



City of Portland, Oregon - Portland Permitting & Development

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NOTICE OF A PUBLIC HEARING BEFORE THE CITY COUNCIL ON AN APPEAL OF A HEARINGS OFFICER DECISION

CASE FILE: LU 23-111784 CU AD
WHEN: THURSDAY, SEPTEMBER 19, 2024, AT 2:00 PM
ACCESS: See <https://www.portland.gov/council/agenda>. Beginning Friday, September 13, 2024, this page will provide specific information on how to participate in the City Council hearing virtually or in person.

Mail Date: August 29, 2024
To: Interested Person
From: Andrew Gulizia, Land Use Services Planner
(503) 865-6714, andrew.gulizia@portlandoregon.gov

A public hearing will be held to consider an appeal of the Hearings Officer's decision to approve with conditions a Conditional Use Review and Adjustment Review for property on the west side of SE Water Ave. between SE Salmon St. and SE Main St. The Hearings Officer's decision has been appealed by Music Portland. At the hearing, the City Council will consider the appeal. You are invited to testify at the hearing.

This will be an on-the-record hearing, one in which new evidence cannot be submitted to the City Council. Please refer to the "General Explanation of City Council Appeal Hearing Process" page attached to this notice.

GENERAL INFORMATION

Appellant: Music Portland
2332 NE Wasco St.
Portland, OR 97232
info@MusicPortland.com

Appellant's Representative: Carrie Richter
Bateman Seidel
1000 SW Broadway #1910
Portland, OR 97205
(503) 972-9920
crichter@batemanseidel.com

Applicant: Johnathan Malsin
Beam Development
1001 SE Water Ave., Ste. 400
Portland, OR 97214
jonathan@beamdevelopment.com

Applicant's Representative: Suzannah Stanley
Mackenzie
1515 SE Water Ave., Ste. 100
Portland OR 97214
(971) 346-3808
ssstanley@mcknze.com

Property Owner: PDC dba Prosper Portland
220 NW 2nd Ave. #200
Portland, OR 97209

Property Owner's Agent: Paul Gagliardi
PDC dba Prosper Portland
222 NW 5th Ave.
Portland, OR 97209
gagliardip@propserportland.us

Site Location: west side of SE Water Ave. between SE Salmon St. and SE Main St.

Legal Description: LOT 1 TL 3602, PARTITION PLAT 2016-7; LOT 1 TL 4305, PARTITION PLAT 2016-8; LOT 1 TL 1705, PARTITION PLAT 2016-9

Tax Account No.: R649670250, R649670290, R649670330

State ID No.: 1S1E03AD 03602, 1S1E03AD 04305, 1S1E03AD 01705

Quarter Section: 3130

Neighborhood: Buckman, contact Nick Olson at buckmanlandusepdx@gmail.com

Business District: Central Eastside Industrial Council, contact Eric Cress at ceic@ceic.cc.

District Coalition: District 3, contact at matchu@seuplift.org

Plan District: Central City (Central Eastside Subdistrict)

Zoning: IG1 – General Industrial 1

Case Type: CU AD – Conditional Use Review and Adjustment Review

Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

Proposal: The applicant proposes to construct a new, 62,000-square-foot building on this site to be used as a concert venue with 1,280 seats and a maximum spectator capacity of 3,500. The applicant requests Conditional Use Review approval for a new Major Event Entertainment use in the IG1 zone. Type III Conditional Use Review is required by Zoning Code Sections 33.140.100.C and 33.815.040.A.1.

The applicant also requests approval of two Adjustments to Zoning Code requirements for this project:

- To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero (Zoning Code Section 33.266.310.C.2.c). The applicant proposes to create 2 truck loading spaces which are primarily in the public right-of-way adjacent to the site. However, loading areas in the public right-of-way do not count toward the Zoning Code requirement.
- To reduce the amount of ecoroof area required from 14,617 square feet (total roof area minus allowable exemptions for roof slope greater than 25%, mechanical equipment, and the elevator overrun) to 4,670 square feet (Zoning Code Section 33.510.243.B.1).

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of Title 33, the Portland Zoning Code. The applicable approval criteria are:

- Zoning Code Section 33.815.215.A-D (Conditional Use Review); and
- Zoning Code Section 33.805.040.A-F (Adjustment Review).

The Portland Zoning Code is available online at <https://www.portland.gov/code/33>.

HEARINGS OFFICER DECISION

The following decision of the Hearings Officer was issued on August 14, 2024:

Approval of Conditional Use Review to establish a Major Event Entertainment use on this site; and

Approval of two Adjustments:

- To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero (Zoning Code Section 33.266.310.C.2.c).
- To reduce the amount of ecoroof area required from 14,617 square feet (total roof area minus allowable exemptions for roof slope greater than 25%, mechanical equipment, and the elevator overrun) to 4,670 square feet (Zoning Code Section 33.510.243.B.1).

The full decision is available on the PP&D website: <https://www.portland.gov/ppd/zoning-land-use/news/notices>. Enter the land use case file number in the keyword search.

APPEAL

The Hearings Officer's decision has been appealed by Music Portland. The appellant asserts the Hearings Officer's decision erred by not adequately responding to transportation issues such as truck movements in the street and conflicts with train crossings, by not adequately protecting the industrial character of the area, by not adequately considering the benefits intended to be provided by full ecoroof coverage, and by not considering negative impacts from the business practices of the intended operator of the concert venue (Live Nation).

The full appeal statement can be viewed in the notice located on the PP&D website at <https://www.portland.gov/ppd/zoning-land-use/events>. Enter the land use case file number in the keyword search.

Review of the case file: If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for requests for paper copies of file documents.

We are seeking your comments on this proposal. The hearing will be held before the City Council. To comment, you may submit written comments in advance or testify at the hearing. In your comments, you should address the approval criteria stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. Attached to this notice is a description of the City Council Hearing process and instructions for submitting comments.

Submit written testimony online at <https://www.portland.gov/council-clerk/lu-23-111784-written-testimony> or by mail to the Council Clerk, 1221 SW Fourth Avenue, Room 130, Portland, Oregon 97204. Written testimony will be distributed to the City Council and included in the public record if received before the record is closed. Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Questions may be submitted to the Council Clerk at (503) 823-4082 or councilclerk@portlandoregon.gov.

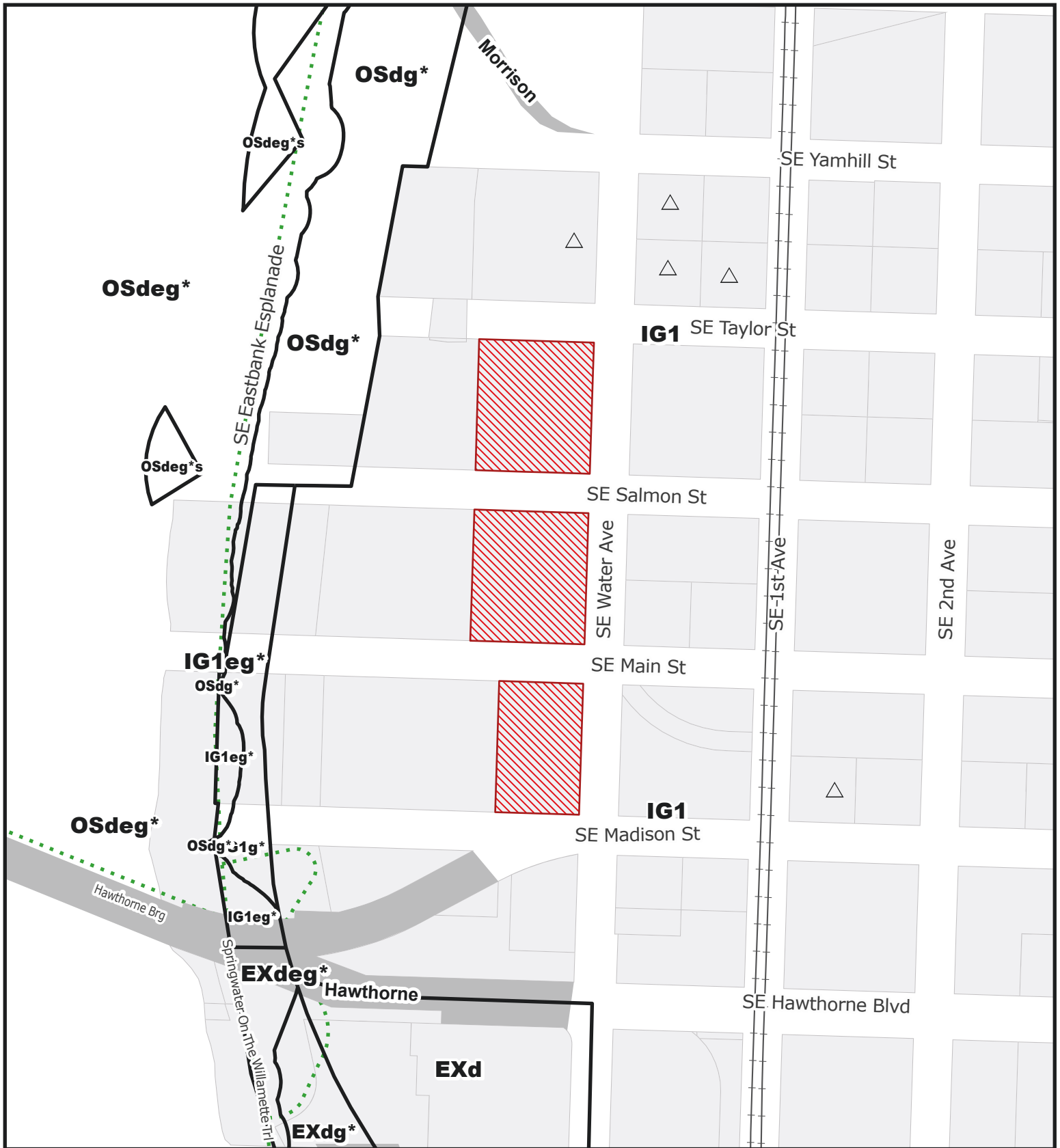
The City Council's decision is the final decision of the City. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to

provide sufficient specificity to afford the City Council an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise.

Request interpretation or an accommodation online at <https://www.portland.gov/311/ada-request> or call 503-823-4000. Please make your request at least 5 days before the hearing.

Attachments




1. Zoning map
2. Site plan
3. East and south building elevations
4. West and north building elevations
5. Photo simulation
6. City Council appeal hearing process
7. Appeal statement (on-line version only)



For Zoning Code in Effect Post October 1, 2022

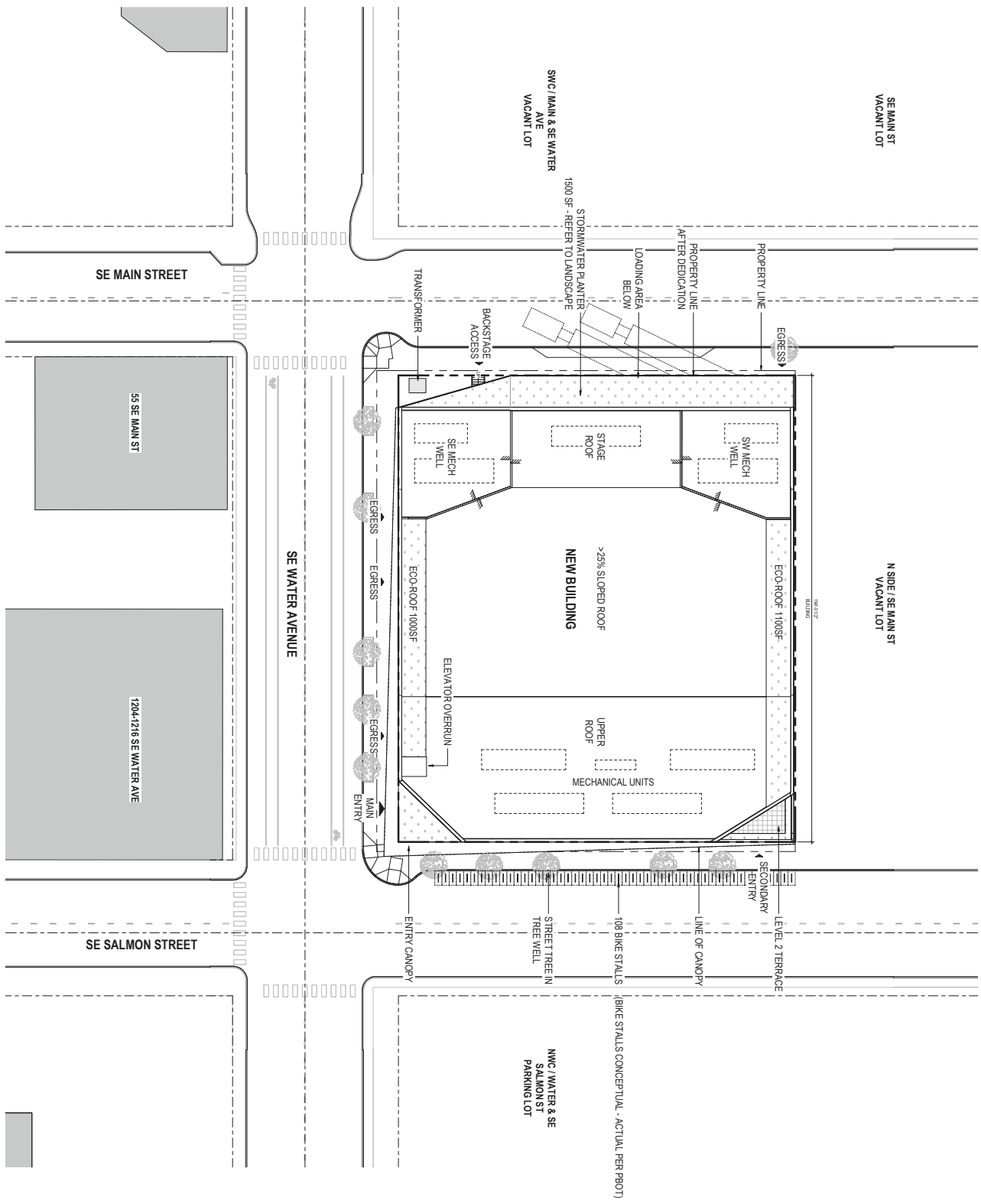
ZONING

THIS SITE LIES WITHIN THE:
 CENTRAL CITY PLAN DISTRICT
 CENTRAL EASTSIDE SUBDISTRICT

-  Site
-  Historic Landmark
-  Recreational Trails

File No.	<u>LU 23 - 111784 CU AD</u>
1/4 Section	<u>3130</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1S1E03AD 3602</u>
Exhibit	<u>B</u> <u>Jan 16, 2024</u>

1 ZONING - SITE PLAN
2000 SCALE: 1/8" = 1'-0"



SITE DATA TABLE

DATE	5/23/2024
SCALE	1/8" = 1'-0"
PROJECT NAME	CENTRAL EASTSIDE VENUE
CLIENT	LEVER
DESIGNER	ARCHITECTURAL DESIGN
DATE	5/23/2024
SCALE	1/8" = 1'-0"
PROJECT NAME	CENTRAL EASTSIDE VENUE
CLIENT	LEVER
DESIGNER	ARCHITECTURAL DESIGN
DATE	5/23/2024

