

Development Services

From Concept to Construction

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More Contact Info (<http://www.portlandoregon.gov/bds/article/519984>)



APPEAL SUMMARY

Status: Decision Rendered

Appeal ID: 23801	Project Address: Offshore of 5480 NW Front Ave
Hearing Date: 6/10/20	Appellant Name: Takashi Taku Fuji
Case No.: B-009	Appellant Phone: 503-972-5002
Appeal Type: Building	Plans Examiner/Inspector: Ian LaVielle, Jason Butler-Brown
Project Type: lur	Stories: NA Occupancy: Not applicable Construction Type: Placement of cover after excavation.
Building/Business Name: Not applicable	Fire Sprinklers: No
Appeal Involves: other: The project involves placement of 2,260 cubic yards of fill over 0.9 acre at a depth of -38 feet CRD in the Willamette River. The location where the fill will be placed will be excavated by an additional 1 foot in depth to accommodate the fill.	
LUR or Permit Application No.: 20-134201-GW	
Plan Submitted Option: pdf [File 1] [File 2] [File 3] [File 4]	Proposed use: There are no structures proposed as part of this project.

APPEAL INFORMATION SHEET

Appeal item 1

Code Section	24.50.060(F)(8)
Requires	<p>Per Portland City Code Section 24.50.060(F)(8) (Balanced Cut and Fill Required in All Flood Management Areas of the City Not Addressed by Section 24.50.060 G), balanced cut and fill shall be required. All fill placed at or below the base flood elevation shall be balanced with at least an equal amount of soil material removal. Soil material removal shall be within the same flood hazard area identified in Section 24.50.050(A)–(I).</p> <p>a. Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.</p> <p>b. Temporary fills permitted during construction shall be removed.</p>
Code Modification or Alternate Requested	McCall Oil and Chemical Corporation (McCall) requests a variance under Portland City Code Section 24.50.070 to allow the placement of cover material following over-excavation as no change in riverbed elevation and no net fill will result from this project.
Proposed Design	The proposed project will include excavation (dredging), followed by placement of approximately 2,260 cubic yards of fill in the Willamette River at River Mile 7.8. The placement of fill (clean sand-and-gravel cover) at the location of DMMUs 8 and 9 is a post-dredge surface management requirement as defined in the joint PSET and EPA Dredged Material Suitability Determination for the maintenance dredging of the McCall berth. This Suitability Determination was issued on

September 17, 2019. The area of excavation and fill is shown in the figures provided, and no change in riverbed elevation and no net fill will result from this project.

Reason for alternative The proposed project is a post-dredge surface management requirement for the maintenance dredging project located at the McCall dock at River Mile 7.8 on the west side of the Willamette River. The project has been designed by McCall and Anchor QEA in accordance with the terms of included in the joint PSET and EPA Dredged Material Suitability Determination for the maintenance dredging project at the McCall dock. The maintenance dredging project will excavate (dredge) approximately 60,500 cubic yards of sediment by the McCall dock to ensure continued safe access to the berth. The total area of the maintenance dredging is approximately 9.4 acres, with dredging of between 2 to 9 feet of accumulated sediment to restore depths to -37 +1 feet CRD. The area proposed for the sand-and-gravel cover will be over-excavated by 1 foot to accommodate placement of a 1-foot clean sand-and-gravel cover. The need for post-dredge surface management at DMMUs 8 and 9 was based on the sediment quality data collected that indicated concentrations of tributyltin exceeded the PSET screening level and dioxin congeners exceeded EPA Portland Harbor Site-Wide Remedial Action Levels in this area. The placement of the sand-and-gravel cover is a benthic health protective action to reduce or eliminate exposures to aquatic organisms to newly exposed sediment resulting from the dredging activities. The post-dredge surface at DMMUs 8 and 9 were the only areas of the dredge prism footprint where post-dredge sediment concentrations exceeded PSET and/or EPA thresholds.

The proposed project has been designed to have a consistent final bed elevation over the entire dredge prism footprint post-dredging and will not result in a net fill at the location of the placement of the sand-and-gravel cover (DMMUs 8 and 9). The overall cut or dredging volume at the McCall dock will be significantly greater (approximately 60,500 cubic yards) than the proposed fill (2,260 cubic yards), which results in a substantial net reduction in sediment volume within the dredge prism even with the placement of the sand-and-gravel cover. At the location of the placement of the sand-and-gravel cover, the cut depth (depth of dredging) ranges from approximately 4 to 10 feet in addition to the 1-foot over-excavation required to accommodate the sand-and-gravel cover. As the riverbed elevation will be lower over the entire 9.4-acre dredge prism footprint that includes the area of sand-and-gravel cover placement, there is no flood rise concern related to this project. The PSET and EPA Suitability Determination for this maintenance dredging project requires that all dredged sediment generated from this maintenance dredging project be placed in an upland disposal site.

This project involves excavation and the subsequent placement of fill at the bottom of the Willamette River, which is an area filled with water during non-storm conditions and therefore does not strictly satisfy the specific terms of Portland City Code Section 24.50.060(F)(8)(a). The project does meet the overall objectives of this code provision in that it is designed to achieve balanced cut and fill volumes in the same flood hazard area.

Portland City Code Section 24.50.070(B) additionally instructs applicants to consider a specified list of "relevant factors and standards" in requests for a variance. The text of the Code's variance criteria is subsequently listed and each criterion is followed by Anchor QEA's response as pertaining to this project.

The danger that materials may be swept into other lands to the injury of others.

The project is located fully in-water at a depth of -38 feet CRD and subject to the flows of the Willamette River. The project location is in a depositional area of the Willamette River as evidenced by the need for the maintenance dredging, as up to 12 feet of sediment have accumulated in this area since it was last dredged in 1993. It is expected that over time, the sediment bed will be enhanced by the deposition of upstream sediment rather than erode. The Oregon Department of Environmental Quality Clean Water Act Section 401 Water Quality Certification for this project requires that turbidity be continually monitored during excavation of sediment and placement of fill to evaluate and control any erosion that may occur to transport materials downstream during construction. Therefore, Anchor QEA does not anticipate that

material from the sand-and-gravel cover would be transported downstream in quantities that would cause injury to others.

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

This project is not expected to have any impact on flood water surface elevations within the regulatory floodway because the overall bed elevation will be lower over the entire 9.4-acre dredge prism footprint that includes the project area of sand and gravel cover placement. Therefore, no known or anticipated danger to life or property exists due to flooding as a result of this project. As discussed in response to Variance Criterion No. 1 this area is a depositional area in the river. Accordingly, no known or anticipated danger to life or property exists due to erosion as a result of this project.

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

This project is fully submerged and located at a riverbed elevation of -38 CRD. Flooding is unlikely to have a damaging effect on the proposed project. Based on a calibrated hydrodynamic model of the Willamette River developed to support the Draft Feasibility Study for Portland Harbor (Anchor QEA 2012), the maximum scour depth during the 1996 flood (representing a 100-year flood event) was estimated at 0 to 5 centimeters (approximately 0 to 2 inches) in the reach of the river containing the project area. The maximum potential scour in an extreme flooding event would not significantly impact the 1-foot sand-and-gravel cover. In addition, the project is located in a depositional area of the river, so any minor scour that might occur would be quickly infilled. Accordingly, Anchor QEA does not anticipate damage to the sand and gravel cover in the event of a flood.

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

The objective of this project is to protect the environment by reducing or eliminating aquatic organism exposure to elevated levels of tributyltin and dioxins congeners present in the post-dredge sediments at the project location. The placement of the sand-and-gravel cover is a requirement of PSET and EPA.

