

**STAFF REPORT**  
**CITY OF LAKE OSWEGO**  
**PLANNING DIVISION**

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APPLICANT/OWNER:

City of Lake Oswego  
(Parks & Recreation Dept.)

FILE NO:

LU 07-0059

TAX LOT REFERENCE:

Tax Lot 100 of Tax Map 2 1E 2CC

STAFF:

Jessica Sarver

LOCATION:

199 Foothills Road (Foothills Park)

DATE OF REPORT:

September 21, 2007

COMP. PLAN DESCRIPTION:

PNA (Park and Natural Area)

DATE OF HEARING:

October 1, 2007

ZONING DESIGNATION:

PNA (Park and Natural Area)

120-DAY DECISION DATE:

December 7, 2007

NEIGHBORHOOD ASSOCIATION:

Foothills

**I. APPLICANT'S REQUEST**

The applicant is requesting approval of the following:

1. Major modification of LU 03-0067 to remove Condition A(2)(1), which requires an information kiosk to be installed at the park; and,
2. A Development Review Permit to install a gangway and abutment to access a new floating dock in the Willamette River.

**II. RECOMMENDATION**

**Approval** of the Development Review Permit with respect to the gangway and abutment; staff makes no recommendation with regard to the modification to eliminate the requirement of an informational kiosk. The complete listing of conditions is provided on pages 14-15 of this report.

**III. APPLICABLE REGULATIONS**

A. City of Lake Oswego Community Development Code [LOC Chapter 50]:

LOC 50.13B.005 - 50.13B.050  
LOC 50.15.005 - 50.15.020  
LOC 50.41.005 - 50.41.040

Park and Natural Area Zone  
Greenway Management Overlay District  
Drainage for Major Development

LOC 50.44.005 - 50.44.035	Flood Plain
LOC 50.45.005 - 50.45.030	Building Design
LOC 50.47.005 - 50.47.030	Landscaping, Screening and Buffering
LOC 50.55.005 - 50.55.025	Off-Street Parking, Loading and Bicycle Access
LOC 50.57.005 - 50.57.035	Access
LOC 50.58.005 - 50.58.035	On-Site Circulation - Driveways and Fire Access Roads
LOC 50.63.005 - 50.63.010	Street Lights
LOC 50.64.005 - 50.64.035	Utilities
LOC 50.77.005	Application for Development
LOC 50.77.007	Burden of Proof
LOC 50.79.025	Review Criteria for Minor Developments
LOC 50.79.040	Conditions of Approval
LOC 50.81.005 - 50.81.020	Review of Minor Development Applications
LOC 50.84.005	Appeal of Minor Development Decision
LOC 50.86.005 - 50.86.030	Effect of Modification of Approved Permit
LOC 50.87.005 - 50.87.025	Compliance with Approved Permit, Modifications

B. City of Lake Oswego Development Standards

LODS 3.005 - 3.040                      Stream Corridors

C. City of Lake Oswego Tree Chapter (LOC Chapter 55):

LOC 55.08.020                      Tree Protection Plan Required  
 LOC 55.08.030                      Tree Protection Measures Required

D. Prior Approvals

LU 03-0028  
 LU 03-0067

**IV. FINDINGS**

A. Background/Existing Conditions:

1. Foothills Park is located in “Foothills Industrial District” in the northeastern area of the City along the Willamette River and is approximately 9 acres in size (Exhibit E1). The park is accessed from Foothills Road and Foothills Drive to the west.
2. The Park was approved in 2004 [LU 03-0067] and has been fully developed as approved, with the exception of the installation of the information kiosk required by Condition A(2)(1) of LU 03-0067.
3. The site is zoned PNA. Uses adjacent to the park include the Tryon Creek Waste Water Treatment Plant to the northwest, miscellaneous industrial uses and multi-family development to the west, and commercial and multi-family uses to the south.
4. The proposed project includes rebuilding the existing wooden commercial dock in the Willamette River along the site’s frontage in order to provide moorage for recreational boats and to construct a gangway connected to a new concrete abutment at the top of the river bank just north of the existing view dolphin to provide pedestrian access to the dock (Exhibit E2). The portion of the park beyond the ordinary low water line, which is occupied by a portion of the existing viewing dolphin and commercial dock, is located outside the City’s boundary and is under the jurisdiction of Clackamas County (Exhibit E2). As a result, the review of the project is limited only to the proposed abutment and

gangway as illustrated. The review of the dock replacement is outside the City's jurisdiction and is under the authority of Clackamas County and State and Federal agencies. Approval from County, State, and Federal agencies for the development outside of the City's jurisdiction is currently being sought by the applicant.