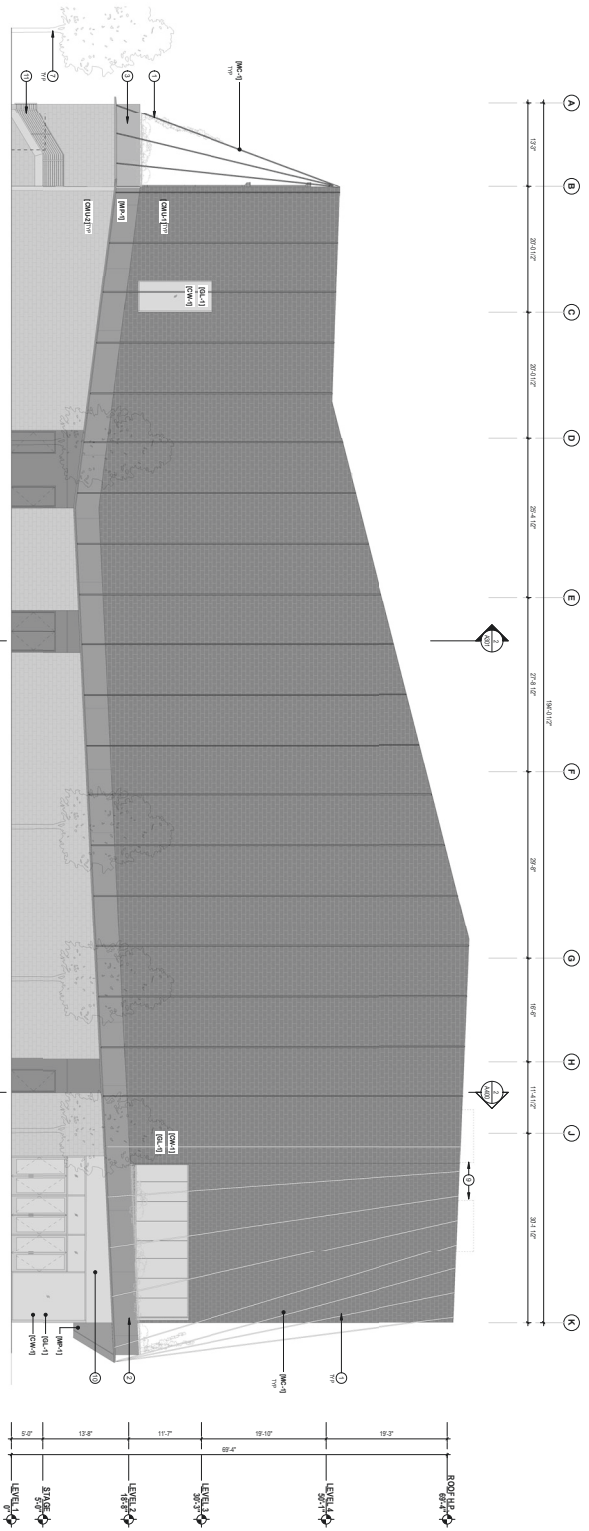
CENTRAL EASTSIDE VENUE
ARCHITECTURAL DESIGN
LEVER

BIKE PARKING TOTALS

DATE	5/23/2024
SCALE	1/8" = 1'-0"
PROJECT NAME	CENTRAL EASTSIDE VENUE
CLIENT	LEVER
DESIGNER	ARCHITECTURAL DESIGN
DATE	5/23/2024

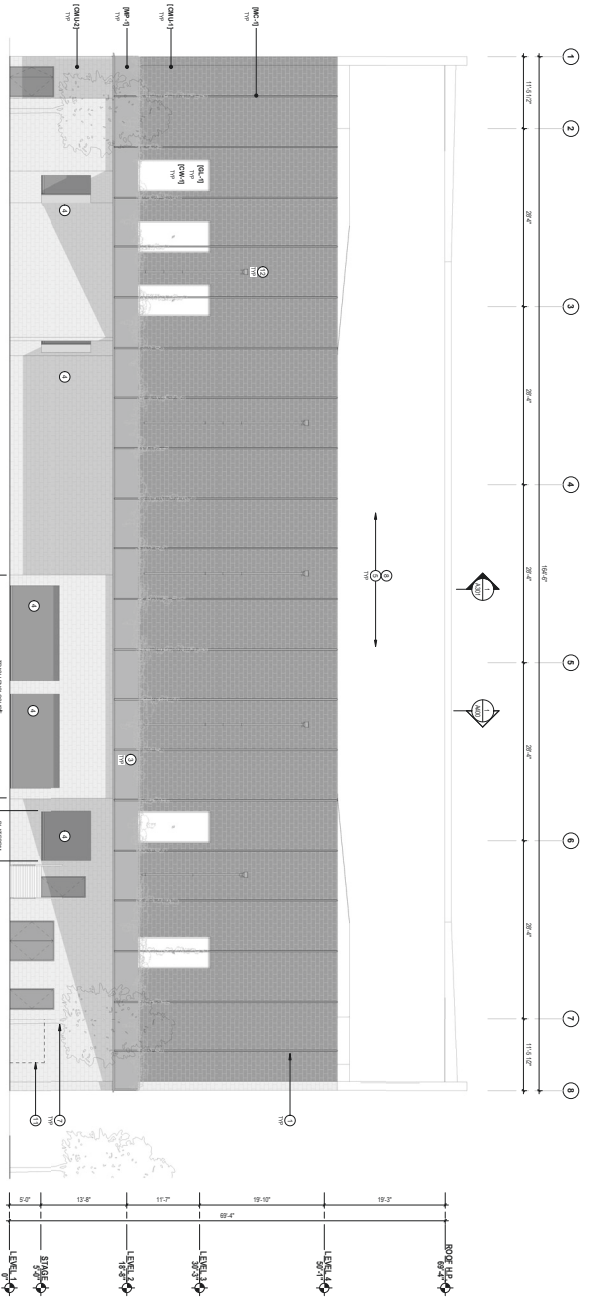
ZONING - SITE PLAN
ARCHITECTURAL DESIGN
LEVER

Z090



1 ZONING - EAST BUILDING ELEVATION
SCALE: 1/8" = 1'-0"

2 ZONING - SOUTH BUILDING ELEVATION
SCALE: 1/8" = 1'-0"



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NOT FOR CONSTRUCTION

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LEVER

4015 N. ALPINE AVENUE
DENVER, CO 80202
781.224.2400
www.lever.com

CENTRAL EASTSIDE VENUE

WYOMING BEHAVIORAL HEALTH CENTER

PHYSICIAN OFFICE



GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR ON-THE-RECORD APPEALS

1. SUBMISSION OF LEGAL ARGUMENT

- a. On-the record appeals are limited to legal argument only. The only evidence that will be considered by the City Council is the evidence that was submitted to the Hearings Officer prior to the date the Hearings Officer closed the evidentiary record. In their testimony, parties may refer to and criticize or make arguments in support of the validity of evidence received by the Hearings Officer. However, parties may not submit new evidence in their testimony to supplement or rebut the evidence received by the Hearings Officer.
- b. Submit written testimony online at <https://www.portland.gov/council-clerk/lu-23-111784-written-testimony> or by mail to the Council Clerk, 1221 SW Fourth Avenue, Room 130, Portland, Oregon 97204. Written testimony will be distributed to the City Council and included in the public record if received before the record is closed. Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council.
- c. Legal argument may be submitted orally (see below).

2. COUNCIL REVIEW

- a. The order of appearance and time allotments are generally as follows:

staff report	10 minutes
appellant	10 minutes
supporters of the appellant	3 minutes each
applicant	15 minutes
supporters of the applicant	3 minutes each
appellant rebuttal	5 minutes
Council discussion	
- b. In-person and virtual testimony registration begins when the September 18-19, 2024 City Council agenda is published by 9:00 a.m. on Friday, September 13 at <https://www.portland.gov/council/agenda>. Registration for virtual testimony closes one hour prior to the Council meeting. In-person testifiers must sign up before the agenda item is heard.
- c. The applicant has the burden of proof to show that the evidentiary record compiled by the Hearings Officer demonstrates that each and every element of the approval criteria is satisfied.
- d. In order to prevail, the opponents of the applicant must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidentiary record compiled by the Hearings Officer demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong approval criteria are being applied or additional approval criteria should be applied.
- e. The failure to address an issue with sufficient specificity to afford the City Council and the parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) on that issue.

3. OTHER INFORMATION

- a. If you are interested in viewing information in the file, please contact the planner listed on the front of this notice. A digital copy of the Portland Zoning Code is available online at <https://www.portland.gov/code/33>.

Request interpretation or an accommodation online at <https://www.portland.gov/311/ada-request> or call 503-823-4000. Please make your request at least 5 days before the hearing.



City of Portland, Oregon - Portland Permitting & Development

1900 SW Fourth Avenue · Portland, Oregon 97201 | 503-823-7300 | www.portland.gov/ppd

Type III Decision Appeal Form

LU Number: 23-111784 CU AD

FOR INTAKE, STAFF USE ONLY

Date/Time Received 8/27/24 @4:09pm

Action Attached Statement & a copy of the HO Decision

Received By Mary Butenschoen

Fee Amount \$6,079

Appeal Deadline Date 8/28/24

Y N Fee Waived

Entered in Appeal Log

Bill # 5339587

Notice to Auditor

Y N Unincorporated MC

Notice to Dev. Review

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS SE Water between Salmon and Mail DEADLINE OF APPEAL 8/28/24

Name MusicPortland

Address 2332 NE Wasco St City Portland State/Zip Code 97232

Day Phone _____ Email info@MusicPortland.com Fax _____

Interest in proposal (applicant, neighbor, etc.) Economic and Social Impact Stakeholder

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. 815 . 215

Zoning Code Section 33. _____ . _____

Zoning Code Section 33. 805 . 040

Zoning Code Section 33. _____ . _____

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

See attached page

Appellant's Name Jamie Dunphy, Board Member and authorized rep, MusicPortland

FILE THE APPEAL - Submit the following:

I acknowledge this typed name as my signature

- This completed appeal form
- A copy of the Type III Decision being appealed
- An appeal fee as follows:
 - Appeal fee as stated in the Decision, payable to City of Portland
 - Fee waiver for Civic Life Recognized Organizations approved (see instructions under Appeals Fees A on back)
 - Fee waiver request letter for low income individual is signed and attached
 - Fee waiver request letter for Unincorporated Multnomah County recognized organizations is signed and attached

Email this application and supporting documents to: LandUseIntake@portlandoregon.gov

To file the appeal, this completed application form and any supporting documentation must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of the Decision. To be valid, the City must receive the appeal by 4:30 p.m. on the deadline listed in the Decision. Once the completed appeal application form is received, a Land Use Services Technician will contact you with instructions on how to pay the fee.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

Type III Appeal Hearing Procedure

A Type III Decision may be appealed only by the applicant, the owner, or those who have testified in writing or orally at the hearing, provided that the testimony was directed to a specific approval criterion, or procedural error made. It must be filed with the accompanying fee by the deadline listed in the decision. The appeal request must be submitted on the Type III Appeal Form provided by the City and it must include a statement indicating which of the applicable approval criteria the decision violated (33.730.030) or what procedural errors were made. If the decision was to deny the proposal, the appeal must use the same form and address how the proposal meets all the approval criteria. There is no local Type III Appeal for cases in unincorporated Multnomah County.

Appeal Hearings for Type III Decisions are scheduled by the City Auditor at least 21 days after the appeal is filed and the public notice of the appeal has been mailed.

Appellants should be prepared to make a presentation to the City Council at the hearing. In addition, all interested persons will be able to testify orally, or in writing. The City Council may choose to limit the length of the testimony. Prior to the appeal hearing, the City Council will receive the written case record, including the appeal statement. The City Council may adopt, modify, or overturn the decision of the review body based on the information presented at the hearing or in the case record.

Appeal Fees

In order for an appeal to be valid, it must be submitted prior to the appeal deadline as stated in the decision and it must be accompanied by the required appeal fee or an approved fee waiver. The fee to appeal a decision is one-half of the original Portland Permitting & Development Land Use Services application fee. The fee amount is listed in the decision. The fee may be waived as follows:

Fee Waivers (33.750.050)

The director may waive required fees for Office of Community & Civic Life Recognized Organizations and for low-income applicants when certain requirements are met. The decision of the director is final.

A. Office of Community & Civic Life Recognized Organizations Fee Waiver

Neighborhood or business organizations recognized by the City of Portland Office of Community & Civic Life or Multnomah County are eligible to apply for an appeal fee waiver if they meet certain meeting and voting requirements.

These requirements are listed in the Type III Appeal Fee Waiver Request for Organizations form and instruction sheet available from the Development Services Center, 1st floor, 1900 SW 4th, Portland, OR 97201. Recognized organizations must complete the Type III Appeal Fee Waiver Request for Organizations form and submit it prior to the appeal deadline to be considered for a fee waiver.

B. Low Income Fee Waiver

The appeal fee may be waived for an individual who is an applicant in a land use review for their personal residence, in which they have an ownership interest, and the individual is appealing the decision of their land use review application. In addition, the appeal fee may be waived for an individual residing in a dwelling unit, for at least 60 days, that is located within the required notification area. Low income individuals requesting a fee waiver will be required to certify their annual gross income and household size. The appeal fee will only be waived for households with a gross annual income of less than 50 percent of the area median income as established and adjusted for household size by the federal Department of Housing and Urban Development (HUD). All financial information submitted to request a fee waiver is confidential. Fee waiver requests must be approved prior to appeal deadline to be considered for a fee waiver.

NOTICE OF APPEAL

City File Number: LU 23-111784

Appellant: MusicPortland
2332 NE Wasco Street
Portland, OR 97232

Legal Representative: Carrie Richter
Bateman Seidel
1000 SW Broadway #1910
Portland, OR 97205
503-972-9920
crichter@batemanseidel.com

Statement of Standing: MusicPortland is a nonprofit organization providing a voice for Portland's independent music industry, which currently provides over 20,000 jobs, nearly \$1 billion in labor income, and over \$4 billion in local economic activity. MusicPortland representatives testified both orally and in writing during the hearings officer's review.

Statement of which sections of the Zoning Code the decision violates includes, but may not be limited to:

- 1) ZC 33.815.215(A)(3) –
 - a. Unpredictable and lengthy train crossings will interfere with the transportation demands created by 3,500 concert attendees needing to access transit, parking and rideshare options.
 - b. This transportation system adequacy criterion requires evaluation of any transportation impacts and mitigation, particularly off-site mitigation, and must extend beyond general PBOT policies and standards that would otherwise apply to uses permitted outright.
 - c. Blanket deferral to PBOT analysis is inadequate where it does not respond to expert transportation engineer testimony identifying inadequacies in the analysis.
- 2) ZC 33.815.215(B)-
 - a. Compatibility in massing and lot coverage alone does not convey the Central Eastside industrial design character. What distinguishes this industrial character is a smooth stucco finish often with highly stylized murals or windows. A "modern" design," whatever that is and angled roof lines is not consistent with any of the surrounding structures.
- 3) ZC 33.815.215(C)-
 - a. By its plain language, this criterion is focused on "any impacts that cannot be mitigated." This open-ended "any" language is not constrained in any respect and most certainly can and should consider economic and social impacts following from this use. Allowing a use that will introduce a scourge of anticompetitive operations that will injure artists, fans, small promoters and venue operators that will cause real and tangible harm.
 - b. The "use" in this case is not just any event venue but is a use that has been designed and will be constructed through ongoing public subsidy to meet and further Live Nation's monopolistic business model. The expenditure of individual taxpayer dollars in this effort demands a greater showing of public benefit than might be required of

private development. This criterion confers on the Council discretion to interpret and apply the public benefit test more broadly or more rigorously on a case-by-case basis as the facts may dictate.

- c. The comparator called for in this criterion is not whether the public benefits of this use outweigh externalities resulting from the property in its vacant and unused state. All of the public benefits identified by the applicant as contributing to Central City are entertainment and leisure-focus objectives that do not further any of the objectives for an industrial zone.
- 4) ZC 33.805.040(A)-
- a. Allowing trucks to back across SE Water Avenue and park in SE Main Street will block and prevent all “other transportation functions” and compromise the safety of pedestrians, bicycle and vehicles. No conditions of approval mandate the use of flaggers. Any other preventive measures such as signage will likely prove insufficient because drivers in this area are, according to the applicant’s TIA, “inattentive.”
 - b. The suggestion that “the street would not have the appearance of a loading area when not in use” is belied by uncontroverted testimony that this loading area would nearly always be in use.
 - c. Ecoroofs are required because they provide water quality, climate and wildlife objectives. Those objectives are not better met by street trees and roof canopy planters making the site more green than it is today or more green than surrounding development. This finding is not only non-responsive to the language of the standard is particularly problematic since staff found that a revised roof design would accommodate greater ecoroof coverage.
- 5) ZC 33.805.040(B)-
- a. The desired character of the area is set by the Buckman Neighborhood Plan policies, among other things. Plan Objective 5.10 expressly prohibits truck loading that blocks streets.

Appeal fee is enclosed.

DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File Number: LU 23-111784 CU AD (Hearings Office # 4240010)

Applicant's Representative: Suzannah Stanley Mackenzie
1515 SE Water Ave., Ste. 100
Portland OR 97214
(971) 346-3808
sstanley@mcknze.com

Applicant: Johnathan Malsin
Beam Development
1001 SE Water Ave., Ste. 400
Portland, OR 97214

Property Owner's Agent: Paul Gagliardi
PDC dba Prosper Portland
222 NW 5th Ave.
Portland, OR 97209

Property Owner: PDC dba Prosper Portland
220 NW 2nd Ave. #200
Portland, OR 97209

Hearings Officer: William Guzman

Bureau of Development Services (BDS) Staff Representative: Andrew Gulizia

Site Address: west side of SE Water Ave. between SE Salmon St. and SE Main St.

