 Date: May 13, 2019  
To: Interested Person  
From: Stacey Castleberry, Land Use Services  
503-823-7586 / Stacey.Castleberry@portlandoregon.gov

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

CASE FILE NUMBER: LU 19-123378 EN

GENERAL INFORMATION

Applicant: Port of Portland  
Attention: Steve Bloomquist  
PO Box 3529  
Portland, OR 97208-3529

Site Address: 8349 N MARINE DR

Legal Description: BLOCK 19&23 TL 200, RIVERGATE INDUSTRIAL DIS

Tax Account No.: R708884700

State ID No.: 2N1W24 00200

Quarter Section: 1320, 1321, 1322, 1421, 1422

Neighborhood: St. Johns, contact Sheryl Lyons at sjnalu@gmail.com  
Business District: Columbia Corridor Association, contact at info@columbiacorridor.org  
District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Plan District: None  
Other Designations: 100- Year Floodplain, FEMA Floodway, Below TOB Columbia River.

Zoning: IHc,h,k,x

Case Type: EN - Environmental Review

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

Proposal: The applicant (Port of Portland) proposes to rehabilitate its existing Berth 601 facility at Port of Portland Terminal 6. Activities include routine maintenance and repair of damaged piles and other maintenance activities to allow its continued safe operation. This project also includes the installation of a new dolphin and an associated grated walkway to allow for safer and more efficient mooring of vessels at the facility. The activities to be conducted will maintain the safety of the existing structure and will not change its authorized use. The activities to be conducted include the following:

- New dolphin and grated walkway (requires Environmental Review according to Portland Zoning Code Chapter 33.430);
- Fender pile replacement (exempt from Chapter 33.430);
- Structural pile repairs (exempt from Chapter 33.430);
• Rub rail replacement (exempt from Chapter 33.430);
• Timber pile removal (as mitigation for the new dolphin and grated walkway).

A November 2018 pile inspection and condition assessment identified structural deficiencies in the existing piles to be repaired and replaced. The study also identified the need for the new dolphin and associated walkway to allow for safer and more efficient mooring of vessels at the facility. This proposal addresses the need for maintenance and repair of damaged piles and other components, and will allow continued safe operation of this part of the terminal, creating safer conditions than exist today.

The project site is within the City’s Environmental Conservation overlay zone. Applicable environmental standards must be met to allow the work to occur by right. Standards 33.430.140 D through S except L apply to alterations to existing development in environmental zones. For those environmental standards that are not met, Environmental Review is required. In this case, the proposed dolphin work will occur below top-of-bank of the Columbia River and will not meet Standard 33.430.140 F; therefore, the work must be approved through an Environmental Review. Note that activities considered maintenance, repair and replacement of existing structures are exempt from the environmental zoning regulations according to 33.430.080 C.1.

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

Criterion 33.430.250 E  Other Development in the Environmental Conservation zone

**ANALYSIS**

**Site and Vicinity:** The project will be constructed at the existing Berth 601 marine terminal at the Port of Portland’s Terminal 6. The project is located in the Columbia River, approximately 0.3 miles upstream of the confluence with the Willamette River. Terminal 6 consists of five berths. Berth 601 (built in the early 1990’s) and an upstream Berth 607 (built in the late 1970’s), are used for unloading automobiles. Between these two berths, Berths 603, 604, and 605 handle containerized cargo and steel slabs. These berths (603 thru 605) are contiguous and form a 2,850-footlong wharf. Seven gantry cranes are used to transfer containers and steel slabs between trucks and ocean-going ships. Upstream of Terminal 6, in the Oregon Slough, there are additional commercial uses and numerous recreational moorage facilities. Commercial and recreational users traverse the slough to and from these facilities. Recreational fishing and small watercraft also use the waterway.

The City of Portland’s Kelly Point Park is located immediately downstream of Berth 601, and extends to the confluence of the Columbia and Willamette Rivers. The Park is approximately 104 acres in size, and amenities include a historical site, paved and unpaved paths, picnic tables, public art, restrooms, and a vista point.