5. The eastern area of the site along the Willamette River is located in the Greenway Management Overlay District and the Flood Management Area. Additionally, because the Willamette River is classified as a Major Stream Corridor, new development within the stream corridor is subject to the regulations of LODS Title 3.
6. The site may contain historic or prehistoric artifacts. In the event that ground disturbing activities expose cultural deposits or artifacts, Oregon State Laws (ORS 97.740 - 97.760, 358.905, 358.955 and 390.235) require that work in the vicinity of such finds immediately be suspended. The State Historic Preservation Office (SHPO) should be notified and a professional archeologist called in to evaluate the significance of the find and recommend a subsequent course of action in consultation with SHPO.

## V. PUBLIC NOTICE OF APPLICATION AND APPLICANT'S BURDEN OF PROOF

### A. Neighborhood Meeting

A neighborhood meeting is not required for a major modification to an approved development permit or for a development review permit.

### B. Public Notice to Surrounding Area:

The City has provided adequate public notice and opportunity to comment on this application, as required by LOC 50.82.020. No comments were received prior to the publication of this report.

### C. Burden of Proof:

Per LOC 50.77.007, the applicant for a development permit shall bear the burden of proof that the application complies with all applicable review criteria or can be made to comply with applicable criteria by imposition of conditions of approval. The applicant has provided sufficient evidence to enable staff to evaluate the proposal. These documents are listed as exhibits at the end this report.

## VI. LOC 50.79.020 - MINOR DEVELOPMENT

### A. Classification of Application

1. Modification of Kiosk Condition of Approval. Per LOC 50.86.025, minor changes to an approved development permit may be approved if the following four criteria are met:

*The City Manager may approve minor changes in any development permit, provided that such change:*

1. *Does not increase the intensity of any use, or the density of residential use; and,*
2. *Meets all requirements of the development standards and other legal requirements; and,*
3. *Does not significantly affect other property or uses; will not cause any deterioration or loss of any natural feature, process or open space; nor significantly affect any public facility; and*
4. *Does not affect any condition specifically placed on the development by action of a hearing body or City Council.*

*Any change not meeting the criteria set forth above shall be processed as a new application. A change meeting the criteria shall be processed as a minor development.*

The criteria set forth in LOC 50.86.025 are used to determine whether the request to modify an approved development permit is substantial or minor. Because the proposal to remove the requirement to install an information kiosk at the park affects a condition of approval imposed by a hearing body, the proposed modification is processed as a new application (development review permit).

The classification as a minor or major modification is dependent on whether the modification is subject to review as a “new application”, or not [LOC 50.86.025]. If the modification is a minor amendment, then analysis is confined to the criteria affected by the proposed amendment; a criterion that is not affected by the proposed amendment is considered “settled” and not subject to re-review. If this application is being reviewed as a “new application”, then the original development review permit with the modification is re-reviewed de novo with all criteria, and it must comply with all criteria. (However, in that instance, prior findings and evidence may be considered in determining whether the proposed amendment complies with all applicable criteria. “Law of the case” is applicable to issues previously decided which are not affected by the modification.) If the modification is a minor amendment, then analysis is confined to the criteria affected by the proposed amendment [LU 07-0017].

Per LOC 50.79.020(2)(f), the construction of an information kiosk and gangway is classified as a minor development.

**B. Criteria for Review of Application**

Given of the nature of the proposed modification – installation of a gangway and abutment to an approved floating dock, and elimination of a conditional of approval to construct a kiosk – does not significantly affect the park improvements, access, traffic, or other impacts of a park, staff incorporates the prior staff report, findings, and record in LU 03-0067 by reference. The findings and conclusions reached therein *not affected by the modification* were previously held to meet all then applicable criteria and such findings are entitled to a conclusive presumption of compliance, under the “law of the case” doctrine. Accordingly, staff will not re-review the aspects of the park unrelated to the requested modification, but adopts the findings and conclusions reached therein. [Staff notes that the applicant also seeks a dock replacement -- to which the requested gangway will connect -- but that portion of the project is outside the regulatory jurisdiction of the City, and accordingly, as noted above, is not a part of this review.]

Per LOC 50.79.025, for any minor development application to be approved, it shall first be established that the proposal complies with:

**1. The requirements of the zone in which it is located;**

**Zoning Standards for the PNA Zone [LOC 50.13B.005 - 50.13B.050]**

The site is zoned PNA. This article prescribes permitted and conditional uses in the PNA zone and prescribes site development limitations for new structures.