Legal Description: LOT 1 TL 3602, PARTITION PLAT 2016-7; LOT 1 TL 4305, PARTITION PLAT 2016-8; LOT 1 TL 1705, PARTITION PLAT 2016-

Tax Account Number: R649670250, R649670290, R649670330

State ID Number: 1S1E03AD 03602, 1S1E03AD 04305, 1S1E03AD 01705

Quarter Section: 3130

Neighborhood: Buckman, contact John Rose or Josh Baker at
buckmanlandusepdx@gmail.com

Business District: Central Eastside Industrial Council, contact ceic@ceic.cc.

District Coalition: Southeast Uplift, contact at operations@seuplift.org

Plan District: Central City (Central Eastside Subdistrict)

Zoning: IG1 – General Industrial 1

Land Use Review: Type III, CU AD Conditional Use Review and Adjustment Review

Public Hearing: The hearing was opened at 1:01 pm on July 10, 2024, via the Zoom platform and ended at 3:51 pm. The record was held open until 4:30 p.m. July 17, 2024 for new evidence, 4:30 p.m. July 24, 2024 for Rebuttal Response to new evidence and until 4:30 p.m. July 31, 2024 for Applicant final argument/rebuttal. The record was closed on July 31, 2024.

Testified at the Hearing:

Andrew Gulizia
Damien Hall
Michael Pina
Carolyne Holcomb
Patrick Fleming
Preston Greene
Jaime Dunphy
Marshall Runkel
Tom Lipton
Bob Sallinger
Logan Vickery
Sheena Taylor
Joseph Perez

Initial Proposal:

At the time of the Hearing the applicant proposed to construct a new, 62,000-square-foot building on this site to be used as a concert venue with 1,280 seats and a maximum spectator capacity of 3,500. The applicant requests Conditional Use Review approval for a new Major Event Entertainment use in the IG1 zone. Type III Conditional Use Review is required by Zoning Code Sections 33.140.100.C and 33.815.040.A.1. The applicant also requests approval of two Adjustments to Zoning Code requirements for this project:

- To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero (Zoning Code Section 33.266.310.C.2.c).

- To reduce the amount of ecoroof area required (Zoning Code Section 33.510.243.B.1).

Relevant Approval Criteria:

To be approved, this proposal must comply with the approval criteria of Title 33, the Portland Zoning Code. The applicable approval criteria are:

- Zoning Code Section 33.815.215.A-D (Conditional Use Review); and
- Zoning Code Section 33.805.040.A-F (Adjustment Review).

II. ANALYSIS

The Record

The record in this matter includes all Exhibits from the Planner’s file marked A – G (no F Exhibits) and any Hearings Office Exhibits received marked Exhibits H-1 through H-54. Applicant objects to Exhibit H-41 as being submitted during the period to respond to new evidence but not being responsive to any submission during the initial open record period. The Hearings Officer finds that the transportation-related issues raised arguably touch upon or expand upon Exhibit 35 (which was submitted during the open record period) and can be considered timely and responsive. The record also includes all testimony received during the Hearing held on July 10, 2024; an audio recording of this Hearing is available online. Note that some submissions included links to outside websites or files. These are not part of the record and the information on these links was not viewed by the Hearings Officer.

Changes to Proposal, Notice of Hearing, and Motion(s) Continuance

Title 33.730.030 governs Type III Procedures stating: “A Type III procedure requires a public hearing before an assigned review body.” Subsections B, E, and F govern neighborhood contact and notice requirements, notice of a request, and decision by review body if site is in City of Portland.

Some comments suggest that notice was inadequate or that a continuance is necessary given some testimony at the hearing. For example, Exhibit H33 suggests the following:

“At the hearing, another regulatory mechanism for enabling the applicant to use the public right-of-way for loading was suggested. If another method is being proposed, the Hearings [Officer] must reopen the record to allow the correct regulatory mechanism to be evaluated by all parties.”

In Exhibit H39 the author argues:

“[T]he city did the bare minimum on outreach required by law and failed to reach out to either groups involved in the Central City Plan or the Green Roof Mandate. While this may not be required, the city is well aware of groups that have vested interest in this issue. This project is too big and too high profile for the city to rely on minimum outreach requirements.”

The Hearings Officer finds that the City provided legally sufficient notice of the Applicant's proposal through the notice of Hearing to satisfy Title 33 based on the City's testimony and the following statement in the Staff Report: "Signs notifying neighbors of the public hearing were posted on June 6, 2024 (Exhibit D-3) and a 'Notice of Public Hearing' was mailed to neighbors on June 20, 2024 (Exhibits D-4 and D-5)."

Regarding changes that require a continuance of a Hearing, the Administrative Rules governing City of Portland land use Hearings include the following instruction in ADM 9.02.K set forth below for easy reference (Changes to a Land Use Application or Applicable Criteria):

1. The Hearings Officer may consider a substantial change to a land use application or applicable criteria, made after the Bureau issues the staff report, only if the applicant submits a signed waiver of the 120-day deadline for final action on the application.
2. If an application is amended and the hearing notice no longer accurately describes the amended application, the Bureau must issue a new hearing notice.

The Hearings Officer finds that the testimony and suggested amendments do not rise to a substantial change in the application, the applicable criteria are the same as prior to the Hearing, and the hearing notice still accurately describes the proposal. The Hearings Officer denies an additional open record period and denies a continuance of the Hearing.

City Bureau Responses

The City Bureaus were invited to submit a response or objection to the applicant's proposal and request for adjustments. A "Request for Response" was sent to City agencies May 29, 2024 (Exhibit D-1). The following City reviewers responded:

- The Bureau of Environmental Services (BES) evaluated the approval criterion related to sanitary sewer service and stormwater disposal. The response is referenced in the findings for Zoning Code Section 33.815.215.A.4, below. (Exhibit E-1)
- PBOT evaluated the approval criteria related to the transportation system. The response is referenced in the findings for Zoning Code Section 33.815.215.A.1-3, below. (Exhibit E-2)
- The Water Bureau responded with no concerns. (Exhibit E-3)
- The Fire Bureau responded with information on building permit requirements and no objections to approval. (Exhibit E-4)
- The Police Bureau responded that police can adequately serve the proposed development. (Exhibit E-5)

- The Site Development Review Section of the Bureau of Development Services (BDS) responded with information on building permit requirements and no objections to approval. (Exhibit E-6)
- The Life Safety Review Section of BDS responded with information on building permit requirements and no objections to approval. (Exhibit E-7)
- The Urban Forestry Division of the Parks Bureau responded with information on street tree requirements and no objections to the land use review proposal. (Exhibit E-8)

The Opposition and Decision

City Council drafts Title 33 and provided the following direction to the Hearings Officer deciding this Title 33 land use application. Title 33.730.030.F.3: “The review body may adopt the Director of BDS’s report and recommendation, modify it, or reject it based on information presented at the hearing and in the record.”

The City’s recommendation in the Staff Report (Exhibit H-5), based in part on the lack of opposition from the City bureaus, is to approve the proposal with adjustments granted and the inclusion of several conditions. The Staff Report is modified by Exhibit H-6’s suggested condition of approval (PBOT Memo). The Applicant agrees with the findings and recommendation of approval contained in the Staff Report and Recommendation and is also amenable to imposition of the revised conditions of approval in the Staff Memo. The City Bureaus have no objections and only suggested conditions.

After independently reviewing the record and the applicable approval criteria the Hearings Officer adopts the Staff Report and its recommendation of approval. The Hearings Officer finds the City’s analysis thorough and persuasive.

Therefore, this decision is going to focus on the opposition to the proposal to document the issues and explain why the Hearings Officer ultimately ruled to approve the proposal despite issues raised by the public. In full disclosure and transparency, throughout this decision the Hearings Officer liberally utilizes text from sources in the record deemed persuasive and adopts the text either through copy/paste feature or by reference.

Bike Parking

Initially, Applicant sought a third Adjustment request to Zoning Code Section 33.266.200.B.1 to reduce the minimum number of on-site, short-term bike parking spaces from 32 to zero. The applicant had proposed to construct bike parking in the public right-of-way adjacent to the site as justification for this Adjustment. After discussion with the Portland Bureau of Transportation (PBOT), the applicant decided to withdraw this Adjustment request (Exhibit G-3).

At the time of the Hearing and as described in the Staff Report, the proposal is for the applicant to pay into PBOT’s bike parking fund when the building permit is issued, as required by Zoning Code Section 33.266.210.E.1.b when there is insufficient space on-site to provide the required short-term bike parking. PBOT would then construct and maintain bike parking in

the public right-of-way. The public is often critical of payment of funds in lieu of strictly adhering to development standards. This criticism must be lodged with City Council who are the elected officials with authority to legislate the opportunity to choose a payment into the fund. It would be an overreach by the quasi-judicial Hearings Officer to unilaterally foreclose this avenue to approval.

In Exhibit H19 Bike Loud (through Aaron Kuehn, Board Chair of BikeLoudPDX) raises a couple concerns regarding construction interruptions and the width of Salmon street suggesting the following recommendations:

“Bike racks are installed diagonally to reduce handlebar conflicts.
Security, lighting, and covering for short-term bicycle parking.
Electrical outlets for e-bike charging, and larger spaces for cargo bike parking.
All bicycle parking is ready for the very first event at this concert venue.
Bike racks could be installed on concrete panels with tree wells in between.”

PBOT’s representative responded to these recommendations and concerns in an email included in the record marked Exhibit H34. This exhibit also includes Bike Loud’s continued objection considering their concerns unresolved.

The Hearings Officer notes the following from PBOT’s submission included in the Staff Report (Exhibit H5 at page 8):

“In accordance with 17.88.020, the proposed project will be required to dedicate and reconstruct the abutting frontages to City standards by providing a 12-ft wide pedestrian corridor along SE Salmon and SE Main streets, and a 15-ft wide corridor along SE Water Street. These improvements will be reviewed through a Public Works permit, which is to receive 30 percent concept approval and bond payment prior to issuance of the building permit. Additional frontage improvements such as street lighting, striped pedestrian crossings, curb extensions, signage, and preparation of ROW bike parking will also be evaluated at time of Public Works permit review.”

In Exhibit H34 PBOT confirms the bike racks get installed diagonally: “By paying into the bike fund, PBOT will install a bank of bike corals along the site’s SE Salmon frontage. Standard bike coral racks are already installed diagonally to reduce handlebar conflicts[.]”

In Exhibit H34 PBOT responds:

“The applicant remains responsible for monitoring bicycle usage and taking additional TDM measures to mitigate the demand. Creating a “Woonerf” or other plaza treatment could be a possibility, but that would be reviewed as either Capitol Improvement Project (CIP) or future partnership with the venue; not associated with this particular Conditional Use development.”

Regarding the timing of the installation the Staff Report includes PBOT's goal: "As noted above, all required frontage improvements, payment into the bike fund, and implementation of TDM strategies will be in place by the time the development is complete."

Lastly, the Hearings Officer approves of the PBOT suggested condition agreed to by the Applicant:

"The applicant must assess the bike parking capacity on an annual basis for the first 3 years after the concert venue begins operation and then every other year after that ending with year 11. That assessment must include bike count averages for events throughout the year. The applicant must send their assessment to PBOT Development Review and PBOT Active Transportation and Safety. If demand consistently exceeds the provided bike parking, the applicant must work with PBOT on remedies, including but not limited to adding additional bike racks or a contract for offering temporary bike racks during events."

In Bike Loud's continued objection they suggest the following: "[We] are not satisfied that this project will improve an already dangerous streetscape or address bicycle parking concerns." The Applicant is not responsible for preexisting conditions in the area that are already causing a dangerous streetscape and all of the bicycle parking concerns were addressed. The Hearings Officer agrees that there can always be more that is done to improve conditions on the ground for bike rider safety but there is only so much that can be accomplished through a land use application and only so much cost for improvements that can be imposed on the developer (example, public right of way improvements and dedications). The Hearings Officer's review of the applicable approval criteria and the proposed conditions lead to the conclusion that the applicable approval criteria have been met.

Train Crossings

The Hearings Officer finds that there are train tracks and crossings in the area of the proposed development. Some of the testimony at the Hearing included concerns about individuals who attend music events climbing over stopped trains to cross the tracks. Additional, written testimony also raised train crossing concerns. For example, in Exhibit H26 a local business owner raised a concern with traffic impacts and safety:

"What considerations has the proposed development taken in regarding traffic flow and grid lock with the train? As a business owner, I have witnessed and experienced the effects of the train being stopped for up to 40 minutes. Imagine 3,500 people trying to get to a concert and the train is stopped or a band is trying to get to a venue to set up for sound check. I imagine this causing stress and chaos on both ends. The traffic that gets backed up on to I-5 is already a fiasco."

In Exhibit H32 the opposition includes the following written testimony for consideration:

“Freight trains go thru this area every day, sometimes at slow speed and sometimes faster. They often stop and remain stationary for an indeterminate amount of time. If a concert gets out at 11pm and the train is sitting there for 30 minutes, do you expect people not to cross the tracks to get to their cars? What considerations has the proposed development taken in regarding traffic flow and grid lock with the train? I have personally experienced the effects of the train being stopped for up to 40 minutes. Imagine 3,500 people trying to get to a concert or a band is trying to get to a venue to set up for sound check and the train is stopped. I imagine this causing stress and chaos on both ends. BEAM Development and Colas Development Group, as city planners, must take into account that the train tracks are a major point of concern with this location. Expecting 3500 people to fill the sidewalks and unsafe streets, while passing over live freight train tracks is irresponsible at best.”

In Exhibit H33 the following is submitted for consideration:

“It is impossible for a major entertainment use to meet this important criterion at this site because it is an inherently unsafe place to attract significant new pedestrian [traffic] because of its proximity to train [traffic] that has killed two pedestrians and injured another in the past five years according to the [Staff] Report and Recommendation to the Hearings [Officer].

* * *

During the periods when trains are stopped at crossings, pedestrians regularly choose to ignore safety barriers designed to stop cars and climb over stopped trains. There are no pedestrian crossing protections at any of the five crossings near the site, nor are any new pedestrian safety protections proposed.”

Exhibit H35 analyzes the issue at pages 3 -4 concluding the following:

“Taken together, this analysis indicates that, at a very minimum, 1,000 of the concert attendees, about one-third of the total, will need to cross the tracks on foot to arrive at an event. Unpredictable train crossings that “average 10 minutes”² will create an incentive for excited attendees to make poor choices, risking their lives, to make it to an event on time. After an event, poor visibility coupled with judgment-impaired attendees crossing train tracks is nothing more than a recipe for disaster.

Portland Zoning Code (ZC) 33.815.215(A)(3) requires a finding that “the transportation system is capable of supporting the proposed use in addition to the existing uses in the area” including “safety,” “impacts on pedestrian circulation.” This provision goes on to explain that: “a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed

development, and any additional impacts on the system from the proposed development are mitigated.”

Locating a major entertainment venue one block from the City’s most heavily used train tracks, where lengthy freight trains barrel through in excess of 15 miles per hour, creates pedestrian safety and circulation failures. The applicant identified no mitigation for this significant injection of pedestrian traffic demanding pedestrian rail crossings far in excess of anything that exists today.”

PBOT’s July 19, 2024 Memo Exhibit H40 includes the following guidance regarding train crossings in the area of the site: “The subject site is does not abut the railroad Right-of-Way, therefore improvements such as an improved crossing is not required of the applicant or project.” This is a legally accurate assessment of the situation.

Additionally, the Applicant addresses the opposition in Exhibits H52 and H54.

“The standard protective devices at rail crossings in Oregon are installed and maintained by the railroad (not the Applicant) per OAR 741-110-0020 to 0090 and 741-115-0010 to 0080.”

“The approval standards do not require projecting and accounting for impairment of individual users of the transportation system.” The Traffic Impact Study results conclude:

“[T]he proposed use is not expected to result in any material change to the frequency of accidents.”

