



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

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STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER

CASE FILE: LU 17-190465 CU
PC # 17-142158
REVIEW BY: Hearings Officer
WHEN: October 25, 2017 at 9:00 AM
WHERE: 1900 SW Fourth Ave., Suite 3000
Portland, OR 97201

It is important to submit all evidence to the Hearings Officer. City Council will not accept additional evidence if there is an appeal of this proposal.

BUREAU OF DEVELOPMENT SERVICES STAFF: DON KIENHOLZ / DON.KIENHOLZ@PORTLANDOREGON.GOV

GENERAL INFORMATION

Applicant: Peter F. Fry
303 NW Upton Terrace #1b
Portland OR, 97210
503-703-8033
Peter@Finleyfry.Com

Owner: Multnomah County
C/O Ken Wilson
501 N Dixon St
Portland OR, 97227
Ken.Wilson@Multco.Us

Site Address: 14355 N BYBEE LAKE CT

Legal Description: LOT 8, BYBEE LAKE INDUSTRIAL PARK
Tax Account No.: R123600450
State ID No.: 2N1W25C 00200
Quarter Section: 1521

Neighborhood: St. Johns, contact sjnalanduse@gmail.com.
Business District: Columbia Corridor Association, contact Debbie Deetz-Silva at 503-978-6044.
District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Plan District: None

Zoning: IHh – Heavy Industrial with an Aircraft Landing Zone (‘h’) overlay.

Case Type: CU – Conditional Use

Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the review body can be appealed to City Council.

Proposal:

The applicant is seeking an extension of the Conditional Use Approval for a Detention Facility originally approved in 2001 (Land Use Case #00-00554 CU) and extended in 2014 (Land Use Case #14-126691 CU). The previous extension approval expires after 3 years without an additional extension due to the approved activity not being established at the site. The proposal does not include any changes to the site, operations, or previous Conditions of Approval for the Wapato Jail.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are found in Portland Zoning Code section 33.815.205.A through C Detention Facilities.

ANALYSIS

Site and Vicinity: The subject site is approximately 18.24 acres in size, located in the Rivergate Industrial area, near the confluence of the Willamette and Columbia Rivers. The site is located at the south end of the Leadbetter Peninsula, which extends into Bybee Lake and abuts the Columbia Slough. The site is separated from the water body by a Port of Portland owned “open space tract” that abuts the site on most of the west side of the lot, and the entire south and east sides. The tract is approximately 200 feet deep and was created to serve as mitigation for previous Port of Portland development (see land use history below). The tract and adjacent area is comprised of vegetation, wetlands and water bodies, all owned by the Port. A linear strip of land located west of the open space tract is designated as a public recreational trail. The trail is developed along the east side of the Columbia Slough. To the north, an abutting lot is developed with a large warehouse and distribution building. Other industrial lots with frontage on N Bybee Lake Court and N. Leadbetter Road are also developed with large industrial warehouse or manufacturing buildings. The buildings are concrete tilt-up structures and are not much over 20 feet in height. Industrially-zoned sites provide extensive separation from the use and general public. The site is located at least 4 miles (driving) and approximately 1.5 miles as the crow flies, from the nearest residentially-zoned area. The nearest residentially zoned and developed property is at N. Columbia Boulevard, northwest of N. Swift Court.

The site contains a 155,400 square foot, multi-story building designed to serve as a medium security corrections facility. The building has the appearance of a hospital or industrial office building with brick exterior and numerous windows. A parking area with approximately 175 parking spaces is located at the north side of the site. A tall chain link security fence is constructed along the entire edge of the site. There is a landscape buffer between a security/emergency road and the fence. An electric gate is located at the entrance of the site, at the cul-de-sac. It prohibits entrance onto the site.

Vehicle access to the site is from N. Marine Drive to N. Leadbetter Road. North Bybee Lake Court is over 900 feet in length and terminates in a cul-de-sac. The driveway (access pole) to the facility is approximately 500 feet in length.