“Minor Park Improvements” include facilities that require a building permit and do not occupy more than 3,500 square feet of site area, individually or cumulatively. Examples include: park buildings, picnic shelters, non-motorized boating facilities. Staff finds that

square footage area of such facilities, including the additional gangway, would not exceed 3,500 square feet. A gangway is similar to a component part of non-motorized boating facilities. A kiosk is similar to a picnic shelter. Both require a building permit. Therefore, staff concludes that the gangway structure and information kiosk both qualify as “minor park improvements”, which are permitted outright in the PNA zone [LOC 50.013B.010(6)].

#### Proposed gangway and associated concrete abutment

The required setback of any respective yard (front, side, rear) shall be equal to the minimum required yard for the property abutting the respective yard’s lot line. The proposed concrete abutment and gangway is located along the site’s eastern property line abutting the Willamette River. Because there is no setback on the abutting property (the Willamette River), there is no setback requirement from the site’s east property line.

The maximum height of a structure in the PNA zone is 35, or a height as determined by the ratio of one foot in height from every 3.5 feet of distance from the portion of the structure to the lot line of the nearest residentially zoned property, to a maximum height of 75 feet. As illustrated on Exhibit E2, the grade difference between the level of the concrete abutment at the top of the bank and the bottom of the bank is approximately 20 feet; therefore, the gangway would be well below the maximum permitted height of the zone.

The maximum lot coverage in the PNA zone is 35%. The park site is over nine acres in size. As illustrated on Exhibit E4, the existing development on the site subject to lot coverage consists of a shelter and arbor near the center of the park and a restroom building on the west side of the park for a total lot coverage of approximately 3,100 square feet, or less than 1% of the site. The addition of the gangway would result in a small increase in the overall lot coverage, but would be well below the 35% maximum.

Staff finds that the proposed gangway and concrete abutment meets all of the requirements of the PNA zone.

#### Information kiosk

At the public hearing for the review of the design of Foothills Park [LU 03-0067], the Development Review Commission (DRC) concluded that “a round event kiosk should be provided in a suitable location within the park” (Exhibit F3) as a condition of approval [Condition A(2)(1)]. Size specifications for the kiosk structure were not outlined by the DRC. The applicant seeks to eliminate the requirement for installation of the kiosk. Obviously an *eliminated* structure does not trigger the application of any zone requirements.

This standard can be met.

#### Greenway Management Overlay District [LOC 50.15.005-50.15.020]

LOC 50.15.010(1) prescribes that the DRC shall review any development within the Greenway Management Overlay (GM) District. The purpose of the GM District is to protect the natural, scenic, and recreational qualities of lands along the Willamette River. LOC 50.15.010(2) provides guidance for reviewing projects within the GM district.

The Greenway Compatibility Review Boundary is defined as being 150 feet shoreward from the ordinary low waterline on the Willamette River. This boundary is shown on the site plan, which illustrates that the proposed gangway and associated concrete abutment are located entirely within the GM District (Exhibit E2). Per LOC 50.15.015(3), recreational park

development is a permitted use in the GM District if found to be in compliance with this Article by the DRC.

Structures proposed within the GM district boundary are reviewed under the objectives of LOC 50.15.010(2), discussed below, and the DRC “shall make findings as applicable.” The objectives being considered are not “criteria” per se; however the DRC may impose reasonable conditions to meet the intent of the objectives [LOC 50.15.015(3)].

*1. Significant fish and wildlife habitats will be protected.*

The disturbance area necessary to construct the gangway will be limited to the location of the concrete abutment on the top of the bank where the gangway will be anchored (Exhibits E2 and F1, page 13). The gangway itself will be suspended above the bank between the concrete abutment and the new dock. The size of the concrete abutment is proposed to be approximately 6'-4" by 12'-6" (80 square feet) and according to the applicant, will occupy an area that was previously paved, thereby limiting the impacts to a previously disturbed area (Exhibit F1, pages 2 and 18). The applicant proposes to limit vegetation removal to the greatest extent possible to construct the abutment and to revegetate the disturbance area with appropriate native vegetation after construction is complete (Exhibit F1, page 13). Additionally, an approximately 6,500 square-foot area of the river bank north of the gangway will be enhanced by planting native trees and shrubs and removing invasive plants (Exhibits E3 and F1, pages 11-12).

Staff finds that by limiting the disturbance on the river bank to an 80 square-foot area at the top of the bank that was previously disturbed and by revegetating the disturbance area and enhancing a much larger area of the bank to the north, that the applicant will protect the significant fish and wildlife habitats along the bank. This objective is met.

*2. Significant natural and scenic areas, viewpoints, and vistas will be protected and enhanced.*

Because the gangway will be located at grade on the top of the bank and slopes down to the river, viewpoints and vistas of the river from the park will not be impacted. Additionally, because the large wooden moorings along the existing dock will be removed and replaced with slender moorings similar to those depicted in the cover photograph of Exhibit F1, views of site from the viewing dolphin and the river will be improved over what is existing today. This objective is met.

