

R.1 / Sauvie Island - 8/27/15 - Written Testimony:

Adams, Jennifer

Bagon, Leslie & Frank

Birnbaum, Ed

Bicycle Transportation Alliance

Davis, Jake

Davis, Tim

Eber, Ron

Frisse, Courtney

Greenfield, Mark

Grummon, Geoff

Hamer, Jan

Hamilton, Rebecca

Hartline, Jane

Hermes, Lukas

Herstein, Adam

Holtz, Andrew

Morasch, Steve

Newman, Adam

Paulsen, Kirk

Replinger, John

Silodor, Susan

Sims, Matthew

Squier, Anne

Sugahara, Kenji

Thomas, J. Blake

Tochen, Dan

Tonneson, Stan

Valentine, Kristin

Whalen, Jamie

White, Skip

Wick, Darin

York, Angel

soils, and nutrient filters to the lake, 5) exploring opportunities to conduct selected dredging to increase depth, flows and flushing and circulation action in Sturgeon Lake, and to minimize temperature increases, 6) providing adequate sanitation facilities to prevent human wastes from entering lakes, 7) controlling boating activity and speeds to minimize shoreline erosion due to wave action and 8) conducting a shoreline inventory that may include vegetation, erosion, soil compaction.

The 1985 Atlas of Oregon Lakes identified Sturgeon Lake as a: "Large, shallow mud-bottomed lake located on Sauvie Island. Water quality problems include siltation and very high turbidity; the lake also experiences algae blooms and high bacterial counts. Hydraulic modifications over the years have exacerbated the sedimentation problem. Recommendations for rehabilitation include re-opening Dairy Creek, thereby re-establishing natural flushing from the Columbia River. Funding for this proposal has been difficult to obtain."

The 1992 federal Clean Vessel Act prohibits discharge of sewage from marine toilets on all freshwater lakes and reservoirs. Boaters must use Coast Guard-approved marine sanitation devices on the Columbia, Willamette and Snake Rivers and on navigable portions of coastal waters.

Marinas and moorages along Multnomah Channel have four basic sewage-producing types of boats or floating structures; 1) floating homes, 2) boathouses, which are primarily for interior boat storage, but may have a small living unit within the structure for "weekend" use, 3) live-aboard boats, and 4) transient boats, which may dock at a facility during the day.

Currently, the Oregon Department of Environmental Quality, the State Marine Board, and the Division of State Lands are discussing appropriate sewage disposal regulations for new and existing marinas and moorages. The Department of Environmental Quality is requiring that all marinas and moorages provide a "hard" connection to city sewer or a private sewage disposal system for all floating homes and boathouses that are plumbed for sewer (even if they are not connected to a water system). New marinas and moorages are also required to have a "hard" connection for each "live-aboard" boat slip. The major discussion point remaining regards "live-aboard" boat slips in existing moorages. Alternatives include requiring "hard" connections at the time of any Division of State Lands lease renewal, or instead requiring easy access to a portable "pump out" facility, along with proof of its actual use. The Department of Environmental Quality has no authority to require sewage disposal facilities be available for "transient" boats -- it is considered the responsibility of the boat owner to safely and legally dispose of his or her sewage. However, it is within the authority of Multnomah County to require pump out facilities be made available for "transient" boats at marinas and moorages which provide service to such boats.

A final type of marine use in Multnomah Channel is the illegal houseboat or anchored live-aboard boat, which dumps its sewage directly into the channel in violation of the



BIRNBAUM, Ed

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Bicycling on Sauvie Island

Ed Birnbaum <edbirnbaum@comcast.net>

Tue, Aug 25, 2015 at 4:28 PM

To: simcplanning@multco.us, mult.chair@multco.us, district1@multco.us

I'm alarmed by the following language in the Sauvie Island/Multnomah Channel Transportation System Plan:

"Support the use of bicycle transportation alternative to automotive use without encouraging purely recreational bicycle activities that may increase this level of vehicle conflict on roadways."

I've frequently bicycled to and around the island, at least once a year, over a period of many years. I've never seen anything that would make me think that that is a rational or desirable policy. I can imagine

that motorists who work or have business there might be annoyed by having to wait for oncoming auto traffic to clear before passing one or more bicyclists, especially if the bicyclists aren't riding single file, as they should.

