

RESOLUTION NO. 2445

ADOPTING FINDINGS IN THE MATTER OF THE APPEAL OF
THE GRANTING OF A GREENWAY CONDITIONAL USE PERMIT,
VARIANCE AND SITE PLAN APPROVALS TO
PERMAWOOD NORTHWEST CORPORATION

WHEREAS, on September 23, 1983, H. David Smith, on behalf of PermaWood Northwest Corporation, filed an application with the City of Albany for the approval of a greenway use permit, site plan review approval and variance approvals for the operation of a tile plant on certain property at the north end of Geary Street containing 5.28 acres located within the City of Albany; and

WHEREAS, a hearing was held on October 17, 1983, before the Albany Hearings Board which said hearing resulted in an approval of said requests; and

WHEREAS, the aforesaid approvals were appealed to the Planning Commission of the City of Albany and a hearing upon said appeal was held on December 5, 1983, at which time the decision of the Hearings Board was affirmed and the applications were again approved; and

WHEREAS, the aforesaid denial of the appeal has been appealed to the City Council of the City of Albany and a hearing upon said appeal was held on January 10, 1984;

NOW, THEREFORE, BE IT RESOLVED by this City Council of Albany that the decision of the Planning Commission of the City of Albany be and the same is hereby affirmed and the applications sought by PermaWood Northwest Corporation be and hereby are approved, and the appeal be and hereby is denied.

This decision is based upon Title 20 of the Albany Municipal Code adopted September 25, 1981, as Ordinance No. 4441, and subsequently amended October 1, 1982, by Ordinance No. 4528. The Land Conservation and Development Commission acknowledged the Comprehensive Plan and City of Albany Development Code on November 19, 1982. The applicable sections of the Comprehensive Plan and the City of Albany Development Code are set forth in the attached Exhibit "A", entitled Findings of Fact, which by this reference is incorporated herein as if fully set forth.

The decision to deny the appeal and affirm the decision of the Planning Commission was based upon the findings and conclusions set forth in Exhibit "A" establishing that the application did comply with the applicable sections of the Development

Code. All criteria were addressed and the decision to deny the appeal was based upon the applicant's ability to show compliance with applicable criteria.


In addition to the findings cited above, the City Council does hereby find that certain objections argued by the appellants can be mitigated or eliminated through adherence with certain conditions and further that the attachment of certain conditions is desirable to assure full compliance with applicable criteria. Therefore, the City Council does also hereby include as a part of this decision attached as Exhibit "B" which by this reference is incorporated herein and entitled "Conditions" and which shall be acknowledged by the developer's authorized signature prior to this decision becoming effective.

DATED this 25th day of January, 1984.



Mayor

Attest:



City Recorder

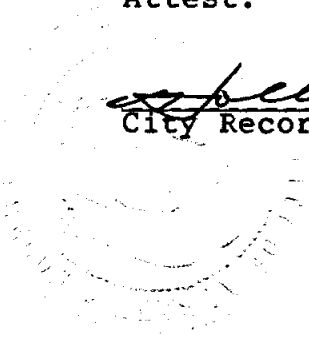


EXHIBIT "B" - CONDITIONS
(Amended 1-25-84)

CONDITIONS ATTACHED BY THE CITY COUNCIL IN THE MATTER OF THE PERMAWOOD APPEAL

The City Council does hereby amend the conditions of the Hearings Board and Planning Commission in the matter of the Permwood Appeal as indicated below. Amended sections are indicated in **bold**; all other conditions shall also apply as listed.

1. Complete Industrial Wastewater Discharge questionnaire, return to Ed Sconfienza, Public Works Wastewater Division, and obtain any permits required.
2. Comply with the Environmental Performance Standards outlined in Article 8 of the Albany Development Code.
3. Submit evidence demonstrating compliance with State, Federal and local environmental regulations and receipt of the necessary permits prior to occupancy of the buildings.
4. Submit building plans for all buildings and operational details to DEQ, Noise Division for review. Submit plans for noise abatement, including response to DEQ recommendations, to the Planning Department prior to occupancy. Conduct noise evaluation, with DEQ or noise consultant assistance, within first 30 days of operation. Submit report of evaluation to the Planning Department and make additional noise abatement modifications as necessary to comply with noise standards.
5. Submit a Grading and Drainage Plan to Public Works which shall be approved prior to the issuance of a building permit. Proposed grading and landscaping must accommodate existing drainage patterns for runoff from adjacent properties.
6. Provide a paved access 30' in length and 48' in width adjacent to Geary Street prior to occupancy of the buildings. Additional paving shall be required as the site is further developed.
7. Driveway approach to Geary Street shall be no wider than 48 feet.
8. Driveway approaches to Chicago Street and Alco Street shall be no wider than 32 feet.
9. Provide a paved access to Chicago Street/Linn Avenue 20 feet in length for the width of the driveway at the time the dedicated streets are improved to City standards.
10. All traveled portions of the site must be maintained in a dust-free condition by oiling or other means.
11. Meet all Uniform Building and Fire Code Regulations.
Additional information must be submitted by the applicant to the Building

& Fire Departments to determine if:

- a. Building is required to be sprinkled.
 - b. Additional fire hydrants and a larger water main are to be required.
 - c. Detection system in existing 9,000 square foot building is required to be modified to accommodate use.
 - d. Fire walls are to be required for exterior walls on existing and proposed buildings.
13. Provide locking devices on all buildings.
14. Prepare and record a legal instrument granting a minimum 35' easement measured from the fence line as shown on the revised Site Plan to the northerly property line adjacent to the Willamette River for public access to and/or from the river and the construction of a bike path and landscaping and buffering. Said easement area shall, prior to permits being issued for Phase II of the project, be deeded to the City in Fee Title. **In addition, an accurate legal description should be required for the entire perimeter of this proposed dedication which should be approved by the City before issuance of Building Permits.**

For changes to Conditions 15 through 19, see Condition No. 28.

