have boundaries that "include such lands along the Willamette River as are necessary to carry out the purpose and intent of the Willamette River Greenway through a coordinated management and acquisition program" (*OAR 660-015-0005 C.2*). As described above, the amended overall Greenway boundary will continue to include lands necessary to carry out the purpose and intent of the Willamette River Greenway, will continue to manage land within the boundary through a coordinated program, and the amended boundary will not conflict with the City's acquisition goals.

The portion of ORS 390.310 through 390.368 that relates to the overall Greenway boundary can be found in ORS 390.318(1).

- (1) *The State Parks and Recreation Department, in cooperation with units of local government that have lands along the Willamette River within their respective boundaries, shall prepare a plan for the development and management of the Willamette River Greenway as described in ORS 390.314. Such plan may be prepared for segments of the Willamette River and may be submitted as segments for approval under ORS 390.322. Such plan shall specify the boundaries of the Willamette River Greenway and the lands and interests in land situated within such boundaries to be acquired in the development of such greenway. There shall be included within the boundaries of the Willamette River Greenway all lands situated within 150 feet from the ordinary low water line on each side of each channel of the Willamette River and such other lands along the Willamette River as the department and units of local government consider necessary for the development of such greenway; however, the total area included within the boundaries of such greenway shall not exceed, on the average, 320 acres per river mile along the Willamette River. The*

*Willamette River Greenway shall also include all islands and all state parks and recreation areas situated along the Willamette River; however, for the purposes of computing the maximum acreage of lands within such greenway, the acreage of lands situated on such islands and within such state parks and recreation areas shall be excluded.*

The proposed overall Greenway boundary is consistent with ORS 390.318(1) as follows:

- The proposed overall Greenway boundary includes land for which the City of Portland has identified an interest in acquisition. The boundary includes 15 sites for acquisition as restoration sites, 8 sites for acquisition as scenic viewpoints, and portions of the greenway trail alignment.
- The boundary includes all land situated within 150 feet of the ordinary low water line on each side of the Willamette River, and, as described above, the boundary includes all the land that the City of Portland considers necessary for development of the greenway in the North Reach.
- The boundary does not include more than 320 acres per river mile on average.

In summary, the amendments to the overall Willamette River Greenway boundary are consistent with the intent and purposes Goal 15 and ORS 390.310 through 390.368.



Joseph S. Voboril  
Admitted to practice in Oregon and Washington

1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, Oregon 97204  
503.221.1440  
503.802.2009  
Fax: 503.972.3709  
joe@tonkon.com

August 12, 2010

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED** and  
**E-MAIL** (amanda.punton@state.or.us)

Ms. Amanda Punton  
Oregon Department of Land Conservation and Development  
800 NE Oregon, #18  
Portland, Oregon 97232

Re: City of Portland Amendments to Willamette River Greenway Plan

Dear Ms. Punton:

On June 4, 2010, I sent you a letter wherein I requested, on behalf of our client, Gunderson LLC, notice of the time and place of the public hearing regarding the above-referenced amendments. We have now learned that the Land Conservation and Development Commission (the "Commission") will hold a public hearing to consider the above amendments on September 2, 2010. It is disappointing that you did not provide us the requested notice.

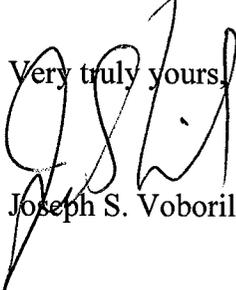
On behalf of our client, we are interested in participating in the Commission's review of the proposed amendments. However, in order to meaningfully participate, two items are needed:

1. The Statement of Need and Fiscal Impact states that the proposed boundary amendments affect 363 acres, with 51 acres proposed for addition and 312 acres proposed for removal from the City of Portland's Greenway Plan. Unfortunately, it is unclear where the affected acres are located. Please provide a map showing the 51 acres that would be added and the 312 acres that would be removed.
2. In the materials that have been posted with the Secretary of State, there is no indication as to what criteria will be applied by the Commission in its review of these amendments. Please provide us with the criteria that will be used by the Commission in this proceeding.

In addition to the above items, we request that a copy of the staff report be provided in a timely manner, at least a week in advance of the September 2 public hearing.

Ms. Amanda Punton  
Oregon Department of Land Conservation and Development  
August 12, 2010  
Page 2

If you have any questions about the above requests, please contact me as soon as possible.

Very truly yours,  
  
Joseph S. Voboril

JSV/cb

copy: David Harvey, Gunderson, LLC (via e-mail)

Susan Anderson

Director, City of Portland Planning and Sustainability

1900 SW Fourth Ave., Suite 1700

Portland, OR 97201-5350

Casaria Tuttle (via e-mail)

Philip Grillo (via e-mail)

Steven Pfeiffer (via e-mail)

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Following are portions of OAR 660, division 20, Goal 15, and ORS 390. Language most pertinent to the review is in italics.

### **OAR 660-020-0065 Amending Willamette Greenway Plan**

The following procedure is established for amending segments of the Willamette River Greenway Plan:

(1) A request for a Willamette Greenway Plan modification from the plan that had previously been approved by LCDC shall be submitted by the Oregon Parks and Recreation Department (OPRD).

(2) If the plan change is initiated by a city or county the request shall be made by council or board action in writing to the Oregon Parks and Recreation Department requesting submission of the amendment to LCDC for adoption of an administrative rule amending the Greenway Plan. This request shall include the proposed plan change, and reasons why such a plan change is necessary. The Oregon Parks and Recreation Department shall, within 30 days submit the request with comments to LCDC.

(3) [For plan changes initiated by OPRD, this is not relevant for this decision.]

(4) The LCDC shall provide public notice of the proposed plan amendment, including the time and place of a public hearing on the proposed plan amendment.

(5) The LCDC shall review and consider testimony regarding the proposed plan amendment, pursuant to the requirements of ORS Chapter 183.

