

**Toledo City Hall
Council Chambers
206 N Main St. Toledo OR
December 14, 2022
6:30 pm**

AGENDA

TOLEDO PLANNING COMMISSION

The Planning Commission will hold an in-person meeting in City Hall Council Chambers.

Participants can also attend the meeting through the Zoom video meeting platform. Email planning@cityoftoledo.org or call 541-336-2247 ext. 2130 to receive the meeting login information.

1. CALL TO ORDER AND ROLL CALL
2. VISITORS: (A time set aside to speak with the Planning Commissioners about issues not on the agenda)
3. APPROVAL OF THE NOVEMBER 9, 2022 MINUTES as circulated and reviewed by the Planning Commission
4. DECISION ITEM: Adoption of Findings for FPV-1-22, Port of Toledo floodplain variance and appeal
5. PUBLIC HEARING: Minor Partition to create two parcels for property located at 1950 NW Sunset Drive (File #MP-3-22), requested by Joshua Lightner (Nathan Lightner authorized agent)
6. WORKSESSION: Comprehensive Land Use Plan Update – Chapter 12 (Transportation)
7. DISCUSSION ITEMS:
 - a. Updates and Reports
8. STAFF COMMENTS
9. COMMISSIONER COMMENTS
10. ADJOURNMENT

* Comments submitted in advance are preferable. Comments may be submitted by phone at 541-336-2247 extension 2130 or by email to planning@cityoftoledo.org. The meeting is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodation for persons with disabilities should be made at least 48 hours in advance of the meeting by calling the Toledo Planning Department at 541-336-2247.

TOLEDO PLANNING COMMISSION MINUTES

A regular meeting of the Toledo Planning Commission was called to order at 6:30 pm by Vice President Cora Warfield. Commissioners present: Jonathan Mix, Brian Lundgren, Ruthanne Morris, Ricky Dyson, and Terri Neimann (arrived at 6:34 pm). Excused was President Anne Learned-Ellis.

Staff present: Contract Planner (CP) Justin Peterson, City Manager (CM) Judy Richter, City Attorney (CA) Mike Adams, and Secretary Arlene Inukai.

VISITORS: Jim Chambers, Debbie Scacco, Beth Goodman, Ariel Kane, Eric Chambers

APPROVAL OF THE OCTOBER 12, 2022, MINUTES:

It was moved and seconded (Mix/Lundgren) to approve the October 12, 2022, minutes as circulated and reviewed by the Planning Commission. The **motion passed** unanimously, noting the absence of Neimann and Learned-Ellis.

At this time, Commissioner Neimann joined the meeting.

PUBLIC HEARING: COMPREHENSIVE LAND USE PLAN AMENDMENT FOR THE TOLEDO HOUSING CAPACITY ANALYSIS (FILE #PA-2-22), REQUESTED BY CITY OF TOLEDO:

Vice President Warfield opened the public hearing by stating the nature and purpose. There were no declarations of ex parte contact, bias, or conflict of interest. The statements of rights and relevances and rights to appeal were then read for all of the public hearings scheduled tonight.

Staff Report: CP Peterson introduced Beth Goodman of ECONorthwest, consultants for the Housing Capacity Analysis (HCA) project.

Ms. Goodman provided a presentation to review the project and findings, as highlighted below:

- An Advisory Committee was formed and met four times. An online Open House was held to receive public comments. The Planning Commission and City Council held a worksession and both will hold public hearings to review the plan.
- The HCA would be an appendix to the Comprehensive Plan. It contains a Buildable Lands Inventory, demographic information, and housing affordability information.
- Reviewed the Buildable Lands Inventory map showing a significant amount of constrained areas. There are approximately 7 acres of Single-Family Residential lands, 7 acres of General Residential lands, 26 acres of Low-Density Residential lands, and 2 acres of Medium Density Residential lands that are unconstrained buildable lands.
- Because of the required population forecast, Toledo's growth is modest, with 15 new dwelling units needed for the 20-year period. Based on the amount of unconstrained buildable lands, Toledo has the capacity for 245 new dwelling units.
- Reviewed affordable housing figures and number of owners/renters experiencing cost-burdened housing.

- Several recommendations for future code updates came out of the project, including land swaps within the Urban Growth Boundary, streamlining the application procedures, increasing the timeline for development projects, clarifying manufactured home park standards, additional housing options within the Commercial Zone/Main Street District, updates to the System Development Charge methodology, implementing programs for tax exemptions for low-income housing, and Toledo recently adopted the Urban Renewal district, which supports residential development projects and funds could be used for residential projects.

Commissioners discussed how to offer guidance or assistance to developers to encourage residential development. CP Peterson noted that the City does not have a public outreach program for housing development, but staff is available for help and to provide information. Commissioners suggested using the newsletter or brochures to provide information.

CP Peterson reviewed the staff report, highlighting the criteria in the Statewide Planning Goals and the Comprehensive Plan. He clarified that the Planning Commission would make a recommendation to the City Council for adoption of the HCA as an appendix to the Comprehensive Plan. In a memo distributed tonight, he provided additional language to Finding #5 to address Goal 10-Housing. This is in response to a suggestion from Oregon Fair Housing Council. The proposed language would expand existing Finding #5 as presented in the staff report. CP Peterson continued review of the staff report, noting that possible development code updates may be the second step in the process. The Planning Commission has three options for their recommendation: 1) recommend approval, 2) recommend approval with modifications, or 3) recommend denial.

Commissioner Mix noted the amount of constrained lands, but received clarification that the sites can still be developed but may have special standards.

Public Testimony: None.

Questions by Commission: None.

Deliberations: The public hearing was closed and the Commission entered into deliberations. Commissioners discussed the difficulty of developing in the constrained areas. They reviewed Option 2 of the staff report recommendation.

It was moved and seconded (Neimann/Dyson) that based on the testimony received, the staff report, and the evidence and arguments before the Planning Commission at the public hearing on November 9, 2022, the Planning Commission finds that application file #PA-2-22 complies with the criteria identified in TMC 19.20.070(A)-(D) and recommends approval of the proposal by the City Council. The Planning Commission hereby adopts the staff report as findings, allowing for the correction of typographical and grammatical errors as needed. The Planning Commission also adopts the additional language to Finding #5, as presented tonight. The **motion passed** with Morris abstaining and noting the absence of Learned-Ellis.

PUBLIC HEARING: MINOR PARTITION TO CREATE TWO PARCELS FOR PROPERTY LOCATED AT 542 NW ASPEN STREET (FILE #MP-2-22), REQUESTED BY CAROL EDWARDS (JIM CHAMBERS AUTHORIZED AGENT):

Vice President Warfield opened the public hearing by stating the nature and purpose. Vice President Warfield reported she viewed the area, but there were no declarations of ex parte contact,

bias, or conflict of interest. The statements of rights and relevances and rights to appeal were previously read.

Staff Report: CP Peterson reviewed the staff report as on file at City Hall. He explained that the request is to partition 542 NW Aspen Street to create two parcels. The property is approximately 1.81 acres and has a house, garage, and outbuildings. Proposed Parcel 1 would be approximately 55,500 square feet and Proposed Parcel 2 would be 23,344 square feet. Notices of the public hearing were sent and no comments received. CP Peterson reviewed the R-S Zone standards, minor partition criteria, Comprehensive Plan goals, and existing utilities in the area. Both parcels would be over the minimum lot size. Sidewalks would not be required at this area. Both proposed parcels would have frontage onto Aspen Drive, while one lot remains a corner lot, adjacent to Skyline Drive. Because of the slope, access would not be taken from Skyline Drive. The proposed parcels would have an irregular shape because of the existing structures on the site. The final plat should show any utility and/or access easements that are needed to serve the two parcels.

The applicant proposes to remove the outbuildings shown as a chicken coop and greenhouse. The recommended conditions of approval require the structures to either be removed or be relocated to meet setback standards to the new property line. The house and garage meet setback standards. The driveway can remain and can be shared between the two parcels, but easements would have to be shown for the location. The applicant has not yet decided if they want to have a shared driveway or provide a new driveway/access point for the existing home. Staff recommends approval with the recommended conditions of approval.

Applicant Testimony: Jim Chambers of 565 NW Aspen Street, Toledo, represents the property owner, Carol Edwards. He reported they have a surveyor to work on the project, but it will take about 3-4 months. The driveway will depend on the layout for the new home site but the location can be included on the plat for clarity. The power company may have an easement for their service line to the existing home. There is an existing road easement along the east side of the property. Utilities may be relocated or the locations can be added to the plat for easement.

Proponent Testimony: None.

Opponent Testimony: None.

Other Interested Parties: None.

Questions by Commission: None.

Deliberations: The public hearing was closed and the Commission entered into deliberations.

It was moved and seconded (Lundgren/Dyson) that based on the testimony received, the staff report, and the evidence and arguments before the Planning Commission at the public hearing on November 9, 2022, the Planning Commission finds that the request by Carol Edwards and Jim Chambers (MP-2-22) complies with the criteria identified in Toledo Municipal Code, Titles 16 and 17, including the criteria identified in Toledo Municipal Code, Section 16.08.070. The Planning Commission hereby adopts the staff report as findings, as well as any conditions of approval for MP-2-22, and allowing for the correction of typographical and grammatical errors. The **motion passed** unanimously, noting the absence of Learned-Ellis.

PUBLIC HEARING: APPEAL THE STAFF DECISION IN FLOODPLAIN DEVELOPMENT PERMIT #FP-2-22 AND A VARIANCE TO THE DEVELOPMENT STANDARDS IN THE FLOOD HAZARD PROTECTION ORDINANCE, FOR PROPERTY LOCATED IN THE DEPOT SLOUGH WATERWAY, ADJACENT TO 127 NW A STREET (FILE #FPV-1-22), REQUESTED BY THE PORT OF TOLEDO:

Vice President Warfield opened the public hearing by stating the nature and purpose. There were no declarations of ex parte contact, bias, or conflict of interest. The statements of rights and relevances and rights to appeal were previously read.

Staff Report: CP Peterson reviewed the staff report as on file at City Hall. He explained that the request is for a variance to the floodplain development code standards and appeal to the staff decision on the floodplain development permit. The Port of Toledo holds a Department of State Lands (DSL) waterway lease for the docks and improvements. The project site is adjacent to 127 NW A Street/367 SE Butler Bridge Road and adjacent to the Water Dependent Zone. Notices were sent to surrounding owners/public agencies and published. DLCD floodplain coordinator called to discuss the proposal, but no comments were submitted.

In July, the City of Toledo and Port of Toledo staff met with FEMA representative to discuss the project and floodplain standards. The Port of Toledo prepared a Joint Permit Application for submittal to Oregon Department of State Lands and Army Corp of Engineers. The City of Toledo is required to review Joint Permit Applications for land use compatibility to local zoning and development codes. The City signed the land use compatibility (LUC) statement with the condition for a floodplain development permit for the project. Staff reached a determination (Attachment E of the staff report) for the floodplain permit. Because the work would occur in the floodway, staff's determination was that the Port would have to submit a hydrologic and hydraulic (H&H) analysis report, performed by an engineer. This is the requirement that is being appealed and the Port's requesting a variance to the H&H analysis.

CP Peterson reviewed the Planning Commission's authority to review variance requests, code criteria, Water Dependent Zone standards, estuary management standards, and floodway standards. The proposed project would replace the existing gangway, relocate the boathouse, limited excavation of the upland area, remove three existing pilings, and place two pilings. The work would occur in the floodway.

In 2019, the City updated the flood hazard ordinance based on the model ordinance and federal standards and adopted new floodplain maps, in accordance with FEMA's requirements to stay in compliance with the flood insurance program. The ordinance allows an appeal or variance to the standards. However, the variance criteria is clear that the Planning Commission considers all technical evaluations and criteria standards in the sections, and a variance shall not be issued within a floodway if it increases the flood levels. The H&H report was in the staff determination in order to see that there is no increase of flood levels.

CP Peterson reviewed the "development" definition and FEMA's guidance document for flood risk. The document also noted the 'no-rise' requirement. Staff had no discretion when it came to this requirement, but the Planning Commission has the discretion if the request meets the criteria. Portions of the variance criteria still come back to the need of the technical evaluation. An H&H analysis would determine if there is an increase in flood levels.

The applicant's letter of October 22, 2022, requests the variance for two projects, the current

pilings/gangway work, and the future dredging project that has not been submitted yet. CP Peterson reviewed the application materials, noting the following applicant statements, 1) requiring the H&H analysis would be a poor use of public funding, and 2) there would be zero impact to flood waters.

CP Peterson clarified it's the City's duty to implement the flood hazard ordinance. FEMA could conduct a community assistance visit which can affect the flood insurance program and the program could be suspended if the standards are not followed. CA Adams added that the City has to adopt FEMA's standards in order to participate in the flood insurance program. He noted that the criteria specifies "technical evaluation", however, the term is not defined. There's only the reference to the H&H analysis. Language in the federal standards are identical to the adopted language in Toledo's flood ordinance.

CA Adams stated that staff does not have what is needed in order to recommend approval. The Planning Commission's options are listed in the staff report, one including continuing the hearing, leaving the record open for additional information. The Planning Commission can approve the variance request, but will need to draft findings to support the approval or denial of the request.

Commissioners discussed the H&H report and if the variance to waive the report has an impact on the flood insurance program and flood levels. CP Peterson stated that they met with FEMA in July to get clarity on the requirements and they stand by the original H&H analysis determination. CA Adams added it's been a complicated process and not ideal for the Port. He clarified his role in this application process and drafting the staff report.

Commissioner Dyson asked if the request was primarily due to the \$13,500 cost of the study. CP Peterson believes the expense is the main reason, but suggested the Port address the question.

Applicant Testimony: Port Manager Debbie Scacco reported they are seeking the variance to the H&H analysis because it is a very expensive study for a minor project. She provided a PowerPoint presentation, summarized below:

- Port of Toledo's Mission Statement was reviewed with the Commission.
- The Port's tax levies are \$251,870. They provide several jobs, maintain several facilities, and have very limited income.
- The project will maintain handicap accessibility and obtains compliance with the grant funding requirements.
 - Two new steel pilings will have a +5 CY permanent affect
 - Removing three existing pilings will have a -3 CY permanent affect
 - Excavating the ADA gangway will have a -11 CY permanent affect
 - Causing a net -9 CY permanent affect to the waterway
- The existing boathouse blocks access to the dock and needs to be relocated. This project is needed to stay in compliance with the transient dock funding requirements. Two new pilings will be needed for the new location, but three existing pilings will be removed. New ADA gangway will also be added.
- Reviewed code definitions and TMC 15.16.190(D)(1-11), providing the following statements:
 - The danger that materials may be swept onto other lands to the injury of others;
Project has no effect and makes no changes to current conditions
 - The danger to life and property due to flooding or erosion damage;
Project has no effect and makes no changes to current conditions

- o The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
Project has no effect and makes no changes to current conditions
- o The importance of the services provided by the proposed facility to the community;
Existing facility. The project is needed to maintain ADA access to marina, ADA kayak launch, and community boathouses
- o The necessity to the facility of a waterfront location, where applicable;
Functionally Dependent Use – existing development
- o The availability of alternative locations for the proposed use which are not subject to the flooding or erosion damage;
Functionally Dependent Use – existing development
- o The compatibility of the proposed use with existing and anticipated development;
Existing development=100% compatible
- o The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
*Staff Report confirms compatibility to:
2000 Toledo Comprehensive Land Use Plan:
Article 2 Objective 2A & 2B with Outright Use per TMC 17.32.020,
Article 5 Goals 2 & 3 has been satisfied by: Army Corps of Engineers Permit NWP 2022-329 and DSL permit 63925-RF (contingent upon City of Toledo's approval of FP-2-22.)
Article 5 Goal 3: to facilitate processing of land use applications.
The City's floodplain code is obstructive to basic management of "functionally dependent use" facilities.
Article 7 Goal 1: Prevent loss of life/property:
Project has no effect and makes no changes to current conditions
The City's floodplain code is being interpreted to not allow requested variance. Code should be revised to allow for common sense and minor project exemption.
Estuary Management Zone and 2000 Toledo Comprehensive Land Use Plan, Article 16 Objective 1 & 6.
Project is for functionally dependent use of an existing facility and would have no effect on natural resources.
The City's floodplain code is being interpreted to not allow requested variance. Code should be revised to allow for common sense and minor project exemption.*
- o The safety of access to the property in the times of flood for ordinary and emergency vehicles;
Project has no effect and makes no changes to current conditions
- o The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
Project has no effect and makes no changes to current conditions
- o The costs of providing governmental services during and after the flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
Project has no effect and makes no changes to current conditions
- In review of TMC 15.16.200, the applicant provided the following information:
 - o *Not new construction or not a substantial improvement.*
 - o *Minimum necessary to meet goals of securing relocated boathouse and providing ADA access. Project was included in 2021 Port of Toledo Strategic Business Plan Update, pg 35.*

- o *No flood level increase – minor project with common sense evaluation.*
- o *Variances should only be issued upon good and sufficient cause: 1) Project retains the Port's compliance with grant terms for the Transient Dock project, 2) Secures the boathouse to ensure no damage to dock infrastructure, protecting a community asset, 3) Provides continued ADA access to the Marina and Community Boathouse Programs. (See Port Mission Statement #4), and 4) Cost of engineer's analysis is prohibitive, estimate \$13,500 is 5% of the Port's annual tax receipts. (See Port Mission Statement #5).*
- o *Hardship: If this project is not completed the Ports options are, 1) Refund grant funds for Transient Dock \$380,000, an extreme hardship considering our limited tax base, 2) Relocate boathouse without piling, risking failure of dock system and damage to moored vessels during a storm event, 3) Loss of ADA access to the Marina, Community Boathouse programs, including free family boating, and ADA kayak launch.*
- o *Determination that variance will not result in increased flood heights. This is a minor project that should rely on common sense and does not require an engineer's analysis to determine no affect to flood heights. Reference: FEMA Guidance for Floodway Analysis and Mapping Guidance Document 79, December 2020, page 34, paragraph 3. "Communities can exercise some discretion and common sense in determining which development requires permits or a hydraulic analysis." Section 11.1.1. Exemptions for Minor Projects: "There are other developments within the floodway that will require permits but can be allowed once the community determines that they are not an obstruction to floodwaters."*
- o *Variances may be issued for other projects as necessary for the conduct of a functionally dependent use provided that 15.16.200B-D are met.*
- o *Notification of variance for construction does not apply.*
- *TMC 15.16.220(D) Conflict with existing laws or ordinances:*
 - o *Staff report advises that a variance would directly conflict with 44CFR 60.3(d)(3) however, Federal Guidance as quoted above allows for common sense and minor project exemptions.*
 - o *TMC 15.16.19 (B) Allows the Planning Commission to hear and decide appeals.*
 - o *TMC 15.16.050 defines "Appeal" as a request to review any provision and "Variance" as a grant of relief from the terms of a flood plain management regulation.*
- *TMC 15.16.190(D) In passing upon such applications, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter. Staff report advises that there is no definition for "technical evaluation" in the code and interprets it to mean the engineer's analysis. If it is open for interpretation The Port proposes using the Joint Permit Application as approved by ACOE and DSL to support the decision.*
- *Reviewed the next project for maintenance dredging. Maintenance dredging is not part of the current project, but it is critical to maintain the floodway. The Port would like to see the Municipal Code amended to exempt maintenance dredging from the H&H analysis requirement.*
- *In support of the request, she added that 1) Port of Toledo provides functionally dependent infrastructure that supports the City's Comprehensive Plan and goals; 2) the Port should not be required by City Municipal Code to expend public funds for unneeded analysis; 3) the Port's project is minor in scope, replacing existing features and common sense can*

determine the project will not decrease flood carrying capacity of floodway because federal guidance allows for the use of common sense, 4) TMC mirrors Federal 44 CFR 60.6 for variances and exceptions: both include provisions for variances to be issued if a determination can be made that the project does not increase flood heights, and 5) if TMC is written in a way that limits the Planning Commission's ability to grant variances and make exceptions, shouldn't that be corrected?

It was noted that the staff report contained the Waterway Lease application with the State, but did not have a copy of the Joint Permit Application. Both permits were approved, but they did not require the H&H analysis, only the City's floodplain permit requires the report. Ms. Scacco clarified that she spoke with DLCD's floodplain coordinator who provided information.

Commissioners discussed options to move forward with the application. Commissioner Dyson voiced that the proposed project should not expect a change in floodwaters and no displacement of water just to move the boathouse. Ms. Scacco agreed and noted that staff acknowledged this as well, but it is not in the code. The H&H analysis will be \$13,500, which is too difficult to justify when there will be zero effect. Commissioners discussed if an H&H report can address both the current project and the maintenance dredging project. Discussion continued on code requirements and impacts to the flood insurance program.

Commissioner Dyson asked if the Port does not want to pay \$13,500 and the City does not want to risk the flood insurance program, would the City pay for the study. Ms. Scacco noted that some communities have an in-house engineer, but the City does not.

Commissioners reviewed the project and received clarity that findings would have to be drafted in order to make a decision tonight. Commissioners suggested using the presentation materials submitted by Ms. Scacco tonight. Based on Commissioner questions, Ms. Scacco believes the H&H analysis is a newer requirement, so past projects were exempt.

Commissioners continued reviewed the decision options, possible findings, and if staff can bring back findings for approval. The Port's presentation can be shared with Commissioners and it can be the basis of the findings. In response to Commissioner questions, Ms. Scacco confirmed they do not have a required completion date on the project, as long as they are moving forward with reaching compliance. She clarified that the current location of the boathouse is between the docks and needs to be moved. This allows boats to tie-up on both sides of the transient dock.

Proponent Testimony: None.

Opponent Testimony: None.

Other Interested Parties: None.

Questions by Commission: Ms. Scacco answered Commissioner questions, stating that the ramp will not be in-water, it is on the bank. CP Peterson noted that it is hard to tell if the ramp is in the floodplain or floodway. He referenced the floodplain map for the location. Ms. Scacco offered to provide a copy of the approved Joint Permit Application for review.

Deliberations: The public hearing was closed and the Commission entered into deliberations. Commissioners discussed using the PowerPoint presentation as a starting point for the findings.

These will support the decision.

It was moved and seconded (Mix/Neimann) that based on the testimony received, the staff report, and the evidence and arguments before the Planning Commission at the public hearing on November 9, 2022, and based on findings presented in the public hearing, the Planning Commission finds that the request by the Port of Toledo (FPV-1-22) complies with the criteria identified in Toledo Municipal Code, Titles 16 and 17, including the criteria identified in Toledo Municipal Code, Section 15.16.180 - 200. The Planning Commission hereby adopts the staff report as findings as modified by the findings made verbally in the November 9, 2022 public hearing and the Planning Commission directs staff to bring back at the next public hearing for adoption, as well as the conditions of approval for FPV-1-22, and allowing for the correction of typographical and grammatical errors. The **motion passed** unanimously, noting the absence of Learned-Ellis.

Staff will put the findings together and will have it on the agenda for review at the next meeting.

Commissioners Dyson and Warfield announced they will not be at the December meeting.

DISCUSSION ITEMS: Comprehensive Land Use Plan Update:

CP Peterson reviewed a memorandum showing the list of updates to the Comprehensive Plan chapters. There are 19 Statewide Goals and 17 are in the Toledo Comprehensive Plan. The Planning Commission has been reviewing one chapter each meeting and can revisit and fine-tune at the end of the project. The project is expected to be completed at the end of 2023.

STAFF COMMENTS: None.

COMMISSIONER COMMENTS: None.

There being no further business before the Commission, the meeting was adjourned at 9:15 pm.

Secretary

Vice President

BEFORE THE PLANNING COMMISSION OF THE CITY OF TOLEDO, OREGON

In the matter of a request to appeal the staff	)	
Decision in Floodplain Development Permit	)	
#FP-2-22 and an application for a variance	)	ORDER
To the development standards identified in	)	
TMC 15.16. Property is identified on Assessor's	)	City of Toledo File #FPV-1-22
Map 11-10-17 BC Tax Lot 10900.	)	

Port of Toledo, Applicant

This matter came before the Planning Commission on November 9, 2022. The Commission held a public hearing, allowing for testimony and introduction of evidence from proponents, opponents, and others. The Planning Commission evaluated the application based on the applicable criteria. Approval of the application is based on the Staff Report and attachments, testimony presented at the public hearing, and the following Criteria, Facts, Findings and Conditions of Approval. The Planning Commission directed Staff to bring back Findings to the next Public Meeting of the Planning Commission (December 14, 2022), and allowing for the correction of typographical and grammatical errors:

APPLICABLE CRITERIA FOR EVALUATING THE VARIANCE AND APPEAL REQUEST AND ANALYSIS:

The following comprehensive plan and ordinance standards apply to this request. The standards are listed below in regular type. Staff analysis including facts and findings are highlighted below each comprehensive plan and ordinance standard in an italicized font.

1. **2000 Toledo Comprehensive Land Use Plan – Article 2, Objective 2(A) – Comprehensive Plan Map Designations:**

Comprehensive Plan Map designations are intended to guide development by designating appropriate areas for each particular type of development use. Additional uses within each designation may be allowed as either uses permitted outright or as conditional uses when the city determines that such uses are either consistent with the general use or can be reviewed for compatibility through the conditional use process. The map designations and the uses allowed in the designations should reflect the applicable goals and objectives of the Toledo Comprehensive Land Use Plan.

Water Dependent (W-D) Zone – The purpose of the W-D zone is to provide for water-dependent uses which need contact with or use of the water for water-borne transportation, recreation, energy production, or water supply.

2. **2000 Toledo Comprehensive Land Use Plan – Article 2, Objective 2(B) – Zoning Map Designations:**

Water-Dependent – This designation provides for uses of property that depend on a location adjacent to a waterway for the viability of that use. Toledo's water surface and its shorelands are a valuable resource and provide considerable potential for future economic growth. The Water-Dependent plan designation shall be implemented by the zoning map

designation of Water-Dependent.

3. **TMC Sections 17.32.010 – 17.32.030 – WD Zone**

TMC 17.32.010 Purpose.

The purpose of the W-D zone is to provide for water-dependent uses which need contact with or use of the water for water-borne transportation, recreation, energy production, or water supply.

TMC 17.32.020 Uses permitted outright.

In a W-D zone, the following uses and their accessory uses are permitted outright:

- A. Marine terminal or transfer facility for fish, timber, or other water-borne commerce.
- B. Industrial processing plant which requires access to water body during processing operation.

- C. Log storage that requires access to water.

- D. Boat building or boat repair and launch facility.**

- E. Seafood processing.

- F. Marine fuel sales.

- G. Charter boat operation.

- H. Marine ways and boat ramp.

- I. Commercial marina or moorage.**

- J. One security dwelling as part of a building for water-dependent use that complies with applicable codes for mixed use occupation.

- K. Any shoreland use or activity necessary in relation to a use allowed under [Section 17.32.020](#).

- L. Any other use that conforms with the definition of water-dependent development in [Section 17.04.020](#).

- M. Low intensity recreation providing waterfront access.

- N. Transportation facilities (operation, maintenance, preservation, and construction in accordance with the city Transportation System Plan).

TMC 17.32.030 Conditional uses permitted.

- A. Boat sales.

- B. Bait and tackle shop.

- C. Warehouse and storage area for marine equipment.

- D. Seafood processing plant, smoking or canning establishment or retail outlet that does not require access to water.

- E. Restaurant in conjunction with and incidental to a water-dependent use which provides a waterfront viewing experience and which either provides public waterfront access with a waterfront walkway or pavilion, or is located on a floor above a water-dependent use.

- F. Public accommodation in conjunction with a water-dependent use that provides marina facility or public waterfront walkway or pavilion.

- G. Parking lot associated with a permitted or conditional use in the W-D zone.

- H. Marine equipment or supply sales.

- I. Other water-related development in conjunction with a water-dependent use.

- J. A non-water-dependent or non-water-related use, provided no structures or alterations are involved which would prevent future use of the site for water-dependent use.

- K. Structural shoreline stabilization as defined in the Lincoln County Estuary Management Plan as amended from time to time.

Analysis: The project is located in the Depot Slough waterway, adjacent to Lincoln County Assessor's Map #11-10-17 BC Tax Lot 10900 and known as 127 NW A Street, Toledo, and Lincoln County Assessor's Map 11-10-17 BC 6800 and 6802-21, known as 367 Butler Bridge Road. The property is located adjacent to the Water Dependent (WD) Zone and is identified as Estuary Management Unit 31. The proposed commercial marina and boat building are allowed outright uses in the Water Dependent (WD) Zone.

This is an application by the Port of Toledo to appeal the staff decision (Attachment C) in Floodplain Development Permit #FP-2-22 and an application for a variance to the development standards identified in the Flood Hazard Protection Ordinance (Toledo Municipal Code Chapter 15.16). The proposed project would replace the gangway, relocate the boathouse, limited excavation of the upland area, remove three existing pilings, and place two pilings. The applicant asks the Planning Commission to waive the requirement for a hydrologic and hydraulic analysis be required, per TMC 15.16 and consider an engineer's analysis is not required to conclude that the project has zero impact to the floodway.

4. Estuary Management Zone and 2000 Toledo Comprehensive Land Use Plan – Article 16: Estuarine Resources

GOAL 1. Recognize and protect the unique environmental, economic and social values of the Yaquina River Estuary and the associated wetlands.

OBJECTIVE 6. Allow dredge, fill or other reduction or degradation of natural values of the estuary by human development activities only:

- a. If required for navigation or other water-dependent uses that require an estuarine location.
- b. If a public need is demonstrated.
- c. If no alternative upland locations exist.
- d. If adverse impacts are minimized and/or mitigated as much as possible.

Analysis: The objectives of the Estuary Management Zone and Article 16, based on Oregon Statewide Planning Goal 16, is to protect the long-term values, diversity, and benefits of estuaries and associated wetlands and also to provide for appropriate restoration and development.

Each estuarine area contains management units whose boundaries are determined by the types of resources in the area and the extent of past alterations. These are natural, conservation, and development units, each of which is "a discrete geographic area, defined by biophysical characteristics and features, within which particular uses and activities are promoted, encouraged, protected, or enhanced, and others are discouraged, restricted, or prohibited."

Staff finds this application complies with the Estuary Management Zone and Article 16, including Goal 1 and Objective 6. Estuary Management Unit 31 is classified as Development. "Management Unit 31 shall be managed to provide for continued development of water

dependent and water related uses...” (Lincoln County Estuary Management Plan, Page 87). In addition, by the Flood Hazard Protection Ordinance, required by FEMA to be adopted by the City if it wants to participate in the NFIP, specifying zero rise within the floodway, which ensures particular uses and activities are promoted, encouraged, protected, or enhanced, in the floodplain, and others are discouraged, restricted, or prohibited, in the floodway. In summary, certain development located within Estuary Management Unit 31 is allowed but is still subject to the Flood Hazard Protection Ordinance.

5. 2000 Toledo Comprehensive Land Use Plan – Article 5: Open Spaces, Scenic & Historical Areas, and Natural Resources, Goal 3, Objective 4, Wetland and Riparian Resources Objectives 2 and 3:

GOAL 3. Protect natural resources such as wetlands and riparian habitat areas as required by state and federal law to ensure their continued contributions as natural areas, open space, wildlife and vegetative habitat, flood protection, and storm water retention and conveyance areas.

OBJECTIVE 2. Protect wetland and riparian areas as required by state and federal law.

OBJECTIVE 3. To facilitate processing of land use applications, coordinate review with the Oregon Division of State Lands and U.S. Army Corps of Engineers of any development proposals that could impact a wetland.

Analysis: Article 5 is designed to protect and conserve a wide range of natural resources, including riparian areas; wetlands; fish and wildlife habitat; wild and scenic rivers; wilderness areas; mineral and aggregate resources; energy sources; groundwater; natural areas; historic and cultural resources; scenic views and sites; and open space. The City is required to follow a specific planning process for resource protection. They must inventory resources and determine their significance; identify conflicting uses; evaluate the economic, social, environmental and energy consequences of allowing conflicting uses; and develop programs that protect each resource. In addition, the City shall facilitate processing of land use applications, coordinate review with the Oregon Division of State Lands (DSL) and U.S. Army Corps of Engineers of any development proposals. The applicant in this case submitted a Joint Permit Application (JPA) that is being reviewed by DSL and Army Corps.

6. 2000 Toledo Comprehensive Land Use Plan – Article 7: Natural Hazards, Goal 1:

GOAL 1 Prevent loss of life and property damage by requiring appropriate safeguards for all development of properties within known natural hazard areas. Natural hazards include: floods, tsunamis, earthquakes, landslides and slope hazards, weak foundation soils, high groundwater, wind/windthrow/winter storms, and wildfires.

Analysis: The goal of Floodplain Management is to reduce losses to people and property from floods while protecting the natural resources and functions of floodplains. Development within the floodway is prohibited with the exception in certain cases when a no-rise determination is made by an engineer, while development within the floodplain generally is allowed. Floodplain management involves regulatory, construction and public education measures to avoid and minimize potential risk to development from flood hazards. Local cities and counties can meet

Statewide Goal 7 requirements, which Article 7 is based upon, for coastal and riverine flood hazards by adopting and implementing local floodplain regulations that meet National Flood Insurance Program or NFIP requirements.

FLOODPLAIN STANDARDS RELEVANT TO THIS REQUEST

7. TMC 15.16.220(D)

D. Floodways. Located within the special flood hazard areas established in [Section 15.16.070](#) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless:

a. ***Certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge; or***

b. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that a conditional letter of map revision (CLOMR) is applied for and approved by the Federal Insurance Administrator, and the requirements for such revision as established under Volume 44 of the Code of Federal Regulations, Section 65.12 are fulfilled.

If the requirements of [Section 15.16.220\(D\)\(1\)](#) are satisfied, all new construction, substantial improvements, and other development shall comply with all other applicable flood hazard reduction provisions of Sections [15.16.210](#) and [15.16.220](#).

Analysis: The proposed work is located in the regulated floodway (See Attachment D). The “regulatory floodway” is defined as, “means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height” 44 C.F.R. 59.1. Also referred to as “floodway.” The floodway provides the function of conveying floodwaters from upstream to downstream.

The City of Toledo is required to regulate development in the designated floodplain and floodway. In 2019 the City of Toledo amended the Floodplain Ordinance and adopted the new FEMA maps. This was required by FEMA and the City is required to regulate development as defined in the Floodplain Ordinance. Development in the floodway is regulated by TMC 15.16.220(D).

As discussed above, the proposed project would replace the gangway, relocate the boathouse, limited excavation of the upland area, remove three existing pilings, and place two pilings. Additional details about the project are in the applicant’s materials (Attachment B).

The City of Toledo Staff sent a floodplain determination on July 26, 2022. The analysis determined that the replacement of the gangway, removal of pilings, and addition of other pilings, but not as to moving the boathouse, would require a “[c]ertification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.” TMC 15.16.220 (D)(1)(a.).” (See Attachment C).

The applicant asks the Planning Commission to waive the requirement for a hydrologic and hydraulic analyses be required, per TMC 15.16 and consider an engineer's analysis is not required to conclude that the project has zero impact to the floodway.

EVALUATION CRITERIA – VARIANCES

8. TMC 15.16.180 - 200

15.16.180 Variance Procedure.

The issuance of a variance is for floodplain management purposes only. Flood insurance premium rates are determined by federal statute according to actuarial risk and will not be modified by the granting of a variance.

15.16.190 Variance Appeal Board

- A. The city of Toledo planning commission shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The planning commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the city manager in the enforcement or administration of this chapter.
- C. An appeal from an action or ruling by the planning commission as authorized by this chapter shall be made to the city council within fifteen (15) days after the action or ruling by filing written notice with the city manager. If no appeal is taken within the fifteen-day period, the action or ruling of the planning commission shall be final. If an appeal is filed, the council shall receive a report and recommendation from the appropriate city official and shall hold a public hearing and consider the appeal de novo. Notice of the public hearing shall be by one publication in the newspaper of general circulation in the city not less than five days nor more than fifteen (15) days prior to the date of the hearing.

In order to have standing for an appeal, a person must have been mailed written notice or have participated in writing or in person at the planning commission public hearing or have been substantially affected by the action or ruling.

- D. In passing upon such applications, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and;
 1. The danger that materials may be swept onto other lands to the injury of others;
 2. The danger to life and property due to flooding or erosion damage;
 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 4. The importance of the services provided by the proposed facility to the

- community;
- 5. The necessity to the facility of a waterfront location, where applicable;
- 6. The availability of alternative locations for the proposed use which are not subject to the flooding or erosion damage;
- 7. The compatibility of the proposed use with existing and anticipated development;
- 8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- 9. The safety of access to the property in the times of flood for ordinary and emergency vehicles;
- 10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- 11. The costs of providing governmental services during and after the flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- E. Upon consideration of the factors of subsection D of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- F. The city manager shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administrator upon request.

15.16.200 – Conditions for Variances

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of Sections [15.16.200](#)(C), (E) and (F). As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.
- B. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
- E. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of Sections [15.16.200](#)(B)—(D) are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- F. Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance and that such construction below the base

flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance shall be maintained in accordance with [Section 15.16.160\(B\)](#).

Analysis: The conditions for floodplain variances and appeals are found in TMC 15.16.200.

"Variance" means a grant of relief by the city of Toledo from the terms of a floodplain management regulation.

"Functionally Dependent Use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.

The current application contemplates replacing the existing gangway, removal of three pilings, and replacement with two pilings. The five-foot width and over the water length of the gangway will not change from what is existing. The area of excavation required (225 sq. ft., 11 c.y., permanent) is being done after obtaining the other appropriate permits, which will result in approximately 10.5 cubic yards of permanent net removal below the (Highest Measured Tide) HMT of Depot Slough. The removal of three pilings to offset the addition of two pilings is not a net gain and appears insignificant. However, the replacement of the gangway, removal of pilings, and addition of other pilings, fall within the "and other development in the floodway" portion of the "development" definition found in TMC 15.16.220 (D)(1).

TMC 15.16.220(D)(1)(a), the requirement of the applicant, the Port of Toledo, to provide a certification by a registered professional civil engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge, is what the Port of Toledo is requested to be waived as a variance.

In the applicant's October 12, 2022 letter to the planning commission, with subject "RE Appeal of Land Use Decision Regarding Floodplain Permit FP-2-22," makes requests for two projects, not just the current project, replacement of the gangway, removal of pilings, addition of other pilings, and moving the boathouse, but also adding a project for the maintenance dredging of the transient dock where an application has not yet been filed. Aside from what is contained in the October 12, 2022 letter, the applicant has provided no information on the proposed dredging project. This letter is broader than the scope of the current floodplain application, presumably to avoid future appeal fees.

The City Staff Report for the November 9, 2022 Planning Commission meeting (Attachment A) outlined staff's analysis that concluded that an encroachment could not occur without a hydrological and hydraulic analyses. However, based on testimony at the Planning Commission meeting the Planning Commission elected to approve the application based on the verbal testimony and presentation from the Port of Toledo. The Order has been updated to reflect Planning Commission's motion.

15.16.190(D) In passing upon such applications, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and;

To recap, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and criteria 1-11 in subsection D. of TMC 15.16.190. The referenced 11 criteria, found in TMC 15.16.190(D), in part, provides the planning commission shall consider:

The Port proposes using the Joint Permit Application as approved by ACOE and DSL to support the decision.

1. The danger that materials may be swept onto other lands to the injury of others;

Per October 12, 2022 letter, “The new ADA gangway replaces a current permitted structure and does not diminish flood carrying capacity. It will be anchored according to standard installation procedures to prevent flotation, collapse or lateral movement.”

Further, per October 12, 2022 letter, “The gangway and piling are constructed of standard materials for their intended purposes.”

Project has no effect and makes no changes to current conditions.

2. The danger to life and property due to flooding or erosion damage;

Project has no effect and makes no changes to current conditions.

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

Project has no effect and makes no changes to current conditions.

4. The importance of the services provided by the proposed facility to the community;

Per October 12, 2022 letter, “The first project is to replace the gangway at the Port's Marina with an ADA gangway and relocate the boathouse which requires placing 2 piling and limited excavation of the upland. To mitigate, the Port will remove 3 existing piling. This project is a public benefit and will maintain accessibility to community boating at the Marina.”

Existing facility. The project is needed to maintain ADA access to Marina, ADA Kayak Launch, and Community Boathouses.

