

PLANNING DEPARTMENT
STAFF REPORT
TO CITY OF LAKE FOREST PARK HEARING EXAMINER

The following review by the City of Lake Forest Park Planning Department is based on information contained in the application and supplemental correspondence, information in the file, comments and letters received, on-site investigation, applicable scientific reports, applicable codes, development standards, adopted plans, and other information on file with the City.

SUMMARY INFORMATION

City File Numbers: 2019-PAUE-0001

Hearing Date: December 9, 2019, 10am

Requested Action: Allow construction of an 18’x24’ picnic shelter, concrete pad, and associated ADA access improvements. Allow trenching to site for installation of underground power and potable water line. The project is located adjacent to the buffer of McAleer Creek, partially within the required building setback, as well as the overlapping buffers of two adjacent wetlands. The project is located at 17435 Brookside Boulevard NE in Pfingst Animal Acres Park.

Applicant: City of Lake Forest Park
Donnelle Dayao
Project Manager
Public Works Department
17425 Ballinger Way NE
Lake Forest Park, WA 98155

Site Location: Pfingst Animal Acres Park
17435 Brookside Boulevard NE
Lake Forest Park, WA

Comprehensive Plan Designation: Recreation/Open Spaces

Zoning Classifications: RS – 15,000

Recommendation: Approval with Conditions

APPLICABLE CODES AND REGULATIONS FOR THE PUBLIC AGENCY UTILITY EXCEPTION REQUEST (This list may not be exhaustive.)

Lake Forest Park Municipal Code Sections Directly Applicable to the Proposal:

1. LFPMC 16.16.230 – Authorized Work in Critical Areas
2. LFPMC 16.16.240- Setback Exception

3. LFPMC 16.16.260 – Critical area regulations for public agency and utility exceptions
4. LFPMC 16.16.320 - Wetlands-Development Standards
5. LFPMC 16.16.340- Wetlands-Mitigation and Restoration Requirements

BACKGROUND INFORMATION:

Description of the proposal: The proposed project is to construct an 18'x 24' picnic shelter, excavate the site for utility installation, and construct the associated 391 square-foot concrete pad and pathway area which complies with ADA access standards. Drainage improvements are also proposed in the form of a 12" wide taper of pervious material that will surround the structure's concrete pad foundation. The project is located adjacent to the buffer of McAleer Creek, partially within the required building setback, as well as located within the buffer of two wetlands adjacent to the stream. The shelter design includes a combination of concrete and wood framing members allowing it to function as an open structure with no walls. Stormwater run-off from the structure's roof will be directed to pervious areas surrounding the structure. Additional work includes trenching necessary to install underground power and water services, excavation for the structure's slab foundation, and mitigation for the impacts to the critical area buffer. A total area of 5,035 square feet would be either permanently or temporarily altered for this project (see page 11 of Exhibit 2). Project limits will be within the boundaries of the park property. None of the proposed work would occur within the Ordinary High Water Mark (OHWM) of the adjacent stream. All proposed work is limited to critical area buffer, building setback areas, or areas outside of buffers and setbacks. The project does not include removal of any trees, nor, does the project impact the inner critical root zones of nearby or adjacent trees. The purpose of the project is to provide a semi-private gathering place for City residents within the park, while not affecting the ability of others to utilize the park's open spaces. The proposal is categorically exempt from SEPA per WAC 197-11-800 (6) (e).

Site Characteristics: The project site is all within one 3.85 acre parcel that is owned by the City and has been designated as Pfingst Animal Acres Park in accordance with the purchasing agreement. The parcel is mostly undeveloped with the exception of a wooden boardwalk adjacent to the on-site portion of the McAleer Creek corridor and gravel pathways that run along the top of the slope associated with the creek ravine and circulate around the upland part of the park. A gravel parking area is located along the eastern parcel boundary adjacent to Brookside Boulevard NE. Sheridan Creek (Type F stream, standard buffer of 115 feet) flows into McAleer Creek (Type F stream, standard buffer of 115 feet) near the western parcel boundary. A large wetland area is located on the property within the McAleer Creek corridor. This large wetland contains two separately categorized wetlands that are located along the corridor of McAleer Creek and Sheridan Creek (see page 3 in Exhibit 2, critical area report). Wetland A, is classified as a category III wetland, with a buffer of 165 feet. Wetland B is classified as a category II wetland, with a buffer of 165 feet.