15. ~~Provide a 40-foot landscaped buffer and screening strip adjacent to the southern boundary line of the subject property adjacent to Tax Lots 1001, 6805 and 6801, II-3W-5CA.~~
16. ~~Provide a 30-foot landscaped buffer strip adjacent to Geary Street.~~
17. ~~Provide a 40-foot landscaped buffer strip adjacent to Alco Street.~~
18. ~~Provide a 40-foot landscaped buffer strip adjacent to Chicago and Tax Lot 7200 if area is to be continued to be used as an open storage lot. If area which is zoned R-2 is used as a parking area for the proposed office building, a 15-foot landscape/buffer area would be required.~~
19. ~~Provide a 20-foot buffer strip adjacent to extension of Chicago Street and Tax Lot 6800, II-3W-5CA for a distance of 40 feet.~~
20. Install wheel barriers of cement concrete, asphalt, wood, or other materials to designate each required parking space.
21. All buildings and structures, including supporting members and all exterior mechanical equipment, shall be screened, colored, or surfaced so as to blend with the riparian environment. Colors shall be natural earth or leaf tones. Surface shall be non-reflective. Submit proposed colors with building permit plans.

22. Open storage lots shall be screened from any adjacent street right-of-way and the river. Screening shall be sight-obscuring and shall blend with the riparian environment. Fences to be "sight-obscuring" shall be at least 75 percent opaque when viewed from any angle at a point 25 feet away from the fence. Hedges shall be of an evergreen species which will meet and maintain year round the same standard within three years after planting. A sight-obscuring, landscaped berm 6 feet in height may also be use. Any fence or hedge shall be located on the property at the required setback line in the same manner as if such berm, fences, or hedge were a building.
23. Maintain 30' vision clearance triangle at entrance to Geary Street. Required landscaping in vision clearance area may not exceed 24" in height with the exception of trees trimmed between the heights of 2 and 8 feet.
24. The driveway approach to Geary Street shall be submitted to the City of Albany's Traffic Division for approval.
25. Alco Street access to be used for emergency vehicles and utility maintenance vehicles only.
26. Access to Chicago Street shall be for emergency vehicles only until such time that Chicago Street is improved to City Standards.
27. Submit Waiver of Remonstrance/Petition for Improvement for Chicago and Alco Street.
28. **Submit revised Landscape Plan which reflects amended landscape and screening areas as indicated on Exhibit 46, referred to in the hearing as the "Green Site Map".**
29. All future building and paving of the site shall be subject to Site Plan Review.
30. Consolidate existing tax lots on the site into the minimum number permitted by the County Assessor.
31. No building shall be constructed within 70 feet of the top of the bank of the Willamette River. Setback line shall be shown on the final site map.
32. The subject property shall be maintained and operated in continuing compliance with all applicable standards adopted by the Oregon Department of Environmental Quality (DEQ) or the **Greenway** Use Permit may be revoked after appropriate public hearings are held or other appropriate legal action taken as determined by the City Attorney.
33. Obtain all necessary fill permits for any fill occurring on the site **including submission of sufficient data to determine the average depth of fill and any other engineered data necessary to enable the Public Works Department to determine compliance with applicable standards.**
34. Submit Final Site Plan details demonstrating intended conformance with all applicable conditions of approval.

35. Required Landscape Plan must include an irrigation system Plan unless a licensed landscape architect or certified nurseryman submits written verification that the proposed plant materials do not require irrigation.
36. All landscaping shall be completed prior to start-up of plant operations or the applicant shall submit a landscape completion guarantee equal to 110% of the estimated cost of the required landscaping which shall be forfeited to the City of Albany if landscaping is not completed within one year of Plant operation start-up.
37. The developer shall submit to the Building Official a soils analysis of sufficient detail to assure compliance with the Uniform Building Code in terms of constructing a proper foundation for the cement silo based on capacity weight.
38. All approved plant materials shall be provided by the developer including those between the bike path and the fence on the northern portion of the property.
39. Any delivery and shipping activities, excluding refuse collection, shall be restricted to 7:00 a.m. to 6:00 p.m., Monday through Saturday .

ACKNOWLEDGMENT:

I, ¹⁴⁹⁷ David Smith, President and duly authorized representative of Permawood Northwest Corporation, do hereby acknowledge the above conditions and consent and agree to comply on behalf of Permawood Northwest Corporation with these conditions as stated herein and I recognize that failure to do so may result in the full enforcement powers of the City to require compliance in every detail.



David Smith

1-26-84
Date

BEFORE THE CITY COUNCIL OF ALBANY

In the Matter of the Appeal)	CASE NO. AP-02-83, AKA CU-06-83,
of the Granting of a Greenway)	AKA AP-04-83, AKA AP-03-83,
Conditional Use Permit,)	
Variance and Site Plan)	FINDINGS OF FACT
Approvals to PERMAWOOD)	AND CONCLUSIONS
NORTHWEST CORPORATION.)	
_____)	

GENERAL INFORMATION:

Applicant: PERMAWOOD NORTHWEST CORPORATION
P. O. Box 311
Philomath, Oregon 97370

Type of Request: Greenway Use Permit to operate a roof tile manufacturing plant with concurrent Variances and Site Plan Review and Flood Plain Review Approvals to construct additional buildings at the same height as the existing buildings and a silo for the storage of Portland Cement with attached pollution control devices.

