

City of Portland

Bureau of Development Services

Land Use Services Division

1900 SW Fourth Ave. Suite 5000 Portland, Oregon 97201 Telephone: 503-823-7300 TDD: 503-823-6868

FAX: 503-823-5630 www.portlandonline.com/bds

Date: August 4, 2008

To: Interested Person

From: Kathy Harnden, Land Use Services

503-823-7834

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-138867 EN

GENERAL INFORMATION

Applicant: Steven Barrett

Rose City Yacht Club 3964 SE Ash St Portland, OR 97214

Owner: Rose City Yacht Club Inc.

7420 SW Hunziker St Ste F Portland, OR 97223-8242

Site Address: 3737 NE Marine DR

Legal Description: TL 100 1.79 ACRES, SECTION 01 1N 1E

 Tax Account No.:
 R941010290

 State ID No.:
 1N1E01AC 00100

Quarter Section: 1934

Business District: Columbia Corridor Association, contact Land Use at 503-287-8686 **Other Designations:** Inventory and Analysis of Wetlands, Water Bodies and Wildlife Habitat

Areas for the Columbia Corridor, Site 71; 100-Year Floodplain;

Multnomah County Drainage District

Zoning: RFchxs - Residential Farm and Forest base zone (RF) with an

Environmental Conservation (c), Aircraft Landing (h), Portland

International Airport Noise Impact (x), and Scenic Resource overlays in

various combinations across the property

Case Type: EN – Environmental Review

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The Rose City Yacht Club proposes to replace 10 of 11 existing piles and install 4 new steel piles for a total of 15 piles, on "Walk 5," one of five docks at this private marina. Walk 5 is currently supported by 11 pilings of different sizes, including 3 wooden creosote piles. The project includes leaving one steel piling in place; removing and re-installing 4 existing steel piles; and installing 6 replacement pilings plus four new pilings, all with 16-inch diameter steel piles, and all in the same

general locations as the removed pilings along the existing dock. The wooden piles will be replaced with steel. Steel piles are stronger and last longer than wooden piles. The proposal will further stabilize the dock and make if safer for pedestrian and boater use. Also, replacing creosote piles with steel piles removes a known carcinogen and pollutant from the water.

The site is located parallel with NE Marina Drive at about River Mile 109. The Club has five walkways perpendicular to the main current of the river that provide access to docks where the club members' boats are moored as well as to the clubhouse and to two permanent residences.

The existing piles on Walk 5 require replacement due to their deterioration over time. Piles, decks, docks and slips have already been replaced on the other 4 walkways. During this project, the decks, docks and moorage slips of Dock 5 will also be replaced, but are exempt from environmental review because coverage will not increase. Because more piles will be installed than currently exist on the site, the installation of 4 additional piles requires review. However, the size and use of the facility will remain the same. There will be no expansion of the existing dock or of the marina due to the increased number and size of piles under Walk 5. This proposal does not include any upland developments or modifications.

A floating barge will be used to access the site from the river side. A crane mounted on the barge will be used to both extract and install the piles. No upland area will be impacted by this proposal. The applicant proposes no new mitigation for this proposal, as there will be no expansion of the existing use or facilities.

Relevant Approval Criteria:

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

33.430.250.E Other development in the Environmental Conservation zone or within the Transition Area Only

PUBLIC REVIEW COMMENTS

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **July 8, 2008**. The following Bureaus responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau

The Bureau of Environmental Services provided suggestions for piling removal. Please see Exhibit E.1 for additional details.

The Site Development Section of BDS responded that a Site Development Permit will be required for installation of pilings, and that a geotechnical report and erosion controls <u>may</u> be required at the time of plan review. Please see Exhibit E.2 for additional details.

Multnomah County Diking District No. 1 reviewed and approved these plans.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 8, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

SITE INFORMATION

Site and Vicinity: The Rose City Yacht Club is a private club that maintains and operates a moorage facility on the Columbia River at about River Mile 109, adjacent to NE Marine Drive, just east of the intersection of NE 33rd Drive. It is the furthest east of eleven commercial marine-based businesses along this section of Columbia River Bank. East of this Marina is a

restaurant on stilts over the River, and Metro's Gleason Boat Ramp and parking facility. East of the boat ramp is a long strip of vacant riverbank owned by the Port of Portland.

