

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

## NOTICE OF DECISION

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

**Case File:** T2-2014-3483

**Permit:** Willamette River Greenway

**Location:** 21600 NW St. Helens Highway  
Tax Lots 100, and 200, Index  
Township 2 North, Range 2 West, W.M.  
and Tax lot 300, Section 07  
Township 2 North, Range 1 West, W.M.  
Tax Account R972010070, R972120050  
and R971070020

**Applicants:** Ducks Unlimited, Curt Mykut

**Owners:** Metro

**Base Zone:** Multiple Use Agriculture - 20

**Overlays:** Willamette River Greenway & Flood  
Hazard

Vicinity Map

N ↑




**Summary:** A request for a Willamette River Greenway Permit to replace culverts with a bridge breach natural levee for new high water connection to Multnomah Channel.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective October 1, 2014 , at 4:00 PM.

Issued by:

By:   
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, September 17, 2014

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact George Plummer, Staff Planner at 503-988-3043, ext. 29152.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is October 1, 2014, at 4:00 PM.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 34.2800 et. al: Multiple Use Agriculture Zone and MCC 34.5800 through 34.5865: Willamette River Greenway Overlay

Copies of the referenced Multnomah County Code (MCC) section can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse> or <http://web.multco.us/transportation-planning>.

### **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690(A) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

### **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. For public safety and if applicable a building permit for the bridge shall be obtained and a final inspection shall be obtained prior to public use. [MCC 34.5855(I)]

2. A professional archeological study shall be submitted to Oregon State Historic Preservation Office (SHPO) and approved, according to SHPO process prior to any earth work for this project. If any archaeological artifact is discovered during the project, work shall stop immediately and the discovery reported to SHPO. Work shall remain stopped until SHPO determines that the work may continue. [MCC 34.5855(N)]
3. Prior to any earth disturbing work a Grading and Erosion Control and Floodplain Development permits must be obtain from the county. [MCC 34.5855(O)]
4. No work authorized under this permit is to be initiated until any required approvals from the Oregon Department of Fish and Wildlife, Army Corps of Engineers and Division of State Lands have been obtained (if applicable).

**Note:** Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, George Plummer, at (503) 988-3043 ext. 29152, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Five sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$70.00 will be collected. In addition, an erosion control inspection fee of \$82.00 may be required.

**Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### **1.00 PROJECT DESCRIPTION**

**Staff:** A request for a Willamette River Greenway Permit to replace culverts with a bridge breach natural levee for new high water connection to Multnomah Channel within the Multiple Use Agriculture – 20 zone district (Exhibit B.4) and within the Willamette River Greenway and Flood Hazard overlay zones (Exhibit B.5 and B.6). Applicant’s submittal includes Exhibits A.1 through A.20. The applicant submitted revised narrative and plans and requested they supersede the previously submitted set, thus Exhibit A.2 is superseded by Exhibit A.16; Exhibit A.3 is superseded by Exhibit A.17; and Exhibit A.2 is superseded by Exhibit A.18.

### **2.00 PROPERTY DESCRIPTION**

**Staff:** Metro has been restoring the wetlands on the subject property in phases. Duck Unlimited has partnered with Metro as well as the Natural Resource Conservation Service, Oregon Department of Fish and Wildlife and Bonneville Power Administration to restore these wetlands. The project has included breaching the levees to restore the natural hydrology of the site including seasonal flooding as well as restoring the natural vegetation on-site (Exhibit A.16 - A.18). This project is a continuation of the restoration project and will provide for a restoration of Crabapple Creek flood flows by removing existing culverts and replacing them with a bridge to provide continuation of access to the northern portion of the property and a Portland General Electric facility.

### **3.00 MULTIPLE USE AGRICULTURE- 20**

#### **Allowed Uses**

**MCC 34.2820 (D) Public and private conservation areas and structures for the protection of water, soil, open space, forest and wildlife resources.**

**Staff:** The proposed bridge structure is a component of a wetlands enhancement project which is designed for the protection of water, soil, open space, and wildlife resources.  
*This standard is met.*

### **4. WILLAMETTE RIVER GREENWAY PERMIT**

#### **4.1. Uses - Greenway (WRG) Permit Required**

**MCC 34.5810:** All uses permitted under the provisions of the underlying district are permitted on lands designated WRG; provided, however, that any development, change of use or intensification of use, except as provided in MCC 33.5820, shall be subject to a Greenway Permit issued under the provisions of MCC 34.5830.