The Hearings Officer finds that the rail crossings and protective devices are not the responsibility of the Applicant to improve or maintain. The Hearings Officer finds that impaired or otherwise poor judgment of individuals (whether concert attendees or not) to ignore the safety devices is not the responsibility of the Applicant. There is no guarantee that the worst case scenario predicted by the opposition won’t occur (a train related death of a music event attendee). This finding merely relies on the best evidence in the record and the limited scope of what can be accomplished through a Type III land use review, that the proposal will not increase the risk of a train related death and limits the scope of review to the proposal and the applicable approval criteria. The safety criteria related to the proposal is satisfied.

Construction Disruption

In Exhibit H26 the project opponent raises the following concern: “The construction alone will be a major disruption to my business. * * * I would like to know how the city plans to address parking for the community and business owners during construction and thereafter since it’s leveraging itself as building more job opportunities.” There is no applicable approval criteria that concerns itself, at this stage of the approval process, with construction noise, delays, impacts. Project opponents may reach out to the City Planner to provide recommendations

about the best way to communicate these concerns as the permit process unfolds and timelines for construction materialize.

Transportation System Impacts

Title 33.815.215 requires analysis of the proposed use to ensure that transportation services are or will be sufficient to serve the use. PBOT submitted analysis into the record (Exhibit E-2) incorporated into the Staff Report finding that subsections A.1, A.2, and A.3 are satisfied. See Exhibit H5 pages 4 – 9. PBOT's analysis relied on the City's Transportation System Plan's (TSP) classification of the abutting streets, the Applicant's Transportation Impact Study (Exhibit A-10), concluding that although there were no objections, and recommended conditions. The Hearings Officer finds that the TIS is expert testimony whereas the opposition relied on anecdotal inferences that are less persuasive.

Opponents of the proposal included traffic related issues (examples in the record in Exhibits H32 and H35) some of which is included below for easy reference:

“I used to work in the area and can confirm that there are more permits issued than there are actual parking spots to match. It's naive to expect this venue not to be impacted by that, given artists/buses/trucks arrive on site early in the morning and stay for at least a day if not more, depending on the number of shows booked. Fans also tend to arrive early out of excitement to see their favorite artist, which will certainly impact parking in the surrounding streets. Employees in the area already struggle to find parking for the businesses already established. Add on top of that the customers shopping at said businesses, I just do not see how it is even remotely possible for the applicant to believe they will not have any affect on daytime parking in the area. Your assessment that 915 parking spots will be needed for a sold out weekday/weekend show of 3500 capacity is misguided. What is that based on?”
Exhibit H32

Applicant responds, arguing that “project opponents have provided no evidence (expert or otherwise) of the inadequacy of public services to support the proposed venue.” The Hearings Officer finds that compliance with the applicable approval standard is demonstrated by substantial expert evidence in the record. PBOT provides a detailed written response to this criterion [Staff Report Exhibit E-2; see also, Exhibit 16, at 2]. As expressly determined by PBOT and as adopted by the Staff Report, PBOT found that the proposed conditional use project is consistent with the surrounding street designations of the Transportation Element of the Comprehensive Plan and TSP classifications” [Id.; see also, Exhibit 5, at 4].

Further, the Applicant's Traffic Impact Study (“TIS”) [Staff Report Exhibit A-10], contains a detailed discussion of how the proposed use is appropriate for the site's traffic street designations identified in Table 1 of the TIS [Staff Report Exhibit A-10, at 57]. The design classifications (SE Salmon Street and SE Main Street are Local Streets, and SE Water Avenue is a Neighborhood Main Street) are also suited for the proposed land use [Id.; see also, Staff Report Exhibit A-12, at 5].

The Applicant further addresses each evaluation factor and responds to oppositional testimony raised during the course of the proceedings in Exhibit H54 that the Hearings Officer adopts and incorporates herein by reference.

The Hearings Officer finds that adjacent and nearby streets will continue to fully accommodate truck movements and all modes of transportation. In addition, the Applicant is required to improve the street frontages of the proposed venue to feature wider sidewalk corridors on SE Main Street and SE Salmon Street, consistent with their local street designations in a Pedestrian District and along SE Water Avenue, consistent with its Major City Walkway and Neighborhood Main Street designations. Such improvements will be reviewed through a Public Works Permit [Exhibit 5 at 8]. With conditions, the proposal meets the applicable approval criteria related to transportation impacts.

Truck Loading Adjustment

Applicant seeks the following adjustment, “To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero (Zoning Code Section 33.266.310.C.2.c). The applicant proposes to create 2 truck loading spaces which are primarily in the public right-of-way adjacent to the site.”

Zoning Code Section 33.266.310.A states the purpose of the on-site loading space requirement:

“A minimum number of loading spaces are required to ensure adequate areas for loading for larger uses and developments. These regulations ensure that the appearance of loading areas will be consistent with that of parking areas. The regulations ensure that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way.”

The applicant proposes to use the SE Main Street right-of-way adjacent to the site for truck loading when needed, and this Adjustment is necessary because the Zoning Code requires loading areas that are on-site rather than in the right-of-way. However, the proposal would still accommodate two large trucks simultaneously, as required by Zoning Code Section 33.266.310.C.2.c, and the loading area would be as large as would be required by Zoning Code Section 33.266.310.D.1. The street would not have the appearance of a loading area or parking area when not in use for truck loading, and using the public street for loading rather than creating a dedicated loading area on-site reduces visual impacts by reducing the amount of pavement area required for the proposal. PBOT evaluated this proposal and found that using SE Main Street for truck loading in this case would not have a negative effect on traffic safety or other transportation functions in the right-of-way, as long as the applicant obtains and maintains continuous compliance with an Angle Loading Permit (Exhibit E-2). For these reasons, and with the condition of approval recommended by PBOT to require the Angle Loading Permit, staff finds the Adjustment request equally meets the purpose of the standard.

The appearance of the loading areas will be consistent with that of required parking areas. Here, there are no required on-site parking areas, and the proposed loading areas will be visually standard loading areas consistent with required setbacks, and indistinguishable when trucks are not present from other loading areas. Similarly, the Staff Report expressly found that the street would not have the appearance of a loading area or parking area when not in use for truck loading, and using the public street for loading rather than creating a dedicated loading area on-site reduces visual impacts by reducing the amount of pavement area required for the proposal. Exhibit 5, at 12. Thus, the purpose of ensuring that “appearance of loading areas will be consistent with that of parking areas” is equally or better met by the proposed adjustment.

The Applicant has provided a detailed analysis of loading-related truck movements and traffic control plans to ensure traffic safety and continuous transportation functionality while trucks are loading and accessing the loading area. The TIS includes a traffic control plan illustrating how vehicle, bike, and pedestrian travel will be maintained on SE Main Street during the time that trucks are loading. The final measures and improvements are subject to the public works and angle loading permitting process, but the Applicant has presented feasible plans that achieve the following traffic safety measures:

- SE Main Street remaining accessible to two-way vehicular and bicycle traffic at all times. Even with the largest trucks loading, no less than 21.6 feet of the street will remain usable for vehicles. 20 feet is the standard minimum width to accommodate two-way traffic.
- Full signage and certified flagger support for truck movements to access the loading area.
- Swinging gate that closes the sidewalk and landscape area, directing pedestrians to use the sidewalk on the other side of SE Main Street when trucks are present in the loading area.

Further, construction of the venue would result in improvements to adjacent rights-of-way resulting in substantial improvement for transportation functionality of the adjacent rights-of-way. The improvements are listed at Table 21 of the TIS and benefit all modes of transportation [Staff Report Exhibit A-10, at 55-56]. Currently, the abutting street improvements do not meet City standards and result in conflicts between modes. Exhibit 48, at pages 2 and 3, show a pick-up truck of a local services provider navigating the current illegal angle parking on SE Salmon and lack of sidewalk improvements resulting in pedestrians in the vehicular travelway.

City staff evaluated and the TIS and concurred with Applicant, finding that the loading area adjustment in this case would not have a negative effect on traffic safety or other transportation functions in the right-of-way, as long as the Applicant obtains and maintains continuous compliance with the appropriate angle loading permit determined by PBOT [Staff Report Exhibit E-2; Exhibit 16]. The Hearings Officer finds that the adjustment criteria are met.

Ecoroof Adjustments

Applicant seeks an adjustment allowing for a much smaller eco room than that required by the applicable City Code. Opposition testimony is located in Exhibits H18, H30, H39. For easy reference some of that opposition testimony is included below:

“The proposal does meet the stormwater requirements set by the city and has integrated planters and eco 'net' using stainless cables for plants to grow up the side of the building; these are an effort to mitigate the lack of eco roof coverage. However, the proposal does not quantify the effects of these alternatives relative to the eco roof requirement. The eco roof requirement is not near to being met and it has not been proven that these mitigation efforts will make up an equal effect of the remaining 85% of the ecoroof requirement. These mitigations do not effectively meet the intention of the eco roof requirement and this proposal should be rejected.” Exhibit H18

“It is clear that performing arts, concert/theater style buildings and even convention centers can be and have been built with ecoroofs at no sacrifice to the interior uses. We encourage the applicant to consider ecoroofing the entire building including the 25% sloped roof.” Exhibit H30.

“The proposed strategies will not provide the myriad benefits provided by a large ecoroof and therefore does not qualify for an adjustment. Beyond compliance with the SWMM, proponents have failed to substantively address any of the benefits that ecoroofs provide. City Council was explicitly trying to achieve more than simply managing stormwater when it put the ecoroof mandate in place. This proposal fails to achieve those multiple benefits. Additionally, proponents seem to rely on cost and feasibility as a basis for proposing alternative strategies. In fact, as expert testimony from City of Portland ecoroof expert, Tom Liptan (retired) indicated, an ecoroof is feasible with the proposed design.” Exhibit H39.

In Exhibit H32 the project proponent asks the following question: “City code requires ecoroof percentage and the fact that the applicant is already looking to decrease that amount begs the question: if we just allow an adjustment to the requirement, then what is the point of having a requirement?” The Hearings Officer appreciates this comment but City Council enacted Zoning Code Section 33.805.040.A-F explicitly allowing adjustments when deemed appropriate (when the adjustment can meet the approval criteria). Therefore, it would be an abuse of authority to disregard the approval criteria allowing for an adjustment sought by the Applicant.

The Applicant has the burden of demonstrating that the proposed adjustment equally or better meets the purposes of the ecoroof requirements. Since the hearing, presumably in response to some of the concerns raised by the opposition heard at the Hearing, the Applicant has modified the ecoroof plans in a manner that meets the criteria. Specifically, the applicant proposes to increase the square footage of ecoroof provided, going from 2,100 to 4,670

square feet [Exhibit 36, at 39] The applicant has also provided additional analysis of the roof design and area required to meet the ecoroof requirement. The outcome of these modifications has been an ecoroof proposal that meets 43% (i.e. 4,670 sq ft of the required 10,872 sq ft) of the unadjusted ecoroof standards, where it previously met only 14% of the unadjusted ecoroof standards (i.e. 2,100 sq ft of 14,617 sq feet).

Further, without this adjustment, construction of an ecoroof would be cost-prohibitive totaling up to nearly \$4.2 million to increase the foundation piles and upsize the roof trusses and structural steel elements as found to be necessary to support full ecoroof compliance by DCI Engineers [Exhibit 36] and as demonstrated in the cost analysis prepared by Colas Construction [Exhibit 38]. Therefore, the proposed adjustment meets the overall purpose of the eco-roof requirement by maximizing the amount of ecoroof that can be provided without over-engineering the building so as to be economically infeasible.

Besides the 4,670 square feet of ecoroof area, Applicant also proposes the following: (1) 1,500-square-foot stormwater planter on the south side of the building that exceeds the stormwater management requirements for ecoroof area (Exhibit 36, Floor Plan – Roof; Exhibit 36, Planting Plan); (2) Stainless steel cables would allow plants to climb toward the roof (Staff Report Exhibit C-4); and (3) Planting of new street trees adjacent to the site (Staff Report Exhibits C-1 and E-8).

With these features, the site would be much greener than it is currently and would appear greener than is typical for sites in the industrial area. While most of the new greenery does not qualify as ecoroof area under PCC 33.510.243.B.2, all the new plants and trees will reduce stormwater runoff, improve air quality, mitigate heat island impacts, and provide habitat for birds and insects. The stormwater management requirements for the site will be fully met (Staff Report Exhibit E-1), and the landscaping plan for the ecoroofs and the other planters includes several plant varieties known to attract pollinators (Staff Report Exhibit A-8, at 14-15); thus, the proposed ecoroof design equally meets these goals. See also, Exhibit 36, Roof Floor Plan; and Exhibit 36, Planting Plan. The planters would utilize a geocell grid to prevent soil erosion, and that plantings would be denser than typical. Staff Report Exhibit A-12, at 16. The Applicant also previously submitted an operations and maintenance plan that would promote the long-term success of the planters (Staff Report Exhibit A-11). Again, without these green features, the lot would continue to be a vacant, un-vegetated combination of paving and gravel [Exhibit 45, at 1; Exhibit 48]. Thus, with these measures, the proposed adjustment will exceed the purpose of the eco-roof standards.

Furthermore, the roof will consist of Thermoplastic Polyolefin (TPO) roofing material for heat island reduction. See Exhibit 36, at 2. Specifically, un-planted roof areas would be white TPO roof material. As evident by Applicant's Exhibit 36, such roofing materials have highly reflective properties that effectively reflect solar radiation to reduce heat island impacts. In effect, the proposed adjustment would meet the purpose of the eco-roof standards by reducing heat islands and air temperatures. For all these reasons, the Hearings Officer finds that the proposed adjustment equally meet the purposes of the ecoroof standards.

Future Tenant Concerns

The record contains significant opposition to the future tenant Live Nation. See for example Exhibits H13, H18, H23, H25, H26, H28, H29, H31, H32, H33, and H35. Exhibit H13 includes the following opposition: "This does not go with what Portland is. Portland is a grassroots community. Allowing businesses like this to come in and syphon creativity from local artists will be another dagger to the city." Another example, Exhibit H18 states in pertinent part: "Live Nation has a track record of shady business practices and a history of squeezing out the small local promoters and venue owners in other cities. Portland has a rich music culture that is run almost entirely by local promoters and artists. Allowing Live Nation to enter our city puts this culture at risk. Live Nation should not be allowed to move forward with this project." Some arguments connect this concern with the future tenant to the following approval criteria: PCC 33.815.215 C, "Public benefits of the proposed use outweigh any impacts that cannot be mitigated." See Exhibit H-33. The Hearings Officer finds that these tenant related concerns are not connected to the approval criteria for the land use proposal and cannot be considered. For comparison, the structure's appearance or impacts on the transportation system are clearly related to the proposed use of the development. The use being proposed is Major Event Entertainment, and this does not include the operator (public, private, large, or small). PCC 33.920.230. Demonstrating the point is that the application is not dependent on the proposed venue operator being the operator and should the lease end or be terminated, the owner could contract with a new venue operator. Notably, nearly all of the opposition to the future tenant also was supportive of a new music venue in Portland. The Hearings Officer rejects any opposition to the tenant's alleged business practices as applicable to the approval criteria. The "impacts" criteria in Title 33 relate to the development of a music venue in this location, not the future tenant's business practices when utilizing the music venue.

No Public Subsidy

Project opponents assert that the proposed venue is reliant on receiving a public subsidy [Exhibits 35 and 43]. The Hearings Officer finds that this assertion is not supported by the facts in the record, therefore, this assertion is incorrect and inaccurate. Accordingly, assertions that the conditional use standards be applied differently based on the existence of public subsidy need not be addressed further.

III. CONCLUSIONS

Despite significant and substantial opposition to the proposal, adjustments, and the adequacy of the conditions (contained in both the opposition testimony at the Hearing and the written submissions marked as H-Exhibits), the Hearings Officer finds the proposal meets the approval criteria. On balance, the Hearings Officer finds that, under the facts of this case, the City's and the Applicant's positions are more persuasive than the opposition testimony. The proposal and adjustments with conditions meet the approval criteria. The Hearings Officer approves the proposal, the adjustments, and the conditions hereby adopting the Staff Report as modified in the decision above and in the conditions below. The Staff Report is adopted as the decision in this matter and is attached hereto and incorporated herein by reference. No adjustments to the approvals per the approved plans, Exhibit C-1 through C-4, are permitted

unless it is deemed necessary by the City Planner given the Applicant's post-Hearing modification to the requested adjustment regarding the expanded ecoroof.

