



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

Carmen Rubio, Commissioner  
Rebecca Esau, Director  
Phone: (503) 823-7310  
TTY: (503) 823-6868  
[www.portland.gov/bds](http://www.portland.gov/bds)

**Date:** May 19, 2023  
**To:** Interested Person  
**From:** Timothy Novak, Land Use Services  
503-823-5395 / [Timothy.Novak@portlandoregon.gov](mailto:Timothy.Novak@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 23-019995 RR UNINCORPORATED MULTNOMAH COUNTY**

#### **GENERAL INFORMATION**

**Applicant:** Tina Farrelly | *Pacific Habitat Services*  
9450 SW Commerce Circle, Suite 180 | Wilsonville, OR. 97070  
(503) 570-0800 | [tf@pacifichabitat.com](mailto:tf@pacifichabitat.com)

**Owner/Agent:** Roger Pollock for *Baja Escapes LLC*  
11724 S Riverwood Rd | Portland, OR. 97219-8473

**Site Address:** 11724 S RIVERWOOD RD

**Legal Description:** LOT 7 TL 2400, RIVERWOOD  
**Tax Account No.:** R711300510  
**State ID No.:** 1S1E35AC 02400  
**Quarter Section:** 4132  
**Neighborhood:** None  
**Business District:** None  
**District Coalition:** None  
**Plan District:** None  
**Other Designations:** Unincorporated Multnomah County, FEMA Flood Hazard Area (100-year), Regulatory Landslide Hazard Area, Resource Site WR23 (Dunthorpe) – *River Plan South Reach (2021)*

**Zoning:** *Base Zone:* Residential 20,000 (R20)  
*Overlay Zones:* River Environmental (e), River General (g\*),  
Constrained Sites (z)

**Case Type:** RR – River Review  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

The applicant is requesting to modify the location of the River Environmental (e) overlay zone at the subject site, moving it riverward (eastward) approximately 46 to 56 feet, depending on the exact location. The purpose is to remove portions of the site with approved development from the 'e' overlay. Specifically, this request will remove the new pool, most of the new pool deck, and a strip of lawn between the pool deck and the existing house from the 'e' overlay. The pool and pool deck were approved under LU 19-267865 EV GW EN. No development or alterations to development are proposed or being reviewed as part of this request.

Per 33.865.020.C, River Review is required when an applicant wishes to fine tune the boundary of the River Environmental overlay zone based on a detailed environmental study that more accurately identifies the location and quality of resources and functional values on the site. Per 33.865.030 Procedure, this request is processed through a Type II River Review.

**Relevant Approval Criteria:**

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

- 33.865.100.B.3 - Modification of River Environmental overlay zone boundaries based on a more detailed site-specific environmental study.

**ANALYSIS**

**Site and Vicinity:** The 38,000 square foot site is situated on the west bank of the Willamette River. The site is in the Dunthorpe-Riverdale Sewer District and has a sanitary sewer easement benefitting the district that runs north/south through the property just east of the existing house and the new pool area that is under construction.

The surrounding properties on the same (west) side of the river are single-dwelling residences, excepting the Bishop's Close and Elk Rock Garden, a private garden at a site owned by the Episcopal Diocese of Oregon that lies about 500 feet to the west of the subject site. On the opposite bank of the river from the site is Milwaukie Bay Park and the Kellogg Creek Wastewater Treatment Plant, which is run by Clackamas County.

**Zoning:** The Residential 20,000 (**R20**) zone is a single dwelling zone. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood. This proposal does not impact where or how the R20 zoning applies on the property; as noted in the proposal description, no development is proposed in this review.

The River General (**g\***) overlay zone allows for uses and development that are consistent with the base zoning and allows for public use and enjoyment of the riverfront. This proposal does not impact where or how the g\* overlay applies on the property.

The River Environmental (**e**) overlay zone protects, conserves and enhances important natural resource functions and values while allowing environmentally sensitive development. The purpose of the zone is to limit the impacts from development and vegetation maintenance on the natural resources and functional values contained within the overlay zone. The River 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. Mitigation is required for unavoidable impacts and is intended to compensate for impacts and improve natural resource features or functions over time. The River Environmental overlay zone applies to specific natural resource areas identified in two detailed studies: the Willamette River Central Reach Natural Resources Protection Plan (2020) and the River Plan / South Reach Natural Resources Protection Plan (2020). This overlay zone always applies in

combination with one of the other River Overlay zones. It is the location of the boundary of this overlay zone that this review is requesting a change to.

The Constrained Sites (**z**) overlay zone reduces development potential to comply with protective measures adopted and acknowledged pursuant to statewide land use planning goals. This overlay zone reduces risk to life or property from certain natural hazards. The application of this overlay is unaffected by this proposal.