The park is largely vegetated in and surrounding the stream and wetland areas, with native and stream corridor vegetation lining the bulk of the stream and wetland areas. The stream and wetland area have a relatively high level of habitat function (see page 5 in Exhibit 2, critical area report). The park also has an open space area, which is vegetated by lawn grass, and select trees which surround the grass.

Adjacent Land Use Characteristics: The adjacent properties are located in the RS-15, with a comprehensive land use designation Conservation Residential, Moderate. The Park is bounded by McAleer Creek on the west side, Brookside Boulevard Northeast to the east, Northeast 178th Street to the north and private residential property to the south. The park is located in a low density residential neighborhood with the small (.25 acres) Eagle Scout Park on the opposite corner of Northeast 178th Street and Brookside Boulevard Northeast, the Presbyterian Church on the east side of Brookside Boulevard Northeast just opposite the park. Brookside Elementary School is located nearby on 37th Avenue Northeast. All adjacent properties are zoned for residential use and have a comprehensive land use designation of Conservation Residential, Moderate (see Exhibit 6, zoning map).

Project Review Timeline:

The City's Public Works Department (Permittee) applied for a Public Agency Utility Exception permit on July 23, 2019 with the assistance of their consultant for this project, The Watershed Company. The Planning Department determined the application to be complete on August 7, 2019. The notice of application was published on August 15, 2019, announcing the required 14-day public comment period. The City sent a request for additional information to the permittee on September 10, 2019. The Permittee responded to the City's request for additional information on September 18, 2019. The City published the notice public hearing on November 25, 2019.

This project was in review a total of 103 days. LFPMC 16.26.040 (F) (2) (a) exempts days that elapsed while the applicant is correcting plans and providing additional information, and up to 14 days after the information has been provided.

CRITERIA ANALYSIS

Public Works provides evidence through their critical area report that the requirements of the critical areas ordinance in the context of this project would prohibit the Permittee from implementing the proposed project. Staff finds that the proposal is not an administratively approvable activity under LFPMC 16.16.230 (Authorized Work in Critical Areas). As a result, the Permittee has requested a Public Agency Utility Exception (PAUE).

The following criteria are found in 16.16.260 (C) of the Lake Forest Park Municipal Code. The Permittee has the burden of meeting all the criteria for an approval. Staff's analysis with supporting findings and conclusions of the relevant criteria are listed below:

Lake Forest Park Municipal Code 16.16.260 Public Agency Utility Exception

C. The hearing examiner shall approve, approve with conditions, or deny the request according to the following criteria:

- 1. There is no other practical alternative to the proposed development with less impact on the critical areas; and*

Findings: According to the Permittee's critical area report, the vast majority of the site is encumbered by overlapping wetland and stream buffers and associated building setbacks. The only unencumbered portion of the site is a 430 square-foot

triangular patch located near the northeastern parcel boundary. A majority of this patch is also located within the critical root zone of an exceptional tree, a tree which has been determined to be a moderate risk for failure within the next five years (see Exhibit 12, arborist report). This 430 square-foot area is further encumbered by the 20-foot front yard setback required by LFPMC 18.18.060 (A).

The project could not be permitted through the administrative setback reduction allowed under LFPMC 16.16.240, because a setback reduction would allow expansion into an area already occupied by the critical root zone of an adjacent exceptional tree (see page 8 of Exhibit 2-Critical Area report). The combination of the required 20-foot front yard setback and the critical root zone protection requirements reduces the buildable area to 29 square feet.

Pursuant to the LFPMC 16.16.320 (C), one other possible mechanism for administrative reduction of a wetland buffer is averaging. Averaging requires expansion of the buffer elsewhere. Other areas on the site, as well as those to the west in the City's adjoining "Big Tree" property, are all completely encumbered with critical area buffers and thus unable to accommodate additional wetland buffer to offset a reduction at the project site.

The proposed development is located in an area of the buffer which is currently low functioning, as it is vegetated solely with lawn grass.