Property Location: 525 Chicago Street and 531 Geary Street, and more generally described as that property lying south of the Willamette River, east of Geary Street, north of portions of Chicago and Linn Avenues, and west of Alco Street.

Total Land Area: 5.28 acres.

Assessor's Map and Tax Lot No.: 11-3W-5CA; Tax Lots: 1000, 6803, 6804, 6900, 6901, 7000, and 7100.

Neighborhood: Willamette.

Existing Comprehensive Plan Designation: Light Industrial (proposed use is consistent with either a light industrial or heavy industrial designation).

Current Zoning Designation: MH (Heavy Industrial).

Surrounding Zoning:

Property to the west across Geary Street is zoned OS (Open Space) and R-2 (Medium Density Residential); the property to the south, including the applicant's Tax Lot 7100, is zoned R-2 (Medium Density Residential); the property to the east across Alco Street is zoned OS (Open Space) and R-2 (Medium Density Residential) and Tax Lots 6805 and 1001 are zoned MH (Heavy Industrial).

Existing Land Use:

Cabinet shop and warehouse.

Historically, the proposed site has been used as a warehouse, cabinet shop, aggregate extraction and processing site, and as a concrete plant.

Surrounding Land Use:

The property is bounded on the north by the Willamette River. To the northwest is Bowman Park, a City park. On the west is Fletcher Plastics. To the southwest and along the southern portion of the property is a concrete tile plant. Along the southern boundary and over to the southeast portion of the property are residential uses. Along the eastern portion of the property is undeveloped land. Along the northeast portion of the property is undeveloped City-owned park land. Further to the southwest, south and southeast, are additional residential uses.

SITE PLAN REVIEW:

The following are Site Plan Review criteria established in Section 13.040 of the Albany Development Code:

CRITERIA:

- A. HOW THE ADEQUACY AND CONTINUITY OF PUBLIC FACILITIES IS SUFFICIENT TO ACCOMMODATE THE PROPOSED DEVELOPMENT. SUCH CONSIDERATIONS SHOULD INCLUDE MODIFYING THE PROPOSAL TO CONFORM WITH PUBLIC FACILITY PLANS OR UPGRADING EXISTING PUBLIC FACILITIES TO ACCOMMODATE THE PROPOSED DEVELOPMENTS.

UTILITIES:

PERMAWOOD'S EVIDENCE:

The evidence submitted by Permawood indicates that facilities for water, electricity, natural gas, and sanitary sewer already exist on the property. Permawood intends to utilize the existing facilities and to upgrade where necessary existing facilities to meet applicable standards.

OPPONENTS' EVIDENCE:

The opponents offer no evidence on this issue except for the sanitary sewer which is addressed later in this document.

CONCLUSION:

The City Council concludes that with the exception of the sanitary sewer, the uncontroverted evidence indicates adequate utilities are available to accommodate the proposed development.

DRAINAGE:

PERMAWOOD'S EVIDENCE:

The evidence in the record indicates that the subject site accepts drainage from public rights-of-way and private property to the south. Permawood indicates that it will utilize the grading and leveling portion of its plan to continue the water flow from the south to the north and also to slope the property from the west to the east following the general contours currently existing on a majority of the property. The Permawood plan is to have the ground water absorbed through the currently existing soils, consisting primarily of gravels and sands. The evidence indicates there is no ponding on the site except on the areas improved for roadways where man-placed substances inhibit the flow of water through the existing gravels and sands. These areas will be eliminated through the development of the site. Permawood's testimony indicated that in the event the site would become further paved, the water would be channeled to the north

and then allowed to be absorbed into the sand and gravel. Any additional water would be allowed to flow to the northeast corner of the property and from there allowed to flow into the natural drainage existing on the property to the northeast. As indicated within the record, a portion of the property to be dedicated for bike path and related uses has been expanded to 95 feet in the northeast corner of the property in order to facilitate City plans for the bike path crossing the natural drainage way and to provide sufficient land mass to allow the natural drainage way to flow under the proposed bike path. The evidence further indicates that the City staff recommends that PermaWood work with the City staff to develop a master drainage plan for the site to prevent excessive costs in developing future facilities.

OPPONENTS' EVIDENCE:

A review of the record, specifically Opponents' Summary of Evidence and Legal Argument, indicates that the opponents have not identified a drainage problem as one of the issues they wish to contest.

CONCLUSION:

The City Council concludes that the preliminary drainage plan as explained by PermaWood will prevent ponding on the property. By working with the City staff, a master plan will insure proper drainage. See Exhibit "B".

SANITARY WASTEWATER:

PERMAWOOD'S EVIDENCE:

PermaWood proposes that its sanitary wastewater would be disposed of through the existing sewer system on the site which connects to the sanitary sewer which runs through the site. The sanitary sewage would be discharged through the existing manhole and the existing connection. City staff recommends that an existing manhole and an existing connection be utilized if possible. The evidence submitted by PermaWood indicates that it based its figures on 400 gallons per day, or slightly less than 30 gallons per employee for the 15 employees who will work on the site. These employees will work over a 24 hour period. This will allow a flow over the entire day.

OPPONENTS' EVIDENCE:

Opponents' testimony on sanitary wastewater indicates a disagreement with PermaWood as to the amount of sanitary wastewater that would be used each day. The opponents' testimony indicated that

there would be 600 gallons a day that should be attributed to sanitary wastewater based upon a formula of 30 gallons per employee per day for the total of all Permawood employees whether employed on site or elsewhere.