This project is a component of a larger maintenance dredging project being completed at the McCall Terminal to allow for safe access to vessels accessing the dock and will have a significant public benefit. The McCall Terminal is a unique facility and one of only two terminals on the West Coast (and the only terminal in Oregon) that can receive and store marine shipments of asphalt. The end users of McCall asphalt are primarily the City of Portland, Multnomah County, and various Oregon and Washington state agencies that are responsible for the maintenance and preservation of local, regional, and state public transportation infrastructure. Approximately 60% to 70% of McCall's product sales are to local clients in the Portland metropolitan area, with the majority being contractors to government agencies. While there are other suppliers of asphalt and bulk liquid energy products in Oregon, they do not have the same receiving or distribution capabilities that McCall's facility does or the proximity to the Portland market, where the majority of Oregon's transportation infrastructure is located. The McCall facility provides the public and public agencies with the most efficient method for obtaining their product (i.e., asphalt, liquid energy, and renewables), providing a huge benefit to the public in transportation infrastructure.

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

The project area is required to have the sand and gravel cover as defined by PSET and EPA in their Suitability Determination for the McCall maintenance dredging project. By necessity, the requirements of PSET and EPA dictate the location of this project.

The availability of alternative locations, not subject to flooding or erosion damage.

As explained in the response to Variance Criterion No. 5, this criterion is not applicable to this project.

The compatibility of the proposed use with existing anticipated development.

The area of the river is zoned River Industrial and Prime Industrial, and Anchor QEA is not aware of any anticipated development for this area that this project would interfere or be incompatible with

The relationship of the proposed use to the Comprehensive Plan and Floodplain Management Program for that area.

The project is located in the Willamette River riverbed at River Mile 7.8 on fully submerged land. The proposed project is a required activity to protect the environment. The overall maintenance dredging project will allow for the existing beneficial uses of the area, including preservation of navigation to allow marine vessels to be able to access the facility year-round to deliver products that can be accepted at the existing McCall facility. This area of the river is zoned River Industrial and Prime Industrial, and the project will have no impact on these designations. The project will, if anything, enhance floodplain management.

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

This project is located on fully submerged land, with no possibility of access by land-based vehicular traffic. Access by marine vessels will be unaffected by the project.

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

As described in the Draft Feasibility Study for Portland Harbor (Anchor QEA 2012), the maximum scour depth expected in the area of the project (River Mile 7.8) during a 100-year flood (as represented by the 1996 flood) is estimated to be only 0 to 5 centimeters (approximately 0 to 2 inches); in addition, a majority of the project area is net depositional and will be quickly infilled following a flood event. Therefore, no significant erosion or sediment transport is expected to occur even during extreme flood events and other critical conditions.

The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges; Upon consideration of the factors listed above and the purposes of this Chapter, such conditions may be attached to the granting of variances as deemed necessary.

This variance criterion is not applicable to this project.

APPEAL DECISION

Placement of cover material following over-excavation with no change in riverbed elevation and no net fill: Granted as proposed.

The Administrative Appeal Board finds that the information submitted by the appellant demonstrates that the approved modifications or alternate methods are consistent with the intent of the code; do not lessen health, safety, accessibility, life, fire safety or structural requirements; and that special conditions unique to this project make strict application of those code sections impractical.

Pursuant to City Code Chapter 24.10, you may appeal this decision to the Building Code Board of Appeal within 90 calendar days of the date this decision is published. For information on the appeals process, go to www.portlandoregon.gov/bds/appealsinfo, call (503) 823-7300 or come in to the Development Services Center.

May 26, 2020

Ian LaVielle
City of Portland
Bureau of Development Services
1900 SW Fourth Avenue
Portland, OR 97201

Re: LU 20-134201 (McCall Oil and Chemical Corporation Terminal Sand-and-Gravel Cover Placement) – Hydraulic Evaluation

Dear Mr. LaVielle,

As part of the land use review for the McCall Oil and Chemical Corporation Terminal Sand-and-Gravel Cover Placement project (Project), a portion of your Land Use Review Response dated May 12, 2020 (included as Attachment 1), requested a hydraulic analysis that demonstrates that the proposed work will not result in a rise of the base flood elevation. The purpose of this letter is to respond to that request.

As noted in your response, the Project is located within the Willamette River floodway, and a total of 2,260 cubic yards of sand and gravel fill will be placed below the base flood elevation in Dredged Material Management Units 8 and 9. However, the design also shows over-dredging by 1 foot down to -39 feet Columbia River Datum (CRD) to accommodate placement of the sand and gravel fill to -38 feet CRD. Although the dredging and fill portion of the Project will lower the riverbed by at least several feet, your response stated the proposed maintenance dredging cannot be considered a compensating excavation because it is meant to restore the river to design conditions.

The current Federal Emergency Management Agency (FEMA) Flood Insurance Study (No. 410183V000B) provides floodway data and regulatory 1%-annual-chance flood water surface elevations for the Willamette River at the Project location. Table 1 summarizes these reported values for the two adjacent cross sections used in the FEMA study.

Table 1
Willamette River Floodway Data

Cross Section	Floodway Width (feet)	Floodway Section Area (square feet)	Regulatory 1%-Annual-Chance Flood Water Surface Elevation (feet NAVD)
J	1,870	123,102	31.4
K	2,045	122,118	31.4

Notes:
Source: FEMA 2010
NAVD: North American Vertical Datum

In our opinion, the proposed Project will not cause a change in FEMA regulatory elevations (currently published as 31.4 feet North American Vertical Datum [NAVD]). There are two factors that support that opinion. The first is the Project includes both over-dredging to -39 feet CRD and fill back up to -38 feet CRD that will provide a balanced cut/fill quantity. The second is the de minimis amount of potential change in cross-sectional area even if the fill quantity is viewed as a separate part of the Project. As stated in Table 1, the floodway cross-sectional area in the Project area is 122,000 to 123,000 square feet. The Project would place 1 foot of sand-and-gravel cover across a width varying from 150 to 265 feet after dredging for a cross-sectional area of 150 to 265 square feet. That cross-sectional area is 0.12% to 0.22% of the floodway cross section. If this were analyzed in a hydraulic model, the change in area would not cause a change to published flood levels.

Sincerely,



Robert Montgomery, P.E.
Oregon P.E. Number 85723
Principal Water Resources Engineer

Reference

FEMA (Federal Emergency Management Agency), 2010. *Flood Insurance Study, City of Portland Oregon, Multnomah, Clackamas, and Washington Counties*. Flood Insurance Study Number 410183V000B. Revised November 26, 2010.

Attachment

Attachment 1 Land Use Review Response Letter (May 12, 2020)

Attachment 1

Land Use Review Response Letter

(May 12, 2020)



City of Portland, Oregon
Bureau of Development Services
Site Development
FROM CONCEPT TO CONSTRUCTION

Ted Wheeler, Mayor
Rebecca Esau, Director
Phone: (503) 823-6892
Fax: (503) 823-5433
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Land Use Review Response
Site Development Section, BDS

To: Morgan Steele, Land Use Review Division

From: Ian LaVielle, Site Development Section, BDS
503-823-7953, Ian.LaVielle@portlandoregon.gov

Location/Legal: TL 1300 18.02 ACRES LAND ONLY SEE R315787 (R941180261) FOR IMPS,
SECTION 18 1N 1E

Land Use Review: LU 20-134201

Proposal: The applicant is requesting approval for the placement of approximately 2,260 cubic yards of clean sand and gravel cover over 0.9 acres of river bottom at River Mile 7.8 on the Lower Willamette River, as part of a maintenance dredging project. The placement of a clean sand and gravel cover is a surface management requirement of the Portland Sediment Evaluation Team (PSET) and U.S. Environmental Protection Agency (EPA) and is required as a function of the maintenance dredging. The project area is located entirely within the Lower Willamette River, approximately 200 feet riverward of the ordinary high water mark at the McCall Terminal Berth. The dredging project will have a total of nine Dredged Material Management Units (DMMUs); however, the sand and gravel will only be placed over DMMUs 8 and 9 as shown on the attached site plan. The PSET and EPA require that this clean sand and gravel cover be placed to reduce exposures by aquatic organisms due to elevated levels of tributyltin and dioxins above PSET screening levels and EPA Portland Harbor remediation action levels. The site is within the City's Greenway overlay zone. Dredging activities are exempt per Zoning Code Section 33.440.320.H; however, Zoning Code Section 33.440.310.D requires Greenway Review for fill in the river within the Greenway overlay zones. The work must therefore be approved through a Greenway Review.