Zoning: The site is zoned IHh, Heavy Industrial with an “h”, Aircraft Landing overlay zone. The Heavy Industrial zone is one of three zones that implement the Industrial Sanctuary Comprehensive Plan Map designation. The zone provides areas where industrial uses may locate, including those uses that are not desirable in other zones due to their objectionable impacts or appearance. Detention facilities are permitted in the IH zone only through an approved Conditional Use review. The “h” overlay limits the height of structures and vegetation in order to

provide safer operating conditions for aircraft in the vicinity of the Portland International Airport. The height limit of the overlay zone is, at its lowest point on the site is 950 feet.

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

- ZC 6911: The Planning Commission applied City zoning for the Rivergate/Port of Portland annexation area.
- S 24-80: A subdivision was approved with conditions.
- LUR 99-00786 CU EN: The Hearings Officer approved a Conditional Use Review and concurrent Environmental Review, with conditions, for the development of a 525-bed, medium security corrections facility on the site. Due to modifications of the proposal, from a Federal Court consent decree that imposed requirements that largely affected surrounding Port of Portland property, the applicant formally withdrew the proposal (and approval).
- LUR 99-00832 SU: A subdivision for 8 industrial lots and 2 tracts was approved. The corrections facility is located on Lot 8.
- LUR 00-00554 CU: The applicant submitted a revised proposal for a 525-bed medium security corrections facility. In response to the Federal Court consent decree, the facility's site was reduced, and some on-site parking, the perimeter access road and perimeter landscaping was modified from the original proposal. A proposed stormwater outfall was relocated outside of the environmental overlay zone and therefore an Environmental Review was not required as part of that review. On November 28, 2000, the Hearings Officer approved the request with conditions. The City Council denied an appeal of the Hearings Officer's decision.
- LU 10-146928 CU: A Conditional Use was approved to remove all the conditions of approval that were applied to the Wapato Corrections Facility in the 2001 Conditional Use approval, and replace some of the old conditions with new conditions of approval, including a Good Neighbor Plan with the St. Johns Neighborhood Association. Other conditions regarding physical requirements of the development had been met and therefore were no longer necessary.
- LU 14-121691 CU: Extension of the original Conditional Use approval for the detention facility since the use had not yet been established within three years of the 2010 Conditional Use approval even though the facilities were constructed.

Agency Review: A "Request for Response" was mailed **September 11, 2017**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Bureau of Transportation Engineering (Exhibit E.2);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5);
- Life Safety (Exhibit E.6); and
- Parks Bureau (Exhibit E.7).

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.815.205 Detention Facilities

These approval criteria ensure that the facility is physically compatible with the area in which it is to be located and that the safety concerns of people on neighboring properties are addressed. The approval criteria are:

- A. Appearance.** The appearance of the facility is consistent with the intent of the zone in which it will be located and with the character of the surrounding uses and development.

Findings: The Wapato Corrections Facility was constructed in the early 2000s, with final permit approval in 2004. Consistent with condition F of LUR 00-00554 CU, the facility was constructed to conform to the proposed design (shown as Exhibit A.3 of the 2000 Conditional Use review). No exterior alterations or site improvements are proposed as part of this review.

Criterion met.

- B. Safety.** The facility and its operations will not pose an unreasonable safety threat to nearby uses and residents;

Findings: The original plan for Wapato was for an interconnected jail and treatment facility—housing inmates that were eligible for alcohol and drug treatment, under the supervision and control of corrections deputies. Of the approved 525 beds, the County intended to use up to 225 for jail inmates. The remaining 300 beds would be available as a secure treatment facility for those with drug, alcohol and mental health problems. The facility would be operated with 24 hour supervision with employee shifts ranging from 20 to 94 staff.

The facility is secure in nature and located more than 1.5-miles in a straight line from the nearest residential development. The 2014 application described four security envelopes incorporated into the building security, utilizing components that comply with modern correctional standards to ensure safety of the public, staff, and inmate population.

An extensive description of security details can also be found in the findings of LU 10-146928 CU, and again reiterated in 2014 application which include the following:

The application explains that “classification” is the process by which jail and prison inmates are selected for assignment to facilities appropriate for their behavior, risks and needs. Modern classification systems are not based upon the criminal charges or convictions, but rather, upon the inmates’ likely behavior, risks and needs during confinement. Corrections officers or counselors are assigned the task of interviewing all booked arrestees or sentenced offenders and evaluation their prior institutional history, risks of misconduct and need for services to determine the appropriate level of security.

