

**THE FOLLOWING MEMOS HAVE BEEN  
SCANNED WITHOUT EXHIBITS FOR  
THE HEARING TO BE CONDUCTED BY  
THE SHORELINES HEARING BOARD**

**ON  
THURSDAY  
MAY 2, 2013 AT 7 P.M.**

**NOTE THE ADDRESS:  
BENTON COUNTY PLANNING  
DEPARTMENT – PLANNING ANNEX  
1002 DUDLEY AVENUE – PROSSER  
IF YOU WISH TO OBTAIN A COMPLETE  
PACKET INCLUDING THE EXHIBITS  
PLEASE CONTACT THE  
BENTON COUNTY PLANNING  
DEPARTMENT - 736-3086/TRI-CITIES  
OR  
786-5612/PROSSER  
OR EMAIL AT  
PLANNING.DEPARTMENT@CO.BENTON.WA.US**

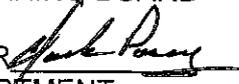
**NEW BUSINESS:  
SHORELINES  
CONDITIONAL USE  
PERMIT  
APPLICATION**

**FILE NO:SCUP 12-01**

**APPLICANT:  
PORT OF BENTON**

# Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

MEMO DATE: APRIL 15, 2013  
HEARING DATE: MAY 2, 2013  
BOARD: BENTON COUNTY SHORELINES HEARING BOARD  
FROM: CLARK A. POSEY, SENIOR PLANNER   
BENTON COUNTY PLANNING DEPARTMENT  
RE: SHORELINES CONDITIONAL USE PERMIT SCUP 12-01  
APPLICANT: PORT OF BENTON  
C/O KITTY THOMAS – PROJECT MANAGER  
3100 GEORGE WASHINGTON WAY  
RICHLAND, WA 99354

**SPECIFIC REQUEST:** The Port of Benton is proposing to undertake the following development to install underground utilities, install a new ADA compliant restroom facility, a fish cleaning station, new access to a new boat ramp and new boat slips with new electrical lines as needed with an associated parking area.

## **BACKGROUND:**

Site Location: The site is located at the Crow Butte Park Recreation Area, Paterson, Washington 99345 and adjacent to the Columbia River on a tract of land lying in the North Half of the Southeast Quarter of Section 6, Township 4 North, Range 24 East, W.M.

Land Use: The site and surrounding areas are within the Crow Brutte Recreational Park.

Zoning: The site and surrounding areas are zoned Park District.

Comprehensive Plan: The Benton County Comprehensive Plan designated the site and surrounding areas as Recreation.

Shoreline Master Plan: The Benton County Shorelines Plan designates this portion of the shoreline of the Columbia River as Conservancy Environment.

State Environmental Policy Act: Environmental Review on SCUP 12-01 has been reviewed under the requirements of the Washington State Environmental Policy Act. A Determination of Non-Significance was issued by Benton County on April 1, 2013. Environmental Impact Statement is not required.

## **APPLICABLE DEVELOPMENT REGULATIONS**

1. Section 7.00 of Phase II of the Benton County Shoreline Master Program provides the following purpose and definition for the Urban Environment:

Purpose The purpose of assigning an area to a conservancy environment is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a

continuous flow of recreational benefits to the public and to achieve sustained resource utilization.

Definition The conservancy environment is for those areas which are intended to maintain their existing character. The preferred uses are those which are non-consumptive of the physical and biological resources of the area. Non-consumptive uses are those uses that can utilize resources on a sustained basis while minimally reducing opportunities for other future uses of the resources of the area. Activities and uses of a non-permanent nature which do not substantially degrade the existing character of an area are appropriate uses for a conservancy environment. Examples of uses that might be predominant in a conservancy environment include diffuse outdoor recreation activities, passive agricultural uses such as pasture and range lands and other related uses and activities.

2. The Benton County Master Program Regulations provide the following information for conditional use permits:

"Conditional uses are those uses which may be permitted to locate in shoreline areas, but are usually seen as uses which either do not need, or depending on the environment, considered not to be suitable for siting in shoreline locations. It is understood, however that there may be special circumstances or special types or styles of conditional uses that would make shoreline siting of special cases acceptable to the goals, policies, and intentions of the Master Program.

