



Staff Report

File #: 18-22

Version: 1

Date: 1/22/2018

Item #: 6.e.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Peter Fernandez, PE, Public Works Director

SUBJECT:

Notice of proposed Administrative Rulemaking for Minto Island Conservation Area Restrictions and Guidelines for events.

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

ISSUE:

Proposed administrative rulemaking to establish regulations and guidelines for events within and through the Minto Island Conservation Area (MICA).

RECOMMENDATION:

Information only.

SUMMARY AND BACKGROUND:

To meet the terms of the MICA conservation easement and the City's Migratory Bird Conservation Strategy, staff has developed an administrative rule for events in the MICA. The rule will also protect the public's enjoyment of the conservation area during events. Rulemaking is authorized in *Salem Revised Code* (SRC) Chapter 94. Notice will be given pursuant to SRC 20J.040(a)(3).

In 2013, the City acquired the 307-acre MICA using Willamette Wildlife Mitigation Program grant funds. Bonneville Power Administration (BPA) holds a conservation easement on the property. The conservation easement protects and conserves, and as appropriate, allows for the restoration or enhancement of the conservation values of the property. Conservation values are specifically focused on fish and wildlife and their habitat. BPA has the right to enforce the terms of the conservation easement.

Minto Brown Island Park is home to over 200 species of birds, many being migratory songbirds and

waterfowl that use the park for nesting and rearing of young during the spring and summer. The park, classified as a Natural Area, is popular with walkers, runners, and birders. With the opening of the Peter Courtney Minto Island Bridge the park has seen an exponential increase in activity. The bridge and the approximately 1-mile paved path bisects the conservation area (Attachment 1).

FACTS AND FINDINGS:

SRC 94.980 authorizes the Public Works Director to adopt rules governing the issuance of permits. Permits are required for events in parks exceeding 150 people. The new administrative rules establish specific restrictions for permitted events within or through the MICA.

The administrative rule includes year-round restrictions for all permitted events in or through the MICA, and provides additional restrictions during the bird nesting season (March 1 to August 30). The administrative rule includes restrictions on noise, sound, starting and ending points, and numbers of people and events allowed. (Attachment 2). The rule was drafted with input from organizers of running events, Friends of Two Bridges, and the Salem Audubon Society. Bonneville Power Administration and Oregon Department of Fish and Wildlife staff have reviewed and approved the draft event rules. The draft rules were also presented to Salem Parks and Recreation Advisory Board at their November 9, 2017, and January 11, 2018, meetings. The Board indicated they may submit formal comments during the public comment period.

The administrative rule will be administered by Recreation Services section staff through the event permitting process.

The objectives of the Minto Island Conservation Area administrative rule:

- (1) Reduce potential negative impacts to wildlife from recreational events and their associated actions.
- (2) Protect birds during the nesting season to the maximum extent feasible.
- (3) Provide a balance between events, general passive recreation use in a Natural Area, and wildlife values as protected by the Conservation Easement.
- (4) Provide for the general public's safety and enjoyment of the MICA while allowing for events to also occur.
- (5) Provide clear guidance for event planners and permit holders.

Recreational activities such as hiking, biking, running, dog walking, and even bird watching can have detrimental effects on wildlife. Actual and perceived threats may cause wildlife to flee, alter their behavior, or abandon the area. This can lead to a reduced diversity of wildlife, mortality of young, and decreased vigor. Some animals may become desensitized to the threats over time while other species may leave the area of disturbance and not return. Breeding and nesting seasons are particularly sensitive times as the adults often leave the young in the nest or in cover to forage and may not return to the nest or area if there is disturbance, resulting in stress and potential mortality of the young.

The Notice of Administrative Rulemaking (Attachment 3) will be posted January 23 through February 6, 2018. Interested parties will have 15 days to provide comment to staff. Subject to review by City Council and the comments received during the public review period, the rules will become effective no later than March 1, 2018.

Adoption of Administrative Rules does not require Council approval. Council may elect to review the proposed Administrative Rule; however, the scope of Council's review is limited to: (1) whether the rule is within the scope of the provision of the Code authorizing adoption; (2) whether the rule is duplicative of, or conflicts with, another rule or other Federal, State or local law or regulation; or (3) whether the rule is outside the range of staff's rulemaking authority. The Legal Department has reviewed the proposed rules for consistency with the code pursuant to SRC 20J.080.

Robert D. Chandler, PhD, PE
Assistant Public Works Director

Attachments:

1. Map of MICA
2. MICA Restrictions and Guidelines for Events
3. Notice of Proposed Administrative Rulemaking