There is a shallow-water nearshore zone that extends from the ordinary high-water mark (OHWM), river-ward approximately 200-250 feet to the face of the existing dock breasting dolphins. Water depths in this area are less than 20 feet. A portion of this nearshore area consists of a 50-100 foot-wide sandy beach that extends waterward of the OHWM at the site, and that is typically exposed at low water. Waterward of the shallow nearshore area, water depths drop off within a short distance to the face of the existing berth, and the adjacent navigation channel, where the depth is maintained by dredging to a depth of -43 feet.

Streambed sediments at the site consist predominantly of medium to coarse alluvial sands and silts. Nearshore habitats provide moderate-quality migratory habitat for outmigrating juvenile salmonids. There is no documented or expected spawning habitat, and there is little structural nearshore habitat complexity at the site that would provide rearing or wintering habitat or refuge.
Deep water habitats in the adjacent berth and Navigation Channel may provide a suitable migratory corridor for returning adults. However, during the approved in-water work periods, salmonids are not expected to be present except in very low numbers. Terrestrial habitats will not be affected by the project. Upstream of the existing access trestle that provides access to the dock, there is a narrow (80-150-foot) band of riparian vegetation that consists primarily of mature black cottonwood (*Populus balsamifera*), with an understory of mixed native shrubs and non-native Himalayan blackberry (*Rubus armeniacus*). Downstream of the trestle a wider (approximately 200-250 foot) band of mature riparian vegetation is present. This forested riparian habitat is part of the City of Portland’s Kelly Point Park. Riparian habitat provides a source of organic inputs to the aquatic system, some nearshore shading, and habitat connectivity to upland and adjacent riparian habitats.

**Zoning:** The project site lies within the Heavy Industrial 2 (IH2) base zone. The overlay zones include: the Portland International Noise Impact overlay zone (x), the Aircraft Landing overlay zone (h), Prime Industrial overlay zone (k) the Environmental Conservation overlay zone (c). The site is also located within a secure area of Terminal 6.

The activities are allowed by right in the IH2 base zone, the x, h, k overlay zones and these Zoning Code chapters are not addressed here.

**Environmental Conservation overlay zone ("c")** protects 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 be sensitive to the site’s protected resources. The c-zone conserves important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

**Land Use History:** City records indicate there are no prior land use reviews that would be affected by this proposal.

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on April 8, 2019.

1. **Agency Review:** Several Bureaus and agencies have responded to this proposal. City bureaus responded to the Notice of Proposal with no concerns or conditions of approval. However BDS Site Development Services will require geotechnical reporting and a technical “no-rise” analysis at the time of building permit application; and the Portland Fire Bureau requires the applicant to obtain approval by the Harbor Master. Please see the “E” Exhibits for details.

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

**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:** The approval criteria which apply to the proposed new dolphin and grated walkway are found in Section 33.430.250 E. The applicant has provided findings for these approval criteria and BDS Land Use Services staff have appended these findings or added conditions,
where necessary to meet the approval criteria. While the applicant’s narrative application is extensive (see Exhibit A.1 in the application case file) the criteria are grouped and the findings abridged and presented below.

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; and**

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

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

**Findings:** The purpose of this criterion is to recognize that some form of development is allowed consistent with the base zone standards, that there are no practicable alternatives that would be less detrimental to the identified resources and functional values, and to demonstrate that resources outside of the proposed disturbance area will be protected from impacts related to the proposal.

A berthing dolphin will be constructed approximately 100-feet upstream of the existing floating dock at Berth 601, to provide for safer and more optimal mooring of vessels at the existing dock. The dolphin will measure approximately 20 x17 feet, and will be supported by (11) 24-inch steel pipe piles. The dolphin will also have a pile-supported fender system, which will include (2) 18-inch steel pipe piles. Access to the new dolphin will be provided from the existing dock by a new grated walkway, approximately 3 feet wide by 100 feet long. The Heavy Industrial 2 base zone allows the warehouse and freight movement use by right and there are no specific base zone standards that apply to dolphins.