5. The necessity to the facility of a waterfront location, where applicable;

Per Applicant's Narrative in Section 5 of the Joint Permit Application, “The purpose of the proposed project to relocate the existing boathouse and replace the existing gangway located within the Port’s marina. The current boathouse location and existing marina gangway do not meet the requirements of the grant fund provided to the Port from OSMB and USFWS for the

recently constructed transient moorage docks. The current boathouse location does not allow for vessel access to the shoreside of the transient mooring dock”

Functionally Dependent Use – Existing Development.

6. The availability of alternative locations for the proposed use which are not subject to the flooding or erosion damage;

Functionally Dependent Use – Existing Development.

7. The compatibility of the proposed use with existing and anticipated development;

Per October 12, 2022 letter, “The first project is to replace the gangway at the Port's Marina with an ADA gangway and relocate the boathouse which requires placing 2 piling and limited excavation of the upland. To mitigate, the Port will remove 3 existing piling. This project is a public benefit and will maintain accessibility to community boating at the Marina.”

Existing Development = 100% compatible

8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

2000 Toledo Comprehensive Land Use Plan: Article 2 Objective 2A & 2B with Outright Use per TMC 17.32.020, Article 5 Goals 2 & 3 has been satisfied by: Army Corps of Engineers Permit NWP 2022-329 and DSL permit 63925-RF (contingent upon City of Toledo’s approval of FP-2-22.)

- Article 5 Goal 3: to facilitate processing of land use applications. The City’s floodplain code is obstructive to basic management of “functionally dependent use” facilities.*
- Article 7 Goal 1: Prevent loss of life/property: Project has no effect and makes no changes to current conditions. The City’s floodplain code is being interpreted to not allow requested variance. Code should be revised to allow for common sense and minor project exemption.*
- Article 7 Goal 1: Prevent loss of life/property: Project has no effect and makes no changes to current conditions. The City’s floodplain code is being interpreted to not allow requested variance. Code should be revised to allow for common sense and minor project exemption*

9. The safety of access to the property in the times of flood for ordinary and emergency vehicles;

Project has no effect and makes no current changes to current conditions.

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

Project has no effect and makes no changes to current conditions.

11. The costs of providing governmental services during and after the flood conditions,

including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.”

Project has no effect and makes no changes to current conditions.

E. Upon consideration of the factors of subsection D of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

No conditions were discussed by the Planning Commission.

15.16.200(A) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of Sections [15.16.200\(C\)](#), (E) and (F). As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.

Not new construction, not substantial improvement. Also see TMC 15.16.200(E) – Variances may be issued for other projects as necessary for the conduct of a functionally dependent use provided that B-D above are met.

15.16.200 (B) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

The planning commission must make a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Minimum Necessary to meet goals of securing relocated boathouse and providing ADA access. Project was included in 2021 Port of Toledo Strategic Business Plan Update, pg 35.

15.16.200 (C) Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.

No flood level increase – minor project with common sense evaluation.

15.16.200 (D) Variances shall only be issued upon:

1. A showing of good and sufficient cause;

Per applicant’s October 12, 2022 letter, “The cost to comply with this requirement restricts the Port’s ability to provide basic maintenance of the waterway and access for public use.”

To approve a variance, first, the planning commission must make a finding that there is a showing of good and sufficient cause.

Good & Sufficient Cause: 1) Project retains the Port’s compliance with grant terms for the Transient Dock project, 2) Secures the boathouse to ensure no damage to dock infrastructure,

protecting a community asset, 3) Provides continued ADA access to the Marina and Community Boathouse Programs. (See Port Mission Statement #4), and 4) Cost of Engineer's analysis is prohibitive, estimate \$13,500 is 5% of the Port's annual tax receipts. (See Port Mission Statement #5).

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

Per applicant's October 12, 2022 letter, "the Port is in receipt of an estimate for this analysis of \$13,500."

To approve a variance, second, the planning commission must make a finding that failure to grant the variance would result in exceptional hardship to the applicant.

Hardship: If this project is not completed the Ports options are 1) Refund grant funds for Transient Dock \$380,000, an extreme hardship considering our limited tax base, 2) Relocate boathouse without piling, risking failure of dock system and damage to moored vessels during a storm event, and 3) Loss of ADA access to the Marina, Community Boathouse programs, including free family boating, and ADA kayak launch.

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

To approve a variance, third, the planning commission must make a finding that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

Reference: FEMA Guidance for Floodway Analysis and Mapping Guidance Document 79, December 2020, page 34, paragraph 3 "Communities can exercise some discretion and common sense in determining which development requires permits or a hydraulic analysis."

Section 11.1.1. Exemptions for Minor Projects: "There are other developments within the floodway that will require permits but can be allowed once the community determines that they are not an obstruction to floodwaters."

Staff report advises that a variance would directly conflict with 44CFR 60.3(d)(3) however, Federal Guidance as quoted above allows for common sense and minor project exemptions.

TMC 15.16.190 (B) Allows the Planning Commission to hear and decide appeals

*TMC 15.16.050 defines "Appeal" as a request to review **any** provision and "Variance" as a grant of relief from the terms of a flood plain management regulation.*

The applicant provide a table of the anticipated impact.

Task	Affect	
Add 2 new 16" steel piling	+ 5 CY Permanent	NWP-2022-329 pg 6/6
Remove 3 existing pilings	- 3 CY Permanent	NWP-2022-329 pg 4/6
Excavate ADA gangway abutment	-11 CY Permanent	NWP-2022-329 pg 4/6
Net Affect to waterway	-9 CY Permanent	

15.16.200 (E) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of Sections [15.16.200\(B\)](#)—(D) are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Variances may be issued for other projects as necessary for the conduct of a functionally dependent use provided that B-D above are met. See above.

15.16.200 (F) Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance and that such construction below the base flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance shall be maintained in accordance with [Section 15.16.160\(B\)](#).

Notification of variance for construction does not apply.

FURTHER STAFF ANALYSIS:

The National Flood Insurance Program (NFIP) is managed by the FEMA and is delivered to the public by a network of more than 50 insurance companies and the [NFIP Direct](#).

Congress established the NFIP on August 1, 1968, with the passage of the National Flood Insurance Act (NFIA) of 1968, which has been modified over the years.

Floods can happen anywhere — just one inch of floodwater can cause up to \$25,000 in damage. Most homeowners insurance does not cover flood damage. Flood insurance is a separate policy that can cover buildings, the contents in a building, or both, so it is important to protect your most important financial assets — your home, your business, your possessions.

The NFIP enables property owners to purchase flood insurance. In return, communities agree to adopt and implement local floodplain management regulations that contribute to protecting lives and reducing the risk of new construction and substantial improvements from future flooding.

The NFIP provides flood insurance to property owners, renters and businesses, and having this coverage helps them recover faster when floodwaters recede. The NFIP works with communities required to adopt and enforce floodplain management regulations that help mitigate flooding effects.

Flood insurance is available to anyone living in one of the 23,000 participating NFIP communities. Homes and businesses in high-risk flood areas with mortgages from government-backed lenders are required to have flood insurance.

Perhaps the most important function of a natural floodplain is to convey floodwaters from upstream to downstream. The portion of the floodplain that conveys most of the floodwaters is called the floodway. Obstructions placed in the floodplain block the flow of water and can cause increased flood heights upstream from the obstruction and increased velocities of floodwaters adjacent to and downstream from the obstruction. Preserving the capacity of floodplains to convey floodwaters through the designation and preservation of a floodway has been an important concept in floodplain management from the very beginning. Preserving the floodway prevents development from occurring in the floodplain that will increase flood heights and damages to upstream properties. The NFIP and nearly all state and local floodplain management programs have incorporated the concept of a floodway to convey floodwaters in their floodplain management requirements.

Floodway regulations have withstood numerous challenges that they are an unconstitutional taking of private property without just compensation. The challengers generally have argued that floodway requirements are so restrictive that the owner is precluded from making an economic use of their property. In nearly all cases the concept of the floodway has been upheld in the Courts as an appropriate use of the community's floodplain management authority. The important point to remember is that floodway requirements are intended to prevent the actions of one property owner from causing increased flood damages to adjacent or upstream property owners.

The status of whether a community participates in, or is suspended/sanctioned from, the NFIP is published in the Community Status Book. The NFIP status has implications for disaster assistance to the community and to its citizens.

The NFIP Community Status Book contains the current "NFIP status" of a community in the declared counties.

The "NFIP status" can be that a community either:

- Participates in the NFIP*
- Does not participate in the NFIP*
- Is suspended or sanctioned*

The NFIP status has implications for disaster assistance to the community and to its citizens. Not implementing the Floodplain or Floodway standards could result in suspension from the NFIP program.

FACTS AND FINDINGS:

The applicant is requesting approval of an appeal to the staff decision in Floodplain Development Permit #FP-2-22 and an application for a variance to the development standards identified in Floodplain Ordinance TMC 15.16. Based upon the information received by city staff and Planning Commission through November 9, 2022, the appeal and variance appear to conform with relevant provisions of the City's plans and ordinances as described below. The following findings support approval of the requested appeal and variance:

1. The project is located in the Depot Slough waterway, adjacent to Lincoln County Assessor's Map #11-10-17 BC Tax Lot 10900 and known as 127 NW A Street, Toledo, and Lincoln County Assessor's Map 11-10-17 BC 6800 and 6802-21, known as 367 Butler Bridge Road. The property is located adjacent to the Water Dependent (WD) Zone and is identified as Estuary Management Unit 31. The proposed commercial marina and boat building are allowed outright uses in the Water Dependent (WD) Zone.
2. This is an application by the Port of Toledo to appeal the staff decision (Attachment C) in Floodplain Development Permit #FP-2-22 and an application for a variance to the development standards identified in the Flood Hazard Protection Ordinance (Toledo Municipal Code Chapter 15.16). The proposed project would replace the gangway, relocate the boathouse, limited excavation of the upland area, remove three existing pilings, and place two pilings. The applicant asks the Planning Commission to waive the requirement for a hydrologic and hydraulic analysis be required, per TMC 15.16 and consider an engineer's analysis is not required to conclude that the project has zero impact to the floodway.
3. The objectives of the Estuary Management Zone and Article 16, based on Oregon Statewide Planning Goal 16, is to protect the long-term values, diversity, and benefits of estuaries and associated wetlands and also to provide for appropriate restoration and development.
4. Each estuarine area contains management units whose boundaries are determined by the types of resources in the area and the extent of past alterations. These are natural, conservation, and development units, each of which is "a discrete geographic area, defined by biophysical characteristics and features, within which particular uses and activities are promoted, encouraged, protected, or enhanced, and others are discouraged, restricted, or prohibited."
5. Staff finds this application complies with the Estuary Management Zone and Article 16, including Goal 1 and Objective 6. Estuary Management Unit 31 is classified as Development. "Management Unit 31 shall be managed to provide for continued development of water dependent and water related uses..." (Lincoln County Estuary Management Plan, Page 87). In addition, by the Flood Hazard Protection Ordinance, required by FEMA to be adopted by the City if it wants to participate in the NFIP, specifying zero rise within the floodway, which ensures particular uses and activities are promoted, encouraged, protected, or enhanced, in the floodplain, and others are discouraged, restricted, or prohibited, in the floodway. In summary, certain development located within Estuary Management Unit 31 is allowed but is still subject to the Flood Hazard Protection Ordinance.
6. Article 5 is designed to protect and conserve a wide range of natural resources, including riparian areas; wetlands; fish and wildlife habitat; wild and scenic rivers; wilderness areas; mineral and aggregate resources; energy sources; groundwater; natural areas;

historic and cultural resources; scenic views and sites; and open space. The City is required to follow a specific planning process for resource protection. They must inventory resources and determine their significance; identify conflicting uses; evaluate the economic, social, environmental and energy consequences of allowing conflicting uses; and develop programs that protect each resource. In addition, the City shall facilitate processing of land use applications, coordinate review with the Oregon Division of State Lands (DSL) and U.S. Army Corps of Engineers of any development proposals. The applicant in this case submitted a Joint Permit Application (JPA) that is being reviewed by DSL and Army Corps.

7. The goal of Floodplain Management is to reduce losses to people and property from floods while protecting the natural resources and functions of floodplains. Development within the floodway is prohibited with the exception in certain cases when a no-rise determination is made by an engineer, while development within the floodplain generally is allowed. Floodplain management involves regulatory, construction and public education measures to avoid and minimize potential risk to development from flood hazards. Local cities and counties can meet Statewide Goal 7 requirements, which Article 7 is based upon, for coastal and riverine flood hazards by adopting and implementing local floodplain regulations that meet National Flood Insurance Program or NFIP requirements.
8. Analysis The proposed work is located in the regulated floodway (See Attachment D). The "regulatory floodway" is defined as, "means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height" 44 C.F.R. 59.1. Also referred to as "floodway." The floodway provides the function of conveying floodwaters from upstream to downstream.
9. The City of Toledo is required to regulate development in the designated floodplain and floodway. In 2019 the City of Toledo amended the Floodplain Ordinance and adopted the new FEMA maps. This was required by FEMA and the City is required to regulate development as defined in the Floodplain Ordinance. Development in the floodway is regulated by TMC 15.16.220(D).
10. As discussed above, the proposed project would replace the gangway, relocate the boathouse, limited excavation of the upland area, remove three existing pilings, and place two pilings. Additional details about the project are in the applicant's materials (Attachment B).
11. The City of Toledo Staff sent a floodplain determination on July 26, 2022. The analysis determined that the replacement of the gangway, removal of pilings, and addition of other pilings, but not as to moving the boathouse, would require a "[c]ertification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge." TMC 15.16.220 (D)(1)(a.)." (See Attachment C).
12. The applicant asks the Planning Commission to waive the requirement for a hydrologic and hydraulic analyses be required, per TMC 15.16 and consider an engineer's analysis is not required to conclude that the project has zero impact to the floodway.
13. The conditions for floodplain variances and appeals are found in TMC 15.16.200.
14. "Variance" means a grant of relief by the city of Toledo from the terms of a floodplain management regulation.

15. “Functionally Dependent Use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.
16. The current application contemplates replacing the existing gangway, removal of three pilings, and replacement with two pilings. The five-foot width and over the water length of the gangway will not change from what is existing. The area of excavation required (225 sq. ft., 11 c.y., permanent) is being done after obtaining the other appropriate permits, which will result in approximately 10.5 cubic yards of permanent net removal below the (Highest Measured Tide) HMT of Depot Slough. The removal of three pilings to offset the addition of two pilings is not a net gain and appears insignificant. However, the replacement of the gangway, removal of pilings, and addition of other pilings, fall within the “and other development in the floodway” portion of the “development” definition found in TMC 15.16.220 (D)(1).
17. TMC 15.16.220(D)(1)(a), the requirement of the applicant, the Port of Toledo, to provide a certification by a registered professional civil engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge, is what the Port of Toledo is requested to be waived as a variance.
18. In the applicant’s October 12, 2022 letter to the planning commission, with subject “RE Appeal of Land Use Decision Regarding Floodplain Permit FP-2-22,” makes requests for two projects, not just the current project, replacement of the gangway, removal of pilings, addition of other pilings, and moving the boathouse, but also adding a project for the maintenance dredging of the transient dock where an application has not yet been filed. Aside from what is contained in the October 12, 2022 letter, the applicant has provided no information on the proposed dredging project. This letter is broader than the scope of the current floodplain application, presumably to avoid future appeal fees.
19. The City Staff Report for the November 9, 2022 Planning Commission meeting (Attachment A) outlined staff’s analysis that concluded that an encroachment could not occur without a hydrological and hydraulic analysis. Based on testimony at the Planning Commission meeting the Planning Commission elected to approve the application based on the verbal testimony and presentation from the Port of Toledo. The Order has been updated to reflect Planning Commission’s motion.
20. TMC 15.16.190(D) Staff report advises that there is no definition for “technical evaluation” in the code and interprets it to mean the engineer’s analysis. If it is open for interpretation The Port proposes using the Joint Permit Application as approved by ACOE and DSL to support the decision.
21. TMC 15.16.190(D)(1) Per October 12, 2022 letter, “The new ADA gangway replaces a current permitted structure and does not diminish flood carrying capacity. It will be anchored according to standard installation procedures to prevent flotation, collapse or lateral movement.” Further, per October 12, 2022 letter, “The gangway and piling are constructed of standard materials for their intended purposes.” Project has no effect and makes no changes to current conditions.
22. TMC 15.16.190(D)(2) Project has no effect and makes no changes to current conditions.
23. TMC 15.16.190(D)(3) Project has no effect and makes no changes to current conditions.
24. TMC 15.16.190(D)(4) Per October 12, 2022 letter, “The first project is to replace the

gangway at the Port's Marina with an ADA gangway and relocate the boathouse which requires placing 2 piling and limited excavation of the upland. To mitigate, the Port will remove 3 existing piling. This project is a public benefit and will maintain accessibility to community boating at the Marina.” Existing facility. The project is needed to maintain ADA access to Marina, ADA Kayak Launch, and Community Boathouses.

25. TMC 15.16.190(D)(5) Per Applicant's Narrative in Section 5 of the Joint Permit Application, “The purpose of the proposed project to relocate the existing boathouse and replace the existing gangway located within the Port’s marina. The current boathouse location and existing marina gangway do not meet the requirements of the grant fund provided to the Port from OSMB and USFWS for the recently constructed transient moorage docks. The current boathouse location does not allow for vessel access to the shoreside of the transient mooring dock” Functionally Dependent Use – Existing Development.
26. TMC 15.16.190(D)(6) Functionally Dependent Use – Existing Development.
27. TMC 15.16.190(D)(7) Per October 12, 2022 letter, “The first project is to replace the gangway at the Port's Marina with an ADA gangway and relocate the boathouse which requires placing 2 piling and limited excavation of the upland. To mitigate, the Port will remove 3 existing piling. This project is a public benefit and will maintain accessibility to community boating at the Marina.” [PC Finding: Existing Development = 100% compatible.
28. TMC 15.16.190(D)(8) 2000 Toledo Comprehensive Land Use Plan: Article 2 Objective 2A & 2B with Outright Use per TMC 17.32.020, Article 5 Goals 2 & 3 has been satisfied by: Army Corps of Engineers Permit NWP 2022-329 and DSL permit 63925-RF (contingent upon City of Toledo’s approval of FP-2-22.)
 - Article 5 Goal 3: to facilitate processing of land use applications. The City’s floodplain code is obstructive to basic management of “functionally dependent use” facilities.
 - Article 7 Goal 1: Prevent loss of life/property: Project has no effect and makes no changes to current conditions. The City’s floodplain code is being interpreted to not allow requested variance. Code should be revised to allow for common sense and minor project exemption.
 - Article 7 Goal 1: Prevent loss of life/property: Project has no effect and makes no changes to current conditions. The City’s floodplain code is being interpreted to not allow requested variance. Code should be revised to allow for common sense and minor project exemption
29. TMC 15.16.190(D)(9) Project has no effect and makes no current changes to current conditions.
30. TMC 15.16.190(D)(10) Project has no effect and makes no changes to current conditions.
31. TMC 15.16.190(D)(11) Project has no effect and makes no changes to current conditions.
32. TMC 15.16.200(A) Not new construction, not substantial improvement. Also see TMC 15.16.200(E) – Variances may be issued for other projects as necessary for the conduct of a functionally dependent use provided that B-D above are met
33. TMC 15.16.200(B) The planning commission must make a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. Minimum Necessary to meet goals of securing relocated boathouse and providing ADA access. Project was included in 2021 Port of Toledo Strategic Business Plan Update, pg 35.
34. TMC 15.16.200(C) No flood level increase – minor project with common sense

evaluation.

35. TMC 15.16.200(D)

1. A showing of good and sufficient cause;

Per applicant's October 12, 2022 letter, "The cost to comply with this requirement restricts the Port's ability to provide basic maintenance of the waterway and access for public use."

To approve a variance, first, the planning commission must make a finding that there is a showing of good and sufficient cause.

Good & Sufficient Cause: 1) Project retains the Port's compliance with grant terms for the Transient Dock project, 2) Secures the boathouse to ensure no damage to dock infrastructure, protecting a community asset, 3) Provides continued ADA access to the Marina and Community Boathouse Programs. (See Port Mission Statement #4), and 4) Cost of Engineer's analysis is prohibitive, estimate \$13,500 is 5% of the Port's annual tax receipts. (See Port Mission Statement #5).

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

Per applicant's October 12, 2022 letter, "the Port is in receipt of an estimate for this analysis of \$13,500."

To approve a variance, second, the planning commission must make a finding that failure to grant the variance would result in exceptional hardship to the applicant. If this project is not completed the Ports options are 1) Refund grant funds for Transient Dock \$380,000, an extreme hardship considering our limited tax base, 2) Relocate boathouse without piling, risking failure of dock system and damage to moored vessels during a storm event, and 3) Loss of ADA access to the Marina, Community Boathouse programs, including free family boating, and ADA kayak launch.

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

To approve a variance, third, the planning commission must make a finding that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

Reference: FEMA Guidance for Floodway Analysis and Mapping Guidance Document 79, December 2020, page 34, paragraph 3 "Communities can exercise some discretion and common sense in determining which development requires

permits or a hydraulic analysis.”

Section 11.1.1. Exemptions for Minor Projects: “There are other developments within the floodway that will require permits but can be allowed once the community determines that they are not an obstruction to floodwaters.”

Staff report advises that a variance would directly conflict with 44CFR 60.3(d)(3) however, Federal Guidance as quoted above allows for common sense and minor project exemptions.

TMC 15.16.190 (B) Allows the Planning Commission to hear and decide appeals

TMC 15.16.050 defines “Appeal” as a request to review **any** provision and “Variance” as a grant of relief from the terms of a flood plain management regulation.

The applicant provide a table of the anticipated impact.

Task	Affect	
Add 2 new 16” steel piling	+ 5 CY Permanent	NWP-2022-329 pg 6/6
Remove 3 existing pilings	- 3 CY Permanent	NWP-2022-329 pg 4/6
Excavate ADA gangway abutment	-11 CY Permanent	NWP-2022-329 pg 4/6
Net Affect to waterway	-9 CY Permanent	

36. TMC 15.16.200(E) Variances may be issued for other projects as necessary for the conduct of a functionally dependent use provided that B-D above are met. See above.

37. TMC 15.16.200(F) Notification of the variance does not apply.

38. Further Staff Analysis:

- The National Flood Insurance Program (NFIP) is managed by the FEMA and is delivered to the public by a network of more than 50 insurance companies and the NFIP Direct.
- Congress established the NFIP on August 1, 1968, with the passage of the National Flood Insurance Act (NFIA) of 1968, which has been modified over the years.
- Floods can happen anywhere — just one inch of floodwater can cause up to \$25,000 in damage. Most homeowners insurance does not cover flood damage. Flood insurance is a separate policy that can cover buildings, the contents in a building, or both, so it is important to protect your most important financial assets — your home, your business, your possessions.
- The NFIP enables property owners to purchase flood insurance. In return, communities agree to adopt and implement local floodplain management regulations that contribute to protecting lives and reducing the risk of new construction and substantial improvements from future flooding.

- e. The NFIP provides flood insurance to property owners, renters and businesses, and having this coverage helps them recover faster when floodwaters recede. The NFIP works with communities required to adopt and enforce floodplain management regulations that help mitigate flooding effects.
- f. Flood insurance is available to anyone living in one of the 23,000 participating NFIP communities. Homes and businesses in high-risk flood areas with mortgages from government-backed lenders are required to have flood insurance.
- g. Perhaps the most important function of a natural floodplain is to convey floodwaters from upstream to downstream. The portion of the floodplain that conveys most of the floodwaters is called the floodway. Obstructions placed in the floodplain block the flow of water and can cause increased flood heights upstream from the obstruction and increased velocities of floodwaters adjacent to and downstream from the obstruction. Preserving the capacity of floodplains to convey floodwaters through the designation and preservation of a floodway has been an important concept in floodplain management from the very beginning. Preserving the floodway prevents development from occurring in the floodplain that will increase flood heights and damages to upstream properties. The NFIP and nearly all state and local floodplain management programs have incorporated the concept of a floodway to convey floodwaters in their floodplain management requirements.
- h. Floodway regulations have withstood numerous challenges that they are an unconstitutional taking of private property without just compensation. The challengers generally have argued that floodway requirements are so restrictive that the owner is precluded from making an economic use of their property. In nearly all cases the concept of the floodway has been upheld in the Courts as an appropriate use of the community's floodplain management authority. The important point to remember is that floodway requirements are intended to prevent the actions of one property owner from causing increased flood damages to adjacent or upstream property owners.
- i. The status of whether a community participates in, or is suspended/sanctioned from, the NFIP is published in the Community Status Book. The NFIP status has implications for disaster assistance to the community and to its citizens.
- j. The NFIP Community Status Book contains the current "NFIP status" of a community in the declared counties.
 - The "NFIP status" can be that a community either:
 - Participates in the NFIP
 - Does not participate in the NFIP
 - Is suspended or sanctioned
- k. The NFIP status has implications for disaster assistance to the community and to its citizens. Not implementing the Floodplain or Floodway standards could result in suspension from the NFIP program.

CONDITIONS OF APPROVAL:

No Conditions of Approval were requested by the Planning Commission.

Based on the testimony received, the staff report, and the evidence and arguments before the Planning Commission at the public hearing on November 9, 2022, the Planning Commission

finds that the request by the Port of Toledo (FPV-1-22) complies with the criteria identified in Toledo Municipal Code, Titles 16 and 17, including the criteria identified in Toledo Municipal Code, Section 15.16.180 - 200. The Planning Commission hereby adopts the Order findings and allowing for the correction of typographical and grammatical errors.

IT IS ORDERED that the request for a Variance and Appeal in this matter is granted.

PLANNING COMMISSION PRESIDENT

DATE

Attachments:

- A. Planning Commission Staff Report (without exhibits)
- B. Applicant's Materials and Presentation
- C. City of Toledo Letters (July 26, 2022 and October 4, 2022)
- D. Floodplain Map

DECISION ORDER ATTACHMENT A
Planning Commission Staff Report Document (without exhibits)
(City of Toledo File #FPV-1-22)

TOLEDO PLANNING COMMISSION
STAFF REPORT

PROPERTY: The project is located in the Depot Slough waterway, adjacent to Lincoln County Assessor's Map #11-10-17 BC Tax Lot 10900 and known as 127 NW A Street, Toledo, and Lincoln County Assessor's Map 11-10-17 6800 and 6802-21, known as 367 Butler Bridge Road.

APPLICATION #s: FPV-1-22

PROPERTY OWNER: Port of Toledo (DSL Waterway Lease)

APPLICANT: Port of Toledo

APPLICATION DATE: October 11, 2022

HEARING DATE: Planning Commission – November 9, 2022

REQUEST: The is an application by the Port of Toledo to appeal the staff decision (Attachment E) in Floodplain Development Permit #FPV-2-22 and an application for a variance to the development standards identified in the Flood Hazard Protection Ordinance (Toledo Municipal Code Chapter 15.16). The proposed project would replace the gangway, relocate the boathouse, limited excavation of the upland area, remove three existing pilings, and place two pilings. The applicant asks the Planning Commission to waive the requirement for a hydrologic and hydraulic analysis be required, per TMC 15.16 and consider an engineer's analysis is not required to conclude that the project has zero impact to the floodway.

LOCATION: Depot Slough Waterway, Port of Toledo Marina

PARCEL SIZE: DSL Lease area

I. REPORT OF FACTS:

1. Plan Designation: Water Dependent (WD)
2. Zone Designation: Water Dependent (WD)
3. Existing Structures: Existing Docks and two floating boat houses.
4. Topography: The property is relatively flat then slopes down to the Depot Slough.
5. Development Constraints: The Depot Slough is identified as a wetland. The Port of Toledo Submitted a Joint Permit Application (JPA) to the

- Army Corps, Department of State Lands, and the Department of Environmental Quality (DEQ). The property is located in the floodway and floodplain. The proposed work is located within the floodway. The floodway standards will be discussed later in the staff report.
6. City water: Water main lines located at SE Butler Bridge Road
 7. City sewer: Sewer main lines located at SE Butler Bridge Road
 8. Notice of Public Hearing: Notices mailed to 38 property owners and 19 public/service agencies on October 20, 2022. The public/service agencies notified include the Department of Land Conservation and Development (DLCD) NFIP Coordinator, Lincoln County Building and Planning, Toledo Fire, Toledo Police, and Toledo Public Works.
 9. Notice Published: October 26, 2022 and November 2, 2022
 10. Comments Received Summarized: Public Works Director, Fire Chief, and Police Chief all reviewed the application.
 11. Attachments to the Staff Report:
 - A. Application with supporting information
 - B. Zoning Map
 - C. Aerial Map
 - D. Floodplain Map
 - E. City of Toledo Letters (July 26, 2022 and October 4, 2022)

II. AUTHORITY:

TMC 15.16.190 states that Floodplain Variances may be permitted by the Planning Commission in accordance with the standards and procedures specified in this ordinance [Toledo Flood Hazard Protection Ordinance].

- A. The city of Toledo planning commission shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The planning commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the city manager in the enforcement or administration of this chapter.
- C. An appeal from an action or ruling by the planning commission as authorized by this chapter shall be made to the city council within fifteen (15) days after the action or ruling by filing written notice with the city manager. If no appeal is taken within the fifteen-day period, the action or ruling of the planning commission shall be final. If an appeal is filed, the council shall receive a report and recommendation from the appropriate city official and shall hold a public hearing and consider the appeal de novo. Notice of the public hearing shall be by one publication in the newspaper of general circulation in the city not less than five days nor more than fifteen (15) days prior to the date of the hearing.

The Planning Commission will be considering the facts and criteria identified in this report and testimony/information received through the close of the public hearing, as it reviews this variance request on November 9, 2022.

III. APPLICABLE CRITERIA FOR EVALUATING THE VARIANCE REQUEST AND STAFF ANALYSIS:

The following Comprehensive Land Use Plan and ordinance standards apply to this request. The standards are listed below in regular type. Staff analysis, including facts and findings, are below the Comprehensive Plan and ordinance standards in an italicized font.

1. **2000 Toledo Comprehensive Land Use Plan – Article 2, Objective 2(A) – Comprehensive Plan Map Designations:**

Comprehensive Plan Map designations are intended to guide development by designating appropriate areas for each particular type of development use. Additional uses within each designation may be allowed as either uses permitted outright or as conditional uses when the city determines that such uses are either consistent with the general use or can be reviewed for compatibility through the conditional use process. The map designations and the uses allowed in the designations should reflect the applicable goals and objectives of the Toledo Comprehensive Land Use Plan.

...

Water Dependent (W-D) Zone – The purpose of the W-D zone is to provide for water-dependent uses which need contact with or use of the water for water-borne transportation, recreation, energy production, or water supply.

2. **2000 Toledo Comprehensive Land Use Plan – Article 2, Objective 2(B) – Zoning Map Designations:**

...

Water-Dependent – This designation provides for uses of property that depend on a location adjacent to a waterway for the viability of that use. Toledo's water surface and its shorelands are a valuable resource and provide considerable potential for future economic growth. The Water-Dependent plan designation shall be implemented by the zoning map designation of Water-Dependent.

3. **TMC Sections 17.32.010 – 17.32.030 – WD Zone**

TMC 17.32.010 Purpose.

The purpose of the W-D zone is to provide for water-dependent uses which need contact with or use of the water for water-borne transportation, recreation, energy production, or water supply.

TMC 17.32.020 Uses permitted outright.

In a W-D zone, the following uses and their accessory uses are permitted outright:

- A. Marine terminal or transfer facility for fish, timber, or other water-borne commerce.
- B. Industrial processing plant which requires access to water body during processing operation.
- C. Log storage that requires access to water.
- D. Boat building or boat repair and launch facility.**
- E. Seafood processing.
- F. Marine fuel sales.
- G. Charter boat operation.
- H. Marine ways and boat ramp.
- I. Commercial marina or moorage.**

- J. One security dwelling as part of a building for water-dependent use that complies with applicable codes for mixed use occupation.
- K. Any shoreland use or activity necessary in relation to a use allowed under [Section 17.32.020](#).
- L. Any other use that conforms with the definition of water-dependent development in [Section 17.04.020](#).
- M. Low intensity recreation providing waterfront access.
- N. Transportation facilities (operation, maintenance, preservation, and construction in accordance with the city Transportation System Plan).

TMC 17.32.030 Conditional uses permitted.

- A. Boat sales.
- B. Bait and tackle shop.
- C. Warehouse and storage area for marine equipment.
- D. Seafood processing plant, smoking or canning establishment or retail outlet that does not require access to water.
- E. Restaurant in conjunction with and incidental to a water-dependent use which provides a waterfront viewing experience and which either provides public waterfront access with a waterfront walkway or pavilion, or is located on a floor above a water-dependent use.
- F. Public accommodation in conjunction with a water-dependent use that provides marina facility or public waterfront walkway or pavilion.
- G. Parking lot associated with a permitted or conditional use in the W-D zone.
- H. Marine equipment or supply sales.
- I. Other water-related development in conjunction with a water-dependent use.
- J. A non-water-dependent or non-water-related use, provided no structures or alterations are involved which would prevent future use of the site for water-dependent use.
- K. Structural shoreline stabilization as defined in the Lincoln County Estuary Management Plan as amended from time to time.

Staff Analysis: The project is located in the Depot Slough waterway, adjacent to Lincoln County Assessor's Map #11-10-17 BC Tax Lot 10900 and known as 127 NW A Street, Toledo, and Lincoln County Assessor's Map 11-10-17 6800 and 6802-21, known as 367 Butler Bridge Road. The property located adjacent to the Water Dependent (WD) Zone and is identified as Estuary Management Unit 31. The proposed commercial marina and boat building are allowed outright uses in the Water Dependent (WD) Zone.

This is an application by the Port of Toledo to appeal the staff decision (Attachment E) in Floodplain Development Permit #FP-2-22 and an application for a variance to the development standards identified in the Flood Hazard Protection Ordinance (Toledo Municipal Code Chapter 15.16). The proposed project would replace the gangway, relocate the boathouse, limited excavation of the upland area, remove three existing pilings, and place two pilings. The applicant asks the Planning Commission to waive the requirement for a hydrologic and hydraulic analysis be required, per TMC 15.16 and consider an engineer's analysis is not required to conclude that the project has zero impact to the floodway.

4. Estuary Management Zone and 2000 Toledo Comprehensive Land Use Plan – Article 16: Estuarine Resources

GOAL 1. Recognize and protect the unique environmental, economic and social values of the Yaquina River Estuary and the associated wetlands.

OBJECTIVE 6. Allow dredge, fill or other reduction or degradation of natural values of the estuary by human development activities only:

- a. If required for navigation or other water-dependent uses that require an estuarine location.
- b. If a public need is demonstrated.
- c. If no alternative upland locations exist.
- d. If adverse impacts are minimized and/or mitigated as much as possible.

Staff Analysis: The objectives of the Estuary Management Zone and Article 16, based on Oregon Statewide Planning Goal 16, is to protect the long-term values, diversity, and benefits of estuaries and associated wetlands and also to provide for appropriate restoration and development.

Each estuarine area contains management units whose boundaries are determined by the types of resources in the area and the extent of past alterations. These are natural, conservation, and development units, each of which is "a discrete geographic area, defined by biophysical characteristics and features, within which particular uses and activities are promoted, encouraged, protected, or enhanced, and others are discouraged, restricted, or prohibited."

Staff finds this application complies with the Estuary Management Zone and Article 16, including Goal 1 and Objective 6. Estuary Management Unit 31 is classified as Development. "Management Unit 31 shall be managed to provide for continued development of water dependent and water related uses..." (Lincoln County Estuary Management Plan, Page 87). In addition, by the Flood Hazard Protection Ordinance, required by FEMA to be adopted by the City if it wants to participate in the NFIP, specifying zero rise within the floodway, which ensures particular uses and activities are promoted, encouraged, protected, or enhanced, in the floodplain, and others are discouraged, restricted, or prohibited, in the floodway. In summary, certain development located within Estuary Management Unit 31 is allowed but is still subject to the Flood Hazard Protection Ordinance.

5. **2000 Toledo Comprehensive Land Use Plan – Article 5: Open Spaces, Scenic & Historical Areas, and Natural Resources, Goal 3, Objective 4, Wetland and Riparian Resources Objectives 2 and 3:**

GOAL 3. Protect natural resources such as wetlands and riparian habitat areas as required by state and federal law to ensure their continued contributions as natural areas, open space, wildlife and vegetative habitat, flood protection, and storm water retention and conveyance areas.

OBJECTIVE 2. Protect wetland and riparian areas as required by state and federal law.

OBJECTIVE 3. To facilitate processing of land use applications, coordinate review with the Oregon Division of State Lands and U.S. Army Corps of Engineers of any development proposals that could impact a wetland.

Staff Analysis: Article 5 is designed to protect and conserve a wide range of natural resources, including riparian areas; wetlands; fish and wildlife habitat; wild and scenic rivers; wilderness areas; mineral and aggregate resources; energy sources; groundwater; natural areas; historic and cultural resources; scenic views and sites; and open space. The City is required to follow a specific planning process for resource protection. They must inventory resources and determine their significance; identify conflicting uses; evaluate the economic, social, environmental and energy consequences of allowing conflicting uses; and develop programs that protect each resource. In addition, the City shall facilitate processing of land use applications, coordinate review with the Oregon Division of State Lands (DSL) and U.S. Army Corps of Engineers of any development proposals. The applicant in this case submitted a Joint Permit Application (JPA) that is being reviewed by DSL and Army Corps.

6. 2000 Toledo Comprehensive Land Use Plan – Article 7: Natural Hazards, Goal 1:

GOAL 1 Prevent loss of life and property damage by requiring appropriate safeguards for all development of properties within known natural hazard areas. Natural hazards include: floods, tsunamis, earthquakes, landslides and slope hazards, weak foundation soils, high groundwater, wind/windthrow/winter storms, and wildfires.

Staff Analysis: The goal of Floodplain Management is to reduce losses to people and property from floods while protecting the natural resources and functions of floodplains. Development within the floodway is prohibited with the exception in certain cases when a no-rise determination is made by an engineer, while development within the floodplain generally is allowed. Floodplain management involves regulatory, construction and public education measures to avoid and minimize potential risk to development from flood hazards. Local cities and counties can meet Statewide Goal 7 requirements, which Article 7 is based upon, for coastal and riverine flood hazards by adopting and implementing local floodplain regulations that meet National Flood Insurance Program or NFIP requirements.

FLOODPLAIN STANDARDS RELEVANT TO THIS REQUEST

7. TMC 15.16.220(D)

D. Floodways. Located within the special flood hazard areas established in [Section 15.16.070](#) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless:
 - a. ***Certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge; or***

b. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that a conditional letter of map revision (CLOMR) is applied for and approved by the Federal Insurance Administrator, and the requirements for such revision as established under Volume 44 of the Code of Federal Regulations, Section 65.12 are fulfilled.

If the requirements of [Section 15.16.220\(D\)\(1\)](#) are satisfied, all new construction, substantial improvements, and other development shall comply with all other applicable flood hazard reduction provisions of Sections [15.16.210](#) and [15.16.220](#).

Staff Analysis: The proposed work is located in the regulated floodway (See Attachment D). The “regulatory floodway” is defined as, “means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height” 44 C.F.R. 59.1. Also referred to as “floodway.” The floodway provides the function of conveying floodwaters from upstream to downstream.

The City of Toledo is required to regulate development in the designated floodplain and floodway. In 2019 the City of Toledo amended the Floodplain Ordinance and adopted the new FEMA maps. This was required by FEMA and the City is required to regulate development as defined in the Floodplain Ordinance. Development in the floodway is regulated by TMC 15.16.220(D).

As discussed above, the proposed project would replace the gangway, relocate the boathouse, limited excavation of the upland area, remove three existing pilings, and place two pilings. Additional details about the project are in the applicant’s materials (Attachment A).

The City of Toledo Staff sent a floodplain determination on July 26, 2022. The analysis determined that the replacement of the gangway, removal of pilings, and addition of other pilings, but not as to moving the boathouse, would require a “[c]ertification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.” TMC 15.16.220 (D)(1)(a.). (See Attachment E).

The applicant asks the Planning Commission to waive the requirement for a hydrologic and hydraulic analysis be required, per TMC 15.16 and consider an engineer’s analysis is not required to conclude that the project has zero impact to the floodway.

EVALUATION CRITERIA – VARIANCES

8. TMC 15.16.180 - 200

15.16.180 Variance Procedure.

The issuance of a variance is for floodplain management purposes only. Flood insurance premium rates are determined by federal statute according to actuarial risk and will not be modified by the granting of a variance.