Conclusions: Once consideration is given to all critical area buffers and associated building setbacks, as well as zoning setbacks, there is no reasonably-sized area available on-site for construction of a new picnic shelter. It is not possible to site the proposed picnic shelter without some impact to the critical area buffers. The proposed site is located as far as possible from adjacent critical areas and is completely outside of the stream buffer/building setback and on the very outer edge of the wetland buffer/setback. Impacts to high functioning buffer areas, including native vegetation within the critical area buffers, will be completely avoided. The proposed location avoids direct impacts to on-site exceptional trees, minimizes additional impacts associated with providing access pathways and utilities, and allows the City to provide adequate parks services.

The above findings and conclusions support the fact that there are no other practical alternatives for this development with less impact on critical areas. This criterion is met subject to compliance with recommended conditions.

2. The application of this chapter would unreasonably restrict the ability to provide utility services to the public; and

Findings:

Ch. 16.16.260.A LFPMC (Public agency and utility exception) states that "Whenever requirements of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply to the planning director for an exception pursuant to this section." The City of Lake

Forest Park's Public Works Department is a public agency and is "responsible for the maintenance, operation and repair of the City's streets, surface water infrastructure, buildings and grounds facilities, parks, sanitary sewer, and 24/7 emergency response" (City of Lake Forest Park Public Works Department webpage: <https://www.cityofflp.com/67/Public-Works-Department>).

A picnic shelter was part of a 1997 Master Plan (see Exhibit 16) for Animal Acres Park. Elements of the Master Plan were eventually approved as part of a Conditional Use Permit in 2000. The picnic shelter is one of the last elements of the Master Plan to be constructed.

The Council adopted the City's Park Recreation Open Space and Trails Plan (PROS-T) via resolution 1724 on February 28, 2019. On page 52 of the PROS-T plan (see Exhibit 15), a picnic shelter is recommended as an identified need and planned improvement to Pfingst Animal Acres Park. Public support for this feature was also discovered through public outreach efforts (see Exhibit 15), where 122 members of the public identified picnic shelters as a desired element to add to the City's parks.

As identified in the Conditional Use Decision CU00-09 (see Exhibit 17), "Phase II improvements will add a small covered shelter within the meadow...." The park, however, is completely encumbered by critical area buffers and setbacks. Structures to accommodate semi-private gatherings are not allowed within the buffer area. Specifically, LFPMC 16.16.230 does not include allowances for the critical area buffer impacts which are necessary for the City to construct the proposed shelter at Pfingst Animal Acres Park. Strict application of LFPMC 16.16 would restrict the ability of the Public Works Department to provide necessary services to the public.

Conclusions: Public Works has applied for a public agency/utility exception because the critical area regulations prevent the structure from being installed within a critical area buffer and thereby preventing Public Works from carrying out its mission to provide parks services to the public. Administrative approval under LFPMC 16.16.240, (administrative zoning setback reduction), as well as buffer averaging provisions in LFPMC 16.16.320 (C) are not feasible because they would either result in an area inadequate for the sought purpose, or, because they are not possible. Strict application of this chapter does not allow Public Works to provide the parks services envisioned in the 1997 Master Plan and the PROS-T plan. This criterion has been met.

3. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and

Findings: According to the Permittee's application, the shelter site is strategically located outside of the potential target area the nearby exceptional tree. The shelter's proposed location will also avoid flooding impacts from McAleer Creek,

and is completely outside of the regulatory stream buffer and associated setback. The proposed shelter includes lighting and an ADA accessible pathway to ensure safety and ease of use and access. The proposed open-air design and its proposed location immediately adjacent to the parking area along Brookside Boulevard NE, providing optimal visibility from all directions in order to maintain security.

The properties surrounding the project site are primarily residential other than the church, which is situated directly across the street from the shelter's proposed location. Additionally, an elementary school is located west of the project site. According to the Permittee's application, the proposed development is not expected to significantly increase the level of park usage or vehicular trips to and from the park. Minor increases in both may occur during times of peak usage when gatherings occur at the shelter, primarily on weekends, but are not expected to coincide with school hours. Semi-private gatherings utilizing the proposed picnic shelter will produce some noise, though noise levels are not expected to increase from the current baseline level, as the park is currently actively used by the public.

Conclusions: The project's design minimizes adverse impacts on critical areas and buffers, as well as unreasonable threats to the public health, safety and welfare, through consideration of building placement, construction methods, as well as mitigation measures for all temporary, and permanent impacts to critical areas for the project. This criterion is satisfied subject to compliance with the recommended conditions, and compliance with the recommendations in the permittee's critical area study.