But adding all such delays together could never be more than a matter of seconds for any given trip. Some cyclists might be careless or discourteous, but no more so than other tourists, and bikes are inherently quieter and

certainly less damaging to the environment, both local and global. Cyclists spend some money there and the opportunity to do the wonderful Sauvie Island loop must be one of the attractions drawing Bike Tourists to

the Portland area. I think we do want to encourage that kind of tourism, don't we? And I certainly hope that you don't want to discourage any kind of healthy exercise and outdoor activity by your constituents. If anything,

we should be doing more to *encourage* bicycling on Sauvie Island and everywhere else in the metro area. Please see that this language is cut from the plan and say "no" to collecting fees from people who just want to ride their bikes on these public roads.

Sincerely,
Ed Birnbaum
7836 SE 11th Ave.
Portland, OR 97202
971-404-6742



DAVIS, Jake
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island bike access

Jake Davis <jake.davis5989@gmail.com>
To: simcplanning@multco.us

Tue, Aug 25, 2015 at 1:35 PM

Howdy all,

I've just been reading about potentially-restricted recreational bike access or toll-based bike access for Sauvie Island, per this BikePortland article:

<http://bikeportland.org/2015/08/25/advocate-sounds-alarm-sauvie-island-transportation-plan-discourage-recreational-bicycle-activities-156249>

This is rather alarming, indeed. I'm not sure why, despite evidence such as bike access being positive for local economies, cars polluting the environment and taking up a disproportional amount of space, and complete streets as a means of providing equitable, safer access to more citizens, there would be a proposal to limit bike access, but seemingly here we are.

I'd like to encourage you to not make an incredibly regressive decision. I've ridden out to Sauvie Island many times because it is a gorgeous treasure that should be accessible by everyone. If anything, you have a responsibility to build a bike path around the perimeter so as to increase safety, discourage driving, and ensure everyone has fair access to the island.

Multnomah County has been on a bit of a roll, what with the poor Broadway Bridge detour and now this. Don't make an absolutely ridiculous decision. Remove the language discouraging further bike access. Hell, change the language completely to *encourage* bike access. I don't understand why a planning committee in 2015 would try anything different. This isn't 1950.

Thanks,
Jake



FRISSE, Courtney

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Multnomah Channel Rural Area Plan

Courtney Frisse <courtneyfrisse@gmail.com>

Tue, Aug 25, 2015 at 10:08 PM

To: simcplanning@multco.us

I am writing in strong support of the recommended Sauvie Island Multnomah Channel Rural Area Plan. My work schedule regrettably prevents me from attending the public hearing Thursday.

A phrase that continually surfaced during the many island meetings with the Planning Commission was "Sauvie Island is being loved to death". The very qualities that make Sauvie Island so very special- the quiet, the rural character, the magnificent landscape and wildlife, the beaches, the farm activities, have attracted so many people that the rural quality is itself threatened.

I support the restrictions and limits to mass gatherings and events on the island. This is an agricultural island and the continual growth of events and mass gatherings is threatening to turn the island into a giant Theme Park. I think we need to recognize and address a fundamental safety issue, that the island becomes so crowded at times that an emergency vehicle's access becomes dangerously restricted. When this is the case, clearly there are too many people for the existing infrastructure which, as we know, is limited to one bridge and many areas with no road shoulder.

I support the restrictions on liveaboards and houseboat moorages and in particular support sanitation requirements. I live on a houseboat at Mayfair Moorage, downstream from a sailboat moorage and a large houseboat moorage. My neighbors and I periodically see human waste in the water, certainly a health hazard for humans, not to mention the contamination to the river and aquatic life. It would be unthinkable on land to permit sewage to be spilled into the streets, and yet it happens as a matter of course in the river.

Many of my neighbors on the island have spent an enormous amount of time thinking about, debating, presenting testimony, and contributing to this plan. It is a good one and a sensible one. We know we live in paradise here, and we wish to share it, and protect the island appropriately as well, so that it remains the gem that it is. Please support this plan.

Sincerely,

Courtney Frisse
Mayfair Moorage
15500U NW Ferry Rd.
Portland, OR 97231

EBER, Ron
August 27, 2015
Agenda #: R.1

August 26, 2015

Multnomah County Board of Commissioners
501 SE Hawthorne
Portland, OR

RECEIVED

AUG 26 2015

RE: Proposed Sauvie Island/Multnomah Channel (SIMC) Rural Area Plan

Dear Commissioners:

Please accept these comments regarding the proposed Sauvie Island Rural Area Plan. I was part of the consultant team that prepared background materials on "Agriculture and Agri-Tourism" for the CAC and staff to use in its preparation.¹

I have followed the development of the plan and reviewed the plan and policies proposed by the Planning Commission and want to also submit private comments, based on my long involvement with farmland issues and EFU zoning under ORS Chapter 215 and OAR 660 Division 33.2. Because of this involvement, **I want to lend my full support to what the County Planning Commission is proposing.**

Oregon has a longstanding commitment to the protection of its agricultural land base and to promoting the bounty produced. Despite the Legislature's intent to only provide for those promotional activities directly related to farm use at farm stands, such events inevitably take on a life of their own and quickly overrun farm areas with many unintended consequences to the agricultural community. This was the prime concern of the Island community that led to this plan update.