15.16.190 Variance Appeal Board

- A. The city of Toledo planning commission shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The planning commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the city manager in the enforcement or administration of this chapter.
- C. An appeal from an action or ruling by the planning commission as authorized by this chapter shall be made to the city council within fifteen (15) days after the action or ruling by filing written notice with the city manager. If no appeal is taken within the fifteen-day period, the action or ruling of the planning commission shall be final. If an appeal is filed, the council shall receive a report and recommendation from the appropriate city official and shall hold a public hearing and consider the appeal de novo. Notice of the public hearing shall be by one publication in the newspaper of general circulation in the city not less than five days nor more than fifteen (15) days prior to the date of the hearing.

In order to have standing for an appeal, a person must have been mailed written notice or have participated in writing or in person at the planning commission public hearing or have been substantially affected by the action or ruling.

- D. In passing upon such applications, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and;
 - 1. The danger that materials may be swept onto other lands to the injury of others;
 - 2. The danger to life and property due to flooding or erosion damage;
 - 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - 4. The importance of the services provided by the proposed facility to the community;
 - 5. The necessity to the facility of a waterfront location, where applicable;
 - 6. The availability of alternative locations for the proposed use which are not subject to the flooding or erosion damage;
 - 7. The compatibility of the proposed use with existing and anticipated development;
 - 8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - 9. The safety of access to the property in the times of flood for ordinary and emergency vehicles;
 - 10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - 11. The costs of providing governmental services during and after the flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- E. Upon consideration of the factors of subsection D of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- F. The city manager shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administrator upon request.

15.16.200 – Conditions for Variances

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of Sections [15.16.200](#)(C), (E) and (F). As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.
- B. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
- E. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of Sections [15.16.200](#)(B)—(D) are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- F. Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance and that such construction below the base flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance shall be maintained in accordance with [Section 15.16.160](#)(B).

Staff Analysis: The conditions for floodplain variances and appeals are found in TMC 15.16.200.

"Variance" means a grant of relief by the city of Toledo from the terms of a floodplain management regulation.

TMC 15.16.220(D)(1)(a), the requirement of the applicant, the Port of Toledo, to provide a certification by a registered professional civil engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge, is what the Port of Toledo is requested to be waived as a variance.

In the applicant's October 12, 2022 letter to the planning commission, with subject "RE Appeal of Land Use Decision Regarding Floodplain Permit FP 2-22," makes requests for two projects, not just the current project, replacement of the gangway, removal of pilings, addition of other pilings, and moving the boathouse, but also adding a project for the maintenance dredging of the transient dock where an application has not yet been filed. Aside from what is contained in the

October 12, 2022 letter, the applicant has provided no information on the proposed dredging project. This letter is broader than the scope of the current floodplain application, presumably to avoid future appeal fees.

The current application contemplates replacing the existing gangway, removal of three pilings, and replacement with two pilings. The five-foot width and over the water length of the gangway will not change from what is existing. The area of excavation required (225 sq. ft., 11 c.y., permanent) is being done after obtaining the other appropriate permits, which will result in approximately 10.5 cubic yards of permanent net removal below the (Highest Measured Tide) HMT of Depot Slough. The removal of three pilings to offset the addition of two pilings is not a net gain and appears insignificant. However, the replacement of the gangway, removal of pilings, and addition of other pilings, fall within the “and other development in the floodway” portion of the “development” definition found in TMC 15.16.220 (D)(1). In other words, for the language in TMC 15.16.220 (D)(1)(a) to be satisfied, an encroachment can’t occur, unless a hydrological and hydraulic analysis is completed by a civil engineer.

This conclusion, that an encroachment can’t occur unless a hydrological and hydraulic analysis is completed, is supported by the Guidance for Flood Risk Analysis and Mapping, Floodway Analysis and Mapping, Guidance Document 79, November 2019, paragraph 2.2, as follows:

“Once a community has adopted a floodway, it must prohibit development in the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed using standard engineering practice that the development will not result in any increase in flood levels during the base flood. FEMA defines “any” as meaning a zero increase (greater than 0.00 feet). This analysis is usually called a “no-rise” or “zero-rise” analysis and results in a “no-rise” or “zero-rise” certification by a qualified registered professional engineer. Remember that considerable encroachment into the floodplain was already allowed when the floodway was designated by the community.”

When you review the Toledo Municipal Code, there is no discretion for the City Manager to waive or forgo the requirement of the applicant to provide a hydrologic and hydraulic analyses by a civil engineer as required by TMC 15.16.220 (D)(1)(a). The applicant, in an October 12, 2022 letter, indicates this certification will cost \$13,500 to complete.

Although the City Manager has no discretion whether or not to require a hydrologic and hydraulic analysis, the Planning Commission does have the ability to grant floodplain variances and appeals if the applicable standards and criteria are met. However, after further review, TMC 15.16.190(D), in part, provides as follows:

“D. In passing upon such applications, the planning commission shall consider all **technical evaluations**, all relevant factors, standards specified in other sections of this chapter, and...” (Emphasis Added).

Although “technical evaluations” is not defined in TMC Chapter 15.16, the only logical meaning is that this is a reference to a hydrologic and hydraulic analyses. It is the only technical evaluation mentioned in Chapter 15.16.

It appears that a technical evaluation shall be considered, pursuant to TMC 15.16.190(D), but has not been submitted by the applicant. Instead, the technical evaluation itself, a hydrologic and hydraulic analyses, is what is requested to be waived by this variance. Even if the planning commission evaluates the 11 criteria in TMC 15.16.190(D), the introductory portion of subsection D. of this section TMC 15.16.190 still appears to require the consideration of the technical evaluation, the hydrologic and hydraulic analyses. In other words, by its inclusion in the beginning of the subsection stating what must be considered by the planning commission in addition to the 11 criteria for a variance, the technical evaluation (hydrologic and hydraulic analyses) doesn't appear to be able to be waived through a variance/appeal.

To recap, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and criteria 1-11 in subsection D. of 15.16.190. The referenced 11 criteria, found in TMC 15.16.190(D), in part, provides the planning commission shall consider:

1. The danger that materials may be swept onto other lands to the injury of others;

Per October 12, 2022 letter, "The new ADA gangway replaces a current permitted structure and does not diminish flood carrying capacity. It will be anchored according to standard installation procedures to prevent flotation, collapse or lateral movement."

Further, per October 12, 2022 letter, "The gangway and piling are constructed of standard materials for their intended purposes."

2. The danger to life and property due to flooding or erosion damage;

No information provided by applicant.

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

No information provided by applicant.

4. The importance of the services provided by the proposed facility to the community;

Per October 12, 2022 letter, "The first project is to replace the gangway at the Port's Marina with an ADA gangway and relocate the boathouse which requires placing 2 piling and limited excavation of the upland. To mitigate, the Port will remove 3 existing piling. This project is a public benefit and will maintain accessibility to community boating at the Marina."

5. The necessity to the facility of a waterfront location, where applicable;

Per Applicant's Narrative in Section 5 of the Joint Permit Application, "The purpose of the proposed project to relocate the existing boathouse and replace the existing gangway located within the Port's marina. The current boathouse location and existing marina gangway do not meet the requirements of the grant fund provided to the Port from OSMB and USFWS for the recently constructed transient moorage docks. The current boathouse

location does not allow for vessel access to the shoreside of the transient mooring dock”

6. The availability of alternative locations for the proposed use which are not subject to the flooding or erosion damage;

No information provided by applicant.

7. The compatibility of the proposed use with existing and anticipated development;

Per October 12, 2022 letter, “The first project is to replace the gangway at the Port's Marina with an ADA gangway and relocate the boathouse which requires placing 2 piling and limited excavation of the upland. To mitigate, the Port will remove 3 existing piling. This project is a public benefit and will maintain accessibility to community boating at the Marina.”

8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

No information provided by applicant.

9. The safety of access to the property in the times of flood for ordinary and emergency vehicles;

No information provided by applicant.

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

No information provided by applicant. This type of information would be found in a hydrologic and hydraulic analyses.

11. The costs of providing governmental services during and after the flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.”

No information provided by applicant.

E. Upon consideration of the factors of subsection D of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

15.16.200 (B) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

No information provided by applicant. The planning commission must make a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

15.16.200 (D) Variances shall only be issued upon:

1. A showing of good and sufficient cause;

Per applicant's October 12, 2022 letter, "The cost to comply with this requirement restricts the Port's ability to provide basic maintenance of the waterway and access for public use."

To approve a variance, first, the planning commission must make a finding that there is a showing of good and sufficient cause.

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

Per applicant's October 12, 2022 letter, "the Port is in receipt of an estimate for this analysis of \$13,500."

To approve a variance, second, the planning commission must make a finding that failure to grant the variance would result in exceptional hardship to the applicant.

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

*To approve a variance, third, the planning commission must make a finding that the granting of a variance **will not** result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.*

As explained further below, the planning commission making a determination that the granting of a variance will not result in increased flood heights does require a hydrologic and hydraulic analyses.

FEMA's Guidance for Flood Risk Analysis and Mapping, Floodway Analysis and Mapping, Guidance Document 79, November 2019, paragraph 11.3, provides that zero increased flood heights are permitted in a floodway by the regulatory process as follows:

"NFIP minimum criteria prohibit encroachments in the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachment will not cause any increase in flood levels in the community during the base flood discharge. FEMA defines "any" as meaning a zero increase. It does not mean that you can allow a .1 foot or even a .01 foot increase – it means 0.00 feet. Otherwise the cumulative effects of all of the developments in the floodway could significantly increase flood stages. There should be no cumulative effects since the permissible increase for any single development is zero."

FEMA's Guidance for Flood Risk Analysis and Mapping, Floodway Analysis and Mapping, Guidance Document 79, November 2019, paragraph 11.1, broadly defines the types of development that must be evaluated:

“The NFIP broadly defines development to include nearly all man-made changes to the floodplain. Permits are required for all development to determine whether the development is subject to the floodplain management requirements in the community’s ordinance. For development other than buildings the primary purpose of the permit review is to determine whether the development is in the floodway and, if it is, whether it will cause any increase in flood stage.”

*TMC 15.16.220 (D) (1) prohibits encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless a. or b. are met. Subsection a. is the requirement for a hydrologic and hydraulic analyses. Although the term “encroachments” is not defined in the definitions found in TMC 15.16.050, the language in TMC 15.16.220 (D)(1) provides the definition of encroachments includes “fill,” “new construction,” “substantial improvements,” and “other development within the floodway.” The replacement of the gangway, removal of pilings, and addition of other pilings are not “new construction,” as they are “not improvements to structures,” as the term structure has been defined. As such, a “substantial improvement” calculation is not applicable, as a “structure” is required by that definition. They are not “fill.” However, the definition of “development,” found in TMC 15.16.050, “means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, **dredging**, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.” Accordingly, the replacement of the gangway, removal of pilings, and addition of other pilings, fall within the “and other development in the floodway” portion of the “development” definition found in TMC 15.16.220 (D)(1).*

Similar to the definition of “development” in TMC 15.16.050, the applicable CFR that the city code is based upon includes dredging and other actions contemplated by the applicant:

44 CFR 59.1 Definitions: *Development means any man-made change to improved or unimproved real Estate, including but not limited to buildings or other structures, mining, **dredging**, filling, grading, paving, excavation or drilling operations or storage of equipment and materials.*

Similar to TMC 15.16.220 (D) (1), which requires the hydrologic and hydraulic analyses, 44CFR 60.3(d)(3) that the city code is based upon also requires a hydrologic and hydraulic analyses to ensure the encroachments within the floodway will not result in any increase in flood levels:

44CFR 60.3(d)(3): *Prohibit encroachments in the floodway, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during occurrence of the base flood discharge. **(Emphasis Added).***

*Further, in order to grant a variance, as a third requirement, the planning commission must make a determination that the granting of a variance **will not** result in a conflict with existing laws or ordinances, which appears to be an impossible task because 44CFR 60.3(d)(3)*

requires the hydrologic and hydraulic analyses before encroachments in the floodway are allowed

TMC 15.16.200, subsection (C), provides “Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.”

Again, this is identical to 44 CFR 60.6(a) Variances: (1) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

Per applicant’s October 12, 2022 letter, “This is a poor use of the Port's public funding, considering an engineer's analysis is not required to conclude that the project has zero impact to the floodway.”

TMC 15.16.200(C) and 44 CFR 60.6(a) requires that a variance shall not be issued if there is any increase in flood levels. Whether there is any increase in flood levels by a project must be determined through a hydrologic and hydraulic analyses, pursuant to TMC 15.16.220(D)(1) and 44CFR 60.3(d)(3), not through opinion or speculation.

FURTHER STAFF ANALYSIS:

The National Flood Insurance Program (NFIP) is managed by the FEMA and is delivered to the public by a network of more than 50 insurance companies and the NFIP Direct.

Congress established the NFIP on August 1, 1968, with the passage of the National Flood Insurance Act (NFIA) of 1968, which has been modified over the years.

Floods can happen anywhere — just one inch of floodwater can cause up to \$25,000 in damage. Most homeowners insurance does not cover flood damage. Flood insurance is a separate policy that can cover buildings, the contents in a building, or both, so it is important to protect your most important financial assets — your home, your business, your possessions.

The NFIP enables property owners to purchase flood insurance. In return, communities agree to adopt and implement local floodplain management regulations that contribute to protecting lives and reducing the risk of new construction and substantial improvements from future flooding.

The NFIP provides flood insurance to property owners, renters and businesses, and having this coverage helps them recover faster when floodwaters recede. The NFIP works with communities required to adopt and enforce floodplain management regulations that help mitigate flooding effects.

Flood insurance is available to anyone living in one of the 23,000 participating NFIP communities. Homes and businesses in high-risk flood areas with mortgages from government-backed lenders are required to have flood insurance.

Perhaps the most important function of a natural floodplain is to convey floodwaters from upstream to downstream. The portion of the floodplain that conveys most of the floodwaters is called the floodway. Obstructions placed in the floodplain block the flow of water and can cause

increased flood heights upstream from the obstruction and increased velocities of floodwaters adjacent to and downstream from the obstruction. Preserving the capacity of floodplains to convey floodwaters through the designation and preservation of a floodway has been an important concept in floodplain management from the very beginning. Preserving the floodway prevents development from occurring in the floodplain that will increase flood heights and damages to upstream properties. The NFIP and nearly all state and local floodplain management programs have incorporated the concept of a floodway to convey floodwaters in their floodplain management requirements.

Once a community has designated a floodway it must prohibit development within that floodway unless it has been demonstrated through hydrologic and hydraulic analyses that the development will not cause an increase in flood stages at any point in the community. Some communities maintain their own in-house engineering expertise and perform these analyses themselves. Most require that the permit applicant hire a qualified registered professional engineer to conduct the analysis and submit it to the community for review and approval. This analysis is usually called a “no-rise” or a “zero-rise” analysis and results in a “no-rise certification” if the analysis demonstrates that there will not be any increase in the base flood elevation due to the development.

The community must prohibit development in the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during occurrence of the base flood discharge. It is the community’s responsibility to make the determination that a development in the floodway will not cause any increase in flood stage. You cannot depend solely on registered professional engineer’s no-rise certification and must review and approve the submission.

Floodway regulations have withstood numerous challenges that they are an unconstitutional taking of private property without just compensation. The challengers generally have argued that floodway requirements are so restrictive that the owner is precluded from making an economic use of their property. In nearly all cases the concept of the floodway has been upheld in the Courts as an appropriate use of the community’s floodplain management authority. The important point to remember is that floodway requirements are intended to prevent the actions of one property owner from causing increased flood damages to adjacent or upstream property owners.

The status of whether a community participates in, or is suspended/sanctioned from, the NFIP is published in the Community Status Book. The NFIP status has implications for disaster assistance to the community and to its citizens.

The NFIP Community Status Book contains the current "NFIP status" of a community in the declared counties.

The "NFIP status" can be that a community either:

- Participates in the NFIP*
- Does not participate in the NFIP*
- Is suspended or sanctioned*

The NFIP status has implications for disaster assistance to the community and to its citizens. Not implementing the Floodplain or Floodway standards could result in suspension from the NFIP program.

IV. FACTS AND FINDINGS:

Additional evidence submitted at the hearing, and verbal findings made by the planning commission, during the hearing, based on that additional evidence, will be needed for the planning commission to decide that the application **does conform** with the following relevant provisions of the City's plans and ordinances. The findings will need to be drafted, based on the planning commission member's statements in this public meeting, and brought back to the next public meeting of the planning commission for approval. **There is not enough evidence to support the findings needed for approval at this time.**

The applicant is requesting approval of a variance to waive the requirement for a hydrologic and hydraulic analysis be required, per TMC 15.16 and consider an engineer's analysis is not required to conclude that the project has zero impact to the floodway.

Based upon the information received by City staff through November 2, 2022, the following **does not conform** with the following relevant provisions of the City's plans and ordinances as described below:

1. To approve a variance, under TMC 15.16.200 (D) (3), the planning commission must make a finding that the granting of a variance **will not** result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

a. The planning commission must make a finding that the granting of a variance **will not** result in increased flood heights. It is staff's opinion that the regulatory scheme requires the planning commission have a hydrologic and hydraulic analyses to make a determination that the granting of a variance will not result in increased flood heights. This is what is requested to be waived in the variance. *Absent further evidence to the contrary in the planning commission hearing, based upon what has been received while staff is drafting this staff report, this determination can't be made.*

b. The planning commission must make a finding that the granting of a variance **will not** conflict with existing laws or ordinances. Based on the US Code's implementing CFR's, it is staff's opinion that the planning commission making a determination that the granting of a variance **will not** result in a conflict with existing laws or ordinances is inaccurate. The granting of a variance will in fact result in a conflict with the Code of Federal Regulations, based on the United States Code (federal statutes), regardless of the City's ordinance. *Absent further evidence to the contrary in the planning commission hearing, based upon what has been received while staff is drafting this staff report, this determination can't be made.*

If the Planning Commission decides that the application does conform to the City's plans and ordinances, and decides to grant a variance to the requirement under TMC 15.16.220(D)(1) that requires the Port of Toledo provide a hydrologic and hydraulic analyses, the planning

commission will need to make verbal findings in the public meeting, as to the following relevant provisions of the City's plans and ordinances, as described below:

1. TMC 15.16.200 (D) (1), A showing of good and sufficient cause; and
2. TMC 15.16.200 (D) (2), A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
3. TMC 15.16.200 (D) (3), A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances. *Based on the staff's understanding, please be sure to specify in the finding why the staff's interpretation is deemed incorrect; and*
4. TMC 15.16.200 (B), Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and
5. The planning commission shall consider TMC 15.16.190 (D), and staff recommend it makes findings to support, all of the 11 criteria; and
6. Determine that all relevant factors, standards specified in other sections of this chapter, have been complied with to justify approval of the application.

V. CONCLUSION AND STAFF RECOMMENDATION:

Based on the staff report, testimony received, and analysis of the applicable code and land use planning goals, the Planning Commission shall make a decision on FPV-1-22.

The Planning Commission has three options with respect to FPV-1-22 application:

Option 1: The Planning Commission may approve the application; or

PROPOSED MOTION (APPROVAL) (FPV-1-22):

BASED ON THE TESTIMONY RECEIVED, THE STAFF REPORT, AND THE EVIDENCE AND ARGUMENTS BEFORE THE PLANNING COMMISSION AT THE PUBLIC HEARING ON NOVEMBER 9, 2022, THE FINDINGS MADE BY THE PLANNING COMMISSION IN THE PUBLIC HEARING, THE PLANNING COMMISSION FINDS THAT THE REQUEST BY THE PORT OF TOLEDO, (FPV-1-22) COMPLIES WITH THE CRITERIA IDENTIFIED IN TOLEDO MUNICIPAL CODE 15.16.200. THE PLANNING COMMISSION HEREBY ADOPTS THE STAFF REPORT AS FINDINGS, AS MODIFIED BY THE FINDINGS MADE VERBALLY IN THE NOVEMBER 9, 2022 PUBLIC MEETING THAT THE PLANNING COMMISSION DIRECTS STAFF TO BRING BACK TO THE NEXT PUBLIC MEETING OF THE PLANNING COMMISSION, AS WELL AS THE PROPOSED CONDITIONS OF APPROVAL FOR FPV-1-22, AND ALLOWING FOR THE CORRECTION OF TYPOGRAPHICAL AND GRAMMATICAL ERRORS.

Option 2: The Planning Commission may deny the application; or

PROPOSED MOTION (DENIAL) (FPV-1-22):

BASED ON THE TESTIMONY RECEIVED, THE STAFF REPORT, AND THE EVIDENCE AND ARGUMENTS BEFORE THE PLANNING COMMISSION AT THE PUBLIC HEARING ON NOVEMBER 9, 2022, THE FINDINGS MADE BY THE PLANNING COMMISSION IN THE PUBLIC HEARING, THE PLANNING COMMISSION FINDS THAT THE REQUEST BY THE PORT OF TOLEDO, (FPV-1-22) DOES NOT COMPLY WITH THE CRITERIA IDENTIFIED IN TOLEDO MUNICIPAL CODE 15.16.200, AND SO THE REQUEST IS DENIED.

Option 3: The Planning Commission may leave the record open for additional testimony to be presented.

PROPOSED MOTION (LEAVE RECORD OPEN) (FPV-1-22):

BASED ON THE TESTIMONY RECEIVED, THE STAFF REPORT, AND THE EVIDENCE AND ARGUMENTS BEFORE THE PLANNING COMMISSION AT THE PUBLIC HEARING ON NOVEMBER 9, 2022, THE FINDINGS MADE BY THE PLANNING COMMISSION IN THE PUBLIC HEARING, THE PLANNING COMMISSION DECIDES TO LEAVE THE RECORD OPEN TO SUBMIT TESTIMONY FOR AN ADDITIONAL 7 DAYS, FROM THE DATE OF THIS HEARING, AND THEN ANY PARTICIPANT MAY ASK THE CITY FOR AN ADDITIONAL 7 DAYS TO RESPOND TO THE NEW TESTIMONY, AND THE APPLICANT SHALL HAVE AN ADDITIONAL 7 DAYS TO RESPOND AFTER THE RECORD IS CLOSED TO ALL PERSONS, FOR THE PLANNING COMMISSION TO CONTINUE THE PUBLIC HEARING UNTIL 6:30 P.M. ON _____, 2022 [MUST ANNOUNCE THE DATE CERTAIN].

VI. PLANNING COMMISSION ROLE:

The Planning Commission should evaluate the applicant's proposal and all testimony presented to them in order to make findings which demonstrate that the applicable criteria in the Toledo Municipal Code, Floodplain Ordinance, and Comprehensive Plan can be satisfied. The decision of the Planning Commission should be based on the report of facts and analysis contained within the Staff Report, as well as the facts and testimony presented by the applicant and those who support or oppose the request given at the public hearing. Any action on the application should address the applicable criteria as contained in the Toledo Municipal Code. The decision of the Planning Commission shall be final unless appealed to the City Council. *The findings of the Planning Commission should verbally be made into the record because there is not enough evidence by the applicant to recommend approval.*

Prepared by,

City Staff

DECISION ORDER ATTACHMENT B

Applicant's Material and Presentation

(City of Toledo File #FPV-1-22)

CITY OF TOLEDO

LAND USE APPEAL APPLICATION



Date 10/11/2022

1. GENERAL INFORMATION:

Appellant Port of Toledo

Mailing Address PO Box 428 Toledo, OR 97391

Telephone 541-336-5207

Email info@portoftoledo.org

Authorized Agent Debbie Scacco

Mailing Address PO Box 428 Toledo, OR 97391

Telephone 541-336-5207

Email debbie.scacco@portoftoledo.org

Address of Subject Property 367 Bulter Bridge Road Toledo, OR 97391

Assessor's Map Number 11-10-17

Tax Lot Number 109 00

Date of Decision 7/26/2022

Action Being Appealed Engineers H&H Analysis Requirement

City File # FP2-22

2. SIGNATURES OF ALL APPELLANTS:

Debbie Scacco

10/12/22

Appellant(s) Signature

Date

Appellant(s) Signature

Date

Appellant(s) Signature

Date

3. REASON FOR THE APPEAL: Attach a letter, briefly summarizing the reason for the Appeal. Explain in what way the decision or action is in conflict with City ordinance and other legal requirements. Describe how the proposal does not meet the applicable criteria as well as verification establishing the appellants standing to appeal the decision. Be as explicit and thorough as possible.

With the application form, please attach information you have available that pertains to the application you are submitting. All applicable standards and criteria must be addressed prior to acceptance of the application. Detailed descriptions, maps, and other relevant information should be attached and will be available for public review.

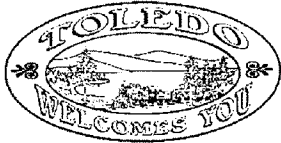
I understand that my appeal will not be heard by the appropriate City entity until the entire fee is paid.

Type of Appeal	Fee
Type II Permit Appeal	\$260
Type III Permit Appeal	\$535
Land Use Appeal, Misc.	\$535

For Office Use Only

Date Received 10/12/22 By _____ Fee Paid \$535 Complete Application Date _____ File No. FPV-1-22

10/12/22



CITY OF TOLEDO LAND USE APPLICATION

Date 10/12/2022

Property Owner Port of Toledo
Mailing Address PO Box 428 Toledo, OR 97391

Telephone 541-336-5207
Email info@portoftoledo.org

Authorized Agent Debbie Scacco
Mailing Address PO Box 428 Toledo, OR 97391

Telephone 541-336-5207
Email debbie.scacco@portoftoledo.org

Property Address 367 SE Butler Bridge Rd, Toledo, OR 97391
Property Location _____
Assessors Map No. 11-10-17

Property Size _____

Tax Lot No. 10900

Present Zoning _____
Comprehensive Plan Designation _____
Current Use of Property _____
Existing Structures (if any) _____

Proposed Change _____

Proposal for which this request is being made (attach additional sheets if needed) _____

Appeal requirement of engineer's hydrologic and hydraulic analysis. The cost for this analysis is prohibitive to the Port. This project is a public improvement providing ADA accessibility to the Community Boathouses and Marina docks. Removing 3 existing piling to offset the addition of 2 piling will have no affect on the capacity of the floodway and limited excavation for the new gangway abutment will not decrease or impede floodway capacity and will provide a small amount of additional capacity.

The following must be submitted with this application: Provided with original application

- ☒ Deed description and proof of ownership interest.
- ☒ Site plan drawn to scale which shows property lines, access, existing buildings, other relevant features or conditions, the property's relationship to the surrounding neighborhood, and the location of existing and proposed development.
- ☒ Description of the proposed land use action, including information on how the proposal might impact surrounding property and how the request meets the decision criteria.
- ☐ Supplemental information form (if required).
- ☒ Application fee.

Annexation/Rezone (\$1,500)*	Expedited Land Division (\$2,000)*	Riparian Modification Permit (\$200)
Appeal, Land Use Misc (\$535)*	Lot Line Adjustment (\$135)	Similar Use, Planning Comm (\$535)
Appeal, Type II (\$260)*	Modification of Approval (75% of fee)	Subdivision (\$930+\$20/lot)*
☒ Appeal, Type III (\$535)*	Partition, Major (\$930)*	UGB Amendment (\$2,660)
Code Amendment (\$930)	Partition, Minor (\$535)*	Vacation (\$2,000)*
(if requires M56 notice \$930+mailing)	Planned Unit Development	Variance, Type I (\$65)*
Comp. Plan Amendment (\$930)	(\$930+\$20/unit)*	Variance, Type II (\$260)*
(if requires M56 notice \$930+mailing)	Replat, Major (\$930)	Variance, Type III (\$535)*
Code Interpretation, official (\$170)	Replat, Minor (\$535)	Zone Change (\$930)
Conditional Use (\$535)	Restrictive Lot Line Covenant	
Exception to Statewide Goal (\$2,660)	(\$100+admin fee)	

*Supplemental forms are required

If filing multiple Land Use Applications, the highest tier application will be assessed and 75% of each additional land use application when submitted together. If filing multiple Type I permits, staff can waive some fees where overlapping permits do not need significant additional review.

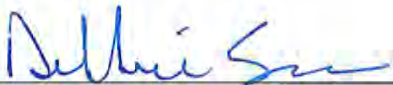
For Office Use Only

Date Received _____ By _____ Fee Paid _____ Complete Application Date _____ City File No. _____

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that I must present sufficient factual evidence to show that this application complies with the Toledo Zoning Ordinance, Comprehensive Plan, and other applicable regulations. This responsibility is independent of any opinions expressed in the Planning Department Staff Report concerning the applicable criteria. I certify that, to the best of my knowledge, all information contained in this application is accurate.

My signature below shows that I have thoroughly discussed this application with the City Planner, City Manager, or designee and I am fully aware of my responsibilities as the applicant. A pre-application meeting with City staff was held on or around _____.

I understand that the Planning Commission will hold a public hearing for this application (Type III)	☒ yes
I understand that the City Council will hold a public hearing for this application (Type IV)	☐ yes
I understand that this is a City of Toledo staff-level decision (Type I and Type II)	☐ yes
Other _____	☐ yes


PORT MANAGER
Applicant(s) Signature

10/19/2022
Date

Property Owner (if different)

Date

*****For Office Use Only*****

Public Works

1. Is City sewer available? Yes____ No____
Where _____

Will a connection have to be constructed? Yes____ No____
What size of a line is required _____
2. Is City water available? Yes____ No____
Where _____

Meter size _____
Estimated installation cost _____
3. Are there any public works improvements necessary? Yes____ No____
If yes, describe _____

4. Is there proper access? Yes____ No____
Are there proper easements? Yes____ No____

Curb cuts and property entrances must be constructed to City specifications. Permit and specifications are available through the Public Works Department.
5. Are there any special access requirements? Yes____ No____
If yes, describe _____
Is a state access permit required? Yes____ No____
Is a county permit required? Yes____ No____
6. Are stormwater improvements needed? Yes____ No____
If yes, describe _____

Is an erosion control plan needed? Yes____ No____
7. Is a plan review by Public Works required? Yes____ No____
8. Is this application ready to be approved? Yes____ No____
Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:

Public Works Director

Date

Fire Department

1. Does the proposal meet the safety requirements of the IFC? Yes _____ No _____

2. Is this application ready to be approved? Yes _____ No _____

Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:

Fire Chief Date

Police Department

1. Is this application ready to be approved? Yes X _____ No _____

Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:


Chief of Police 11/02/22
Date

Planning Department

1. Is this application ready to be approved? Yes _____ No _____

Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:

City Planner Date

Fire Department

1. Does the proposal meet the safety requirements of the IFC? Yes ☒ No ☐
2. Is this application ready to be approved? Yes ☒ No ☐
Explain modifications or revisions needed for the application _____

Comments No Comments

REVIEWED AND APPROVED BY:

Dan Musil
Fire Chief Inspector

11/2/22
Date

Police Department

1. Is this application ready to be approved? Yes ☐ No ☐
Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:

Chief of Police

Date

Planning Department

1. Is this application ready to be approved? Yes ☐ No ☐
Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:

City Planner

Date



Chuck Gerttula, President
Rick Graff, Vice President
Zack Dahl, Secretary & Treasurer
Mike Kriz, Commissioner
Penny Ryerson, Commissioner
Debbie Scacco, Port Manager

DESCRIPTION OF PROPOSED LAND USE ACTION

Appeal of Land Use Requirement for FP 2-22

The Ports project to install an ADA gangway and relocate a boathouse is in jeopardy of being abandoned due to the cost of the City's requirement of an engineers hydrologic and hydraulic analysis. The Port understands that this code requirement is to protect the capacity of the floodway and protect upland properties from flooding, however our project can clearly demonstrate no impact to the floodway without the excessive, needless, expenditure of public funds.

The project to add 2 piles to secure the new placement of the boathouse is offset by removal of 3 piles. This project is approved by the Army Corps of Engineers and Oregon DSL in our Joint Permit NWP 2022-329 and nets to zero impact to the floodway. The project also includes a small amount of excavation for the abutment of a new ADA gangway, estimated at 11 cubic yards. This will add to the waterway's flood capacity. There will be no fill or obstacle added to the waterway.

The Port requests an exemption of this requirement and the City pursues a revision or amendment to Toledo Municipal Code 15.16 to allow for zero impact improvement projects and maintenance dredging.

Serving Since 1910

PO Box 428, 496 NE Hwy 20, Unit 1, Toledo, Oregon 97391 Telephone (541) 336-5207
info@portoftoledo.org www.portoftoledo.org



Chuck Gerttula, President
Rick Graff, Vice President
Zack Dahl, Secretary & Treasurer
Mike Kriz, Commissioner
Penny Ryerson, Commissioner
Debbie Scacco, Port Manager

October 12, 2022

City of Toledo
Planning Commission
PO Box 220
Toledo, OR 97391

RE Appeal of Land Use Decision Regarding Floodplain Permit FP 2-22

The Port of Toledo requests the Planning Commission address an issue in the City's adopted Floodplain Code and make an exception for specific projects that can demonstrate zero affect to the floodway. The City's code, Section 15.16.070 requires certification by a registered professional civil engineer, demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge. The cost to comply with this requirement restricts the Port's ability to provide basic maintenance of the waterway and access for public use.

The Port is in the process of permitting two projects. The first project is to replace the gangway at the Port's Marina with an ADA gangway and relocate the boathouse which requires placing 2 piling and limited excavation of the upland. To mitigate, the Port will remove 3 existing piling. This project is a public benefit and will maintain accessibility to community boating at the Marina. Port staff has met with City staff regarding this requirement and have received a letter of determination stating that, as a development in the floodway, the hydrologic and hydraulic analysis is required. The Port is in receipt of an estimate for this analysis of \$13,500. This is a poor use of the Port's public funding, considering an engineer's analysis is not required to conclude that the project has zero impact to the floodway.

Our second project, that we are in the process of permitting, is for maintenance dredging of the Transient Dock. The Code's definition of development includes dredging, resulting with the same requirement and costs for an engineer's analysis for regular maintenance dredging. The Port's limited tax resources are not sufficient to bear these expenses and will result in a delay of maintenance dredging which will have a negative impact on the floodway's capacity.

To address specific requirements of the code Section 15.16.070:

- This project does not fill, encroach or change the floodway. A professional civil engineer's analysis is not required to determine that these projects will not result in increased food levels within the community during the occurrence of a base flood discharge.
- The projects do not alter the watercourse.

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info@portoftoledo.org www.portoftoledo.org

- The new ADA gangway replaces a current permitted structure and does not diminish flood carrying capacity. It will be anchored according to standard installation procedures to prevent flotation, collapse or lateral movement.
- The project is not a manufactured dwelling
- The gangway and piling are constructed of standard materials for their intended purposes.
- There are no utilities/No on-site waste disposal/No Electrical/No Tanks
- Not a subdivision project, structure, garage, or appurtenance

The Port requests an exception to the requirement of an engineer's hydrologic and hydraulic analysis for these two projects and asks the city to make revisions to its Code that allows for in-kind replacement of existing structures and maintenance dredging. Also, due to the obstructiveness of this code and its impedance to the Port's ability to complete our mission to maintain and add waterborne and land transportation infrastructure that attracts new businesses; protect and enhance the special quality of place and the quality of life for our port district's citizens, and; make the highest and best use of our financial tools, people, and property assets; we ask the City to refund any unexpended portion of the \$575 appeal fee.