IV. DECISION

Approval of Conditional Use Review to establish a Major Event Entertainment use on this site; and

Approval of two Adjustments:

- To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero (Zoning Code Section 33.266.310.C.2.c).
- To reduce the amount of ecoroof area required from 14,617 square feet (total roof area minus allowable exemptions for roof slope greater than 25%, mechanical equipment, and the elevator overrun) to 4,670 square feet (Zoning Code Section 33.510.243.B.1).

The approvals are per the approved plans, Exhibit C-1 through C-4, and subject to the following conditions of approval:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 23-111784 CU AD."
- B. Prior to issuance of a building permit for this development, the applicant must receive 30 percent public works concept approval and make any required bond payment for required frontage improvements abutting the site.
- C. Prior to issuance of a building permit for this development, the applicant must obtain approval of the appropriate permit as determined by PBOT for the proposed truck loading in SE Main Street. The applicant must adhere to all the conditions and stipulations of said permit for the life of the proposed use. If any conditions are found to be in violation, the applicant may be fined and/or any applicable permits may be revoked.
- D. The applicant must continually implement the transportation demand management (TDM) measures identified in the TDM plan in Exhibit A-10 that are within their control.

E. The applicant must assess the bike parking capacity on an annual basis for the first 3 years after the concert venue begins operation and then every other year after that ending with year 11. That assessment must include bike count averages for events throughout the year. The applicant must send their assessment to PBOT Development Review and PBOT Active Transportation and Safety. If demand consistently exceeds the provided bike parking, the applicant must work with PBOT on remedies, including but not limited to adding additional bike racks or a contract for offering temporary bike racks during events.

William Guzman

William Guzman, Hearings Officer

August 14, 2024

Date

Application Determined Complete:	May 23, 2024
Report to Hearings Officer:	July 1, 2024
Decision Mailed:	August 14, 2024
Last Date to Appeal:	August 28, 2024 by 4:30 p.m.
Effective Date (if no appeal):	August 29, 2024

Conditions of Approval. This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER’S DECISION MUST BE E-MAILED TO LANDUSEINTAKE@PORTLANDOREGON.GOV. The appeal application form can be accessed at : [Land Use Review Appeals, Land Use Review Appeal Costs and Appeal Fee Waivers | Portland.gov](https://www.portland.gov/landuse/land-use-review/appeals). If you do not have access to e-mail, please telephone (503) 865-6744 for assistance on how to submit the appeal; please allow one business day for staff to respond. **An appeal fee will be charged.**

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

EXHIBITS RECEIVED IN THE HEARINGS OFFICE – SEE NEXT PAGE
(NOT ATTACHED UNLESS INDICATED)

The exhibits in the land use case file are all assigned a letter (example A-1). The Hearings Office accepts exhibits filed online in its case management system. These exhibits are marked in the lower right hand corner that identifies the exhibit as a “Portland Hearings Office” exhibit. All of these exhibits are designated “H Exhibits” (that is, Hearings Office Exhibits). See the BDS Staff Report for a list of exhibits prior to “H.”

4240010 H Exhibits, Orders, and Other Attachments

Number	Title	Status
Exhibit 1	Schedule Request	Accepted
Exhibit 2	Zoom Participation Instructions	Accepted
Exhibit 3	Notice Of Hearing	Accepted
Exhibit 5	STAFF REPORT (attached)	Accepted
Exhibit 6	STAFF MEMO	Accepted
Exhibit 7	Nick Wood Testimony	Accepted
Exhibit 8	Patrick Fleming Testimony	Accepted
Exhibit 9	STAFF PRESENTATION	Accepted
Exhibit 10	Jeff Miller Testimony	Accepted
Exhibit 11	Portland Metro Chamber (PMC) Comments	Accepted
Exhibit 12	OMSI Support Letter	Accepted
Exhibit 13	Live Nation Land Use Comments	Accepted
Exhibit 14	PBOT MEMO	Accepted
Exhibit 15	TRANSPORTATION INFORMATION	Accepted
Exhibit 16	PBOT MEMO ADDITIONAL	Accepted
Exhibit 17	Record Closing Information	Accepted
Exhibit 18	Written Testimony - Kevin Killian	Accepted
Exhibit 19	Written Testimony - Aaron Kuehn	Accepted
Exhibit 20	Applicant Presentation	Accepted
Exhibit 21	Written Testimony - Jaime Dunphy	Accepted
Exhibit 22	LU 23-11784 CU AD 14 day Extension	Accepted
Exhibit 23	Katie Bergen Testimony	Accepted
Exhibit 24	Kate Sena Testimony	Accepted
Exhibit 25	Chad Colwell Testimony	Accepted
Exhibit 26	Debra Krueger	Accepted
Exhibit 27	Carolyne Holcomb Testimony (CEIC)	Accepted
Exhibit 28	Jon Meyer Testimony	Accepted
Exhibit 29	New Evidence - Tori Johnson	Accepted
Exhibit 30	New Evidence - Tom Liptan	Accepted
Exhibit 31	New Evidence - Ronnie Carrier	Accepted
Exhibit 32	K. Jasmine Robb Testimony	Accepted
Exhibit 33	Marshall Runkel Testimony	Accepted
Exhibit 34	Kiel Johnson Testimony (email chain)	Accepted
Exhibit 35	Carrie Richter - New Evidence	Accepted
Exhibit 36	New Evidence - Damien R. Hall	Accepted
Exhibit 37	New Evidence - Damien R. Hall (2 of 3)	Accepted

	3)	
Exhibit 38	New Evidence - Damien R. Hall (3 of 3)	Accepted
Exhibit 39	New Evidence - Bob Sallinger	Accepted
Exhibit 40	PBOT Memo	Accepted
Exhibit 41	H. Lee & Associates, PLLC	Accepted
Exhibit 42	Dunphy - Response to New Evidence 2	Accepted
Exhibit 43	Runkel Updated Testimony	Accepted
Exhibit 44	D. Hall Response to New Evidence 2 of 4 (pt.1)	Accepted
Exhibit 45	D. Hall Response to New Evidence 2 of 4 (pt.2)	Accepted
Exhibit 46	D. Hall Response to New Evidence 2 of 4 (pt.3)	Accepted
Exhibit 47	D. Hall Response to New Evidence 1 of 4	Accepted
Exhibit 48	D. Hall Response to New Evidence 3 of 4 (pt.1)	Accepted
Exhibit 49	D. Hall Response to New Evidence 3 of 4 (pt. 2)	Accepted
Exhibit 50	D. Hall Response to New Evidence 3 of 4 (pt.3)	Accepted
Exhibit 51	D. Hall Response to New Evidence 3 of 4 (pt.4)	Accepted
Exhibit 52	D. Hall Response to New Evidence 4 of 4	Accepted
Exhibit 53	Runkel Further Testimony	Accepted
Exhibit 54	Applicant Final Written Argument (D. Hall)	Accepted



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

Carmen Rubio, Commissioner
 David Kuhnhausen, Interim Director
 Phone: (503) 823-7300
 TTY: 711
www.portland.gov/bds

STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER

CASE FILE: LU 23-111784 CU AD
 (Pre-Application Conference # 22-128857 PC)
REVIEW BY: Hearings Officer (Hearings Office Case # 4240010)
WHEN: July 10, 2024, at 1:00 PM

This land use hearing will take place online using the Zoom platform. See the instructions on how to participate remotely (online or by phone) at this link: <https://www.portland.gov/bds/zoning-land-use/documents/notice-land-use-hearing-lu-23-111784-cu-ad/download> or contact the Hearings Office at HearingsOfficeClerks@portlandoregon.gov or 503-823-7307. Additional Hearings Office information is available at www.portland.gov/omf/hearings/land-use.

It is important to submit all evidence to the Hearings Officer. City Council will not accept additional evidence if there is an appeal of this proposal.

BUREAU OF DEVELOPMENT SERVICES STAFF: ANDREW GULIZIA / ANDREW.GULIZIA@PORTLANDOREGON.GOV

GENERAL INFORMATION

Applicant's Representative: Suzannah Stanley
 Mackenzie
 1515 SE Water Ave., Ste. 100
 Portland OR 97214
 (971) 346-3808
sstanley@mcknze.com

Applicant: Johnathan Malsin
 Beam Development
 1001 SE Water Ave., Ste. 400
 Portland, OR 97214

Property Owner's Agent: Paul Gagliardi
 PDC dba Prosper Portland
 222 NW 5th Ave.
 Portland, OR 97209

Property Owner: PDC dba Prosper Portland
 220 NW 2nd Ave. #200
 Portland, OR 97209

Site Address: west side of SE Water Ave. between SE Salmon St. and SE Main St.

Legal Description: LOT 1 TL 3602, PARTITION PLAT 2016-7; LOT 1 TL 4305, PARTITION PLAT 2016-8; LOT 1 TL 1705, PARTITION PLAT 2016-9

Tax Account No.: R649670250, R649670290, R649670330
State ID No.: 1S1E03AD 03602, 1S1E03AD 04305, 1S1E03AD 01705

Quarter Section: 3130
Neighborhood: Buckman, contact John Rose or Josh Baker at buckmanlandusepdx@gmail.com
Business District: Central Eastside Industrial Council, contact ceic@ceic.cc.
District Coalition: Southeast Uplift, contact at operations@seuplift.org
Plan District: Central City (Central Eastside Subdistrict)
Zoning: IG1 – General Industrial 1
Case Type: CU AD – Conditional Use Review and Adjustment Review
Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

Proposal: The applicant proposes to construct a new, 62,000-square-foot building on this site to be used as a concert venue with 1,280 seats and a maximum spectator capacity of 3,500. The applicant requests Conditional Use Review approval for a new Major Event Entertainment use in the IG1 zone. Type III Conditional Use Review is required by Zoning Code Sections 33.140.100.C and 33.815.040.A.1.

The applicant also requests approval of two Adjustments to Zoning Code requirements for this project:

- To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero (Zoning Code Section 33.266.310.C.2.c). The applicant proposes to create 2 truck loading spaces which are primarily in the public right-of-way adjacent to the site. However, loading areas in the public right-of-way do not count toward the Zoning Code requirement.
- To reduce the amount of ecoroof area required from 14,617 square feet (total roof area minus allowable exemptions for roof slope greater than 25%, mechanical equipment, and the elevator overrun) to 2,100 square feet (Zoning Code Section 33.510.243.B.1).

Note: The applicant originally requested three Adjustments, including an Adjustment request to Zoning Code Section 33.266.200.B.1 to reduce the minimum number of on-site, short-term bike parking spaces from 32 to zero. The applicant had proposed to construct bike parking in the public right-of-way adjacent to the site as justification for this Adjustment. After discussion with the Portland Bureau of Transportation (PBOT), the applicant decided to withdraw this Adjustment request (Exhibit G-3). If this land use review is approved, the applicant will pay into PBOT’s bike parking fund when the building permit is issued, as required by Zoning Code Section 33.266.210.E.1.b when there is insufficient space on-site to provide the required short-term bike parking. PBOT would then construct and maintain bike parking in the public right-of-way.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of Title 33, the Portland Zoning Code. The applicable approval criteria are:

- Zoning Code Section 33.815.215.A-D (Conditional Use Review); and
- Zoning Code Section 33.805.040.A-F (Adjustment Review).

The Portland Zoning Code is available online at <https://www.portland.gov/code/33>.

ANALYSIS

Site and Vicinity: The subject site consists of three undeveloped lots owned by Prosper Portland in the Central Eastside industrial area. The middle lot, which abuts SE Salmon Street to the north, SE Water Avenue to the east, and SE Main Street to the south, is the subject of this development proposal. No new development is proposed for the other two Prosper Portland lots to the north and south, and these lots would continue to be used as parking. The site is at the

western edge of the industrial area, and properties to the north, east, and south of the Prosper Portland property are developed with commercial and industrial buildings. To the west of the subject site is the I-5 freeway right-of-way, and beyond that is the Eastbank Esplanade and the Willamette River. The on-ramp to the Hawthorne Bridge is just south of the site.

Zoning: The IG1 (General Industrial 1) zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. IG1 areas generally have smaller lots and a grid block pattern.

The Central City plan district implements the Central City Plan and other plans applicable to the Central City area. The district implements portions of these plans by adding code provisions which address special circumstances existing in the Central City area.

Land Use Review History: Below are prior land use review decisions that include the subject site. None of these land use review decisions have conditions of approval that affect the current proposal.

- LU 14-235124 LC. 2015 approval of a lot consolidation.
- LU 11-171075 AD. 2011 approval of Adjustments to landscaping and exterior activity requirements for a temporary (3-year) asphalt and concrete processing use. The approval has since expired.
- LU 00-00704 GW AD. 2001 approval of a Greenway Review and Adjustments to landscaping and nonconforming upgrades requirements for a parking lot.
- LU 00-00134 GW. 2000 approval of a Greenway Review for new fencing.
- CU 063-86. 1986 Conditional Use Review approval for fill associated with a Willamette River greenway trail.

Agency Review: A “Request for Response” was sent to City agencies May 29, 2024 (Exhibit D-1). The following City reviewers responded:

- The Bureau of Environmental Services (BES) evaluated the approval criterion related to sanitary sewer service and stormwater disposal. The response is referenced in the findings for Zoning Code Section 33.815.215.A.4, below. (Exhibit E-1)
- PBOT evaluated the approval criteria related to the transportation system. The response is referenced in the findings for Zoning Code Section 33.815.215.A.1-3, below. (Exhibit E-2)
- The Water Bureau responded with no concerns. (Exhibit E-3)
- The Fire Bureau responded with information on building permit requirements and no objections to approval. (Exhibit E-4)
- The Police Bureau responded that police can adequately serve the proposed development. (Exhibit E-5)
- The Site Development Review Section of the Bureau of Development Services (BDS) responded with information on building permit requirements and no objections to approval. (Exhibit E-6)

- The Life Safety Review Section of BDS responded with information on building permit requirements and no objections to approval. (Exhibit E-7)
- The Urban Forestry Division of the Parks Bureau responded with information on street tree requirements and no objections to the land use review proposal. (Exhibit E-8)

Neighborhood Review: Signs notifying neighbors of the public hearing were posted on June 6, 2024 (Exhibit D-3) and a “Notice of Public Hearing” was mailed to neighbors on June 20, 2024 (Exhibits D-4 and D-5). At the time this report was prepared, no public comments had been submitted into the record.

ZONING CODE APPROVAL CRITERIA

Conditional Use Review

33.815.215 Major Event Entertainment

These approval criteria ensure that the potentially large size and impacts of these uses are not harmful to surrounding areas and that transportation services are or will be sufficient to serve the use. The approval criteria are:

A. Public services.

1. The proposed use is in conformance with the street designations shown in the Transportation Element of the Comprehensive Plan;

Findings: PBOT reviewed the proposal and submitted the following response to criterion A.1 (Exhibit E-2):

At this location, the City’s Transportation System Plan (TSP) classifies the following abutting streets as follows:

Street Name	Traffic	Transit	Bicycle	Pedestrian	Freight	Emergency Response	Street Design
SE Salmon St	Local Service	Local Service	Major City Bikeway	Local Service in a Ped. Dist.	Freight District	Minor Response	Local Street
SE Water Ave	Traffic Access St	Local Service	Major City Bikeway	Major City Walkway in a Ped. Dist.	Priority Truck Street	Major Response	Neighborhood Main Street
SE Main St	Local Service	Local Service	City Bikeway	Local Service in a Ped. Dist.	Freight District	Minor Response	Local Street

The proposed Conditional Use project is supportive of the surrounding street designations of the Transportation Element of the Comprehensive Plan and TSP classifications. This criterion is met.

Based on this finding from PBOT, staff finds criterion A.1 is met.

2. If the proposed use will be located in an industrial zone, it will not have a significant adverse effect on truck and freight movement;

Findings: PBOT reviewed the proposal and submitted the following response to criterion A.2 (Exhibit E-2):

The proposed use is located within the Central Eastside Industrial Sanctuary. The applicant's TIS [Exhibit A-10] provided an analysis of existing, projected no-build, and post-development multi-modal transportation patterns. Conclusions indicate that since all of the development is located west of SE Water Ave, with the abutting east-west streets of SE Salmon and SE Main terminate into the Eastbank Esplanade, the proposed development will not conflict with existing truck and freight movement throughout the district. This criterion is met.

Based on this finding from PBOT, staff finds criterion A.2 is met.

3. Transportation system:

- a. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated;
- b. Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements.
- c. Transportation improvements adjacent to the development and in the vicinity needed to support the development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed.