The application notes that the Wapato facility exhibits distinct security advantages because it is surrounded on three sides by water and extensive industrially-zoned development on the fourth side. The water bodies create a natural barrier or fortress. The facility is located approximately 1.5 miles (as the crow flies) from residentially-zoned sites. Vehicle access to the facility is provided via major traffic streets and/or industrial routes—N. Marine Drive, N. Lombard and Interstate 5. There is a single point of entry off N. Bybee Lake Court, a dead-end street that terminates at the entrance of the county facility. A single point of entry allows law enforcement to strictly control access to and from the facility.

Further, the Wapato building incorporates multiple security features to secure the population: The facility is constructed with solid masonry exterior walls. The roof and floors are constructed to require power tools to infiltrate. Doors and windows are blocked with high security, heavy gauge screens and bars. The fencing is topped with coils of razor ribbon to deter entrance or escape. There is a separate interior entrance and egress points and individual and group holding areas. And there are security electronic locking, duress indication, CCTV and communication systems installed throughout the building. The Wapato facility is developed with dormitory-style housing. There are clusters of bunk beds with lockers for inmates to store their possession. There are some single cells and restricted internal movement of inmates within the facilities secure perimeter. The dormitory areas can be locked at night and supervised by corrections officers.

In 2010, the St. Johns Neighborhood Association provided written comments noting their concern that because the facility was not constructed for inmate/prisoner intake, a condition should specifically prohibit future operators from conducting “intake” at the facility. Further, because of the isolation of the site and concerns about the safety of the community and well-being of the inmates, the neighborhood association wanted release of inmates at the facility to be prohibited. For safety reasons, the association requested a condition that prohibits the transport of inmates on residential streets. Lastly, the applicant proposed, and the neighborhood supported, establishing a Good Neighbor Agreement between the neighborhood association and the agency/operator of the facility. A Good Neighbor Agreement can provide a protocol for ongoing coordination and problem-solving between the facility operator and the neighborhood.

The current application proposes no change in the security plans for the site or the facility. With the conditions from the previous approvals that remain in place, this approval criterion will continue to be met.

Criterion met.

C. Public services.

1. The proposed use is in conformance with the street designations shown in the Transportation Element of the Comprehensive Plan;
2. If the proposed use will be located in an industrial zone, it will not have a significant adverse effect on truck and freight movement;
3. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, or other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; and safety for all modes; and

Findings: The Portland Transportation/Development Review Section has reviewed the application for potential impacts on public rights-of-way, traffic impacts and conformance with adopted policies, street designations, and the above criteria. An excerpt from PBOT’s response follows:

The request to extend the approved CU will have no impacts on transportation facilities. PBOT’s original analyses continue to be relevant to the site....Since City Council found the transportation system was capable of safely serving the proposed combination of uses in land use decision [LUR 00-00554 CU], then any combination of uses that produce fewer transportation impacts can also meet this criterion.

Transportation has no objection to the proposal with a condition that the applicant submit a TDM Plan specific the actual uses at the time of occupancy of those uses.

With a condition of approval, this criterion is met.

4. Public services for water supply, police and fire protection are capable of serving the proposed use and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

Findings: Given the facility is already developed and no additional development is proposed, the Bureau of Environmental Services, BDS Site Development, Water Bureau and Fire Bureau stated no objections or concerns in their responses. A prior condition of approval remains in place that requires an agency or agent using the Wapato facility such as Multnomah County and/or other user(s)/operator(s) of the facility to contact the Portland Police Bureau's Land Use Representative to develop an operator specific operation/security plan. The plan must be signed by the Police Bureau and the user(s)/operator(s) prior to occupancy of the facility. This condition will provide communications and a protocol so that the Police Bureau is capable of serving the proposed use(s) at the facility. Through compliance with the condition, this approval criterion continues to be 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

In 2001, Multnomah County received City of Portland approval of the Wapato Corrections Facility, a Conditional Use detention facility. In order to provide flexibility to the county to utilize the already-constructed facility and/or to sell or lease the facility to another user, the applicant requested an extension of the Conditional Use approved via case file LU 10-146928 CU. In 2014 Multnomah County requested and was granted another extension of the original permit. All of the prior conditions from that review carry forward. The applicant proposes no changes to the facility or the site and simply requests a renewed approval in order to provide Multnomah County additional time to secure a use or tenant for the facility. The facility has been previously approved as a secured medium security detention facility with the flexibility to be a jail, prison, secure treatment facility or a combination of those uses.