CONCLUSION:

It is the conclusion of the City Council that the difference between the projections is minimal and of no impact of the whole City system. It appears that the projections by Permawood seem reasonable. Further, there has been no indication by the staff, or the opponents, that the difference of 200 gallons per day would make any significant impact on the City sewer plant. In fact, it is the conclusion of the City Council that in reviewing the testimony under this section, and the next section under industrial wastewater, that the discharge from the site will not have an adverse impact on the capacity of the sewer system of the City of Albany.

INDUSTRIAL WASTEWATER:

PERMAWOOD'S EVIDENCE:

Permawood proposes to discharge its wastewater into the City sewer system. The evidence submitted by Permawood indicates that it will utilize approximately 3,200 gallons per day of industrial wastewater. Permawood has furnished to the City Engineer's Office its chemical breakdown of the chemical content of its industrial wastewater. Permawood's evidence indicates that there will be no chemical oxygen demand, a minimal amount of biological oxygen demand, estimated at least then 1/10th of a pound per hour caused by incidental contact with small amount of woodchips. The evidence indicated that pH would be approximately 8.0, with neutral being 7.0, caused by incidental contact with the Portland cement. The largest chemical compound in liquid form in the industrial discharge would be salt (NaCl) which would have a maximum content of approximately one pound per hour. All 3200 gallons of industrial wastewater would be discharged from the cold water cooling system inside the main building of the plant. This cold water cooling system is utilized to reduce the heat of the molded product from approximately 160° F. to a temperature of about 80° to 90°. The water would be continuously cooled through a cooling tower system to enable the tile to be removed from the cooling system and be handheld. The cold water cooling system would be self-contained and separate and apart from any other chemical stored on the property. The water in the cooling system would have to be intentionally discharged in order to get into the sewer system of the City of Albany.

The evidence submitted by Permawood indicates that each of the chemicals on the site are contained in separated areas. The chemical water glass is contained in the tank outside the building and the tank is surrounded by a protective moat. Hydrochloric acid is stored in 55 gallon drums in a protected area inside the plant building. Also inside the plant building and spacially separated from the acid storage area is the water coolant system. The self-contained system is one of only two discharge points into the City sewer system. The only other discharge point being the toilet and wash facilities.

The evidence indicated that the office of the City Engineer, after review of the chemical content of the wastewater, recommended to Permawood that it should obtain permits to allow discharge directly into the Willamette River.

Permawood's testimony indicated that in conferences with the City Engineering staff, that the City Engineering staff indicated that there was sufficient capacity in the sewer system to process the volumes of waste to be discharged into the sewer system.

OPPONENTS' EVIDENCE:

Opponents' evidence, on this issue, is summarized beginning on page 5 of the document entitled Summary of Evidence and Legal Argument ending on page 9. The major portion of opponents' argument may be summarized as identifying for the City Council the fact that various federal regulations, state laws and provision of the City ordinance must be complied with in discharging industrial wastewater. Opponents also identify cement, toluene, phenol, and chlorinated phenols as theoretically possible toxic substances produced on site. Opponents also indicated that the industrial wastewater may be polluted from the following other sources: heat pollution, unacceptable pH levels due to lime stored and used on the site, and other general discharges, including sand, sulfite, spent lime, wood, plastics, and substances which may cause fires or be explosive. Opponents' expert has indicated that she is not familiar with the manufacturing process of Permawood and has not studied the manufacturing processes, nor has she inquired to obtain information from anyone who is knowledgeable about the process nor reviewed the patent documents. The opponents' testimony indicates that cement may enter the City sewer system by the cement silo collapsing and falling onto the manhole which exists on the property. The manhole would then be filled with cement allowing the discharge into the City sewer system. The opponents provided additional evidence which indicates that in periods of heavy rainfall the sewer system, when combined with storm water, overflows. The opponents presented pictorial evidence of an overflow existing on the City park land

to the west of the subject site. The exact locations of the manhole covers identified by the opponents are shown on the western boundary of the survey and contour map submitted by Permawood.

CONCLUSION:

Permawood's testimony indicates that it has limited possible access into the sewer system at only two points. The first point is the discharge into a sanitary sewer system from toilets and wash basins. No believable evidence has been presented which would indicate that any toxic substance of any significant quantity will be introduced into the sewer system through those sources. The only other discharge source, the cooling water system, does not appear to contain any of the hazardous chemicals. The temperature of the water appears to be of such moderate level that the products taken from it will be cooled to the point where they can be handheld. Thus, the likelihood of thermal, or heat contamination, appears not to be evident. In summary, Permawood has disclosed the amounts and the chemical content of its discharge into the sewer system. The amounts and the chemicals discharged do not appear to place a burden on the existing sewer system. Allegations of the introduction of toxic chemicals and other problems raised by the opponents have not been reasonably substantiated. While the City is concerned with and as indicated by the exhibits on file, is working on solutions in the separation of storm sewers from sanitary sewers, that problem is not attributable to Permawood. The opponents' exhibits indicate that DEQ is aware of the problems with the City of Albany sewage system and are aware that the City is working on solutions. DEQ has not required, nor even suggested, that the City of Albany will be required to place a moratorium on sewer connectors. The Council concludes that it can allow a connection to the City sewer system without problems to the system. The evidence does not indicate any sewage overflow on Permawood's property. The evidence does not indicate that the identified point of sewage overflow would be further affected due to the fact that the manhole discharged into by Permawood is located down stream from the one identified as an overflow point by the opponents. In addition, this discharge will be governed by the City industrial waste requirements which will involve periodic monitoring of the amount of effluent and its content. If a problem were detected, the problem could be cured or discharge into the system terminated, thus stopping the plant operation.