The upland area slopes about 10 feet downward toward the river from NE Marine Drive, then flattens out to form a 1.14 acre graveled parking area for tenants of the moorage slips. Another 10-foot bank leads from the parking area to the river itself. Surrounding the parking area is a lightly vegetated area with a few trees adjacent to NE Marine Drive as well as shrubs and groundcovers required by a previous land use review. The east side of the upland contains a 0.3-acre shallow basin that appears to be about 4 to 6 feet deep.

Zoning: The Residential Farm/Forest zone, <u>RF zone</u>, is intended to foster the development of single-dwelling residences on lots having a minimum area of 52,000 square feet. Newly created lots must have a minimum density of 1 lot per 87,120 square feet of site area. The marina use is a pre-existing, nonconforming use, subject to the provisions of Chapter 33.258. Specifically, the proposal is subject to 258.070.D.2. a. The value of the proposal is less than the threshold amount that triggers compliance with the non-conforming use standards. Therefore, the proposal is not required to meet the standards of Chapter 33.258.

Environmental zones, "c" - conservation and "p" - protection overlays, 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 land use review is to ensure compliance with the regulations of the environmental zones.

The Aircraft Landing zone, "h" overlay, limits the height of structures and vegetation in the vicinity of the Portland International Airport; a height contour map is available for review in the Development Services Center.

The Scenic Resource zone, <u>"s" overlay</u>, is intended to protect Portland's significant scenic resources. The purposes of the scenic overlay, 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. Land use review 02-123157 EN required maximum landscaping in the setback to provide screening of the parking area adjacent to NE Marine Drive. Vegetation planting constraints imposed by Multnomah County Drainage District for levees within their jurisdiction limit additional plantings on the site. Trees may not be planted on the site. In addition, the landscaping standards of this chapter are not triggered by this proposal due to its low cost value {33.480.040.B.3.b(2)}.

The Portland International Airport Noise Impact zone, "x" overlay, 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 regulations of this zone are not applicable to the proposed new pile installation.

Land Use History: City records indicate that prior land use reviews include the following: CS 21-80 – Approved a boat marina and moorage on the site CS 21-80a – Approved a change in a condition of approval regarding setback requirements from

DR 85-05-04 – Approved a change in a previous condition of approval and the design of the boat moorage and marina.

LU 02-123157 EN – Approved a proposal to dredge an area under the existing head walkway at the marina and to install a riprap buttress at the toe of the existing bank.

Environmental Resources: The application of the environmental zones is based on detailed studies that have been carried out within eight separate areas of the City. The City's policy objectives for these study areas are described in reports that identify the resources and describe the functional values of the resource sites. Functional values are the benefits

provided by resources. The values for each resource site are described in the inventory section of these reports.

According to the "Inventory and Analysis of Wetlands Water Bodies and Wildlife Habitat Areas for the Columbia Corridor," the Rose City Yacht Club property is in study area 2. More specifically, the property is part of Resource Site 71 in the inventory that is part of the *Columbia Corridor Natural Resources Management Plan*. Resource Site 71 identifies functions such as fish habitat, drainage, flood storage, desynchronization, erosion control, sediment trapping, and pollution and nutrient retention and removal. For the Columbia River and the riverbank, the Resource Site also includes riparian strip values for wildlife habitat, visual amenity, and erosion control. The river provides fish habitat, and the site provides some flood storage. NE Marine Drive provides a view of the river that is considered a visual amenity. The existing riprapped bank provides erosion control and stabilization of the riverbank.

The Wildlife Inventory Score is 18 and the overall habitat score for the site is listed at 54. The range of Wildlife Inventory Scores for all the sites inventoried in the Columbia South Shore and the Columbia Corridor was 17 to 106. Therefore, this site, with its riprapped bank, upland parking area, and sparse vegetation, with little potential for improvement due to limitations placed on planting vegetation on the levee, contains minimal resources and offers few functional values.