Quarter Sec. Map: 2424

Date: May 12, 2020

Site Development has reviewed the submitted memorandum summarizing the McCall Terminal Sand and Gravel Cover Placement project dated March 4, 2020 for compliance with Portland City Codes (PCC), Titles 10 and 24.

Permits

A Site Development (SD) Permit from the Bureau of Development Services will be required for this project.

Flood Hazards

General: This site is located within the Zone AE of the FEMA Special (100-year) Flood Hazard Area and FEMA Floodway as shown on FEMA Flood Insurance Rate Map (FIRM) [410183 0080F](#) dated November 26, 2010. The base flood elevation = 31.4 feet NAVD 1988 datum based on the Willamette River Flood Profiles published in the November 26, 2010 FEMA [Flood Insurance Study](#). In addition, the site is within the 1996 Flood Inundation Area as mapped by Metro. A 1.5-foot rise above the 100-year area base flood elevation was observed at the Morrison Street Bridge during the 1996 flood. Resulting in an adjusted base flood elevation of 32.9 feet NAVD 1988 datum.

Flood Hazards – Balanced Cut and Fill

Balanced cut and fill is regulated under Section [24.50.060.F.8](#). It requires that fill placed at or below the (adjusted) base flood elevation is required to be balanced by an equal volume of soil removal within the same flood zone. To qualify as compensating, the excavation may not be filled with water during non-storm winter conditions. To satisfy this requirement, balancing excavations are frequently created below the base flood elevation and at or above the ordinary high water elevation.

A total of 2,260 cubic yards of fill will be placed below the base flood elevation. Compensating excavation must be provided within the same flood hazard area below the base flood elevation but above the non-storm winter water level.

In the past variances to Section 24.50.060.F.8 have been approved for dredging and capping projects that result in no change in elevation and no net fill. However, the proposed maintenance dredging cannot be considered a compensating excavation because it is dredging meant to restore the river to design conditions. If the applicant can show that this area will be over dredged to allow for the sand and gravel cover (i.e. dredged below the maintenance dredge line), the project may meet the variance criteria provide in [PCC 24.50.070](#).

Variances are submitted through the Building Code Appeal process. Addition information on how to submit an variance can be found at the [Appeal Board website](#). All variance criteria provided in PCC 24.50.070 must be addressed in the appeal.

Please revise submitted documents to show that the project is in compliance with the cut/fill balance requirements or submit an appeal to the cut/fill balance requirements.

Flood Hazards – Floodway

Section 24.50.060.D prohibits development (including the fill placement) within the floodway unless it is demonstrated through a technical (numerical) analysis completed by a professional engineer licensed in the State of Oregon, that the development will not result in a rise in the base flood elevation.

Please provide a hydraulic analysis that demonstrates that the proposed work will not result in a rise of the base flood elevation.

Erosion control

Erosion prevention and sediment control requirements found in Title 10 apply to both site preparation work and development. Full compliance with the erosion control requirements of Title 10, as well as maintenance of the erosion control elements is the responsibility of the property owner and the builders of structures. Please refer to the City of Portland *Erosion and Sediment Control Manual* for additional information regarding erosion and sediment control requirements.

The project site meets the criteria specified in City Code 10.30.030 as a Special Site with additional requirements for erosion, sediment and pollution control. The erosion control plan must be prepared by a Certified Professional in Erosion and Sediment Control (CPESC) or State of Oregon registered professional engineer.

An erosion control plan must be included as part of the construction plan. Please provide an erosion control plan that meets the requirements of Title 10.

Conclusions

Site Development cannot support approval of this greenway reivew at this time. Additional items discussed above and summarized below are required.

- 1) Please revise submitted documents to show that the project is in compliance with the cut/fill balance requirements or submit an appeal to the cut/fill balance requirements.
- 2) Please provide a hydraulic analysis that demonstrates that the proposed work will not result in a rise of the base flood elevation.
- 3) Please provide an erosion control plan that it meets the requirements of Title 10.

