

1600 SE 190<sup>th</sup> Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

## NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-2016-6444  
**Permit:** Significant Environmental Concern  
**Location:** Sandy River adjacent to Oxbow Park  
Tax Lot 500, Section 10, Township 1 South, Range 4 East, W.M.  
Tax Account #R994100170  
**Applicants:** Brian Vaughn, Metro Parks and Nature  
Gary Shepherd, Office of Metro Attorney  
**Owners:** Oregon Department of Fish and Wildlife, c/o Jeff Boechler  
**Base Zone:** Commercial Forest Use – 4 (CFU-4)  
**Overlays:** Significant Environmental Concern – general

**Summary:** Metro is proposing to place a large wood habitat jam comprised of native soil, large log and boulders near the entrance of a side channel. To construct the jam, the area will be excavated and the jam built in layers. Native soil, sand and cobble will be backfilled over the jam to restore natural conditions.

**Decision:** Approved with Conditions

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, June 20, 2017 at 4:00 pm.**

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by:

  
\_\_\_\_\_  
Lisa Estrin, Planner

For: Michael Cerbone, AICP  
Planning Director

Date: Tuesday June 6, 2017



**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-0167 or [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@multco.us).

1. **Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 35.2220(F), MCC 35.4510, MCC 35.4520, MCC 35.4555(H), MCC 35.4555(J), (K) & (M)], MCC 37.0690(B), MCC 37.0695, MCC 35.4555(F), Oregon Revised Statutes 273.705 and ORS 358.905 to 358.955), ORS Chapter 97.740 to 97.760.

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.multco.us/landuse/zoning-codes>.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, June 20, 2017 at 4:00 pm.**



## **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.

1. 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.
2. This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690(B):
  - (a) When construction has not commenced within two years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.
  - (b) When the structure has not been completed within four years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. All in-water-work shall be limited to July 15 to August 31<sup>st</sup> in 2017 or 2018, unless the State of Oregon grants an extension to the in-water work period. [MCC 35.4555(F)]
4. If any Cultural Resources and/or Archaeological Resources are located or discovered on the tax lots or within the project area, including finding any evidence of historic campsites, old burial grounds, implements, or artifacts, the following procedures shall be implemented:
  - a. Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
  - b. Notification – The project applicant shall notify the County Planning Director and the State Historic Preservation Office (SHPO) within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours. This includes the Yakama Nation; contact Cultural Specialist for the Cultural Resources Program at: (509) 865-5121 extension 4720; Fax number (509) 865-4664.
  - c. Survey and Evaluation – The applicant shall follow any and all procedures outlines by SHPO and if necessary obtain the appropriate permits (see ORS 273.705 and ORS 358.905 to 358.955).
  - d. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and

plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

- e. Construction activities may recommence when SHPO requirements are satisfied.
5. The following procedures shall be in effect if human remains are discovered during excavation or construction (human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts):
- a. Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
  - b. Notification – Local law enforcement officials, the Multnomah County Planning Director, State Historic Preservation Office and the Indian tribal governments shall be contacted immediately.
  - c. Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
  - d. Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and this protection process may conclude.
  - e. Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760. [MCC 35.4555(H)]
6. Best Management Practices for sediment and erosion control shall be used for the entirety of the project. No ground disturbance shall occur until such time as the grading and erosion control permit is issued by the County. [MCC 35.4555(J)]
7. A post-construction report shall be prepared, stamped and signed by an Oregon Professional Engineer and provided to Multnomah County Land Use Planning within 90 days of completion of the project. The post-construction report shall confirm the project has been completed in compliance with approved designs and all conditions of Multnomah County Land Use Permit T2-2017-6444. Any variation from approved designs or conditions of approval shall be clearly indicated. The post-construction report shall include:
- a. Dated pre- and post-construction photos taken of the side channel and areas of disturbance for construction of the apex log jam and car removal. The photos should clearly show the site conditions before and after construction.
  - b. A narrative that describes any deviation from the approved plans.
8. The applicant or their representative shall monitor all project sites to determine whether 85% of each type of vegetation (trees, shrubs, ground cover) planted continues to live, thrive and grow for a minimum period of 5 growing seasons after completion of all the initial plantings. Annual monitoring reports are required.
- a. For any replanted area that falls below the 85% threshold shall be replanted during the next planting season.
  - b. Annual Monitoring Report Due Date: Annual monitoring reports are due by November 30th of each year.
  - c. Extension of the Monitoring Period: The monitoring period may be extended, at the discretion of Land Use Planning, for failure to provide monitoring reports, failure of the site

