

# Natural Resources Development Review Staff Review, Decision, Conditions of Approval Case File NRDR 2024-01

**Date:** June 18, 2024

**Case File:** NRDR 2024-01 Schooner Creek Discovery Park

**Property Owners:** City of Lincoln City

**Situs Address:** 4815 SE 51<sup>st</sup> Street

**Location:** Between SE 52<sup>nd</sup> Street and SE 47<sup>th</sup> Street along SE 51<sup>st</sup> Street

**Tax Map/Lot:** 07-11-27-DD-03500, -04500, -04600, and 04700

## Comprehensive Plan

**Designation:** Park (P)

**Zoning District:** Park (P) Zone

**Site Size:** 6.72 acres

**Proposal:** Request for natural resources development review for significant wetlands

**Surrounding Land Uses and Zones:**  
North: Houses; R1-7.5  
South: Houses; R1-7.5  
East: Apartments/Condos; GC and OS; Schooner Creek  
West: Houses R1-7.5

**Authority:** Table 17.76.020-1 of Lincoln City Municipal Code (LCMC) 17.76.020 lists a natural resources development review application as a Type II procedure with the Planning and Community Development Director (Director) listed as the review authority. LCMC 17.76.040.A states that Type II procedures apply to administrative permits and applications and that decisions on administrative applications are made by the Director, based on reasonably objective approval criteria that require only limited discretion.

**Procedure:** The application was received on May 29, 2024. The application was deemed complete on May 30, 2024. On May 31, 2024, pursuant to LCMC 17.76.040.E, the Planning and Community Development Department mailed a notice of application to property owners within 250 feet of the subject property.

**Applicable** LCMC Chapter 17.42 Park (P) Zone  
**Substantive** LCMC Chapter 17.46 Natural Resource Overlay (NR) Zone  
**Criteria:** LCMC Section 17.76.040 Type II Procedure  
LCMC Section 17.77.090 Natural Resources Development Review

### **BACKGROUND**

The subject property (site) is addressed as 4815 SE 51<sup>st</sup> Street in the Park (P) zone. The tax lot numbers are 07-11-27-DD-03500, -04500, -04600, and 04700 and the lot size is 6.72 acres or 292,624 square feet. The site is undeveloped and surrounded by houses to the north, south, and east, all of which are in the R1-7.5 zone. The east boundary of the site is NE 51<sup>st</sup> St. Schooner Creek lies just to the east of NE 51<sup>st</sup>.

Lincoln City's GIS mapping shows the site does not contain any bluff erosion hazards or aesthetic resource. A significant portion of the site is within the floodplain, but no portion is within the floodway. The site is also within a natural resource overlay zone with mapped significant wetlands as the natural resource.

The proposal is to develop a community park, including a playground, sport courts, and sports fields.

### **COMMENTS**

Comments were received from Lincoln City Public Works. They are included as a condition of approval at the end of this staff report. North Lincoln Sanitary Services simply stated "Looks good. Can't wait." No other comments were received.

### **ANALYSIS**

#### ***Chapter 17.42 Park (P) Zone***

##### *17.42.020 Permitted uses*

**Finding:** Lincoln City is proposing to develop a community park on the subject parcels. The site is zoned Park (P) Zone. LCMC Chapter 17.42 lists the permitted uses in the Park zone. Public parks, playgrounds, and public athletic fields are listed as permitted in LCMC 17.42.020. A and B.

*17.42.050 Development standards.*

*17.42.060 Other requirements.*

**Finding:** This application is not for development; rather, this application is for a natural resources development review. Compliance with development standards shall be confirmed at the time of a building permit application.