PROJECT ANALYSIS

Alternatives Analysis. The applicant provided two alternatives: No build, and the current proposal. The proposal is to replace deteriorating materials that are required in order to maintain a functioning marina. No "new" development, i.e., new docks, boat slips, boathouses, and the like, is requested. Therefore, the only other alternative available would be to allow the current development to further deteriorate, creating unsafe conditions. The proposed replacement pilings are not subject to this review; only the four new pilings are subject to review. The applicant believes the four new pilings will create additional stability for the dock, and safer use of the docks for boat moorage and pedestrians walking on the dock. The four new pilings, with 16-inch diameters, will impact 7 square feet of riverbed. These pilings will be located adjacent to an existing dock and moorage slips. In comparison with the existing overwater coverage of the existing dock, houseboats, boat slips and pilings along Walkway 5, the four proposed new pilings will increase over-water coverage at this site by less than one percent.

Construction Management. All of the work activity associated with this proposal will be located in the waters of the Columbia River. Piling extraction and pile driving will occur from a barge-mounted crane that will move along the dock, removing and replacing piles as it goes. The applicant proposes to use a vibratory "hammer" to remove and install piles. The use of a vibratory pile driver to remove and install piles is a well-known method that reduces siltation as well as impacts to aquatic life over other types of pile installation methods. The pile driving activity will take only a few minutes each. Although a sediment plume is expected from the pile driving, the effects will be nominal, lasting only a few minutes each, and dissipating within a few moments. The amount of sediment associated with the driving of these small-diameter piles will be very small relative to the Columbia River's flow and the sediment it transports on a daily basis. Both the U.S. Army Corps of Engineers and the NOAA Fisheries Service (NOAA) have determined in previous small dock proposals that the sediment plumes from such small projects will have temporary and non-significant impacts on aquatic species in the area, and have limited the timing of dock installation to August 1 to February 28.

Mitigation Plan. The applicant did not prepare or submit a mitigation plan with this proposal. In 2002, an environmental review allowed dredging of an area below ordinary high water and installation of a riprap buttress along the riverbank down to elevation –7.0 Columbia River Datum (CRD) to help maintain the dredged area. As mitigation for that proposal, the applicant

proposed planting cedar trees, shrubs and groundcovers. After the proposal was approved, the applicant applied for a revised land use approval to plant only shrubs and groundcovers, as MCDD would not allow additional trees to be planted. Because the Marina was a pre-existing, non-conforming use in the RF zone, the dredging/bank stabilization proposal had to meet the requirements of Chapter 33.258 – Nonconforming Situations. Because of the high cost of that dredging/stabilization proposal, it had to meet this chapter's standards. The applicable standard involved compliance with landscaping requirements. As a result, the applicant installed 162 shrubs and seeded the non-parking upland area with a native riparian seed mix, creating a well-vegetated area on the site adjacent to NE Marine Drive.

The current proposal's value is estimated at \$20,000. The threshold trigger for compliance with the non-conforming upgrades is valued at \$124,100 (33.258.070.C2.a). Therefore, this proposal does not have to comply with the standards of the Nonconforming Situations Chapter, and additional landscaping required by those standards does not apply.

The US Army Corps of Engineers and NOAA Fisheries will determine whether there are impacts to fish that require might require in-water mitigation. Because all of the piling extraction and driving activity is located within the footprint of the existing moorage facility, there will be no upland impacts.

Because of the previous landscaping requirements, because cumulative in-water impacts are negligible, and because there is no upland work associated with this proposal, the applicant did not submit a mitigation plan.

ZONING CODE APPROVAL CRITERIA

33.430.250 Approval Criteria for Environmental Review

An environmental review application will be approved if the review body finds that the applicant has shown that all of 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.

Findings: Installation of the new piling does not meet the exemption criteria or Development Standards 430.140.D and F of Chapter 33.430. The approval criteria that apply to the proposed new pilings are found in Section 33.430.250.E. The applicant provided findings for these approval criteria and BDS Land Use Services staff have revised these findings or added conditions, where necessary, to meet the approval criteria.