- to meet performance standards for two consecutive years (without irrigation or replanting) or when needed to evaluate re -planting or other corrective or remedial actions.
- d. Release of Monitoring Obligation: Monitoring is required until Land Use Planning has officially released the site from further monitoring.
  - e. Failure to Submit Monitoring Reports: Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period, forfeiture of the financial security and/ or enforcement action.
9. The annual monitoring report shall include the following information:
- a. The permit number, monitoring date, report year, and a determination of whether the site is meeting performance standard of Condition No. 8.
  - b. Post construction photographs of each monitoring area taken within the last 30 day prior to the report date.
  - c. A brief narrative that describes maintenance activities and recommendations to meet performance standard. This includes when irrigation occurred and when the above ground portion of the irrigation system was or will be removed from the site.
  - d. Any other information necessary or required to document compliance with the performance standard listed in Condition No. 8.
10. Any extra excavated materials not used as ballast for the proposed wood installations shall be placed in a truck and hauled to an authorized disposal or fill site outside of Oxbow Regional Park unless a separate Grading and Erosion Control permit for placement of fill outside of a SEC overlay boundary is authorized by the Planning Director. [MCC 35.4555(J), (K) & (M)]

**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*.

### **1.00 Project Description:**

**Staff:** The proposed project is to enhance a lower side-channel on the Sandy River for salmonid habitat. The following improvements will be completed:

- Remove an old car body from the side channel entrance.
- Install an apex log jam at the side channel’s entrance to increase flows into the side channel.
- Install five margin wood structures within the side channel.
- Install two channel spanning jams to the side channel.
- Revegetate with native trees and shrubs.

### **2.00 Background Information:**

**Applicant’s Narrative:** The section of the Sandy River within the project area is characterized by a broad sinuous alluvial reach with expansive floodplain surfaces, point bars and vegetated islands, secondary channels and side channels. Underlying geology of the river and floodplain is volcanic and derived from a series of lahar deposits. Hydrology of the Sandy River is characterized by low flows in late summer, high flows in the fall and winter generated from rainfall and rain-on-snow, and snowmelt in the spring. In the last 100 years the Sandy has experienced several large flow events that caused substantial flooding, bank erosion and damages to Oxbow Park Infrastructure.

The proposed restoration will protect and enhance native vegetation to maintain riparian function, reduce erosion, and maintain scenic quality of this reach of the Sandy River. Invasive species will be removed and native species will be replanted in all areas of disturbance in the action areas. Nuisance plants listed in Table 1 of MCC 36.5550 and defined in MCC 36.4510 will not be planted during revegetation efforts and will be eradicated to the maximum extent practicable. Vegetation communities of intact native vegetation will be retained in a contiguous, natural state. Large mature trees will be avoided whenever possible and any unavoidable removal will be replaced with a minimum one-for-one ratio. The project will restore vegetation communities to an equal or better condition within the action areas.

### **3.00 Commercial Forest Use - 4 Criteria:**

#### **3.01 § 35.2220 ALLOWED USES**

##### **(F) An uninhabitable structure accessory to fish and wildlife enhancement.**

**Staff:** The apex log jam, margin wood structures and channel – spanning jams all qualify as uninhabitable structures. These structures are part of the fish habitat enhancement in the Sandy River. *The use is an allowed use.*

### **4.00 Significant Environmental Concern Criteria**

#### **4.01 § 35.4510 USES - SEC PERMIT REQUIRED**

**(C) Activities proposed for lands designated as scenic waterways under the Oregon Scenic Waterways System shall be subject to an SEC permit in addition to approval from the Oregon Parks and Recreation Department.**

**Staff:** The Sandy River is protected under the State's Scenic Waterways System. The applicant obtained approval from the Oregon Parks and Recreation Department (Exhibit A.10). The application for SEC permit is addressed in Sections 4.03 through 4.16.

**4.02 § 35.4520 APPLICATION FOR SEC PERMIT**

**An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 35.4555 through 35.4575.**

**(A) An application for an SEC permit shall include the following:**

**(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 35.4555 through 35.4575.**

**(2) A map of the property showing:**

- (a) Boundaries, dimensions, and size of the subject parcel;**
- (b) Location and size of existing and proposed structures;**
- (c) Contour lines and topographic features such as ravines or ridges;**
- (d) Proposed fill, grading, site contouring or other landform changes;**
- (e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;**
- (f) Location and width of existing and proposed roads, driveways, and service corridors.**