In conclusion, we find it significant that a review of the data submitted by Permawood led the City Engineering staff to conclude that Permawood could qualify for the variety of permits necessary

in order to discharge their industrial wastewater directly into the Willamette River.

ROAD SURFACE:

PERMAWOOD'S EVIDENCE:

The evidence in the record indicates that Permawood plans to use Geary Street as its main access to and from the site. Further, the record indicates that the Hearings Board restricted Permawood to using access onto Alco and Chicago Streets only in emergency situations. Permawood has sought a variance in order to place its access at the widest part of Geary Street in order to insure safe access to and from Geary Street. Permawood's testimony indicates that the City Engineering staff believes Geary Street has been designated as a main collector and built to standards necessary to carry industrial traffic. A review of the staff report indicates no expressed concern that Geary Street would be unable to handle the traffic at the Permawood site.

OPPONENTS' EVIDENCE:

Opponents indicate that Geary Street would not be capable of handling "heavy" industrial truck traffic at the point it narrows going into Bowman Park. Opponents advocate that the City should conclude that traffic should not travel through the part of the Permawood property zoned R-2 and that any access onto Geary Street should be 40 feet north of the line where a westerly extension of Linn Avenue would intersect Geary Street. Opponents' expert witness also indicated that Geary Street would be damaged by the heavy truck traffic. Opponents' expert admitted that she had not reviewed the engineering design for Geary Street, nor was she aware of the engineering standards used to design Geary Street. The expert admitted her contact with Geary Street was based upon her traveling on the City street the Saturday before the City Council hearing.

CONCLUSION:

For the reasons discussed more specifically in the segment dealing with the procedural objections raised by the opponents, the City Council does not construe its own ordinance to mean that Permawood is forbidden from driving through the portion of its property designated as R-2 in order to make safe access onto a fully improved street capable of handling the industrial traffic to the plant site. The Council also concludes that the credible evidence indicates that Geary Street will be able to handle the traffic.

In summary, Permawood has offered convincing evidence that it has already developed or is able to expand all necessary public facilities to operate the site in conformance with applicable regulations. A review of opponents' evidence does not offer any convincing evidence that the public facilities are insufficient to accommodate the proposed development.

CRITERIA:

- B. HOW ANY SPECIAL FEATURES OF THE SITE (SUCH AS TOPOGRAPHY, HAZARDS, VEGETATION, WILDLIFE HABITAT, ARCHAEOLOGICAL SITES, HISTORICAL SITES, ETC.) HAVE BEEN ADEQUATELY CONSIDERED AND UTILIZED.

PERMAWOOD'S EVIDENCE:

The special feature of this site is its abutment to the Willamette River. The evidence indicates that the natural vegetation along the river will be retained. The landscape plan submitted by Permawood clearly indicates that the existing natural vegetation will be enhanced by additional plantings. The record is equally clear that there are no archaeological or historical sites on the subject site. Permawood's evidence indicated that there were no significant wildlife habitat sites on the site. That if such a wildlife habitat site existed, it would be along the river bank in an area which is not to be disturbed by the development of the site. The development of the site is designed to protect the bank area by the addition of vegetative screening and bike path area indicated on the site plan. Further, existing City regulations, see Code Section 6.140, restrict all building from inside the floodway line which runs across a portion of the property leaving at a minimum, more than 100 feet of land between the water's edge and the floodway line.

OPPONENTS' EVIDENCE:

Opponents, in their written summary of evidence and legal argument, begin their discussion of this criteria on page 10 of said document and conclude on page 11. However, the discussion there does not discuss the special features of the site but rather discusses concerns of the opponents in regards to hazards which may exist on the site. Therefore, opponents' concerns will be discussed in other applicable portions. Opponents also offered oral testimony of the existence of herons, other bird life, and fish life along the bank of the river. A review of the testimony and exhibits of the opponents indicates that the fish life occurs at the bank of the river and that the bird life has been identified in the park area and along unspecified bank areas of the river.

CONCLUSION:

In conclusion, it appears that PermaWood has made provisions for maintaining and enhancing the natural conditions along the Willamette River and providing a suitable buffer zone between industrial activities and the natural vegetation on the Willamette River. They have done so by providing an area for public usage which is 30 feet at its narrowest and 95 feet at its widest, beginning at a point at the top of the riverbank and further designated on the site plan map. This area, plus the additional restrictions caused by the floodway lines intersection through the property, insure that this criteria has been well met. It is also noted that the opponents have not identified any wildlife habitats in the proposed area which would be damaged by development of the site.

CRITERIA:

- C. HOW THE SIZE, SITE AND BUILDING DESIGN AND OPERATING CHARACTERISTICS OF THE PROPOSED DEVELOPMENT ARE REASONABLY COMPATIBLE WITH SURROUNDING DEVELOPMENT AND LAND USES AND ANY NEGATIVE IMPACTS HAVE BEEN SUFFICIENTLY MINIMIZED.