Through compliance with the existing conditions, the facility will continue to satisfy the Conditional Use approval for a 525-bed Detention Facility, and therefore the applicant's request for a renewed approval timeline should be approved.

TENTATIVE STAFF RECOMMENDATION

(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)

Approval of:

- Extension of the Conditional Use approval for a 525 bed Detention Facility, subject to the following conditions:
 - A. As part of the building permit application submittal, the following development-related conditions (B through F) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be

labeled "ZONING COMPLIANCE PAGE - Case File LU 17-190465 CU." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. To create an understanding toward the use and operation of the facility, any agency or agent using the Wapato facility such as Multnomah County and/or other user(s)/operator(s) of the facility must contact the Portland Police Bureau's Land Use Representative to develop an operator specific operation/security plan. The plan must be signed by the Police Bureau and the user(s)/operator(s) 30 days prior to occupancy of the facility [33.815.205.B].
- C. A Good Neighbor Agreement must be developed with the facility user(s)/operator(s) and the St. Johns Neighborhood Association [33.815.205.B].
- D. Inmate/prisoner intake and release is prohibited at the facility [33.815.205.B]
- E. Truck traffic serving the facility and inmate transport must occur only on designated major traffic streets, regional trafficways and the streets in the Rivergate Freight District that provide direct route to the facility [33.815.205.B].
- F. To reduce the number of vehicle trips and generally provide or encourage alternatives to single-occupancy vehicle trips by employees, the agency or agent using/operating the facility must submit a Transportation Demand Management Plan to the Portland Bureau of Transportation, Development Review Division 30 days prior to occupancy of the facility or building permit for any physical changes to the site that are required to accommodate the use, whichever occurs first [33.815.205.C].

Procedural Information. The application for this land use review was submitted on June 21, 2017, and was determined to be complete on September 1, 2017.

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 21, 2017.

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 December 30, 2017.**

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 recommendation 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 report is not a decision. The review body for this proposal is the Hearings Officer who will make the decision on this case. This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The review body may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the record. Your comments to the Hearings Officer can be mailed c/o the Hearings Officer, 1900 SW Fourth Ave., Suite 3100, Portland, OR 97201 or faxed to 503-823-4347.

You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant. This Staff Report will be posted on the Bureau of Development Services website. Look at www.portlandonline.com. On the left side of the page use the search box to find Development Services, then click on the Zoning/Land Use section, select Notices and Hearings. Land use review notices are listed by the District Coalition shown at the beginning of this document. You may review the file on this case at the Development Services Building at 1900 SW Fourth Ave., Suite 5000, Portland, OR 97201.

Appeal of the decision. The decision of the Hearings Officer may be appealed to City Council, who will hold a public hearing. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Who can appeal: You may appeal the decision only if you write a letter which is received before the close of the record for the hearing, if you testify at the hearing, or if you are the property owner/applicant. Appeals must be filed within 14 days of the decision. **Appeals must be filed within 14 days of the decision. An appeal fee of \$2,100.00 will be charged (one-half of the BDS application fee, up to a maximum of \$5,000).**

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization’s bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Recording the final decision.

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after the Hearings Officer renders and signs their decision 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.

Planner’s Name: Don Kienholz

Date: October 13, 2017

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant’s Statement:
 - 1. Narrative and Written Materials
 - 2. Copy of Hearing Officer’s Decision for LU 14-121691 CU
 - 3. Deed Recorded in Book 1291, Page 436 on September 15, 1948
 - 4. Supplemental Written Information
- B. Zoning Map (attached):
 - 1. Existing Zoning
- C. Plans & Drawings:
 - 1. Site Plan
- D. Notification information:
 - 1. Request for Response
 - 2. Posting letter Sent to Applicant
 - 3. Notice to be Posted
 - 4. Applicant’s Statement Certifying Posting
 - 5. Mailing List and Notice
 - 6. Mailed Notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of Bureau of Development Services
 - 6. Life Safety
 - 7. Parks

