

## NOTICE OF DECISION

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**Case File:** T2-2021-14500

**Permit:** Temporary Permit

**Applicants:** Port of Portland, Steve Bloomquist

**Owners:** Dept. of State Lands,  
Justin Russell

**Location:** Submerged lands adjacent to 3600 N Hayden Island Drive, Portland  
**Map, Tax Lot:** 2N1E28 - 00200, 2N1E19 – 00200, 2N1E10-00100  
**Tax Account** #R951280010, R951190030 & R951190020  
**Property ID** # R323351, R489120, R489119

**Base Zone:** Multiple Use Forest – 19 (MUF-19)

**Overlays:** Flood Hazard (FH)

**Proposal Summary:** The applicant is requesting a temporary permit for two existing spud barges and one proposed spud barge within the submerged lands adjacent to Hayden Island.

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**Decision:** **Approved with Conditions**

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, February 10, 2022 at 4:00 pm.**

**Opportunity to Review the Record:** The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review by contacting Case Planner, Lisa Estrin at 503-988-0167 or at [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@multco.us). Copies of all documents are available at the rate of \$0.35/per page.

**Opportunity to Appeal:** An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

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**Issued by:** \_\_\_\_\_

Lisa Estrin, Senior Planner

**For:** Carol Johnson, AICP  
Planning Director

**Date:** Thursday, January 27, 2022

## Vicinity Map



### **Applicable Approval Criteria:**

For this application to be approved, the proposal will need to meet applicable approval criteria below:

**Multnomah County Code (MCC):** MCC 39.1515 Code Compliance and Applications, MCC 39.8750 Temporary Permits for Certain Uses.

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:

**Chapter 39 - Zoning Code**

### **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

1. Permit Expiration – This Temporary Permit runs from February 5, 2022 to February 5, 2023 or one (1) year from the date it becomes final. No time extensions may be granted.
2. The Port of Portland shall obtain a Flood Development permit for each of the three spud barges approved. The new spud barge may not be installed until the Flood Development permit is issued. If necessary, the two existing spud barges shall be retrofitted to comply with the County's Flood Development requirements.

### **Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### **1.0 Project Description:**

**Staff:** The applicant is proposing three spud barge locations on the northwest side of Hayden Island in the Columbia River. Spud barges serve as movable portable moorages for barges related to wheat moved via barge by Shaver Transportation. The identified tax lots are to assist in documenting their present locations as the actual riverbed is not broken down into separate tax lots. The State of Oregon owns the underlying land at this location of the Columbia River and will lease the land to the Port of Portland for the spud barge purpose.

### **2.0 Property Description & History:**

**Staff:** Presently two spud barges exist that were not authorized by Multnomah County in the past due to a jurisdictional misunderstanding. These barges are located in the Columbia River on the northwest side of Hayden Island. Exhibit A.6 shows the two existing spud barge locations in relation to the upland tax lots.

### **3.0 Code Compliance and Applications Criteria:**

#### **§ 39.1515 CODE COMPLIANCE AND APPLICATIONS.**

**Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.**

**(A) A permit or other approval, including building permit applications, may be authorized if:**

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

**(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.**

**Staff:** This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation

project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

During the discussions with the Port of Portland, it became clear that the City of Portland had previously approved the installation of two spud barges northwest of Hayden Island. Review of the Portland - Multnomah County IGA covering Hayden Island identified that the Columbia River water and underlying lands were not under the City of Portland's jurisdiction. This temporary permit will authorize these two existing spud barges for the term of this temporary permit. They will need to be reauthorized or removed at the end of this temporary permit.

#### **4.0 Temporary Permit Criteria:**

##### **§ 39.4715 TEMPORARY USES.**

**Temporary uses may be permitted when approved pursuant to MCC 39.8700 and 39.8750**

##### **§ 39.8750- TEMPORARY PERMITS FOR CERTAIN USES.**

**(A) Notwithstanding the limitations of use as established by this Chapter in each of the several base zones, the Planning Director may issue temporary permits, valid for a period of not more than one year after issuance, for structures, or uses which are of a temporary nature, such as:**

- (1) Storage of equipment during the building of roads or developments;**
- (2) Real estate office used for the sale of lots or housing in subdivisions;**
- (3) Temporary storage of structures or equipment;**
- (4) Sheds used in conjunction with the building of a structure;**
- (5) Temporary housing; or**
- (6) Other uses of a temporary nature when approved by the Planning Director.**

**Staff:** The applicant is requesting to place one temporary, portable moorage (spud barges) for barges in the Columbia River northwest of Hayden Island. In addition, they are seeking to authorize the use of two existing spud barges. Barges filled with agricultural products (primarily wheat) are tied up to the spud barges while they are waiting to be unloaded at the Port of Portland's Terminal 5 and 6 in the City of Portland. The proposed spud barges qualify as an "*Other uses of a temporary nature...*" and are allowed when approved through a temporary permit.

The Temporary Permit for the spud barges will run for a period of one year starting the day after this permit becomes final. A condition of approval has been included that the barges are to be removed (flat deck and steel pipes) or reauthorized through a land use permit.

## 5.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Temporary Permit to establish three spud barges in the Multiple Use Forest – 19 zone. This approval is subject to the conditions of approval established in this report.

## 6.0 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits with a “\*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2021-14500 by contacting the case planner.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	2	General Application Form	4.01.2021
A.2	1	Payment Receipt	4.01.2021
A.3	8	Narrative	4.01.2021
A.4	1	Letter from Shaver Transportation dated February 3, 2021	4.01.2021
A.5	1	Site Plan	4.22.2021
A.6	1	Existing Spud Barge Location	1.21.2022
A.7	1	Time Extension	1.21.2022
‘B’	#	Staff Exhibits	Date
B.1	2	Assessment & Taxation Property Information for 2N1E28-00200 (R951280010)	4.01.2021
B.2	2	Assessment & Taxation Property Information for 2N1E19 - 00200 (R951190030)	4.01.2021
B.3	2	Assessment & Taxation Property Information for 2N1E19 – 00100 (R951190020)	4.01.2021
‘C’	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	4.21.2021
C.2	1	Applicant’s acceptance of 180 day clock	5.19.2021
C.3	1	Complete Letter (day 1)	9.24.2021
C.4	2	Opportunity to Comment	10.1.2021
C.5	6	Administrative Decision	1/24/2022







THE PURPOSE OF THIS DRAWING IS TO SHOW THE LIMITS OF THE SHAWNEE TRANSPORTATION FACILITY 3.500 BARGE LANE AREA. THE LOCATION WAS DETERMINED FROM INPUT BY SHAWNEE TUG AND THE PORT OF PORTLAND NAVIGATION DIVISION.

THE SURVEY COLLECTOR ANCHORAGE (HBS) WAS DETERMINED FROM THE FEDERAL REGISTRATION, 7.1 N. MILWAUKEE, OCTOBER 8, 2009 (RALS) AND REGULATIONSPART 16 ANCHORAGE REGULATIONS PAGES 3179 & 3179Z.

ALL BEARINGS AND COORDINATE VALUES ARE BASED UPON OREGON STATE PLANE (GCS NORTH ZONE, NAD 83), INTERNATIONAL FEET AND WAS TAKEN FROM SURVEY NO. 56825 AS RECORDED AT THE MULTNOMAH COUNTY SURVEYORS OFFICE. ALL DISTANCES ARE GROUND DIMENSIONS.

THE AERIAL PHOTOS ARE ORTHORECTIFIED FROM JUNE OF 2019 PHOTOGRAPHY.

NO FIELD SURVEY WORK WAS PERFORMED ON THE SURVEY.