PERMAWOOD'S EVIDENCE:

The photographic evidence submitted by both the opponents and PermaWood indicate that this is a site where the land has undergone several manmade changes. The site has only been minimally developed with the construction of two buildings and suffers from abrupt contour changes reflective of the decades of aggregate extraction and concrete processing which occurred on the site. The brown-colored steel-sided building currently existing on the site is a fully insulated structure which was recently constructed in accordance with a City-issued building permit to be utilized as a warehouse. The evidence in the record indicates that the other existing building is a concrete block building which currently houses Lane Bros. Cabinet Shop. and is proposed to be used as an office and repair and maintenance center. The existing steel building will house the manufacturing activities. The manufacturing process takes the various components into a sealed ribbon blender where the components are mixed. Each of the various components, wood fiber, Portland cement, water glass, water, hydrochloric acid, and other minimal ingredients, are mixed in the enclosed ribbon blender. The mixed ingredients are measured into an aluminum mold which is then pressed, heated to a temperature approximating that of a dishwasher, cooled in a separate system, and then the individual molds are opened and the tile removed. The tile is then drilled, color coated, allowed to

dry and then transported for storage in the yard. Storage in the yard is important in order to allow the tile to reach its maximum strength. The evidence indicates that Permawood has made the following engineering design efforts to minimize impacts:

Location and Storage of Chemicals -- The chemical, water glass, a liquid material, is stored in a specially designed tank on the exterior of the building. Surrounding the chemical tank is a retaining wall which has been designed to contain the volume of the tank to insure that in the unlikely event of a rupture of the tank that the chemical would be contained within the retaining wall, thus preventing accidental spills beyond the designated area. Hydrochloric acid is stored in barreled containers inside the manufacturing facility. This area is separate and apart from the storage of other chemicals. When utilized, the hydrochloric acid is metered from a special container into the ribbon blender to act as a neutralizer. The ribbon blender is a sealed vessel thereby preventing accidental spills of hydrochloric acid into the blender. The third chemical is the Portland cement, which is stored in a silo on the northern exterior of the manufacturing plant. The silo is a commercially designed container specifically engineered for the storage of Portland cement. The silo shape has been specifically designed in order to allow the proper hydraulic flow of dry cement from the bottom of the silo without clogging. The approximate dimensions of the silo itself is 10 feet in diameter and 30 feet in height. At the bottom of the silo is a cone which allows the cement to gravity feed into the plant. There it is placed in measured amounts into the ribbon blender mixing with the wood fibers, water and chemicals. A computer monitors the volume of compounds placed in the blender, maintains the blending process, and then monitors the amount of mixed product, in wet form, placed into a mold.

Air Pollution -- The evidence introduced by Permawood indicates that air pollution could be caused from two sources on the site. The loading of cement into the silo and the processing of the wood chips. Permawood's evidence indicates that the use of state-of-the-art pollution control devices, such as a bag house, will allow them to meet DEQ and EPA standards. Permawood's testimony indicated that they had already received initial approval from DEQ to utilize the type of pollution control system designated in the testimony. Opponents offered a written exhibit from DEQ which on its face indicates that DEQ has no objections to the pollution control device utilized for the cement tower. Permawood's evidence indicates that it intends to construct a new structure on the site as designated on the site plan. This new structure would be a steel-sided insulated building which would house the chip storage and processing. Wet wood chips would be unloaded inside this building. Inside the building, there would

be a concrete block room which would contain the machinery necessary to reduce the wood chips to the wood fiber to be utilized in the process. This area would also contain the system utilized to transport the processed fiber to a bin which would be located near the northwest corner of the manufacturing building and directly west of the cement silo immediately adjacent to the north wall of the manufacturing building. The wood fibers would flow by gravity from the storage silo through a sealed tube into the ribbon blender where it would be mixed with the remainder of the product.

Noise -- Permawood's evidence indicated that noise reduction factors had taken place from the very engineering of the plant, as well as the plant layout. The manufacturing process has been engineered to reduce noise impacts at all levels. All facilities inside the manufacturing building have been designed to reduce noise impacts. Lightweight aluminum molds insure that extraneous banging will not occur without damaging the molds, thereby causing severe economic hardship to the manufacturing activity. In addition, the conveyors and other mechanisms have been designed to operate as quietly as possible. By locating the manufacturing activity within the insulated building, additional efforts have been made to insure that the sound is buffered as much as possible from the residential area. The location of noise sources as far as possible from the residential neighborhood has been made in the placement of the buildings and by placing the buildings between noise sources and the neighborhood. The chip storage and processing building is intended to house noise sources within it thereby minimizing noise impacts. As indicated in the bag house brochure submitted into evidence, the bag house itself is enclosed. Permawood has indicated that the only exterior on-site noise sources will be vehicular oriented. To minimize the sound impacts, the vehicle traffic plan has been designed to move the motor vehicles from Geary Street to a loading area north of the existing buildings, or into the to-be-constructed chip storage and processing building. When the initial application was filed, Permawood indicated that it would utilize a lift truck requiring a gas motor and muffler system on the site. As the hearings progressed, evidence at the City Council hearing by Permawood indicated that it would now use an electric lift truck which did not require a muffled exhaust or a safety beeper, thereby further minimizing noise impacts. Permawood acknowledges that it must meet OSHA, DEQ, EPA and City noise standards in the operation of its plant. Permawood's evidence also indicated that at the time it seeks building permits, the buildings would be constructed to standards contained within the applicable uniform building code and related structural and electrical and plumbing codes.