(6) *The LCDC may adopt by rule the plan amendment if the plan change is consistent with the intent and purposes of the Willamette River Greenway as stated in Goal 15 of the Statewide Planning Goals and ORS 390.310 to 390.368.*

(7) The local jurisdiction shall adopt the Willamette Greenway Plan amendment by ordinance. Such ordinance shall not have an effective date which is prior to LCDC's adoption of the plan amendment.

(8) A copy of the approved plan amendment shall be sent to the Oregon Parks and Recreation Department, and the boundary change(s) shall be recorded on the OPRD and LCDC Greenway maps as well as the local Greenway map(s) in the appropriate County Recorder's office.

### **Goal 15:**

**Goal statement** - To protect, conserve, enhance and maintain the natural, scenic, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

### **Goal 15 C. Considerations and Requirements**

2. Boundary Considerations and Requirements – The temporary and preliminary Greenway boundaries shall be reviewed as to their appropriateness and refined as needed based on information contained in the inventories. *The refined boundary shall include such lands along the Willamette River as are necessary to carry out*

*the purpose and intent of the Willamette River Greenway through a coordinated management and acquisition program. [Emphasis added]*

#### **Goal 15 D. DOT Greenway Plan**

The DOT will prepare and keep current, through appropriate revisions, a Greenway Plan setting forth the state interests in the Greenway. The Plan will show;

1. The boundaries of the Willamette River Greenway ;
2. The boundaries of the areas in which interests in property may be acquired. These shall be depicted clearly on maps or photographs together with the nature of acquisitions such as fee title or scenic easements; the general public purpose of each such area, and the conditions under which such acquisitions may occur
3. Use Intensity Classifications for the areas acquired by the State for Greenway purposes; and
4. The locations of public access, either already existing or to be acquired.

The DOT plan and revisions thereto will be reviewed by the Land Conservation and Development Commission as provided by ORS 390.322. When the commission has determined that the revision is consistent with the statutes and this Goal it shall approve the plan for recording.

#### **ORS 390.310–390.368 Willamette River Greenway**

[390.310 provides definitions. 390.330–390.368 addresses acquisition of land, management of such land and OPRD’s authority to make rule. These sections are not directly relevant to this decision and are not included here.]

**390.314 Legislative findings and policy.** (1) The Legislative Assembly finds that, to protect and preserve the natural, scenic and recreational qualities of lands along the Willamette River, to preserve and restore historical sites, structures, facilities and objects on lands along the Willamette River for public education and enjoyment and to further the state policy established under ORS 390.010, it is in the public interest to develop and maintain a natural, scenic, historical and recreational greenway upon lands along the Willamette River to be known as the Willamette River Greenway.

(2) In providing for the development and maintenance of the Willamette River Greenway, the Legislative Assembly:

(a) Recognizing the need for coordinated planning for such greenway, finds it necessary to provide for development and implementation of a plan for such greenway through the cooperative efforts of the state and units of local government.

(b) Recognizing the need of the people of this state for existing residential, commercial and agricultural use of lands along the Willamette River, finds it necessary to permit the continuation of existing uses of lands that are included within such greenway; but, for the benefit of the people of this state, also to limit the intensification and change in the use of such lands so that such uses shall remain, to the greatest possible degree, compatible with the preservation of the natural, scenic, historical and recreational qualities of such lands.

(c) Recognizing that the use of lands for farm use is compatible with the purposes of the Willamette River Greenway, finds that the use of lands for farm use should be continued within the greenway without restriction.

(d) Recognizing the need for central coordination of such greenway for the best interests of all the people of this state, finds it necessary to place the responsibility for the coordination of the development and maintenance of such greenway in the State Parks and Recreation Department.

(e) Recognizing the lack of need for the acquisition of fee title to all lands along the Willamette River for exclusive public use for recreational purposes in such greenway, finds it necessary to limit the area within such greenway that may be acquired for state parks and recreation areas and for public recreational use within the boundaries of units of local government along the Willamette River. [1973 c.558 §1]

**390.318 Preparation of development and management plan; content of plan.**

(1) The State Parks and Recreation Department, in cooperation with units of local government that have lands along the Willamette River within their respective boundaries, shall prepare a plan for the development and management of the Willamette River Greenway as described in ORS 390.314. Such plan may be prepared for segments of the Willamette River and may be submitted as segments for approval under ORS 390.322. *Such plan shall specify the boundaries of the Willamette River Greenway and the lands and interests in land situated within such boundaries to be acquired in the development of such greenway. There shall be included within the boundaries of the Willamette River Greenway all lands situated within 150 feet from the ordinary low water line on each side of each channel of the Willamette River and such other lands along the Willamette River as the department and units of local government consider necessary for the development of such greenway;* however, the total area included within the boundaries of such greenway shall not exceed, on the average, 320 acres per river mile along the Willamette River. The Willamette River Greenway shall also include all islands and all state parks and recreation areas situated along the Willamette River; however, for the purposes of computing the maximum acreage of lands within such greenway, the acreage of lands situated on such islands and within such state parks and recreation areas shall be excluded.

*(2) The plan prepared pursuant to subsection (1) of this section, shall depict, through the use of descriptions, maps, charts and other explanatory materials:*

*(a) The boundaries of the Willamette River Greenway.*

*(b) The boundaries of lands acquired or to be acquired as state parks and recreation areas under ORS 390.338.*

*(c) The lands and interests in lands acquired or to be acquired by units of local government under ORS 390.330 to 390.360.*

*(d) Lands within the Willamette River Greenway for which the acquisition of a scenic easement, as provided in ORS 390.332, is sufficient for the purposes of such greenway.*

(3) The plan shall include the location of all known subsurface mineral aggregate deposits situated on lands within the boundaries of the Willamette River Greenway. [1973 c.558 §3; 1989 c.904 §19] [Emphasis added]

### **390.322 Submission of plan to Land Conservation and Development**

**Commission; revision, approval and distribution of plan.** (1) Following the preparation of the plan or any segment thereof under ORS 390.318, the State Parks and Recreation Department shall submit such plan or segment to the Land Conservation and Development Commission. The commission shall investigate and review such plan or segment as it considers necessary. If the commission finds that the plan or segment complies with ORS 390.310 to 390.368, it shall approve the plan or segment. If the commission finds revision of any part of the submitted plan or segment to be necessary, it may revise the plan or segment itself or require such revision by the department and units of local government.