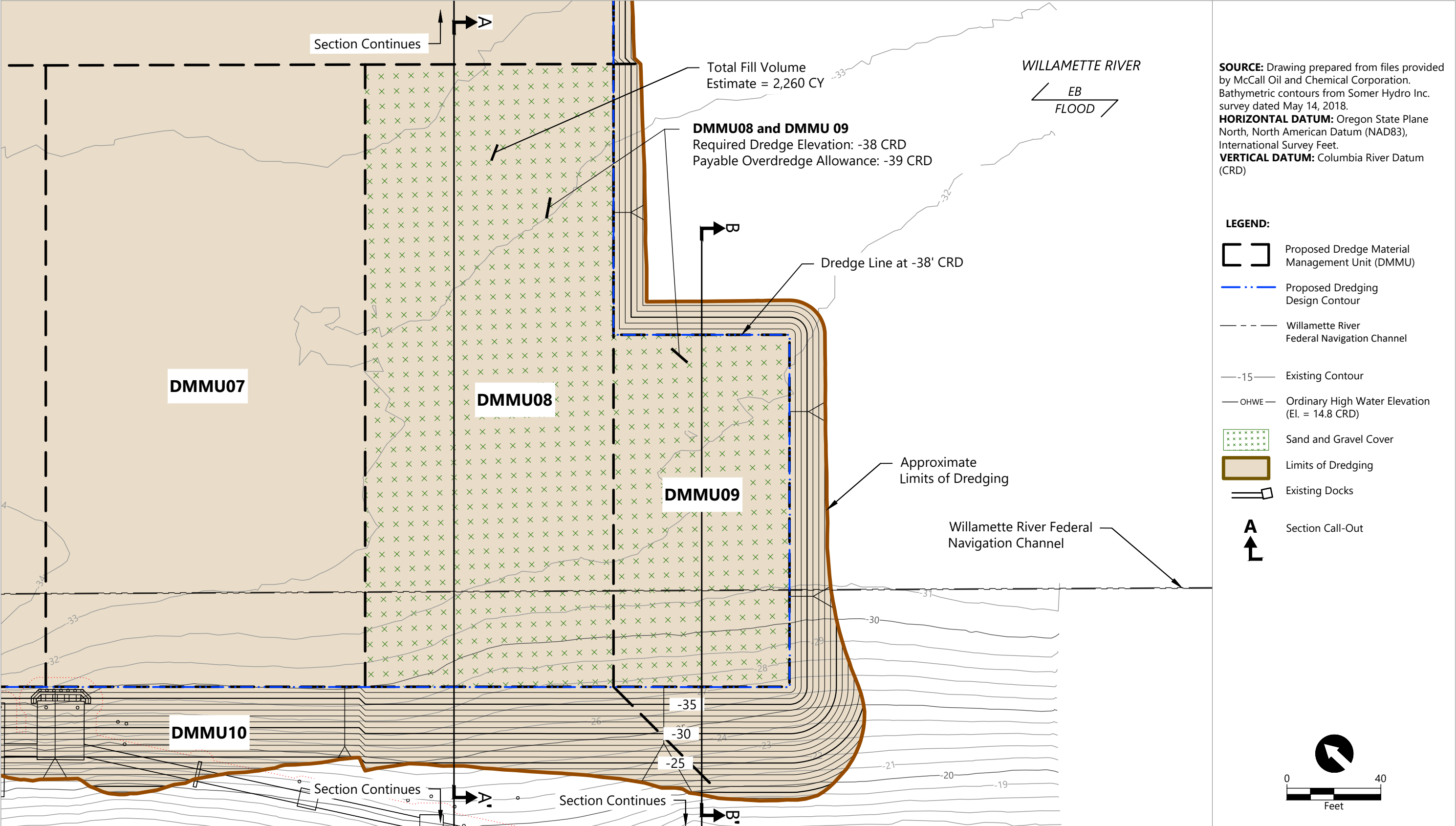


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 Filepath: K:\Projects\0162-McCall Oil and Chemical Corp\Dredging Permit Application\0162-RP-001 (Vmap).dwg Figure 1



Figure 1
Vicinity Map

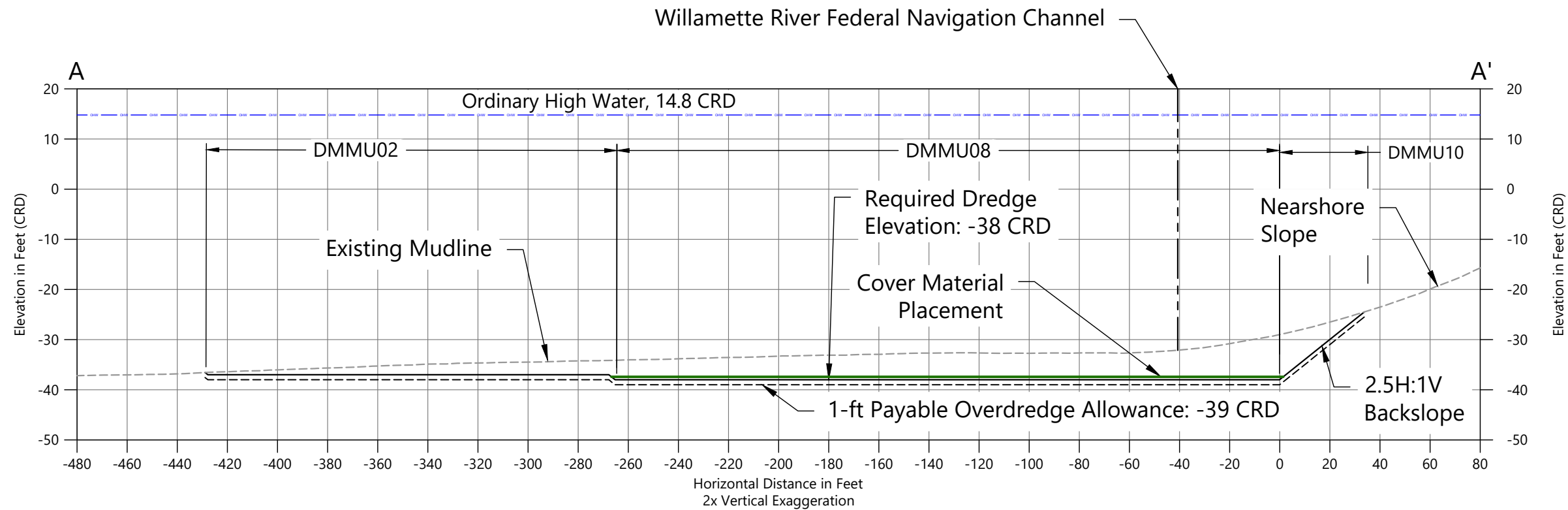
Proposed Sand and Gravel Cover at Willamette River Mile 7.8
 McCall Oil and Chemical Corporation



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Filepath: K:\Projects\0162-McCall Oil and Chemical Corp\Dredging Permit Application\0162-RP-002 (Sand-Gravel Cover).dwg Figure 2



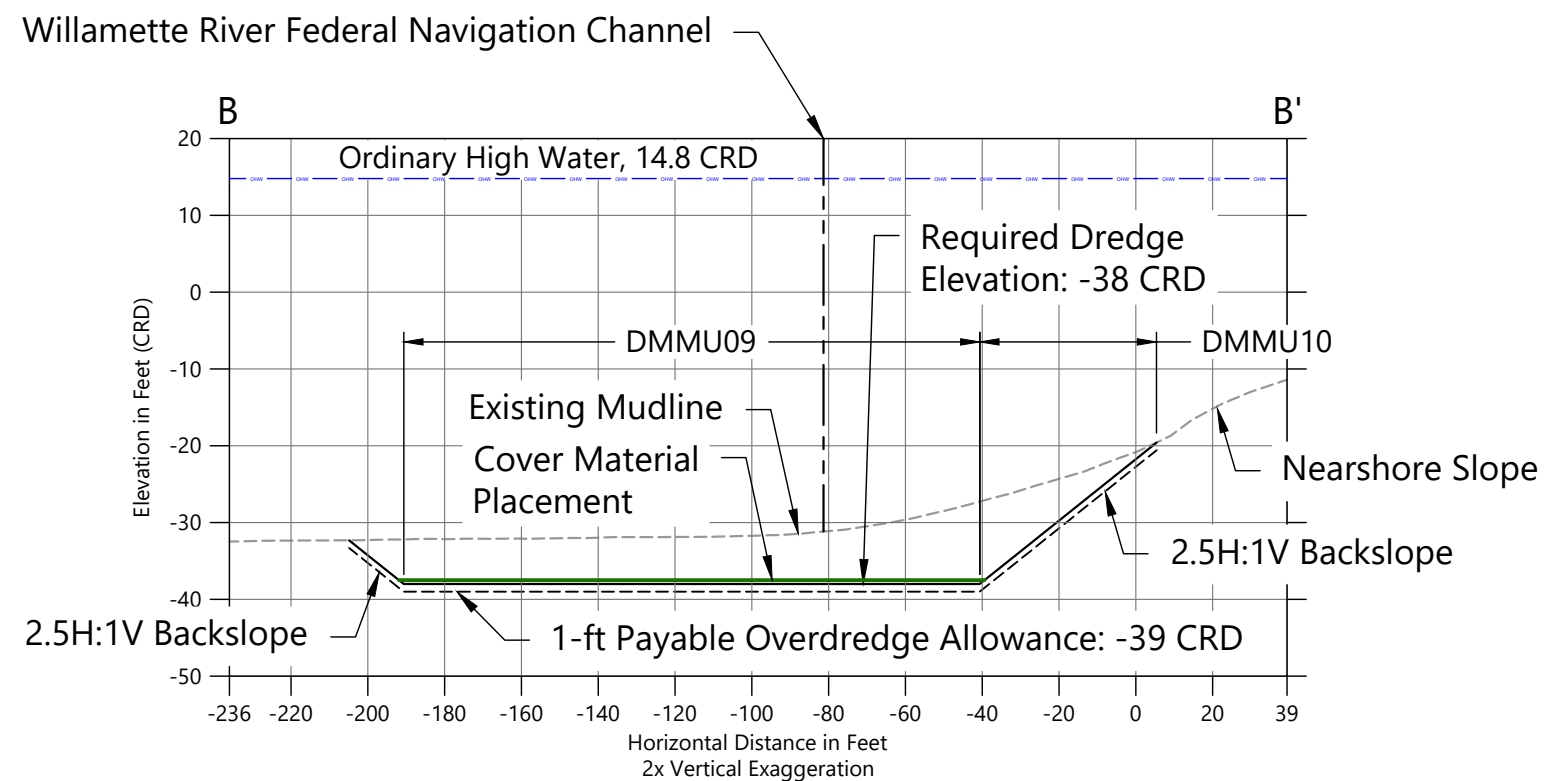
Figure 2
Sand and Gravel Cover Placement Location
Proposed Sand and Gravel Cover at Willamette River Mile 7.8
McCall Oil and Chemical Corporation