Findings: PBOT reviewed the proposal and submitted the following response to criterion A.3 (Exhibit E-2):

33.815.215.A.3.a: The applicant's traffic engineer has evaluated each of the evaluation factors to determine that that transportation system is capable of supporting the proposed use in addition to the existing uses in the area. PBOT Traffic Engineers have reviewed the applicant's TIS and approved the methodologies, analyses, assumptions, findings, and conclusions with regard to intersection capacity, Level of Service (LOS), trip generation, multi-modal safety, etc. to confirm that the transportation-related approval criteria have been addressed. This criterion is met.

The following is a summary of the applicant's TIS findings:

- *Safety: For vehicle safety, the applicant's traffic engineer utilized Oregon Department of Transportation's (ODOT) Crash Data System over a five-year period from January 2016 to December 2020. There were 66 crashes recorded at the study intersections over the five-year period (see Table 4), with the most crashes occurring at the SE*

Stark St/SE Grand Ave and SE Stark St/SE MLK Jr Blvd intersections. Seven involved people walking or biking, including one at the SE Water Ave/SE Salmon St intersection. The most common collision types at the study intersections were angle, turning and rear-end crashes, many of which show “no yield” or “disregarded traffic signal” as the cited cause. In addition, the Union Pacific study rail crossings along the segment between SE Stark Street and SE Clay Street also had three reported incidents in the past five years, two in 2020 and one in 2022, two at the SE Salmon Street and one at the SE Clay Street crossings (see Table 5). Each of these incidents included a train striking a pedestrian, with two resulting in a fatality and one resulting in an injury.

When an intersection’s crash rate (crashes per million entering vehicles) is greater than the critical crash rate (an intersection’s crash history compared to similar intersections, adjusting for volume), it’s an indication that a design deficiency may exist and further study is warranted. As shown in Table 6, one of the identified intersections is located at the intersection of SE Water Ave/SE Salmon St – where the proposed use is located. This is a 4-leg intersection with stop control of the side street approaches. Most of the collisions were angle/rear end type (4 of the 6 total collisions). Three of the collisions were caused by drivers failing to yield or passing the stop sign, two were caused by drivers running into a stopped or parked vehicle, and one was caused by a bike passing the stop sign.

PBOT standards are designed to provide safe conditions for all modes, especially pedestrians and cyclists. The applicant will be required to dedicate property along all three frontages and reconstruct the abutting pedestrian corridor to City standards, including safety improvements such as striped crosswalk, additional lighting, and curb extensions, mitigating potential conflicts in the future. PBOT will submit additional comments related to safety into the record prior to the public hearing.

- *Street Capacity/Level of Service (LOS): To determine the pre-build and post-build intersection capacity and LOS, turning movement data was obtained for the study intersections during the weekday and weekend pre-event period (6 p.m. to 8 p.m.) and post-event period (10:00 p.m. to 12:00 a.m.). Daily motor vehicle count data was also collected adjacent to the proposed venue along SE Water Avenue, south of SE Salmon Street and north of SE Main Street. The count data indicates that approximately 4,900 vehicles pass the proposed venue along SE Water Avenue during an average weekday. Of these vehicles, 1,300 travel northbound and 3,600 travel southbound. The highest number of trips along SE Water Avenue occurs from 5:00 – 6:00 p.m., with 488 vehicles passing the proposed venue (157 northbound and 331 southbound). During the pre-event and post-event peak hours, 165 and 35 vehicles pass the proposed venue along SE Water Avenue, respectively. For City study intersections along SE Water Avenue not designated on the Metro Regional Transportation Plan Arterial and Throughway Network, the City of Portland standards require a LOS "D" or better to be maintained for signalized intersections and a LOS "E" or better for intersections with stop control. As shown in Table 7, all study intersections meet the current mobility targets during the weekday and weekend pre-event and post event peak hours. All intersections along SE Water Avenue operate with a LOS B or better, while the signalized intersections at SE Stark Street/SE Grand Avenue and SE Stark Street/SE Martin Luther King Jr Boulevard operate with a LOS C or better, well below the current mobility targets.*

For Post-build expectations, Table 17 shows the future 2025 intersection operations at study intersections, with the proposed venue. As shown, all study intersections are expected to continue to meet mobility targets despite the added traffic growth from the proposed venue through 2025, despite an expected increase up to 14

percent during the pre-event peak hour and up to 41 percent during the post-event peak hour. All intersections along SE Water Avenue are expected operate with a LOS C or better, while the signalized intersections at SE Stark Street/SE Grand Avenue and SE Stark Street/SE Martin Luther King Jr Boulevard also operate with a LOS C or better. Therefore, the system evaluation found no street capacity or level of service impacts with the proposed venue, as shown in Table 17, 18 and 19.

- Pedestrian, Cycling, and Transit Availability: The proposed venue is very accessible to pedestrians and bicyclists and is well-served by a network of continuous sidewalks and bike facilities on the surrounding streets between nearby existing private vehicle parking, bike parking, ride hailing or transit stops. The proposed venue is also adjacent to existing bikeways along the Eastbank Esplanade, SE Water Avenue and SE Salmon Street. Current transit service near the proposed venue is primarily accessed via stops located on SE Grand Avenue and SE Martin Luther King Jr Boulevard between SE Salmon Street and SE Taylor Street, on the SE Madison Street and SE Hawthorne Boulevard viaducts (accessed via stairs from SE Water Avenue), on the SE Morrison Street and SE Belmont Street viaducts (accessed via stairs from SE Water Avenue), along SW 1st Avenue in downtown Portland across the Morrison Bridge, and near SE Tilikum Way. Event attendees and employees who utilize transit for travel to and from the venue would primarily utilize SE Water Avenue, SE Salmon Street and the Eastbank Esplanade to access transit services before and after events. Current schedules indicate that the TriMet Routes 6, 14 and 15 and MAX light-rail service near the proposed venue extends beyond the conclusion of a typical event (i.e., expected to be 11:00 p.m. or later for most events).
- Connectivity: The subject site located at the intersection of three ROWs meeting the City's Street spacing standards noted in 17.88.040. Therefore, additional connections are not required.
- Access Restrictions: Of the three frontages, SE Main Street is the lowest classified street, therefore the appropriate frontage to which provide vehicular access. As discussed further below, the applicant proposes to provide loading from SE Main Street, reviewed through a PBOT Angle Loading Permit.
- On-Street Parking Impacts: Parking surveys were conducted between 6:00 p.m. and 11:00 p.m. on a weekday (Thursday, July 27, 2023) and a weekend (Saturday, August 5, 2023) within a 0.25 mile or about a 10-minute walk of the proposed venue, which is generally considered a comfortable walking distance. This roughly includes the blocks bounded by the Willamette River to the west, SE Morrison Street to the north, SE Grand Avenue to the east and SE Clay Street to the south. On-street parking in the surveyed area is either permit parking (i.e., Zone G or Zone N permit) or available via a 2-hour time limit for non-permit holders and enforced on weekdays only from 7 a.m. to 6 p.m. in non-metered spots and 8 a.m. to 6 p.m. in metered spots. As shown in Table 14, about 1,318 parking spots were identified within the surveyed area, including 1,084 on-street parking stalls and 234 parking spots in public off-street lots (see Figure 16 and Figure 17). A maximum estimated parking occupancy for the entire surveyed area of 32 percent was observed during the weekday and 17 percent was observed during the weekend, both occurring in the 5:00 p.m. and 7:00 p.m. survey period.

Table 15 shows that a sold-out concert is estimated to generate demand for 915 parking spaces during both a weekday and weekend event, with attendee and employee arrivals occurring between 6:00 p.m. and 9:00 p.m. and most assumed to use parking locations within 0.25 miles of the proposed venue (i.e., 763 of the 915

parking spaces). The total occupied parking spaces with the proposed venue is estimated to be highest between 8:00 p.m. and 9:00 p.m. during both a weekday and weekend event when the attendee and employee parking demand is at its highest (i.e., demand for 763 spaces within 0.25 miles of the proposed venue). The parking occupancy rate during this period is estimated to reach 82 percent during a weekday event (i.e., 1,074 parking spaces) and 71 percent during a weekend event (i.e., 930 parking spaces) for the 1,318 parking spaces within 0.25 miles of the proposed venue. The estimated parking occupancy rates between 6:00 and 8:00 p.m. are under 80 percent for a weekday event and under 70 percent for a weekend event.

Table 16 shows that a weekday special event is estimated to generate demand for 131 parking spaces, with attendee and employee arrivals occurring between 12:00 p.m. and 3:00 p.m. and all are assumed to use parking locations within 0.25 miles of the proposed venue. The total occupied parking spaces with the proposed venue is estimated to be highest between 1:00 p.m. and 2:00 p.m., when 1,135 parking spaces are utilized. This represents an 86 percent occupancy rate for the 1,318 parking spaces within 0.25 miles of the proposed venue. The estimated parking occupancy rates between 12:00 and 1:00 p.m. and are 2:00 and 3:00 p.m. are at or below 84 percent. PBOT regularly evaluates the on-street parking demand and has the ability to adjust controlling factors in accordance with existing practices and policies.

- *Neighborhood Impacts: The applicant's TIS did not overtly address the potential of neighborhood impacts to the immediate vicinity or district as a whole. The purpose of the IG zone is to protect the Industrial Sanctuary area designated by the Comprehensive Plan. The Industrial Sanctuary zones identify areas where industrial uses may locate, while other uses - such as the current proposal - are restricted to prevent potential conflicts and to preserve land for industry. In this instance, the proposed venue is located in the outer portion of Central Eastside subdistrict, and the majority of proposed operations would occur when many industrial and allowed uses are closed, offsetting the impact to the district. PBOT shared concerns with the applicant that due to the proposed loading in SE Main St, the property directly to the south will be directly affected, which could impact the nature of future development of the neighboring property. PBOT recommends that a letter from the property owner (Prosper Portland) be provided acknowledging the proposed development.*

33.815.215.A.3.b: In accordance with 17.88.020, the proposed project will be required to dedicate and reconstruct the abutting frontages to City standards by providing a 12-ft wide pedestrian corridor along SE Salmon and SE Main streets, and a 15-ft wide corridor along SE Water Street. These improvements will be reviewed through a Public Works permit, which is to receive 30 percent concept approval and bond payment prior to issuance of the building permit. Additional frontage improvements such as street lighting, striped pedestrian crossings, curb extensions, signage, and preparation of ROW bike parking will also be evaluated at time of Public Works permit review.

The applicant also prepared a Transportation Demand Management (TDM) plan to reduce the impact of events on the transportation system and provide employees and attendees with information and incentives to use transportation methods other than single occupancy vehicles. The plan provides strategies to increase the walking, biking, transit, and ride hailing services to ensure that people who travel via motor vehicle effectively navigate to their parking, drop-off, or pick-up location with fewer delays than what would occur under an unmanaged setting. PBOT Parking Control and Traffic Engineering will evaluate ride hailing locations as deemed appropriate to serve the use and reserve the right to modify and relocate such service locations as the project comes online.

The applicant also identified several Capital Improvement Projects (CIP) in and around the area that will also help mitigate anticipated impacts and strengthen the City's mode-split goals.

Therefore, PBOT finds that with these measures, the transportation impact of the project will be able to sufficiently mitigate transportation-related impacts immediately surrounding the site and within the district. This criterion is met.

33.815.215.A.3.c: As noted above, all required frontage improvements, payment into the bike fund, and implementation of TDM strategies will be in place by the time the development is complete. This criterion is met.

In conclusion, based on the evidence included in the record, PBOT finds the applicant has demonstrated with required frontage improvements, implementation of proposed TDM measures, and adhering to strict conditions set forth in the required Angle Loading Permit, the proposed project will support access, safety, and function for users of all modes; and that the transportation system will be capable of supporting the proposed venue, in addition to accommodating the existing uses in the area.

PBOT has no objections to the proposed Major Event Entertainment Conditional Use, subject to the following conditions:

- 1. The applicant must receive 30 percent Public Works concept approval and bond payment prior to issuance of building permit for required frontage improvements abutting the site.*
- 2. The applicant must apply for and obtain an annual Angle Loading Permit for the proposed loading in SE Main Street. The applicant must adhere to all the conditions and stipulations of said permit for the life of the proposed use. If any conditions are found to be in violation, applicant may be fined and/or revocation of said Angle Loading Permit.*
- 3. The applicant must implement the TDM measures identified the TDM plan within their control.*
- 4. Applicant must assess their bike parking capacity on an annual basis for first 5 years and then every other year after that. That assessment shall include bike counts averages for events throughout the year. Applicant must send their assessment to PBOT Development Review and PBOT Active Transportation and Safety. If demand consistently exceeds provided bike parking, the applicant must work with PBOT on remedies, including but not limited to adding additional bike racks or a contract for offering temporary bike racks during events.*
- 5. The applicant shall provide a letter for the record that the property to the south (R673495) acknowledges and accepts the limitations placed upon the site with the proposed loading occurring in SE Main St by the subject property.*

Based on these findings from PBOT, and with the conditions of approval recommended by PBOT, staff finds criterion A.2 is met.

4. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

Findings: The Water Bureau and the Fire Bureau reviewed the proposal and responded with no objections (Exhibits E-3 and E-4, respectively), indicating that adequate water supply and fire protection would be available. The Police Bureau reviewed the proposal and responded that police would be able to adequately serve the proposed use (Exhibit E-5). The Bureau of Environmental Services reviewed the application and found the proposed sanitary sewer connection and stormwater management plan are acceptable (Exhibit E-1). For these reasons, staff finds criterion A.4 is met.

- B. Appearance.** The appearance of the facility is consistent with the intent of the zone in which it is to be located and with the character of the surrounding uses and development;

Findings: Zoning Code Section 33.140.030.C states the intent of the General Industrial zones, including the IG1 zone that applies to the subject site:

The General Industrial zones are two of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zones provide areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. The development standards for each zone are intended to allow new development which is similar in character to existing development. The intent is to promote viable and attractive industrial areas.

1. *General Industrial 1. IG1 areas generally have smaller lots and a grid block pattern. The area is mostly developed, with sites having high building coverages and buildings which are usually close to the street. IG1 areas tend to be the City's older industrial areas.*
2. *General Industrial 2. IG2 areas generally have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street.*

The site is at the western edge of an older industrial area, and the I-5 freeway and the Willamette River are just west of the site. The lots to the north and south of the proposed building are undeveloped, and no development is currently proposed for these lots. Properties east of the site, on the opposite side of SE Water Street, are developed with one- and two-story industrial and commercial buildings. A larger, four-story building (the Eastbank Commerce Center) is one block north of the proposed concert venue.

As intended for the IG1 zone, this area has a grid block pattern and relatively small lots for an industrial area. (The concert venue lot would be about 32,000 square feet after required street dedications.) Since this proposal is to construct a new building on a currently vacant lot, and since that building would be close to all three abutting streets, covering most of the lot area, staff finds the proposal is consistent with the intent of the IG1 zone to have “high building coverages and buildings which are usually close to the street.”

The new building would have a four-story scale and a modern design with angled roof lines and minimal ornamentation other than rooftop plantings (Exhibit C-4). The applicant describes the design as like an “upscale warehouse” (Exhibit A-12, page 9), and Exhibit A-3 shows how the exterior design, though modern, reflects existing buildings in the area.

Staff finds the appearance of the proposed building would be both attractive and compatible with the industrial character of the area, consistent with the intent of the General Industrial

zones to “promote viable and attractive industrial areas.” Since staff finds the appearance of the facility would be consistent with the intent of the IG1 zone and with the character of surrounding uses and development, staff finds criterion B is met.

C. Benefit. Public benefits of the proposed use outweigh any impacts that cannot be mitigated;

Findings: The applicant has identified several public benefits from the proposal (Exhibit A-12, page 9). The proposal would develop a currently vacant lot, and the concert venue would create a higher level of activity in the evenings to deter crime and support nearby bars and restaurants without interfering with industrial businesses that operate primarily in the daytime. In addition, the applicant would be required to install public improvements such as wider sidewalks and street trees around the development site.

However, neither the applicant nor staff has identified any negative impacts from the proposed Major Event Entertainment use that cannot be mitigated. The venue would largely operate outside the hours of operation of most businesses in the industrial area, and as stated in the findings for criterion A, public services, including the transportation system, are adequate to accommodate the proposed use.

Since there are no negative impacts identified that cannot be mitigated and which public benefits must outweigh, staff finds criterion C is not applicable.