**Staff:** The applicant has provided the required information in Exhibits A.1 through A.15.  
*Criterion met.*

**4.03 § 35.4555 CRITERIA FOR APPROVAL OF SEC PERMIT**

**The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:**

**(A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.**

**Staff:** The proposed project is to improve salmon and steelhead habitat in the Sandy River. The project will occur within the river along an existing side channel to improve it for winter habitat for resident fish species. These improvements must occur within the floodplain of the Sandy River in order to enhance salmonid habitat. The improvements will be made to appear like natural log jams (Exhibit A.14). *Criterion met.*

**4.04 (B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.**

**Staff:** The two upland parcels being used as access points and disposal sites for earth materials are owned by the State of Oregon. The two tax lots are heavily forested and will remain so through Conditions of Approval requiring replanting of impacted area. The two tax lots are part of Oxbow Regional Park. These two tax lots will be used for construction access and

staging. After the project, the two tax lots will remain available for forest uses. No farm uses will be harmed as part of this project. *Criterion met.*

**4.05 (C) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.**

**Staff:** The apex log jam, channel spanning log jams and wood structures all qualify as a “structure” as defined in Multnomah County Code MCC 35.0005 Definitions. The Sandy River is a *Wild and Scenic River* protected by the State of Oregon and Multnomah County. The construction of these wood installations is needed to improve the quality of habitat for salmon and steelhead species. The wood installations will be roughened by machinery to make them appear more natural in their setting. The proposed project will help to preserve the natural habitat for the Salmonids species (Exhibit A.2). *Criterion met.*

**4.06 (D) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.**

**Staff:** The Sandy River flows through Oxbow Regional Park. The proposed habitat improvements for Salmonids will not interfere with the use of the upland areas or river once they are installed. The River will still remain useable for kayaking, rafting, fishing and fish viewing. The habitat improvements may increase the availability of fish in the future, adding to recreational opportunities on the river. *Criterion met.*

**4.07 (E) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

**Staff:** The Sandy River is owned by the people of Oregon and is held in trust by the State of Oregon (Exhibit A.4 & A.12). Oregon Parks and Recreation Department has approved the in-stream habitat project with conditions (Exhibit A.10). The project designers and applicants have considered the safety of rafters and kayakers when designing these Salmonids habitat projects (Exhibit A.14). *Criterion met.*

**4.08 (F) Significant fish and wildlife habitats shall be protected.**

**Staff:** The proposed projects are intended to enhance habitat in the Sandy River for ESA-listed fish species (salmon and steelhead). The addition of wood improvements to the side-channel will improve fall and winter habitat for various fish species during high water time periods. The project will be constructed during the in-water work window of July 15<sup>th</sup> to August 31<sup>st</sup> (Exhibit A.2). A condition of approval has restricted the construction of this project to the in-water work window. *As conditioned, criterion met.*

**4.09 (G) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.**

**Staff:** The construction of a temporary access road and staging area to serve this and another project upstream was authorized by T2-2016-6483 and will utilize a portion of an existing trail for a portion of its alignment. The alignment of the temporary road was designed to minimize tree removal. After the completion of the project, the temporary access road/trail will be re-vegetated with native seed mix and woody plants, such as snowberry, salmonberry, thimbleberry, and Oregon ash (T2-2016-6483) to reduce its width back into a hiking trail (Exhibit A.14.j). *Criterion met.*



**4.10 (H) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.**

**Staff:** The applicant submitted a Cultural Resource Survey of the Oxbow Park lands dated from August 26, 2015 (Exhibit A.8). The report indicates that no cultural resources were found. A condition of approval has been included that if in the unlikely event that an archaeological object or site is encountered, work is to cease and appropriate Government Agencies contacted. *Through a condition, this criterion will be met.*

**4.11 (I) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.**

**Staff:** The proposed project will remove an existing car body at the entrance to the Sandy River side channel (Exhibit A.14). In addition, a large apex log jam will be installed at the side channel entrance to help direct stream flow into the channel. The removal of the car body and construction of the apex log jam will occur within an identified wetland, but the car body is a foreign object that does not belong in a natural river. Its removal will help preserve water quality. The apex log jam will not hinder the functionality of the wetland. The improved flow of water during the fall and winter will add to the capacity of the floodplain. *Criterion met.*

**4.12 (J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.**

**Staff:** The applicant will use best management practices and appropriate timing for construction of the project. Project may only occur during the in-water work period established by the Oregon Department of Fish and Wildlife for the Sandy River. In addition, the County will be issuing a Grading and Erosion Control Permit for the work. A condition of approval has been included requiring Best Management Practices for all proposed ground disturbance actions. *Through a condition, criterion met.*