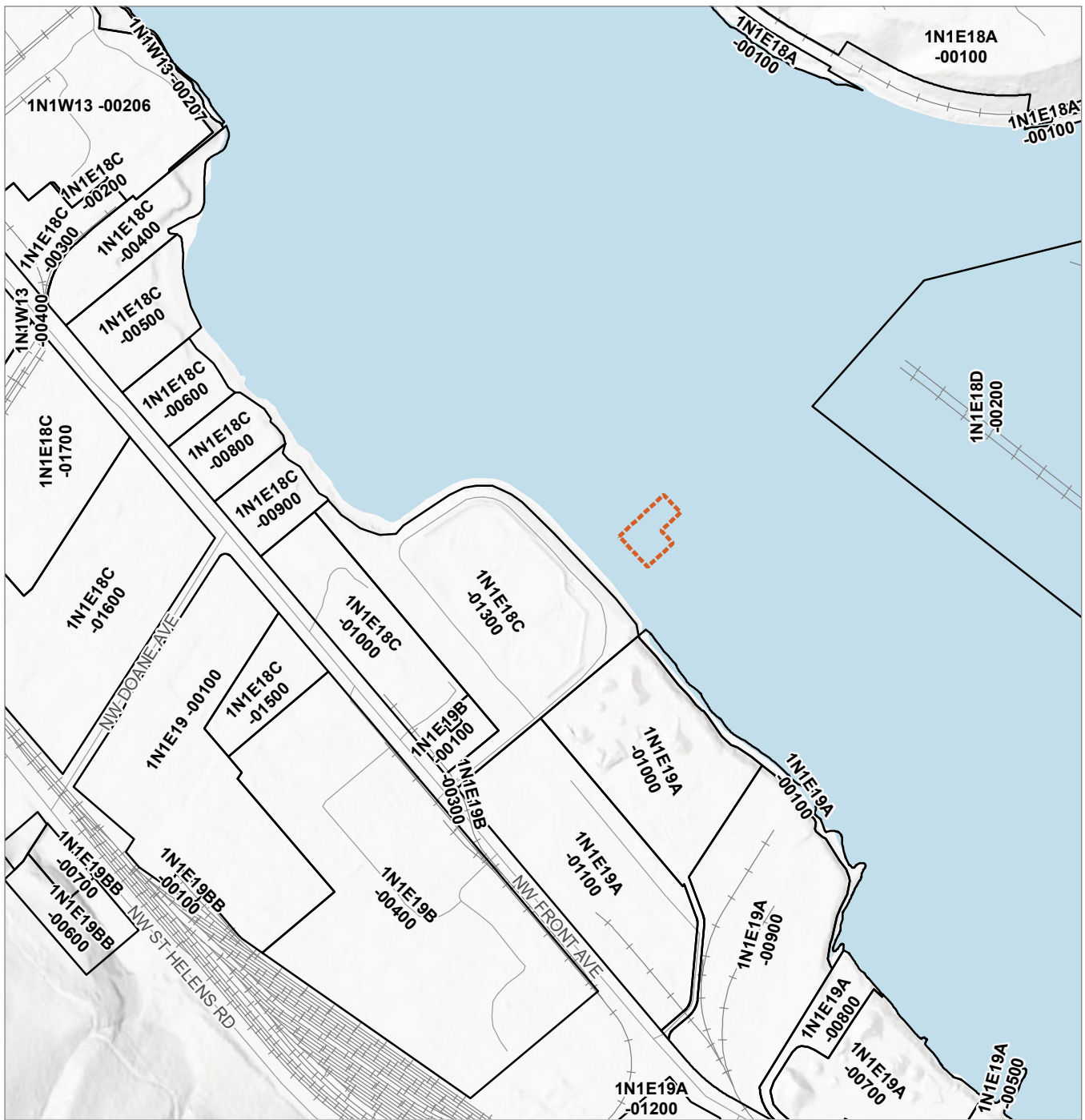


SOURCE: Drawing prepared from files provided by McCall Oil and Chemical Corporation. Bathymetric contours from Somer Hydro Inc. survey dated May 14, 2018.
HORIZONTAL DATUM: Oregon State Plane North, North American Datum (NAD83), International Survey Feet.
VERTICAL DATUM: Columbia River Datum (CRD).






LEGEND:

- Ordinary High Water Elevation (14.8 CRD)
- Sand and Gravel Cover Placement Location





LEGEND:

-  Project Location
-  Tax Lots
-  Streets
-  Railroads
-  Willamette River

NOTE:

Data from City of Portland.



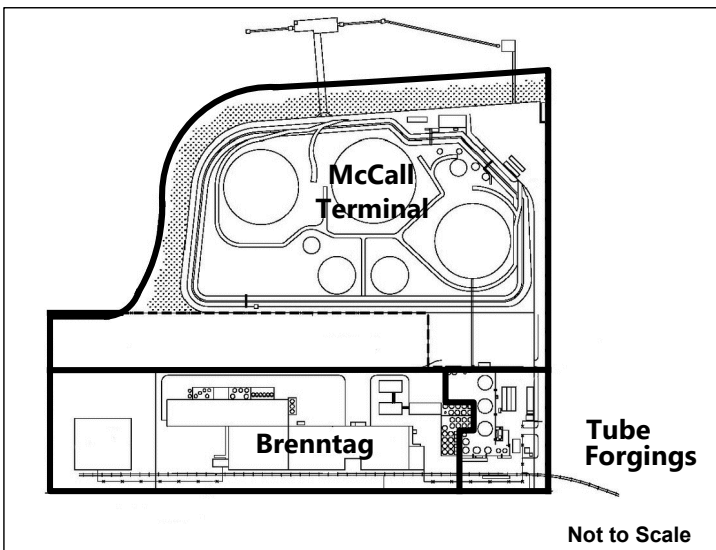
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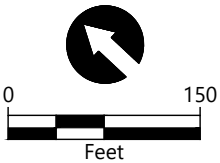


Figure 4
Tax Lot Map

Proposed Sand and Gravel Cover at Willamette River Mile 7.8
McCall Oil and Chemical Corporation



- LEGEND:**
- Ordinary High Water Elevation
 - Top of Bank
 - Greenway Setback (25' Setback from Top of Bank)
 - Project Location



SOURCE: Drawing prepared from base map provided by IT Corporation and TRT Engineering, Inc.
HORIZONTAL DATUM: Coordinates are on a local plane and are assumed.
VERTICAL DATUM: Elevations are based on City of Portland Benchmark #2528. Elevation = 34.64 Feet.