(2) Upon approval of the plan for the Willamette River Greenway or segment thereof, the commission shall cause copies of such plan or segment to be filed with the recording officer for each county having lands within the Willamette River Greenway situated within its boundaries. Such plan or segment filed as required by this subsection shall be retained in the office of the county recording officer open for public inspection during reasonable business hours.

(3) If the plan for the Willamette River Greenway is prepared and approved in segments, the total of all such approved segments shall constitute the plan for the Willamette River Greenway for the purposes of ORS 390.310 to 390.368. *The department and units of local government, with the approval of the commission, may revise the plan for the Willamette River Greenway from time to time.*



**City of Portland  
Amended Greenway Boundary**

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property line of a river front parcel, and excludes land on the landward side of a barrier (railroad track).

Figure 1 Proposed Boundary Changes



**City of Portland  
Amended Greenway Boundary**

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property lines of several river front parcels, and excludes land on the landward side of a barrier (public street).

Figure 1 Proposed Boundary Changes



**City of Portland  
Amended Greenway Boundary**

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property line of several river front parcels, and excludes land on the landward side of a barrier (railroad track).

Figure 1 Proposed Boundary Changes



**City of Portland  
Amended Greenway Boundary**

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property line of several river front parcels, and excludes land on the landward side of a barrier (railroad track).

Figure 1 Proposed Boundary Changes



### City of Portland Amended Greenway Boundary

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property line of several river front parcels, and excludes land that is separated from the river by a barrier (public street), or other parcel.

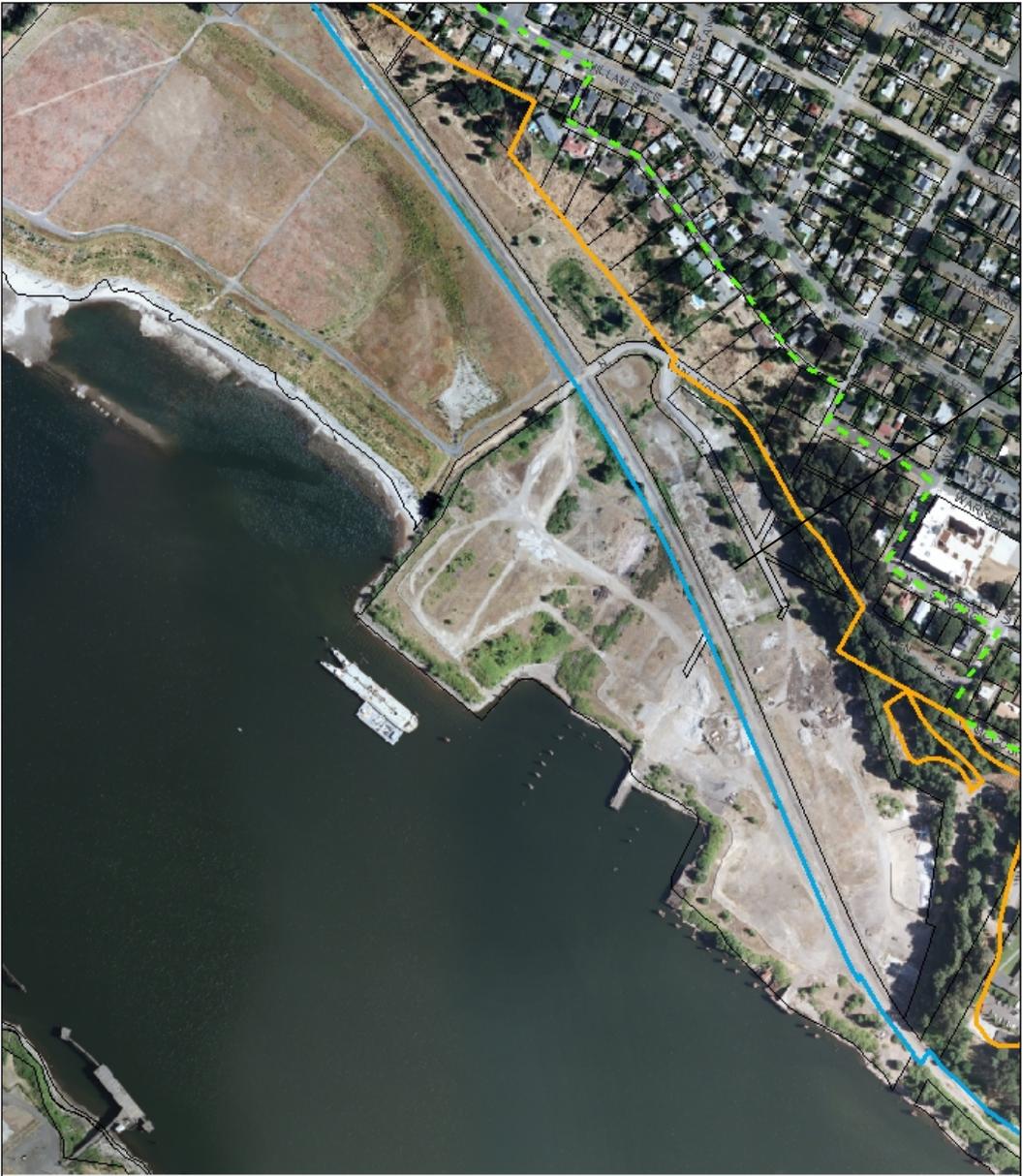
Figure 1 Proposed Boundary Changes



**City of Portland  
Amended Greenway Boundary**

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property line of several river front parcels, and excludes land on the landward side of a barrier (railroad track).