Thanks for your consideration,



Debbie Scacco
Port Manager

Serving Since 1910

PO Box 428, 496 NE Hwy 20, Unit 1, Toledo, Oregon 97391 Telephone (541) 336-5207
info@portoftoledo.org www.portoftoledo.org

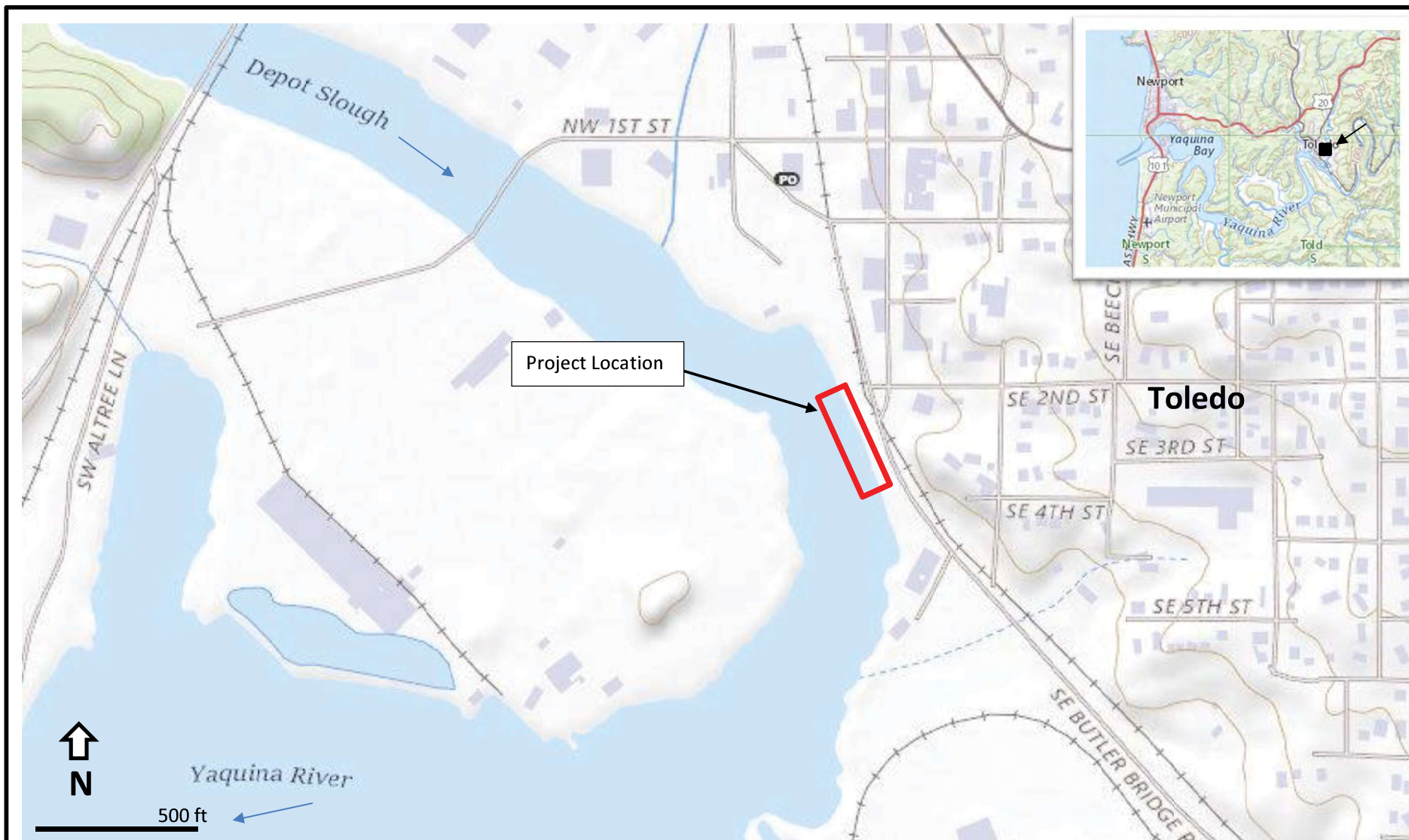


Figure 1: Location Map
 Port of Toledo Boat House & Gangway
 (USGS 2022)

Applicant: Port of Toledo
Project Name: Port of Toledo Boat House & Gangway
Location: Toledo, OR – Lincoln County
Lat/Long: 44.3706 N/ -123.5616 W
T/R/S: T:11S/R:10W/S:17
Date: 05/12/2022



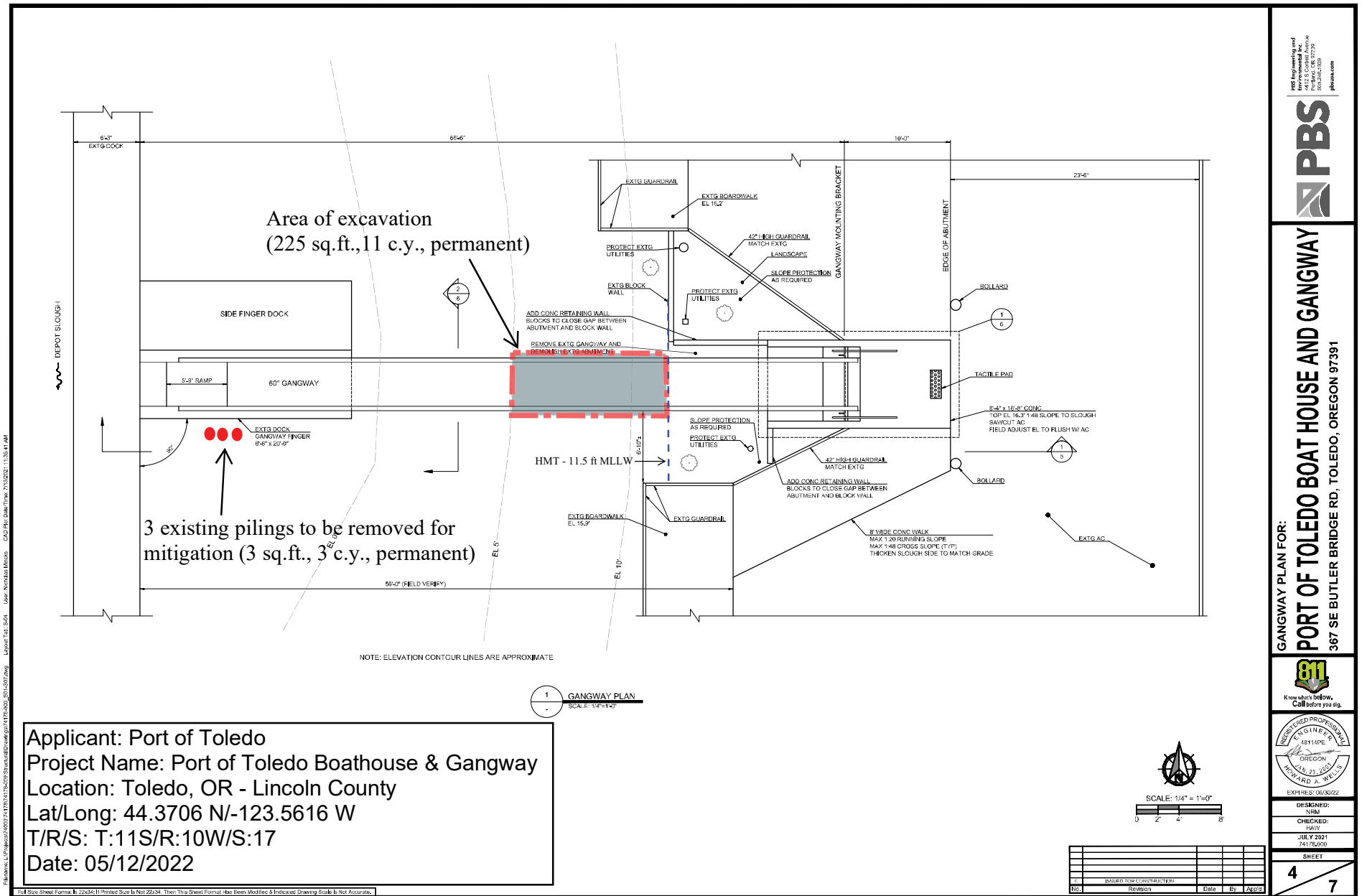
Figure 2: Tax Lot Map
 Port of Toledo Ramp Replacement &
 Boathouse Relocation
 (ORMAP 2022)

Applicant: Port of Toledo
Project Name: Ramp replacement/boathouse relocation
Location: Toledo, OR – Lincoln County
Lat/Long: 44.3706 N/ -123.5616 W
TRS: T:11S/R:10W/S:17
Date: 04/27/2022

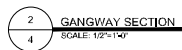


Figure 3: Aerial Photo
Port of Toledo Ramp Replacement &
Boathouse Relocation
 (Google Earth 2019)

Applicant: Port of Toledo
Project Name: Port of Toledo Boat House and Gangway
Location: Toledo, OR – Lincoln County
Lat/Long: 44.3706 N/ -123.5616 W
T/R/S: T:11S/R:10W/S:17
Date: 05/11/2022



Filename: L:\Projects\74000\74178\74178-009\Structural Drawings\74178-000_901-907.dwg Layout Tab: 9-06 User: Nicholas Winkles CAD Plot Date/Time: 7/13/2021 7:52:44 AM



TOP VIEW



1 ABUTMENT DETAILS
4 SCALE: 1/2"=1'-0"

()	PUBLISHED FOR CIRCULATION:			
No.	Revision	Date	By	App

GANGWAY AND ABUTMENT DETAIL FOR:
PORT OF TOLEDO BOAT HOUSE AND GANGWAY
367 SE BUTLER BRIDGE RD, TOLEDO, OREGON 97391



DESIGNED:

DESIGNED:

NRM

CHECKED:

CHECKED:
HAW

JULY 2021
74178.000

ONEET

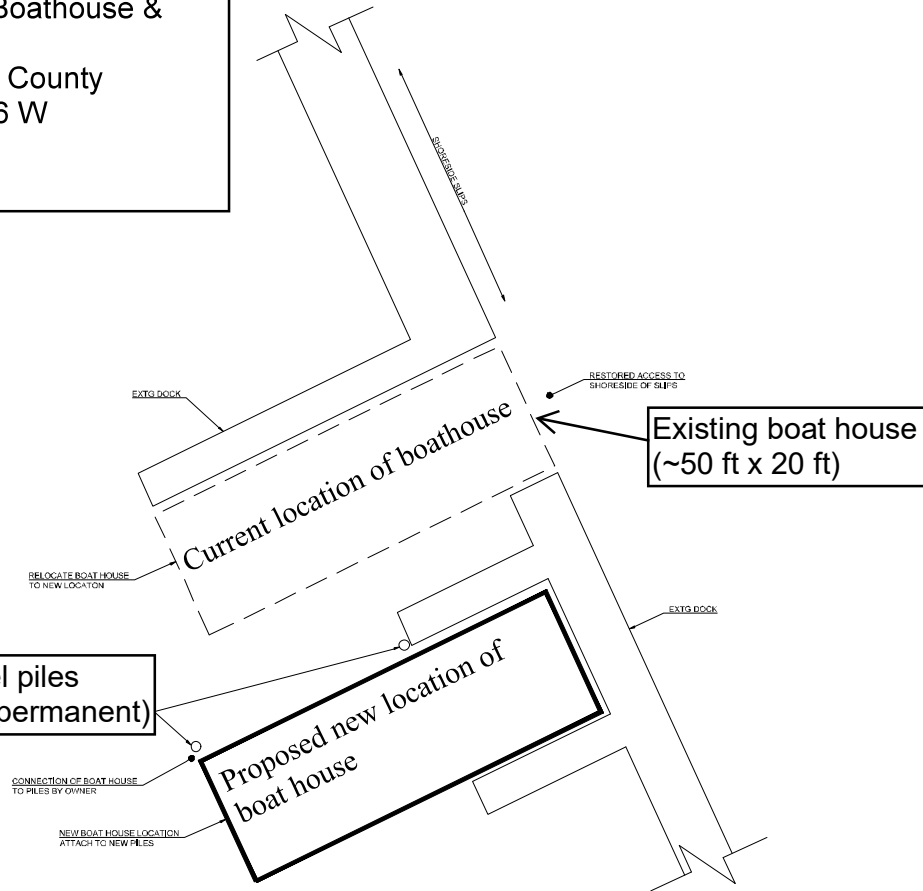
SHEET

6 /

Applicant: Port of Toledo
 Project Name: Port of Toledo Boathouse & Gangway
 Location: Toledo, OR - Lincoln County
 Lat/Long: 44.3706 N/-123.5616 W
 T/R/S: T:11S/R:10W/S:17
 Date: 05/12/2022

Depot Slough


2 new, 16-in steel piles
 (2.7 sq.ft, 5 c.y., permanent)



1 BOAT HOUSE RELOCATION PLAN
 SCALE: 1/8"=1'-0"



NO.	REVISION	DATE	BY	APP'D

PBS Engineering and
 Construction
 4415 S. Central Avenue
 Portland, OR 97229
 phone.com



BOAT HOUSE RELOCATION PLAN FOR:
PORT OF TOLEDO BOAT HOUSE AND GANGWAY
 367 SE BUTLER BRIDGE RD, TOLEDO, OREGON 97391



DESIGNED: NRM
 CHECKED: NRM
 JUN 12 2021
 74176000

SHEET
 7 7

Plot Size Sheet Format: 11x25.5" If Printed Size Is Not 22x34" Then This Sheet Format Has Been Modified & Indicated Drawing Scale Is Not Accurate.



Date Received:

Waterway Lease Application Form

www.oregon.gov/dsl

(West of the Cascade Crest)
WESTERN REGION
Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
503-986-5200
FAX: 503-378-4844

Mail complete application and non-refundable
application fee to your local regional office.

*Existing Authorizations can pay application fee
online at:

<https://apps.oregon.gov/dsl/EPS/>.

(East of the Cascade Crest)
EASTERN REGION
Department of State Lands
951 SW Simpson Ave, Suite 104
Bend, OR 97702
541-388-6112
FAX: 541-388-6480

***Modification**

\$ 375.00 (Reduction in Lease area)

\$ 750.00 (Increase in Lease area)

***Renewal**

\$ 375.00 (with No Changes)

New \$750.00

Existing Department of State Lands No.

AGENCY WILL ASSIGN NO.

1 - APPLICANT INFORMATION

Applicant: (Individual, Organization or Entity)

Primary Phone:

Address:

Cell Phone:

Fax:

Email:

Co-Applicant:

Primary Phone:

Address:

Cell Phone:

Fax:

Email:

Contact: (if different than above)

Billing

Authorized Agent

Other

Primary Phone:

Cell Phone:

Address:

Fax:

Email:

Riparian Property Owner: (if different than applicant)

Primary Phone:

Address:

Cell Phone:

Fax:

Email:

2 - PROJECT LOCATION

Street, Road or other descriptive location

Use Area Description

Township Range

Section

Quarter

Tax Lot(s)

In or Near City:

County:

County Property Tax Account #

Tax Map #

Waterway:

River Mile:

Latitude:

Longitude:

3 - PROJECT INFORMATION

Activity Type (Check all that apply):

Area requested (length x width)

- a) ☐ Log rafts/log storage areas
- b) ☐ Commercial marina and floating home moorages
- c) ☐ Noncommercial marina and owner-oriented floating home moorages
- d) ☐ Marine industrial; marine services; fish processing facilities
- e) ☐ Non-marine uses (restaurant, retail sales, offices, motel, residences, etc.)
- f) ☐ Historical vessel moorages
- g) ☐ Other (Research)

Are you aware of any Endangered Species on the project site?

Yes No

Are you aware of any Cultural Resources on the project site?

Yes No

Is the project site near a State Scenic Waterway?

Yes No

If yes to any of the above, please explain in the project description (Section 4).

4 - PROJECT PURPOSE & DESCRIPTION

☐ Existing Facility

☐ Proposed for Construction

Project Purpose and Need:

Project Description:

Estimated Start Date:

Estimated Completion Date:

5 - ADDITIONAL INFORMATION

Names, addresses and phone numbers for **adjacent** property owners.

Have you applied for Corps of Engineers or Department of State Lands permits for this project?

☐ Yes

☐ No

If yes, what identification number(s) were assigned by the respective agencies:

Corps #

State of Oregon #

6 - CITY/COUNTY PLANNING DEPARTMENT AFFIDAVIT

(to be completed by local planning official)

- ☐ This project is not regulated by the local comprehensive plan and zoning ordinance.
☐ This project has been reviewed and is consistent with the local comprehensive plan and zoning ordinance.
☐ This project has been reviewed and is **not** consistent with the local comprehensive plan and zone ordinance.
☒ Consistency of this project with the local planning ordinance cannot be determined until the following local approval(s) are obtained:

☐ Conditional Use Approval

☐ Development Permit

☐ Plan Amendment

☐ Zone Change

☒ Other Flood plain ordinance consistency is finalized.

An application ☐ has ☐ has not been made for local approvals checked above.

Judy M. Richter
Signature of local planning official

City Manager
Title

City of Toledo

City / County

Judy M. Richter

8/30/2022

Print/Type Name

Date

7 - BUSINESS INFORMATION

LIMITED LIABILITY COMPANY: Complete the following

- Do you have authority from the Oregon Secretary of State to do business in the State of Oregon? ☐ Yes ☐ No
Is the LLC presently in good standing with the Oregon Secretary of State? ☐ Yes ☐ No
In what state is the LLC primarily domiciled? OR
Is the LLC name and the Oregon business address the same as stated in this application? ☐ Yes ☐ No
If no, state the legal Name:

Address:

Street or Box Number

City

State

Zip Code

Additionally, a LIMITED LIABILITY COMPANY must submit the following with the application:

A certified copy of the company's Articles of Organization

A copy of the company's operating agreement

CORPORATION: Complete the following:

- Do you have authority from the Oregon Secretary of State to do business in the State of Oregon? ☐ Yes ☐ No
Is the corporation presently in good standing with the Oregon Secretary of State? ☐ Yes ☐ No
In what state are you incorporated?
Is the legal corporation name and Oregon business address the same as stated in this application? ☐ Yes ☐ No
If no, state the legal Corporate Name:

Address:

Street or Box Number

City

State

Zip Code

PARTNERSHIP OR JOINT VENTURE: Complete the following

NAME	BUSINESS ADDRESS	% SHARE	DIVISION

TRUST: Complete the following for each beneficiary of the Trust:

NAME	BUSINESS ADDRESS

OR identify the Trust document by title, document number, and county where document is recorded:

TITLE	DOCUMENT NUMBER	COUNTY

A resolution that the individual designated to sign is authorized to act on behalf of the company in this matter.

8 - LESSEE CHOICE
(Refer to OAR 141-082-0305)

Calculate my rent under the Flat Rate Method.

Calculate my rent based on 5% of the riparian land value.

Calculate my rent based on 3% of the gross annual boat slip rental income.
(Attach monthly income statements for all boat slip rental and boat rental income)

**9 - FOR A COMPLETE APPLICATION,
PLEASE SUBMIT ALL THE FOLLOWING:**

- a) A street or highway location map with road directions to the site from the nearest main highway or road.
- b) Assessor map that contains the riparian uplands. Do not mark on this map.
- c) A copy of the current year's property tax statement which identifies the present owner's name(s), land values, land size and tax account numbers of the riparian uplands.
- d) A description of the lease use area with an accurate delineation of the area relative to the tax lot boundaries of the upland parcel. (The department may require a survey for this purpose).
- e) A separate drawing of all existing and proposed structures for the lease area. Label each separate activity type stated in Section 3 and show the dimensions of each area by length and width, as stated in Section 3.
- f) Lessee Choice for the calculations of the annual lease fee, Section 8.
- g) Enclose applicable non-refundable application fee, made payable to: Oregon Department of State Lands.

10 - APPLICANT SIGNATURE

I hereby request a state authorization for _____ (number) years.

Application is hereby made for the activities described herein. I certify that I am familiar with the information contained in the application, and, to the best of my knowledge and belief, this information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I understand that the granting of other permits by local, county, state or federal agencies does not release me from the requirement of obtaining the authorization requested before commencing the project. I understand that payment of the required state application fee does not guarantee authorization.

Print /Type Name

Title

Applicant Signature

Date

I appoint the person named below to act as my duly authorized agent.

Print /Type Name

Title

Authorized Agent Signature

Date



Location Map

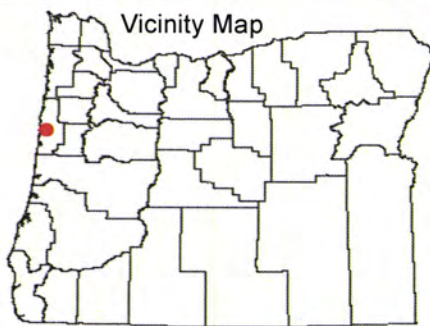
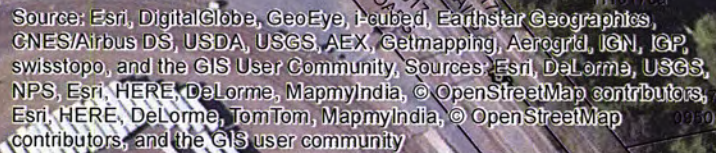
Port of Toledo Boathouse Relocation
(USGS 2022)

Applicant: Port of Toledo
Project Name: Boathouse Relocation
Location: Toledo, OR (Lincoln County)
Lat/Long: 44.6189 N / -123.9382 W
TRS: T:11S/R:10W/S:17
Date: 8/22/2022



Aerial Photo
Port of Toledo Boathouse Relocation
(Google Earth 2019)

Applicant: Port of Toledo
Project Name: Boathouse Relocation
Location: Toledo, OR (Lincoln County)
Lat/Long: 44.6189 N/ -123.9382 W
T/R/S: T:11S/R:10W/S:17
Date: 8/22/2022

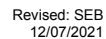


- This map depicts the approximate location and extent of a Department of State Lands, Land Management Division authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

State of Oregon
Department of State Lands
775 Summer St, NE, Suite 100
Salem, OR 97301
503-986-5200
www.oregon.gov/DSL
Date: 2/17/2015

SEE MAP 11 10 17 BB

Cancelled
300
400
900
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1400
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1600
1700
2000
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3200
3300
3500
4200
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6601
6602
6602-31
6700
6700-A1
6701
6800-A1
6800-A2
6801
6900-21
7000
7500
7700
8100
9100
9300
10400
10502



TOLEDO
11 10 17 BC

2022 GENERAL INFORMATION

Property Status	A Active
Property Type	Commercial
Legal Description	TWNSHP 11, RNG 10, ACRES 1.63, MF258-1775 & MF260-0389
Alternate Account Number	-
Neighborhood	T286: TOLEDO RIVERFRONT COMMER IN IND ZONE
Map Number	11-10-17-BC-06802-00
Property Use	991: EX - PORT OR MUNICIPAL IMPR PROP
Levy Code Area	203
Zoning	I

RELATED PROPERTIES

Linked Properties R530774

Print
property
information

2022 OWNER INFORMATION

Owner Name	PORT OF TOLEDO
Mailing Address	PO BOX 428 TOLEDO, OR 97391

EXEMPTIONS/DEFERRALS

EXEMPTION CODE	EXEMPTION DESCRIPTION	EXPIRATION YEAR
MUNI	MUNI: OTHER MUNICIPAL CORP OWNED	-

2022 IMPROVEMENTS

⌵ Expand/Collapse All

⊞ Improvement #1	Improvement Type
-	C: COMMERCIAL

2022 LAND SEGMENTS

STATE CODE	SEGMENT TYPE	LAND SIZE
L1	AWL: WET LAND ACREAGE	1.63 Acres
TOTALS		71002.80 Sq. ft / 1.63 acres

CERTIFIED / IN PROCESS VALUES

YEAR	IMPROVEMENTS	LAND	RMV	SPECIAL USE	ASSESSED VALUE
2022 (In Process)	\$30,150	\$41,730	\$71,880	\$0	\$0
2021	\$24,900	\$39,940	\$64,840	\$0	\$0
2020	\$22,650	\$36,350	\$59,000	\$0	\$0
2019	\$20,850	\$33,420	\$54,270	\$0	\$0
2018	\$31,800	\$34,560	\$66,360	\$0	\$0
2017	\$31,800	\$34,560	\$66,360	\$0	\$0
2016	\$29,250	\$31,790	\$61,040	\$0	\$0
2015	\$35,000	\$28,530	\$63,530	\$0	\$0

SALES HISTORY

SALE DATE	SELLER	BUYER	INST #	SALE PRICE	INST TYPE
	LINCOLN COUNTY	PORT OF TOLEDO	MF258-1775	-	QCD QUIT CLAIM DEED

- If applicable, the described property is receiving special valuation based upon its use. Additional rollback taxes which may become due based on the provisions of the special valuation are not indicated in this listing.

TAX SUMMARY

Effective Date: [Details](#)

TAXYEAR	TOTAL BILLED	AD VALOREM	SPECIAL ASMT	PRINCIPAL	INTEREST	DATE PAID	TOTAL OWED
2021	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00

TOTAL TAXES DUE

Current Year Due	\$0.00
Past Years Due	\$0.00
Total Due	\$0.00

2020	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2019	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2018	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2017	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2016	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2015	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2014	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2013	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2012	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2011	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2010	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2009	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2008	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2007	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2006	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2005	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2004	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2003	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2002	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2001	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
2000	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
1999	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
1998	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00
1997	\$0.00	\$0.00	\$0	\$0.00	\$0.00	-	\$0.00



Payment History for R271538 not found.

Please contact the Assessor's office if you have further questions.

Joint Permit Application

This is a joint application, and must be sent to all agencies (Corps, DSL, and DEQ). Alternative forms of permit applications may be acceptable; contact the Corps and DSL for more information.

DATE STAMP



**U.S. Army Corps
of Engineers
Portland District**



**Oregon
Department of
State Lands**



**Oregon
Department of
Environmental
Quality**

Action ID Number

Number

(1) TYPE OF PERMIT(S) IF KNOWN (check all that apply)

Corps: ☐ Individual ☐ Nationwide No.: _____ ☐ Regional General Permit _____ ☐ Other (specify) _____

DSL: ☐ Individual ☐ GP Trans ☐ GP Min Wet ☐ GP Maint Dredge ☐ GP Ocean Energy ☐ No Permit ☐ Waiver

(2) APPLICANT AND LANDOWNER CONTACT INFORMATION

	Applicant	Property Owner (if different)	Authorized Agent (if applicable) ☒ Consultant ☐ Contractor
Name (Required)	Lorna Davis (Port Manager)	Oregon DSL	Eric Campbell
Business Name	Port of Toledo	775 Summer St. NE	Campbell Environmental, LLC
Mailing Address	496 N.E. Hwy 20, Unit 1 Toledo, OR 97391	Suite 100 Salem, OR 97301	28592 SW Cascade Loop Wilsonville, OR 97070
Business Phone	541-336-5207	503-986-5260	503-680-8390
Cell Phone	541-270-1810		503-680-8390
Fax			
Email	lorna.davis@portoftoledo.org		eric@campbellenviro.com

(3) PROJECT INFORMATION

A. Provide the project location

Project Name		Latitude & Longitude (decimal)	
Port of Toledo Boathouse and Gangway		44.3706 N/ -123.5616 W (WGS 84)	
Project Address / Location		City (nearest)	County
367 SE Butler Bridge Rd		Toledo	Lincoln
Township	Range	Section	Quarter/Quarter
11S	10W	17	NW/SW
Tax Lot(s)			
06800, 06802			

Brief Directions to the Site

Take US-20 and travel 42 miles west toward Newport/Toledo. Turn left onto US-20 Business toward Toledo, travel 2 miles and turn left onto NE 1st St., then turn left onto SW Butler Bridge Rd. The Port of Toledo Marina will be on the right.

B. What types of waterbodies or wetlands are present in your project area? (Check all that apply.)

☒ River / Stream ☐ Non-Tidal Wetland ☐ Lake / Reservoir / Pond
☒ Estuary or Tidal Wetland ☐ Other ☐ Pacific Ocean

Waterbody or Wetland Name	River Mile	6 th Field HUC Name	6 th Field HUC (12 digits)
Depot Slough	0.25	Depot Creek	171002040302

C. Indicate the project category. (check all that apply.)

☐ Commercial Development ☐ Industrial Development ☐ Residential Development
☐ Institutional Development ☐ Agricultural ☐ Recreational
☐ Transportation ☐ Restoration ☐ Bank Stabilization

- ☐ Dredging
 ☐ Utility lines
 ☐ Survey or Sampling
☒ In- or Over-Water Structure
 ☐ Maintenance
 ☐ Other:

(4) PROJECT DESCRIPTION

A. Summarize the overall project, including work in areas both in and outside of waters or wetlands.

The Port of Toledo (Port) is proposing to relocate an existing boathouse and replace an existing gangway within their marina located along Depot Slough in Toledo, Oregon (see Attachment A: Figures). The current boathouse location and existing marina gangway do not meet the requirements of the grant fund provided to the Port from the Oregon State Marine Board (OSMB) and U.S. Fish and Wildlife Service (USFWS) for the recently constructed transient moorage docks. The current boathouse location does not allow for vessel access to the shoreside of the transient mooring dock (see Attachment A: Figures), and the existing marina gangway is not Americans with Disabilities Act (ADA)-compliant. As such, in coordination with OSMB and USFWS, the Port has agreed to relocate the existing boathouse approximately 30 feet south of its current location, and replace the existing marina gangway in-kind with an ADA-accessible gangway. Relocation of the boathouse will require the installation of two (2) new, 16-inch diameter, steel moorage pilings. Replacement of the existing gangway will require excavation of in-water sediments to slightly lower the grade of the gangway from the abutment. To mitigate for the installation of two new steel moorage pilings, the project will also include the removal of three existing timber pilings.

B. Describe work within waters and wetlands

Work within waters (i.e., below the highest measure tide [HMT] of Depot Slough) will include the relocation of an existing boathouse (approximately 30 feet south), installation of two (16-inch diameter) steel moorage pilings, removal of three (12-inch diameter) existing timber pilings, and minor excavation of substrates to allow for the decreased grade of the proposed ADA-compliant gangway. A summary of proposed waters impacts below the HMT of Depot Slough is provided below (Table 1). The proposed project will not impact wetlands.

Table 1. Summary of Permanent and Temporary Impacts to Waters and/or Wetlands.

Removal Volumes and Dimensions (if more than 7 impact sites, include a summary table as an attachment)							
Wetland / Waterbody Name *	Removal Dimensions					Time Removal is to Remain **	Material***
	Length (ft.)	Width (ft.)	Depth (ft.)	Area (sq. ft.)	Volume (c. y.)		
Yaquina River/Depot Slough							
Excavation of substrate under gangway	~15	~15	~3	225	11	Permanent	Sand/silt/riprap
Removal of three existing timber pilings	3	1	~40	3	4.5	Permanent	Wood pilings
Total Removal Volumes and Dimensions							
				Length (ft)	Area (sq. ft.)	Volume (c.y.)	
Total Removal to Wetlands				N/A	N/A	N/A	
Total Removal Below Highest Measured Tide				18	228	15.5	
Total Removal Below Mean High Water Tidal Elevation				8	~60	~7	
Fill Volumes and Dimensions (if more than 7 impact sites, include a summary table as an attachment)							
Wetland / Waterbody Name *	Fill Dimensions					Time Fill is to Remain **	Material***
	Length (ft.)	Width (ft.)	Depth (ft.)	Area (sq. ft.)	Volume (c. y.)		
Yaquina River/Depot Slough							
Installation of two, 16-inch diameter pilings	2.6	1.3	~50	2.7	5	Permanent	Steel piles
Installation of temporary spud pilings	2.6	1.3	~20	2.7	2	Temporary	Steel spud piles
I. Total Fill Volumes and Dimensions							
				Length (ft)	Area (sq. ft.)	Volume (c. y.)	

Total Fill to Wetlands	N/A	N/A	N/A
Total Fill Below Highest Measured Tide	5.2	5.4	7
Total Fill Below Mean High Water Tidal Elevation	5.2	5.4	~6.8
* If there is no official name for the wetland or waterway, create a unique name (such as "Wetland 1" or "Tributary A"). ** Indicate whether the proposed area of removal or fill is permanent or, if you are proposing temporary impacts, specify the days, months or years the fill or removal is to remain. *** Example: soil, gravel, wood, concrete, pilings, rock etc.)			

C. Construction Methods. Describe how the removal and/or fill activities will be accomplished to minimize impacts to waters and wetlands.

As discussed above, the proposed project will include relocating the Port's existing boathouse and replacing the existing marina gangway in-kind with an ADA-accessible gangway. All work conducted below the HMT of Depot Slough will occur between November 1 and February 1 of the Oregon Department of Fish and Wildlife (ODFW)-preferred in-water work window (IWWW) for Depot Slough and the Yaquina River estuary, a period when Endangered Species Act (ESA)-listed species are least likely to be present within the vicinity of the project area. The proposed project will require approximately two to four weeks of in-water/overwater work. Construction crews and equipment will access the project site via existing parking areas, floating docks, and/or floating barge.

Boathouse Relocation

The existing boathouse will be relocated approximately 30 feet to the south using a small tow vessel. The boathouse will then be secured to two new, 16-inch diameter, steel moorage pilings. The new pilings will be installed using a vibratory hammer, with some potential use of an impact hammer to seat the pilings to their desired depth of approximately 30 feet into the substrate. It is anticipated that each pile will require approximately 15 to 30 minutes of vibratory hammer use. The contractor will implement appropriate sound attenuation methods (i.e., "soft-start" procedures and use of a bubble curtain) as outlined below in the Measures to Minimize Impacts. The three existing timber pilings (for mitigation) will be dislodged with a vibratory hammer and slowly lifted from the sediment and placed into a contained area for appropriate upland disposal.

Gangway Replacement

The existing, grated aluminum gangway (~40-foot long by 5-foot wide) will be removed and the existing shoreline abutment will be demolished using an excavator or crane. The proposed ADA-accessible, replacement gangway will be 60 feet long and 5 feet wide, but will not increase the overwater area, as the additional length will extend upland to the new abutment. The replacement gangway will be built of grated, nonskid aluminum with guard rails. Full-width, hinged aluminum transition ramps will also be installed at both ends of the gangway, and the toe end adjusted to allow the dock system free movement to travel the full range of water levels. Replacement utilities lines will still run under the ramp.

A replacement concrete abutment will be constructed at the shoreline above HMT for the attachment and movement of the gangway. An excavator will be used to remove approximately 11 cubic yards of sediment from under the gangway near the shoreline to ensure free movement of the new ADA-compliant, gangway grade throughout the tidal elevation range. All excavated material will be hauled offsite to an appropriate upland disposal location.

Measures to Minimize Impacts: The following conservation measures have been incorporated into the proposed project design and construction methods to minimize and avoid potential adverse effects to ESA-listed fish species, their designated Critical Habitat elements, and Essential Fish Habitat:

- All work conducted below the HMT will occur during the ODFW-preferred IWWW for the Yaquina River estuary (November 1 – February 1), a period when ESA-listed species are less likely to be present within the vicinity of the project area.
- All heavy equipment (i.e., crane) will access the project site via existing asphalt parking lots and/or floating barges.

- All new pilings will be installed with a vibratory hammer. In the event that the vibratory hammer cannot fully embed the piles to the necessary depth, the contractor will use an impact hammer to seat the piles. Use of an impact hammer will be limited to daylight hours between 7 a.m. and 7 p.m.
- During the use of an impact hammer a multi-level bubble curtain will be installed to reduce sound pressure levels. The bubble curtain system shall conform to the following:
 - o If water velocity is greater than 1.6 feet per second, surround the piling being driven by a confined bubble curtain (e.g., a bubble ring surrounded by a fabric or non-metallic sleeve) that will distribute air bubbles around 100% of the piling perimeter for the full depth of the water column. Bubblers shall completely surround the pile.
 - o Piling shall be completely engulfed in bubbles over the full depth of the water column at all times when an impact pile driver is in use. Bubbles are not required during vibratory pile driving.
- The contractor will initiate daily “soft-start” procedures to provide a warning and/or give species near piling removal and installation activities a chance to leave the area prior to a vibratory hammer or impact driver operating at full capacity; thereby, exposing fewer species to loud underwater and airborne sounds.
 - o A soft-start procedure will be used at the beginning of in-water piling removal and installation, or any time piling removal/installation has ceased for more than 30 minutes.
 - o For vibratory hammer operation, the contractor will initiate noise from vibratory hammers for 15 seconds at reduced energy followed by a 30-second waiting period. The procedure shall be repeated two additional times.
 - o For impact pile driving (if necessary), the contractor will provide an initial set of strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent sets. (The reduced energy of an individual hammer cannot be quantified given the variations between individual drivers. In addition, the number of strikes will vary at reduced energy given that raising the hammer at less than full power and then releasing it results in the hammer bouncing as it strikes the pile, resulting in multiple strikes).
- All pilings will be removed with a vibratory hammer. During piling removal, the following criteria will be implemented to minimize creosote release, sediment disturbance and sediment resuspension:
 - o Install a floating surface boom to capture floating surface debris.
 - o Consider the best tidal condition for piling removal; try to remove in-the-dry.
 - o Keep all equipment (e.g., bucket, cable, vibratory hammer) out of the water, grip piles above the waterline, and complete work during low water and low current conditions.
 - o Dislodge piling with a vibratory hammer, when possible; never intentionally break a pile.
 - o “Wake” the piling by vibrating to break the friction bond between the piling and sediment.
 - o Slowly lift the pile from the sediment and through the water column.
 - o Place the pile in a containment basin on a barge deck, pier, or shoreline without attempting to clean or remove any adhering sediment.
 - o Fill the holes left by each piling with clean, native sediments immediately upon removal.
 - o Dispose of all removed piles, floating surface debris, any sediment spilled on work surfaces, and all containment supplies at a permitted upland disposal site.
- When a pile breaks or is intractable during removal, removal will continue as follows:
 - o Every attempt short of excavation will be made to remove each piling, if a pile in uncontaminated sediment is intractable, breaks above the surface, or breaks below the surface, cut the pile or stump off at least 3 feet below the surface of the sediment.
- The following conditions will apply when removing preservative-treated wood:
 - o To the extent possible, ensure no wood debris falls into the water. If wood debris does fall into the water, remove it immediately.
 - o Wood debris will be placed in an appropriate dry storage site until removed from the site.

- o Wood construction debris will not be left in the water or stacked on the bank or below HMT.
- o Wood debris removed during the project will be evaluated to ensure proper disposal.
- A Pollution Control Plan (PCP) will be prepared by the Contractor and carried out commensurate with the scope of the project that includes the following:
 - o Best management practices to confine, remove, and dispose of construction waste.
 - o Procedures to contain and control a spill of any hazardous material.
- All conditions of Oregon Department of Environmental Quality's (ODEQ's) 401 Water Quality Certification will be followed.
- All equipment will be inspected daily for fluid leaks. Any leaks detected will be repaired before operation is resumed. Stationary power equipment (i.e., cranes) operated within 150 feet of the river will be diapered to prevent leaks.
- All new pilings will be fitted with devices to prevent perching by piscivorous birds.
- Replacement overwater gangway will be grated to allow for light penetration.

D. Describe source of fill material and disposal locations if known.

Fill material will consist of two new, 16-inch diameter steel pilings. All material removed from below the HMT (i.e., sediment and timber pilings) will be placed into a contained area and hauled to an appropriate upland location for recycling or disposal.

E. Construction timeline.

What is the estimated project start date?: November 1, 2022
 What is the estimate project completion date? February 1, 2023

Is any of the work underway or already complete? ☐ Yes ☒ No
 If yes, describe.

(5) PROJECT PURPOSE AND NEED

Provide a statement of the purpose and need for the overall project.

The purpose of the proposed project to relocate the existing boathouse and replace the existing gangway located within the Port's marina. The current boathouse location and existing marina gangway do not meet the requirements of the grant fund provided to the Port from OSMB and USFWS for the recently constructed transient moorage docks. The current boathouse location does not allow for vessel access to the shoreside of the transient mooring dock (see Attachment A: Figures), and the existing marina gangway is not ADA compliant. The Port is proposing to relocate the existing boathouse approximately 30 feet south of its current location, and replace the existing marina gangway in-kind with an ADA-accessible gangway.

The Port's Community Boathouse was constructed in 2017 and provides classroom and workshop space for youth and community members to learn and experience hands-on boatbuilding, maintenance, sailing and seamanship. The relocation of the boathouse and the installation of the new ADA-compliant gangway within the marina will allow all members of the community to continue to enjoy the Port's marina and the maritime programs they provide.

(6) DESCRIPTION OF RESOURCES IN PROJECT AREA

A. Describe the existing physical and biological characteristics of each wetland or waterway. Reference the wetland and waters delineation report if one is available. Include the list of items provided in the instructions.

Yaquina Estuary: The Yaquina Bay estuary is approximately 4,329 acres in size and drains a watershed of approximately 253 square miles. The geomorphology of the area is that of a drowned river mouth estuary. The

Yaquina Bay estuary provides critical spawning and rearing habitat for a variety of forage fish, including Pacific herring, Northern anchovy, longfin smelt, whitebait smelt, and surf smelt. Pacific herring spawn in the shallow waters of the tidal flats and larvae begin rearing in the estuary. Pacific herring are selective pelagic plankton feeders and during low tide cycles they are concentrated in deep-water habitats of the lower estuary. In marine waters, species such as Pacific herring, anchovies and smelt provide food for commercial fish such as hake, salmon, rockfish, halibut, and lingcod. In Yaquina Bay, forage fish are prey for California sea lions, harbor seals, brown pelicans and many other species.

The Oregon Department of Land Conservation and Development (DLCD) has classified Yaquina Bay as a Deep Draft Development Estuary. The estuary has maintained jetties and a navigation channel maintained by dredging to -30 feet mean lower low water (MLLW) or deeper. The Yaquina River Estuary Plan calls for management of the area to provide for public, commercial, and industrial uses, including navigation, marinas, aquaculture, and aggregate extraction. The project area of the Yaquina River is used intensively for shallow and medium draft navigation, moorage of small and large boats, and recreation.

The estuary has been isolated from heavy wave action from the Pacific Ocean by jetties extending into the ocean from the mouth of the Yaquina Bay. These jetties were begun in the 1880s and extended to their present length in 1972. Protection of the estuary from direct influence of the Pacific has likely changed sediment transport within the outer estuary over the course of the last century. Present sediment distribution includes nearly clean sand near the mouth of the estuary with finer sediments upstream. Movement of Pacific sand into the estuary with tidal flows is also influenced by the Pacific wave field and by storm surges from the Pacific Ocean. Throughout the lower portion of Yaquina Bay, the shoreline and aquatic areas are significantly altered with riprap, bulkheads, piers, wharves, piling, floating docks, dredging, and other activities.

Depot Slough: Depot Slough is located in the upper Yaquina Estuary and is fed by Depot Creek. Depot Creek begins approximately 6 miles north of the City of Toledo and confluent with the Yaquina River at RM 12.5. The project site is located along the east shore of Depot Slough approximately 0.25 miles upstream from the confluence of the Yaquina River. Depot Slough within the vicinity of the project area is bordered on either side by the Georgia-Pacific paper mill as well as the City of Toledo's residential and industrial areas. The banks within the action area are armored with riprap with minimal riparian vegetation. Substrates within the action area consists of mostly sand and silt. The area is subject to twice-daily tidal influences. The highest measured tide (HMT) elevation within the vicinity of the project area is approximately 11.5 feet MLLW (DSL 2010¹). The Depot Slough navigation channel has been dredged periodically in the past (most recently in 2010²) and is listed by the Oregon Department of Environmental Quality as 303(d) Category 5: water quality limited year-round for fecal coliform (ODEQ 2021³).

¹DSL (Oregon Department of State Lands). 2010. Using Tidal Datums to Determine Highest Measured Tide (HMT). October 19, 2010.

²Port of Toledo. <http://porto.toledo.blogspot.com/2010/09/dredging-depot-slough.html>

³ODEQ (Oregon Department of Environmental Quality). 2021. Oregon's 2012 Integrated Report Assessment Database and 303(d) List. <http://www.deq.state.or.us/wq/assessment/rpt2012/search.asp>

Floodplain: The proposed project will result in no net-rise within the 100-year floodplain.

ESA-Listed Species: There are four species listed under the Endangered Species Act (ESA) with the potential to occur within the vicinity of the project area (see Table 2). In addition, the project area contains designated Critical Habitat, Essential Fish Habitat (ESH) as defined by the Magnuson-Stevens Act, and Essential Salmonid Habitat (ESH) as defined by the DSL.

Table 2. ESA-listed Species with the Potential to Occur within the Vicinity of the Project Area⁴.

Species	Population (ESU/DPS)	Federal Status	Closest Designated Critical Habitat	Potential Site Use
Coho salmon <i>Oncorhynchus kisutch</i>	Oregon Coast ESU	Threatened (76 FR 35755)	Yaquina Bay	Rearing and migration
Green Sturgeon <i>Acipenser medirostris</i>	Southern DPS	Threatened (71 FR 17757)	Yaquina Bay	Foraging
Eulachon <i>Thalichthys pacificus</i>	Southern DPS	Threatened (75 FR 13012)	Yaquina Bay	Foraging and migration
Marbled Murrelet <i>Brachyramphus marmoratus</i>	N/A	Threatened (56 FR 45328)	Approximately 3.5 miles south of project area	Foraging

⁴Sources: NMFS (National Marine Fisheries). 2022. Northwest Regional Office, ESA Salmon Listings.

