



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

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Date: June 8, 2022
To: Interested Person
From: Timothy Novak, Land Use Services
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NOTICE OF A TYPE Ix DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 22-116532 EN

GENERAL INFORMATION

Applicant/ Owner's

Representative: Steve Bloomquist *for the Port Of Portland*
7200 NE Airport Way | Portland, OR. 97218
(503) 415-6558 | steve.bloomquist@portofportland.com

Owner: Port of Portland
2145 SW Naito Pkwy | Portland, OR 97201

Site Address: 7005 NE MARINE DR

Legal Description: TL 102 1.23 ACRES, SECTION 05 1N 2E; TL 103 1.26 ACRES, SECTION 05 1N 2E

Tax Account No.: R942050290, R942050300

State ID No.: 1N2E05 00102, 1N2E05 00103

Quarter Section: 2037, 2038, 2138, 2139

Neighborhood: NONE

Business District: Columbia Corridor Association, contact at mking@columbiacorridor.org

District Coalition: NONE

Plan District: Portland International Airport - Airport Subdistrict

Other Designations: Site CS3 – Central Columbia River, *Middle Columbia Corridor/ Airport Natural Resources Inventory (2011)*

Zoning: *Base Zone* – Open Space (OS)
Overlay Zones – Environmental Conservation Overlay Zone ‘c’,
Aircraft Landing Zone ‘h’;
PDX Noise Impact Overlay Zone ‘x’;
Scenic Resource Zone ‘s’

Case Type: Environmental (EN) Review
Procedure: Type Ix, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

PROPOSAL:

The applicant is proposing to remove all above-ground improvements on the site and to decommission all below-ground infrastructure. Improvements to be removed include all structures, all utilities, and approximately 1,700 square feet of asphalt surface. The septic system will be decommissioned and the drain field abandoned in accordance with requirements of Multnomah County. All utility connections will be removed or abandoned. After the removal of the improvements, the site will be regraded to align with the adjacent levee surface(s).

After regrading, the applicant proposes to place six to eight inches of topsoil over disturbed areas and reseeding with a seed mix of native, perennial grasses with shallow root structures. Where appropriate, rip rap rock, matching the existing rip rap, will be placed on top of the excavated and backfilled areas.

Per the applicant's narrative, work below the ordinary high water mark of the Columbia River will be completed during the summer and fall Columbia River low-flow period (approximately August through September) so that work can be constructed completely in the dry. The in-water work period for the Columbia River is November 1 through December 31. The applicant indicates that the plan will be communicated and approved by the Oregon Department of Fish and Wildlife (ODFW).

The removal of the improvements and planting of native species at the site is considered resource enhancement. The majority of the work will occur within the resource area of the Environmental Conservation (c) overlay zone. Certain environmental standards must be met to allow the work to occur by right. In this case, the proposed work doesn't meet all the standards of 33.430.170 Standards for Resource Enhancement Projects. Specifically, the project doesn't meet 33.430.170.C.1, which doesn't allow for excavation, fill, or construction activities within any waterbody. Some of the piles that support the existing wood-framed structure are below ordinary high water. Some of the proposed excavation will occur in the vicinity of the piles and will also occur below ordinary high water. Portions of the site that are below ordinary high water are considered to be within the waterbody of the Columbia River. Therefore, a Type Ix Environmental Review is required.

RELEVANT APPROVAL CRITERIA:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are:

33.430.250.B Resource Enhancement Projects

ANALYSIS

Site and Vicinity: The site is composed of a narrow strip of land between NE Marine Drive and the Columbia River and the overwater structures proposed for removal that are directly north of the site. As noted above, the submerged lands (those under water) are leased by the applicant from the Oregon Department of State Lands. In the vicinity of the site, the dominating development is the Portland International Airport, which is across NE Marine Drive from the site. There is no other development on NE Marine Drive for over a mile in either direction.

Zoning: The zoning designation on the site includes Open Space (OS) base zone, with Environmental Conservation (c), Aircraft Landing (h), PDX Noise Impact (x), and Scenic Resource (s) overlay zones. The site is also in the Airport Subdistrict of the Portland International Airport plan district - (see zoning on Exhibit B).

The Open Space base zone is intended to preserve and enhance public and private open, natural, and improved park and recreational areas identified in the Comprehensive Plan. These areas provide opportunities for outdoor recreation, provide contrasts to the built environment, preserve scenic qualities, protect sensitive or fragile environmental areas, enhance and protect the values and functions of trees and the urban forest, preserve the capacity and water quality of the stormwater drainage system, and provide pedestrian and bicycle transportation connections.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant. The purpose of this Environmental Review is to ensure compliance with the regulations of the Environmental Conservation overlay zone.

The Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation.

The Portland International Airport Noise Impact overlay zone reduces the impact of aircraft noise on development within the noise impact area surrounding the Portland International Airport. The zone achieves this by limiting residential densities and by requiring noise insulation, noise disclosure statements, and noise easement.

The Scenic Resource overlay zone is intended to protect Portland's significant scenic resources. The purposes of the Scenic Resource zone, to enhance the city's appearance and protect scenic views, are achieved by establishing height limits, establishing landscaping and screening requirements, and requiring preservation of identified scenic resources. NE Marine Drive is a designated Scenic Drive (Corridor); the development standards of 33.480.040.B don't apply to demolition.

The purpose of the Portland International Airport plan district is to address the social, economic, and environmental aspects of growth and development at Portland International Airport (PDX). PDX is a unique land use within the City and requires tailored regulations to address wildlife hazards and impacts to transportation and natural resources. The plan district provides flexibility to the Port of Portland—owner of PDX—to address a constantly changing aviation industry, while addressing the broader community impacts of operating an airport in an urban context. The regulations of this plan district protect significant identified environmental resources consistent with the requirements of airport operations, while maintaining or enhancing the capacity of public and private infrastructure within and serving the district. Additionally, the regulations protect significant archaeological features of the area. None of the environmental regulations of the plan district apply to this proposal.

Environmental Resources: The application of the environmental overlay zones is based on detailed studies that have been carried out within separate areas throughout the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these respective study areas.

The project site is mapped within the *Middle Columbia Corridor/Airport Natural Resources Inventory* as Resource Site CS3 – Central Columbia River. According to the Inventory:

The Columbia River inventory site (CS3) is 1,430 acres in size, 128 acres of which is terrestrial and the remaining 1,302 acres is the Columbia River. The majority of the riverbank is undeveloped, except for a private marina and public boat launch (Gleason Boat Ramp). The riverbank function is constrained by the levee along Marine Drive...

The river is a migration channel for anadromous salmonids including Chinook, Coho, chum, sockeye, and steelhead. Near shore, shallow water areas and areas of sandy substrate, such

as Broughton Beach which is located just east of the Metro boat launch, are utilized by juvenile salmonids during migration to the Pacific Ocean. The Columbia River is designated by NOAA Fisheries as Critical Habitat for listed salmonids. The near-shore, shallow-water areas with sandy substrate are also important for lamprey. The Columbia River is also part of the Pacific Flyway, which is a significant corridor for migratory birds.

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

- LU 05-137898 EN CU. Approval of an Environmental Review and a Conditional Use Review to install wireless communication facilities on the landward portion of the site. There are no conditions of the approval that are applicable to this review.
- LU 20-203501 EN. Approval of an Environmental Review to remove 54 steel and 14 wood pilings from the Columbia River. The current review is a continuation of the same project, which is to abandon and remove all improvements from the site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **April 1, 2022**. Multiple Bureaus and review groups responded. None objected or requested conditions of approval. See the ‘E’ Exhibits for the complete responses.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 1, 2022. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.430.250 Approval Criteria

An environmental review application will be approved if the review body finds that the applicant has shown that all the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .190, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

B. Resource Enhancement Projects. In resource areas of environmental zones, resource enhancement projects will be approved if the applicant’s impact evaluation demonstrates that all the following are met:

1. There will be no loss of total resource area;

Findings: There will be no loss of total resource area as all disturbance is temporary. In fact, by removing all man-made structures from the property, the amount of accessible resource area in a natural state will be increased.

Considering there will be no loss of total resource area for this resource enhancement proposal, *this criterion is met.*

2. There will be no significant detrimental impact on any resources and functional values; and

Findings: Upland resources at the site are in a severely compromised state. Riparian resources are also very compromised. As such significant detrimental impacts would most likely be limited to issues with erosion and siltation. Prevention of these impacts will be ensured during the building permit review process and shall be required in conformance with the erosion control plans, Exhibits C.5 and C.6, as a condition of approved. As noted in the Site Development response (Exhibit E.4), “An erosion control plan prepared by a Certified Professional in Erosion and Sediment Control (CPESC) or State of Oregon registered professional engineer will need to be submitted at the time of building permit application.”

Furthermore, to minimize and avoid impacts to aquatic species, as noted in the applicant's Joint Permit Application to the Army Corp of Engineers, the Oregon Department of State Lands, and the Oregon Department of Environmental Quality (Exhibit A.1.e), "Work below the OHWM of the Columbia River will be completed during the summer and fall Columbia River low-flow period (approximately August through September) so that work can be constructed completely in the dry. The in-water work period for the Columbia River is November 1 through December 31. This plan will be communicated and approved by the Oregon Department of Fish and Wildlife (ODFW)."