OPPONENTS' EVIDENCE:

This criteria provides the opportunity to set forth most of the evidentiary concerns raised by the opponents. Opponents' evidentiary concerns are contained in the document entitled Summary of Evidence and Legal Argument, pages 10 through 13. Opponents' evidence can be classified into two general areas: potential hazards and noise concerns. Opponents' evidence indicates that its expert has concern that in the event of a disaster, such as an earthquake, as the area is a Class II earthquake zone as defined by the Uniform Building Code, cement may enter into the sewage interceptor, or, in the event of a flood, toxic substances could be washed out of the manufacturing plant and into the river. Opponents also offered the concern that DEQ's inquiry as to fugitive dust had not been answered. Opponents also offered testimony indicating that escaping cement dust would have an adverse impact on surrounding vegetation and offered as support the expert witness's visual evaluation of a site in Clackamas County where large quantities of cement are transported to the site, stored and then re-transported to other sites. Opponents' evidence also suggests that a letter submitted from DEQ to Permawood's Project Coordinator, Keith Slater, indicates concerns. Opponents also offer testimony that the cement silo and attendant pollution control devices offer visual pollution to the neighborhood.

CONCLUSION:

In reviewing the evidence, the City Council concludes that Permawood has designed the plant layout, plant design, mechanical design, and other factors to control the environmental impacts upon the neighborhood. It appears that in reviewing the evidence submitted by the opponents the worst that would happen to Permawood in terms of air quality impacts is that it would have to install a bag house facility on the chip storage building in order to meet all of DEQ's emission concerns. In addition, it may be, as the evidence before the City Council suggests, that wet wood chips would not produce a dust problem within the building, then Permawood apparently can proceed without objection from DEQ. In either event, it appears that Permawood will be able to obtain DEQ approval for dust control. There is no evidence in the record that indicates that a dust problem exists which cannot be controlled to meet DEQ standards.

The testimony in the record by the opponents indicates allegations that hazards may exist which would bar the utilization of this property by Permawood as designed. It is apparent that Permawood must obtain building permits to construct the facilities in question. As set forth later, this City Council

believes that it is appropriate to submit necessary data as requested by the City Building Official in order for the City Building Official to determine the proper structural and other content of the building plans. From the evidence submitted, it appears that the buildings will be constructed above the current flood levels. It also appears from the record that the existing structure was constructed in accordance with the regulations at the time it was constructed and was constructed in accordance with the building permit issued by the City of Albany. Contour maps indicate the floor of the building to be at a minimum of 200 feet in elevation which would indicate that even during a 100 year flood, minimal if any, water would be in the building as the floor would be the same height as the highest level of a 100 year flood.

Opponents' other concern is that chemicals may be discharged into the Willamette River. Although omitted by the opponents' witness during oral testimony, the site plan clearly shows a containment wall for the chemical outside of the building. This containment wall takes care of any reasonable concern that the chemical would reach the Willamette River. Opponent's second contention is that in case of an earthquake or other disaster which would cause the cement silo to fall that the cement would reach the Willamette River or infiltrate the sanitary sewer system. The opponents have not discussed in any credible manner how the cement would travel the several hundred feet from the silo to the river across the parking area which is graveled, over and through the vegetative plantings and barrier to the Willamette River without being contained on site. The argument by Permawood that in the unlikely event the silo did fall, the cement would mix with the gravels and moisture to form concrete seems to be a very plausible result. Certainly, Permawood's theory that the cement would mix with water and rock and turn into concrete is more plausible than the opponents' theory that the cement would permeate through the existing sand and gravel, not form concrete, and penetrate a buried 42 inch mainline and enter into the sewer system, or that it would make a direct hit on the manhole cover and enter through the manhole cover into the sewer system. A review of the map in the Uniform Building Code, a part of the Code of the City of Albany, indicates that a Class II earthquake zone is the lowest earthquake zone west of the Rocky Mountains. Even if the risk of an earthquake is a factor, by requiring all construction to be in accord with the Uniform Building Code, the City Council believes that whatever risk of earthquake exists will be minimized. Opponents' further concern that their needs to be a review for potential for the risk of water pollution by a state and federal agency is based upon the premise that Permawood needs to apply for a federal permit. The record indicates the need for a federal permit would only occur if Permawood took the

recommendation of the City Engineering staff to apply for a discharge permit to allow direct discharge of the industrial waste into the Willamette River. It seems reasonable that if Permawood pursues that option, at that time it may be necessary to apply for review of the potential for water pollution. Failing to prove the need for Permawood to require a federal permit, the opponents have failed to trigger the operative language in federal law.

The opponents' argument that Permawood will be unable to meet DEQ noise standards is not supported by the evidence submitted by Permawood, or by the opponents. As indicated above, Permawood has indicated a great deal of design, insulation, containment, distance and other factors intended to minimize noise at the plant site. Further, Permawood has demonstrated a willingness to meet any reasonable noise concerns. The often referred to letter dated November 1, 1983, by Terry L. Obteshka of DEQ's Noise Control Program, indicated a concern about the operations of the forklift. Permawood produced evidence that it would use a forklift with an electric motor to minimize and eliminate truck exhaust and which would not require a backup warning device. It is important to read carefully Mr. Obteshka's letter because nowhere in that letter does he indicate that Permawood is unable to meet the DEQ noise levels. With the conditions pertaining to noise mitigation listed in Exhibit "B" and Permawood's additional requirements to meet DEQ and EPA noise levels, the neighborhood has been effectively protected from any negative noise impacts from this site.

The opponents have argued that there are visual impacts caused by the cement silo and accompanying pollution control device. The amount of intrusion that takes place is a visual intrusion of 10 feet in diameter. This intrusion will be minimized by the vegetative plantings around the exterior of the property which will, in time, provide sufficient height to buffer the vision of on site developments from any off site location.

CRITERIA:

- D. HOW THE PARKING AREAS AND ENTRANCE-EXIT POINTS ARE DESIGNED SO AS TO FACILITATE TRAFFIC AND PEDESTRIAN SAFETY AND AVOID CONGESTION.