<http://www.westcoast.fisheries.noaa.gov/index.html>.

StreamNet. 2022. Data Query and Critical Habitat Mapper. <http://www.streamnet.org/>.

USFWS (U.S. Fish and Wildlife Service). 2022. Critical Habitat Mapper. <https://ecos.fws.gov/ecp/report/table/critical-habitat.html>

It is anticipated that the potential effects of the proposed project on ESA-listed fish species under the jurisdiction of the National Marine Fisheries Service (NMFS) will be covered under the existing 2012 Formal Programmatic Opinion, Letter of Concurrence, and Essential Fish Habitat Consultation for Revisions to Standard Local Operating Procedures for Endangered Species to Administer Actions Authorized or Carried Out by the U.S. Corps of Engineers in Oregon (SLOPES IV In-water/Over-water Structures). The project's need for a Section 10 Permit from the Corps authorizes implementation of the terms and conditions of the SLOPES IV In-water/Over-water Structures as a means to comply with the requirements of Section 7 of the ESA (see Attachment B: SLOPES IV Action Implementation Form). Specifically, the proposed project has been designed to comply with the applicable design and construction criteria to *maintain, rehabilitate, replace, or remove an existing in-water or over-water structure*.

It is reasonably certain that the proposed project will have no effect on marbled murrelets under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). Marbled murrelets were reported as “common” in Yaquina Bay in the early 1900s (USFWS 1997⁵), but are now rarely reported inside the bay. Given the proposed timing of in-water work (outside the nesting season of April 1 – September 15), and lack of murrelet presence within the bay as well as the location of the proposed project (within a marina), it is unlikely that marbled murrelets will be present within the action area during project activities. In addition, based on an initial desktop assessment of potential nesting habitat for the murrelet within the vicinity of the proposed project, it was determined that nesting habitat likely does not occur within 0.25 mile of proposed project activities (the farthest distance at which project activities could potentially disturb nesting murrelets).

⁵USFWS (U.S. Fish and Wildlife Service). 1997. Recovery Plan for the threatened marbled murrelet (*Brachyramphus marmoratus*) in Washington, Oregon and California. Portland, Oregon. 203 pp.

B. Describe the existing navigation, fishing and recreational use of the waterway or wetland.

The Yaquina River Estuary Plan calls for management of the area to provide for public, commercial, and industrial uses, including navigation, marinas, aquaculture, and aggregate extraction. The Yaquina River and Depot Slough are used primarily for shallow and medium draft navigation, moorage of small and medium size boats, fishing, and recreation.

(7) PROJECT SPECIFIC CRITERIA AND ALTERNATIVES ANALYSIS

Describe project-specific criteria necessary to achieve the project purpose. Describe alternative sites and project designs that were considered to avoid or minimize impacts to the waterway or wetland*.

Alternatives: As stated above, the Port is proposing to relocate their existing marina boathouse approximately 30 feet south of its current location, and replace the existing marina gangway in-kind with an ADA-accessible gangway to meet the requirements of the OSMB and USFWS grant fund provided for the recently constructed transient moorage docks.

The project team identified the following three alternatives for this project (see below). These alternatives were evaluated to determine if they were feasible from an engineering, environmental and economic standpoint, and that they were consistent with the underlying purpose and need.

Alternative 1 - No Action: The current location of the boathouse does not allow vessel access to the shoreside transient spaces within the marina, and the existing gangway does not meet ADA requirements. A No Action alternative would not bring the project into compliance with the OSMB and USFWS grant requirements, and as such, was not selected.

Alternative 2: Remove Boathouse: As stated above, the Port's Community Boathouse program provides classroom and workshop space for youth and community members to learn and experience hands-on boatbuilding, maintenance, sailing and seamanship. The boathouse was built with funds from the Siletz Tribal Charitable Contribution Fund and serves an invaluable community function. As such, removal of the boathouse was not an acceptable alternative.

Alternative 3: Relocate Boathouse and Replace Gangway: This alternative was ultimately selected as the preferred alternative given that it would only require moving the boathouse 30 feet, and would allow vessel access to the shoreside mooring facilities, as well as provide ADA-access to all parts of the marina. Given the size of the existing boathouse, two new 16-inch diameter pilings are required to safely moor the boathouse in its new proposed location.

(8) ADDITIONAL INFORMATION

Are there any [state](#) or [federally](#) listed species on the project site? ☒ Yes ☐ No ☐ Unknown

Is the project site within designated or proposed critical habitat? ☒ Yes ☐ No ☐ Unknown

Is the project site within a national [Wild and Scenic River](#)? ☐ Yes ☒ No ☐ Unknown

Is the project site within a [State Scenic Waterway](#)? ☐ Yes ☒ No ☐ Unknown

Is the project site within the [100-year floodplain](#)? ☒ Yes ☐ No ☐ Unknown

If yes to any of the above, explain in Block 6 and describe measures to minimize adverse effects to these resources in Block 7.

Is the project site within the [Territorial Sea Plan \(TSP\) Area](#)? ☐ Yes ☒ No ☐ Unknown

If yes, attach TSP review as a separate document for DSL.

Is the project site within a designated [Marine Reserve](#)? ☐ Yes ☒ No ☐ Unknown

If yes, certain additional DSL restrictions will apply.

Will the overall project involve ground disturbance of one acre or more? ☐ Yes ☒ No ☐ Unknown

If yes, you may need a [1200-C permit](#) from the Oregon Department of Environmental Quality (DEQ).

Is the fill or dredged material a carrier of contaminants from on-site or off-site spills? ☐ Yes ☒ No ☐ Unknown

Has the fill or dredged material been physically and/or chemically tested? ☐ Yes ☒ No ☐ Unknown

If yes, explain in Block 6 and provide references to any physical/chemical testing report(s).

Has a cultural resource (archaeological and/or built environment) survey been performed on the project area? ☐ Yes ☒ No ☐ Unknown

If yes, provide a copy of the survey with this application. Do not describe any resources in this document

Do you have any additional archaeological or built environment documentation, or correspondence from tribes or the State Historic Preservation Office? ☐ Yes ☒ No ☐ Unknown

If yes, provide a copy of the survey and/or documentation of correspondence with this application to the Corps only. Do not describe any resources in this document. Do not provide the survey or documentation to DSL.

Is the project part of a DEQ Cleanup site? ☒ No ☐ Yes Permit number _____ DEQ contact. _____

Will the project result in new impervious surfaces or the redevelopment of existing surfaces? Yes ☐ No ☐

If yes, the Applicant must submit a post-construction stormwater management plan as part of this application to DEQ's 401 WQC program for review and approval, see <https://www.oregon.gov/deq/FilterDocs/401wqcertPostCon.pdf>

Identify any other federal agency that is funding, authorizing or implementing the project.

Agency Name	Contact Name	Phone Number	Most Recent Date of Contact

List other certificates or approvals/denials required or received from other federal, state or local agencies for work described in this application.

Agency	Certificate / approval / denial description	Date Applied
NMFS	SLOPES Programmatic Approval	
Oregon DEQ	401 Water Quality Certification	

Other DSL and/or Corps Actions Associated with this Site (Check all that apply):

☐ Work proposed on or over lands owned by or leased from the Corps (may require USC 408 authorization)

☒ State Owned Waterway DSL Waterway Lease # 46274

☐ Other Corps or DSL Permits Corps # _____ DSL # _____

☐ Violation for Unauthorized Activity Corps # _____ DSL # _____

☐ Wetland and Waters Delineation Corps # _____ DSL # _____

Submit the entire delineation report to the Corps; submit only the concurrence letter (if complete) and approved maps to DSL. If not previously submitted to DSL, send under a separate cover letter.

(9) IMPACTS, RESTORATION/REHABILITATION, COMPENSATORY MITIGATION

A. Describe unavoidable environmental impacts that are likely to result from the proposed project. Include permanent, temporary, and direct and indirect impacts.

Permanent/Direct Impacts: The proposed project will result in approximately 5 cubic yards of permanent net fill and 15.5 cubic yards of permanent removal below the HMT of Depot Slough; resulting in a **net removal of 10.5 cubic yards**. Given the relative scale of the project, altered condition of the marina, existing disturbance activities (i.e., boat operation and moorage), general lack of habitat complexity, and proposed conservation and mitigation measures; it is reasonably certain that the proposed project will not result in any adverse change in the instream or downstream functions (i.e., hydrologic, geomorphic, biological, or chemical/nutrient) of Depot Slough. Potential direct effects of the proposed project on ESA-listed species and their habitats (i.e., hydroacoustic impacts, temporary degraded water quality and minor alteration of substrates) will be consistent with those addressed under the SLOPES IV In-water/Overwater Structures Programmatic.

Temporary Impacts: The proposed project may require temporary placement of spud piles to stabilize the barge used during piling removal and installation activities.

Indirect Impacts: The proposed project will result in the minor alteration of substrates and the installation of two new steel pilings. The proposed ADA-accessible, replacement gangway will not increase the existing overwater area and the aluminum grating will continue to allow for light penetration. The boathouse has been in the current location since 2017, and a relatively minor relocation (30 feet to the south) will likely have little to no effect on fish species and their preferred habitat. It is anticipated that any potential indirect effects resulting from the proposed project activities will be offset by the net removal of material below the HMT. As such, given the existing baseline conditions within the project area, and proposed conservation and mitigation measures, it is reasonably certain that the proposed project will not result in any long-term adverse effects to existing instream or downstream functions (i.e., hydrologic geomorphic, biological, or chemical/nutrient) of Depot Slough. Potential indirect effects of the proposed project on ESA-listed species and their habitats (i.e., in-kind replacement of overwater structures and minor alteration of substrates) will be consistent with those addressed under the SLOPES IV In-water/Overwater Structures Programmatic.

B. For temporary removal or fill or disturbance of vegetation in waterways, wetlands or riparian (i.e., streamside) areas, discuss how the site will be restored after construction to include the timeline for restoration.

N/A – All proposed project activities will occur within the footprint of existing structures.

Compensatory Mitigation

C. Proposed mitigation approach. Check all that apply:

☐ Permittee-responsible Onsite Mitigation ☐ Permittee-responsible Offsite Mitigation ☐ Mitigation Bank or In-lieu Fee ☐ Payment to Provide (not approved for use with Corps permits)

D. Provide a brief description of mitigation approach and the rationale for choosing that approach. If you believe mitigation should not be required, explain why.

As discussed above, the proposed project will result in a permanent net removal of approximately 10.5 cubic yards below the HMT of Depot Slough from excavation of material from under the existing gangway and removal of three existing timber pilings to offset the installation of two new steel pilings. In addition, relocation of the boathouse and the replacement of the gangway will not increase the existing area of overwater structures, and will maintain existing light penetration to the water. As such, it is anticipated that the proposed project will be self-mitigating, and additional mitigation will not be required.

Functional Assessment: OAR 141-085-0685 requires that a functional assessment be conducted for impacts to waters of the state. Given that the proposed project will occur within a non-wadable slough (Depot Slough), the best professional judgement (BPJ) methodology has been employed for this assessment.

In accordance with OAR 141-085-0685(4)(f)(A) and (B), the functions and values of the Yaquina River/Depot Slough within the project area were assessed and rated based on eleven stream functions within four broad functional groups (hydrologic, geomorphic, biological, and water quality), as outlined in the Stream Function Assessment Method (SFAM) developed by the Oregon Department of State Lands (DSL) and U.S. Environmental Protection Agency (EPA).

Grouped Functions	Existing		Proposed	
	Function Group Rating	Value Group Rating	Function Group Rating	Value Group Rating
Hydrologic Functions (SWS, SST, FV)	Moderate	Low	Moderate	Low
Geomorphic Functions (SC, SM)	Low	Moderate	Low	Moderate
Biological Functions (MB, CMH, STS)	Moderate	Moderate	Moderate	Moderate
Water Quality Functions (NC, CR, TR)	Low	Moderate	Low	Moderate

Hydrologic functions (surface water storage, sub-surface transfer, and flow variation) are assessed through an evaluation of five function attributes, including overbank flow, effective discharge, base flow, groundwater flux, and riparian structure and composition. The project site is located on the eastern shore of Depot Slough, a tributary to the Yaquina River in Toledo. The action area is within a marina surrounded by riprap shorelines with little riparian cover. The substrates within and around the marina consist primarily of silt and sand. Depot Slough is subject to twice daily tidal fluctuations as well as stream discharges from Depot Creek. Two earthen dams, one located approximately a quarter of mile upstream, the other approximately three quarters of a mile upstream, have been constructed at road crossings and restrict free flow of Depot Slough. At least three additional culverts at road crossings also restrict flow of Depot Slough/Creek upstream of the project area. Residential and industrial development (including a large lumber mill), up-basin logging, and road construction have changed the historical conditions around Depot Slough, including the hydrologic functions. Given the relative scale and location of the project (i.e., within an existing marina), and the baseline conditions within the marina, it is reasonably certain that the proposed replacement gangway and installation of two new pilings will have no effect on the hydrologic functions of Depot Slough.

Grouped Function	Specific Functions	Pre Function and Value	Post Function and Value
Hydrologic Functions	Surface water storage (SWS)	Function rating: Moderate Value rating: Low	Function rating: Moderate Value rating: Moderate
	Sub/surface transfer (SST)	Function rating: Moderate Value rating: Low	Function rating: Moderate Value rating: Low
	Flow variation (FV)	Function rating: Moderate Value rating: Low	Function rating: Moderate Value rating: Low

Geomorphic functions (sediment continuity and substrate mobility) are assessed through an evaluation of six function attributes, including overbank flow, effective discharge, bed mobility, sediment character, bank stability, and hydraulic variability. Sediment deposition, most likely due to up-basin logging and development within the surrounding landscape, has reduced geomorphic function. Periodic dredging of Depot Slough is required to ensure safe navigation within Depot Slough. The aforementioned culverts and earthen dams likely impede both sediment continuity and substrate mobility within the basin. The banks of the project area are bordered by riprap and residential and industrial development. Banks are most likely stable.

Grouped Function	Specific Functions	Pre Function and Value	Post Function and Value
Geomorphic Functions	Sediment continuity (SC)	Function rating: Low Value rating: Moderate	Function rating: Low Value rating: Moderate
	Substrate mobility (SM)	Function rating: Low Value rating: Moderate	Function rating: Low Value rating: Moderate

Biological functions (biodiversity maintenance, aquatic/riparian habitat creation, and trophic level maintenance) are assessed through an evaluation of twelve function attributes, including overbank flow, effective discharge, base flow, bed mobility, sediment character, bank stability, hydraulic variability, stream habitat, riparian structure and composition, aquatic species structure and composition, water quality, and sedimentation. The reductions in riparian reserves, agricultural, industrial and residential development as well as logging within the upper watershed have most likely contributed to reduced biologic functions within the project area. Riparian reserves in the vicinity of the project area are fragmented and poorly connected. Off-channel habitat and refugia are present in moderation upstream of the project area but are at risk within project area due to insufficient size, number, and connectivity.

Short-term, localized project-related increases in background turbidity levels may occur as a result of proposed piling installation below the HMT of Depot Slough. In the short-term, increases in turbidity can reduce forage quantity for aquatic species, and disrupt behavioral patterns such as feeding and sheltering. Exposure duration is a critical determinant of physical or behavioral turbidity effects. Most aquatic species have evolved in systems that periodically experience short-term pulses (days to weeks) of high suspended sediment loads, often associated with flood events, and are adapted to such seasonal high pulse exposures.

As discussed above, the proposed project will result in approximately 10.5 cubic yards of permanent net removal below the HMT of Depot Slough. Given the relatively small scale of the project, existing baseline conditions, general lack of existing habitat complexity, and proposed conservation and mitigation measures; it is reasonably certain that the proposed project will not result in any long-term, adverse effect to existing biological functions. Forage quantity for aquatic species may be temporarily reduced within the immediate in-water work area as benthic organisms become disturbed by proposed piling installation; however, recolonization of benthic organisms will likely occur within months following project completion.

Grouped Function	Specific Functions	Pre Function and Value	Post Function and Value
Biological Functions	Maintain biodiversity (MB)	Function rating: Moderate Value rating: Moderate	Function rating: Moderate Value rating: Moderate
	Create and maintain habitat (aquatic/riparian) (CMH)	Function rating: Low Value rating: Moderate	Function rating: Low Value rating: Moderate
	Sustain trophic structure (STS)	Function rating: Moderate Value rating: Moderate	Function rating: Moderate Value rating: Moderate

Water quality functions (including nutrient cycling, chemical regulation, and thermal regulation) are assessed through an evaluation of seven function attributes, including overbank flow, base flow, groundwater flux, bank stability, riparian structure and composition, water quality, and water temperature. In general, the water quality in Depot Slough has been significantly affected by human activities such as residential, industrial and agricultural development, road construction, and logging activities in upper drainage. Depot Slough is listed by the Oregon Department of Environmental Quality as 303(d) Category 5: water quality limited for fecal coliform. Lower water quality has detrimental effects on native fish both as adults and juveniles as they migrate to and from spawning streams.

Equipment operating near and over Depot Slough within the project area represent potential sources of chemical contamination. Accidental spills of construction materials or petroleum products would adversely affect water quality. Development and implementation of a Pollution Control Plan that will include containment measures and spill response for construction-related chemical hazards will significantly reduce the likelihood of chemical releases within the project area. As such, it is reasonably certain that the proposed project will have no measurable effect on the chemical and nutrient functions of Depot Slough.

Grouped Function	Specific Functions	Pre Function and Value	Post Function and Value
Water Quality Functions	Nutrient cycling (NC)	Function rating: Low Value rating: Moderate	Function rating: Low Value rating: Moderate
	Chemical regulation (CR)	Function rating: Low Value rating: Moderate	Function rating: Low Value rating: Moderate
	Thermal regulation (TR)	Function rating: Moderate Value rating: Moderate	Function rating: Moderate Value rating: Moderate

Mitigation Bank / In-Lieu Fee Information:

Name of mitigation bank or in-lieu fee project: _____

Type of credits to be purchased: _____

If you are proposing permittee-responsible mitigation, have you prepared a compensatory mitigation plan?

☐ **Yes.** Submit the plan with this application and complete the remainder of this section.☐ **No.** A mitigation plan will need to be submitted (*for DSL, this plan is required for a complete application*).**Mitigation Location Information (Fill out only if permittee-responsible mitigation is proposed)**

Mitigation Site Name/Legal Description		Mitigation Site Address		Tax Lot #
County		City (nearest)		Latitude & Longitude (in DD.DDDD format)
Township	Range	Section	Quarter/Quarter	

(10) ADJACENT PROPERTY OWNERS FOR PROJECT AND MITIGATION SITE☐ **Pre-printed labels of adjacent property owners attached (only required if more than 5 adjacent owners)**Tax Lot 06799

Union Pacific Railroad Co
 Attn: L. Shirley Prop Tax Comp
 PO Box 2500
 Broomfield, CO 80038

Tax Lot 007400, 07000, 07300

Mark & Shyla Richardson
 PO Box 224
 Newport, OR 97365

Tax Lot 08000

Pacific Inland Holdings, LLC
 Attn: Rick Prest
 268 N Beaver Valley Dr
 Seal Rock, OR 97376

Tax Lot 10700, 01500

Georgia Pacific Toledo, LLC
 Attn: Property Tax
 PO Box 105681
 Atlanta, GA 30348

Tax Lots 10900, 06900

Owned by Applicant

(11) CITY/COUNTY PLANNING DEPARTMENT LAND USE AFFIDAVIT
(TO BE COMPLETED BY LOCAL PLANNING OFFICIAL)

I have reviewed the project described in this application and have determined that:

- ☐ This project is not regulated by the comprehensive plan and land use regulations.
- ☐ This project is consistent with the comprehensive plan and land use regulations.
- ☒ This project is consistent with the comprehensive plan and land use regulations with the following:
- ☐ Conditional Use Approval
 - ☐ Development Permit
 - ☒ Other Permit (explain in comment section below)
- ☐ This project is not currently consistent with the comprehensive plan and land use regulations. To be consistent requires:
- ☐ Plan Amendment
 - ☐ Zone Change
 - ☐ Other Approval or Review (explain in comment section below)

An application or variance request ☐ has ☐ has not been filed for approvals required above.

Local planning official name (print) Justin Peterson	Title Contract Planner	City/County Toledo
Signature 		Date 6/8/2022

Comments:

The project is located in the Floodway. A floodplain permit from the City of Toledo is required.

(12) COASTAL ZONE CERTIFICATION

If the proposed activity described in your permit application is within the Oregon coastal zone, the following certification is required before your application can be processed. A signed statement will be forwarded to the Oregon Department of Land Conservation and Development (DLCD) for its concurrence or objection. For additional information on the Oregon Coastal Zone Management Program and consistency review of federally permitted projects, contact DLCD at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301 or call 503-373-0050, or click [here](#).

CERTIFICATION STATEMENT

I certify that, to the best of my knowledge and belief, the proposed activity described in this application complies with the approved Oregon Coastal Zone Management Program and will be completed in a manner consistent with the program.

Print/Type Applicant Name Lorna Davis	Title Port Manager
Applicant Signature 	Date 5/19/2022

(13) SIGNATURES

Application is hereby made for the activities described herein. I certify that I am familiar with the information contained in the application, and, to the best of my knowledge and belief, this information is true, complete and accurate. I further certify that I possess the authority to undertake the proposed activities. By signing this application I consent to allow Corps or DSL staff to enter into the above-described property to inspect the project location and to determine compliance with an authorization, if granted. I hereby authorize the person identified in the authorized agent block below to act in my behalf as my agent in the processing of this application and to furnish supplemental information in support of this permit application. I understand that the granting of other permits by local, county, state or federal agencies does not release me from the requirement of obtaining the permits requested before commencing the project. I understand that payment of the required state processing fee does not guarantee permit issuance. To be considered complete, the fee must accompany the application to DSL. The fee is not required for submittal of an application to the Corps.

Fee Amount Enclosed	\$ 885.00
----------------------------	-----------

Applicant Signature (required) must match the name in Block 2

Print Name	Title
Lorna Davis	Port Manager

Signature 	Date 5-19-2022
--	-------------------

Authorized Agent Signature

Print Name	Title
Eric Campbell	Principal (Campbell Environmental)

Signature	Date
-----------	------

Landowner Signature(s)***Landowner of the Project Site (if different from applicant)**

Print Name	Title
------------	-------

Signature	Date
-----------	------

Landowner of the Mitigation Site (if different from applicant)

Print Name	Title
------------	-------

Signature	Date
-----------	------

Department of State Lands, Property Manager (to be completed by DSL)

If the project is located on state-owned submerged and submersible lands, DSL staff will obtain a signature from the Land Management Division of DSL. A signature by DSL for activities proposed on state-owned submerged/submersible lands only grants the applicant consent to apply for a removal-fill permit. A signature for activities on state-owned submerged and submersible lands grants no other authority, express or implied and a separate proprietary authorization may be required.

Print Name	Title
------------	-------

Signature	Date
-----------	------

*Not required by the Corps

(14) ATTACHMENTS

☒ Drawings

- ☒ **Location map with roads identified** (Attachment A, Figure 1)
- ☒ **U.S.G.S. topographic map** (Attachment A, Figure 1)
- ☒ **Tax lot map** (Attachment A, Figure 2)
- ☒ **Recent aerial photo** (Attachment A, Figure 3)
- ☒ **Site plan(s)** (Attachment A, Plan Sheets 4 and 7)
- ☒ **Plan view and cross section drawing(s)** (Attachment A, Plan Sheets 5 and 6)
- ☒ Project photos (Attachment A, Figure 8)
- ☐ Erosion and Pollution Control Plan(s), if applicable
- ☐ DSL/Corps Wetland Concurrence letter and map, if approved and applicable
- ☐ Pre-printed labels for adjacent property owners (required if more than 5)
- ☐ [Incumbency Certificate](#) if applicant is a partnership or corporation
- ☐ Restoration plan or rehabilitation plan for temporary impacts
- ☐ Mitigation plan
- ☐ Wetland functional assessments, if applicable
 - ☐ Cover page
 - ☐ Score sheets
 - ☐ ORWAP OR, F, T, & S forms
 - ☐ ORWAP reports
 - ☐ Assessment maps
 - ☐ ORWAP reports: soils, topo, assessment area, contributing area
- ☐ Stream functional assessments, if applicable
 - ☐ Cover page
 - ☐ Score sheets
 - ☐ SFAM PA, PAA, & EAA forms
 - ☐ SFAM report
 - ☐ Assessment maps
 - ☐ Aerial photo site map and topo site map (both maps should document PA, PAA, & EAA)
- ☐ Compensatory Mitigation (CM) Eligibility and Accounting Worksheet
 - ☐ Matching Quickguide sheet(s)
 - ☐ CM Eligibility and Accounting sheet
- ☐ Alternatives analysis
- ☐ Biological Assessment (if requested by the Corps PM during pre-application coordination)
- ☐ Stormwater management plan (may be required by the Corps or DEQ)
- ☐ Other:
 - ☒ SLOPES IV Action Notification Form (Attachment B)
 - ☐ _____
 - ☐ _____
 - ☐ _____
 - ☐ _____
 - ☐ _____
 - ☐ _____
 - ☐ _____

For U.S. Army Corps of Engineers, send application to:

USACE Portland District
ATTN: CENWP-OD-GP
Box 2946
Portland, OR 97208-2946
Phone: 503-808-4373
portlandpermits@usace.army.mil

Counties: Baker, Benton, Clackamas, Clatsop, Columbia, Gilliam, Grant, Hood River, Jefferson, Lincoln, Linn, Malheur, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Washington, Wheeler, Yamhill

OR

US Army Corps of Engineers
ATTN: CENWP-ODG-E
211 E. 7th Avenue, Suite 105
Eugene, OR 97401-2722
Phone: 541-465-6868
portlandpermits@usace.army.mil

Counties: Coos, Crook, Curry, Deschutes, Douglas, Jackson, Josephine, Harney, Klamath, Lake, Lane

For Department of State Lands, send application to:

West of the Cascades:
Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
Phone: 503-986-5200

East of the Cascades:
Department of State Lands
1645 NE Forbes Road, Suite 112
Bend, Oregon 97701
Phone: 541-388-6112

For Department of Environmental Quality, email application to:

ATTN: DEQ 401 Certification Program
Water Quality
700 NE Multnomah St, Suite 600
Portland, OR 97232
401applications@deq.state.or.us

Attachment A

Figures



Figure 1: Location Map
Port of Toledo Boat House & Gangway
(USGS 2022)

Applicant: Port of Toledo
Project Name: Port of Toledo Boat House & Gangway
Location: Toledo, OR – Lincoln County
Lat/Long: 44.3706 N/ -123.5616 W
T/R/S: T:11S/R:10W/S:17
Date: 05/12/2022



Figure 2: Tax Lot Map
 Port of Toledo Ramp Replacement &
 Boathouse Relocation
 (ORMAP 2022)

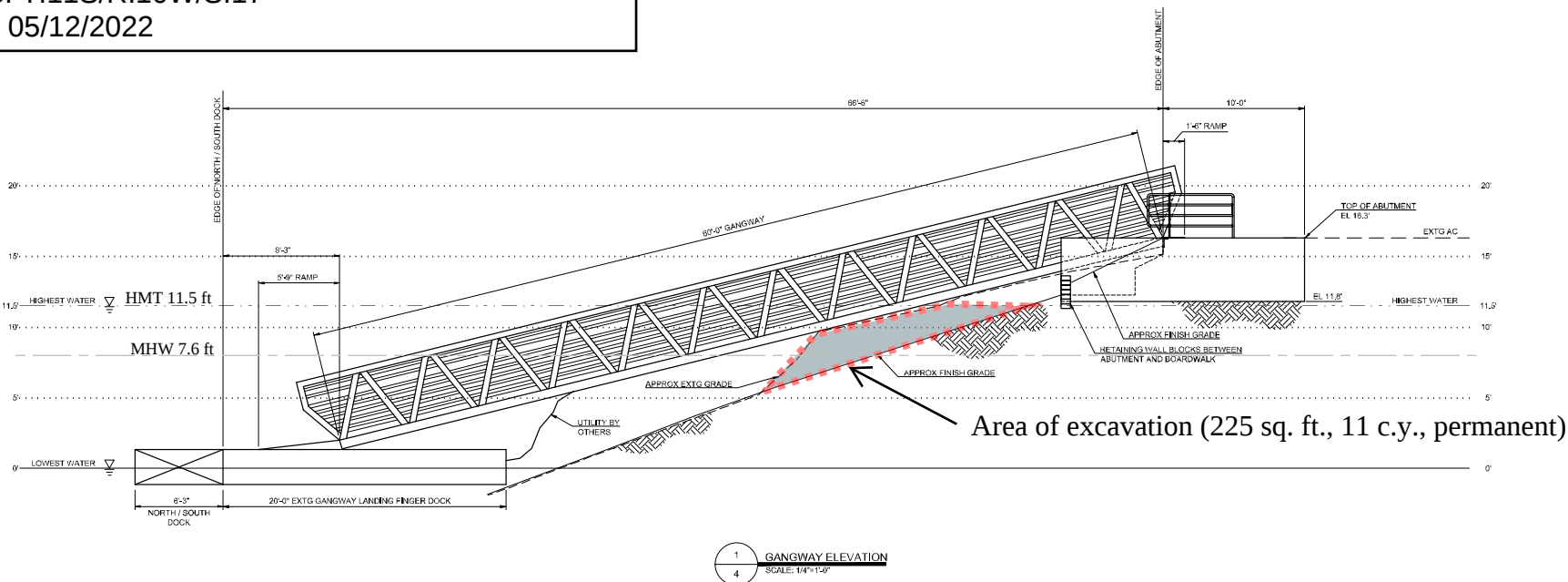
Applicant: Port of Toledo
Project Name: Ramp replacement/boathouse relocation
Location: Toledo, OR – Lincoln County
Lat/Long: 44.3706 N/ -123.5616 W
TRS: T:11S/R:10W/S:17
Date: 04/27/2022



Figure 3: Aerial Photo
**Port of Toledo Ramp Replacement &
Boathouse Relocation**
(Google Earth 2019)

Applicant: Port of Toledo
Project Name: Port of Toledo Boat House and Gangway
Location: Toledo, OR – Lincoln County
Lat/Long: 44.3706 N/ -123.5616 W
T/R/S: T:11S/R:10W/S:17
Date: 05/11/2022

Applicant: Port of Toledo
 Project Name: Port of Toledo Boathouse & Gangway
 Location: Toledo, OR - Lincoln County
 Lat/Long: 44.3706 N/-123.5616 W
 T/R/S: T:11S/R:10W/S:17
 Date: 05/12/2022



NO.	REVISION	DATE	BY	APP'D

Filename: L:\Projects\74000\74178\74178-009\Structural\Drawings\74178-000_S01-S07.dwg User: Nicholas Mincks Layout Tab: S-06 CAD Plot Date/Time: 7/13/2021 7:52:44 AM



TOP VIEW



1
4

ABUTMENT DETAILS
SCALE: 1/2"=1'-0"

D	ISSUED FOR CONSTRUCTION			
No.	Revision	Date	By	App'd

**GANGWAY AND ABUTMENT DETAIL FOR:
PORT OF TOLEDO BOAT HOUSE AND GANGWAY
367 SE BUTLER BRIDGE RD, TOLEDO, OREGON 97391**



Know what's below.
Call before you dig.



EXPIRES: 06/30/22

DESIGNED:

NRM

CHECKED:
HAY

JULY 2021

74178.000

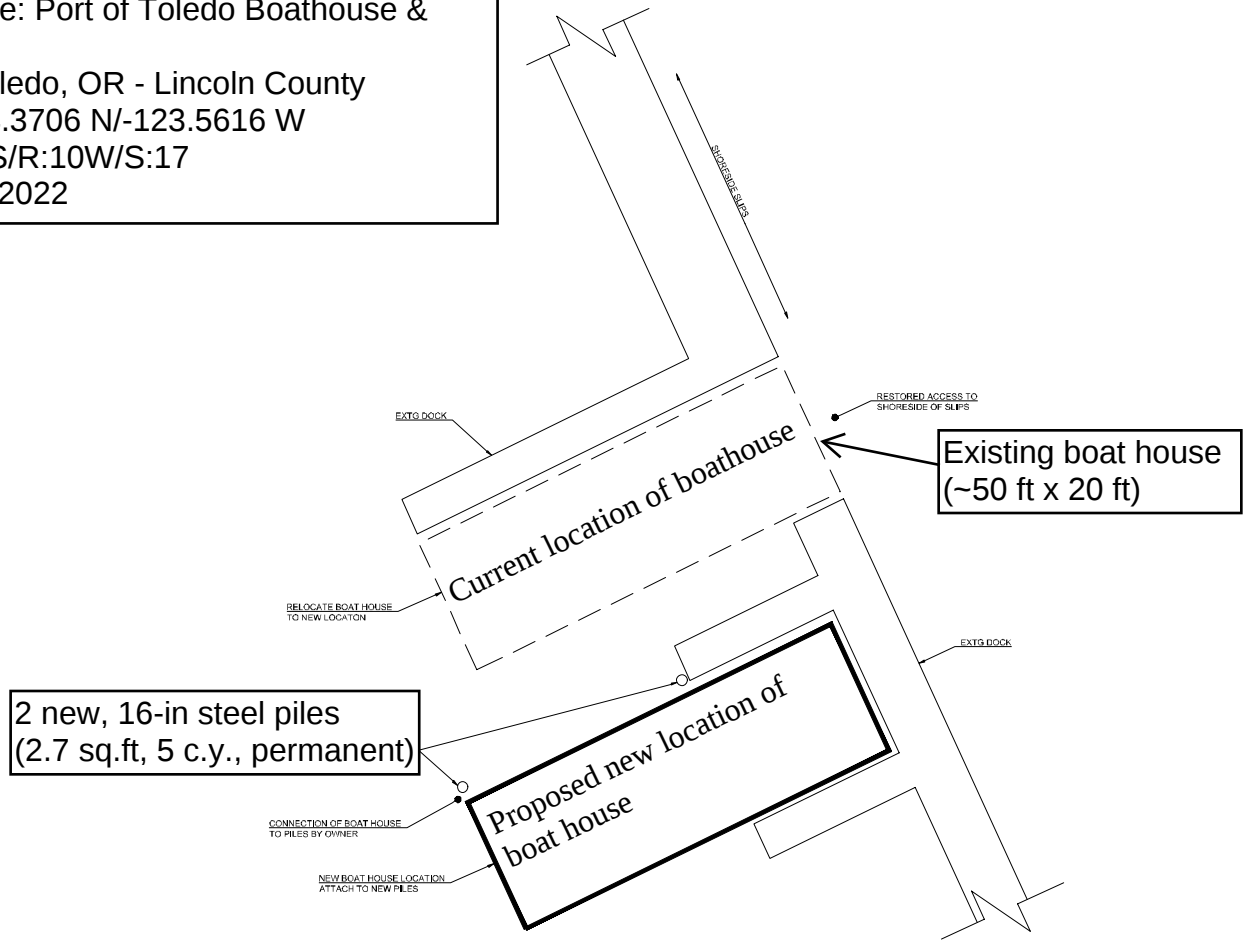
SHEET

6 /

07

Applicant: Port of Toledo
 Project Name: Port of Toledo Boathouse & Gangway
 Location: Toledo, OR - Lincoln County
 Lat/Long: 44.3706 N/-123.5616 W
 T/R/S: T:11S/R:10W/S:17
 Date: 05/12/2022

Depot Slough

1 BOAT HOUSE RELOCATION PLAN
 1 SCALE: 1/8"=1'-0"

NO.	REVISION	DATE	BY	APPROVED

BOAT HOUSE RELOCATION PLAN FOR:
PORT OF TOLEDO BOAT HOUSE AND GANGWAY
 367 SE BUTLER BRIDGE RD, TOLEDO, OREGON 97391

811
 Know what's below.
 Call before you dig.

REGISTERED PROFESSIONAL
 ENGINEER
 481148E
 OREGON
 JAN 23, 2011
 HOWARD A. WELLS
 EXPIRES: 06/30/22

DESIGNED:
 VSM

CHECKED:
 HAW

JULY 2021
 14176.R02

SHEET
 7 7

PBS
 PBS Engineering and
 Planning
 4412 S. Center Avenue
 Portland, OR 97226
 phone.com



Photo 1: View to the west showing the three piles to be removed as mitigation.

Figure 8: Photographs

Port of Toledo Boat House and Gangway

(Port of Toledo May, 2022)

Applicant: Port of Toledo

Project Name: Port of Toledo Boat House & Gangway

Location: Toledo, OR – Lincoln County

Lat/Long: 44.3706 N/ -123.5616 W

T/R/S: T:11S/R:10W/S:17

Date: 05/12/2022

Attachment B

SLOPES IV Action Notification Form

SLOPES IV PROGRAMMATIC – IN-WATER OVER-WATER STRUCTURES ACTION NOTIFICATION FORM

Submit this completed action notification form with the following information to NMFS at slopes.nwr@noaa.gov. The SLOPES IV Programmatic e-mail box is to be used for **Incoming Only**.

NMFS Review and Approval. All actions must be individually reviewed and approved by NMFS as consistent with this opinion before that action is authorized. NMFS will notify the Corps within 30 calendar days if the action is approved or disqualified. Attach engineering designs and the results of a site assessment for contaminants to identify the type, quantity, and extent of any potential contamination.

Attach a copy of the erosion and pollution control plan, if required.

DATE OF REQUEST: _____

NMFS Tracking #: _____

Statutory Authority: ☐ ESA ONLY ☐ EFH ONLY ☒ ESA & EFH INTEGRATED

Lead Action Agency: Corps of Engineers

Action Agency Contact: Kinsey Friesen _____ Individual Corps Permit #: _____

Applicant: Lorna Davis _____ Individual DSL Permit #: _____

Action Title: Port of Toledo Boathouse and Gangway _____

6th Field HUC & Name: Depot Creek

Latitude & Longitude
(including degrees,
minutes, and seconds) 44.3706 N/ -123.5616 W (WGS 84)

Proposed Project: *Start Date:* November 1, 2022 *End Date:* February 1, 2022

Action Description:

The Port of Toledo (Port) is proposing to relocate an existing boathouse and replace an existing gangway within their marina located along Depot Slough in Toledo, Oregon (see JPA Attachment A: Figures). The current boathouse location and existing marina gangway do not meet the requirements of the grant fund provided to the Port from the Oregon State Marine Board (OSMB) and U.S. Fish and Wildlife Service (USFWS) for the recently constructed transient moorage docks. The current boathouse location does not allow for vessel access to the shoreside of the transient mooring dock (see JPA Attachment A: Figures), and the existing marina gangway is not ADA-compliant. As such, in coordination with OSMB and USFWS, the Port has agreed to relocate the existing boathouse approximately 30 feet south of its current location, and replace the existing marina gangway in-kind with an ADA-accessible gangway. Relocation of the boathouse will require the installation of two (2) new, 16-inch diameter, steel moorage pilings. Replacement of the existing gangway will require excavation of in-water sediments to slightly lower the grade of the gangway from the abutment. To mitigate for the installation of two new steel moorage pilings, the project will also include the removal of three existing timber pilings.

All work conducted below the HMT of Depot Slough will occur between November 1 and February 1 of the Oregon Department of Fish and Wildlife (ODFW)-preferred in-water work window (IWWW) for Depot Slough and the Yaquina River estuary, a period when Endangered Species Act (ESA)-listed species are least likely to be present within the vicinity of the project area. The proposed project will require approximately two to four weeks of in-water/overwater work. Construction crews and equipment will access the project site via existing parking areas, floating docks, and/or floating barge.

Boathouse Relocation

The existing boathouse will be relocated approximately 30 feet to the south using a small tow vessel. The boathouse will then be secured to two new, 16-inch diameter, steel moorage pilings. The new pilings will be installed using a vibratory hammer, with some potential use of an impact hammer to seat the pilings to their desired depth of approximately 30 feet into the substrate. It is anticipated that each pile will require approximately 15 to 30 minutes of vibratory hammer use. The contractor will implement appropriate sound attenuation methods (i.e., “soft-start” procedures and use of a bubble curtain) as outlined below in the Measures to Minimize Impacts. The three existing timber pilings (for mitigation) will be dislodged with a vibratory hammer and slowly lifted from the sediment and placed into a contained area for appropriate upland disposal.