*3. Areas of ecological, scientific, historical, or archeological significance will be protected, restored, or enhanced to the maximum extent possible.*

The applicant states that there is no reason to believe that any significant ecological, scientific, historical, or archeological areas exist on the site; however, if any ground disturbing activities should uncover cultural deposits or artifacts, work in the vicinity will be immediately suspended and the applicant will notify the State Historic Preservation Office and comply with all state laws (Exhibit F1, page 18). This objective can be met.

*4. The quality of the air and water in and adjacent to the river will be maintained or enhanced in the development, change of use, or intensification of use of land within the GM District.*

The proposed abutment and gangway do not themselves impact air or water quality. Potential impacts to water quality associated with the construction of the dock in the river

(not under the City's jurisdiction) will be reviewed by the appropriate state and federal agencies. This objective is met.

5. *Areas of annual flooding, water areas and wetlands will be retained in their natural state to the maximum possible extent to provide for water retention, overflow and other natural functions as well as protect the health, safety and welfare of the public. Areas subject to the 100 year flood level are also regulated by the Flood Plain Standard.*

The proposed gangway is designed to rise and fall with the water level of the river and will not impact any areas of the site that are subject to annual flooding or that contain wetlands. The proposed development is located within the 100-year Flood Plain. Compliance with the Flood Plain Standard will be discussed later in this report. This objective is met.

6. *The natural vegetative fringe shall be maintained or enhanced to assure scenic quality, protection of wildlife, protection from erosion and screening of uses from the river.*

The existing vegetation near the disturbance area will be maintained to the greatest extent possible and disturbed areas will be replanted with native vegetation. The applicant also proposes to enhance approximately 6,500 square feet of river bank just north of the development site (Exhibits E3 and F1, pages 11-13). This objective is met.

7. *Areas considered for development, change or intensification of use that have erosion potential will be protected from erosion by means compatible with the natural character of the Greenway.*

The applicant states that temporary erosion control measures will be installed during construction and that any disturbed soils will be permanently stabilized using appropriate methods including seeding and installation of plants, mulch, and fabric (Exhibit F1, page 13 and 18). This objective is met.

8. *Recreational needs will be satisfied by public and private means in a manner consistent with the natural limitations of the land. Conflicts with adjacent land uses will be minimized.*

The proposed gangway will provide access from Foothills Park to a new public recreational dock in the Willamette River, which replaces an existing commercial dock (the dock construction is not under the jurisdiction of the City and is currently being reviewed by the appropriate state and federal agencies). As illustrated on Exhibit E1, the location of the gangway and dock is several hundred feet from adjacent land uses surrounding the park, thereby minimizing any potential conflicts.

The gangway will extend from an approximately 80 square-foot concrete abutment at the top of the river bank to the new public dock and is designed to rise and fall with the level of the river. Because the gangway construction would impact only a small area on the river bank and is designed to function with the changing water level of the river, staff finds that the proposed development is consistent with the natural limitations of the land. This objective is met.

9. *Public safety and protection of public and private property will be provided to the maximum extent practicable, especially from vandalism and trespass.*

The applicant states that the City Parks and Recreation Department will continue to maintain Foothills Park and its associated facilities, including the new gangway and dock,

in the same safe and clean condition it is currently maintained at today. This objective can be met.

10. *Non-water related or dependent structures be located west of and no closer than 25 feet to the setback lines listed under LOC 50.15.010(2)(j).*

The proposed gangway is a water related structure. This objective is not applicable.

11. *Necessary public access will be provided to and along the river including pedestrian, bicycle and water-related uses.*

Construction of the proposed development will provide direct public access for pedestrian and water-related uses to the river. Existing infrastructure within Foothills Park is adequate to allow for bicycle and pedestrian access to the new gangway and dock. This objective is met.

Staff finds that the proposed gangway and concrete abutment are consistent with the objectives of the GM District and is a permitted use within the GM District.

### **3. The Development Standards applicable to minor developments;**

Per LOC 50.79.025(2) Development Standards applicable to Major Development shall be applied to requests for a Development Review Permit. The following discussion addresses the standards applicable to the subject proposal.

#### **Drainage Standard for Major Development - [50.41.005-50.41.040]**

This standard is applicable to all major development and requires that drainage improvements be provided to ensure that the proposed development will not adversely affect surrounding properties. The determination of whether or not the application meets the drainage requirements of LOC 50.41, is under the review authority of the City Manager or City Engineer; the requirements of this Article are not under the review authority of a hearing body, other than to find whether or not the City Engineer or City Manager has found that the application complies with LOC 50.41, or whether conditions of approval are required for compliance with this Article.