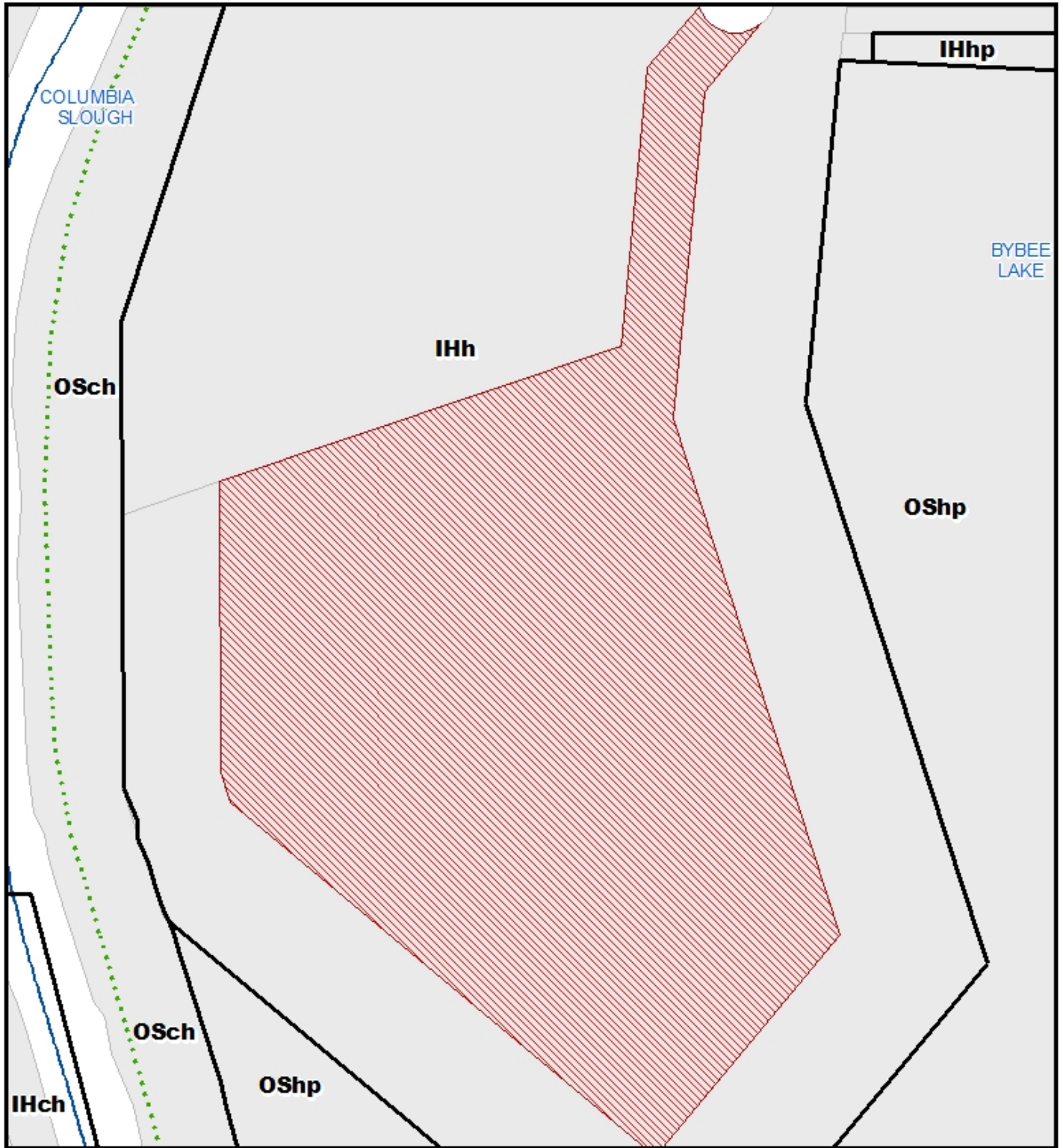
F. Letters: None

G. Other:

1. Original LUR Application
2. Receipt Fees Paid
3. July 21, 2017 Incomplete Letter




H.

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).



ZONING



-  Site
-  Stream
-  Recreational Trails

File No.	LU 17-190465 CU
1/4 Section	1621 1521
Scale	1 inch = 200 feet
State ID	2N1W25C 200
Exhibit	B Jun 23, 2017