Gangway Replacement

The existing, grated aluminum gangway (~40-foot long by 5-foot wide) will be removed and the existing shoreline abutment will be demolished using an excavator or crane. The proposed ADA-accessible, replacement gangway will be 60 feet long and 5 feet wide, but will not increase the overwater area, as the additional length will extend upland to the new abutment. The replacement gangway will be built of grated, nonskid aluminum with guard rails. Full-width, hinged aluminum transition ramps will also be installed at both ends of the gangway, and the toe end adjusted to allow the dock system free movement to travel the full range of water levels. Replacement utilities lines will still run under the ramp.

A replacement concrete abutment will be constructed at the shoreline above HMT for the attachment and movement of the gangway. An excavator will be used to remove approximately 11 cubic yards of sediment from under the gangway near the shoreline to ensure free movement of the new ADA-compliant, gangway grade throughout the tidal elevation range. All excavated material will be hauled offsite to an appropriate upland disposal location.

Measures to Minimize Impacts: The following conservation measures have been incorporated into the proposed project design and construction methods to minimize and avoid potential adverse effects to ESA-listed fish species, their designated Critical Habitat elements, and Essential Fish Habitat:

- All work conducted below the HMT will occur during the ODFW-preferred IWWW for the Yaquina River estuary (November 1 – February 1), a period when ESA-listed species are less likely to be present within the vicinity of the project area.
- All heavy equipment (i.e., crane) will access the project site via existing asphalt parking lots and/or floating barges.
- All new pilings will be installed with a vibratory hammer. In the event that the vibratory hammer cannot fully embed the piles to the necessary depth, the contractor will use an impact hammer to seat the piles. Use of an impact hammer will be limited to daylight hours between 7 a.m. and 7 p.m.

- During the use of an impact hammer a multi-level bubble curtain will be installed to reduce sound pressure levels. The bubble curtain system shall conform to the following:
 - o If water velocity is greater than 1.6 feet per second, surround the piling being driven by a confined bubble curtain (e.g., a bubble ring surrounded by a fabric or non-metallic sleeve) that will distribute air bubbles around 100% of the piling perimeter for the full depth of the water column. Bubblers shall completely surround the pile.
 - o Piling shall be completely engulfed in bubbles over the full depth of the water column at all times when an impact pile driver is in use. Bubbles are not required during vibratory pile driving.
- The contractor will initiate daily “soft-start” procedures to provide a warning and/or give species near piling removal and installation activities a chance to leave the area prior to a vibratory hammer or impact driver operating at full capacity; thereby, exposing fewer species to loud underwater and airborne sounds.
 - o A soft-start procedure will be used at the beginning of in-water piling removal and installation, or any time piling removal/installation has ceased for more than 30 minutes.
 - o For vibratory hammer operation, the contractor will initiate noise from vibratory hammers for 15 seconds at reduced energy followed by a 30-second waiting period. The procedure shall be repeated two additional times.
 - o For impact pile driving (if necessary), the contractor will provide an initial set of strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent sets. (The reduced energy of an individual hammer cannot be quantified given the variations between individual drivers. In addition, the number of strikes will vary at reduced energy given that raising the hammer at less than full power and then releasing it results in the hammer bouncing as it strikes the pile, resulting in multiple strikes).
- All pilings will be removed with a vibratory hammer. During piling removal, the following criteria will be implemented to minimize creosote release, sediment disturbance and sediment resuspension:
 - o Install a floating surface boom to capture floating surface debris.
 - o Consider the best tidal condition for piling removal; try to remove in-the-dry.
 - o Keep all equipment (e.g., bucket, cable, vibratory hammer) out of the water, grip piles above the waterline, and complete work during low water and low current conditions.
 - o Dislodge piling with a vibratory hammer, when possible; never intentionally break a pile.
 - o “Wake” the piling by vibrating to break the friction bond between the piling and sediment.
 - o Slowly lift the pile from the sediment and through the water column.
 - o Place the pile in a containment basin on a barge deck, pier, or shoreline without attempting to clean or remove any adhering sediment.
 - o Fill the holes left by each piling with clean, native sediments immediately upon removal.

- o Dispose of all removed piles, floating surface debris, any sediment spilled on work surfaces, and all containment supplies at a permitted upland disposal site.
- When a pile breaks or is intractable during removal, removal will continue as follows:
 - o Every attempt short of excavation will be made to remove each piling, if a pile in uncontaminated sediment is intractable, breaks above the surface, or breaks below the surface, cut the pile or stump off at least 3 feet below the surface of the sediment.
- The following conditions will apply when removing preservative-treated wood:
 - o To the extent possible, ensure no wood debris falls into the water. If wood debris does fall into the water, remove it immediately.
 - o Wood debris will be placed in an appropriate dry storage site until removed from the site.
 - o Wood construction debris will not be left in the water or stacked on the bank or below HMT.
 - o Wood debris removed during the project will be evaluated to ensure proper disposal.
- A Pollution Control Plan (PCP) will be prepared by the Contractor and carried out commensurate with the scope of the project that includes the following:
 - o Best management practices to confine, remove, and dispose of construction waste.
 - o Procedures to contain and control a spill of any hazardous material.
- All conditions of Oregon Department of Environmental Quality's (ODEQ's) 401 Water Quality Certification will be followed.
- All equipment will be inspected daily for fluid leaks. Any leaks detected will be repaired before operation is resumed. Stationary power equipment (i.e., cranes) operated within 150 feet of the river will be diapered to prevent leaks.
- All new pilings will be fitted with devices to prevent perching by piscivorous birds.
- Replacement overwater gangway will be grated to allow for light penetration.

The proposed project will result in a permanent net removal of approximately 10.5 cubic yards below the HMT of Depot Slough from excavation of material from under the existing gangway and removal of three existing timber pilings to offset the installation of two new steel pilings. In addition, relocation of the boathouse and the replacement of the gangway will not increase the existing area of overwater structures, and will maintain existing light penetration to the water. As such, it is anticipated that the proposed project will be self-mitigating, and additional mitigation will not be required.

Type of Action:

Identify the type of action proposed.

- ☒ In-water Over-water Structure
- ☐ Access Maintenance
- ☒ Piling Installation or Removal

- *What is the number of impact hammer strikes per pile?*
It is anticipated that all pilings will be installed with a vibratory hammer. However, in the event that the vibratory hammer cannot fully embed the pilings to the required depth, the contractor may use an impact hammer to seat the pilings to the required depth. If an impact hammer is used, up to 20 strikes per minute may be required.
- *What is the number of hours/minutes required to drive one pile and all piles?*
It is anticipated that each pile will require approximately 15-30 minutes of vibratory hammer use.
- *What is the number of hours per day pile driving will occur?*
All new pilings will be installed with a vibratory hammer. In the event that the vibratory hammer cannot fully embed the piles to the necessary depth, the contractor may use an impact hammer to seat the piles. Use of an impact hammer will be limited to daylight hours between 7 a.m. and 7 p.m.
- *What is the depth of water and type of substrate the piles will be driven in?*
The highest measured tide (HMT) elevation within the vicinity of the project area is 11.5 feet MLLW. Water depths fluctuate between approximately 5 to 20 feet with the normal tidal cycles. Substrates throughout the project area are comprised primarily of silty sand.
- *If an impact hammer is used, will it be the entire pile or the last few hits per pile?*
Only the last few hits per piling, if the piling cannot be fully embedded using a vibratory hammer.
- *What is the diameter of the piles?*
The two new steel pilings will be 16-inch diameter.
- *Will pile-driving be continuous?*
No
- *Will be pile be driven straight or battered?*
Straight
- *Will a template be used?*
No
- *Pile type (H, round, etc)?*
The pilings proposed for installation are 16-inch diameter, round steel.
- *When is pile-driving proposed?*
As discussed above, it is anticipated that all pilings will be installed with a vibratory hammer. However, in the event that the vibratory hammer cannot fully embed the pilings to the required depth, the contractor may use an impact hammer to seat the pilings to the required depth.
- *What life-stages are known to occur within the action area.*
Rearing and migration; foraging.
- *If provided, what is the source of hydroacoustic assumptions?*
- *Installation plan/ schematics included?*
see JPA

Pile spacing?
Varies

Residential Dock

- Is the proposed dock within 100 ft of a tributary that supports a run of ESA listed fish? Yes____ No____
- Is the pier leading to the float wider than 8 ft? N/A Yes____ No____

NMFS Species/Critical Habitat Present in Action Area:

Identify the species found in the action area:

Species:

- ☐ Lower Columbia River Chinook
- ☐ Upper Willamette River spring-run Chinook
- ☐ Upper Columbia spring-run Chinook
- ☐ Snake River spring/summer run Chinook
- ☐ Snake River fall-run Chinook
- ☐ Columbia River chum
- ☐ Lower Columbia River coho
- ☒ Oregon Coast coho salmon
- ☐ Southern Oregon/Northern California coasts coho
- ☐ Snake River sockeye
- ☐ Lower Columbia River steelhead
- ☐ Upper Willamette River steelhead
- ☐ Middle Columbia River steelhead
- ☐ Upper Columbia River steelhead
- ☐ Snake River Basin steelhead
- ☒ Southern Green sturgeon
- ☒ Eulachon

- ☒ Steller sea lion

EFH

- ☒ Salmon
- ☒ Coastal Pelagics
- ☒ Groundfish

Aquatic Vegetation

- Is the project in a saltwater influenced area (estuary)? Yes ☐ No ☐
Has an aquatic vegetation survey been completed? Yes ☐ No ☒

If yes, include the results of the survey

If no, explain below why a survey was not conducted: A survey was not conducted given the small footprint of the two proposed steel pilings (2.6 square feet).

Terms and Conditions:

Check the Terms and Conditions from the biological opinion that will be included as conditions on the permit issued for this proposed action. Please attach the appropriate plan(s) for this proposed action.

Administrative

- ☒ 5. Site access
- ☐ 6. Salvage notice
- ☒ 7. Action completion report
- ☐ 8. Site restoration/mitigation report

Construction

- ☒ 11. Pollution/erosion control
- ☐ 12. Stormwater management
- ☐ 13. Site restoration
- ☐ 14. Compensatory mitigation
- ☐ 15. Preconstruction activity
- ☐ 16. Site preparation
- ☒ 17. Heavy equipment
- ☒ 18. In-water work period
- ☐ 19. Work area isolation
- ☐ 20. Capture and release
- ☒ 21. Piling installation
- ☒ 22. Impact hammer usage
- ☐ 23. Pile driving near Stellar sea lions
- ☒ 24. Piling removal
- ☒ 25. Broken or intractable piling
- ☐ 26. Treated wood
- ☐ 27. Treated wood removal

Action Type**In-water Over-water Structure**

- ☐ 28. Boat ramps
- ☐ 29. Educational signs
- ☐ 30. Flotation material
- ☐ 31. New or replacement floats
- ☐ 32. Piscivorous birds
- ☐ 33. Relocation of existing structures
- ☐ 34. Repair/replacement of covered moorage/boat houses

Access Management

- ☐ 35. Maintenance dredging

Minor Discharge

- ☐ 36. Functionality Dredging/Minor discharge



Port of Toledo

Debbie Scacco, Port Manager

November 9, 2022

FPV-1-22

Appeal Staff Decision requiring costly analysis
Request Exemption for Minor Project

MISSION STATEMENT

As a steward of the public trust the Port of Toledo:

- 1) Creates economic development and quality jobs by retaining and growing businesses;
- 2) ***Maintains*** and adds waterborne and land transportation infrastructure that attracts new businesses;
- 3) Builds our Port's financial strength, increasing and diversifying operating revenue sources;
- 4) ***Protects and enhances the special quality of place and the quality of life for our port district's citizens***, and;
- 5) Makes the highest and ***best use of our financial tools***, people, and property assets.

Port of Toledo

Fiscal Year 2022-2023 Tax Levies

\$251,870

- Port Staff 6 FTE
- 4 Public Parks including Launch Ramp, Paddle Park, Waterfront Path
- Marina – 20 moorages
- Transient Dock – Encourages transient boaters to visit Toledo
- Community Boathouses – Free Family Boating
- Preserve approximately 50 acres of wetland/open space
- 4 Commercial & Industrial Properties
Supports 8 Businesses = over 50 jobs

Excludes the Shipyard Enterprise:

- Port staff 20 FTE
- 30 Vendors
- Approx. 200 Vessels per year that patronize local businesses

Project:

Relocate Boathouse to obtain compliance with Transient Dock funding and maintain handicap accessibility to Community Boathouse programs and Marina

Task	Affect	
Add 2 new 16" steel piling	+ 5 CY Permanent	NWP-2022-329 pg 6/6
Remove 3 existing pilings	- 3 CY Permanent	NWP-2022-329 pg 4/6
Excavate ADA gangway abutment	-11 CY Permanent	NWP-2022-329 pg 4/6
Net Affect to waterway	-9 CY Permanent	



Definitions: TMC 15.16.050

"Appeal" means a request for a review of the interpretation of *any* provision of this chapter or a request for a variance

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.

"Variance" means a grant of relief by the city of Toledo from the terms of a flood plain management regulation.

TMC 15.16.190 D: Considerations

1. The danger that materials may be swept onto other lands to the injury of others;
Project has no effect and makes no changes to current conditions
2. The danger to life and property due to flooding or erosion damage;
Project has no effect and makes no changes to current conditions
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
Project has no effect and makes no changes to current conditions
4. The importance of the services provided by the proposed facility to the community;
Existing facility. The project is needed to maintain ADA access to Marina, ADA Kayak Launch, and Community Boathouses

TMC 15.16.190 D: Considerations cont.

5. The necessity to the facility of a waterfront location, where applicable;
Functionally Dependent Use – existing development
6. The availability of alternative locations for the proposed use which are not subject to the flooding or erosion damage;
Functionally Dependent Use – existing development
7. The compatibility of the proposed use with existing and anticipated development;
Existing development=100% compatible

TMC 15.16.190 D: Considerations cont.

8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

Staff Report confirms compatibility to:

- **2000 Toledo Comprehensive Land Use Plan:**
 - Article 2 Objective 2A & 2B with Outright Use per TMC 17.32.020,
 - Article 5 Goals 2 & 3 has been satisfied by: Army Corps of Engineers Permit NWP 2022-329 and DSL permit 63925-RF (contingent upon City of Toledo's approval of FP-2-22.)
- **Article 5 Goal 3: to facilitate processing of land use applications.**

The City's floodplain code is obstructive to basic management of "functionally dependent use" facilities

TMC 15.16.190 D: Considerations cont.

- Article 7 Goal 1: Prevent loss of life/property:
 - **Project has no effect and makes no changes to current conditions**
The City's floodplain code is being interpreted to not allow requested variance. Code should be revised to allow for common sense and minor project exemption
- Estuary Management Zone and 2000 Toledo Comprehensive Land Use Plan, Article 16 Objective 1 & 6.
 - **Project is for functionally dependent use of an existing facility and would have no affect on natural resources.**
The City's floodplain code is being interpreted to not allow requested variance. Code should be revised to allow for common sense and minor project exemption

TMC 15.16.190 D: Considerations cont.

9. The safety of access to the property in the times of flood for ordinary and emergency vehicles;
Project has no effect and makes no changes to current conditions
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
Project has no effect and makes no changes to current conditions
11. The costs of providing governmental services during and after the flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
Project has no effect and makes no changes to current conditions

TMC 15.16.200 – Conditions for variances:

- A. Not New Construction, Not a substantial improvement
- B. Minimum Necessary to meet goals of securing relocated boathouse and providing ADA access. Project was included in [2021 Port of Toledo Strategic Business Plan Update](#), pg 35.
- C. No flood level increase – Minor project with Common sense evaluation
- D. Variances should only be issued upon:
 - 1. Good & Sufficient Cause:
 - Project retains the Port's compliance with grant terms for the Transient Dock project
 - Secures the boathouse to ensure no damage to dock infrastructure, protecting a community asset
 - Provides continued ADA access to the Marina and Community Boathouse Programs. (See Port Mission Statement #4)
 - Cost of Engineer's analysis is prohibitive, estimate \$13,500 is 5% of the Port's annual tax receipts. (See Port Mission Statement #5)

TMC 15.16.200 – Conditions for variances: continued

2. Hardship: If this project is not completed the Ports options are
 - Refund grant funds for Transient Dock \$380,000, an extreme hardship considering our limited tax base.
 - Relocate boathouse without piling, risking failure of dock system and damage to moored vessels during a storm event
 - Loss of ADA access to the Marina, Community Boathouse programs, including free family boating, and ADA kayak launch
3. Determination that variance will not result in increased flood heights.
 - This is a minor project that should rely on common sense and does not require an engineer's analysis to determine no affect to flood heights.

Reference: FEMA Guidance for Floodway Analysis and Mapping Guidance Document 79, December 2020, page 34, paragraph 3

“Communities can exercise some discretion and common sense in determining which development requires permits or a hydraulic analysis.”

Section 11.1.1. Exemptions for Minor Projects: “There are other developments within the floodway that will require permits but can be allowed once the community determines that they are not an obstruction to floodwaters.”

TMC 15.16.200 – Conditions for variances: continued

- E. Variances may be issued for other projects as necessary for the conduct of a functionally dependent use provided that B-D above are met.**
- F. Notification of variance for construction does not apply**

TMC 15.16.220(D) Conflict with existing laws or ordinances:

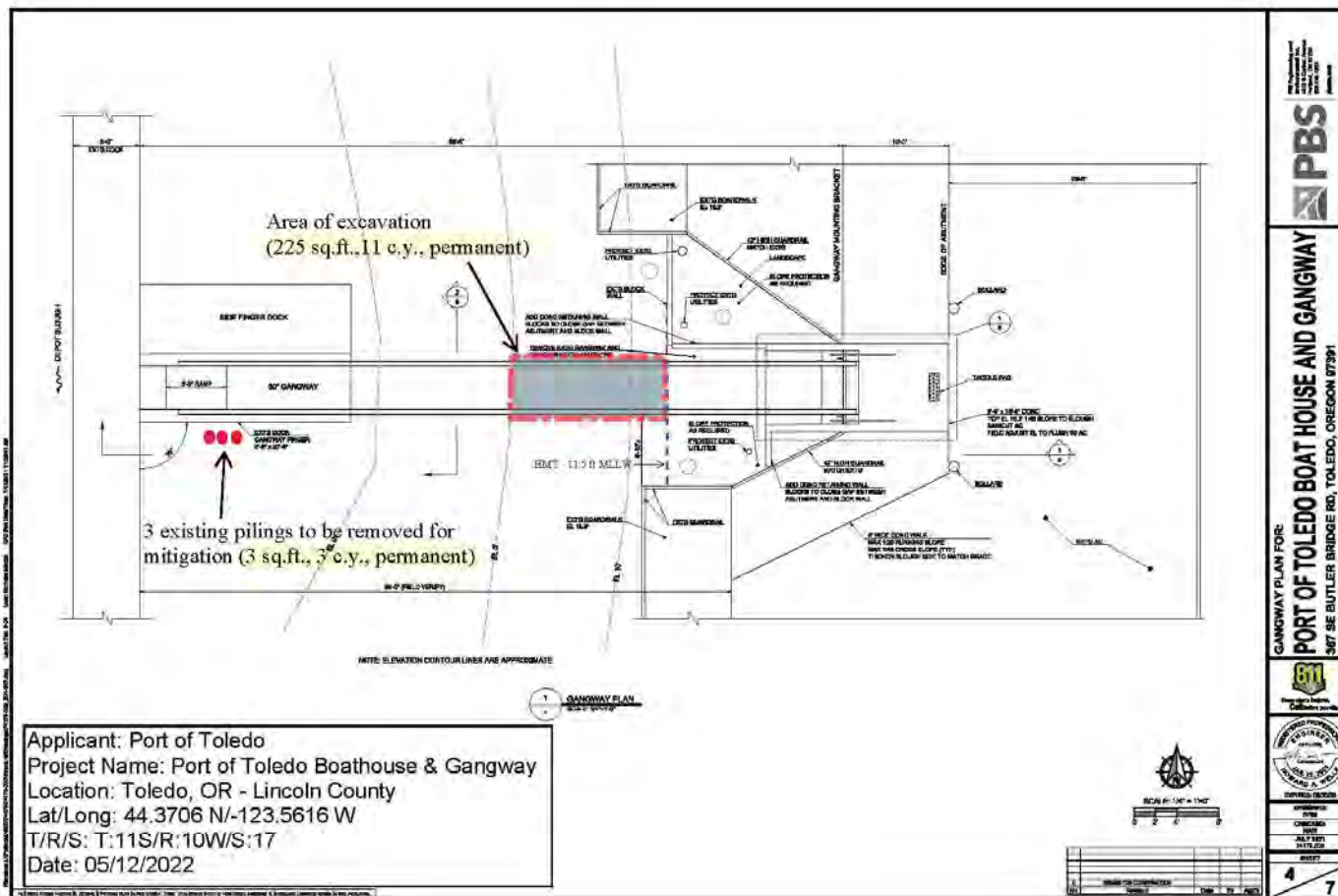
Staff report advises that a variance would directly conflict with 44CFR 60.3(d)(3) however, Federal Guidance as quoted above allows for common sense and minor project exemptions.

TMC 15.16.19 (B) Allows the Planning Commission to hear and decide appeals

TMC 15.16.050 defines “Appeal” as a request to review any provision and “Variance” as a grant of relief from the terms of a flood plain management regulation.

TMC 15.16.190(D) In passing upon such applications, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter.

Staff report advises that there is no definition for “technical evaluation” in the code and interprets it to mean the engineer’s analysis. If it is open for interpretation The Port proposes using the Joint Permit Application as approved by ACOE and DSL to support the decision.



Next Project Up:

Maintenance Dredging of the Transient Dock

This dredging is critical to maintain the previously authorized depth of the floodway.

Due to natural accumulation of sediment – not dredging will reduce the flood carrying capacity of the floodway.

Army Corps of Engineers will dredge the authorized channel

The Port is responsible for dredging a small area under the Transient Dock

If not already provided in TMC a revision should be made to exempt maintenance dredging from this requirement of costly, unnecessary, analysis. FEMA guidance provides provisions for maintenance of watercourse – not included in TMC.

Critical to have permits in place to use ACOE contractor and in-water disposal

In conclusion:

Port of Toledo provides functionally dependent infrastructure that supports the City's Comprehensive Plan and goals

The Port should not be required by City Municipal Code to expend public funds (your property taxes) for unneeded analysis

The Port's project is minor in scope, replacing existing features. **Common Sense** can determine the project will not decrease flood carrying capacity of floodway. Federal guidance allows for the use of common sense.

TMC mirrors Federal 44 CFR 60.6 for variances and exceptions: Both include provisions for variances to be issued if a determination can be made that the project does not increase flood heights.

If TMC is written in a way that limits the Planning Commission's ability to grant variances and make exceptions, shouldn't that be corrected?

Critical need for revision to Toledo Municipal Code:

TMC 15.16.050 definition of “Development” to exclude maintenance dredging and replacement/maintenance activities.

TMC 15.16.220.D (1) to allow for common sense determination for minor projects.

Request

Planning Commission decision to include provision for staff to start process of revising TMC to reflect less obstructive requirements for maintenance activities for existing “functionally dependent” facilities.

The Port and City should be working together to accomplish mutual goals to protect and enhance Toledo and its waterways.

DECISION ORDER ATTACHMENT C

City of Toledo Letters
(City of Toledo File #FPV-1-22)



City of Toledo
City Manager's office
206 N. Main St
PO Box 220
Toledo, OR 97391

July 26, 2022

Port of Toledo
PO Box 428
Toledo, OR 97391

RE: Floodplain Permit (FP-2-22)
127 NW A Street, Toledo OR
Lincoln County Assessors Map No. 11-10-17 BC Tax Lot 10900

This decision of the Floodplain Administrator, or designee, attempts to address the current application by the Port of Toledo and the requirements in TMC Chapter 15.16.

In special flood hazard areas, established by FEMA map, referenced in TMC 15.16.070, are areas designated as floodways. As directed by FEMA's regulatory scheme and the model code adopted by the City of Toledo in 2019, TMC 15.16.220 (D) has specific standards for floodways.

The Port project: The current boathouse location and existing marina gangway do not meet the requirements of the grant provided to the Port from the Oregon State Marine Board and U.S. Fish and Wildlife Service for the recently constructed transient moorage docks. Accordingly, the boathouse will be relocated approximately 30-feet to the South of its current location, and replacement of the existing gangway with an ADA-accessible gangway. Relocation of the boathouse will require excavation of in water sediments to slightly lower the grade of the gangway from the abutment, and installation of two new, 16-inch diameter, steel moorage pilings. To mitigate for the installation of two steel moorage pilings, the project will include removal of three existing timber pilings.

The application contemplates moving an existing boathouse. The construction of a new boathouse would not meet the definition of a "structure,"¹ because it is not "principally above ground," consistent with the definition in TMC 15.16.050. In reviewing the definition of "lowest floor,"² a boathouse also does not have a "lowest floor" required of a building or structure. Rather, it sits on the water. See definition in TMC 15.16.050. As a "substantial improvement"³ requires there to be a "structure," the threshold 50% amount for a "substantial improvement" is not applicable.

¹ "Structure," for floodplain management purposes, means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured dwelling

² "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

³ "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

The application also contemplates replacing the existing gangway, removal of three pilings, and replacement with two pilings. The five-foot width and over the water length of the gangway will not change from what is existing. The area of excavation required (225 sq. ft., 11 c.y., permanent) is being done after obtaining the other appropriate permits, which will result in approximately 10.5 cubic yards of permanent net removal below the HMT of Depot Slough. The removal of three pilings to offset the addition of two pilings is not a net gain and appears insignificant.

If the language in TMC 15.16.220 (D)(1)⁴ is satisfied, an encroachment can't occur, unless a hydrological and hydraulic analysis is completed by a civil engineer. Dealing with floodways, TMC 15.16.220 (D) (1) prohibits encroachments, unless a. or b. are met. Although the term "encroachments" is not defined in the definitions found in TMC 15.16.050, the language in TMC 15.16.220 (D)(1) provides the definition of encroachments includes "fill," "new construction," "substantial improvements," and "other development within the floodway." The replacement of the gangway, removal of pilings, and addition of other pilings are not "new construction," as they are "not improvements to structures," as the term structure has been defined. As such, as explained earlier, a "substantial improvement" calculation is not applicable, as a "structure" is required by the definition. They are not "fill." However, the definition of "development,"⁵ found in TMC 15.16.050, "*means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.*" Accordingly, the replacement of the gangway, removal of pilings, and addition of other pilings, fall within the "and other development in the floodway" portion of the "development" definition found in TMC 15.16.220 (D)(1).

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

⁴ TMC 15.16.220

D. Floodways. Located within the special flood hazard areas established in Section 15.16.070 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless:

a. Certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge, or

b. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that a conditional letter of map revision (CLOMR) is applied for and approved by the Federal Insurance Administrator, and the requirements for such revision as established under Volume 44 of the Code of Federal Regulations, Section 65.12 are fulfilled.

If the requirements of Section 15.16.220(D)(1) are satisfied, all new construction, substantial improvements, and other development shall comply with all other applicable flood hazard reduction provisions of Sections 15.16.210 and 15.16.220.

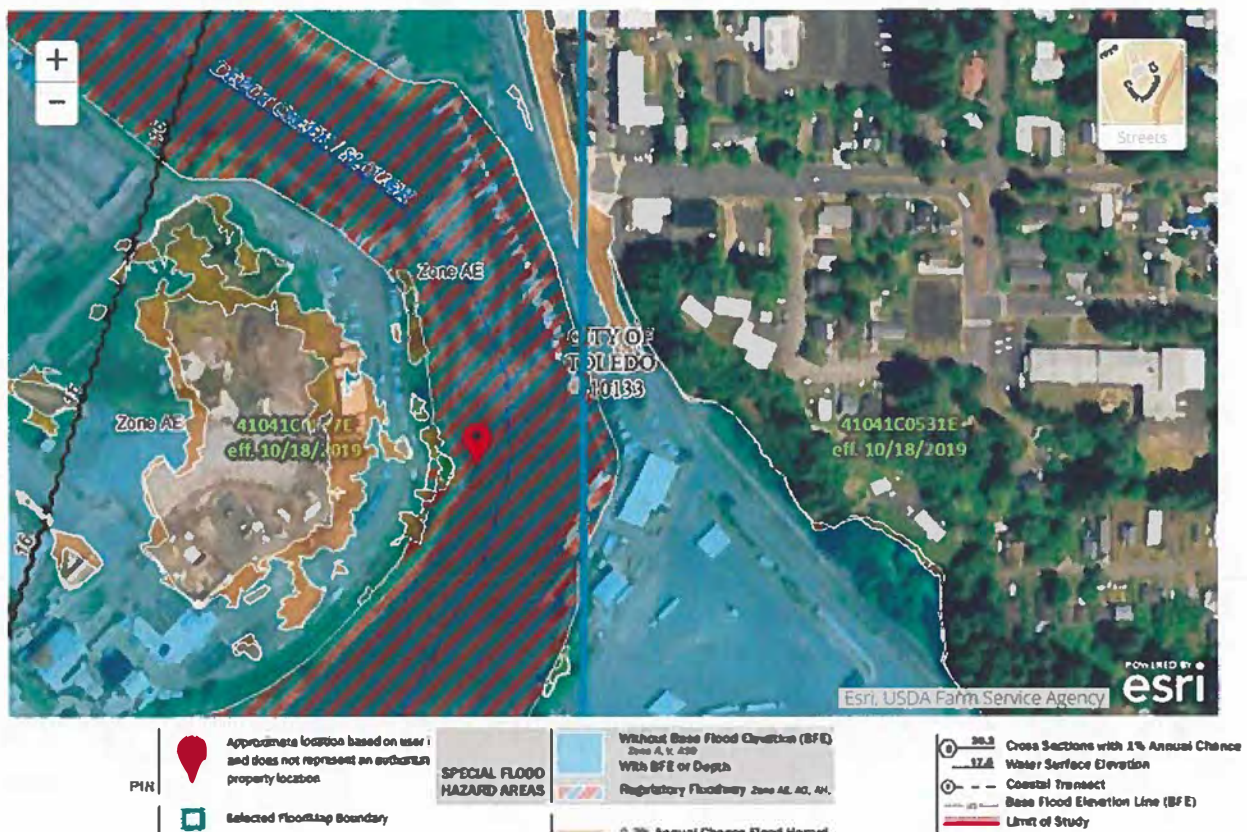
⁵ "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

In conclusion, as to the replacement of the gangway, removal of pilings, and addition of other pilings, but not as to moving the boathouse, the City finds that the code as written requires a

“[c]ertification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.” TMC 15.16.220 (D)(1)(a).

It appears reasonably certain that the proposed replacement gangway and installation of two new pilings will have no effect on the hydrological and hydraulic functions of Depot Slough that will result in any increase in flood levels within the community during the base flood discharge. As a result, the outcome is less than desired, but is required by the code and regulatory scheme for actions in the floodway.

Although Port of Newport, Port of Astoria and other locations have been distinguished as not having similar requirements, unlike the Port of Toledo, those Port areas have also not been designated by FEMA as a floodway, more formally known as a Regulatory Floodway. Rather, they are simply in the flood plain, which is marked in blue on the map below. In contrast, the regulatory floodway is marked by red and blue cross hatched lines on the map below, and can be seen at <https://msc.fema.gov/portal/search#searchresultsanchor>.



⁸ TMC 15.16.190 - Variance Appeal Board , in part, provides

D. In passing upon such applications, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and;

- 1.The danger that materials may be swept onto other lands to the injury of others;
- 2.The danger to life and property due to flooding or erosion damage;
- 3.The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

wish to appeal the decision please contact the City Planning Department for the appropriate forms to submit an application including the appeal fee.

If you have any questions concerning this letter or code standards you can call the Planning Department at 541-336-2247 extension 2130 or email planning@cityoftoledo.org

Sincerely,



Judy Richter
City Manager

cc: Planning Department

-
4. The importance of the services provided by the proposed facility to the community;
 5. The necessity to the facility of a waterfront location, where applicable;
 6. The availability of alternative locations for the proposed use which are not subject to the flooding or erosion damage;
 7. The compatibility of the proposed use with existing and anticipated development;
 8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 9. The safety of access to the property in the times of flood for ordinary and emergency vehicles;
 10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 11. The costs of providing governmental services during and after the flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

E. Upon consideration of the factors of subsection D of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

F. The city manager shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administrator upon request. (Ord. No. 1380, § 1, 10-2-2019)



City of Toledo
PO Box 220
Toledo, OR 97391

October 4, 2022

Port of Toledo
PO Box 428
Toledo, OR 97391

RE: Floodplain Permit (FP-2-22)
127 NW A Street, Toledo OR
Lincoln County Assessors Map No. 11-10-17 BC Tax Lot 10900

I write about the decision of the Floodplain Administrator, or designee, in the letter dated July 26, 2022, to address the current application by the Port of Toledo and the requirements in TMC Chapter 15.16.

In your email to City Planning Staff, you requested the forms and required information to submit an appeal. The cost of an appeal is \$535, and the applicable form is enclosed. The deadline for your submission is October 12, 2022, which will result in the appeal going before the planning commission on November 9, 2022. Unfortunately, the deadline to be heard in the October meeting has passed.

As you will see when you review it, Toledo Municipal Code (TMC) 15.16.190 requires that the planning commission decide appeals and requests for variances. The applicable criteria that the planning commission will consider are contained in TMC 15.16.190, and the conditions for variances are contained in TMC 15.16.200. It is recommended that your consultant address each of these decision criteria in your application. Absent your submission of evidence that supports each of the criteria, the risk is that contrary testimony be submitted or the overall weight of the evidence in the hearing will result in a decision where you will not prevail.

If you have any questions concerning this letter or code standards you can call the Planning Department at 541-336-2247 extension 2130 or email planning@cityoftoledo.org

Sincerely,

A handwritten signature in blue ink that reads "Judy Richter".

Judy Richter
City Manager

cc: Planning Department

National Flood Hazard Layer

123°56'34"W 44°37'19"N

DECISION ORDER ATTACHMENT D

Floodplain Map

(City of Toledo File #FPV-1-22)

FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT



SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall
OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
		17.5 Cross Sections with 1% Annual Chance Water Surface Elevation
		Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
MAP PANELS		Coastal Transect Baseline
		Profile Baseline
		Hydrographic Feature
		Digital Data Available
		No Digital Data Available
		Unmapped
		The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.



0 250 500 1,000 1,500 2,000 Feet

1:6,000

123°55'56"W 44°36'54"N

Basemap: USGS National Map: Orthoimagery: Data refreshed October, 2020

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 11/2/2022 at 6:51 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

**TOLEDO PLANNING COMMISSION
STAFF REPORT**

PROPERTY: Lincoln County Assessor's Map # 11-10-08 BC Tax Lot 2800 (1950 NW Sunset Drive)

APPLICATION #: MP-3-22

APPLICANT: Nathan Lightner, Authorized Agent

OWNER: Joshua Lightner, Property Owner

APPLICATION DATE: November 8, 2022

HEARING DATE: Planning Commission – December 14, 2022

REQUEST: The applicant is requesting a minor partition to create two parcels, as marked on the attached Exhibit A to this staff report. Note: the applicant submitted a lot line adjustment application (LLA-2-22). MP-3-22 is contingent upon the completion of LLA-2-22.

LOCATION: The subject property is located at 1950 NW Sunset Drive. The parcel is further identified on Lincoln County Assessors Map# 11-10-08 BC as Tax Lot 2800. The subject Tax Lot 2800 has frontage along NW Sunset Drive.

PARCEL SIZE: Tax Lot 2800 is approximately 4.97 acres (216,603 square feet). Proposed Parcel 1 would be approximately 80,850 square feet, and proposed Parcel 2 would be approximately 135,953 square feet (Note: Lot sizes are based on LLA-2-22)

I. REPORT OF FACTS:

1. Plan Designation: Single-Family Residential (R-S)
2. Zone Designation: Single-Family Residential (R-S)
3. Existing Structures: Single-family home and garage
4. Topography: Based on the Lincoln County Assessor's contour lines the property is the subject property slopes downhill to the southeast. The slopes appear to be steeper further to the southeast.

5. Development Constraints: Access to the property will be from NW Sunset Drive. Slopes on the subject property limit the developable area.

A riverine wetland that runs north/south near the eastern edge

- of the property line according to the Statewide Wetlands Inventory (SWI). No development is proposed as part of this application and the future development is expected on proposed Parcel 1 which is not located near the riverine wetland.
6. City water: Public water main lines are located in NW Sunset Drive
 7. City sewer: Public sewer main lines cut across the subject property.
 8. Notice of Public Hearing: Notices mailed to 34 property owners and 19 public/service agencies on November 23, 2022, 2022.
 9. Notice Published: November 30, 2022 and December 7, 2022
 10. Comments Received: Public Works Director, Fire Chief, and Police Chief all reviewed the application. Staff comments are included in the Application form. Two neighbors asked questions about the application and may attend the public hearing.
 11. Attachments to Staff Report:
 - A. Exhibit A - Map showing Parcels after partition
 - B. Application with supporting information
 - C. Zoning Map
 - D. Aerial Map
 - E. LLA-2-22 Approval (Lightner-Blank Request)

II. APPLICABLE CRITERIA FOR EVALUATING THE MINOR PARTITION

REQUEST AND STAFF ANALYSIS: The following comprehensive plan and ordinance standards apply to this request. The standards are listed below in regular type. Staff analysis including facts and findings are highlighted below each comprehensive plan and ordinance standard in an italicized font.

1. 2000 Toledo Comprehensive Land Use Plan – Article 2, Objective 2(A) – Comprehensive Plan Map Designations:

Comprehensive Plan Map designations are intended to guide development by designating appropriate areas for each particular type of development use. Additional uses within each designation may be allowed as either uses permitted outright or as conditional uses when the city determines that such uses are either consistent with the general use or can be reviewed for compatibility through the conditional use process. The map designations and the uses allowed in the designations should reflect the applicable goals and objectives of the Toledo Comprehensive Land Use Plan.

Low-Density Residential – This designation provides for lower density housing with a focus on single-family housing accessory dwelling units, and duplexes. This designation allows for other types of housing including cottage clusters and multi-family. This designation shall be implemented through the zoning map's Single-Family Residential (R-S) zone designation.

2. 2000 Toledo Comprehensive Land Use Plan – Article 2, Objective 2(B) – Zoning Map Designations:

Single-Family Residential (R-S) - The purpose of the R-S zone is to promote and

encourage a suitable environment for family living and to protect and stabilize the residential characteristics of the zone. The R-S Zone is primarily for single-family homes, accessory dwelling units, duplexes, and their accessory uses. In addition, multifamily dwellings and some other uses may be evaluated as a conditional use.

3. **TMC Sections 17.08.20 – 17.08.050 – R-S Zone.**

TMC Section 17.08.020 – R-S Zone – Uses permitted outright.

In the R-S Zone, the following uses and their accessory uses are permitted outright. Special standards for certain uses, marked with an asterisk (*), are found in Section 17.08.090.

- A. Single-family dwellings* and their accessory uses.
- B. Home occupations which comply with Chapter 17.46
- C. Manufactured dwellings.*
- D. Accessory use structures.*
- E. Accessory dwelling units.*
- F. Transportation facilities (operation, maintenance, preservation, and construction in accordance with the Toledo Transportation System Plan).
- G. Duplexes

TMC Section 17.08.030 – R-S Zone – Conditional uses permitted.

- A. Religious use.
- B. Governmental structure or land use including but not limited to a public park, playground, fire station, library, or museum.
- C. Hospital, sanitarium, rest home, home for the aged, nursing home, convalescent home, group care center, residential care facility, residential care home, or medical clinic.
- D. School: nursery, primary, elementary, junior high, or senior high.
- E. Pumping station and utility substation.
- F. Manufactured dwellings that do not meet the minimum standards set in Sections 17.08.090(A)–(B).
- G. Boarding house, bed and breakfast facility, hostel, or residency hotel.
- H. Multifamily dwelling units.
- I. Commercial use in conjunction with a planned development under the Toledo Land Division Ordinance.
- J. Child day care center.*
- K. Single-Family Homes that do not meet the minimum standards set in Sections 17.08.090(A)-(B).
- L. Cottage Clusters*

TMC Section 17.08.050 – R-S Zone – Lot size.