With the exception of the new 80 square-foot concrete abutment, the proposed gangway is a pervious structure that will not affect existing drainage patterns. Due to the small area of the concrete abutment, runoff from the 80 square-foot impervious area can be easily infiltrated by the vegetated areas surrounding the new abutment. This standard is not applicable.

#### **Flood Management Area - [LOC 50.44.005-50.44.045]**

This standard applies to all development proposed within the "Flood Management Area", which includes lands within the 100-year flood boundary as depicted on the most recent Flood Insurance Rate Maps (FIRM) and Flood Boundary and Floodway Maps created for the National Flood Insurance Program by the Federal Emergency Management Agency (FEMA). Development review is required for all development proposed within the Flood Management Area and may only be allowed if the development complies with the procedure and submittal requirements of this article, is found to be consistent with the applicable standards of LOC 50.44.030 and 50.44.036, and if the applicant demonstrates that all necessary permits have been obtained from the Federal, State, or local government agencies from which prior approval is required (the City may condition its approval on successful acquisition of the required permits).



### Compliance with Procedures and Submittal Requirements [LOC 50.44.020(3)]

For development involving non-habitable structures, a site plan that includes the boundary line and the elevation for the base flood and the location of existing and proposed structures and other development is required [LOC 50.44.020(3) (b)].

As illustrated on Exhibit E2, the location of the boundary and elevation (33.5') for the base flood, as well as the location of existing and proposed structures are depicted on the site plan as required.

### Flood Management Area Development Standards [LOC 50.44.030]

The proposed development within the Flood Management Area includes the construction of a gangway and abutment [to access a floating dock (water dependent use)], the planting of vegetation to restore areas disturbed by the construction, and the enhancement of approximately 6,500 square feet along the river bank. Per LOC 50.44.030(1), the planting of new trees or vegetation, restoration or enhancement of riparian areas meeting Federal and State standards, and water dependent uses are all permitted within the Flood Management Area. This standard is met.

### Standards for Construction [LOC 50.44.036]

All new construction within the Flood Management Area shall be anchored to prevent flotation, collapse, or lateral movement and shall be constructed with materials resistant to flood damage using methods and practices that minimize flood damage.

As discussed in the applicant's narrative (Exhibit F1, page 21), the gangway will be anchored to the concrete abutment on the river bank to prevent collapse and lateral movement. The gangway will be made of pre-fabricated aluminum that has been designed specifically for use on a river and is equipped to withstand any typical flooding event. This standard is met.

### Agency Permit Review

The applicant is currently pursuing all necessary approvals for the proposed development from the US Army Corps of Engineers, US Fish & Wildlife Service, National Marine Fisheries Service, Federal Emergency Management Agency, Oregon Department of State Lands, City of Portland, and Clackamas County. As a condition of approval, the applicant will be required to demonstrate that all necessary approvals from these agencies have been obtained prior to the construction of the development. As conditioned, this requirement can be met.

Staff finds that the proposed development complies or can be conditioned to comply with all standards and requirements of the Flood Management Area article.

### **Building Design - [50.45.005-50.45.030]**

This standard requires new development to be complementary to and integrate with existing structures of good design with regard to materials, height, setbacks, and overall proportions and shall be located to complement and preserve existing natural land forms, trees, shrubs, and other natural vegetation.

### Proposed gangway and associated concrete abutment

The new gangway is proposed to be located just north of the existing viewing dolphin on the east side of the park and will be accessed from an existing pathway running along the river bank (Exhibit E2). The nearby viewing dolphin is about 10-15 feet south of the gangway and is constructed of a concrete walking surface, concrete base faced with stone veneer, and a dark brown metal railing. Other aluminum gangways are also located in the vicinity of the site to the north and northeast (Exhibit E6).

The applicant has provided an information sheet for the proposed gangway (Exhibit E8) as well as photographs of a similar gangway that has been installed at another location (Exhibit E7). The gangway consists of a pre-fabricated aluminum structure rated for public/commercial use and meeting Americans with Disabilities Act (ADA) requirements. The gangway will be secured by two capped metal pilings similar to those depicted in Exhibit E7. The approach (abutment) to the gangway will be a concrete pad on grade.

Staff finds that the proposed gangway is consistent, and therefore complementary in terms of size, design and materials of other gangways in the vicinity of the site (Exhibits E6 and E7). Additionally, the proposed pilings, which are weathered steel in a dark brown/rust color, blend in well with the surroundings and are complementary to the dark brown color of the railing on the adjacent viewing dolphin. The aluminum material of the gangway, although not a material used on the viewing dolphin, is a light silver-gray color that is complementary to the light gray colored stone veneer at the base of the dolphin. The concrete approach to the gangway is also consistent with the concrete surface of the viewing dolphin.