**City of Portland  
Amended Greenway Boundary**

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property line of several river front parcels, and excludes land on the landward side of a barrier (railroad track).

Figure 1 Proposed Boundary Changes





**City of Portland  
Amended Greenway Boundary**

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property line of several river front parcels, and excludes land on the landward side of a barrier (railroad track).

Figure 1 Proposed Boundary Changes



**City of Portland  
Amended Greenway Boundary**

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property line of several river front parcels, and excludes land on the landward side of a barrier (railroad track).



**City of Portland  
Amended Greenway Boundary**

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property line of several river front parcels, and excludes land on the landward side of a barrier (railroad track).

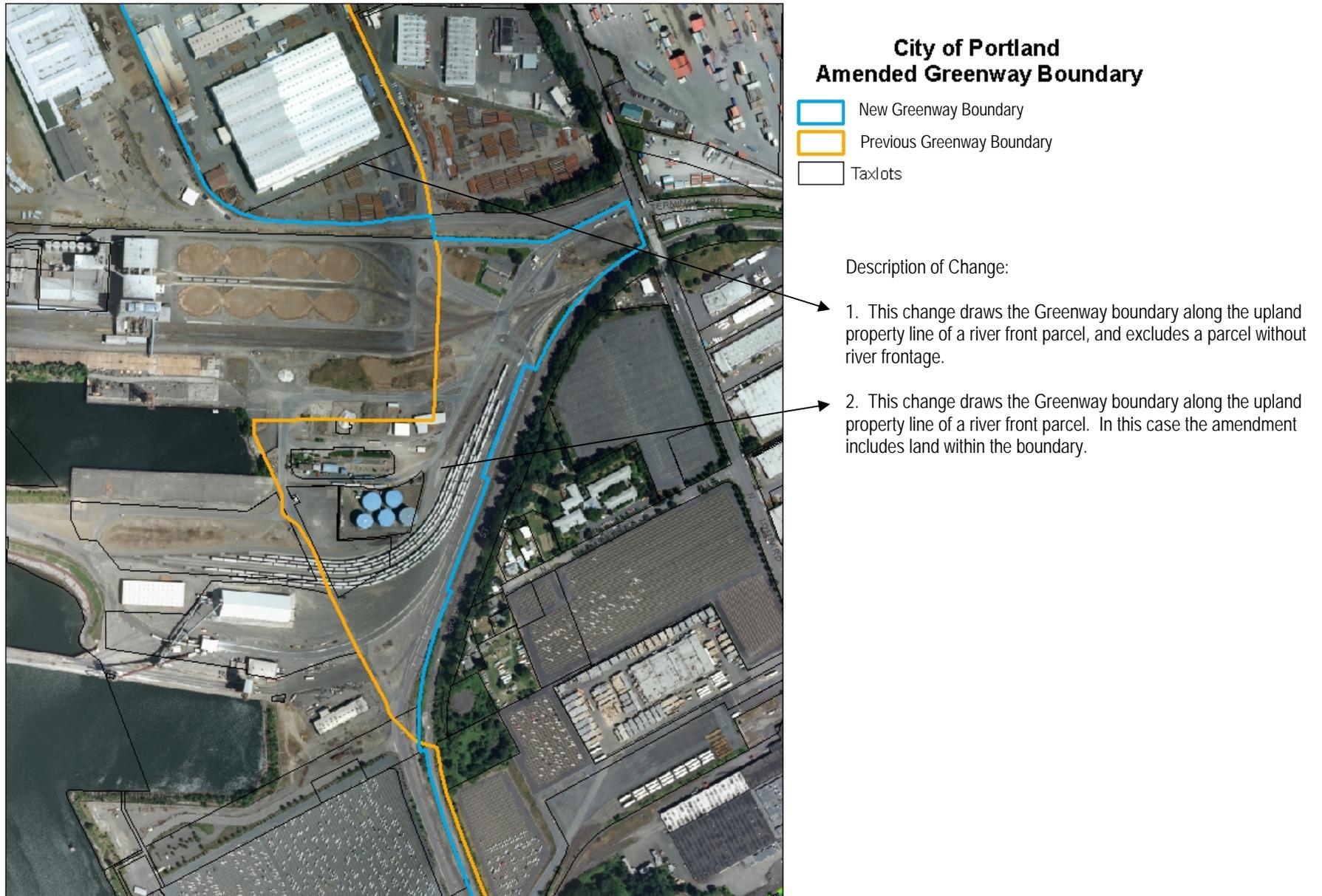


Figure 1 Proposed Boundary Changes

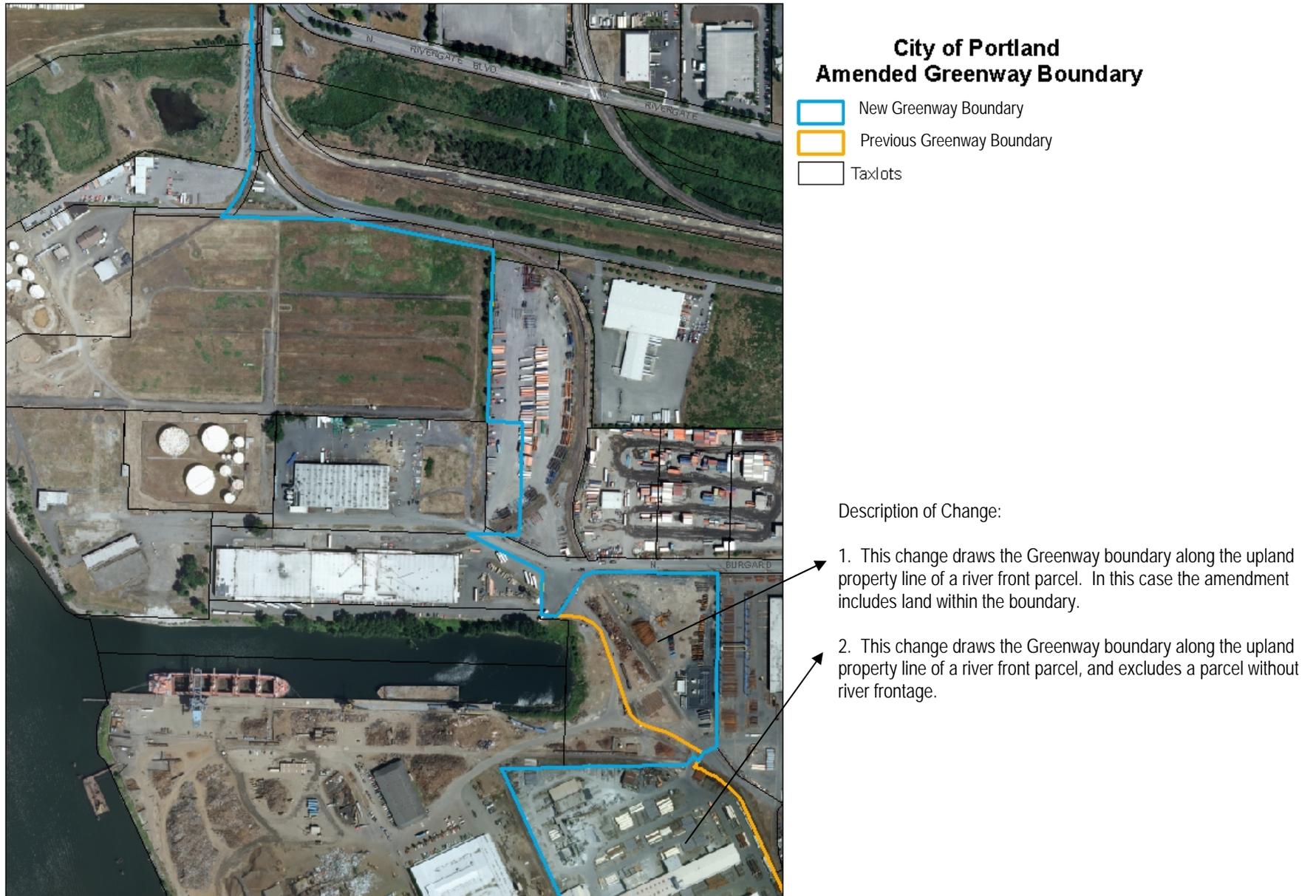


Figure 1 Proposed Boundary Changes

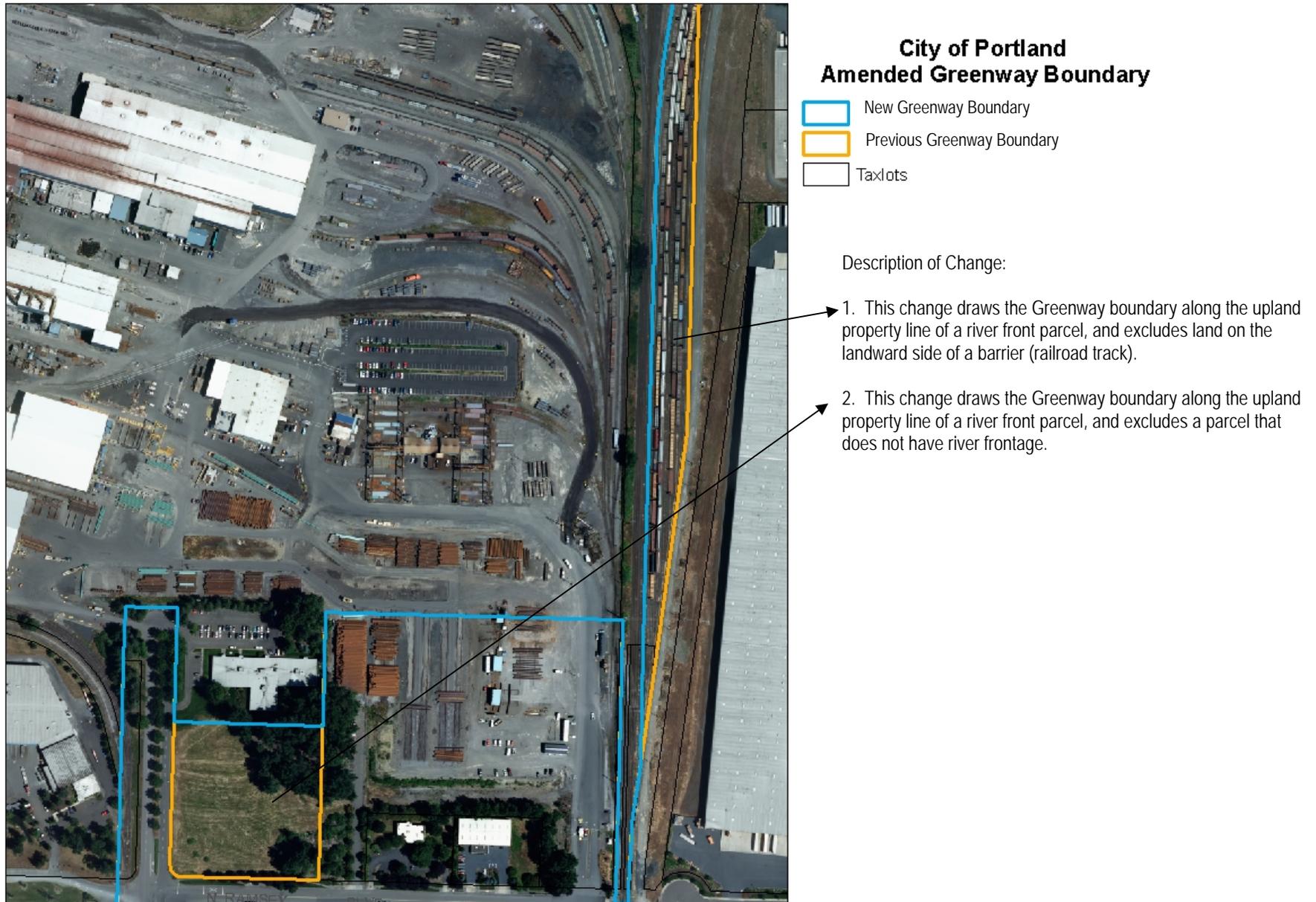


Figure 1 Proposed Boundary Changes



**City of Portland  
Amended Greenway Boundary**

-  New Greenway Boundary
-  Previous Greenway Boundary
-  Taxlots

Description of Change:  
This change draws the Greenway boundary along the upland property line of a river front parcel. In this case the amendment includes land within the boundary.