33.430.250.E. Other development in the Environmental Conservation zone or within the Transition Area only. In Environmental Conservation zones or for development within the Transition Area only, the applicant's impact evaluation must demonstrate that all of the following are met:

1. Proposed development minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review;

Findings: This criterion is met because the four new piles will be placed within the footprint of the existing dock and boat slips. The new piles will be installed immediately adjacent to the existing dock structure. Only minimal disturbance of the riverbed will occur from this activity.

Although the marina is an existing, nonconforming use, its maintenance is allowed as long as certain non-conforming use standards can be met. As described above on page 5, this proposal is not required to meet these standards.

2. Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;

Findings: The alternatives analysis considered a no-build option and the proposed option. Maintenance and stability of the docks is a concern. Adding the four piles to the existing dock helps anchor and stabilize the dock, as discussed on page 4. The only location for the piles is adjacent to the dock they support. Steel piles will last longer and require less maintenance than the wood piles they replace. Also, replacing creosote piles with steel piles removes a known carcinogen and pollutant from the water. Because the piles will be extracted and replaced by a barge-mounted crane, there will be no upland disturbance. The use of a vibratory pile driver to remove and install piles minimizes siltation as well as impacts to aquatic life. Therefore, *this criterion is met*.

3. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

Findings: This criterion is met because 1) upland areas will not be affected due to the inwater installation methodology proposed by the applicant; and 2) NOAA Fisheries Service has found that such small projects have no significant or long-term impacts to this riverine environment.

4. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

Findings: A mitigation plan was not included in the proposal to install 4 new pilings in the Columbia River. There will be no upland impacts from installing the 4 new pilings and inwater sedimentation is expected to be minimal and short-lived. Significant detrimental impacts to resources or functional values in the upland or water areas of the site have not been identified. *Mitigation is not required and therefore this criterion is not applicable*.

5. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

Findings. Because mitigation is not required, this criterion does not apply.

6. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: Because mitigation is not required, this criterion does not apply.

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

Among other over-water activities that are not subject to review, the applicant proposes to install 4 new pilings attached to an existing dock in the Columbia River in an existing private

marina/yacht club. These activities will require a Site Development permit and a geo-technical report may be required at that time.

The new pilings will help stabilize the dock. Since all work will be conducted in or from the water, there will be no impacts to upland areas. The US Army Corps of Engineers and NOAA Fisheries Service have approved similar projects with a finding of no significant adverse impacts to water resources, including threatened and endangered aquatic species.

Because significant impacts are not expected to resources or functional values due to this project, the City will not require any mitigation for this particular project.

The findings show that the applicable approval criteria are met by the proposal and it should be approved.

ADMINISTRATIVE DECISION

Approval of an Environmental Review for:

• Installation of 4 new steel pilings adjacent to the existing Walk 5 at the Rose City Yacht Club.

within the Environmental Conservation overlay zone, and in substantial conformance with Exhibits C.1 and C.2, as signed and dated by the City of Portland Bureau of Development Services on July 29, 2008. Approval is subject to the following condition:

A. All permits: Copies of the stamped Exhibits C.1 – C.2 from LU 08-138867 EN shall be included as part of all plans submitted for permits (building, grading, Site Development, erosion control, etc.). These exhibits shall be included on a sheet that is the same size as the plans submitted for the permit and shall include the following statement, "Any field changes shall be in substantial conformance with approved Exhibits C.1 through C.4.b. Substantial conformance shall be verified by BDS, Land Use Review Staff."

Decision rendered by: Whall My on July 31, 2008

By authority of the Director of the Byreau of Development Services

Decision mailed: August 4, 2008

Staff Planner: Kathy Harnden

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 June 19, 2008, and was determined to be complete on July 3, 2008.

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 June 19, 2008.

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.

The applicant provided some of the information contained in this report.

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.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed by 4:30 PM on August 18, 2008 at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. An appeal fee of \$250 will be charged. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the Internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- Unless appealed, The final decision may be recorded on or after August 15 (the day following the last day to appeal).
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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.