D. In the campus institutional zones. These approval criteria allow Major Event Entertainment facilities to be part of an institutional campus. They also ensure that the impacts of the facility on nearby areas are mitigated and that affected neighbors have an opportunity to comment on the proposals for mitigation. The approval criteria are:

1. The facility is to be established as part of a school or college. Such facilities are prohibited as part of a medical center campus;
2. The facility is limited to events that feature the athletic or performance skills of students, faculty or staff or which supplement the institution’s programs;
3. In the IR zone the facility is listed in the mission statement as part of the institution’s impact mitigation plan;
4. In the IR zone the mitigation activities completed to implement the impact mitigation plan are adequate to mitigate for the expected impact of the facility. The location chosen and mitigation measures used are consistent with the institution’s approved impact mitigation plan; and
5. All approved limited uses and major event entertainment uses in aggregate occupy 30 percent or less of all campus net building area including portions of parking structures associated with these uses. If the institutional campus includes structured parking, 250 square feet of the structured parking will be associated with the major event entertainment facility for each parking space associated with the facility. Size exceptions are prohibited.

Findings: The campus institutional zones are listed in Zoning Code Section 33.150.020. Since this site is not in a campus institutional zone, criterion D does not apply.

Adjustment Review

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

- A.** Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant is requesting two Adjustments:

- To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero (Zoning Code Section 33.266.310.C.2.c).
- To reduce the amount of ecoroof area required from 14,617 square feet (total roof area minus allowable exemptions for roof slope greater than 25%, mechanical equipment, and the elevator overrun) to 2,100 square feet (Zoning Code Section 33.510.243.B.1).

Consistency with the purpose of each requirement to be modified is discussed below.

Loading

Zoning Code Section 33.266.310.A states the purpose of the on-site loading space requirement:

A minimum number of loading spaces are required to ensure adequate areas for loading for larger uses and developments. These regulations ensure that the appearance of loading areas will be consistent with that of parking areas. The regulations ensure that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way.

The applicant proposes to use the SE Main Street right-of-way adjacent to the site for truck loading when needed, and this Adjustment is necessary because the Zoning Code requires loading areas that are on-site rather than in the right-of-way. However, the proposal would still accommodate two large trucks simultaneously, as required by Zoning Code Section 33.266.310.C.2.c, and the loading area would be as large as would be required by Zoning Code Section 33.266.310.D.1. The street would not have the appearance of a loading area or parking area when not in use for truck loading, and using the public street for loading rather than creating a dedicated loading area on-site reduces visual impacts by reducing the amount of pavement area required for the proposal. PBOT evaluated this proposal and found that using SE Main Street for truck loading in this case would not have a negative effect on traffic safety or other transportation functions in the right-of-way, as long as the applicant obtains and maintains continuous compliance with an Angle Loading Permit (Exhibit E-2). For these reasons, and with the condition of approval recommended by PBOT to require the Angle Loading Permit, staff finds the Adjustment request equally meets the purpose of the standard.

Ecoroof

Zoning Code Section 33.510.243.A states the purpose of the ecoroof requirement:

Ecoroofs provide multiple complementary benefits in urban areas, including stormwater management, reduction of air temperatures, mitigation of urban heat island impacts, air quality improvement, urban green spaces, and habitat for birds, plants and pollinators. The standards are intended to:

- *Maximize the coverage of ecoroofs;*

- *Allow for the placement of structures and other items that need to be located on roofs; and*
- *Support the architectural variability of rooftops in the Central City.*

Without this Adjustment, ecoroofs would be required over all the roof area with slopes not steeper than 25% and not covered by mechanical equipment and elevator and stairwell overruns (Zoning Code Section 33.510.243.B.1). The proposed building design incorporates large, sloping roof forms that are not steep enough to be exempt from this requirement (Exhibit A-8, page 7). While 2,100 square feet of ecoroof is proposed over parts of the roof, the applicant states the long spans of the sloped roof areas are not capable of supporting the weight of additional ecoroof area (Exhibit A-6, page 3).

Although a revised roof design could likely accommodate greater ecoroof coverage than proposed, staff finds the proposed building design illustrated in Exhibit C-4 would be unique in the area, supporting architectural variability as noted in the purpose statement above.

Staff also finds the proposal creates meaningful, complementary benefits that are intended to be provided by ecoroofs in the purpose statement above. Besides the 2,100 square feet of ecoroof area, the applicant proposes an additional 2,150 square feet of planted area on top of roof canopies, including a 1,500-square-foot stormwater planter on the south side of the building (Exhibit A-8, page 7). Stainless steel cables would allow plants to climb toward the roof (Exhibit C-4), and the applicant would also be required to plant new street trees adjacent to the site (Exhibits C-1 and E-8). With these features, the site would be much greener than it is currently and would appear greener than typical for sites in the industrial area. While most of the new greenery would not qualify as ecoroof area under Zoning Code Section 33.510.243.B.2, all the new plants and trees would reduce stormwater runoff, improve air quality, mitigate heat island impacts, and provide habitat for birds and insects. The stormwater management requirements for the site would be fully met (Exhibit E-1), and the landscaping plan for the ecoroofs and the other planters includes several plant varieties known to attract pollinators (Exhibit A-8, pages 14-15). The applicant states the planters would utilize a geocell grid to prevent soil erosion, and that plantings would be denser than typical (Exhibit A-12, page 16). The applicant also submitted an operations and maintenance plan that would promote the long-term success of the planters (Exhibit A-11). Finally, staff notes the un-planted roof areas would be painted white (Exhibit A-12, page 15), which would reflect solar radiation to reduce heat island impacts.

For all these reasons, staff finds the Adjustment request equally meets the purpose of the standard.

Summary

With the condition of approval recommended by PBOT for the Angle Loading Permit, staff finds each Adjustment request equally meets the purpose of the requirement to be modified. With the condition of approval, staff finds criterion A is met.

- B.** If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Since the site is in an industrial (I) zone, the Adjustments must be consistent with the classifications of adjacent streets and the desired character of the area.

Street classifications

The Adjustment to the loading requirement would allow SE Main Street, which is classified as a Freight District Street, to be used for truck loading for this development. PBOT is supportive of this request. PBOT noted that truck loading has been traditionally accommodated in the right-of-way in this area, and that with continuous compliance with a PBOT-approved Angle Loading Permit, negative impacts on streets adjacent to the site are not expected (Exhibit E-2).

The Adjustment to the ecoroof requirement affects only the interior of the site and would have no impact on travel demand or the function of adjacent streets.

With the condition of approval recommended by PBOT for the Angle Loading Permit, staff finds the proposal is consistent with the adjacent street classifications.

Desired character of area

“Desired character” is defined in Zoning Code Chapter 33.910. Pursuant to this definition, the desired character for this site is determined by:

- the character statement for the IG1 zone
- the purpose statement for the Central City Plan District
- the Buckman Neighborhood Plan
- the Central City 2035 Plan

IG1 zone

The character statement for the IG1 zone is in Zoning Code Section 33.140.030.C:

The General Industrial zones are two of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zones provide areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. The development standards for each zone are intended to allow new development which is similar in character to existing development. The intent is to promote viable and attractive industrial areas.

- 1. General Industrial 1. IG1 areas generally have smaller lots and a grid block pattern. The area is mostly developed, with sites having high building coverages and buildings which are usually close to the street. IG1 areas tend to be the City's older industrial areas.*
- 2. General Industrial 2. IG2 areas generally have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street.*

The new building would cover most of the lot and would be close to each of the abutting streets, and as discussed in the Conditional Use Review findings, the quality building design would be compatible with nearby development and contribute to a more attractive industrial area. Staff finds the proposal is therefore consistent with the character intended for the IG1 zone, and that neither of the Adjustment requests would detract from this character.

Central City Plan District

The purpose statement for the Central City Plan District is in Zoning Code Section 33.510.010:

The Central City plan district implements the Central City 2035 Plan. The regulations address the unique role the Central City plays as the region's premier center for jobs,

health and human services, tourism, entertainment and urban living. The regulations encourage a high-density urban area with a broad mix of commercial, residential, industrial and institutional uses, and foster transit-supportive development, pedestrian and bicycle-friendly streets, a vibrant public realm and a healthy urban river.

A new concert venue for 3,500 spectators at this location would broaden the use mix in the Central Eastside and reinforce the Central City's role as the premiere location in the region for entertainment and tourism. The location is easily accessible by multiple transit lines, and pedestrians and cyclists can easily access the site from the nearby Eastside Esplanade as well as from the neighborhood street grid. Neither of the Adjustment request would detract from the purpose of the Central City Plan District.

Buckman Neighborhood Plan

Staff finds the following objectives from the Buckman Neighborhood Plan to be relevant:

Objective 1.6. Support planning and design of new developments that enhance neighborhood livability.

Objective 1.7. Promote the development of a clear identity for commercial nodes on Burnside, Belmont/Morrison, Hawthorne and the Central Eastside.

Objective 5.1. Control neighborhood traffic and parking to ensure safety and livability for neighborhood residents.

Objective 5.2. Encourage alternatives to automobile use.

Objective 5.10. Discourage trucks from blocking the streets when loading and unloading, except in the designated truck zone.

Objective 6.16. Encourage visual, literary, and performing arts to thrive in Buckman.

Objective 7.2. Encourage pedestrian-oriented commercial development.

The proposal would create a new destination and amenity in the Buckman Neighborhood, support the performing arts, and contribute to a higher profile for the Central Eastside. Since the concert venue would be several blocks from residential areas, impacts on neighborhood livability would be minimal.

The development would have a pedestrian-oriented design with the building facades close to the street lot lines, improved public sidewalks, and no on-site motor vehicle parking. PBOT found that street parking in the vicinity would be adequate to support the development, and PBOT also recommended a condition of approval to require compliance with a transportation demand management (TDM) plan to limit single-occupancy vehicle trips associated with the proposed use.

The Adjustment to the loading requirement would allow trucks to partially, but not fully, block SE Main Street when loading or unloading, but only within a designated, PBOT-approved truck loading area. PBOT recommended a condition of approval requiring continuous compliance with an Angle Loading Permit to prevent truck loading from significantly impacting the functions of the public right-of-way (Exhibit E-2).

For these reasons, and with the conditions of approval recommended by PBOT, staff finds the proposal is consistent with the Buckman Neighborhood Plan.

Central City 2035 Plan

Staff finds the following statements from the Central City 2035 Plan to be relevant:

Goal 1.A. Portland's Central City is the preeminent regional center for commerce and employment, arts and culture, entertainment, tourism, education and government.

Policy 1.1. Regional image. Strengthen the roles of the Central City and Willamette River in enhancing a positive image for the city, region and state.

Policy 1.4. Tourism, retail and entertainment. Expand upon activities in the Central City that support tourism and complement economic success, vibrancy, and livability, with a special focus on retail, cultural events and institutions, public spaces, arts and entertainment, urban design, and transportation.

Policy 1.CE-1.a. Industrial center. Protect the Central Eastside as a centralized hub of industrial businesses and services that support the regional economy by serving other industrial districts and businesses located throughout the Portland metropolitan area.

Policy 3.16. Loading. Support the delivery of goods in the Central City. Pursue strategies that bring new ways of delivering goods to the Central City in a way that optimizes loading and freight access and makes efficient use of limited urban space.

Policy 5.6. Distinct and vibrant districts. Enhance the existing character and diversity of the Central City and its districts, strengthening existing places and fostering the creation of new urban places and experiences.

Central Eastside 2035 Vision. The Central Eastside is a large, multimodal and vibrant employment district where existing industrial and distribution businesses continue to thrive while the district's job base grows and diversifies to attract new and emerging industries.

The new investment on this site would broaden the use mix in the Central Eastside, reinforce the Central City's role as the region's premiere location for entertainment and tourism, and support a positive image of the city as a vibrant, healthy community.

Since the site is at the edge of the industrial area, and since the concert venue would operate in the evenings, the proposal would not significantly impact neighboring industrial businesses, which operate primarily in the daytime.

The Adjustment to allow truck loading from the SE Main Street right-of-way is supported by PBOT (Exhibit E-2) and would make efficient use of urban space by avoiding the need for a separate truck loading area on-site.

For these reasons, staff finds the proposal is consistent with the Central City 2035 Plan.

Summary

With the conditions of approval recommended by PBOT for the transportation demand management plan and the Angle Loading Permit, staff finds the proposal is consistent with the classifications of adjacent streets and with the desired character of the area. With the condition of approval, staff finds criterion B is met.

- C.** If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Zoning Code Section 33.140.030.C describes the purpose of the IG1 zone:

The General Industrial zones are two of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zones provide areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. The development standards for each zone are intended to allow new development which is similar in character to existing development. The intent is to promote viable and attractive industrial areas.

- 1. General Industrial 1. IG1 areas generally have smaller lots and a grid block pattern. The area is mostly developed, with sites having high building coverages and buildings which are usually close to the street. IG1 areas tend to be the City's older industrial areas.*
- 2. General Industrial 2. IG2 areas generally have larger lots and an irregular or large block pattern. The area is less developed, with sites having medium and low building coverages and buildings which are usually set back from the street.*

As stated in the findings for criterion B, the new building would cover most of the lot and would be close to each of the abutting streets, and the quality building design would contribute to a more attractive industrial area. Staff finds the proposal is therefore consistent with the purpose statement above. The effects of the two Adjustment requests are to allow a smaller area of the roof to be ecoroof and to allow the SE Main Street right-of-way to be used for truck loading when needed. Whether considered individually or cumulatively, these effects do not detract from the proposal's consistency with the purpose of the IG1 industrial zone. Staff finds criterion C is met.

D. City-designated scenic resources and historic resources are preserved; and

Findings: City-designated scenic resources are identified on zoning maps with an "s," and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic resources or historic resources mapped on the subject site (Exhibit B), this criterion is not applicable.

E. Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: The Adjustment to waive the requirement for an on-site truck loading area would be mitigated by the truck loading area within the SE Main Street right-of-way. Though loading areas within the right-of-way do not count toward the Zoning Code requirement, the proposed loading area would be adjacent to the building's loading and staging room (Exhibit A-8, page 2) and would meet the dimensional requirements that would apply to an on-site loading area (Zoning Code Sections 33.266.310.C.2.c and 33.266.310.D.1).

The Adjustment to the ecoroof requirement would be mitigated by above-ground planters that would not count as ecoroofs but would create similar benefits. This Adjustment is also mitigated by the applicant's plan to paint un-planted roof areas white to reduce heat island impacts.

Staff finds the impacts of both Adjustment requests are mitigated to the extent practical and that criterion E is therefore met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: Environmental overlay zones are designated on zoning maps with either a “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on the subject site (Exhibit B), this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

Staff finds the proposal for a new concert venue on this site would not negatively impact the industrial area, and that adequate public services are available to support the proposal.

The proposed Adjustments to the loading and ecoroof requirements are consistent with the purpose of the standards to be modified, with the character of the area, and with the purpose of the IG1 zone. Impacts from the Adjustments would be mitigated to the extent practical.

With the recommended conditions of approval listed below, staff finds that each of the applicable Conditional Use Review and Adjustment Review approval criteria are met. With these conditions, staff recommends approval of the proposal.

TENTATIVE STAFF RECOMMENDATION

(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)

Approval of Conditional Use Review to establish a Major Event Entertainment use on this site; and

Approval of two Adjustments:

- To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero (Zoning Code Section 33.266.310.C.2.c).
- To reduce the amount of ecoroof area required from 14,617 square feet (total roof area minus allowable exemptions for roof slope greater than 25%, mechanical equipment, and the elevator overrun) to 2,100 square feet (Zoning Code Section 33.510.243.B.1).

The approvals are per the approved plans, Exhibit C-1 through C-4, and subject to the following conditions of approval:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 23-111784 CU AD."
- B. Prior to issuance of a building permit for this development, the applicant must receive 30 percent public works concept approval and make any required bond payment for required frontage improvements abutting the site.