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503.221.1440

Joseph S. Voboril  
Admitted to practice in Oregon and Washington

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Fax: 503.972.3709  
joe@tonkon.com

October 5, 2010

**VIA CERTIFIED MAIL No. 7160 3901 9842 8079 6413 –  
RETURN RECEIPT REQUESTED**

Chair John VanLandingham and Members of  
the Land Conservation and Development Commission  
c/o Casaria Tuttle  
Rules, Records & Policy Coordinator/  
Assistant to Deputy Director  
Oregon Department of Land Conservation and Development  
635 Capitol Street N.E.  
Suite 150  
Salem, OR 97301-2540

Re: City of Portland's Proposed Amendments to  
Willamette River Greenway Plan Boundary ("Proposed Amendments")

Gentlemen:

This office represents Gunderson, LLC, the owner of property within the existing Willamette River Greenway Plan that is affected by the Proposed Amendments that were recently adopted by the City of Portland as part of the River Plan/North Reach Land Use Decision (Ordinance #183694). Our client participated in the City's process leading up to the adoption of the River Plan/North Reach Decision and has appealed that decision to the Land Use Board of Appeals. The case is entitled *Gunderson, LLC v. City of Portland*, LUBA No. 2010-039, and has been consolidated with appeals filed by Schnitzer Steel Industries, Inc. and the Working Waterfront Coalition, LUBA Nos. 2010-040 and 2010-041.

Since the Proposed Amendments are being initiated by a city, the Oregon Parks and Recreation Department has submitted the Proposed Amendments to the Land Conservation and Development Commission (the "Commission") for adoption of an administrative rule as required by OAR 660-020-0065(2). The purpose of this letter is to set forth the reasons why the Commission should not adopt the Proposed Amendments.

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**LAND CONSERVATION  
AND DEVELOPMENT**

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First, the Commission has not complied with its duties for rulemaking under the Comprehensive Land Use Coordination Statute. Under this statute, when the Commission promulgates an administrative rule, the Commission must address the requirements of ORS 197.040(1)(b) which require the Commission to:

- (A) allow for the diverse administrative and planning capabilities of local governments;
- (B) consider the variation in conditions and needs in different regions of the state and encourage regional approaches to resolving land use problems;
- (C) assess what economic and property interests will be, or are likely to be, affected by the proposed rule;
- (D) assess the likely degree of economic impact on identified property and economic interests; and
- (E) assess whether alternative actions are available that would achieve the underlying lawful objective and would have a lesser economic impact.

In the current rulemaking process, the first two factors are likely are not applicable since the Proposed Amendments do not affect other regions of the state or other local governments. However, the latter three factors are applicable and as such must be addressed by the Commission.

While the Notice of Proposed Rulemaking Hearing filed with the Secretary of State by the Department of Land Conservation and Development ("the Department") requested public comment "on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business," the August 20, 2010 Staff Report to the Commission does not include any such options and as such it does not appear that the Commission is prepared to address this concern before it adopts the Proposed Amendments. Moreover, the Staff Report lacks any discussion of the likely affected economic and property interests and the degree of economic impact on identified property and economic interests. This is not surprising since the City of Portland's August 13, 2010 memorandum to the Commission did not include any of the above-required assessments. However, without such an analysis, any rule adopted by the Commission will be invalid.

Second, the Statement of Need and Fiscal Impact ("the Fiscal Impact Statement") which the Department filed with the Oregon Secretary of State is deficient. In the Fiscal Impact Statement, the Department explained that in areas where the Willamette River Greenway boundary is proposed for expansion by the Proposed Amendments:

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"...there could be a significant negative economic impact on a property owner as a result of additional development limitations imposed in the greenway area."

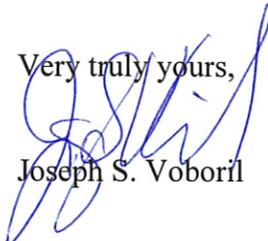
The concern expressed by the Department in the Fiscal Impact Statement is valid. Under the River Plan requirements adopted by Ordinance #183694, the 51 acres that would be included within the greenway area by the Proposed Amendments would be subject to a number of development limitations, including a new 15% vegetation standard. This negative impact should have been assessed and, as required by ORS 197.040(1)(b)(C) and (D), such assessments should have been included in the Fiscal Impact Statement filed with the Oregon Secretary of State.

The Fiscal Impact Statement also falls short of the requirements of the Oregon Administrative Procedure Act, which requires agencies to include with the notice of rulemaking the following:

"A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected."  
ORS 183.335(2)(b)(E).

Given the City of Portland's failure to provide the required assessments and other information which would have enabled the Commission to file the proper notices and be in a position to address the applicable statutory requirements, the Proposed Amendments should not be adopted.

Very truly yours,

  
Joseph S. Voboril

JSV:kw

(20 copies of this letter are enclosed)

cc: David Harvey (via e-mail)  
Steven L. Pfeiffer (via e-mail)  
Amanda Punton (via e-mail)



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OCT 06 2010

LAND CONSERVATION  
AND DEVELOPMENT

Steven L. Pfeiffer  
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FAX: (503) 346-2261  
EMAIL: SPfeiffer@perkinscoie.com

October 5, 2010

**VIA E-MAIL AND FIRST-CLASS MAIL**

Chair John VanLandingham and  
Members of the Land Conservation and Development Commission  
635 Capitol Street NE  
Suite 150  
Salem, Oregon 97301-2540

**Re: Amendment to Willamette River Greenway Boundary**

Dear Chair VanLandingham and Members of the Commission:

This office represents Schnitzer Steel Industries, Inc. regarding the City of Portland's adoption of the River Plan for the North Reach of the Willamette ("River Plan/North Reach") and the corresponding amendments to the Willamette Greenway boundary that are currently before the Commission. The proposed amendment would add approximately six acres of Schnitzer's property to the greenway boundary, which would create significant impediments to future industrial use of that land. This letter provides background regarding the nature and impacts of the City's River Plan amendments, and identifies specific shortcomings in the City's request for action by the Commission regarding amendments to the greenway boundary.