Therefore, the project will result in no significant detrimental impacts to the resources and functional values at or adjacent to the site and *this criterion is met.*

3. There will be a significant improvement of at least one functional value.

Findings: The removal of improvements and planting of grasses, while sub-optimal, nonetheless is more likely to reduce pollutants and capture those in water running down the vegetated bank than is currently the situation on the site with the improvements. The proposal will also, to a lesser extent, improve habitat and habitat connectivity by removing structures and human occupancy of the space.

Additionally, it is worth reiterating that enhancement plantings are severely restricted by the planting standards that the Army Corp of Engineers requires on the levee. To this point, MCDD has indicated that they are looking into seed mixes that could include flowering species to support pollinator habitat (Exhibit A.2.b). Adding pollinator-friendly species to the seed mix would provide a significant improvement to the enhancement of the site's resources, as noted on page 4 of BES' response (Exhibit E.1). As such, as a condition of approval, the applicant shall inquire just prior to reseeded with MCDD to determine whether they have approved a seed mix that includes flowering species friendly to pollinators. The applicant shall submit MCDD's response as part of the required Demolition Permit for review by Planning and Zoning. If such a seed mix has been approved, it shall be the mix applied to the site after all demo and grading work is complete.

Furthermore, to ensure that the functional values of the groundcover vegetation endure, a condition of approval of this decision will require that the landowner maintain the vegetation in good condition and replace (reseed) areas where the vegetation fails to establish or dies on an on-going basis.

Based on the improvement of habitat-related functional values and with the aforementioned condition, *this criterion can be and is met.*

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant proposes a resource enhancement project along the Columbia River that will remove the final structures and improvements associated with the Boy Scouts of America Cascade Council's Sea Scouts Site. By utilizing erosion control construction management practices that protect the shoreline and minimize in-water impacts, the applicant demonstrates that the proposed work will have only limited temporary impacts. By removing the structures and improvements, the project will increase the site's habitat suitability and ability to capture pollutants that would

otherwise enter the river. Therefore, the proposed resource enhancement project should be approved subject to conditions listed below.

ADMINISTRATIVE DECISION

Approval of an Environmental Review to remove all above-ground improvements on the site, decommission all below-ground infrastructure, regrading and reseeding of disturbance areas.

The approval of the aforementioned work shall be per the approved site plans, Exhibits C.1 through C.9, signed and dated June 6, 2022, and subject to the following conditions:

- A. A BDS Development/Demolition Permit is required for this project.** Plans shall include the following statement, *“Any field changes shall be in substantial conformance with approved LU 19-134376 EN Exhibits C.1 through C.9.”*
- B.** Prior to demolition permit issuance, the applicant shall submit documentation stating when the seeding of the site occurred, whether the seed mix included flowering species, and correspondence from MCDD verifying that the inclusion or exclusion of flowering species is consistent with currently approved mixes. If flowering species can be included in the mix, it must be incorporated into the seed mix used at the site.
- C.** Erosion control measures in conformance with Title 10 and with Exhibits C.5 and C.6, including, but not limited to sediment barriers, shall be installed prior to ground disturbance.
- D.** The land owner is responsible for ongoing survival of the required plantings. The establishment of the groundcover vegetation must be monitored and any areas of bare soil reseeded to provide permanent erosion control.

Staff Planner: Timothy Novak

Decision rendered by:  **on June 6, 2022**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 8, 2022

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on February 24, 2022, and was determined to be complete on March 29, 2022.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on February 24, 2022.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: July 27, 2022.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has

independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. Contact LUBA at 775 Summer St NE Suite 330, Salem, OR 97301-1283 or phone 1-503-373-1265 for further information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

Recording the final decision.

This final decision will be recorded after **June 8, 2022** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and

- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Submittals
 - a. Narrative
 - b. Drawings
 - c. Tax Map
 - d. Quarter Section Maps
 - e. Joint Permit Application
 - 2. Revised Submittals
 - a. Narrative
 - b. Correspondence regarding seed mix
 - c. Correspondence regarding cut/fill
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Demolition Plan - West (attached)
 - 2. Demolition Plan - East (attached)
 - 3. Restoration and Grading Plan - West
 - 4. Restoration and Grading Plan - East
 - 5. Erosion Control Plan - West
 - 6. Erosion Control Plan - East
 - 7. Cross Sections 1
 - 8. Cross Sections 2
 - 9. Cross Sections 3
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Fire Bureau
 - 4. Site Development Review Section of BDS
 - 5. Bureau of Parks, Forestry Division
 - 6. Life Safety Review Section of BDS
- F. Correspondence: NONE
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).