The construction of the abutment and gangway will not require the removal of any trees and will not involve any major modifications to the existing river bank. As discussed in the narrative (Exhibit F1), the applicant intends to minimize the removal of existing vegetation during the construction and will replant any disturbed areas with native vegetation.

Staff finds that the proposed development complies with the standards of this article.

### Information kiosk

As a condition of approval for the Park [Condition A(2)(1) of LU 03-0067], DRC required that a round event kiosk be provided in a suitable location within the park (Exhibit F3); however, no design or size specifications for the kiosk structure were outlined by the DRC. The applicant is requesting a modification of LU 03-0067 in order to remove the condition requiring the kiosk. The reasons for this request are discussed in the applicant's supplemental narrative (Exhibit F2) and are summarized as follows:

- The kiosk requires considerable maintenance by staff in order to keep it continually up to date and in a clean, neat condition.
- Park events are advertised via the web, print ads, city-wide mailings, and postings at public centers such as the library and tennis center. The current use and attendance at park events is evident of the success of the current advertising.
- The maintenance burden would outweigh the benefits of an event kiosk.

The minutes reflect that the kiosk was made as a suggestion by the DRC members, and because the applicant voluntarily agreed to incorporate the kiosk suggestion into the site plan, it was made a condition of approval. Staff expressed reservation at the public hearing on LU 03-0067 as to whether the Code, and in particular the Building Design Standard, could support a finding that a kiosk was required to meet the applicable criteria for approval. Removal of the kiosk condition would not be contrary to the Code in order for the overall

park development to meet the applicable Code requirements. Staff concludes that the kiosk is not required for the park project to meet the Code requirements.

If the DRC concludes that the condition to install the kiosk should remain in effect in order to for the park to comply with the applicable Code requirements, staff recommends that some general design guidelines for the structure be provided to the applicant (e.g. is there a particular kiosk design in another area of the City that might be appropriate for this site; can an information board be provided inside the picnic shelter in lieu of a round free-standing structure, etc).

**Landscaping Screening and Buffering - [50.47.005-50.47.030]**

This standard requires screening and buffering to mitigate noise and lighting, screening of utility and storage areas and parking lots, and separation between dissimilar uses. The standard also establishes the basic requirements for landscape material and maintenance.

The new gangway will displace approximately 80 square feet of grassy area, but will not generate any noise, lighting, or other adverse impacts that would require screening. The applicant states that after construction, the disturbed area will be planted with native vegetation in accordance with the installation and maintenance standards of this section. This standard can be met.

**Off-Street Parking, Loading and Bicycle Access - [50.55.005-50.55.020]**

The proposed development will not generate a need for additional parking; therefore, this standard is not applicable.

**Access - [50.57.005-50.57.035]**

The proposed development does not affect existing access to the site; therefore, this standard is not applicable.

**On-Site Circulation - Driveways and Fire Access Road - [50.58.005-50.58.035]**

This standard is applicable to all development proposing a new use or an increased use on a site when the development will result in the construction of or increased use of driveways or parking lot aisles. This standard also specifies the geometric design of proposed driveways, fire lanes, and parking lot aisles that serve as emergency access routes.

According to the Fire Marshal, there are no special Fire Department access requirements for the gangway proposed by the applicant (Exhibit F4). This standard is therefore not applicable.

**Street (Pathway, Parking Lot) Lights - [LOC 50.63.005-50.63.010]**

No new lighting is proposed on or near the new gangway. This standard is not applicable.

**Utilities - [LOC 50.64.005-50.64.035]**

This standard is applicable to all development requiring connection to utilities. The Fire Marshal states that water supply for fire protection is not required for the type of gangway proposed by the applicant (Exhibit F4). The proposed development does not require any other utility connections; therefore, this standard is not applicable.

**4. Any additional statutory, or Lake Oswego Code provisions which may be applicable to the specific minor development application;**

**Stream Corridors - [LODS 3]**

The Willamette River is not inventoried as a Resource Preservation (RP) District pursuant to the Sensitive Lands Article [LOC Article 50.16]; however, as noted at the end of section 50.16.015, a stream corridor not designated under LOC Article 50.16, but that was inventoried on the City Hydrology Map or that meets the criteria under LODS 3, Section 5, may be subject to the standards of LODS 3. LODS 3, Section 5 states that a stream corridor is classified as a "Major Stream Corridor" and is subject to the standards of LODS 3 if it serves as an essential element of the drainage system within the City. The City's tributaries drain to the Willamette River; therefore, it is an essential element of the drainage system within the City.