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

- MUP 8-90 WRG (90-200509 LU). Approval of a dock. Currently, the dock approved in this review is not located at the site.
- LU 19-267865 EV GW EN. Approval of an Environmental Review for: ♣ Construction of stairs, landing, gangway, and piles. Approval of an Environmental Violation Review for: ♣ Removal of illegal development within Wetland A and installation of remediation plantings. Approval of a Greenway Review for: ♣ Construction of a pool, sanitary sewer line, stormwater facility, and stormwater outfall; and ♣ Construction of a dock and its associated components (access path and stairs, landing, gangway, and piles). *This review is relevant to this case as it provides context for how the pool and pool deck that will be (mostly) removed from the ‘e’ overlay were approved to be built in what is now the ‘e’ overlay. Prior to March of 2021, the overlay zone designations and locations at the site were different, with only the base zone (R20) and the Greenway River General (g) overlay applying to the pool area.*

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **April 7, 2023**. Multiple reviewers from BDS and interagency partners responded. None objected to the request, and none recommended any conditions of approval. See the ‘E’ Exhibits for the complete responses.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on April 7, 2023. One written response has been received from a notified property owner in response to the proposal. That response expresses general support for the proposal. The complete response is exhibited as Exhibit F.1.

## ZONING CODE APPROVAL CRITERIA

**Title 33.865.100.B.3** Modification of River Environmental overlay zone boundaries based on a more detailed site-specific environmental study. The River Environmental overlay zone line location may be modified to more accurately reflect the location of natural resources and functional values on the site. All of the following must be met:

**a. The modified River Environmental overlay zone boundary must include all natural resource features that receive a high or medium rank using the methodology within the adopted Natural Resources Inventory; and**

**Findings:** The applicant provided findings in their narrative (Exhibit A.1) that address the City of Portland Riparian Corridor Model Criteria listed in Table 5 (pg 43) of the Natural Resource Inventory Update for Riparian Corridors and Wildlife Habitat (NRI, 2022), which amended the original NRI that City Council adopted in October of 2012. Staff has reviewed the applicant’s inventory of the site’s resources and takes no exception to its conclusions and its consistency with the methodology within the adopted and amended NRI. For convenience, staff has included the relevant NRI section with the model criteria as Exhibit G.3 and the section describing how to assign rankings based on the criteria as Exhibit G.4. The complete amended NRI can be found at the following link: <https://efiles.portlandoregon.gov/record/15521425>.

Based on their analysis of the site's resources, the area to be removed from the River Environmental Overlay zone contains no natural resource features with a medium or high rank, those features all being riverward of the modified boundary on the site.

Therefore, *this criterion is met.*

**b. The modified River Environmental overlay zone boundary must be located no closer than 50 feet from the top of bank of a river, stream, drainageway, wetland or other water body; and**

**Findings:** As seen in Exhibit C.1, the modified 'e' zone boundary is located approximately 100 feet from ordinary high water and a greater distance to the identified wetlands that occupy the space between ordinary high water and ordinary low water. At its closest, the modified boundary will be 65 feet from top of bank of the Willamette River. *The applicant provided a description of how they determined the location of top of bank at the site (Exhibit A.3) and staff takes no exception to the result, which appears more consistent with available Lidar-derived topographical contours than does the adopted default top of bank.*

Therefore, *this approval criterion is met.*

**c. The modified River Environmental overlay zone boundary must include all mapped floodplain (100-year floodplain and 1996 Flood Inundation Area).**

**Findings:** As seen in Exhibit C.1, the modified 'e' zone boundary has been located along the outer boundary of the mapped floodplain so that all of the mapped floodplain will remain in the 'e' overlay zone under the proposed modification. *The applicant provided a description of how they determined the location of the mapped floodplain at the site, which they based on an elevation provided to them by BDS Site Development Review section. Staff takes no exception to the result, which appears slightly more consistent with available Lidar-derived topographical contours than the mapped boundary and is more conservative as well.*

Therefore, *this approval criterion is 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**

The applicant proposes to modify the boundary of the River Environmental overlay zone at the site, moving it riverward roughly 45 feet at the south property line and 55 feet at the north property line to more accurately reflect existing conditions and approved development; the modified boundary correlates to the boundary of the 1996 flood inundation area. The applicant has provided an analysis of the site and demonstrated that the applicable approval criteria are met. Therefore, this proposal should be approved.

**ADMINISTRATIVE DECISION**

Approval of a River Review for modification to the River Environmental zone boundary at the subject site, per the approved site plan, Exhibit C.1, signed and dated May 17, 2023.

**Staff Planner: Timothy Novak**

**Decision rendered by:**  **on May 17, 2023**

By authority of the Director of the Bureau of Development Services

**Decision mailed: May 19, 2023**

**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 March 8, 2023, and was determined to be complete on April 5, 2023.

*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 March 8, 2023.

*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: August 3, 2023.**

**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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on June 2, 2023. The completed appeal application form must be emailed to**

**[LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@portlandoregon.gov) and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails.

**Appeal fee waivers.** Multnomah County may cover the appeal fees for their recognized associations. An appeal filed by a recognized association must be submitted to the City with either the appropriate fee or the attached form signed by the County. Contact Multnomah County at 503-988-3043, 1600 SE 190<sup>th</sup>, Portland, OR 97233.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

**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 after **June 2, 2023** 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. Original Submittals (Narrative & Plans)
  - 2. Revised Submittals
    - a. Ownership information
    - b. Plans
  - 3. Explanation of how TOB and 1996 flood boundary were established
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Future Conditions Site Plan (attached)
- 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. Site Development Review Section of BDS
  - 4. Life Safety Review Section of BDS
- F. Correspondence:
  - 1. Neighbor Comments (Palmer) [rplamer@lindsayhart.com](mailto:rplamer@lindsayhart.com)
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete Letter
  - 3. NRI Model Criteria
  - 4. NRI Ranking Formula

**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).**