



Marion County OREGON

PUBLIC WORKS

(503) 588-5036

MEMORANDUM

BOARD OF COMMISSIONERS

Janet Carlson
Kevin Cameron
Sam Brentano

DIRECTOR Alan Haley

ADMINISTRATION

BUILDING INSPECTION

EMERGENCY MANAGEMENT

ENGINEERING

ENVIRONMENTAL SERVICES

OPERATIONS

PARKS

PLANNING

SURVEY

TO: Marion County Hearings Officer
FROM: Marion County Planning Division/Reich
DATE: September 26, 2018
SUBJECT: Floodplain Case 18-003/Zielinski

The Marion County Planning Division has reviewed the above named case and offers the following comments:

FACTS:

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). Portions of the property are within the 100-year and 500-year floodplain of the Willamette River.
2. The subject property is located at the site of an old gravel extraction site east of Windsor Island Road NE in the 6,900 block.
3. Surrounding land in all directions consist of properties being farmed in an EFU zone.
4. Soil Report for Marion County Oregon indicates the soils on the subject property are 95% high-value soil.
5. The applicant proposes to restore to grade an existing gravel extraction site using soil that has been determined by the Oregon Department of Environmental Quality to be "substantially the same as clean fill." The soil would be capped with three feet of clean fill permitting approximately five acres of land to be reclaimed for farming.
6. On June 13, 2016, the Federal Emergency Management Administration provided notice of preliminary results from a consultation regarding the effects of the National Flood Insurance Program on threatened and endangered fish habitat in Oregon. On page two of that letter, the county was given the option of voluntarily implementing the interim measures found in the reasonable and prudent alternative element 2, which relates to protecting fish habitat and providing mitigation for activities that degrade habitat. The applicant provided a letter from a biologist stating that the existing gravel pits do not currently provide fish habitat and during a flood the pits cannot act as refuges for fish because fish would be entrapped in the excavation. According to the letter from the biologist, the proposed action to fill in the pits would provide improved fish passage in the future during a flood. Because the biologist identified the site as

not providing fish habitat and filling in the pits may improve fish habitat, no additional review under the reasonable and prudent alternative appears to be necessary. Any approval of this request can limit fill to only the area described in the application.

STAFF FINDINGS AND ANALYSIS:

7. Army Corps of Engineers commented that a permit may be required.

Oregon Department of State Lands commented that a removal-fill permit would be required.

Marion County Land Development Engineering and Permits (LDEP) requested that the following Condition be included in the land use case:

“Condition A – Applicant shall maintain a written daily log of haul route visual monitoring during operations to ensure no materials are inadvertently deposited onto county roads and city streets. In the event deposition does occur, cleaning and/or sweeping of the deposited material will be required within the same day discovered and shall be documented on the daily log.

Nexus for this condition is to prevent the creation of road hazards along the public road [MCC 11.45].”

8. The purpose of the Floodplain Overlay Zone is to promote public health, safety and general welfare to minimize public and private losses due to flood conditions. The criteria and standards which must be satisfied are listed in Section 17.178 of the Marion County Code (MCC).
9. The property is on Flood Insurance Rate Map #41047C0193G in an 100-year floodplain AE zone (green-blue color on the aerial photograph). Portions are also within the Shaded X zone (orange color on the aerial photograph), a 500-year floodplain. No development requirements apply within the Shaded X zone.
10. MCC 17.178.050 requires for any development in the floodplain:

C. Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner’s successors in interest, acknowledging that the property and the approved development are located in a floodplain.

The recording of this statement can be made a requirement of any approval.

D. Prior to obtaining a building permit, commencing development or placing fill in the floodplain the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.

The applicant’s engineer provided this certification. This criterion appears to be met.

11. Based on the above facts and discussion, it appears the proposal meets, or can be conditioned to meet, all of the criteria for placing fill within a 100-year floodplain. If the hearings officer approves the request, the Planning Division recommends the following conditions of approval be applied:

- A. Prior to placing fill, the applicant shall sign and submit to the Planning Division a Declaratory Statement acknowledging that the property and the approved development are located within a floodplain. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
- B. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited unless stored within a structure or on land elevated above the base flood level. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.
- C. The soil that is substantially the same as clean fill shall be capped with three feet of clean fill.
- D. The applicant is advised that all development in the floodplain is subject to federal, local and state regulations and standards at the time development is begun. These regulations and standards are in the process of being revised and the development proposed in this application may be subject to additional regulations and standards at the time construction of structures or placement of fill on the property begins.
- E. The applicant is advised that based on preliminary information provided by the National Marine Fisheries Service on April 14, 2016, federal law might only recognize as legal under the county current floodplain ordinance building permits that are issued prior to September 15, 2016 and where the work is begun prior to March 15, 2017. Permits issued after September 15, 2016 or not begun until after March 15, 2017 may be in violation of federal law and thus invalidate this local permit.
- F. Construction related to this permit is approved only on the area of the property identified in the application. Construction of new structures, fill or other development of the property shall not occur outside the existing developed area without prior consultation with the Marion County Planning Division. Federal regulations may require additional approvals for development outside the existing developed area of the property identified in the application.
- G. The applicant shall obtain all necessary permits from the Oregon Division of State Lands and the Army Corps of Engineers for development in wetlands.
- H. The applicants shall obtain all necessary permits, and stay in compliance with all permits, from the Army Corps of Engineers and the Oregon Department of Environmental Quality for transportation and placement of fill.
- I. Applicant shall maintain a written daily log of haul route visual monitoring during operations to ensure no materials are inadvertently deposited onto county roads and city streets. In the event deposition does occur, cleaning and/or sweeping of the deposited material will be required within the same day discovered and shall be documented on the daily log.