The proposed Agriculture & Agri-Tourism Policy Framework is an excellent set of focused policies for the protection of Sauvie Island's agricultural land base from activities and events unrelated to the Island's primary farm use. They will provide clear guidance to decision makers in the implementation of this plan. This is very important since Oregon law requires jurisdictions to implement the plan after its adoption and conform prior conflicting zoning ordinances to it. No land use may occur which would exceed the limits set by the plan between the time of the enactment of the comprehensive plan and the implementing zoning ordinances.³

¹ See Appendix 2 "Agriculture and Agri-Tourism"

² DLCD Agricultural Lands Policy Specialist 1976 to 2008 (retired) and Special Assistant to Anne Squier, Governor Barbara Robert's Natural Resources Policy Advisor, 1993 and co-author with Ed Sullivan of "The Long and Winding Road: Farmland Protection in Oregon 1961-2009," 18 San Joaquin Agricultural Law Review # 1 (2008-2009).

³ See generally, *Baker v. City of Milwaukie*, 271 Or 500 (1975).

Only with clear policies can the plan fulfill its function to be the “controlling land use instrument” and provide guidance in determining whether any future land use or code provisions will exceed the policy limits established by the plan.

Governor Tom McCall advocated a land use system “that is courageous and comprehensive...” and it is now time to deliver on that promise.⁴ I urge your adoption of the Agricultural and Agri Tourism Policy Framework recommended to you by your Planning Commission. They and the citizens involved in its development should be commended for these policies that make real choices and decisions to guide future land use on Sauvie Island.

Sincerely,

Ronald Eber
Box 249
Port Gamble, WA 98364

⁴ Special Message to the 55th Oregon Legislative Assembly on Land-Use Planning and Zoning (February 7, 1969)



Bicycle Transportation Alliance

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

SIMC Rural Area Plan Feedback

Carl Larson <carl@btaoregon.org>

Tue, Aug 25, 2015 at 4:12 PM

To: simcplanning@multco.us

Cc: Kevin COOK <kevin.c.cook@multco.us>, joanne.fuller@multco.us, district1@multco.us

Hello.

I've attached a letter from our executive director regarding problematic language in the Sauvie Island Multnomah Channel (SIMC) Rural Area Plan. We hope that this issue can be addressed and that the otherwise-excellent plan can move forward.

Thanks!

Carl

Carl Larson | Engagement Manager
tel: 503.226.0676 x16 | fax: 503.226.0498

Bicycle Transportation Alliance | btaoregon.org
618 NW Glisan Street, Suite 401
Portland, OR 97209



SIMC RAP BTA comments.pdf

339K

August 25th, 2015

Kevin Cook
Multnomah County Land Use Planning
1600 SE 190th Avenue
Portland, OR 97233

Re: Sauvie Island / Multnomah Channel Rural Area Plan

Dear Mr. Cook,

The Bicycle Transportation Alliance creates healthy, sustainable communities by making bicycling safe, convenient, and accessible. While most of Multnomah County's proposed Sauvie Island / Multnomah Channel Rural Area plan matches that mission, one bit of language appears to run counter to that mission and, we submit, the county's.

Specifically, Policy 5.9 in the proposed plan aims to "support the use of bicycle transportation alternative to automotive use *without encouraging purely recreational bicycle activities* that may increase this level of vehicle conflict on roadways."

The county should not prohibit encouragement of safe, healthy recreation.

Strictly speaking, "recreation" is simply something one does for enjoyment when one is not working. The bulk of the motor vehicle and bike traffic on Sauvie Island's roads is recreational – off-island users seeking beaches, berry patches, or just a chance to enjoy rural Multnomah County. In assessing opportunities for active living, the county's 2011 Built Environment Atlas states "the health benefits of rural environments include better air quality and wider opportunities for contact with nature than is available in urban settings." We must work to provide safe, equitable access to these places for ALL users.

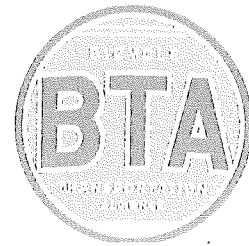
As the regional body concerned with our region's health, Multnomah County encourages active, healthy lifestyles including recreational bicycling. The County's land use plans should reflect that fact.