- C. Prior to issuance of a building permit for this development, the applicant must obtain approval of an annual Angle Loading Permit for the proposed truck loading in SE Main Street. The applicant must adhere to all the conditions and stipulations of said permit for the life of the proposed use. If any conditions are found to be in violation, the applicant may be fined and/or said Angle Loading Permit may be revoked.
- D. Prior to issuance of a building permit for this development, the applicant must provide a letter for the record that Prosper Portland, the owner of the property to the south (R673495), acknowledges and accepts the limitations placed upon the site with the proposed truck loading occurring in SE Main Street adjacent to the subject property.
- E. The applicant must continually implement the transportation demand management (TDM) measures identified in the TDM plan in Exhibit A-10 that are within their control.
- F. The applicant must assess the bike parking capacity on an annual basis for the first 5 years after the concert venue begins operation and then every other year after that. That assessment must include bike count averages for events throughout the year. The applicant must send their assessment to PBOT Development Review and PBOT Active Transportation and Safety. If demand consistently exceeds the provided bike parking, the applicant must work with PBOT on remedies, including but not limited to adding additional bike racks or a contract for offering temporary bike racks during events.

PROCEDURAL INFORMATION

The application for this land use review was submitted on December 22, 2023, and was determined to be complete on May 23, 2024.

Zoning Code Section 33.700.080 states that land use review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on December 22, 2023.

ORS 227.178 states the City must issue a final decision on land use review applications within 120 days of the application being deemed complete. The 120-day review period may be extended at the request of the applicant. In this case, the applicant has not extended the 120-day review period. Unless extended by the applicant, the 120 days will expire on **September 20, 2024**.

Some of the information contained in this report was provided by the applicant. As required by Zoning Code Section 33.800.060, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the recommendation of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to specific conditions of approval, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or

development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

This report is not a decision. The review body for this proposal is the Hearings Officer who will make the decision on this case. This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The Hearings Officer may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the record. To comment, you may testify at the hearing, submit comments at www.portland.gov/omf/hearings/land-use; email your comments to HearingsOfficeClerks@portlandoregon.gov; write to the Land Use Hearings Officer, 1900 SW Fourth Ave., Suite 3100, Portland, OR 97201; or FAX your comments to 503-823-4347.

You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant. This staff report will be posted on the Bureau of Development Services website at <https://www.portland.gov/bds/zoning-land-use/public-notice>. Enter the land use case file number in the keyword search.

Appeal of the decision. The decision of the Hearings Officer may be appealed to City Council, who will hold a public hearing. In the event of an appeal of the Hearings Officer's decision, only evidence previously presented to the Hearings Officer will be considered by the City Council.

You may appeal the decision only if you submit written comments which are received before the close of the record, if you testify at the hearing, or if you are the property owner or applicant. Appeals must be filed within 14 days of the decision. **An appeal fee of \$6,079 will be charged.**

Neighborhood associations recognized by the Office of Community & Civic Life may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the chairperson or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws. Neighborhood associations who wish to qualify for a fee waiver must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

Assistance in filing the appeal and information on fee waivers are available from the Bureau of Development Services website: <https://www.portland.gov/bds/zoning-land-use/land-use-review-fees-and-types/appeals-fees-and-fee-waivers>.

Recording the final decision. If this land use review is approved the final decision will be recorded with the County Recorder. *Unless appealed*, the final decision will be recorded by the Bureau of Development Services.

Expiration of this approval. Generally, land use approvals (except Comprehensive Plan and Zoning Map Amendments) expire five years from the date of the final decision unless a permit has been issued for the approved development. See Zoning Code Section 33.730.130 for specific expiration rules.

Applying for permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and

- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

Planner’s Name: Andrew Gulizia
 Date: June 27, 2024

EXHIBITS (not attached unless indicated)

A. Applicant’s Statement:

Original submittal

1. Original narrative
2. Original plan set
3. Context images
4. Original stormwater report
5. Original transportation study

May 23, 2024 submittal

6. Letter in response to incompleteness determination letter
7. Revised narrative
8. Revised plan set
9. Revised stormwater report
10. Revised transportation study

June 24, 2024 submittal

11. Operations and maintenance plan for stormwater planters and ecoroofs

June 26, 2024 submittal

12. Final revised narrative

B. Zoning Map (attached)

C. Plans & Drawings:

1. Site plan (attached)
2. East and south building elevations (attached)
3. West and north building elevations (attached)
4. Photo simulation (attached)

D. Notification information:

1. Request for Response
2. Sign posting instructions
3. Applicant’s statement certifying posting
4. Notice of Public Hearing, mailed June 20, 2024
5. Mailing list for Notice of Public Hearing

E. Agency Responses:

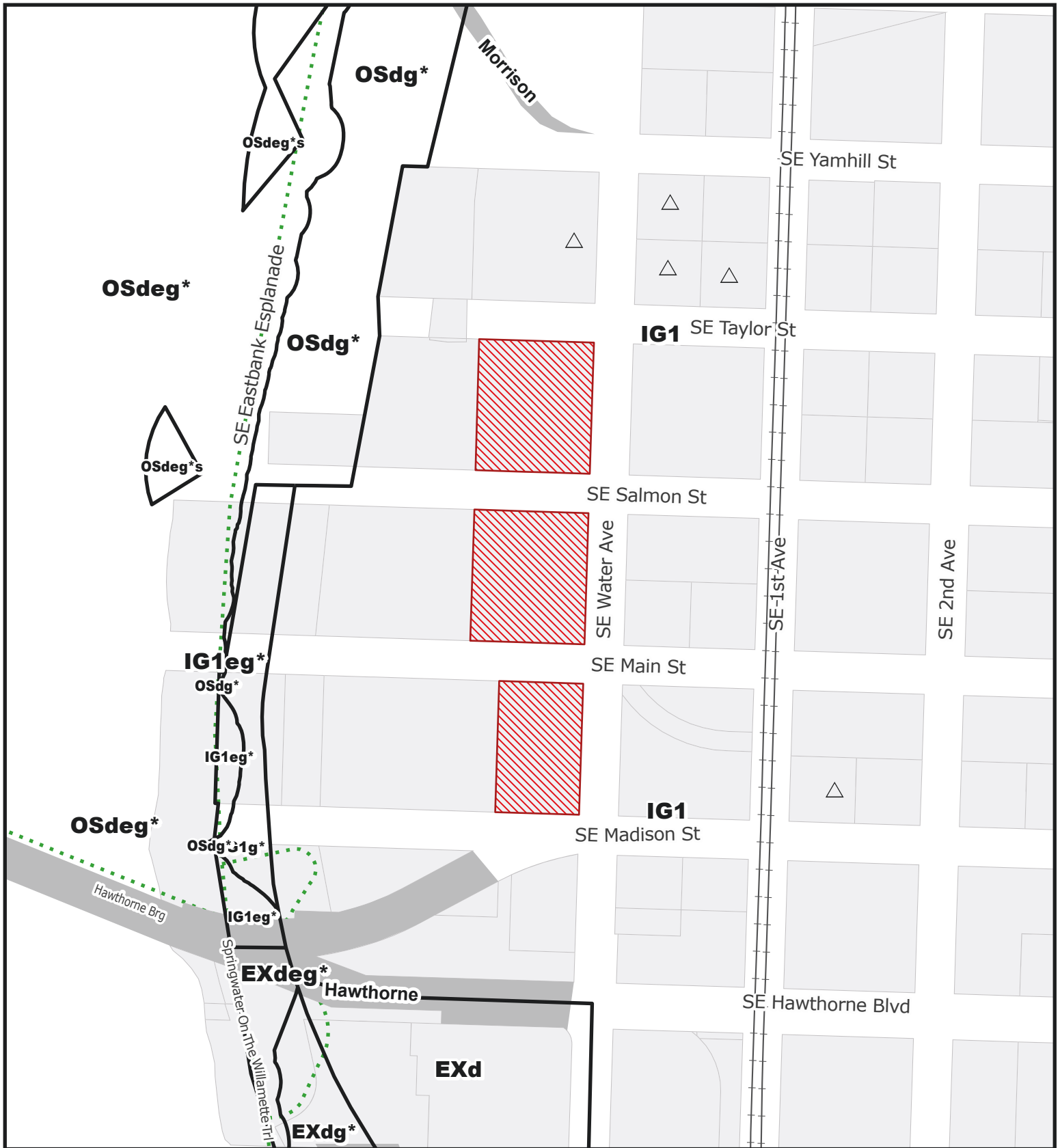
1. Bureau of Environmental Services
2. Portland Bureau of Transportation
3. Water Bureau
4. Fire Bureau
5. Police Bureau
6. Site Development Review Section of BDS
7. Life Safety Review Section of BDS
8. Parks and Recreation - Urban Forestry Division

F. Correspondence (none received)

G. Other:

1. Land use review application
 2. Incompleteness determination letter, dated January 12, 2024
 3. Applicant email withdrawing bike parking Adjustment request, received June 25, 2024
- H. Hearing Exhibits:




The Bureau of Development Services is committed to providing equal access to information and hearings. To request an accommodation or alternative format of communication, please contact us at least five business days prior to the hearing at 503-823-7300 (TTY 503-823-6868).



For Zoning Code in Effect Post October 1, 2022

ZONING

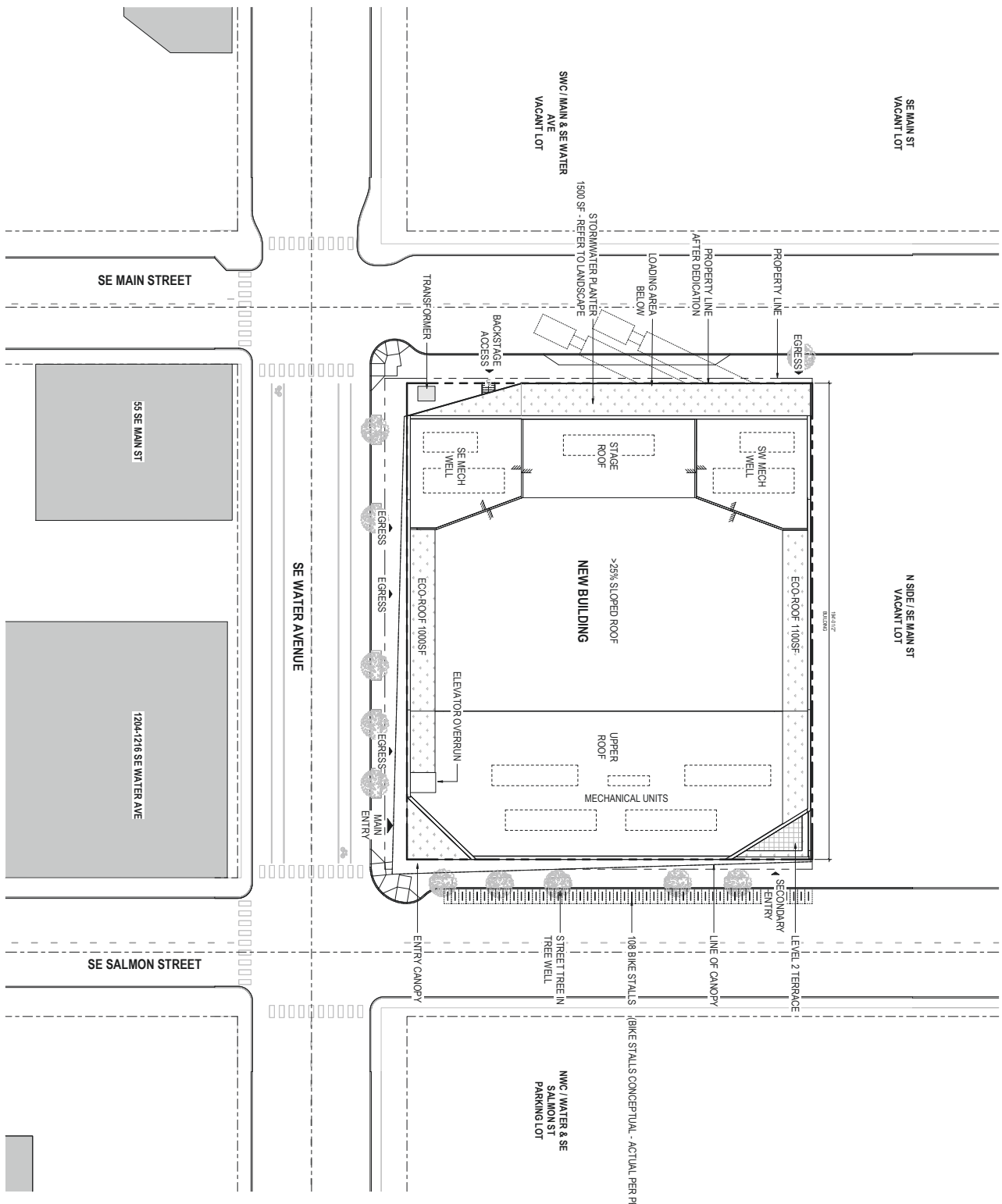
THIS SITE LIES WITHIN THE:
CENTRAL CITY PLAN DISTRICT
CENTRAL EASTSIDE SUBDISTRICT

-  Site
-  Historic Landmark
-  Recreational Trails

File No. LU 23 - 111784 CU AD
 1/4 Section 3130
 Scale 1 inch = 200 feet

State ID 1S1E03AD 3602
 Portland Hearings Office
 Case #4 Exhibit B Jan 16, 2024
 Bureau Case #LU 23 - 111784 CU AD
 Exhibit #5
 Page 23 of 27

1 ZONING - SITE PLAN
SCALE: 1/8" = 1'-0"



SITE DATA TABLE

DATE	5/23/2024
SCALE	1/8" = 1'-0"
PROJECT NAME	CENTRAL EASTSIDE VENUE
CLIENT	LEVER
ARCHITECT	ARCHITECTS
ENGINEER	ENGINEERS
LANDSCAPE ARCHITECT	LANDSCAPE ARCHITECTS
PLANNING	PLANNERS
PHOTOGRAPHER	PHOTOGRAPHERS
PAINTER	PAINTERS
SCULPTOR	SCULPTORS
WELDER	WELDERS
WOODWORKER	WOODWORKERS
GLAZIER	GLAZIERS
ROOFER	ROOFERS
CONCRETE	CONCRETE
MECHANICAL	MECHANICAL
ELECTRICAL	ELECTRICAL
PLUMBING	PLUMBING
HEATING, VENTILATION & AIR CONDITIONING	HEATING, VENTILATION & AIR CONDITIONING
LANDSCAPE	LANDSCAPE
TRAILER	TRAILERS
STORAGE	STORAGE
OFFICE	OFFICES
RETAIL	RETAIL
RESTAURANT	RESTAURANTS
BAR	BAR
CHEF	CHEFS
SERVER	SERVERS
WAITRESS	WAITRESSES
BARISTA	BARISTAS
COFFEE	COFFEES
TEA	TEAS
WATER	WATERS
BEVERAGE	BEVERAGES
FOOD	FOODS
MEAT	MEATS
VEGETABLE	VEGETABLES
FRUIT	FRUITS
GRAIN	GRAINS
LEGUME	LEGUMES
DAIRY	DAIRIES
EGG	EGGS
MEAT	MEATS
VEGETABLE	VEGETABLES
FRUIT	FRUITS
GRAIN	GRAINS
LEGUME	LEGUMES
DAIRY	DAIRIES
EGG	EGGS

LEVER
4733 N. ALASKA AVENUE
SUITE 200
DENVER, CO 80202
781.222.2222
www.lever.com

DATE	5/23/2024
SCALE	1/8" = 1'-0"
PROJECT NAME	CENTRAL EASTSIDE VENUE
CLIENT	LEVER
ARCHITECT	ARCHITECTS
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PLANNING	PLANNERS
PHOTOGRAPHER	PHOTOGRAPHERS
PAINTER	PAINTERS
SCULPTOR	SCULPTORS
WELDER	WELDERS
WOODWORKER	WOODWORKERS
GLAZIER	GLAZIERS
ROOFER	ROOFERS
CONCRETE	CONCRETE
MECHANICAL	MECHANICAL
ELECTRICAL	ELECTRICAL
PLUMBING	PLUMBING
HEATING, VENTILATION & AIR CONDITIONING	HEATING, VENTILATION & AIR CONDITIONING
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STORAGE	STORAGE
OFFICE	OFFICES
RETAIL	RETAIL
RESTAURANT	RESTAURANTS
BAR	BAR
CHEF	CHEFS
SERVER	SERVERS
WAITRESS	WAITRESSES
BARISTA	BARISTAS
COFFEE	COFFEES
TEA	TEAS
WATER	WATERS
BEVERAGE	BEVERAGES
FOOD	FOODS
MEAT	MEATS
VEGETABLE	VEGETABLES
FRUIT	FRUITS
GRAIN	GRAINS
LEGUME	LEGUMES
DAIRY	DAIRIES
EGG	EGGS

LU 23-11784 QUA EXHIBIT C-1
Z090