Publish Date: 2020/04/15 12:42 PM | User: jbigbsy
 Filepath: K:\Projects\0162-McCall Oil and Chemical Corp\Dredging Permit Application\0162-RP-004 (Greenway Setback).dwg Figure 5



Figure 5
Greenway Setback and Project Location
 Proposed Sand and Gravel Cover at Willamette River Mile 7.8
 McCall Oil and Chemical Corporation

Memorandum

March 4, 2020

To: City of Portland – Bureau of Development Services

From: Greg Summers, Anchor QEA, LLC

cc: Ted McCall, McCall Companies

Re: Project Summary for Greenway Review; Placement of Clean Sand and Gravel Cover at River Mile 7.8

This proposed project involves the placement of approximately 2,260 cubic yards (cy) of clean sand and gravel cover over 0.9 acre of river bottom at River Mile (RM) 7.8 on the Lower Willamette River, as part of a maintenance dredging project. The placement of a clean sand and gravel cover is a surface management requirement of the Portland Sediment Evaluation Team (PSET) and U.S. Environmental Protection Agency's (USEPA's) Region 10 Cleanup Program for Dredged Material Management Units (DMMUs) 8 and 9 of the proposed maintenance dredging project at the McCall Terminal berth. The project area is located entirely within the Lower Willamette River, approximately 200 feet riverward of the ordinary high water mark (OHWM) at this location, with no other disturbances. The PSET and USEPA require that this clean sand and gravel cover be placed to reduce exposures by aquatic organisms due to elevated levels of tributyltin and dioxins above PSET screening levels and USEPA Portland Harbor remediation action levels as documented in the Dredged Material Suitability Determination Memorandum for the proposed maintenance dredging project (PSET and USEPA 2019). None of the other eight DMMUs for this maintenance dredging project required post-dredge surface management by PSET or USEPA.

The proposed project is within a Greenway River Industrial Overlay Zone that extends bank to bank at this location. The Greenway River Industrial Overlay Zone was established to encourage and promote the development of river-dependent and river-related industries, which strengthen the economic viability of Portland as a marine shipping and industrial harbor, while preserving and enhancing the riparian habitat and providing public access where practical. The project area and required information for the Greenway Review are included in this memorandum and shown in figures attached to this application.

The proposed project is located riverward of the greenway setback and 200 feet riverward of the OHWM. The majority of the project area (81%) is located in the Federal Navigation Channel (FNC) within the Lower Willamette River (Figures 2 and 3). The placement area for the clean sand and gravel cover is within the dredge prism where 2 to 9 feet of sediment will be removed to re-establish authorized navigation depths for vessel access at the McCall Terminal berth. The project will result in

a substantial net reduction in sediment volume within the dredge prism even with the placement of the clean sand and gravel cover.

The clean sand and gravel cover will be transported to the project area by barge. All of the work will be performed in the river with no disturbance of the greenway setback. The clean cover material will be uniformly deposited over the placement area such that the surface layer is generally even and free from mounds or windrows. A clamshell bucket or similar device will be used for cover placement and the methods shall limit sediment resuspension and turbidity generation to maintain compliance with the project's Section 401 water quality certification requirements. Pre- and post-cover placement bathymetric surveys will be used to ensure that the placement of the clean cover meets project-specified requirements for cover placement.

The City of Portland's Greenway Review Submittal Checklist (City of Portland 2017), requires that a narrative addressing applicable Greenway Review approval criteria (33.440.350.A-H), applicable design guidelines from the *Willamette Greenway Plan* (City of Portland 1987), and the habitat site(s) identified from *Willamette River Wildlife Inventory* (City of Portland 1986) and descriptions of resources and values present on the property be submitted as part of the Greenway Review application. This narrative and information are presented in the following text.

Narrative Addressing Applicable Greenway Review Approval Criteria (33.440.350.A-H) and Applicable Design Guidelines from Willamette Greenway Plan.

- a. **For All Greenway Reviews (33.440.350.A)**
 - i. **Summary of Approval Criteria:** The Willamette Greenway design guidelines must be met for all Greenway reviews.
 - ii. **Proposed Project Consideration:** The Willamette River design guidelines do not apply to this proposed project as the proposed project is located entirely riverward of the greenway setback area and riverbank. The proposed project will not impact any of the Willamette Greenway design guidelines nor impact the attainment of the goals and objectives of the Willamette Greenway Plan.
- b. **River Frontage Lots in River Industrial Zone (33.440.350.B)**

This approval criterion does not apply to this proposed project as it is not located within a river frontage lot.
- c. **Development Within the River Natural Zone (33.440.350.C)**

This approval criterion does not apply to this proposed project as it is not located within the River Natural Zone.
- d. **Development on Land Within 50 feet of the River Natural Zone (33.440.350.D)**

This approval criterion does not apply to this proposed project as it is not located on lands within 50 feet of the River Natural Zone.
- e. **Development Within the Greenway Setback (33.440.350.E)**

This approval criterion does not apply to this proposed project as it is not located within the greenway setback.

f. **Development Riverward of the Greenway Setback (33.440.350.F)**

- i. **Summary of Approval Criteria:** The applicant must show that the proposed development or fill riverward of the greenway setback will comply with all of the following criteria:
 - (a) The proposal will not result in the significant loss of biological productivity in the river;
 - (b) The riverbank will be protected from wave and wake damage;
 - (c) The proposal will not:
 - (i) Restrict boat access to adjacent properties;
 - (ii) Interfere with the commercial navigational use of the river, including transiting, turning, passing, and berthing movements;
 - (iii) Interfere with fishing use of the river;
 - (iv) Significantly add to recreational boating congestion; and
 - (d) The request will not significantly interfere with beaches that are open to the public.
- ii. **Proposed Project Consideration:** The approval criterion 33.440.350.F is the only Greenway Review approval criterion that applies to this proposed project. Information regarding the compliance of the proposed project with each criterion included in 33.440.350.F follows.

No significant loss of biological productivity in the Lower Willamette River will result from this proposed project. The project area is very small (approximately 0.9 acre) within the 27 miles of the Lower Willamette River from Willamette Falls at RM 27 to the confluence with the Columbia River at RM 0. The habitat present in the river by the project area is characterized by degraded baseline environmental conditions influenced by the historical and current industrial development and use, which includes shoreline armoring, dredging, and the presence of structures and debris in the river, which limits the aquatic community present in this section of the river. The impacts due to placement of the clean sand and gravel cover will be short-term, and benthic species are expected to recolonize the surface sediments in the project area quickly, within the span of a few weeks to several months (Anchor QEA 2019). In addition, the cover is a protective measure to ensure a healthy aquatic community by reducing exposures to the post-dredge surface as required by PSET and USEPA.

The proposed project will not interfere with the commercial navigation use of the river nor restrict boat access to adjacent properties as the placement of the clean

sand and gravel cover is a component of a reduction in sediment volume at the project location, which will enhance commercial navigation by allowing safer access to the McCall Terminal berth.

The proposed project will not interfere with fishing in the river nor significantly add to recreational boat congestion. The McCall Terminal facility is a secured marine facility consistent with the maritime security regime required by the Maritime Transportation Security Act of 2002 as codified in 33 Code of Federal Regulations 101, which restricts public access to the facility and associated riverbank. No recreational use is allowed along the shoreline or in the uplands of the McCall Terminal facility. There is limited recreational fishing and no public access to the shoreline and no public beaches along the shoreline of this portion of the Lower Willamette River.

g. **Development Within the River Water Quality Overlay Zone Setback (33.440.350.G)**

This approval criterion does not apply to this proposed project as it is not located within the River Water Quality Overlay Zone setback.

h. **Mitigation or Remediation Plans (33.440.350.H)**

This approval criterion does not apply to this proposed project as it does not require a mitigation or remediation plan.

Habitat site identified from the *Willamette River Wildlife Inventory*, and descriptions of resources and values present on the property.