**MCC 34.0005: Development – Any act requiring a permit stipulated by Multnomah County Ordinances as a prerequisite to the use or improvement of any land, including a building, land use, occupancy, sewer connection or other similar permit, and any associated grading or removal of vegetation.**

**MCC 34.5820: Exceptions – A Greenway Permit shall not be required for the following:**

**(F) Activities to protect, conserve, enhance and maintain public recreational, scenic, historical and natural uses on public lands;**

**Staff:** While the wetland restoration and enhancement project is by definition considered to be “development,” MCC 34.5820 allows an exception to the requirement to obtain a WRG Permit for a project that is protecting, conserving, enhancing and maintaining natural uses on public land. The wetland restoration and enhancement project meets this exception standard because the land is owned by Metro thus is public lands. However, placement of a bridge structure is development and is not exempt from the WRG Permit requirements. Thus a WRG Permit is required for the bridge. The following findings for the WRG standards address the development of the bridge.

#### **4.2. Greenway Design Plan**

##### **4.2.1 MCC 34.5855(A): The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and the river.**

**Staff:** The bridge development is a minor structure on the 244 acre tract consisting of three properties (Exhibit B.1 and B.2). The proposed bridge is a structure is located about 200 feet from the river (Exhibit A.3). The tract is mostly a natural landscape open space area (Exhibit B3). The need for the bridge along the access road dictates the location to provide for the creek crossing and maintain access. The proposed bridge is the furthest from the river as possible while providing access the northern portion of the property to maintain, enhance and study wetland restoration and enhancement projects and to provide continued public access for recreational users. Additionally, the bridge provides a maintenance access to Portland General Electric power lines. *This standard is met.*

##### **4.2.2. MCC 34.5855(B): Reasonable public access to and along the river shall be provided by appropriate legal means to the greatest possible degree and with emphasis on urban and urbanizable areas.**

**Staff:** The property is owned by the Metro (Exhibit B.1) and is currently managed as wetlands. The applicant states that the property is, “fully accessible to the public for passive/non-consumptive recreational opportunities.” *This standard is met.*

##### **4.2.3 MCC 34.5855(C): Developments shall be directed away from the river to the greatest possible degree, provided, however, that lands in other than rural and natural resource districts may continue in urban uses.**

**Staff:** That project includes a bridge to maintain access across Crabapple Creek after culverts are removed and the accessway breach is widened to improve the creek function and to enhanced wetland connectivity. The location is dictated by the where existing

accessway crosses the creek. The proposed bridge is the furthest from the river as possible while providing access the northern portion of the property to maintain, enhance and study wetland restoration and enhancement projects and to provide continued public access for recreational users. Additionally, the bridge provides a maintenance access to Portland General Electric power lines. *This standard is met.*

**4.2.4. MCC 34.5855(D): Agricultural lands shall be preserved and maintained for farm use.**

**Staff:** The property is not farmed because most of the land consists of wetland soils and is often covered with water. The site is not suitable as agricultural land or in farm use (Exhibit A.5 and A.7). *This standard is not applicable.*

**4.2.5. MCC 34.5855(E): The harvesting of timber, beyond the vegetative fringes, shall be conducted in a manner which shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent practicable or will be restored within a brief period of time on those lands inside the Urban Growth Boundary.**

**Staff:** No timber harvest is proposed. *This standard is met.*

**4.2.6. MCC 34.5855(F): Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflicts with farm uses.**

**Staff:** The proposed bridge will provide public access to the northern portion of the site. Access is limited by the size of the parking area. The distance to the bridge by foot will also limit site use. Thus proposal is consistent with the carrying capacity of the land. The nearest farmed property to the west is more 2000 feet away on the same side of the river across the highway and the nearest farmed land to the east is about 1500 feet across the river, thus it is unlikely there will be any conflicts with farm uses. *This standard is met.*

