

ATTACHMENT D – STAFF REPORT

File Number: 921-18-000134-PLNG

Original File Number: PLASAR-16-09-0013

Applicant/Owner: Oregon Department of Transportation (ODOT)

Request: Extension of Time request for a Scenic Area Review (File PLASAR-16-09-0013) to perform environmental restoration activities on approximately 1.5 acre of the Chenoweth (Shooting) Quarry to reduce lead contamination in the soil.

Decision: **Approved** with Conditions

Decision Date: September 20, 2018

Appeal Deadline: October 5, 2018

Location: The property is located west of Highway 30 West, approximately 0.5 mile north of Division Street in the City of The Dalles, Oregon; more specifically described as:

<u>Existing Tax Lot</u>	<u>Acct #</u>	<u>Acres</u>
2N 13E 20 800	13760	11.04

Zoning District: A-1 (160), Large Scale Agriculture in the General Management Area of the Columbia River Gorge National Scenic Area.

Past Actions: PLASAR-16-09-0013, remediation and restoration of 1.5 acre of the Shooting Quarry to reduce lead contamination in the soil; PLASAR-08-11-0013 (berm construction)

Procedure Type: Administrative

Prepared By: Dawn Baird, Associate Planner

I. APPLICABLE STANDARDS

Wasco County National Scenic Area Land Use & Development Ordinance (NSALUDO)

Chapter 2 – Development Approval Procedures

Section 2.240, Expiration of Approvals

Section 2.250, Extension of Validity of Land Use Approvals

II. BACKGROUND

- A. Legal Parcel:** The subject parcel was created by Deed Volume 82, Page 490, recorded with the Wasco County Clerk on October 11, 1930. The property is consistent with the definition of “Legal Parcel” in Section 1.090 of the NSA-LUDO because it was created by deed prior to September 4, 1974.
- B. Site Description:** The subject parcel is located directly west of Highway 30W. Access to the property is from Highway 30W at its southern property line. Natural slopes on the parcel are east-facing and run between 20-50%. The quarry floor ranges in width from approximately 60-200’ and is located at approximately 160’ above sea level (ASL). The walls of the quarry range from approximately 160-300’ in elevation. This property was used from the 1930s through the early 1960s as a rock quarry for the Oregon Department of Transportation and provided material for Highway 30 W maintenance and construction of Interstate 84. It has been unused since that time, however the public unofficially used the site as a shooting range for several decades after the quarry was abandoned. Due to the use of the quarry as a shooting range, the floor and wall of the quarry are heavily contaminated with lead casings and slugs. Past quarry activities have disturbed the eastern ½ (approximate) of the site. The steepest slopes exist on the northwestern portion of the property. The northwest and southwest portion of the property contain vegetated areas (grasses) mixed with large rock outcroppings. There are approximately 10 trees on the northeast portion of the property outside of the excavated area.
- C. Surrounding Land Use:** All surrounding properties are zoned A-1(160), Large Scale Agriculture in the General Management Area of the National Scenic Area, however the extreme southern end of property to the south is located in the Urban Exempt Area of the City of The Dalles (south of Chenoweth Creek). Properties to the north and west are used as an aggregate extraction operation (Munsen Paving). Property to the south in the NSA was approved for a campground in 1989, but a minimal amount of development has occurred since it was approved. Property to the east lies east of Highway 30W and is vacant. Properties generally contain east- or southeast-facing slopes. Slopes on properties to the north and west are similar to the subject parcel (over 20%). These properties contain an aggregate extraction site which has operated since the 1960s or earlier, with grassy slopes. Slopes to the south average 10-20%. The majority of the property is undisturbed. Property along the creek contains heavy tree vegetation, with scattered trees throughout the southeast portion of the property. This property contains large landforms along Highway 30W. Slopes east of Highway 30W average 5-10%. This land is vacant, contains no trees and is in natural grass vegetation.
- D. Public Comment:** Notice of Administrative Action was mailed on August 23, 2018, to all owners of property within 500’ of the subject parcel, the U.S. Forest Service - Columbia River Gorge

National Scenic Area Office, Columbia River Gorge Commission, the four tribal governments, State Historic Preservation Office, and other interested parties registered with Wasco County. This notice provided a 15-day pre-notice for public comment (ending September 7, 2018). No comments were received from tribal governments however the following comment was submitted:

(June 15, 2018) Steven D. McCoy, Staff Attorney, Friends of the Columbia Gorge

Mr. McCoy cited various review criteria and application requirements and stated that conditions of approval must be recorded.