Per LODS 3.020(4), development for recreational uses is allowed within a Major Stream Corridor Buffer Zone (defined as the area on each side of the corridor measured a minimum of 25 feet horizontally from the edge of the corridor bank outward). The standards listed under LODS 3.020(3), discussed below, shall guide the actual development.

- 1. The development cannot feasibly be located elsewhere than in the stream corridor buffer zone because of physical or topographical conditions;*

In order to access the floating dock in the river, the proposed development must be located within the stream corridor buffer zone and cannot feasibly be located elsewhere.

- 2. Location of the development within the buffer zone is necessary to allow reasonable use of the property;*

The entire eastern border of the park abuts the Willamette River, but due to the steep slopes of the river bank, there is no direct public access to the River. The proposed gangway and abutment will allow public access to a floating dock that provides direct, safe access to the river for all park users. It is a reasonable use of a riverfront property to have at least one safe access route to the riverfront for recreational purposes.

- 3. The development will cause the minimum degradation, or loss of natural features in the stream corridor necessary to accommodate such work; and,*

The abutment will impact approximately 80 square feet of area on the river bank, which is the minimum area necessary to secure the gangway and provide adequate pedestrian access. The gangway will be suspended above the stream bank, thereby eliminating physical impacts to the stream corridor.

- 4. The development uses design techniques including density transfer to minimize intrusion into the buffer zone.*

Since the development is a water dependent use and cannot exist without intruding into the buffer zone, density transfer is not a viable option for minimizing intrusion into the buffer zone.

Per LODS 3.025, erosion control, drainage management, landscaping or other means of assuring the health and quality of the stream corridor is required during construction. Additionally, the development area shall be landscaped to replace and/or enhance the disturbed area with ecologically compatible trees, shrubs and permanent ground cover.

As discussed in the narrative (Exhibit F1), the disturbance area in the buffer will be limited to approximately 80 square feet due to the small size of the abutment for the gangway. Erosion control measures will be installed during construction and the area is to be replanted with native shrubs and groundcover to permanently stabilize the disturbed area.

Staff finds that the applicant has adequately demonstrated that the proposed development complies with all standards of LODS 3.

### **City of Lake Oswego Tree Chapter - [LOC Chapter 55]**

The Tree Code is intended to preserve trees. Only those trees that must be removed in order to site proposed improvements will be granted tree cutting permits under LOC 55.02.080. No trees are requested to be removed as part of this application.

Tree protection fencing is required when a tree protection zone or drip line of a tree that is five inches in diameter or greater is within the construction zone, whether on or off-site. It appears that no trees would be impacted by the proposed development, however, the applicant should be aware that tree protection fencing will be required if the construction would occur in the tree protection zone of an on or off-site tree. A tree protection application and plan is required to be submitted for staff review and approval prior to conducting any development activities on the site, including, but not limited to stockpiling, clearing, grading, or excavation. Tree protection fencing shall be placed at the tree protection zone, which is the zone required to protect the critical root area necessary for the continued health of the tree. The applicant shall propose the tree protection zone for each tree, for review and approval by staff, on site. As required by LOC 55.08.030(7), no construction, excavation, root pruning or other activity shall occur within the tree protection zone unless directed by an arborist present on site and approved by the City. The applicant will be required to submit a contract with a consulting arborist for services as described above if construction activities are proposed within the tree protection zone.

All tree protection plans submitted shall clearly illustrate all areas impacted by construction activities on or off site, the location of temporary fencing secured by metal stakes around the tree protection zone of all trees five inches in diameter or greater where the construction zone is within the drip line of a tree, or other tree protection measures as recommended by a certified arborist. In addition, signs should be placed on the fencing and notes added on the construction documents that informs the site contractors about the necessity of preventing damage to the trees, including bark and root zone, and that no materials should be stored nor compaction occur within the root zones of the adjacent trees [LOC 55.08.030].

#### **5. Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.**

All conditions of approval imposed as part of the prior approvals will remain in effect and will become conditions of approval for the present request, except as modified by this decision or those conditions that have already been completed.

## **VII. CONCLUSION**

Based upon the materials submitted by the applicant and findings presented in this report, staff concludes that LU 07-0059 can be made to comply with all applicable criteria by the imposition of conditions.

## VIII. RECOMMENDATION

Staff recommends **approval** of LU 07-0059 as it relates to the proposed gangway development, subject to the conditions listed below. Because the requirement to install the information kiosk was specifically imposed by the DRC at the public hearing for LU 03-0067, staff takes a neutral stance regarding the Major Modification request and recommends that the DRC make its own findings and conclusions with respect to the kiosk modification.