The minimum lot area shall be six thousand (6,000) square feet. The criteria for the conditional use or planned unit development approval process may authorize other use types at a density at or above the density level authorized in the R-S zone under the uses permitted outright. Density in the R-S zone discretionary conditional use development process shall not exceed twenty-five (25) units per acre.

Staff Analysis: The subject property is approximately 216,603 square feet (4.97 acres) in

size pending the completion of LLA-2-22. Staff recommends a condition of approval that proposed LLA-2-22 is completed prior to the finalization of MP-3-22. The applicant is requesting to divide the property into two parcels, resulting in proposed Parcel 1 being approximately 80,650 square feet (1.85 acres) and proposed Parcel 2 being approximately 135,953 square feet (3.12 acres). The proposal meets the minimum lot size standard for the R-S Zone as both parcels are over 6,000 square feet.

4. **2000 Toledo Comprehensive Land Use Plan – Article 10, Goal 1 – Housing:**

1. Encourage development of a mixture of housing stock in terms of design, type, cost, and location that meets the housing needs of all Toledo citizens.

...

10. Encourage residential development on vacant or redevelopable lots in areas already serviced or where services can be economically provided.

Staff Analysis: The subject property currently has a single-family home and a garage. Future development of proposed Parcels 1 and 2 must comply with TMC 17.08 (Single-Family Residential Zone) standards. The R-S Zone allows various residential uses, specifically, single-family homes (both site built and manufactured), duplexes, and accessory dwelling units are allowed outright. The applicant has tentative plans to build a single-family home on proposed Parcel 1. This request meets additional housing needs for Toledo residents in terms of type, creating an additional location for housing, and developing in an area where public service already exists.

5. **2000 Toledo Comprehensive Land Use Plan – Article 14, Goal 1 and 3 – Urbanization and Livability:**

1. Build Toledo as a small, cost-effective, attractive, livable, and sustainable city by encouraging efficient land use patterns.

...

3. Ensure that all new developments are reviewed expeditiously and thoroughly and result in compliance with the comprehensive Plan goals and policies and Toledo's Municipal Code and standards.

Objective:

1. Encourage urban level development which is properly serviced with public facilities to locate within the city limits.

5. Encourage compact development and the use of already serviced vacant and underdeveloped land through effective zoning, land division, and development standards and through the prioritization of public expenditures for municipal services.

6. Encourage land use patterns and development plans that take advantage of density and location to reduce the need for travel and the extension of public services but are also designed around the natural features and constraints of Toledo's topography and environmentally sensitive areas.

Staff Analysis: Approval of this application encourages an attractive, livable, and sustainable city by encouraging efficient land use patterns. The proposed partition is adjacent to an existing city street (NW Sunset Drive) minimizing the need for additional infrastructure. This application has been reviewed in compliance with and processed consistent with Toledo's Comprehensive Plan goals and policies and Municipal Code standards.

GENERAL REQUIREMENTS AND MINIMUM DESIGN STANDARDS

6. TMC Sections 16.04.20 – 16.04.050 – General Provisions.

TMC 16.04.020 - Purpose.

The purpose of this title is to prescribe standards and procedures for minor and major partitions and subdivisions of land and planned development within the city of Toledo and to aid in the implementation of the Toledo Comprehensive Land Use Plan.

TMC 16.04.050 (A) Conformity to the Comprehensive Plan.

Conformity to the Comprehensive Plan. All partitions and subdivisions shall conform with all adopted portions of the comprehensive plan, transportation system plan, and all applicable ordinances and design standards of the city. Traffic facilities (including streets, pedestrian paths and bicycle paths), community and neighborhood facilities and recreational areas should be placed in approximately the same locations designated by the comprehensive plan and transportation system plan.

Staff Analysis: Based upon the information received by City staff through December 7, 2022, the minor partition appears to conform to relevant provisions of the City's plans and ordinances as described herein.

TMC 16.04.050 (B) Access.

The partitioning and subdividing of land shall provide each lot or parcel, by means of a fully developed city street, satisfactory vehicular access to an existing street pursuant to Chapter 16.06 of this Code. The city street for the entire length which is adjacent to the parcel or lot which is being partitioned or subdivided must be a fully developed city street unless an exception is granted as per the following standards and procedures:

1. Partitions and subdivision of land that require the creation of a public street to serve the proposed lots shall comply with the requirements of the adopted street standards and shall include the public dedication of the required right-of-way in the adopted street standards, except as varied under Section 16.30;
2. Partitions and subdivision of land with frontage along an existing city, county, or state street or that are accessed via an existing city, county, or state street shall be required to make such improvements as necessary to address the impacts of the proposed development on those streets provided the required improvements are roughly proportional to the impacts created by the proposed development. If the required improvements are roughly proportional to the impacts created by the proposed development, but the planning commission determines that because of the existing street conditions, topography, or other similar factor that requiring the improvements to be completed prior to platting the property is an inefficient method of obtaining the improvements, the planning commission can allow the applicant to provide a deferred

improvement agreement, bond, irrevocable petition for public improvements, or similar mechanism for obtaining the completion of the required improvements at a later date.

Staff Analysis: Proposed Parcels 1 and 2 would have adequate frontage along NW Sunset Drive, a city street. The applicant is proposing an access easement for proposed Parcel 1 across proposed Parcel 2.

Improvements as necessary to address the impacts of the proposed development on those streets provided the required improvements are roughly proportional to the impacts created by the proposed development. Any driveway modification, in accordance with the standards specified in the Public Infrastructure Design Standards Manual, may be required as determined by the Public Works Director. If required, it shall be completed within one year of approval of this application, or a deferred development agreement entered into, to address this requirement. Determination will be made when a construction permit has been submitted that identifies the location of proposed construction and length of its driveway, to ensure that the development will comply with Public Infrastructure Design Standards and Fire, Life, Safety standards. The improvements will be along the frontage of the property only and roughly proportional to the development. Staff recommends allowing the applicant to provide a deferred improvement agreement, bond, irrevocable petition for public improvements, or similar mechanism for obtaining the completion of the required improvements at a later date.

The applicable development standards for the driveways and sidewalks are found in City of Toledo's approved Public Infrastructure Design Standards Manual. Other standards apply, but some are included below.

Paragraph 3.9 provides development standards as to driveways:

- (1) Driveways shall conform to standard details (3.9.1);
- (2) Driveways may be deferred until lots are built upon, if approved by the City Planning Commission or City Council (3.9.2);
- (3) If the developer chooses to delay the installation of a driveway approach, additional repair of curb and gutter, sidewalk, and other facilities may be required when the driveway is installed (3.9.2.(A));
- (4) The costs of installing a driveway approach and associated repairs to curb and gutter, sidewalk and other facilities will be borne, solely, by the developer.

Paragraph 3.9.5 provides residential driveway approach standards as follows:

- (1) A residential driveway approach shall be constructed of Portland cement concrete, minimum of 6-inches in thickness, 3,000 psi filed strength, with 2-inches (minimum) compacted ¾"-0" crushed rock base. No rebar or wire mesh is required for residential approaches (3.9.5(A)); and
- (2) Transition flares shall be constructed to the same standards for residential driveway approaches (3.9.5(B)).

Paragraph 3.11 provides development standards for sidewalks as follows:

- (1) All development for which land use applications are required must include sidewalks adjacent to public streets. This requirement also applies to new single-family houses and duplexes if they are located on arterial or collector streets or on curbed local streets if there is an existing sidewalk within 500 feet on the same side of the street (3.11.1);

- (2) The provision of sidewalks may be waived where the street serves a use or combination of uses which generate fewer than fifty trips a days (based on ITE standards) and cannot be continued or extended to other properties. A waiver shall only be granted upon review of the Public Works Director or designee (3.11.3);
- (3) Sidewalks along residential and other local streets must be a minimum of five (5) feet in width. Sidewalk design may be a setback or integral as determined by the developer, Public Works Director, or funding agency (3.11.4(C)).

Staff analysis: Proposed Parcels 1 and 2 are adjacent to NW Sunset Drive. Road improvements may be required by the City of Toledo Public Works Department when the parcel is developed. Staff recommends that this is listed as a condition of approval.

Unless waived by the Public Works Director, or designee, all land use applications are required to include curb and gutter and sidewalks adjacent to public streets. As sidewalks have been waived, the installation of 5-foot-wide sidewalks along NW Sunset Drive are not required, nor is a deferred development agreement required, because no sidewalks are within 500 feet of the subject property.

TMC 16.04.050 (C) Relation to the Adjoining Street System.

Major partitions and subdivisions shall provide for the continuation of the city streets existing in the adjoining neighborhood and for the proper street extensions when the adjoining properties are divided or developed. If the city adopts a plan for the neighborhood or area of which the partition or subdivision is a part, the partition or subdivision shall conform to such neighborhood or area plan. If the topographical conditions make such continuation or conformity impractical, adjustments or variances may be approved under Section 16.30.

Staff Analysis: The application is for a minor partition and not a major partition or subdivision. No new streets are required or proposed by the proposed partition.

TMC 16.04.050 (D) Density.

...

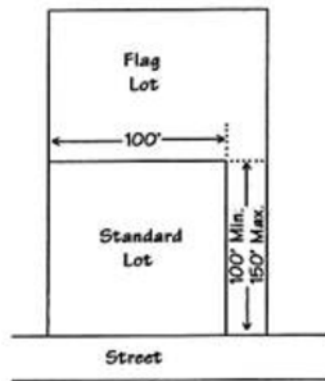
4. All partitions within residential zones where the subject parcel can be further partitioned, shall be partitioned in a manner that does not preclude the efficient division of land in the future.

Staff Analysis: Proposed Parcels 1 and 2 could be further divided based on the minimum lot size requirement in the R-S Zone. Proposed Parcels 1 and 2 are unlikely to be further divided because of the existing conditions on the lot including slopes. The current request does not preclude the efficient division of land in the future.

TMC 16.04.050 (E). Lots, Parcels, Topography, or Past Development Patterns.

1. Every lot and parcel shall abut and take primary ingress and egress from a city street, county road, or state highway and the frontage of each shall not be less than twenty-five (25) in nonresidential zones, twenty (20) feet in the R-G zone and R-S zone;
2. Lots and parcels with double frontage shall not be permitted unless, in the opinion of the planning commission, an odd-shaped tract, existing street layout, or existing topography makes such a lot or parcel unavoidable;
3. Each side line shall be as close to perpendicular to the adjacent street line or radial to a curved street line as possible;

4. Flag lots shall not have an interior flag portion measurement of more than one hundred (100) feet in length or a "pole" less than twenty (20) feet wide for residential and twenty-five (25) feet for non-residential. See illustration.



5. The pole portion of a flag lot shall be a minimum of one hundred (100) feet long and a maximum of one hundred fifty (150) feet long. Existing circumstances that make this minimum and maximum impossible can be considered as a variance by the planning commission as set forth in the zoning ordinance;

6. Lots and parcels under twenty-five thousand (25,000) square feet in area must not exceed a depth to width ratio of two and one-half to one. Lots and parcels over twenty-five thousand (25,000) square feet in area must not exceed a depth to width ratio of three and one-half to one;

7. Flag lots may not be created such that more than two driveways for individual lots are in less than seventy-five (75) foot of street frontage;

8. Existing natural and piped drainages must be preserved or replaced on the site and easements must be granted for drainage as long as the easements required are roughly proportional to the impact of the proposed development.

Staff Analysis: TMC 16.04.050 (E)(1) provides that each of the two parcels shall abut and take primary ingress and egress from a city street and the frontage of each shall not be less than twenty (20) feet in the R-S zone. Proposed Parcel 1 will have more than 20 feet of frontage onto NW Sunset Drive (a city street). Proposed Parcel 1 will take access across Parcel 2. Proposed Parcel 2 will have more than 20 feet of frontage onto NW Sunset Drive (a city street).

Staff Analysis: TMC 16.04.050 (E)(2) provides that parcels with double frontage shall not be permitted unless an odd-shaped tract, existing street layout, or existing topography makes such a parcel unavoidable. The result of the partition will be two parcels with single frontage. The existing parcel has double frontage and the property is being divided in a way that removes the double frontage. The proposal will not create a double frontage lot.

Staff Analysis: TMC 16.04.050 (E)(3) provides that each side line be as close to perpendicular to the adjacent street line as possible. The proposed property line configuration for Parcels 1 and 2 will be close to perpendicular to NW Sunset Drive.

Staff Analysis: TMC 16.04.050 (E)(4) provides that flag lots shall not have an interior flag portion measurement of more than one hundred (100) feet in length, or a "pole" less than twenty (20) feet wide for residential. The proposed parcels are not flag lots. Flag lots are not defined in the Toledo

Municipal code and only a diagram is provided. Other codes often define a flag as a pole that a parcel takes access from. Proposed Parcel 1 is not considered a flag lot because access will be taken across proposed Parcel 2 using an easement. Furthermore, the proposed Parcel 1 is different than the flag lot diagram in the Toledo Code.

Staff Analysis: TMC 16.04.050 (E)(5) provides that the pole portion of a flag lot shall be a minimum of one hundred (100) feet long and a maximum of one hundred fifty (150) feet long. The proposed parcels are not flag lots. See above for flag lot analysis.

Staff Analysis: TMC 16.04.050 (E)(6) provides that lots and parcels under twenty-five thousand (25,000) square feet in area must not exceed a depth to width ratio of two and one-half to one. Further, that lots and parcels over twenty-five thousand (25,000) square feet in area must not exceed a depth to width ratio of three and one-half to one. Proposed Parcel 1 would be approximately 80,850 square feet and proposed Parcel 2 would be approximately 135,953 square feet. Accordingly, proposed Parcels 1 and 2 exceed twenty-five thousand (25,000) square feet in area and must not exceed a depth to width ratio of three and one-half to one. As to Parcel 1, the depth of the parcel is approximately 519 feet and width is approximately 221 feet, so does not exceed a depth to width ratio of three and one-half to one. As to Parcel 2, the depth of the parcel is approximately 492 feet and width is approximately 356 feet, so it does not exceed a depth to width ratio of three and one-half to one. Therefore, as drawn on the proposed map, the proposed parcels will not exceed a depth to width ratio of three and one-half to one.

Staff Analysis: TMC 16.04.050 (E)(7) provides that flag lots may not be created such that more than two driveways for individual lots are in less than seventy-five (75) foot of street frontage. The proposed parcels are not flag lots as discussed above. Furthermore, the driveway will be a shared use driveway.

Staff Analysis: TMC 16.04.050 (E)(8) provides that existing natural and piped drainages must be preserved or replaced on the site and easements must be granted for drainage as long as the easements required are roughly proportional to the impact of the proposed development. An existing natural drainage is located near the eastern edge of the property, any identified drainage must be preserved or replaced on the site.

TMC 16.04.050 (F) All parcels and lots in partitions and subdivisions shall be served by a public water system. No plat of a partition or subdivision shall be approved unless the city has received and accepted:

1. A certification by the public works director that water will be available from the nearest point of supply; and
2. A performance agreement, bond, contract or other assurance that a water supply system will be installed by or on behalf of the partitioner to the boundary line of each and every lot or parcel depicted on the proposed partition or subdivision.

TMC 16.04.050 (G) All parcels and lots in partitions and subdivisions shall be served by a public sewer system unless in possession of a sewer exception stipulated in writing by the public works director and city council (Public Improvement Requirements and Design Standards). No plat of a partition or subdivision shall be approved unless the city has received and accepted:

1. A certification by the director of public works that sewage service will be available at the nearest point of collection;
2. A performance agreement, bond, contract or other assurance that sewage disposal lines will be installed by or on behalf of the partitioner to the boundary line of each and every lot or parcel depicted in the proposed partition.

Staff Analysis: The Public Works Director reviewed the proposed partition and indicated that water and sewer are currently available to the parcels. The public water line is located in the NW Sunset Drive right-of-way and the public sewer line cuts across Tax Lot 2800 as indicated on the survey. Private water service lines and other utility lines should be identified and easements recorded if utilities for Parcel 1 cross Parcel 2.

When Parcel 1 is developed, separate utility connections to water and sewer will be required.

The applicant should agree that the final plat will include water, sewer, and/or other utility easements, as appropriate, for any service lines that may cross proposed parcels.

IMPROVEMENTS

7. TMC Sections 16.08.040 Improvements.

- A. The applicant shall improve or agree to improve lands dedicated for roads, alleys, pedestrian or bicycle ways, drainage channels, private easements for access, and other rights-of-way or public open space as condition preceding the acceptance and approval of the partition.
- B. Prior to final approval of the partition, the applicant shall either install all required improvements to city standards and repair existing roads and other public facilities damaged in the development of the partition or shall execute and file with the city manager an agreement between the applicant and the city specifying the period within which all the required improvements and repairs shall be completed. The agreement shall provide that if all of the required work is not completed within the time specified, the city may complete the work and recover the full cost and expense from the applicant. If the applicant so requests, the planning commission may grant not more than one extension of time for a period not to exceed one year to complete the required improvements.

Staff Analysis: Driveway, utility and street development specifications are currently contained in the Public Works Infrastructure Design and Standards Manual and are not part of TMC Title 16 or 17 at this time. Prior to final approval of the partition, the applicant shall either install all required improvements to City standards and repair existing roads and other public facilities damaged in the development of the partition or shall execute and file with the City Manager an agreement between the applicant and the City specifying the period within which all the required improvements and repairs shall be completed.

EVALUATION CRITERIA

8. TMC 16.08.070 Criteria for evaluation.

In reviewing applications for minor and major partitions, all of the following criteria shall be met before the planning commission may approve the proposed partition:

- A. The division of land complies with applicable ordinances and public improvement design standards adopted by the city;

- B. The applicant has filed all the necessary information required by the land division Title 16;
- C. If the application is for a minor partition, the division of land will not constitute a major partition or a subdivision pursuant to the definitions in this title;
- D. If the application is for a major partition, the division of land will not constitute a subdivision and the street design has received approval from the director of public works;
- E. The applicant has demonstrated that each lot will be served with city sewer and water and that the city has the capacity to provide those services;
- F. The infrastructure designs have received approval from the public works department and if a bond is required to be posted for any infrastructure improvements, the applicant has agreed in writing to do so;
- G. The applicant has demonstrated that adequate precautions have been taken to prevent damage or injury resulting from natural hazards;
- H. The division of land will not affect a designated dredged material disposal site or mitigation site as designated in the Lincoln County estuary management plan.
- I. The division of land will not result in any newly created parcels or lots which are entirely zoned for natural resources or which become one hundred (100) percent un-developable due to splitting off the buildable land unless owned, created, or proposed to be used by a public utility.

Staff Analysis: The proposed minor partition does not involve the development or extension of any streets and will create parcels that are served by City water and sewer service. Utility easements may be needed based on standards in the Public Infrastructure Design Standards Manual. The division of land complies with applicable ordinances and public improvement design standards adopted by the City. The division of land will not constitute a major partition or a subdivision pursuant to the definitions in Title 16. The division of land will not constitute a subdivision and the street design has received approval from the Director of Public Works. The division of land has received approval from the Public Works Director. Each lot will be served with City sewer and water and the City has the capacity to provide those services. If a bond is required to be posted for any infrastructure improvements, the applicant should agree in writing to do so. The applicant has demonstrated that adequate precautions have been taken to prevent damage or injury resulting from natural hazards. The division of land will not affect a designated dredged material disposal site or mitigation site as designated in the Lincoln County Estuary Management Plan. The division of land will not result in any newly created parcels or lots which are entirely zoned for Natural Resources or which become one hundred (100) percent un-developable due to splitting off the buildable land unless owned, created, or proposed to be used by a public utility.

Staff Analysis: The City Public Works Director, Police and Fire Chief have all reviewed the application and have indicated their approval in relation to their respective departments.

III. FURTHER STAFF ANALYSIS:

The current owners, Joshua Lightner (Authorized Agent Nathan Lightner), have correctly indicated that the minor partition would create two lots. The applicant's request would be compatible with surrounding land uses. Single-family Residential zoning is located to the north, south, west, and east. In addition, a portion of the Northeast corner of the property touches a Public Lands zoned parcel. See Zoning Map attachment C.

NW Sunset Drive is a paved street currently without curbs or sidewalks adjacent to the subject

property.

The objective of the Low-Density Residential designation as contained in the Comprehensive Plan is to provide for lower density housing with a focus on single-family housing accessory dwelling units, and duplexes. This designation shall be implemented through the zoning map's Single-family Residential (R-S) zone designation, which the current maps indicate.

As mentioned above, the subject property slopes downhill to the southeast. Future development of the parcels may require a geo-tech report as defined in TMC 15.20.050. Staff Recommends that this is listed as a condition of approval.

FINDINGS:

The applicant is requesting approval of a minor partition to divide a parcel of land that is approximately 4.97 acres in size into two parcels. Based upon the information received by city staff through December 7, 2022, the minor partition appears to conform with relevant provisions of the City's plans and ordinances as described below. The following findings support approval of the requested partition:

1. Tax Lot 2800 appears to be a lawfully created unit of land and, according to the Lincoln County Assessor's records.
2. The subject property is approximately 216,603 square feet (4.97 acres) in size pending the completion of LLA-2-22. Staff recommends a condition of approval that proposed LLA-2-22 is completed prior to the finalization of MP-3-22. The applicant is requesting to divide the property into two parcels, resulting in proposed Parcel 1 being approximately 80,650 square feet (1.85 acres) and proposed Parcel 2 being approximately 135,953 square feet (3.12 acres). The proposal meets the minimum lot size standard for the R-S Zone as both parcels are over 6,000 square feet.
3. The subject property currently has a single-family home and a garage. Future development of proposed Parcels 1 and 2 must comply with TMC 17.08 (Single-Family Residential Zone) standards. The R-S Zone allows various residential uses, specifically, single-family homes (both site built and manufactured), duplexes, and accessory dwelling units are allowed outright. The applicant has tentative plans to build a single-family home on proposed Parcel 1. This request meets additional housing needs for Toledo residents in terms of type, creating an additional location for housing, and developing in an area where public service already exists.
4. Approval of this application encourages an attractive, livable, and sustainable city by encouraging efficient land use patterns. The proposed partition is adjacent to an existing city street (NW Sunset Drive) minimizing the need for additional infrastructure. This application has been reviewed in compliance with and processed consistent with Toledo's Comprehensive Plan goals and policies and Municipal Code standards.
5. Based upon the information received by City staff through December 7, 2022, the minor partition appears to conform to relevant provisions of the City's plans and ordinances as described herein.
6. Proposed Parcels 1 and 2 would have adequate frontage along NW Sunset Drive, a

- city street. The applicant is proposing an access easement for proposed Parcel 1 across proposed Parcel 2.
7. The minor partition criteria for evaluation in TMC 16.08.070 has been met.
 8. Improvements as necessary to address the impacts of the proposed development on those streets provided the required improvements are roughly proportional to the impacts created by the proposed development. Any driveway modification, in accordance with the standards specified in the Public Infrastructure Design Standards Manual, may be required as determined by the Public Works Director. If required, it shall be completed within one year of approval of this application, or a deferred development agreement entered into, to address this requirement. Determination will be made when a construction permit has been submitted that identifies the location of proposed construction and length of its driveway, to ensure that the development will comply with Public Infrastructure Design Standards and Fire, Life, Safety standards. The improvements will be along the frontage of the property only and roughly proportional to the development. Staff recommends allowing the applicant to provide a deferred improvement agreement, bond, irrevocable petition for public improvements, or similar mechanism for obtaining the completion of the required improvements at a later date.
 9. Proposed Parcels 1 and 2 are adjacent to NW Sunset Drive. Road improvements may be required by the City of Toledo Public Works Department when the parcel is developed. Staff recommends that this is listed as a condition of approval.
 10. Unless waived by the Public Works Director, or designee, all land use applications are required to include curb and gutter and sidewalks adjacent to public streets. As sidewalks have been waived, the installation of 5-foot-wide sidewalks along NW Sunset Drive are not required, nor is a deferred development agreement required, because no sidewalks are within 500 feet of the subject property. Proposed Parcels 1 and 2 could be further divided based on the minimum lot size requirement in the R-S Zone. Proposed Parcels 1 and 2 are unlikely to be further divided because of the existing conditions on the lot including slopes. The current request does not preclude the efficient division of land in the future.
 11. The request meets TMC 16.04.050(E)(1-8), as provided below:
 - a. TMC 16.04.050 (E)(1) provides that each of the two parcels shall abut and take primary ingress and egress from a city street and the frontage of each shall not be less than twenty (20) feet in the R-S zone. Proposed Parcel 1 will have more than 20 feet of frontage onto NW Sunset Drive (a city street). Proposed Parcel 1 will take access across Parcel 2. Proposed Parcel 2 will have more than 20 feet of frontage onto NW Sunset Drive (a city street).
 - b. TMC 16.04.050 (E)(2) provides that parcels with double frontage shall not be permitted unless an odd-shaped tract, existing street layout, or existing topography makes such a parcel unavoidable. The result of the partition will be two parcels with single frontage. The existing parcel has double frontage and the property is being divided in a way that removes the double frontage. The proposal will not create a double frontage lot.
 - c. TMC 16.04.050 (E)(3) provides that each side line be as close to perpendicular to the adjacent street line as possible. The proposed property line configuration for Parcels 1 and 2 will be close to perpendicular to NW

Sunset Drive.

- d. TMC 16.04.050 (E)(4) provides that flag lots shall not have an interior flag portion measurement of more than one hundred (100) feet in length, or a "pole" less than twenty (20) feet wide for residential. The proposed parcels are not flag lots. Flag lots are not defined in the Toledo Municipal code and only a diagram is provided. Other codes often define a flag as a pole that a parcel takes access from. Proposed Parcel 1 is not considered a flag lot because access will be taken across proposed Parcel 2 using an easement. Furthermore, the proposed Parcel 1 is different than the flag lot diagram in the Toledo Code.
 - e. TMC 16.04.050 (E)(5) provides that the pole portion of a flag lot shall be a minimum of one hundred (100) feet long and a maximum of one hundred fifty (150) feet long. The proposed parcels are not flag lots. See above for flag lot analysis.
 - f. TMC 16.04.050 (E)(6) provides that lots and parcels under twenty-five thousand (25,000) square feet in area must not exceed a depth to width ratio of two and one-half to one. Further, that lots and parcels over twenty-five thousand (25,000) square feet in area must not exceed a depth to width ratio of three and one-half to one. Proposed Parcel 1 would be approximately 80,850 square feet and proposed Parcel 2 would be approximately 135,953 square feet. Accordingly, proposed Parcels 1 and 2 exceed twenty-five thousand (25,000) square feet in area and must not exceed a depth to width ratio of three and one-half to one. As to Parcel 1, the depth of the parcel is approximately 519 feet and width is approximately 221 feet, so does not exceed a depth to width ratio of three and one-half to one. As to Parcel 2, the depth of the parcel is approximately 492 feet and width is approximately 356 feet, so it does not exceed a depth to width ratio of three and one-half to one. Therefore, as drawn on the proposed map, the proposed parcels will not exceed a depth to width ratio of three and one-half to one.
 - g. TMC 16.04.050 (E)(7) provides that flag lots may not be created such that more than two driveways for individual lots are in less than seventy-five (75) foot of street frontage. The proposed parcels are not flag lots as discussed above. Furthermore, the driveway will be a shared use driveway.
 - h. TMC 16.04.050 (E)(8) provides that existing natural and piped drainages must be preserved or replaced on the site and easements must be granted for drainage as long as the easements required are roughly proportional to the impact of the proposed development. An existing natural drainage is located near the eastern edge of the property, any identified drainage must be preserved or replaced on the site.
12. The Public Works Director reviewed the proposed partition and indicated that water and sewer are currently available to the parcels. The public water line is located in the NW Sunset Drive right-of-way and the public sewer line cuts across Tax Lot 2800 as indicated on the survey. Private water service lines and other utility lines should be identified and easements recorded if utilities for Parcel 1 cross Parcel 2.
13. When Parcel 1 is developed, separate utility connections to water and sewer will be required.

14. The City Public Works Director, Police and Fire Chief have all reviewed the application and have indicated their approval in relation to their respective departments.
15. Driveway, utility and street development specifications are currently contained in the Public Works Infrastructure Design and Standards Manual and are not part of TMC Title 16 or 17 at this time. Prior to final approval of the partition, the applicant shall either install all required improvements to City standards and repair existing roads and other public facilities damaged in the development of the partition or shall execute and file with the City Manager an agreement between the applicant and the City specifying the period within which all the required improvements and repairs shall be completed.
16. The proposed minor partition does not involve the development or extension of any streets and will create parcels that are served by City water and sewer service. Easements are needed based on standards in the Public Infrastructure Design Standards Manual. The division of land complies with applicable ordinances and public improvement design standards adopted by the City. The division of land will not constitute a major partition or a subdivision pursuant to the definitions in Title 16. The division of land will not constitute a subdivision and the street design has received approval from the Director of Public Works. The division of land has received approval from the Public Works Director. Each lot will be served with City sewer and water and the City has the capacity to provide those services. If a bond is required to be posted for any infrastructure improvements, the applicant should agree in writing to do so. The applicant has demonstrated that adequate precautions have been taken to prevent damage or injury resulting from natural hazards. The division of land will not affect a designated dredged material disposal site or mitigation site as designated in the Lincoln County Estuary Management Plan. The division of land will not result in any newly created parcels or lots which are entirely zoned for Natural Resources or which become one hundred (100) percent un-developable due to splitting off the buildable land unless owned, created, or proposed to be used by a public utility.
17. The current owners, Joshua Lightner (Authorized Agent Nathan Lightner), have correctly indicated that the minor partition would create two lots. The applicant's request would be compatible with surrounding land uses. Single-family Residential zoning is located to the north, south, west, and east. In addition, a portion of the Northeast corner of the property touches a Public Lands zoned parcel. See Zoning Map attachment C.
18. The objective of the Low-Density Residential designation as contained in the Comprehensive Plan is to provide for lower density housing with a focus on single-family housing accessory dwelling units, and duplexes. This designation shall be implemented through the zoning map's Single-family Residential (R-S) zone designation, which the current maps indicate.
19. NW Sunset Drive is a paved street currently without curbs or sidewalks adjacent to the subject property.
20. Notification to 34 surrounding property owners, 19 public/service agencies, and publication of the proposed minor partition were completed in accordance with the TMC requirements. As of December 7, 2022, no comments have been received.

Staff would direct the Planning Commission to evaluate the applicant's proposal and all testimony presented to them in order to make findings that demonstrate the applicable criteria in the TMC can be satisfied. The decision of the Planning Commission should be based on the report of facts and analysis contained within the Staff Report, as well as the facts and testimony presented by the applicant and those who support or oppose the request given at the public hearing. Any action on the application should address the applicable criteria as contained in the TMC. The decision of the Planning Commission on City Case #File MP-3-22 will become final unless appealed to the City Council.

IV. STAFF RECOMMENDATION:

Based on the staff report, testimony received and analysis of the applicable code and land use planning goals, staff recommends the Planning Commission approve the minor partition, pursuant to the criteria in TMC Section 16.08.070. Staff further recommends approval of the request, subject to the following conditions:

1. Partitioning of the property shall be in compliance with the proposed partition plan as described in the application, plan and drawings submitted and included in Exhibit A of this report.
2. Proposed LLA-2-22 shall be completed prior to the completion of the proposed partition plat.
3. The applicant shall provide a final minor partition plat prepared by a registered surveyor and meeting the plat standards of the City of Toledo and including an approval signature line for the City Manager's signature. The applicant shall submit the final plat to the Lincoln County Surveyor for review, and to the City of Toledo to review for compliance with conditions of approval prior to recording. The applicant shall record the approved final plat with the Lincoln County Surveyor. A copy of the recorded plat shall be submitted by the applicant to the City of Toledo.
4. In accordance with TMC Chapter 16, the final partition plat shall be recorded within one year from the effective date of the Planning Commission approval. One extension of time, not to exceed one year, may be granted to complete the partition if an application for an extension of time is made in writing prior to the expiration date.
5. The applicant of property owner shall obtain a geo-tech report for any development on a geo-hazard area defined by TMC 15.20.050. Development not on a geo-hazard area defined by TMC 15.20.050 would not be required to submit a geo-hazard report.
6. Protect all existing easements (in addition to being noted on the plat) and, as appropriate, record any new easements to serve the proposed parcels for driveway access and utilities, and comply with the Public Infrastructure Design Standards Manual, before construction permits will be issued.
7. Any driveway modification, in accordance with the standards specified in the Public Infrastructure Design Standards Manual, may be required as determined by

- the Public Works Director. If required, it shall be completed within one year of approval of this application, or a deferred development agreement entered into, to address this requirement. Determination will be made when a construction permit has been submitted that identifies the location of proposed construction and length of its driveway, to ensure that the development of Parcel 1 will comply with Public Infrastructure Design Standards and Fire, Life, Safety standards.
8. The recording of easements (in addition to being noted on the plat) as required and as appropriate by the Public Works Director to serve the interior properties for driveway access and utilities, including water and sewer, in accordance with the minimum width and other standards in the Public Infrastructure Design Standards Manual, before construction permits will be issued.
 9. All standards and requirements in the Infrastructure Design Standards Manual, TMC Chapter 16 and 17 are met, as to both parcels marked on Exhibit A.
 10. The applicant shall obtain any required state or federal permits.

PLANNING COMMISSION DECISION

PROPOSED MOTION (MP-3-22):

BASED ON THE TESTIMONY RECEIVED, THE STAFF REPORT, AND THE EVIDENCE AND ARGUMENTS BEFORE THE PLANNING COMMISSION AT THE PUBLIC HEARING ON DECEMBER 14, 2022, THE PLANNING COMMISSION FINDS THAT THE REQUEST BY JOSHUA LIGHTNER (AUTHORIZED AGENT NATHAN LIGHTNER) (MP-3-22) COMPLIES WITH THE CRITERIA IDENTIFIED IN TOLEDO MUNICIPAL CODE, TITLES 16 AND 17, INCLUDING THE CRITERIA IDENTIFIED IN TOLEDO MUNICIPAL CODE, SECTION 16.08.070. THE PLANNING COMMISSION HEREBY ADOPTS THE STAFF REPORT AS FINDINGS, AS WELL AS THE CONDITIONS OF APPROVAL FOR MP-3-22, AND ALLOWING FOR THE CORRECTION OF TYPOGRAPHICAL AND GRAMMATICAL ERRORS.

V. PLANNING COMMISSION ROLE:

The Planning Commission should evaluate the applicant's proposal and all testimony presented to them in order to make findings which demonstrate that the applicable criteria in the Toledo Municipal Code and Comprehensive Plan can be satisfied. The decision of the Planning Commission should be based on the report of facts and analysis contained within the Staff Report, as well as the facts and testimony presented by the applicant and those who support or oppose the request given at the public hearing. Any action on the application should address the applicable criteria as contained in the Toledo Municipal Code. The decision of the Planning Commission shall be final unless appealed to the City Council.

Prepared by,

Justin Peterson
Contract Planner

The map displays the city of Toledo, Ohio, with a focus on the area around the Toledo Center. A black circle highlights a specific region in the north-central part of the city, near the Toledo Center and the Toledo Harbor. The map shows a network of streets, including major roads like Western Loop, Toledo Center, and various local roads. Water bodies are depicted, including Lake Erie, Toledo Harbor, and several sloughs. A compass rose is located in the bottom right corner, indicating North (N), South (S), East (E), and West (W).



ATTACHMENT B

Application with Supporting Information

(City of Toledo File #MP-3-22)

LAND USE APPLICATION



Date _____

Property Owner JOSHUA LIGHTNER
Mailing Address 1950 NW SUNSET DR
TOLEDO OH 47391

Telephone _____
Email _____

Authorized Agent Nathan Lightner
Mailing Address P.O. Box 736 Newport, Oregon 97365
541-270-8206

Telephone _____
Email _____

Property Address 1950 NW SUNSET DR
Property Location _____
Assessors Map No. 11-10-08-BE-02800

Property Size _____

Tax Lot No. _____

Present Zoning _____
Comprehensive Plan Designation _____
Current Use of Property _____
Existing Structures (if any) _____

Proposed Change _____

Proposal for which this request is being made (attach additional sheets if needed)

PARTITION OF 1 NEW PARCEL

The following must be submitted with this application:

- ☐ Deed description and proof of ownership interest.
- ☐ Site plan drawn to scale which shows property lines, access, existing buildings, other relevant features or conditions, the property's relationship to the surrounding neighborhood, and the location of existing and proposed development.
- ☐ Description of the proposed land use action, including information on how the proposal might impact surrounding property and how the request meets the decision criteria.
- ☐ Supplemental information form (if required).
- ☐ Application fee.

☐ Annexation/Rezone (\$1,500)*	☐ Expedited Land Division (\$2,000)*	☐ Riparian Modification Permit (\$200)
☐ Appeal, Land Use Misc (\$535)*	☐ Lot Line Adjustment (\$135)	☐ Similar Use, Planning Comm (\$535)
☐ Appeal, Type II (\$260)*	☐ Modification of Approval (75% of fee)	☐ Subdivision (\$930+\$20/lot)*
☐ Appeal, Type III (\$535)*	☐ Partition, Major (\$930)*	☐ UGB Amendment (\$2,660)
☐ Code Amendment (\$930)	☐ <u>Partition, Minor (\$535)*</u>	☐ Vacation (\$2,000)*
☐ (if requires M56 notice \$930+mailing)	☐ Planned Unit Development	☐ Variance, Type I (\$65)*
☐ Comp. Plan Amendment (\$930)	☐ (\$930+\$20/unit)*	☐ Variance, Type II (\$260)*
☐ (if requires M56 notice \$930+mailing)	☐ Replat, Major (\$930)	☐ Variance, Type III (\$535)*
☐ Code Interpretation, official (\$170)	☐ Replat, Minor (\$535)	☐ Zone Change (\$930)
☐ Conditional Use (\$535)	☐ Restrictive Lot Line Covenant	
☐ Exception to Statewide Goal (\$2,660)	☐ (\$100+admin fee)	

*Supplemental forms are required

If filing multiple Land Use Applications, the highest tier application will be assessed and 75% of each additional land use application when submitted together. If filing multiple Type I permits, staff can waive some fees where overlapping permits do not need significant additional review.

For Office Use Only

Date Received _____ By _____ Fee Paid \$535 Complete Application Date _____ City File No. _____

10/13/02

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that I must present sufficient factual evidence to show that this application complies with the Toledo Zoning Ordinance, Comprehensive Plan, and other applicable regulations. This responsibility is independent of any opinions expressed in the Planning Department Staff Report concerning the applicable criteria. I certify that, to the best of my knowledge, all information contained in this application is accurate.

My signature below shows that I have thoroughly discussed this application with the City Planner, City Manager, or designee and I am fully aware of my responsibilities as the applicant. A pre-application meeting with City staff was held on or around _____.

I understand that the Planning Commission will hold a public hearing for this application (Type III)	☐ yes
I understand that the City Council will hold a public hearing for this application (Type IV)	☐ yes
I understand that this is a City of Toledo staff-level decision (Type I and Type II)	☐ yes
Other _____	☐ yes

Andrew Olson

Applicant(s) Signature

10/2/22

Date

10/2/22

Date

Date

Property Owner (if different)

*****For Office Use Only*****

Public Works

1.	Is City sewer available? Where _____	Yes <u>X</u>	No _____
	Will a connection have to be constructed? What size of a line is required _____ <u>TBD</u>	Yes _____	No _____
2.	Is City water available? Where _____	Yes <u>X</u>	No _____
	Meter size _____ Estimated installation cost _____		
3.	Are there any public works improvements necessary? <u>TBD</u> If yes, describe _____	Yes _____	No _____
4.	Is there proper access? Are there proper easements? <u>TBD</u>	Yes _____ Yes _____	No _____ No _____
Curb cuts and property entrances must be constructed to City specifications. Permit and specifications are available through the Public Works Department.			
5.	Are there any special access requirements? If yes, describe _____	Yes _____	No _____
	Is a state access permit required? Is a county permit required?	Yes _____ Yes _____	No _____ No _____
6.	Are stormwater improvements needed? If yes, describe _____	Yes _____	No _____
	Is an erosion control plan needed?	Yes _____	No _____
7.	Is a plan review by Public Works required? <u>TBD</u>	Yes _____	No _____
8.	Is this application ready to be approved? Explain modifications or revisions needed for the application _____	Yes _____	No _____

Comments _____

REVIEWED AND APPROVED BY:

Brad Zuppa PWD 12/6/22
Public Works Director Date

Fire Department

1. Does the proposal meet the safety requirements of the IFC?
2. Is this application ready to be approved?
Explain modifications or revisions needed for the application

Yes ☒ No ☐
Yes ☒ No ☐

Comments No Comments

REVIEWED AND APPROVED BY:

Greg Musi
Fire Chief Inspector

11/18/22
Date

Police Department

1. Is this application ready to be approved?
Explain modifications or revisions needed for the application

Yes ☐ No ☐

Comments

REVIEWED AND APPROVED BY:

Chief of Police

Date

Planning Department

1. Is this application ready to be approved?
Explain modifications or revisions needed for the application

Yes ☐ No ☐

Comments

REVIEWED AND APPROVED BY:

City Planner

Date

Fire Department

1. Does the proposal meet the safety requirements of the IFC? Yes _____ No _____
2. Is this application ready to be approved? Yes _____ No _____
Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:

Fire Chief

Date

Police Department

1. Is this application ready to be approved? Yes X No _____
Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:



11/22/22

Chief of Police

Date

Planning Department

1. Is this application ready to be approved? Yes _____ No _____
Explain modifications or revisions needed for the application _____

Comments _____

REVIEWED AND APPROVED BY:

City Planner

Date

Boundary Surveys
Topographic Surveys
Elevation Certificates
Construction Layouts
As-Built Surveys



Partitions
Subdivisions
Boundary Line Adjustments
Land Use Consulting
Wetland Boundaries

Loomis Surveying

459 Pioneer Mtn. Loop, Toledo, Or 97391 (541)764-2928
(541) 336-2994 fax - (541) 270-2928 cell
dave@loomissurveying.com

Justin Peterson, Contract Planner
City of Toledo
PO Box 220
206 N. Main Street
Toledo, OR 97391

Joshua

Here is the Description of the proposed LLA-2-22 and the MP-2-22.