3. The applicant must supply whatever evidence, information, or agreements to assure the local hearings board that the following conditions will be met:
  - a. That there is some necessity for a shoreline site for the proposed use, or that the particular site applied for is essential for this use, and that denial of the conditional use request would create a hardship on the applicant to locate the proposed use anywhere outside the shoreline jurisdiction area.
  - b. That the design of the proposed use will make it compatible with the environment it will be placed in.
  - c. That water, air, noise and other classes of pollution will not be more severe than pollution that would result from the uses, which are permitted, in the particular environment.
  - d. That none of the goals, policy statements or specific aims of the particular environment would be violated, abrogated, or ignored.

Should the local hearings board find insufficient evidence, explanation, or guarantees that the above conditions will be met, they may deny the request or indicate to the applicant what changes he could make that would cause the local hearings board to reconsider."

Washington Administrative Code states the following for review criteria for conditional use permits:

"The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

**SECTIONS 15.20.060 AND 15.20.070** of the Benton County Code (Title 15 is Protection of Critical Areas and Resources) provides the following regulations related to rivers:

**BCC 15.20.060 DEVELOPMENT-GENERAL REQUIREMENTS**, In addition to other provisions of this title, the applicant shall provide that the flood carrying capacity of the river or creek is maintained and has not impacted the flood zone from its original intent.

**BCC 15.20.070 PROHIBITED ACTS**. The introduction of any vegetation or wildlife, which is not indigenous to the Pacific Northwest into any river or creek or its near shore riparian area, is prohibited unless authorized by a State of Washington or a federal license or permit.

### **FINDINGS OF FACT**

The Planning Staff has reviewed the application and information received in the SCUP 12-01 application. Based on the application and information received the planning staff makes the following findings.

1. The applicant is the Port of Benton, c/o Kitty Thomas – Project Manager - 3100 George Washington Way. Richland, WA 98354
2. This project is to install underground utilities, a new ADA restroom facility, fish cleaning station, a new access to a new boat ramp and new boat slips with new electrical lines as needed with an associated parking area.
3. The proposed location is at the Crow Butte Park Recreation Area, Paterson Washington, 99345 on the Columbia River in the North Half of the Southwest Quarter of Section 6 of Township 4 North, Range 24 East, W.M, 12 miles West of Paterson, Washington.
4. The application was filed in accordance with the Benton County Shoreline Management Master Plan, Phase II, Section 8.16.
5. The application for SCUP 12-01 - EA 12-17 was submitted to Benton County on June 14, 2012. It was declared complete for the purpose of processing and routing for comments on June 26, 2012.
6. The application was sent out for comments to the Benton Clean Air Authority, Benton-Franklin District Health Department, Benton County Fire Marshall, Benton County Building Department, Benton County Department of Public Works, Corps of Engineers, Washington State Department of Ecology – Shoreline Division Yakima and Olympia, Washington State Department of Natural Resources; Washington State Department of Fish and Wildlife, Yakama Indian Nation; Natural Resource Conservation Service, Fire District 6, Department of Transportation, FEMA, Archeological/Historical Preservation, Washington State Department of Health, Bureau of Land Management and Bureau of Reclamation.
7. The Notice of Application for SCUP 12-01 - EA 12-17 was published on, July 5, 2012 for a thirty (30) day comment period. This notice was published and mailed to property owners of record within 300 feet of the outer boundaries of the parcel, described in the application as required by BCC 17.10.100.
8. The notice for the Benton County Shoreline Hearing Board's Open Record Hearing for application SCUP 12-01 was published on April 16, 2013 in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel. The Open Record Hearing is scheduled for May 2, 2013.
9. An Environmental Determination of Non-Significance for SCUP 12-01 - EA 12-17 was made on April 1, 2013.
10. The property is zoned Park District by Benton County.
11. The 2012 Benton County Comprehensive Plan designates the site as Recreation.

12. The Benton County Shoreline Master Program designated the site as Conservancy Environment.
13. The upgrading of existing facilities is allowed by permit as stated in Benton County Shoreline Master Program Phase II, Section 8.11 Shoreline Structures, page, 19.
14. The CRPP conducted a survey and shovel testing in Crow Butte Park for proposed improvements to the marina area. No archaeological resources were observed during testing. However, Crow Butte is a historic property of religious and cultural significance to both the CTUIR and the Confederated Tribes and Bands of the Yakima Nation. Because development of the park already exists, a portion of the improvements are in-kind replacements, and the fish cleaning station may improve cultural use of the area, the CRPP recommends a finding of No Adverse Effect. Because this project is within a historic property of the religious and cultural significance to both the CTUIR and the Yakima Nation and given the high density of sites present on Crow Butte, the CRPP recommends a cultural resources monitor, monitor excavation activities associated with the proposed marina improvements. The CRPP feels that the project may proceed upon concurrence of the Corps and DAHP.  
A Cultural Resource Study has been completed and a Finding of No Adverse Effect was determined.
15. The Benton County Shoreline Master Program provides the following policy statements for Shoreline Structures Use Regulations:

### **SHORELINE MASTER PROGRAM PHASE II (I) GENERAL REGULATIONS.**

- A. Earth changes shall not interfere with free passage of river and floodwater except where such is specifically intended and authorized.
- B. All applications for a conditional use permit shall be reviewed to determine if the proposed activities are consistent with the goals and policies of the Benton County Shoreline Management Master Plan.
- C. Shoreline structures shall be constructed so as not to constitute a hazard to river flow or navigation.

The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that there is some necessity for a shoreline site for the proposed use, or that the particular site applied for is essential for this use, and that denial of the conditional use request would create a hardship on the applicant to locate the proposed use anywhere outside the shoreline jurisdiction area.

The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that the design of the proposed use will make it compatible with the environment that it will be placed in.

The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that water, air, noise and other classes of pollution will not be more severe than pollution that would result from the uses, which are permitted, in the particular environment. No other construction or excavation will be performed.

The Benton County Master Program requires that the applicant must supply evidence, information, or agreements that none of the goals, policy statements or specific aims of the particular environment would be violated, abrogated, or ignored, and that no other applicable regulations will be violated. Based on the above findings it appears all goals of the Benton County Shoreline Master Program are complied with. If this permit is approved the Planning Department suggests the following conditions be listed as requirements for the approval of SCUP 12-01 and placed upon the final permit. The applicant shall continue to meet these requirements while SCUP 12-01 is in effect. In addition the applicant must comply will all applicable local, state and federal regulations.

## CONDITIONS

1. During construction precautions must be taken to prevent siltation, erosion or other debris from entering into the surface waterway. Should any debris accidentally be interjected into the surface water it should be immediately removed to the greatest degree possible. Spoilage and construction debris should be stockpiled and the original materials should be used to replace or backfill the project area. Spoilage not used should be disposed of upland of the project and outside of the shoreline area.
2. The original contour of the landscape should be restored upon completion of construction. In the wetland and riparian areas only native soils should be used to backfill and level any disturbed area.
3. All areas that are cleared or backfilled or otherwise disturbed shall be replanted with native vegetation that is representative of the site (natural reference site) immediately following any earthwork or grading of the site.
4. Copies of all permits pertaining to approval and/or construction (building and/or grading) of the project shall be submitted to the Benton County Planning Office and shall be considered as a condition of this Shorelines/SCUP Permit. Benton County Building Permits will be required, in addition to any Federal or State permits which may be required prior to the time of construction.
5. The CRPP (Cultural Resource Protection Program) recommends a cultural resources monitor, monitor excavation activities associated with the proposed marina improvements. The CRPP feels that the project may proceed upon concurrence of the Corps and DAHP.(Department of Archeological and Historic Preservation)
6. If archaeological resources are located during the undertaking, work will need to cease in the area until the find can be evaluated in consultation with the Corps and DAHP (Department of Archeological and Historic Preservation). If ancestral remains are inadvertently discovered, work in the area must cease, the area must be secured, and the CRPP (Cultural Resource Protection Program) and law enforcement officials must be contacted immediately.
7. All development shall be designed to protect lands involved of wind and water erosion.
8. No equipment or machinery of any kind shall enter any body of water or wetland, except when authorized under the terms of a substantial development permit. This prohibition shall not apply to floating equipment.
9. Vegetation along the water's edge shall be returned or left in the original condition unless permit stipulations allow or require otherwise.
10. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
11. No construction is authorized for any structure within the shoreline setback without prior approval from the Benton County Shorelines Hearing Board and the Washington State Department of Ecology; see RCW 90.58.140(5) and WAC 173-14-090.
12. The system shall include provisions to assure that construction pursuant to any work will not begin or be authorized until twenty-one days from the date of receipt as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of receipt as defined in subsection (6) of this section except as follows:

13. The applicant must supply the Benton County Planning Department a copy of the Hydraulic Project Approval from the Washington State Department of Fish and Wildlife
14. Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of any required Federal, State, or local permits.
15. If the Planning Department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee.
16. If the Planning Department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescinding of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.
17. As the Columbia River belongs to the State of Washington and is managed by the Department of Natural Resources (DNR). The activity that is planned would require a use authorization from DNR. A copy of this permit must be submitted to the Benton County Planning Department.