#### ***Chapter 17.46 Natural Resource Overlay (NR) Zone***

##### *17.46.040 Uses allowed.*

- A. By Underlying Zoning. Except as limited below, the uses allowed in the natural resource overlay zone are the same as, and only, those allowed by the underlying zoning.*

**Finding:** The underlying zone is Park. The proposed use is permitted within the underlying zone.

- B. *In the Natural Resource Overlay Zone. All development is excluded from the natural resource overlay zone, with the following exceptions:*
1. *Development for which a natural resources development variance has been obtained through the provisions of LCMC 17.77.112.*
  2. *Development that will occur on a portion or portions of the property that are in the natural resource overlay zone but that do not contain any wetlands, riparian areas, or wildlife areas, as proven in a current (within six months of submitting a natural resources development review application) delineation report as follows:*
    - a. *Within six months prior to submitting a natural resources development review application, the entire site must be studied and included in a delineation report prepared by a qualified professional. All wetlands, riparian areas, and wildlife areas on the property must be identified in the report with locations and boundaries mapped. The delineation report must be submitted to the Oregon Department of State Lands, and a valid concurrence from the Oregon Department of State Lands must accompany the natural resources development review application.*
    - b. *The qualified professional shall recommend a buffer as part of the delineation report and compliance with the buffer shall be required as part of the natural resources development review.*

**Finding:** A wetland delineation/determination report was submitted as part of this application. The report was prepared by James Stupfel, of DOWL, and submitted on October 12, 2023. The report received concurrence from the Department of State Lands on February 15, 2024. A site plan with recommended buffers was also submitted as part of the application. No development is proposed within the delineated significant wetlands or within any recommended buffers.

3. *The following uses are allowed outright:*
  - a. *Uses not involving a structure and which do not impede native riparian vegetation growth, result in removal of native riparian vegetation, alter hydrology, introduce sediment, lead to erosion, or involve ground disturbance or impervious surfaces.*
  - b. *Mowing of lawns existing on the effective date of the ordinance codified in this chapter (but not expansion of lawns into significant natural resources), and other cutting necessary for hazard prevention.*
  - c. *Pedestrian footbridge, provided installation and maintenance do not disturb...*
  - d. *Riparian restoration activities limited to the planting of native riparian...*
  - e. *Trimming and pruning of vegetation in a way that does not reduce the survivability or root strength of the vegetation.*

**Finding:** The proposed use as a community park is not a use allowed outright within the Natural Resource Overlay Zone.

4. *The following uses are allowed subject to compliance with the following activity standards. Failure to comply with the activity standards may result in fines and mandatory mitigation requirements.*
  - a. *Activity Standards.*

- i. *For in-water work the responsible party must follow the Oregon Department of Fish and Wildlife guidelines for in-water work.*
  - ii. *The responsible party may not remove native vegetation except for that in the space occupied by the use.*
  - iii. *Within six months of vegetation removal, the responsible party must replant areas from which vegetation is removed with native vegetation at densities at least equaling those of the removed vegetation, unless vegetation would not allow the use to function.*
  - iv. *The responsible party must keep sediment from entering the water area.*
  - v. *The responsible party must obtain all required federal and state permits (e.g., U.S. Army Corps of Engineers permit, Oregon Water Resources Department permit, Division of State Lands fill/removal permit).*
- b. *Uses.*
- i. *Replacement drainage facilities, utility facilities, domestic and irrigation water pumps, and minor facilities authorized by the Oregon Water Resources Department (such as stream gauges).*
  - ii. *Vegetation removal for maintenance of existing bridges, roads, clear-vision areas as described in LCMC 17.52.060, drainage facilities, domestic or irrigation pumps, utility facilities, and facilities approved by the Oregon Water Resources Department; provided, that trees are not trimmed in a manner that causes them to die (unless complete removal of the tree is necessary to avoid imminent hazard to the use).*
  - iii. *Replacement of a stream crossing (bridge or culvert) or expansion of an existing land transportation facility within an existing right-of-way, provided all applicable Oregon Department of Fish and Wildlife fish passage guidelines are followed.*
  - iv. *Dock or moorage.*
  - v. *Water-dependent uses, where permitted in the underlying zone.*

**Finding:** A condition of approval shall be placed on this application to address relevant activity standards and uses.