- A. **Approval of LU 07-0059 shall be valid for a 3-year period from the date of the order granting final approval, and shall be void if construction is not complete within that time period.**
- B. **Prior to the Issuance of a Building Permit to Construct the Proposed Development, the Applicant/Owner Shall:**
1. Submit final building and site plans for the review and approval of staff that are the same or substantially similar to those approved by Exhibits E2, E3, E7, and E8.
  2. Demonstrate that all necessary approvals from State, Federal, and local government agencies have been obtained for the proposed development.
  3. If any on or off-site trees are within the construction zone, submit a tree protection plan for staff review and approval. This plan shall be attached to the construction documents or printed on the construction site plans, and shall include:
    - a. The location of temporary tree protection fencing, consisting of a minimum 6-foot high cyclone fence secured by steel posts, around the tree protection zone, or as recommended by the project arborist and approved by the City.
    - b. A note stating that no fill or compaction shall occur within the critical root zones of any of the trees, or that if fill or compaction is unavoidable, measures will be taken as recommended by a certified arborist to reduce or mitigate the impact of the fill or compaction. Such measures should be clearly outlined in the tree protection plan.
    - c. A note that clearly informs all site contractors about the necessity of preventing damage to the trees, including bark and root zone. The applicant and contractor(s) shall be subject to fines, penalties and mitigation for trees that are damaged or destroyed during construction. The note shall also inform contractors that the project arborist shall be on site and oversee all construction activities within the tree protection zone.
    - d. A sign shall be attached to the tree protection fencing, which states that inside the fencing is a tree protection zone, not to be disturbed unless prior approval has been obtained from the City Manager and project arborist.
- C. **Prior to Construction or Grading Activity on the Site, the Applicants/Owners Shall:**
1. Apply for an Erosion Control permit and install the erosion control and, if required, the tree protection fencing as required by LOC 45 and Condition B(3), above. These measures shall remain in place throughout construction period.
- D. **Prior to the Approval of the final Building Inspection, the Applicant/Owner Shall:**
1. Remove invasive vegetation and install all landscaping materials in substantial

compliance with Exhibits E3 and F1, pages 11-13.

2. The mitigation plantings required by Condition D(1), above, shall be monitored in accordance with the maintenance and monitoring plan outlined in Exhibit F1, pages 11-12 for a period of five years from the date of installation. An annual report shall be submitted to the City of Lake Oswego Planning Division in October of each of the monitoring years.

**Notes:**

1. In the event that ground disturbing activities expose cultural deposits or artifacts Oregon State Laws (ORS 97.740 - 97.760, 358.905, 358.955 and 390.235) require that work in the vicinity of such finds immediately be suspended. The SHPO should be notified and a professional archeologist called in to evaluate the significance of the find and recommend a subsequent course of action in consultation with SHPO and the appropriate Indian tribes.
2. The land use approval for this project does not imply approval of a particular design, product, material, size, method of work, or layout of public infrastructure except where a condition of approval has been devised to control a particular design element or material.
3. Development plans review, permit approval, and inspections by the City of Lake Oswego Development Review Section are limited to compliance with the Lake Oswego Community Development Code, and related code provisions. The applicants are advised to review plans for compliance with applicable state and federal laws and regulations that could relate to the development, i.e., Americans with Disabilities Act, Endangered Species Act. City staff may advise the applicants of issues regarding state and federal laws that the City staff member believes would be helpful to the applicants, but any such advice or comment is not a determination or interpretation of federal or state law or regulation.

**EXHIBITS**

**A. Notice of Appeal:**

(No current exhibits; reserved for hearing use)

**B. Findings, Conclusions and Order:**

(No current exhibits; reserved for hearing use)

**C. Minutes:**

(No current exhibits; reserved for hearing use)

**D. Staff Report:**

(No current exhibits; reserved for hearing use)

**E. Graphics/Plans:**

- E1. Vicinity Map
- E2. Site Plan
- E3. Mitigation Planting Plan
- E4. Conceptual Site Plan of the entire Park
- E5. Photographs of Site
- E6. Photographs of Surrounding Area in the Vicinity of the Site
- E7. Photographic Example of a Gangway, Abutment, and Moorings similar to Proposed Development
- E8. Information Sheet from Manufacturer of Proposed Gangway

**F. WRITTEN MATERIALS**

- F1. Applicant's Narrative
- F2. Applicant's Supplemental Narrative

- F3. Findings, Conclusion & Order for LU 03-0067
- F4. Fire Marshal's Memorandum

**G. LETTERS**

Neither for nor Against: (G1-99)

None

Support: (G100-199)

None

Opposition: (G-200-)

None

Date of Application Submittal: July 13, 2007

Date Application Determined to be Complete: August 10, 2007

State Mandated 120-Day Rule: December 7, 2007