Berth 601 is the only location in the City of Portland designed specifically for auto import and exports, therefore no other alternative locations can be feasibly evaluated. The proposed location for the new dolphin is located between an existing dolphin and the floating dock.

Alternative designs evaluated for the new dolphin and for repairing the fender piles included the use of creosote-coated timber piles; structural repairs such as adding shims or additional steel pipe sections. These alternatives were more expensive and would result in greater impacts than the alternative selected. Alternatives were also considered that would have replaced the fender piles with larger diameter piles but replacing the piles with the same diameter pile minimizes the impact to benthic habitat.

The dolphin and walkway design have been developed to minimize the extent of solid overwater coverage, and the extent of the impact to benthic habitats. The concrete pile cap is the minimum necessary to serve the purpose of the structure, and the walkway is grated to reduce the extent of shading. The structure is supported on the fewest number of piles necessary to provide structural function of the dolphin. The structures are also situated in deep water, which further reduces the potential for any impact to aquatic habitat function.

The applicant describes construction management considerations and provides an extensive list of best management practices to be employed during construction (Exhibit A.1, application case file), aimed at protecting surrounding resources.

Materials will be mobilized to the site and staged either on work barges, or on the existing dock. Most of the work will be conducted from work barges, skiffs, or temporary falsework.
(i.e. scaffolding or similar temporary support structures). Work barges likely will use spuds to anchor in place.

Pile installation for the dolphin will be conducted with a vibratory hammer to the extent practicable, to minimize the potential for impacts associated with temporarily elevated underwater noise. An impact hammer will be used to drive the piles to final tip elevation and for proofing. A bubble curtain will be employed during impact pile driving to attenuate underwater noise. The bubble curtain will meet the specifications established in the USACE SLOPES IV Programmatic Biological Opinion, which stipulates that the curtain distribute air bubbles around 100% of the piling perimeter for the full depth of the water column.

Once piles are driven to final tip elevation they will be filled with clean sand, and then a concrete pile cap will be installed. Temporary falsework will be built for the cast-in-place concrete pile caps. Watertight formwork will be built on the falsework, and the steel reinforcing cage for the pile cap will be constructed. After the cage has been completed and side forms have been placed, the concrete will be cast. Most of this work will be accomplished using water-based equipment (i.e., from a barge or similar equipment). Concrete will be delivered to the site by ready-mix truck and placed by pump or crane-supported bucket. While portions of the falsework and formwork may extend below the OHWM elevation, forms will be sealed and no uncured concrete would come in contact with the water. Casting concrete for the pile cap will therefore not be restricted to the in-water work window.

Deep water habitats in the adjacent berth and navigation channel may provide a suitable migratory corridor for returning adults. However, during approved in-water work periods, salmonids are not expected to be present except in very low numbers. The project will produce very limited impacts to nearshore habitats with consideration of the limited amount of disturbance and work during the jurisdictional in-water work period in the fall of 2019.

Terrestrial habitats will not be affected by the project.

The proposal 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 and the proposal is less detrimental than other practicable alternatives. Construction management techniques have been proposed by the applicant to minimize impacts to identified resources and functional values designated to be left undisturbed. These criteria are met.

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

Findings: This criterion requires the applicant to quantify unavoidable impacts and propose mitigation that is proportional to the impacts, as well as comparable in character, so as to replace lost resource functions and values.

The structural and fender piles for the dolphin will directly displace approximately 38 square feet of benthic habitat and result in approximately 360 square feet of solid overwater coverage, and approximately 300 square feet of grated overwater coverage for the walkway.

To offset the limited impacts associated with the direct loss of deep-water benthic habitat from the dolphin piles, the applicant proposes to remove 50 existing creosote-treated timber piles from the vicinity of the existing dock. The pile removal will restore a total of 39.27 square feet of benthic habitat, which represents a greater than 1:1 ratio of benthic habitat restoration. The piles are in nearshore areas, and many of them are in shallow water habitats, where the effect of the habitat restoration will be more beneficial. The removal of creosote-treated timber piles will restore primary productivity to nearshore habitats, will remove a potential impediment to downstream juvenile salmonid migration, and will remove a source of chemical contamination from the aquatic environment.
Piles will be removed either by vibratory extraction, or by cutting or breaking the piles off at the mudline. The preferred method for pile removal is vibratory extraction. Broken and/or cut pile stubs will not be cut or pushed below the mudline, to minimize the disturbance of the benthic substrate. It is expected that natural hydraulic action will distribute clean, native sediment into the holes left following pile removal, and no additional material will be necessary to fill the holes. Pile removal will be conducted within the October 1 – December 31 in-water work window.