**4.13 (K) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.**

**Staff:** Best Management Practices will be used during construction of the various structures and channel improvement pursuant to Condition 6. The ambient noise level in the area during the construction project will be impacted during daylight hours due to use of helicopters, trucks, track-hoes or other heavy equipment. Once the project is complete, ambient noise levels will return to natural conditions. The engineered log jams and large wood placement will not affect noise levels in the area after their completion. *Criterion met.*

**4.14 (L) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.**

**Staff:** The enhancement projects will use logs, rocks and other natural materials that are typically found within the waterway. The placement of these materials will attempt to mimic a natural log jam in the side channel. The proposed improvements will be compatible with the character and visual quality of the Sandy River (Exhibit A.14). *Criterion met.*

**4.15 (M) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent**

**possible.**

**Staff:** During the planning of the project, the applicant found no fragile or endangered plant habitat in the area of ground disturbance (Exhibit A.2). *Criterion met.*

**4.16 (N) The applicable policies of the Comprehensive Plan shall be satisfied.**

**Staff:** Comprehensive Plan Policy 5.17 recognizes and supports the Goals, Standards and Guidelines of the Sandy Wild and Scenic River management plan. The applicant has demonstrated compliance with this applicable policy by meeting the above approval criteria. *Criterion met.*

**5.00 Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern permit to install the apex log jam and large woody structures in the Sandy River in the Commercial Forest Use – 4 zone. This approval is subject to the conditions of approval established in this report.

**6.00 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. All other exhibits are available for review in Case File T2-2016-6444 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	12/16/2016
A.2	17	Narrative	12/16/2016
A.3	1	1S4E10 & Index Map	12/16/2016
A.4	2	Warranty Deed recorded in Book 1850, Page 99	12/16/2016
A.5	43	Exhibit 3 - Lower Sandy River Habitat Assessment and Candidate Site Design Project	12/16/2016
A.6	82	Exhibit 4 - Oxbow Stream Restoration Project – Existing Conditions	12/16/2016
A.7	34	Exhibit 5 – Oxbow Stream Restoration Project – Natural Resource Assessment dated November 2016	12/16/2016
A.8	59	Exhibit 6 – Cultural Resource Survey of the Oxbow Regional Park Project, Multnomah County, Oregon dated August 26, 2015	12/16/2016
A.9	15	Exhibit 7 - Joint Permit Application	12/16/2016
A.10	1	Exhibit 8 – Oregon Parks and Recreation Department Letter on the Oxbow Park Stream Restoration Project dated December 6, 2016	12/16/2016

A.11	12	Permit Plan Set Submittal	12/16/2016
A.12	9	Intergovernmental Agreement – Oxbow Regional Park	12/16/2016
A.13	5	Metro Letter regarding Completeness Response dated January 31, 2017	2/02/2017
A.14	12	Permit Plan Set Submittal (Revised) – Sheet1 a. Notes and Abbreviations – Sheet 2 b. Existing Conditions – Sheet 3 c. Site Overview and Access – Sheet 4 d. State Lands Lower – Sheet 5 e. Erosion Control State Lands – Sheet 9 f. Erosion Control Details – Sheet 12 g. Erosion Control Notes – Sheet 13 h. State Lands Lower Apex Jam – Sheet 14 i. Details 1 – Sheet 17 j. Revegetation Plan – Sheet 18 k. Revegetation Details – Sheet 19	2/02/2017
A.15	19	DSL/Army Corps Permit Plan Set Submittal – Sheet 1 a. Notes and Abbreviations – Sheet 2 b. Existing Conditions – Sheet 3 c. Site Overview and Access – Sheet 4 d. State Lands Lower – Sheet 5 e. Alder Alcove – Sheet 6 f. BLM Side Channel – Sheet 7 g. BLM Side Channel - Zoomed In – Sheet 8 h. Erosion Control State Lands – Sheet 9 i. Erosion Control Alder Alcove – Sheet 10 j. Erosion Control Side BLM Side Channel – Sheet 11 k. Erosion Control Details – Sheet 12 l. Erosion Control Notes – Sheet 13 m. State Lands Lower Apex Jam – Sheet 14 n. BLM Side Channel Apex Jam – Sheet 15 o. Alder Alcove Emulated Landslide Sheet 16 p. Details 1 – Sheet 17 q. Revegetation Plan – Sheet 18	2/02/2017

		r. Revegetation Details – Sheet 19	
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1S4E10 - 00500	12/16/2016
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	1/13/2017
C.2	1	Applicant's Acceptance of 180 Day Clock (Applicant deems case complete)	2/02/2017
C.3	3	Opportunity to Comment	4/13/2017
C.4	12	Administrative Decision	5/25/2017