Staff Response: All applicable criteria and Friends of the Columbia Gorge concerns are addressed throughout this report.

III. FINDINGS:

Wasco County National Scenic Area Land Use & Development Ordinance (NSALUDO)

Chapter 2 – Development Approval Procedures

Section 2.240, Expiration of Approvals

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- C. *Land Use Approvals with Structures: Any land use approval issued pursuant to this Ordinance for a use or development that includes a structure shall expire as follows:*
1. *When construction has not commenced within two years of the date the land use approval was granted, or*
 2. *When the structure has not been completed within two years of the date of commencement of construction.*

The expiration date for the validity of a land use approval is from the date of the expiration of the appeal period and not the date the decision was issued.

FINDING: The request was originally approved on October 26, 2016, and the appeal period ended on November 10, 2016. A minor amendment was requested on April 17, 2017, and approved on April 18, 2018. The amendment changed the amount of affected material being excavated from 7,800 CY to 9,000 CU, and will wrap and cover the soil instead of treating the soil on-site.

According to NSA-LUDO Section 2.240 the applicant had two years from the date of final approval (November 10, 2016) to begin the project. Once the project begins, the applicant has two years to complete the project. The start of the project must occur no later than November 10, 2018. According to Brad DeHart, ODOT Project Manager, the project will not begin by November 10, 2018, thus he is requesting an extension of time. Staff finds that the request complies with Section 2.240.C.

Section 2.250, Extension of Validity of Land Use Approvals

A request for extension of the time frames in 2.240(B), C(1) or C(2) above, shall be submitted in writing before the applicable expiration date. The expiration date for the validity of a land use

approval is from the date of the expiration of the appeal period and not the date the decision was issued.

FINDING: The original Scenic Area Review application expires on November 10, 2018. The applicant requested approval of an Extension of Time on August 16, 2018, prior to the expiration date. Staff finds that the request complies with Section 2.250.

- A. *The Director may grant one 12-month extension to the validity of a land use approval if they determine that events beyond the control of the applicant prevented commencement of the use or development (applicable to 2.240(B) above) or commencement of construction (applicable to 2.240(C)(1) above) within the original two-year time frame.*

FINDING: The Extension of Time Request is being approved through this review for the reasons discussed below in Criterion C. A **condition** of approval is included in the Notice of Decision stating that the extension of time will be valid for one additional year, and will expire on November 10, 2019, at the end of the day. The owner should be aware that all of the original conditions of approval continue to apply to this approval. A **condition** of approval is included in the Notice of Decision requiring compliance with all of the conditions of approval in the Notice of Decision dated October 26, 2016. With proposed **conditions** of approval in the Notice of Decision, staff finds that the request complies with Criterion A.

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- C. *A request for extension shall state the reason why events beyond the control of the applicant warrant an extension.*

FINDING: The application states that after the approval was issued, ODOT advertised the project for bid. Prospective contractor bids came in above the estimate and budget available. ODOT worked with DEQ and hired a consultant to evaluate alternative options that would fall within the allocated budget and still meet the allocated budget and DEQ cleanup requirements for the abandoned quarry. DEQ issued an approval for the alternative remedy on June 3, 2018. ODOT has been working on new contract documents for advertisement, but the process will not allow for adequate time to begin work before the expiration date. An extension of time would allow for the cleanup work to be completed this fall/winter, with seeding in the spring during the approved seeding window (October – February).

Government budgets are not flexible and ODOT had no control over the original bids returned to them. They had to seek an alternative solution consistent with DEQ. The timeline for obtaining that approval was beyond their control. Staff finds that the request complies with Criterion C.

- D. *Approval or denial of a request for extension shall be considered an administrative decision.*

FINDING: This decision has been processed administratively by the Wasco County Planning Department. A pre-notice was sent to all affected owners and agencies on August 23, 2018, and a 15-day comment period was provided, which ended on September 7, 2018. Comments received are listed in Section II.D. Notice of the decision is being sent to all previous parties of record, and affected property owners and agencies. Staff finds that the request complies with Criterion D.