**4.2.7. MCC 34.5855(G): Significant fish and wildlife habitats shall be protected.**

**Staff:** The wetland restoration is designed to improve fish and wildlife habitats. The bridge will cross a channel that is designed to provide water from the river to the wetland to improve the habitat of the wetland. *This standard is met.*

**4.2.8. MCC 34.5855(H): Significant natural and scenic areas and viewpoints and vistas shall be preserved.**

**Staff:** The bridge will be a minor component in the landscape. The project will not impact significant natural and scenic areas and viewpoints and vistas. The bridge will provide a viewing area for the Tualatin Mountains (West Hills) and of the wetland. *This standard is met.*

**4.2.9 MCC 34.5855(I): Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

**Staff:** A condition will require that (if applicable) a building permit obtained for the bridge prior to allowing public use. Metro's Parks and Greenspaces department staff patrols the site to prevent public safety issues and to protect the property from criminal activity such as vandalism. *This standard is met through a condition.*

**4.2.10. MCC 34.5855(J): The natural vegetation along the river, lakes, wetlands and streams shall be enhanced and protected to the maximum extent practicable to assure scenic quality, protection from erosion, screening of uses from the river, and continuous riparian corridors.**

**Staff:** The installation of the bridge will not impact natural vegetation along the river. The proposed wetland project will enhance and protect the natural vegetation and includes planting native species in the area. The project will protect to the maximum extent practicable to assure scenic quality of the site and views protecting the wetland open space of the site. The project is designed to minimize erosion through best practices erosion control measures installed during the project. *This standard is met.*

**4.2.11. MCC 34.5855(L): Areas of annual flooding, flood plains, water areas and wetlands shall be preserved in their natural state to the maximum possible extent to protect the water retention, overflow and natural functions.**

**Staff:** The proposed bridge will not negatively impact the flood plain areas. The proposed wetland enhancement project includes expanded breaches to allow more annual flooding of the wetland area on-site. The wetland area and flood storage area will be increased through the enhancement project and will protect the water retention, overflow and natural functions of the floodplain. The bridge project will preserve areas of annual flooding, floodplains, water areas and wetlands in their natural state to the maximum possible extent to protect the water retention, overflow and natural functions. A Floodplain Development permit is required for the proposed bridge project as well as for the wetlands restoration and enhancement project (Exhibit B.6). *This standard is met.*

**4.2.12. MCC 34.5855(M): Significant wetland areas shall be protected as provided in MCC 34.5865.**

**Staff:** The proposed bridge is located in an upland area. While the wetland enhancement project will involve a significant wetland, wetland enhancement portion of project is located on public land and is exempt from the WRG Permit requirements under MCC 34.5820(F). *This standard is met.*

**4.2.13. MCC 34.5855(N): Areas of ecological, scientific, historical or archaeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible.**

**Staff:** The ecological and scientific significance of the site will not be impacted by the proposed bridge and will be improved through the wetland enhancement project. The bridge is located along an existing access road on an upland portion of the site. The work to install the bridge is in the previously disturbed area which was disturbed when the road was built and culverts were installed. The applicant states that there are no known archeological significance for the site. There are no known historic resources on the site. The applicant states that prior to any work a survey by professional archeological

contractor will confirm whether additional action will be needed to protect cultural resources. A condition can require that an archeological study meeting the requirements of the Oregon State Historic Preservation Office (SHPO) be submitted and approved by the SHPO according to their process prior to any earth work. SHPO has sent out notice of receiving an archeological study for the project (Exhibit C.1) *This standard is met through a condition.*

**4.2.14. MCC 34.5855(O): Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the character of the Greenway.**

**Staff:** The project site does not include existing areas of erosion. The applicant states that erosion control best management practices will be employed for the project. A Grading and Erosion Control permit is required for the project and an application has been submitted. This standard can be met through a condition. *This standard is met through a condition.*

**4.2.15. MCC 34.5855(P): The quality of the air, water and land resources in and adjacent to the Greenway shall be preserved in development, change of use, or intensification of use of land designated WRG.**