Sincerely,



Rob Sadowsky
Executive Director

Cc: Joanne Fuller, Multnomah County Health Dept. Director
Jules Bailey, Multnomah County Commissioner, District 1

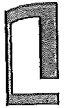


MORASCH, Steve

August 27, 2015

Agenda #: R.1

COPY



LANDERHOLM

Legal advisors. Trusted advocates.

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August 14, 2015

Jules Bailey
Multnomah County Commissioner
501 SE Hawthorne Blvd, #600
Portland, OR 97214

Diane McKeel
Multnomah County Commissioner
501 SE Hawthorne Blvd, #600
Portland, OR 97214

Loretta Smith
Multnomah County Commissioner
501 SE Hawthorne Blvd, #600
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Deborah Kafoury
Multnomah County Chair
501 SE Hawthorne Blvd, #600
Portland, OR 97214

Judy Shiprack
Multnomah County Commissioner
501 SE Hawthorne Blvd, #600
Portland, OR 97214

Re: **Draft Sauvie Island/Multnomah Channel Rural Area Plan**

Dear Commissioners:

We are submitting these comments on behalf of our client Frevach Land Co. (Fred's Marina). We oppose the proposed amendments because they constitute a *de facto* moratorium on all new houseboats.

Houseboats have been historically allowed on Multnomah Channel for nearly a hundred years. See Comprehensive Framework Policy 26. In 1996-97, the issue of how houseboat moorages should be regulated was subjected to lengthy public debate with monthly meetings of a 16-member task force over the course of a year, culminating in the draft Sauvie Island/Multnomah Channel Rural Area Plan which was then presented at an open house in March, before the Planning Commission hearing in April and final adoption by the Board of County Commissioners on October 30, 1997.

Ordinance No. 887 adopting the Sauvie Island/Multnomah Channel Rural Area Plan was a complete "overhaul" of the regulations affecting the historic houseboat moorages along Multnomah Channel. After this lengthy public debate over how houseboat moorages should be regulated in Multnomah County, the County confirmed that houseboats would be allowed as a conditional use in certain designated areas of Multnomah Channel that had historically been used for houseboat moorages, subject to the "one to 50" density standard.

Over the past couple of decades, moorage owners have relied on the acknowledged plan and code regulations for their continued existence and prosperity. But now the County is faced with a

proposal to change the way these historically allowed uses are regulated by imposing a *de facto* moratorium on all new houseboats.

We urge you to reject the portion of the proposed amendments that would impose a moratorium on new houseboats and to retain the historical regulations allowing houseboats as conditional uses in certain limited and designated areas and subject to the "one to 50" density standard.

The proposed houseboat moratorium seems to be based on several false legal arguments pertaining to state law and Goals 14 and 15. There appears to be a misconception, perpetuated by planning staff, that new houseboats are not allowed under state law. This is false for several reasons, and we have prepared brief legal argument on these issues for the record, set forth below.

I. The existing rules are acknowledged as complying both with Goals 14 and 15.

Multnomah County's provisions permitting houseboats and regulating their density in the Sauvie Island Multnomah Channel Rural Area Plan and Chapter 34 have been "acknowledged" and therefore are beyond challenge for compliance with statewide planning Goals 14 (Urbanization) and 15 (Willamette River Greenway). Houseboats are an historically allowed use and should be allowed to continue under the existing plans and codes.

The Sauvie Island Multnomah Channel Rural Area Plan was adopted through the post acknowledgment plan amendment process on October 30, 1997. On July 23, 2014, in the final decision issued in casefile T2-2013-3238, the Multnomah County Land Use Hearings Officer held that the Sauvie Island Multnomah Channel Rural Area Plan and Chapter 34, including the provisions allowing houseboat marinas as conditional uses in certain designated areas of Multnomah Channel up to the "one to 50" density standard, were acknowledged as being in compliance with Goal 14.

The Hearings Officer further held that under the express terms of OAR 660-004-0040(3)(b), the County's existing regulations regarding houseboats comply with state administrative rules adopted by LCDC implementing Goal 14.

On May 30, 2014, in the final decision issued in casefile T2-2013-2907, the Multnomah County Land Use Hearings Officer held that the Sauvie Island Multnomah Channel Rural Area Plan and Chapter 34 were acknowledged as being in compliance with Goal 15. The Hearings Officer held on page 11 of his decision: "As acknowledged provisions of the County's plan and land use regulations, these comprehensive policies and land use regulations implementing Goal 15 may not now be challenged as being inconsistent with the statewide planning goal."