LLA-2-22

This Property line Adjustment is done to give the existing Lot 1 more road frontage on Sunset Drive. This will allow future development after the property changes ownership sometime in the future.

The area which is being adjusted makes Lot 2 more useable with more flat ground in the yard space. It provides adequate room so that a new Parcel can be made to the West of Lot 1.

This adjustment has no adverse consequences to Lot 1, at present or in the foreseeable future.

MP-2-22

This Partition is being done to divide off a homesite from Lot 1. The new parcel is acceptable for one homesite, The rest of the Parcel is mostly on a steep sidehill (40-50%)

Utilities: The sewer line run through the New Parcel, making it an easy hookup. The Electrical Power is located along the Access & Utility easement for easy hookup.

These proposed Parcels are more than adequate in size for similar homes in the area which are mostly on oversize lots also.

These land use projects are being done in a way that they will assist in the infilling of the property in Toledo in the future.

No other properties will be impacted by these land use changes. The land to the North and West of this property has access to Sunset Drive and Skyline Drive. The land to the South and East is Accessed from Nye Street.

LEGEND

○ FOUND SURVEY MONUMENT AS SHOWN

● FOUND SURVEY MONUMENT HELD FOR CONTROL

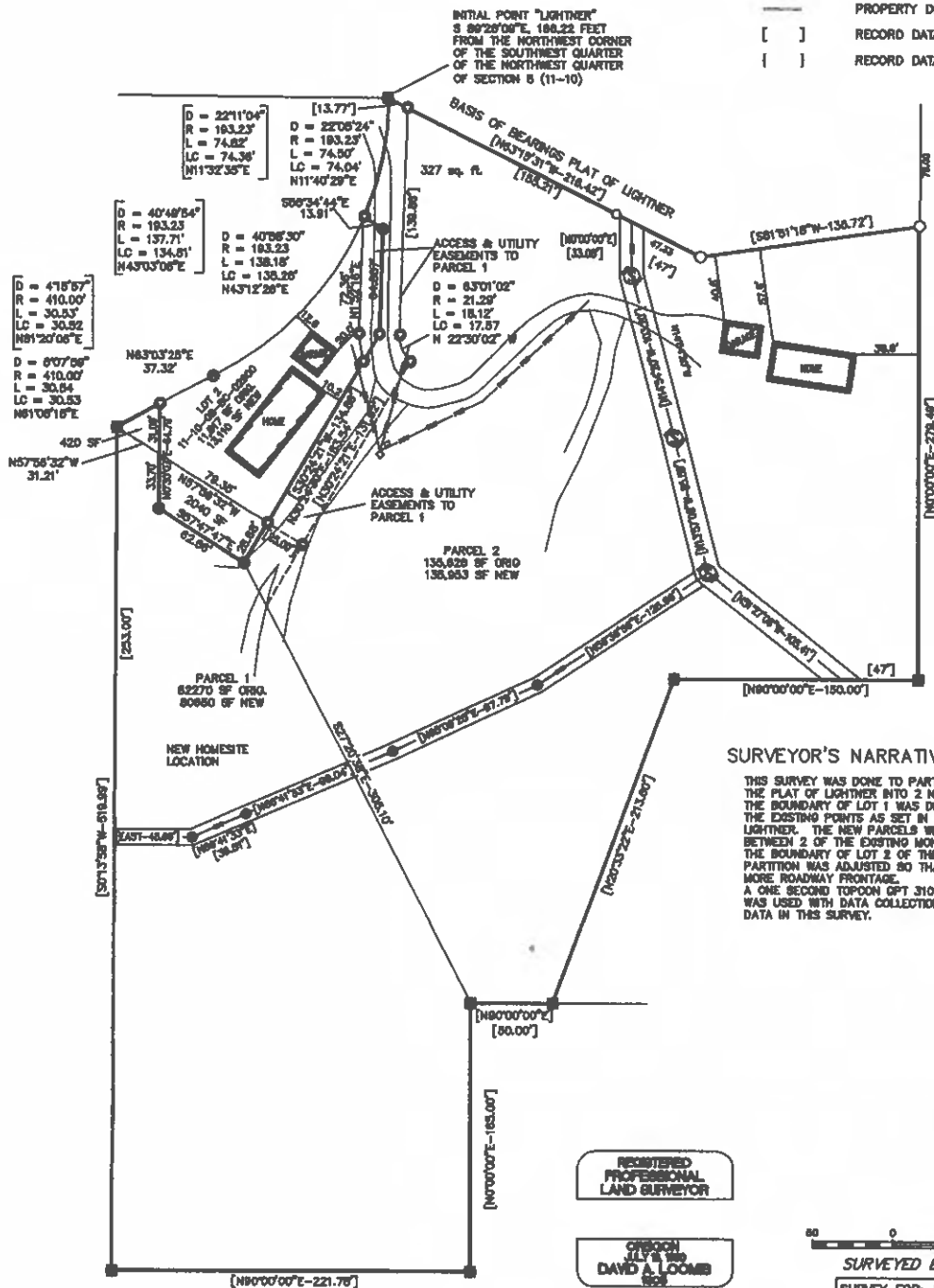
● SET 5/8" x 30" IRON ROD WITH A PLASTIC CAP "LOOMIS PLS 1908"

■ FD 5/8" I. ROD WITH DENISON CAP CS 13,290

— PROPERTY DEED BOUNDARY

[] RECORD DATA LIGHTNER SUBDIVISION BK 17 PG 10

{ } RECORD DATA


$$1'' = 50'$$

THIS SURVEY WAS DONE TO PARTITION LOT 1 OF THE PLAT OF LIGHTNER INTO 2 NEW PARCELS. THE BOUNDARY OF LOT 1 WAS DETERMINED FROM THE EXISTING POINTS AS SET IN THE PLAT OF LIGHTNER. THE NEW PARCELS WERE DETERMINED BETWEEN 2 OF THE EXISTING MONUMENTS. THE BOUNDARY OF LOT 2 OF THE LIGHTNER PARTITION WAS ADJUSTED SO THAT LOT 1 HAD MORE ROADWAY FRONTAGE.

A ONE SECOND TOPCON GPT 3102 TOTAL STATION WAS USED WITH DATA COLLECTION TO GATHER THE DATA IN THIS SURVEY.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

CRISCO
JUL 2 1969
DAVID A. LOOME
1969
RENEWAL DATE:
JANUARY 1, 2023



SURVEYED BY

SURVEY FOR: JOSHUA LIGHTNER

LOCATION: 11-10-08-BC-02800

LOT 1 OF PLAT OF LIGHTNER

DAVID LOOMIS SURVEYING

- DAVID A. LOOMIS LS 1908 -

459 PIONEER MOUNTAIN LODGE

TOLEDO, OR, 97391
541 338 2994 - 541 270 2920

FAX: 541.336.2994

110

CHECKED BY: DAL
DRAWN BY: DAL
SCALE: 1" = 50'
DATE: JAN 2021
No. 0121-007

RECORDING REQUESTED BY:


Western Title & Escrow

255 SW Coast Highway, Suite 100
Newport, OR 97365

GRANTEE'S NAME:

Joshua Lightner

AFTER RECORDING RETURN TO:

Order No.: WT0154217-AMM

Joshua Lightner
1950 NW Sunset Drive
Toledo, OR 97391

SEND TAX STATEMENTS TO:

Joshua Lightner
1950 NW Sunset Drive
Toledo, OR 97391

APN: R439273

Map: 11-10-08-BC-02800

1950 NW Sunset Drive, Toledo, OR 97391

Lincoln County, Oregon
04/30/2018 03:27:19 PM
DOC WD

2018-04128

Cnt=1 Pgs=3 Stn=20

\$15.00 \$11.00 \$10.00 \$20.00 \$7.00

\$63.00

I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed



Dana W. Jenkins, Lincoln County Clerk



SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATUTORY WARRANTY DEED

Lee

William T. Lightner, Grantor, conveys and warrants to Joshua Lightner, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Lincoln, State of Oregon:

Lot 1, LIGHTNER, in the City of Toledo, County of Lincoln and State of Oregon.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS ONE HUNDRED FIFTY-THREE THOUSAND ONE HUNDRED EIGHTY AND NO/100 DOLLARS (\$153,180.00). (See ORS 93.030).

Subject to:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

EXHIBIT "A"

Exceptions

Subject to:

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of: Pacific Power and Telegraph Company
Recording Date: June 6, 1946
Recording No: Book 111, Page 570

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of: City of Toledo
Recording Date: May 10, 1993
Recording No: Book 261, Page 1015

Corrected by instrument,

Recording Date: April 23, 2002
Recording No.: Book 447, Page 1677

Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of: Norwest Natural Gas Company
Recording Date: June 2, 1993
Recording No: Book 262, Page 1221

Sewer Pipeline Easement, including the terms and provisions thereof,

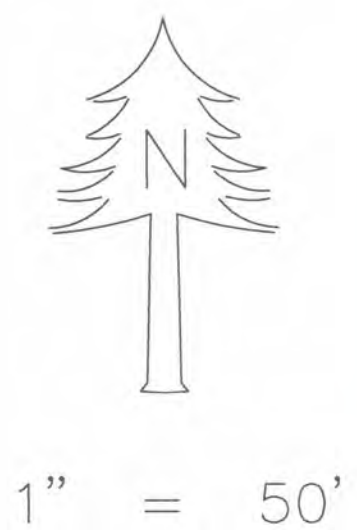
Recording Date: August 10, 1993
Recording No.: Book 266, Page 687

Underground Right of Way Easement, including the terms and provisions thereof,

Recording Date: September 12, 1995
Recording No.: Book 305, Page 1560

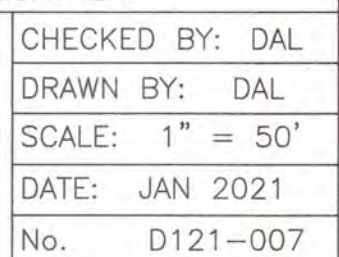
Covenants, conditions, restrictions and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the **Plat**.

	LEGEND
	FOUND SURVEY MONUMENT AS SHOWN
	FOUND SURVEY MONUMENT HELD FOR CONTROL
	SET 5/8" x 30" IRON ROD WITH A PLASTIC CAP "LOOMIS PLS 1908"
	FD 5/8" I. ROD WITH DENISON CAP CS 13,290
	PROPERTY DEED BOUNDARY
	RECORD DATA LIGHTNER SUBDIVISION BK 17 PG 10
	RECORD DATA



THIS SURVEY WAS DONE TO PARTITION LOT 1 OF THE PLAT OF LIGHTNER INTO 2 NEW PARCELS. THE BOUNDARY OF LOT 1 WAS DETERMINED FROM THE EXISTING POINTS AS SET IN THE PLAT OF LIGHTNER. THE NEW PARCELS WERE DETERMINED BETWEEN 2 OF THE EXISTING MONUMENTS. THE BOUNDARY OF LOT 2 OF THE LIGHTNER PARTITION WAS ADJUSTED SO THAT LOT 1 HAD MORE ROADWAY FRONTAGE. A ONE SECOND TOPCON GPT 3102 TOTAL STATION WAS USED WITH DATA COLLECTION TO GATHER THE DATA IN THIS SURVEY.

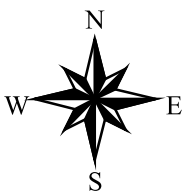
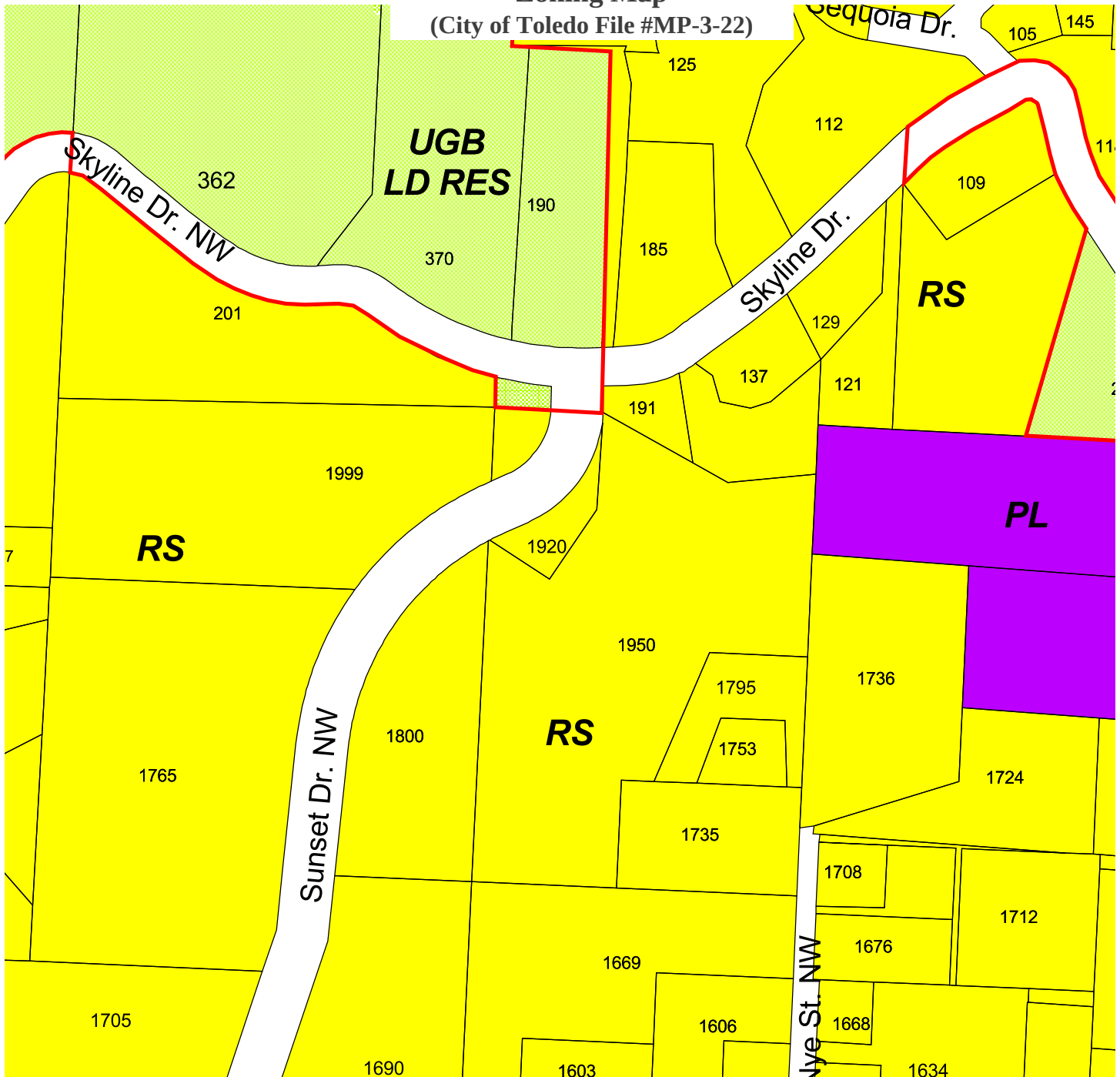
RENEWAL DATE:
JANUARY 1, 2023



ATTACHMENT C

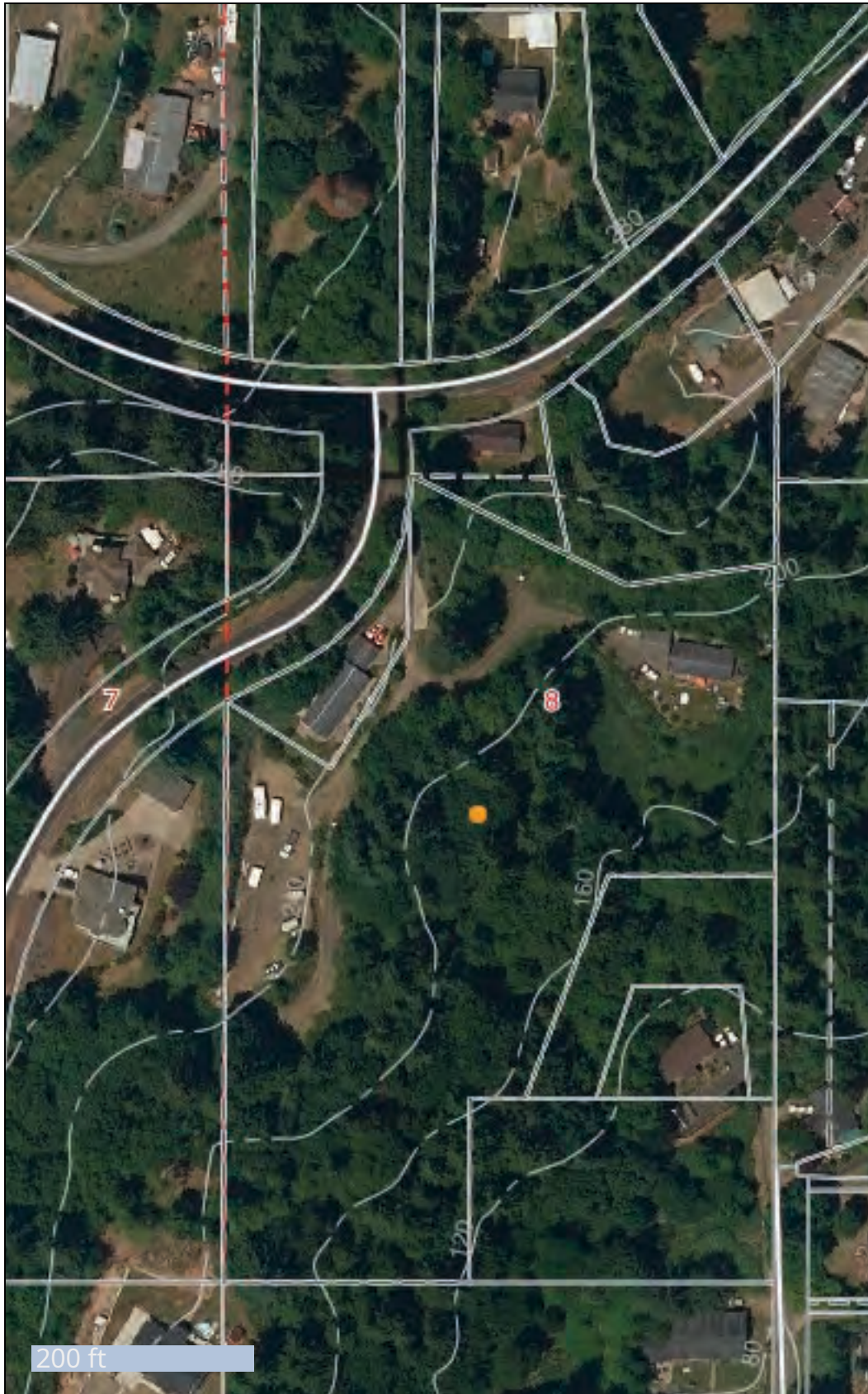
Zoning Map

(City of Toledo File #MP-3-22)



- City Limits
- Parcels
- Comprehensive Plan
- Commercial
- Industrial
- Light Industrial
- Natural Resources
- Public Lands
- Residential General
- Residential Single
- Water Dependent
- Outside UGB
- UGB Commercial
- UGB Industrial
- UGB Low Density Residential
- UGB Medium Density Residential
- UGB Natural Resources
- UGB Public Lands
- UGB Water Dependent

ATTACHMENT D
Aerial Map
(City of Toledo File #MP-3-22)



Legend

-  Cities
-  Sections
-  40 Foot Contours

Printed on 12 / 7 / 2022

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ATTACHMENT E
LLA-2-22 Approval (Lightner-Blank Request)
(City of Toledo File #MP-3-22)

CITY OF TOLEDO
LOT LINE ADJUSTMENT STAFF REPORT

PROPERTY: Lincoln County Assessor's Map # 11-10-08 BC Tax Lots 2800 and 2900 (1950 NW Sunset Drive and 1920 NW Sunset Drive).

APPLICATION #: Case File #LLA-2-22

APPLICANT: Nathan Lightner, Authorized Agent

OWNER: Andrew and Kyra Blank, Property Owners TL 2900
Joshua Lightner, Property Owner TL 2800

APPLICATION DATE: November 8, 2022

DATE OF DECISION: November 17, 2022

REQUEST: The applicants are requesting approval of a property line adjustment for Tax Lots 2800 and 2900. Tax Lot 2800 will change from 217,896 square feet (5.0 acres) to approximately 216,603 square feet (4.97 acres). Tax Lot 2900 will change from approximately 11,817 square feet (0.27 acres) to approximately 13,110 square feet (0.30 acres). The property line adjustment will transfer approximately 1,293 square feet of land from Tax Lot 2800 to Tax Lot 2900.

LOCATION: The subject properties are located at 1950 and 1920 NW Sunset Drive

I. REPORT OF FACTS:

Existing Size of Tax Lots: Tax Lot 2800 is approximately 217,896 square feet (5.0 acres) and Tax Lot 2900 is approximately 11,817 square feet (0.27 acres).

Plan & Zone Designation: Single-Family Residential (R-S) for Tax Lots 2800 and 2900.

Existing Structures: Tax Lot 2800 has an existing home and garage. Tax Lot 2900 has an existing home and garage.

Development Constraints: TL 2800 is sloped downhill to the southeast. Tax Lot 2900 has some slopes on the northern property line.

City water & sewer:

Water service is located in NW Sunset Drive. Sewer service cuts across Tax Lot 2800. The existing homes are served by sewer and water.

II. CRITERIA AND FINDINGS:

The following ordinance standards apply to this request. The ordinance standards are listed below in regular type. Staff analysis including facts and findings are highlighted below each ordinance standard in an italicized font.

TMC 16.28.040. The city manager shall approve or deny a request for a lot line adjustment in writing based on findings that all of the following criteria are satisfied:

- A. No additional parcel or lot is created by the lot line adjustment; however, the number of lots or parcels may be reduced.

Fact #1: The proposed adjustments will revise the area of two existing parcels and will not result in the creation of additional parcels.

Finding #1: No additional lots or parcels are created by the proposal.

- B. Lot Standards. All lots and parcels comply with the applicable lot standards of the land use district including lot area and dimensions.

Fact #2: The proposal will result in the following adjustments: Tax Lot 2900 will be increased from 11,817 square feet (0.27 acres) to approximately 13,110 square feet (0.30 acres) in size. Tax Lot 2800 will be reduced from 217,896 square feet (5.0 acres) to approximately 216,603 square feet (4.97 acres) in size.

Finding # 2: The proposed lot line adjustment for Tax Lots 2800 and 2900 will result in a lot size that will meet and exceed the minimum lot size of 6,000 square feet that is required in the R-S Zone. Both parcels will meet the minimum lot size requirement.

- C. Access. All lots and parcels comply with the standards or requirements of access and circulation.

Fact #3: The proposal will not revise existing access and circulation.

Finding #3: All lots and parcels will comply with the standards of access and circulation.

- D. Setbacks. The resulting lots, parcels, tracts, and building locations comply with the standards of the land use district.

Fact #4: Tax Lot 2800 has an existing home and garage. TL 2900 has an existing home and garage.

Finding #4: The adjusted lot lines will not reduce any setback below the minimum

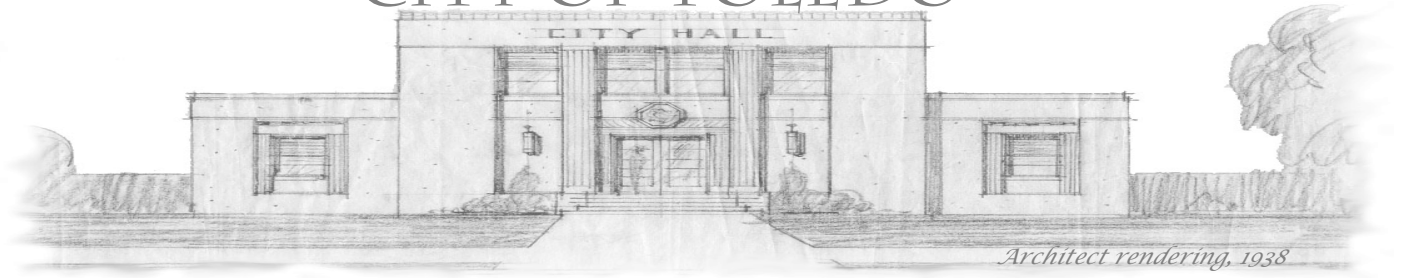
standards allowed for the R-S zone in TMC 17.08.060.

III. DECISION

Case File #LLA-2-22 is hereby **approved** provided the following conditions are met:

1. Approval is based on the submitted plan, including the attached map that shows combined Tax Lots 2800 and 2900. Any change to the approved plan will require a new application for a lot line adjustment.
2. Approvals shall be subject to the following minimum conditions:
 - a. Deeds, based on a metes and bounds legal description, for all adjusted lots resulting from the lot line adjustment shall be recorded with the Lincoln County Clerk's office.
 - b. A certified boundary survey map that reflects the approved lot line adjustment shall be filed with Lincoln County. Prior to the filing of the survey map with Lincoln County, the map shall be reviewed by the City and signed by the City Manager.
 - c. Copies of the recorded deeds and filed survey map shall be provided to the City following recordation.
3. Within one year from the date of this decision, the applicant shall file the lot line adjustment survey with the Lincoln County Surveyor's office, and provide a copy of the filed survey to the City of Toledo Planning Department. The date of this decision is November 17, 2022.
4. The lot line adjustment approval shall lapse if:
 - a. The lot line adjustment is not recorded with the Lincoln County Clerk within the time limit of one year;
 - b. The lot line adjustment survey is not filed with the Lincoln County Surveyor within the time limit of one year;
 - c. The lot line adjustment has been improperly recorded with Lincoln County without the satisfactory completion of all conditions attached to the approval; or
 - d. The final recording is a departure from the approved plan.
5. Extension. The City shall, upon your written request and payment of the required fee, grant an extension of the approval period not to exceed one year provided that:
 - a. No changes are made on the original plan as approved by the City;
 - b. You can show intent of recording the approved lot line adjustment within the one year extension period; and
 - c. There have been no changes in the applicable code or plan revisions on which the approval was based. In the case where the lot line adjustment conflicts with a code change, the extension shall be denied.

CITY OF TOLEDO



To: Toledo Planning Commission

From: Justin Peterson, Oregon Cascades West Contract Planner

Date: December 7, 2022

Re: Comprehensive Plan Update

Background

The City of Toledo updated its Transportation System Plan (TSP) in December 2013 and at the same time adopted new Goals and Objectives based on the findings in the TSP. Staff anticipates that the updates to Article 12 Transportation will be minor in nature. TSPs are typically updated every 10-20 years. Therefore, the City of Toledo can anticipate updating the TSP sometime in the next 10 years. At that time the goals and objectives will be reviewed.

Please review the attached Goals and Objectives before the meeting. At the meeting we will go through each of the goals and objectives.

Attachments

- Existing Transportation Goals and Objectives

ARTICLE 12: TRANSPORTATION

GOALS:

1. Provide a safe and efficient, multi-model transportation system which provides linkages in a manner that enhances Toledo's neighborhoods, environment, economy, and social and scenic values.
2. Minimize the adverse social, economic, and environmental impact costs of constructing, maintaining, and using transportation facilities and services in cooperation with county, state, and other public agencies and the private sector.
3. Encourage safe, efficient, convenient, and economic modes of travel that reduce reliance upon one form of transportation, minimize energy consumption and air quality impacts.
4. Develop a safe and efficient street system that will handle the project needs of the community and provide connections to the region.
5. Provide safe, accessible, and convenient pedestrian and bicycle facilities while taking into account Toledo's topography, current street use and widths, and current funding levels for major improvements.
6. The City of Toledo will seek for all its citizens the maximum level of access to all social, work, and welfare resources.
7. The City of Toledo will seek for all its citizens a customer-based regionally coordinated public transit system that is efficient, effective, and founded on present and future needs.
8. Minimize the negative impact of the rail system on other aspects of the transportation system, adjacent land uses, and quality of life in Toledo.
9. Encourage land use patterns that maximize rail service or preserve the future opportunity to use rail transportation.
10. Support current rail service in Toledo.

OBJECTIVES:

Multimodal System Objectives

1. Provide a multi-modal transportation system which provides services for motorized vehicles, bicycles, pedestrians, electronic data transmission, mass transit, and air, rail and water transport (including shipping).
2. Encourage options other than the personal automobile for transportation services

through comprehensive land use planning policies that would allow reliance upon the automobile and vehicle trips to be reduced.

- a. Improve and support transit services.
 - b. Improve and support ride-sharing opportunities.
 - c. Support programs to reduce the single-occupancy trips for commuters to Newport and other Lincoln County and Benton County areas.
 - d. Encourage the provision of sidewalks, pedestrian paths, and bicycle paths/lanes.
3. Support the role of Toledo as a regional center for air, water, rail, and roadway transport connections. Within Lincoln County, Toledo has the only sites which provide rail, air, water, and roadway connections for moving goods.
 4. Continue to coordinate transportation planning and services with Lincoln County, Oregon Department of Transportation, private industry, and others determining transportation policies, programs, and projects.
 5. Maintain a Transportation System Plan which supports and implements these transportation goals and objectives, the Oregon Transportation Goal 12, and the requirements of the Oregon Transportation Rule.

Public Works Objectives

6. Build and maintain roadways and other transportation facilities in a manner that is the most cost effective for the life of the road so as to reduce public maintenance costs.
7. Provide transportation facilities designed to maintain safe conditions over time and in adverse weather conditions.
8. Develop a coordinated approach to the operation, development, and maintenance of transportation facilities by linking the construction and maintenance of roadways to the construction and maintenance of other public services including wastewater, water, storm drainage, public utilities, and public safety vehicle access and to the increased service level demands of new or expanded land within the City and Urban Growth Boundary.
9. Ensure continued, economically viable, and competitive access to electronic data transmission. Maintain the Toledo Public Utilities Commission to provide input to the City Council regarding franchises for the operation of public utilities within Toledo.

Development/Land Use Objectives

10. Assure that minimum, adopted national standards for public safety access are maintained for each property and that access lanes are provided as fire breaks and

evacuation routes within the community.

11. Require new development to extend/improve transportation facilities to complete transportation system linkages and to mitigate impacts of additional traffic from new development on the existing transportation system and neighborhoods.
12. Maintain standards and procedures to ensure the provision of the desired transportation system as each property is developed/redeveloped for more intense uses by coordinating development permits with the extension or improvement of streets and other transportation facilities.
13. Develop and maintain a Transportation System Plan and clear and objective local standards for transportation facilities construction and maintenance. Incorporate the use of the TSP and local standards into application reviews and permits for all new developments and construction projects.
14. Minimize disturbances of the natural environment or use of natural resources when locating, constructing, maintaining, and using transportation facilities and services. Encourage land use patterns which minimize environmental impacts from transporting people, goods, and services.

Street System Objectives

15. Provide a system of roadways that maintain vehicle capacity and public safety as the community grows.
16. Provide linkages within the community with a circulation system that is safe and convenient to all areas within the community and that links the community to Highway 20, rail, air, and water shipping facilities.
17. Maintain the character of Toledo's neighborhoods by encouraging local streets that ensure safe and efficient traffic flows but which are designed to encourage low speeds and minimize traffic impacts within the residential neighborhoods.
18. Maintain efficient and safe truck routes to support the transportation of people, goods, and services between major employment centers and markets.
19. Support and work with the Cascades West Area Commission on Transportation (CWACT) to identify funding for Western Junction projects that are in line with Toledo's vision for the intersection.
20. Work with partners to add wayfinding signs to direct visitors to downtown Toledo, the Arts District, and other Toledo attractions for all modes including vehicles, bicyclists, and pedestrians.
21. Continue to support transportation access including freight to industrial sites in

the City - including the Siletz Kiln site - to support economic development.

22. Maintain flexibility with street standards for all modes given the existing topographical and right-of-way constraints, provide options to minimum standards that provide safe, feasible streets.
23. The designated Functional Classification of streets in the Toledo TSP will be used to prioritize street maintenance and guide the location and design of new streets.
24. Protect the function of existing and planned roadways by application of appropriate setbacks, land use regulations, exactions, and voluntary dedication.
25. All development proposals, plan amendments, or zone changes will conform with the Toledo Transportation System Plan.
26. Consider impacts on existing or planned transportation facilities in all land use decisions.
27. Coordinate with the Oregon Department of Transportation and Lincoln County Public Works to implement the improvements listed in the Toledo Transportation System Plan.
28. Continue to update capital plans to identify, prioritize, and construct transportation projects giving careful consideration to a constrained budget environment, topographical challenges, and diminishing sources of outside funding.
29. Land uses authorized under Comprehensive Land Use Plan Map and Zoning Map amendments must be consistent with the identified function, capacity, and level of services of transportation facilities.

Bicycle and Pedestrian System Objectives

30. Develop a pedestrian and bikeway system which will provide routes to allow pedestrians and bicyclists to travel to and from residential areas to schools, parks, places of employment, and commercial areas.
 - a.. Action: If there are stakeholders in this area, then every effort should be made to involve these citizens in selecting prioritized routes to be considered for feasibility, safety, and cost versus use practicality.
 - b. Action: The same stakeholders should also be encouraged to take an active role in determining sources of revenue for funding these improvements above the funds currently being dedicated for bike lanes.
 - c. Action: Coordinate with Lincoln County and private land owners in the development of bikeways.

31. All new arterial and collector streets and major improvements¹ to arterial and collector streets shall include the pedestrian and bikeway facility specified in the street design standard where feasible.
32. When traffic volume on existing collector streets (speeds <25mph) exceeds 3,000 ADT consider changing the bikeway type from shared roadway to bike lanes.
33. Low curb crosswalks shall be used at all intersections, consistent with ADA guidelines, to facilitate use by all pedestrians.
34. Where feasible, the City shall allow no physical obstruction of sidewalks such as utility poles, sign posts, or guy wires (consistent with ADA guidelines).
35. Provide safe, convenient, and attractive walking environments through the City with a special emphasis in the commercial area.
36. Visibility and unobstructed views shall be promoted for all areas of high pedestrian use.
37. Bicycle traffic on sidewalks shall be prohibited.
38. The City will work with interested landowners to explore local funding options for sidewalk improvements such as Local Improvement Districts.
39. The City supports the development of a well-developed sidewalk system with street trees to link the community to downtown, local parks, and the waterfront.
40. Support efforts by local schools and emergency service organizations to implement a bicycle, pedestrian, and driver safety education program to encourage safe walking, cycling, and driving behavior.
41. Coordinate with rail operators to address rough pavement at railroad crossings to create smooth crossings for bicyclists and pedestrians. (This objective is in conjunction with Rail Objectives 61 and 63 to address railroad crossings).
42. Identify ways to improve wayfinding resources to guide pedestrians and bicyclists to explore Toledo and provides directions to local attractions in downtown and near the waterfront.
43. Work with regional partners to determine the feasibility of building an intercity multi-use trail.
44. Encourage community partners to explore the possibility of instituting a

¹“Major Improvement” refers to a construction project where the pavement or asphalt of the street is removed down to the base rock foundation and rebuilt.

volksmarch² route in Toledo for programming events.

Port and Water System Objectives

45. Work with partners to determine the lifespan of Butler Bridge and explore the rebuilding or altering the bridge to accommodate taller barges and boats.
46. Support efforts to develop a pier for barge access at the entrance to Depot Slough on Georgia-Pacific property to take advantage of the dredged river channel.
47. Explore the possibility of a recreational (non-motorized) boat launch on the waterfront near downtown.
48. Work with the Port of Toledo and other partners to help identify an appropriate dredge spoils site for Depot Slough.
49. Continue to make the proposed intermodal hub at Tokyo Slough (linking water, rail, and freight truck transportation) a high priority.

Transit Objectives

50. The City will support and promote regional planning for public transportation services that use innovative technology to maximize efficiency of operation, planning, and administration of public transportation.
51. The City encourages the use of car pools and park-and-ride lots in the area and other strategies to reduce the number of single occupant vehicle trips.
52. The City shall support existing public transportation services by improving facilities and promoting public awareness of the services.
53. The City will coordinate with other jurisdictions when park-and-ride facilities are needed.
54. Maintain long-standing partnership with Lincoln County Transit and the North by Northwest Connector to support new investments in transit service and infrastructure, and identify potential new funding sources to implement these improvements.
55. Encourage the Toledo Chamber of Commerce or other organization to explore a citywide transit shuttle or circulator that could meet the demand for improved local service for Toledo residents and employees.

²Volksmarching is a form of personal, non-competitive, fitness walking that originated in Germany and has a popular following in the United States.

56. Encourage local and regional partners to explore long-term feasibility of water taxi or ferry service to Newport.

Air Objective

57. If the airport closes, work with partners (including emergency service providers) to identify an alternate Life Flight landing site in the City.

Pipeline Objective

58. Continue to support the Georgia-Pacific plant's effluent pipeline and work with partners to maintain applicable environmental permitting.

Rail Objectives

59. Retain existing railroad crossings in Toledo and strive for safety measures that offer the highest level of protection.
60. Work with the railroad to minimize the visual and noise impacts of rail traffic.
61. Continue to work with the railroad to facilitate pedestrian facility installation at all pedestrian crossings.
62. Coordinate with regional organizations to emphasize the importance of the current rail system to the economy of Toledo and Lincoln County.
63. Coordinate regularly with ODOT Rail, Lincoln County, Georgia Pacific, and PNWR to work together to address the conditions of the crossings.
64. Develop evaluation criteria to prioritize public crossing investments and generate a list of improvements in order of greatest priority.
65. Continue to pursue the proposed intermodal hub at Tokyo Slough with the Port of Toledo to add potential freight rail customers.
66. Work with ODOT Rail and PNWR to develop policies to reduce idling train engines near Downtown businesses.
67. Support efforts that will attract new businesses and support existing businesses and industries that will utilize freight and potential passenger rail service between Toledo and the I-5 corridor



TOLEDO PLANNING COMMISSION SCHEDULE

2023 MEETING DATES



JANUARY 11
FEBRUARY 8
MARCH 8
APRIL 12
MAY 10
JUNE 14

JULY 12
AUGUST 9
SEPTEMBER 13
OCTOBER 11
NOVEMBER 8
DECEMBER 13



Planning Commission meetings begin at 6:30 pm.
Unless indicated, meetings will be held in the City Hall Council Chambers, 206 N Main Street, Toledo.
visit www.cityoftoledo.org/meetings for updated information

Worksessions/Special Meetings: The Planning Commission may conduct worksessions and/or special meetings throughout the year. These meetings will be scheduled as necessary and notice will be sent in advance of the meeting date. Unless otherwise noted, worksessions and special meetings will be held in the City Hall Council Chambers, 206 N Main Street, Toledo. Times may vary.