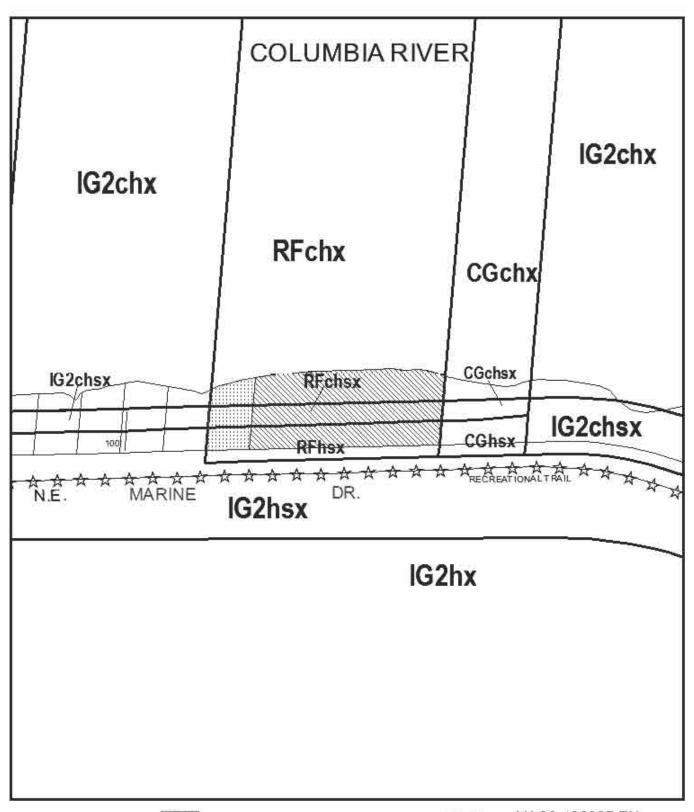
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Existing Conditions Site Plan (attached)
 - 2. Proposed Development Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services

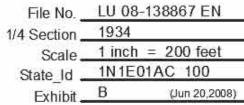
- 2. Site Development Review Section of BDS
- 3. Multnomah County Drainage District No. 1
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).

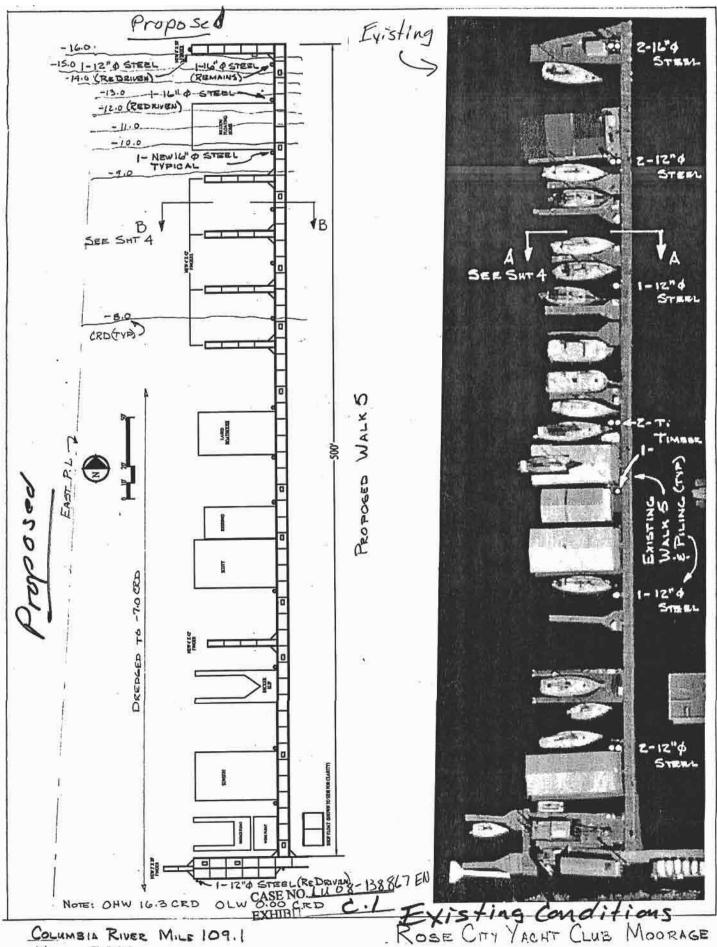












COLUMBIA RIVER MILE 109.1 MARCH 2008