*17.46.050 Natural resources development review.*

*A property owner must apply for a natural resources development review prior to the commencement of any development on property within the natural resource overlay zone. If the natural resource overlay zone applies to a portion of a parcel, a natural resources development review is required only for that portion of a development located inside the natural resource overlay zone. If the natural resource overlay zone applies to a portion of a parcel and no development is proposed within the natural resource overlay zone, then a natural resources development review is not required. No development within the natural resource overlay zone may occur until the natural resources development review has been approved.*

**Finding:** The property owner applied for the natural resources development review prior to the commencement of any park development.

## **Chapter 17.76 Procedures**

### *Type II procedure*

- A. *General Description. Type II procedures apply to administrative permits and applications. Decisions on administrative applications are made by the director, based on reasonably objective approval criteria that require only limited discretion. Type II procedures require public notice and an opportunity for appeal, but do not require a public hearing or a public meeting.*
- B. *When Applicable. Table 17.76.020-1 identifies Type II applications. Applications not listed in Table 17.76.020-1 ...*
- C. *Pre-Application Conference. A pre-application conference is not required for Type II procedures.*
- D. *Application Requirements. Type II applications shall:*
  - 1. *Be submitted on application forms provided by the department and shall include all information, exhibits, plans, reports, and signatures requested on the application forms.*
  - 2. *Be accompanied by the required fee as adopted by city council resolution. Be subject to the completeness review procedure set forth in LCMC 17.76.110(D) and (E).*
  - 3. *Be subject to the completeness review procedures set forth in LCMC 17.76.110 (D) and (E)*

**Finding:** No pre-application conference was held. The required application forms and materials were submitted along with the required fee. The application was deemed complete in accordance with LCMC 17.76.110 (D) and E).

- E. *Public Notice of Application and Comment Period. Type II applications require public notice of receipt of a complete application with an opportunity for area property owners and other interested parties to provide written comment prior to issuance of the decision.*
  - 1. *After a Type II application has been accepted as complete under LCMC 17.76.110(E), the department shall mail a written public notice to the following:*
    - a. *The applicant and applicant's representative;*
    - b. *The owners of record of the subject property;*
    - c. *Property owners of record within 250 feet of the perimeter property line of the property or properties subject to the application, using the most recently provided property tax assessment roll of the Lincoln County assessor's office as provided to the city to determine property owners of record; and*
    - d. *Any neighborhood or community organization or association recognized by the governing body and whose boundaries include the site.*

**Finding:** The Planning and Community Development Department mailed the public notice of a complete application to the parties noted in LCMC 17.76.040(E)(1)(a) through (d). The notice of a complete application was mailed on May 30, 2024.

- 2. *The written public notice shall include the following:*
  - a. *A brief description of the request;*
  - b. *The applicable criteria from the ordinance and the comprehensive plan that apply to the application at issue;*
  - c. *The street address or other easily understood geographical reference to the subject property;*
  - d. *Statement that failure of an issue to be raised in writing prior to the expiration of the public comment period, or failure to provide statements or evidence sufficient to afford the review authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals (LUBA);*

- e. *The name of a department staff member to contact and the telephone number where additional information may be obtained; and*
  - f. *Statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.*
3. *The failure of a property owner to receive notice does not invalidate the land use action if the notice was sent.*
  4. *Public notices for receipt of complete Type II applications shall include a written comment period of 14 days from the date the notice was mailed for the submission of written comments before the decision is issued.*

**Finding:** The written public notice contained all the information required in LCMC 17.76.040(E)(2)(a) through (f). The written public notice included the written comment period of 14 days. No public comments were received in response to the notice.

*F. Review Authority. The review authority for Type II applications shall be the director.*

**Finding:** The Director reviewed the submitted Type II application.

*G. Decision.*

1. *Based on the criteria and facts contained within the record, the director shall approve, approve with conditions, or deny the request. The decision shall address all relevant approval criteria and consider written comments submitted before the close of the comment period.*

**Finding:** The relevant approval criteria are addressed in detail throughout this staff report. No public comments were received.