4. *The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science with the objective of no net loss of critical area functions and values.*

Findings: According to the Permittee's critical area report, the project will have both permanent and temporary impacts to the critical area buffers on-site. Complete avoidance is not possible because the vast majority of the site is encumbered by critical areas and their associated buffers. The only unencumbered portion of the site is a small triangular patch (430 square feet) located near the northeastern parcel boundary, most of which is encumbered by the required front yard zoning setback. The size and shape of the unencumbered patch does not allow for the construction of the proposed picnic shelter. Additionally, temporary trenching impacts to connect to electrical and water utilities within the wetland buffer are required to adequately serve the intended purpose of the structure. The trenching path must navigate around the interior critical root zone of an on-site exceptional tree, which has been determined to be a moderate risk for failure within the next five years (see Exhibit 12, arborist report).

According to the Permittee's critical area report, minimization techniques were utilized during the design process in order to limit the impact of the project. The proposed location of the picnic shelter maximizes the distance between the

structure and the stream and wetland areas, and avoids impacts to nearby significant and exceptional trees. The proposed shelter location is directly adjacent to the parking area and an existing access point to the park, minimizing the amount of additional impervious surface necessary to create suitable pedestrian access to the shelter. Additionally, the proposed location is closer to both utility access points than the unencumbered portion of the property, minimizing the amount of trenching required to supply adequate services to the shelter. The proposed project will comply with the applicable impact minimization measures in Table 16.16.320-2 (LFPMC Ch. 16.16.320 - Wetlands – Development standards). The proposal will not create any of the permanent disturbances described in Table 16.16.320-2, which include: lights, noise, toxic runoff, stormwater runoff (the proposed size of the structure is not large enough to trigger stormwater site improvements, pursuant to the King County Surface Water Design Manual), changes in water regime, pets and human disturbances, and/or dust. Furthermore, standard construction management practices, including temporary erosion and sediment control measures, will be implemented during construction.

The Permittee's critical area report states that, following completion of the construction project, buffer restoration will occur to offset permanent buffer and building setback impacts. A total of 1,035 square feet of permanent wetland buffer and setback impact will result from construction of the new picnic shelter and access paths. All permanent buffer impacts will be mitigated through enhancement plantings in the buffer area currently dominated by lawn grass, and located immediately adjacent to well vegetated buffer areas, within overlapping stream and wetland buffers. Meanwhile, 3,840 square feet of wetland and stream buffer (and structure setback) will be temporarily disturbed as a result of shelter construction and trenching for utility lines. As mitigation for permanent wetland buffer impacts, a total of 1,200 square feet of wetland buffer will be enhanced, equating to a ratio of 1.15:1, which slightly exceeds the 1:1 ratio, as required by LFPMC 16.16.340 (D) (3). All areas of temporary disturbance are proposed to be restored in place, and with like conditions.

According to the Permittee's critical area report the mitigation area will be monitored for a period of at least five years, and held to a series of performance standards listed in Chapter 5 of the project critical area report (Exhibit 2). As a recommended condition of approval, the applicant shall provide the Planning Department with an as-built drawing (prepared by a licensed professional) of the final mitigation after it has been inspected and accepted. The Permittee shall provide the Planning Department with annual monitoring reports of all mitigation for a period of five years, which shall report on the level of achievement relative to the performance goals outlined in the critical area report. A signed copy of the written contract with the qualified professional who will perform the monitoring program shall also be provided to the Planning Department prior to final inspection (recommended condition of approval). Since this is a public project, financial securities are not being proposed as a contingency measure. In the event

that any of the mitigation fails to reach the performance standards, the Planning Department will have authority to require remediation (recommended condition of approval).

Conclusions: The project minimizes and mitigates impacts to critical area and buffer functions by using best available sciences. Per the Permittee's critical area report, the project, as designed, poses no net loss of function or values for critical areas or their buffers. This criterion is satisfied, subject to the recommended conditions of approval.

5. *The proposal is consistent with other applicable regulations and standards.*

Findings: The Permittee is responsible for securing all other agency approvals. At this time, there are no known inconsistencies with other applicable zoning, environmental, and right of way standards besides those that the Permittee is asking for relief from. The project is categorically exempt from SEPA per WAC 197-11-800 (6) (e).