Detrimental impacts on the benthic and aquatic communities will be well mitigated by the removal of 50 creosote piles and this criterion is met.

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**

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:** Mitigation for significant detrimental impacts will be conducted on the same site as the proposed use or development, and the applicant has indicated that they hold a DSL Waterway Lease over the proposed mitigation area. Provided the applicant provides documentation confirming legal access to the construction and the mitigation site, these criteria can 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 requirements of Title 11 can be met, and that all development standards of Title 33 can be met or have received an Adjustment or Modification via a land use review, prior to the approval of a building or zoning permit.

**CONCLUSIONS**

The applicant proposes a new berthing dolphin and grated pedestrian walkway at Berth 601 of Terminal 6. The limited in-water and benthic impacts will be offset by the applicant’s proposal to removed 50 creosote-coated piles from adjacent river bed. The applicants and the above findings have shown that the proposal meets the applicable approval criteria with conditions. Therefore, this proposal should be approved.

**ADMINISTRATIVE DECISION**

**Approval** of an Environmental Review for:

- Construction of a new dolphin and grated walkway at Berth 601;

within the Environmental Conservation overlay zone, and in substantial conformance with Exhibits C.1 through C.6, as approved by the City of Portland Bureau of Development Services on **May 8, 2019**. Approval is subject to the following conditions:

A. As part of construction permit application submittal, each of the 4 required site plans and any additional drawings must reflect the development approved by this land use review as indicated in Exhibits C.1-C.6. The sheets on which this information appears must be labeled, “Proposal as approved in Case File # LU 19-123378 EN. No field changes allowed.”

B. As part of the construction permit application submittal, the applicant shall provide documentation that they hold a DSL Waterway Lease over the “project limits” as shown on Exhibit C.5.
C. The applicant shall remove 50 existing creosote-treated timber piles by December 31, 2019, as shown on Exhibits C.5 and C.6.

**Staff Planner:** Stacey Castleberry

**Decision rendered by:** [Signature] on May 8, 2019

**Decision mailed:** May 13, 2019

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

**Procedural Information.** The application for this land use review was submitted on February 21, 2019, and was determined to be complete on April 2, 2019.

_Zoning Code Section 33.700.080_ states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 21, 2019.

_ORS 227.178_ states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on:** July 31, 2019.

**Some of the information contained in this report was provided by the applicant.** As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

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

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

**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 May 28, 2019** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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 call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, 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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 will be recorded with the Multnomah County Recorder.
- **Unless appealed,** the final decision will be recorded on or after **May 29, 2019** by the Bureau of Development Services.

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

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

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

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

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.
EXHIBITS
NOT ATTACHED UNLESS INDICATED

A. Applicant’s Statement
   1. Applicant’s Environmental Review application narrative
   2. Applicant’s first rev of site plans (superseded)

B. Zoning Map (attached)

C. Plans/Drawings:
   1. Vicinity map
   2. Site Plan
   3. Project Overview Plan
   4. Walkway Elevation
   5. Mitigation Plan (attached)
   6. Mitigation Plan/Air Photo
   7. Detail Sheets

D. Notification information:
   1. Mailing list
   2. Mailed notice

E. Agency Responses:
   1. Bureau of Environmental Services
   2. Bureau of Transportation Engineering and Development Review
   3. Fire Bureau
   4. Site Development Review Section of BDS
   5. Life Safety Review Section of BDS
   6. Portland Parks & Recreation Urban Forestry Division

F. Correspondence: (none received)

G. Other:
   1. Original LU Application
   2. Letter of Incompleteness
   3. Environmental Zoning history

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).