The aquatic condition at the project site are characteristic of a highly developed waterfront industrial area. Previous berth dredging actions have created a steep transition from nearshore to deep-water conditions, with a slope of between 20% and 30% from top of bank. The project site is within the range of several Endangered Species Act (ESA)-listed salmonid species: the Upper Willamette River (UWR) and Lower Columbia River (LCR) evolutionarily significant unit (ESU) of Chinook salmon (*Oncorhynchus tshawytscha*), the LCR ESU of coho salmon (*O. kisutch*), and the UWR and LCR distinct population segment of steelhead (*O. mykiss*). Various salmonid life stages may be present in the Lower Willamette River in the vicinity of the project site, but no spawning occurs in or near the project site (Anchor QEA 2019). The proposed project area may support the presence of non-native warm water fish species such as bass, walleye, and species of sunfish.

References

- Anchor QEA (Anchor QEA, LLC) 2019. *Biological Assessment; Maintenance Dredging*. Prepared for McCall Oil and Chemical Corporation. October 2019.
- City of Portland, 2017. *Greenway Review Submittal Checklist*. Bureau of Development Services. July 21, 2017. Available at: <https://www.portlandoregon.gov/bds/article/143752>.
- City of Portland, 1987. *Willamette Greenway Design Guidelines*. Portland Planning Bureau, Portland Oregon. November 1987.
- City of Portland, 1986. *Lower Willamette River Wildlife Habitat Inventory*. Portland Planning Bureau, Portland Oregon. March 1986.
- PSET and USEPA (Portland Sediment Evaluation Team and U.S. Environmental Protection Agency's Region 10 Cleanup Program) 2019. *Level 2A Dredged material Suitability Determination for Maintenance Dredging of the McCall Oil and Chemical Corporation Berth*. September 17, 2019.

May 26, 2020

City of Portland Permits and Inspections: Appeal Form

*Type of Appeal:

- ☒ Building
- ☐ Plumbing
- ☐ Mechanical
- ☐ Electrical
- ☐ Fire [View Instructions](#)

*Project Type:

- ☐ One & Two Family Residential
- ☐ Commercial
- ☒ LUR

*This appeal involves:

- ☐ Erection of a new structure
- ☐ Alteration of an existing structure
- ☐ Addition to an existing structure
- ☐ Correction of a violation
- ☐ Reconsideration of appeal ID# Click or tap here to enter text.
- ☐ Change of Occupancy: From: Click or tap here to enter text. To: Click or tap here to enter text.
- ☒ Other (specify): The proposed project involves placement of approximately 2,260 cubic yards of clean sand and gravel over 0.9 acre at a depth of -38 feet Columbia River Datum (CRD) in the Willamette River at River Mile 7.8. The placement of the clean sand and gravel cover is a post-dredge surface management requirement of the Portland Sediment Evaluation Team (PSET) and the

U.S. Environmental Protection Agency (EPA) Region 10 Cleanup Program. The specific location where the sand and gravel cover will be placed will be over-excavated by an additional 1 foot in depth to accommodate the sand and gravel cover and prevent flood-rise. McCall Oil and Chemical Corporation (McCall) requests a variance under Portland City Code Section 24.50.070 to allow the placement of cover material following excavation as no change in riverbed elevation and no net fill will result from this project.

***Proposed Use of Structure:**

There are no structures proposed as part of this project. The project involves placement of a clean sand-and-gravel cover on the riverbed over Dredge Material Management Units (DMMUs) 8 and 9 for post-dredge surface management as required by PSET and EPA.

Building/Business Name:

Not applicable.

***Project Address:**

*Street Address: This project is located on submerged land beneath the Willamette River offshore of 5480 NW Front Avenue.

Legal Description – Lot: The legal description of 5480 NW Front Avenue is TL 1300; 1N1E18C.

Block: Not applicable.

Addition: Not applicable.

*Owner's Name: Edgar "Ted" McCall; McCall Oil and Chemical Corporation

*Owner's Address: 5480 NW Front Avenue, Portland, Oregon 97210

***Please provide one of the following choices below:**

☐ Permit No: Click or tap here to enter text.

☒ LUR No: LU 20-134201 GW

☐ Preliminary

☐ Other: Click or tap here to enter text.

***Number of Stories**

Not applicable.

***Occupancy Group:**

Not applicable.

***Construction Type:**

Placement of a clean sand-and-gravel cover following over-excavation.

***Fire Sprinklers**

☒ No

☐ Yes: Location: [Click or tap here to enter text.](#)

***Plans Examiner/Inspector:**

Ian LaVielle

***Payment Options: Please refer to the [BDS Fee Payment](#) or [Fire Fee Payment](#) instructions.**

☐ Payment by Mail

☒ Online Payment

☐ Payment in Person

***Plan Submittal Options:**

☐ Mail

☒ Attach PDF

I am the property owner, or the property owner's agent. In accordance with City Code Section 24.10.075, I am authorized to submit an appeal for an alternative material, design or method of construction or equipment or a modification to the strict interpretation of the Building Code as adopted by the City of Portland as outlined in the attached information. I hereby acknowledge that the City is not liable for any damages that result from or relate to any formal decision rendered by the City with respect to this appeal.

* ☒ **Agreed and acknowledged**

*Appellant Name: Taku Fuji

Firm Name: Anchor QEA, LLC

*Appellant Address: 6720 S Macadam Avenue, Suite 125

*City: Portland

*State: Oregon

*ZIP Code: 97219

*Appellant Phone: 503-972-5002

*Email Address: tfuji@anchorqea.com

*Code Section: 24.50.060(F)(8)

Appellant Signature:



Date: May 26, 2020

***Requirements:**

Please describe the requirements of the code section listed above.

Per Portland City Code Section [24.50.060\(F\)\(8\)](#) (Balanced Cut and Fill Required in All Flood Management Areas of the City Not Addressed by Section 24.50.060 G), balanced cut and fill shall be required. All fill placed at or below the base flood elevation shall be balanced with at least an equal amount of soil material removal. Soil material removal shall be within the same flood hazard area identified in Section 24.50.050(A)–(I).

a. Excavation shall not be counted as compensating for fill if such areas will be filled with water in non-storm winter conditions.

b. Temporary fills permitted during construction shall be removed.

***Proposed Design:**

Describe the alternate methods and/or materials of construction to be used or that exist. (Be as specific and detailed as possible). If this is a Reconsideration of an appeal, enter the original appeal text, followed by a section titled "Reconsideration Text" along with new language.

The proposed project will include excavation (dredging), followed by placement of approximately 2,260 cubic yards of fill in the Willamette River at River Mile 7.8. The placement of fill (clean sand-and-gravel cover) at the location of DMMUs 8 and 9 is a post-dredge surface management requirement as defined in the joint PSET and EPA Dredged Material Suitability Determination for the maintenance dredging of the McCall berth. This Suitability Determination was issued on September 17, 2019. The area of excavation and fill is shown in the figures provided, and no change in riverbed elevation and no net fill will result from this project.

***Reason for Alternative:**

Describe why the alternate is required and how it will provide equivalent health, accessibility, structural capacity, energy conservation, life safety or fire protection to what the code requires. If this is a Reconsideration of an appeal, enter the original appeal text, followed by a section titled "Reconsideration Text" along with new language.