On April 15, 2010, the City of Portland adopted Ordinance No. 183694, which amends the City's comprehensive plan and zoning maps to implement the River Plan/North Reach. The River Plan is the first update to the City's Willamette Greenway Plan in 20 years, and the North Reach of the Willamette includes the majority of the working industrial area of the Willamette River, from roughly the Fremont Bridge to the Columbia River. The area is designated as an Industrial Sanctuary on the City's comprehensive plan map, and is designated on the Metro Title 4 map as a "Regionally Significant Industrial Area."

The North Reach is a critical part of the City's industrial land base. Unfortunately, the City's proposed amendments to the Willamette Greenway Plan impose unworkable restrictions on existing and future industrial uses in this significant industrial area. Notably, properties that are included within the amended greenway boundary will be subject to new "vegetation

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enhancement" standards that require 15% of industrial sites to be landscaped. The plan also imposes new use restrictions that would prevent any industrial uses that are not river-dependent or river-related. The river-dependent and river-related requirements cannot be removed without going through a "river review" process that would require the property owner to demonstrate that the property is unsuitable for river-related or river-dependent uses.

The City's proposed amendments will have significant impacts on the ability of Schnitzer and other property owners to use their industrial properties for industrial purposes. However, the primary justification offered by the City for adding new properties to the boundary appears to be simply a matter of convenience for the City: "The City wishes to avoid split-zoned parcels." August 30, 2010 Staff Report, page 5. This justification is hardly compelling, and is actually somewhat strange, particularly given the dramatic effects of the River Plan amendments on industrial uses. Split-zoning is a common occurrence that is not particularly difficult to implement, and is certainly not a sufficient justification for the imposition of new regulatory restrictions of this magnitude.

The City's plan amendments have been appealed to LUBA by a coalition of major industrial property owners and businesses in the North Reach area, including Schnitzer Steel and Gunderson LLC. These property owners have significant concerns regarding impacts on existing and future industrial uses in the North Reach. Briefing at LUBA will be complete on November 2, 2010, and a final opinion is expected by the end of the year.

**1. The greenway boundary amendment is an amendment to Goal 15.**

The City is proposing to amend the mapped boundaries of the Willamette River Greenway. The greenway boundary was adopted by LCDC as part of Goal 15, which provides that "the Greenway Program shall include: (a) Boundaries within which special greenway considerations shall be taken into account." An amendment to the greenway boundary is necessarily an amendment to Goal 15. The mapped greenway boundary is the equivalent of a comprehensive plan map designation, in that an amendment to the plan map necessarily amounts to an amendment to the comprehensive plan. The August 30, 2010 staff report to the Commission correctly notes that the City must obtain Commission approval of the proposed amendment because "[a]lthough a locally approved post-acknowledgement plan amendment is sufficient for changing some elements of a local greenway implementation, the boundary on the City comprehensive plan map must be consistent with the boundary adopted by the Commission." Staff Report, page 3.

The Commission is being asked to amend the boundaries of the greenway, which is the key element of the entire Goal 15 greenway program. Unlike other elements of the Greenway Program, the City may not merely adopt its own amendment to the map, but must obtain

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Commission approval in order to change the boundary. That approval by the Commission is an amendment to Goal 15. The Department is incorrect in its conclusion that the Commission may adopt this amendment through a simple rulemaking process. Rather, the Commission is required to adopt this boundary change through an amendment to Goal 15, which under ORS 197.245 requires application of the statutory process set forth at ORS 197.235 and 197.240. As explained by the Oregon Supreme Court:

"The goals are rules within the meaning of ORS 183.310(8), but different procedures are specified for goal preparation, adoption and amendment, see ORS 197.235 to 197.245, than are specified for promulgation of rules under the Administrative Procedures Act, ORS 183.310 to 183.500. This distinction in procedure has led the Court of Appeals to conclude that the goals occupy a preferred position over LCDC rules. See *Willamette University v. LCDC*, 45 Or. App. 355, 374 (1980). *1000 Friends of Oregon v. Wasco County*, 299 Or. 344 (1985).

Because of the "preferred position" held by the goals, the proposed amendment by the Commission of the Goal 15 map must satisfy the more extensive procedural requirements for amendment of the goal, and the typical notice and comment rulemaking provisions of the APA are insufficient.

## **2. The boundary amendment does not comply with Goal 9.**

The City's proposed amendment would add approximately six acres of Schnitzer's property to the Willamette River Greenway. This area is shown on page 15 of Attachment B to the August 30, 2010 staff report. Under the City's new River Plan requirements, 15% of that land is thereby removed from industrial use and must be dedicated to "vegetation enhancement." This property is part of a regionally significant industrial area and the City's Goal 9 inventory of industrial land.

The City's decision and the materials presented to the Commission fail to demonstrate that the impacts of the greenway boundary amendments are consistent with Goal 9. This amendment effectively converts industrially zoned land to non-industrial uses and reduces the supply of industrial land. The Commission has been provided no information by the City to demonstrate that the Goal 9 implications have been considered, or that this boundary amendment is consistent with the requirements of Goal 9.