Conclusions: This criterion is satisfied subject to compliance with the recommended conditions.

PUBLIC COMMENT

During the comment period for the Notice of Application, the City received a comment from Ned Lawson, a citizen of Lake Forest Park (see specific comments in Exhibit 3). Mr. Lawson's comment stated that the site proposed for the picnic shelter was purchased with money approved through a King County bond measure in 1989. According to Mr. Lawson's comments, the bond measure awarded funds to jurisdictions for the purpose of purchasing property for open space preservation, and the continuation of environmental stewardship. Mr. Lawson's comment said that properties acquired with funds from the bond were supposed to be specifically used for passive activities, and set aside for the public to interact with natural environment. Mr. Lawson's comment objects to the construction of the picnic shelter, on the basis that the funds were to be used for the purposes described herein. His comment is in direct conflict with the proposal.

The Permittee has conducted a title search and an analysis of the purchase and sale agreement for the property and the language of the bond measure and finds that there are no restrictions on the use and potential to have structures like a picnic shelter at the park.

Staff has considered the public comments and the Permittee's responses while drafting the recommendation and creating the recommended conditions of approval. The public comments provided do not provide any exhibits to demonstrate that the uses in the park are limited, or, that structures of the proposed type cannot be built for use at the park.

Further public comment may become available, as the public hearing notice was published on November 25, 2019.

CONCLUSIONS AND RECOMMENDATION

Planning Staff recommends granting the Public Agency Exception to allow the installation of the picnic shelter, associate utilities, and installation of the suggested mitigation for critical areas. In combination, these measures should allow the City to install the picnic shelter with the least amount of impact on critical areas.

The City of Lake Forest Park Planning Department recommends approval of the proposal, subject to the conditions listed below:

1. All design/implementation, recommendations and statements included in the critical areas report (Exhibit 2) and the mitigation plans (Exhibit 4), shall be strictly adhered to throughout construction of the project and monitoring period.
2. The Permittee shall obtain, grading, building, and any other necessary permits needed for construction level activity.
3. The Permittee shall provide the Planning Department with an as-built drawing (prepared by a qualified professional) of the final mitigation after it has been inspected and accepted. Verification of an agreement with a qualified professional to conduct the monitoring program shall also be provided to the Planning Department prior to final inspection.
4. The Permittee shall provide the Planning Department with annual monitoring reports of all mitigation for a period of five years. In the event that any portion of the mitigation work does not meet the performance standards, as outlined in the critical areas report (Exhibit 2) and the annual reports, the Permittee will replace the failing mitigation in accordance with the recommendations of the licensed professional.

ATTACHMENTS

The following documents are attached to or referenced, and made a part of this report:

Attached:

Exhibit 1: Staff Report and Recommendation

Exhibit 2: Critical Area Report date stamped July 23, 2019 by the City of Lake Forest Park.

Exhibit 3: Public Comments

Exhibit 4: Design/Mitigation Plans date stamped July 23, 2019 by the City of Lake Forest Park; Sheets A1.0, A2.0, and sheets W1 through W7.

Exhibit 5: Comprehensive Plan Map

Exhibit 6: Zoning Map

Exhibit 7: PAUE application date stamped July 23, 2019 by City of Lake Forest Park

Exhibit 8: SEPA checklist date stamped July 23, 2019 by City of Lake Forest Park

Exhibit 9: Letter of Complete application

Exhibit 10: Notice of Application

Exhibit 11: SEPA exemption dated September 29, 2019

Exhibit 12: Arborist Report date stamped July 23, 2019 by City of Lake Forest Park

Exhibit 13: Notice of Public Hearing

Exhibit 14: Ariel photo of project site

Exhibit 15: PROS-T plan excerpts (page 52 and question 18 within section 5)

Exhibit 16: Animal Acres Master Plan Excerpts

Exhibit 17: Animal Acres Conditional Use Permit Decision

Submitted:



Nick Holland
Senior Planner

Date: November 27, 2019

For information about this proposal or questions about this staff report, please contact the Lake Forest Park Planning Department at Lake Forest Park City Hall, 17425 Ballinger Way NE, (206) 368-5440 or e-mail aplanner@cityoflfp.com.