The proposed project is a post-dredge surface management requirement for the maintenance dredging project located at the McCall dock at River Mile 7.8 on the west side of the Willamette River. The project has been designed by McCall and Anchor QEA in accordance with the terms of included in the joint PSET and EPA Dredged Material Suitability Determination for the maintenance dredging project at the McCall dock. The maintenance dredging project will excavate (dredge) approximately 60,500 cubic yards of sediment by the McCall dock to ensure continued safe access to the berth. The total area of the maintenance dredging is approximately 9.4 acres, with dredging of between 2 to 9 feet of accumulated sediment to restore depths to -37 +1 feet CRD. The area proposed for the sand-and-gravel cover will be over-excavated by 1 foot to accommodate placement of a 1-foot clean sand-and-gravel cover. The need for post-dredge surface management at DMMUs 8 and 9 was based on the sediment quality data collected that indicated concentrations of tributyltin exceeded the PSET screening level and dioxin congeners exceeded EPA Portland Harbor Site-Wide Remedial Action Levels in this area. The placement of the sand-and-gravel cover is a benthic health protective action to reduce or eliminate exposures to aquatic organisms to newly exposed sediment resulting from the dredging activities. The post-dredge surface at DMMUs 8 and 9 were the only areas of the dredge prism footprint where post-dredge sediment concentrations exceeded PSET and/or EPA thresholds.

The proposed project has been designed to have a consistent final bed elevation over the entire dredge prism footprint post-dredging and will not result in a net fill at the location of the placement of the sand-and-gravel cover (DMMUs 8 and 9). The overall cut or dredging volume at the McCall dock will be significantly greater (approximately 60,500 cubic yards) than the proposed fill (2,260 cubic yards), which results in a substantial net reduction in sediment volume within the dredge prism even with the placement of the sand-and-gravel cover. At the location of the placement of the sand-and-gravel cover, the cut depth (depth of dredging) ranges from approximately 4 to 10 feet in addition to the 1-foot over-excavation required to accommodate the sand-and-gravel cover. As the riverbed elevation will be lower over the entire 9.4-acre dredge prism footprint that includes the area of sand-and-gravel cover placement, there is no flood rise concern related to this project. The PSET and EPA Suitability Determination for this maintenance dredging project requires that all dredged sediment generated from this maintenance dredging project be placed in an upland disposal site.

This project involves excavation and the subsequent placement of fill at the bottom of the Willamette River, which is an area filled with water during non-storm conditions and therefore does not strictly satisfy the specific terms of Portland City Code Section 24.50.060(F)(8)(a). The project does meet the overall objectives of this code provision in that it is designed to achieve balanced cut and fill volumes in the same flood hazard area.

Portland City Code Section 24.50.070(B) additionally instructs applicants to consider a specified list of "relevant factors and standards" in requests for a variance. The text of the Code's variance criteria is subsequently listed in bold and italicized font; each criterion is followed by Anchor QEA's response as pertaining to this project.

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

The project is located fully in-water at a depth of -38 feet CRD and subject to the flows of the Willamette River. The project location is in a depositional area of the Willamette River as evidenced by the need for the maintenance dredging, as up to 12 feet of sediment have accumulated in this area since it was last dredged in 1993. It is expected that over time, the sediment bed will be enhanced by the deposition of upstream sediment rather than erode. The Oregon Department of Environmental Quality Clean Water Act Section 401 Water Quality Certification for this project requires that turbidity be continually monitored during excavation of sediment and placement of fill to evaluate and control any erosion that may occur to transport materials downstream during construction. Therefore, Anchor QEA does not anticipate that material from the sand-and-gravel cover would be transported downstream in quantities that would cause injury to others.

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

This project is not expected to have any impact on flood water surface elevations within the regulatory floodway because the overall bed elevation will be lower over the entire 9.4-acre dredge prism footprint that includes the project area of sand and gravel cover placement. Therefore, no known or anticipated danger to life or property exists due to flooding as a result of this project.

As discussed in response to Variance Criterion No. 1 this area is a depositional area in the river. Accordingly, no known or anticipated danger to life or property exists due to erosion as a result of this project.

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

This project is fully submerged and located at a riverbed elevation of -38 CRD. Flooding is unlikely to have a damaging effect on the proposed project. Based on a calibrated hydrodynamic model of the Willamette River developed to support the Draft *Feasibility Study* for Portland Harbor (Anchor QEA 2012), the maximum scour depth during the 1996 flood (representing a 100-year flood event) was estimated at 0 to 5 centimeters (approximately 0 to 2 inches) in the reach of the river containing the project area. The maximum potential scour in an extreme flooding event would not significantly impact the 1-foot sand-and-gravel cover. In addition, the project is located in a depositional area of the river, so any minor scour that might occur would be quickly infilled. Accordingly, Anchor QEA does not anticipate damage to the sand and gravel cover in the event of a flood.

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

The objective of this project is to protect the environment by reducing or eliminating aquatic organism exposure to elevated levels of tributyltin and dioxins congeners present in the post-dredge sediments at the project location. The placement of the sand-and-gravel cover is a requirement of PSET and EPA.

This project is a component of a larger maintenance dredging project being completed at the McCall Terminal to allow for safe access to vessels accessing the dock and will have a significant public benefit. The McCall Terminal is a unique facility and one of only two terminals on the West Coast (and the only terminal in Oregon) that can receive and store marine shipments of asphalt. The end users of McCall asphalt are primarily the City of Portland, Multnomah County, and various Oregon and Washington state agencies that are responsible for the maintenance and preservation of local, regional, and state public transportation infrastructure. Approximately 60% to 70% of McCall's product sales are to local clients in the Portland metropolitan area, with the majority being contractors to government agencies. While there are other suppliers of asphalt and bulk liquid energy products in Oregon, they do not have the same receiving or distribution capabilities that

McCall's facility does or the proximity to the Portland market, where the majority of Oregon's transportation infrastructure is located. The McCall facility provides the public and public agencies with the most efficient method for obtaining their product (i.e., asphalt, liquid energy, and renewables), providing a huge benefit to the public in transportation infrastructure.

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

The project area is required to have the sand and gravel cover as defined by PSET and EPA in their Suitability Determination for the McCall maintenance dredging project. By necessity, the requirements of PSET and EPA dictate the location of this project.

6. The availability of alternative locations, not subject to flooding or erosion damage.

As explained in the response to Variance Criterion No. 5, this criterion is not applicable to this project.

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

The area of the river is zoned River Industrial and Prime Industrial, and Anchor QEA is not aware of any anticipated development for this area that this project would interfere or be incompatible with.

8. The relationship of the proposed use to the Comprehensive Plan and Floodplain Management Program for that area.

The project is located in the Willamette River riverbed at River Mile 7.8 on fully submerged land. The proposed project is a required activity to protect the environment. The overall maintenance dredging project will allow for the existing beneficial uses of the area, including preservation of navigation to allow marine vessels to be able to access the facility year-round to deliver products that can be accepted at the existing McCall facility. This area of the river is zoned River Industrial and Prime Industrial, and the project will have no impact on these designations. The project will, if anything, enhance floodplain management.

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

This project is located on fully submerged land, with no possibility of access by land-based vehicular traffic. Access by marine vessels will be unaffected by the project.

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

As described in the Draft *Feasibility Study* for Portland Harbor (Anchor QEA 2012), the maximum scour depth expected in the area of the project (River Mile 7.8) during a 100-year flood (as represented by the 1996 flood) is estimated to be only 0 to 5 centimeters (approximately 0 to 2 inches); in addition, a majority of the project area is net depositional and will be quickly infilled following a flood event.

Therefore, no significant erosion or sediment transport is expected to occur even during extreme flood events and other critical conditions.

11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges; Upon consideration of the factors listed above and the purposes of this Chapter, such conditions may be attached to the granting of variances as deemed necessary.

This variance criterion is not applicable to this project.