2. *The decision is considered final for purposes of appeal on the date the notice of the decision is mailed. Within seven days after the director has issued the decision, a notice of the decision shall be sent by mail to the following:*
  - a. *The applicant and applicant's representative;*
  - b. *The owners of record of the subject property;*
  - c. *Any person, group, agency, association, or organization who submitted written comments during the comment period; and*
  - d. *Any person, group, agency, association, or organization who submitted a written request to receive notice of the decision.*

**Finding:** Within seven days of this decision, a notice of decision will be mailed by the Planning and Community Development Department pursuant to LCMC 17.76.040 (G)(2).

3. *The notice of the decision shall include the following:*
  - a. *A brief description of the request;*
  - b. *A statement of the decision and the applicable approval criteria used in making the decision;*
  - c. *The street address or other easily understood geographical reference to the subject property;*
  - d. *A statement that the decision is final, unless appealed as provided in LCMC 17.76.180;*
  - e. *The requirements for filing an appeal of the decision, including a statement of the date and time by which an appeal must be filed;*
  - f. *A statement that the complete file is available for review; and*
  - g. *The name of a department staff member to contact and the telephone number where additional information may be obtained.*

**Finding:** The Planning and Community Development Department will issue the notice of decision containing all of the information noted in 17.76.040 (G)(3)(a) through (g).

**Chapter 17.77 Applications**

*17.77.090 Geologic hazard report and/or beach protective structure review – Natural resources development review*

- A. Procedure. Geologic hazard report, beach protective structure review, and natural resources development review are subject to the Type II procedure as described in LCMC 17.76.040.*

**Finding:** A natural resources development review application was submitted for review. Pursuant to LCMC 17.76.040, the request is subject to the Type II procedure and has been processed accordingly.

- B. Submittal Requirements. Type II application submittal requirements are set forth in LCMC 17.76.040 and more specific submittal requirements are provided on application forms and checklists as authorized in LCMC 17.76.100, as well as Chapters 17.46 and 17.47 LCMC.*

**Finding:** The required documents were submitted.

- C. Approval Criteria.*  
*1. See Chapter 17.47 LCMC for approval criteria for geologic hazard report and beach protective structure review.*

**Finding:** This standard is not applicable to this application for a natural resources development review for significant wetlands.

- 2. See LCMC 17.46.050 for approval criteria for natural resources development review.*

**Finding:** Compliance with the approval criteria of LCMC 17.46.050 is addressed earlier in this staff report.

- D. Conditions of Approval. The review authority may impose conditions of approval to ensure compliance with the approval criteria.*

**Finding:** Conditions of approval have been imposed to ensure compliance with applicable criteria.

**DECISION**

Based upon an analysis of the submitted application and accompanying materials against applicable criteria, the Director concludes that all criteria have been or will be met, and thus **APPROVES WITH CONDITIONS** the natural resources development review request, subject to the following conditions:

**General Conditions**

1. The developer, applicant, and/or property owner are responsible for compliance and conformance with all city, state, and federal requirements, rules, regulations, standards, and ordinances.

**Planning**

2. The developer, applicant, and/or property owner may not remove native vegetation except for that in the space occupied by the use. The developer, applicant, and/or property owner must replant areas from which vegetation is removed with native vegetation at densities at least equaling those of the removed vegetation, unless vegetation would not allow the use to function. Replanting must be completed within six months of vegetation removal.
3. The property owner shall adhere to all conditions, rules, regulations, requirements, and information in DSL’s concurrence letter for the site (WD #2023-0474), dated February 15, 2024, which is attached to this decision.

**Public Works**

4. The developer, applicant, and/or property owner will be required to provide sufficient erosion control measures to ensure all temporary and permanent development impacts are kept outside of the noted wetland areas per LCMC 12.08.

Approved by:



06 / 17 / 2024

---

Daphnee Legarza  
City Manager

Date

Attachments

DSL Concurrence Letter