The City's failure to adequately consider Goal 9 is manifest in the findings adopted by the City in support of the River Plan/North Reach amendments. The new standards adopted by the City that will apply within the greenway boundary ensure that hundreds of acres of land zoned for heavy

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industrial use along the North Reach will not be developed for Goal 9 uses. The decision also expressly changes the plan designation of a 42-acre site from Industrial Sanctuary to Mixed Employment. Under the Goal 9 rule, the City is required to undertake the analysis required by OAR 660-009-0010(4), which requires a demonstration that the amendment is consistent with the City's most recent economic opportunities analysis (EOA). The City has no adopted EOA, but relies on a *draft* EOA that is not part of the City's acknowledged comprehensive plan, which is not allowed under *D.S. Parklane Development, Inc. v. Metro*, 165 Or. App. 1 (2000) (local governments may not rely on studies that have not been adopted as part of their comprehensive plan when making plan amendments). The City merely cites a "vacant land analysis" from 1987 that is not an EOA, and does not provide the analysis required for an EOA under the applicable Goal 9 rules.

The proposed Goal 15 boundary amendment would add 51 acres to the Greenway Boundary, including approximately six acres of our client's property. Applying the City's new 15% vegetation standards just to that 51 acres, the proposed amendment would remove approximately 7.65 acres of land in the City's Industrial Sanctuary from being able to be used for industrial purposes. The City has not undertaken the analysis required under Goal 9 regarding the economic impacts of this decision.

**3. The City has failed to address ORS 197.040(1)(b).**

The City and the Department assert that the Commission may adopt this boundary amendment through a rulemaking process under the Oregon Administrative Procedures Act, ORS Chapter 183. As explained above, this is actually an amendment to Goal 15 requiring application of heightened requirements for goal amendments. However, if the Commission is going to proceed through a rulemaking process, it is required by ORS 197.040 to undertake certain analyses regarding the economic impacts of its rulemaking. The City has failed to provide the Commission with sufficient evidence or analysis to ensure consistency with the requirements of that statute.

Under ORS 197.040(1)(b), the Commission is required to undertake several different analyses when it carries out its rulemaking authority:

- (1) The Land Conservation and Development Commission shall:
- (b) In accordance with the provisions of ORS Chapter 183, adopt rules that it considers necessary to carry out ORS Chapters 195, 196 and 197. \* \* \* in designing its administrative requirements the Commission shall:

\* \* \* \* \*

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- (C) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;
- (D) Assess the likely degree of economic impact on identified property and economic interests;
- (E) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

The City has failed to provide the Commission with necessary information regarding economic impacts and alternative actions, and there is no basis on which the Commission can make the findings necessary to meet these statutory requirements.

**4. The City has failed to provide the Commission with information necessary to comply with ORS 390.318.**

The creation and management of the Willamette River Greenway is addressed in ORS 390.318, which creates specific requirements regarding what lands must be included in the greenway boundary. The City has provided the Commission with a series of aerial photos identifying what we assume to be the 16 specific locations where the greenway boundary is being relocated. However, those maps do not provide a basis on which the Commission may conclude that the requirements of ORS 390.318 have been met. That statute provides, in relevant part:

- (1) \* \* \* There shall be included within the boundaries of the Willamette River Greenway all lands situated within 150 feet from the ordinary low water line on each side of each channel of the Willamette River and such other lands along the Willamette River as the department and units of local government consider necessary for the development of such greenway.
- (2) The plan prepared pursuant to subsection (1) of this section shall depict, through the use of descriptions, maps, charts and other explanatory materials:
  - (a) The boundaries of the Willamette River Greenway;
  - (b) The boundaries of lands acquired or to be acquired as state parks and recreation areas under ORS 390.338;
  - (c) The lands and interests in lands acquired or to be acquired by units of local government under ORS 390.330 to 390.360;

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- (d) Lands within the Willamette River Greenway for which the acquisition of a scenic easement, as provided in ORS 390.332, is sufficient for the purposes of such greenway.

The Commission must conclude that the above-quoted statutory requirements are met in order to approve the City's proposed greenway boundary amendments. However, the City has not provided the Commission with the information that is necessary for the Commission to reach such a conclusion, such as the following:

- (1) Maps that clearly show the distance between the amended boundary and the ordinary low water line. The statute requires a minimum distance of 150 feet; however, several of the aerial photos provided by the City appear to relocate the boundary to locations that are quite close to the waterline. *See, e.g.*, pages 7-10 of City-supplied aerial photos. In the absence of any sort of scaled map or drawing, there is no factual basis on which the Commission may reach the necessary conclusion that 100% of the new boundary location is 150 feet from the ordinary low water line.

- (2) Maps that show the boundaries of lands acquired or to be acquired as State parks and recreation areas. The materials provided by the City do not address whether there are any lands within the proposed boundary amendments that are identified as future State parks and recreation areas.

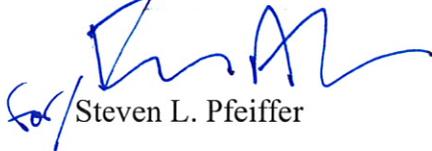
- (3) Maps that show the location of lands identified for public acquisition. Although it is not entirely clear, the written materials provided by the City appear to indicate that 17 new sites are being added to the City's greenway plan as sites that are identified for public acquisition, and that at least three of those new sites would be located within the new proposed greenway boundary. See pages 20-21 of Attachment B to August 30, 2010 staff report. However, there is no information in the written materials or on the aerial photos provided by the City regarding the location of sites identified for public acquisition inside or outside of the proposed boundary. If the City is adding new sites within the boundary and/or amending the boundary to include such new sites, the Commission needs to be provided with maps or other information sufficient to identify the location of such sites.

The City has failed to provide the Commission with the required evidence and analysis to demonstrate that all applicable statutory requirements have been met. Further, as explained above, the proposed greenway boundary amendment is a map amendment to Goal 15 that is subject to statutory requirements for goal amendments, and is also inconsistent with Goal 9 and

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the Goal 9 rule. For all of these reasons, the Commission should reject the proposed amendments.

Very truly yours,



for Steven L. Pfeiffer

SLP:crl

cc: Schnitzer Steel Industries  
Joe Voboril  
Phil Grillo