**Staff:** The proposed bridge will not impact the quality of the air, water and land resources in and adjacent to the Greenway. The bridge will help improve water quality through providing for increased flooding of the site and flood-water storage. There is no air quality correlation related to the bridge. The area wetlands will be improved through the increase in annual flooding resulting from the project. *This standard is met.*

**4.2.16. MCC 34.5855(Q): A building setback line of 150 feet from the ordinary low waterline of the Willamette River shall be provided in all rural and natural resource districts, except for non-dwellings provided in conjunction with farm use and except for buildings and structures in conjunction with a water-related or a water dependent use.**

**Staff:** The proposed bridge is a structure and is located about 200 feet from the Willamette River's Multnomah Channel (Exhibit A.3). *This standard is met.*

**4.2.17. MCC 34.5855(R): Any development, change of use or intensification of use of land classified WRG, shall be subject to design review, pursuant to MCC 34.7000 through 34.7070, to the extent that such design review is consistent with the elements of the Greenway Design Plan.**

**Staff:** The bridge is not a change of use or intensification of use. The bridge is located along an existing accessway that provides access to the northern part of the property and utility facilities (power line). There is no proposal at this time to change or intensify that use. A design review is not required. *This standard is met.*

**4.2.18. MCC 34.5855(S): The applicable policies of the Comprehensive Plan are satisfied.**

**Staff:** The applicable policies of the Comprehensive Plan are satisfied through the standards previously addressed above. *This standard is met.*



## 5. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Willamette River Greenway permit to establish a bridge in the MUA-20 zone. This approval is subject to the conditions of approval established in this report.

## 6. Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Comments Received

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	5/14/14
A.2	23	Narrative	5/14/14
A.3	3	Project Vicinity Map and Site Plan (Part of Applicant’s Attachment A)	5/14/14
A.4	23	Topographic Maps of Project Areas and Engineer drawings of Project (Part of Applicant’s Attachment A)	5/14/14
A.5	2	Soil Survey Map (Applicant’s Attachment B)	5/14/14
A.6	1	Floodplain Elevation Map (Part of Applicant’s Attachment C)	5/14/14
A.7	2	National Wetlands Inventory Maps (Part of Applicant’s Attachment C)	5/14/14
A.8	4	Aerial Photo Showing Project Areas (Applicant’s Attachment D)	5/14/14
A.9	2	Tom Murtagh ODFW District Fish Biologist Letter Maps (Part of Applicant’s Attachment E)	5/14/14
A.10	1	Jim Turner NMFS Fisheries Biologist Email Maps (Part of Applicant’s Attachment E)	5/14/14
A.11	1	Floodproofing Certificate (Applicant’s Attachment F)	5/14/14
A.12	2	Firm Panel 0040H Showing Project Locations	5/14/14
A.13	1	Randolph Van Hoy, P.E. No Rise Statement	5/14/14
A.14	1	Applicant Response (180 Day Period)	6/25/14
A.15	1	Letter from Applicant Discussing New Submittal (requesting it supersede previously submitted documents)	6/25/14
A.16	25	Revised Narrative	6/25/14
A.17	4	Project Vicinity Map and Site Plan (Part of Applicant’s Attachment A)	6/25/14
A.18	25	Revised Topographic Maps of Project Areas and Engineer drawings of Project (Part of Applicant’s Attachment A)	6/25/14
A.19	2	Narrative by Randolph K Van Hoy, P.E. addressing MCC	6/25/14

		29.609 Watercourse Relocation and Alteration	
A.20	7	Grant of Water Storage Easement at 19400 NW St Helens Hwy (2N1W -00900, R971070030, R324841)	9/8/14
'B'	#	Staff Exhibits	Date
B.1	6	County Assessment Property Information	5/14/14
B.2	2	County Assessment Tax Map with Property Highlighted	9/10/14
B.3	1	2012 Aerial Photo of Property and Vicinity	9/10/14
B.4	1	2012 Aerial Photo of MUA-20 Zone	9/10/14
B.5	1	2012 Aerial Photo of Willamette River Greenway Overlay Zone	9/10/14
B.6	1	2012 Aerial Photo of Flood Hazard Overlay Zone	9/10/14
'C'	#	Comments Received	Date
C.1	16	Oregon Parks and Recreation Archeological Permit Notice for the Project	7/11/14