PERMAWOOD'S EVIDENCE:

Permawood's design is intended to allow access onto the widest portion of Geary Street prior to the curve into Bowman Park and the narrowing of the street width. The design approved by the Planning Commission and the Hearings Board authorizes Permawood

to locate its entrance at a point where Geary Street is at its widest. In addition, the evidence indicates that Permawood designed the width of the access in order to facilitate truck and vehicle traffic moving quickly off Geary Street onto the Permawood site. The wide access allows any party leaving the site clear vision into the park and up Geary Street before entering Geary Street to insure traffic movement being made in safety.

OPPONENTS' EVIDENCE:

The opponents' evidence on this issue is really one of legal argument rather than factual dispute. It is the position of the opponents that the City Development Code does not allow access to be utilized through the portion of the property designated as R-2 to the industrial site. Further, that the City cannot grant a variance to the setback standards and buffering standards along the southern boundary of Tax Lot 7100. These specific issues are dealt with and rejected under the section entitled Opponents' Procedural Objections. Factually, opponents' testimony before the Hearings Board indicated that the proposed access is the only practical way to access onto Geary Street.

CONCLUSION:

The design submitted by Permawood and approved by the Hearings Board and Planning Commission provides for the safest access onto Geary Street at the safest point on Geary Street. The position taken by the opponents would essentially eliminate Permawood's access to the improved street. With the Hearings Board having already restricted access onto Alco and Chicago Streets at the request of the neighborhood to only emergency vehicles, opponents' position would mean City action eliminating any access to the property. The City Council does not construe its own code as requiring such a harsh and unrealistic result. In particular, the Development Code does not list access as a permitted or prohibited use by zoning district. The Code merely regulates the number, size, and location of access ways for all uses. If, in fact, this particular point of access was determined to be a zoning conflict, the problem could easily be remedied through dedication of an access easement or actual right-of-way. The Council does not find, however, that such a remedy is necessary to resolve this alleged violation if for no other reason than that this access location has been utilized for many years by all previous industrial users of the site.

CRITERIA:

- E. HOW THE DESIGN PROMOTES ENERGY CONSERVATION THROUGH THE USE OF MATERIALS, LANDSCAPING, AND BUILDING ORIENTATION.

PERMAWOOD'S EVIDENCE:

The evidence submitted by the applicant indicates that the site has been designed to cluster the manufacturing activities to maximize energy conservation in moving the raw materials from one building to another and the movement of raw materials within each building. Storage areas have been located near manufacturing facilities to minimize the distance that finished products must be transported. The manufacturing process has been designed to utilize gravity flow and other metered mixing systems to minimize the amount of energy that must be utilized in the process. In addition, the evidence, photographs, site design, and other data indicates that the buildings and landscaping on the property do not infringe upon the solar access rights of the abutting properties and affords the opportunity for PermaWood to utilize solar energy in the event that it becomes economically feasible to do so. The buildings are insulated which will help to conserve energy as well as provide noise reduction.

OPPONENTS' EVIDENCE:

Opponents have indicated no contrary evidence on this issue.

CONCLUSION:

It appears that the location of the cement silo and bag house is such that it will not infringe upon the solar rights of any additional property owners, nor will any of the other structures on the site. The evidence also indicates that PermaWood has designed the site and the manufacturing process to promote energy conservation.

CRITERIA:

- F. HOW BUILDINGS ARE LOCATED SO AS TO PROVIDE LIGHT AND AIR ACCORDING TO YARD REQUIREMENTS AND AFFORD ADEQUATE SOLAR ACCESS WHERE DESIRED.

PERMAWOOD'S EVIDENCE:

The evidence furnished by PermaWood through oral testimony and documents such as the site plan and landscape plan indicate that only 6% of the land mass will be covered by building; 25% of the

land mass will be in buffered areas, setbacks, and areas of vegetation, with the remaining 69% of the property being designated as open areas, portions of which will be used for traffic flow, storage of materials and substantial amounts of landscaping. The buildings have been clustered near the center of the property in order to maximize the distance from residential uses to the south, and possible public uses to the north along the Willamette River. Clustering the buildings in the center of the property allows solar access to the buildings without impediment from the vegetative screenings. Further, the evidence is quite clear that with the clustering of the buildings, in their proposed locations, solar access will be provided to the riverbank area to allow vegetation there to continue to flourish in its natural state. Even with the proposed variance and height limitations, the buildings are more than 100 feet from the river edge.

OPPONENTS' EVIDENCE:

Opponents have not provided any contrary evidence or argument on this issue.

CONCLUSION:

The City Council concluded that the uncontroverted evidence indicates that this criteria has been met.

CRITERIA:

- G. HOW THE DESIGN PROMOTE CRIME PREVENTION AND SAFETY FEATURES THROUGH LIGHTING, VISIBILITY OF BUILDING ENTRANCES, SECURE STORAGE AREAS, ETC.

PERMAWOOD'S EVIDENCE:

PermaWood has indicated on the site plan and in oral presentations before the various hearings bodies that the site has been fenced in its entirety to provide additional security to the neighborhood and to the site itself. Existing lighting patterns have been designated on the site plan to improve the safety of operations on the facility and to provide high visibility to discourage those with criminal intentions. The existing light pattern is illuminated inward so that no external light is aimed out of the property. Secure storage areas have been designated on the site plan. In addition, screens, solid waste disposal points have also been indicated on the plan. All solid waste is intended to be removed by a commercial service.