The Hearings Officer decision on the Goal 15 issue was not appealed, and is therefore not subject to challenge. The Hearings Officer decision on the Goal 14 issues was appealed to the Oregon Land Use Board of Appeals (LUBA), and LUBA affirmed the Hearings Officer. *Squier v. Multnomah County*, __ OR LUBA __, LUBA No. 2014-074 (February 4, 2015).

In *Squier v. Multnomah County*, Petitioner Anne Squier argued that the Multnomah County code and comprehensive plans governing houseboats and houseboat density were not acknowledged under Goal 14. LUBA squarely rejected that argument.

Therefore, the existing rules have been acknowledged under both Goals 14 and 15, and the argument that the existing rules are not acknowledged as being in compliance with Goals 14 and 15 is false. The County may amend other provisions of the plan without having to undertake a new Goal 14 or 15 analysis of the existing regulations allowing houseboats as conditional uses up to the "one to 50" density standard.

2. Houseboats are a "water dependent" use and comply with Goal 15.

Regardless of the "acknowledgement" issue, houseboats are "water dependent" and comply with Goal 15.

By definition, houseboats are a water dependent use since they are designed to float. Houseboats have been used historically in Multnomah County for nearly a century. Because of their longstanding historic use in Multnomah County, houseboats are different than other uses that could theoretically be made to float. Houseboats are historically recognized uses that are designed to float and are therefore water dependent.

On May 30, 2014, the Multnomah County Land Use Hearings Officer held that "houseboats and houseboat marinas are recognized as uses that are consistent with the Willamette River Greenway and Statewide Planning Goal 15." Decision in casefile T2-2013-2907, page 11. The Hearings Officer further stated that "it is undeniable that a houseboat – a floating home – is by definition a water dependent use." *Id.*

The argument that houseboats are not a water dependent use under Goal 15 is false. The Multnomah County Land Use Hearings Officer held that houseboats were a water dependent use and no one challenged that decision.

3. The 2000 LCDC Goal 14 rule does not apply to Houseboats.

Houseboats comply with Goal 14 through the Goal 14 implementing rule adopted by LCDC in 2000. The 2000 LCDC Goal 14 rule amendments impose density limitations on "permanent" dwellings "placed on lots" in rural residential zones. Houseboats are not "permanent" dwellings "placed on lots," since they may be moored temporarily at one location and then floated away to another location. So, the Goal 14 rule does not apply.

On July 23, 2014, in the final decision issued in casefile T2-2013-3238, the Multnomah County Land Use Hearings Officer confirmed the 2000 LCDC Goal 14 rule amendments do not apply to houseboat moorages because houseboats are not "permanent" dwellings "placed on lots."

The argument that the Curry County case or the 2000 LCDC Goal 14 rule amendments prohibit new houseboats along Multnomah Channel is false and has been rejected by the County's own Land Use Hearings Officer and LUBA.

Anne Squier appealed this issue to LUBA in *Squier v. Multnomah County*, and LUBA squarely held that the 2000 LCDC Goal 14 rule amendments do not apply to houseboat moorages because houseboats are not "permanent" dwellings "placed on lots."

Multnomah County planning staff member Kevin Cook inaccurately described LUBA's decision on this issue to the Planning Commission, stating that the County's rules governing houseboats needed to be revised to comply with Goal 14 and the 2000 LCDC Goal 14 rule amendments. That is the opposite of what LUBA actually held. LUBA held that the 2000 LCDC Goal 14 amendments do not apply to houseboats or houseboat moorages.

The DLCD director Jim Rue described LUBA's opinion in a May 7, 2015 memo to the Land Conservation and Development Commission. Mr. Rue stated:

"LUBA first determined that Multnomah County was correct in determining that OAR 660-004-0040, which interprets Goal 14 provisions regarding rural residential development in light of the 1986 Oregon Supreme Court Curry County decision, does not apply to houseboat moorages, in part because the rule does not specifically mention them, and in part because the rule does not include any standards that could meaningfully be applied to determine whether and what density of houseboat moorages can be approved without an exception to Goal 14."

Despite Multnomah County planning staff's false and misleading statements to the contrary, there is no question that LUBA held that LCDC's Goal 14 implementing rules do not apply to houseboats. Even DLCD Director Jim Rue agrees that was LUBA's holding. LUBA's decision was not appealed and is therefore beyond challenge.

4. The Rural Reserves Rule allows existing uses to be redeveloped.

The state Rural Reserves Rule in OAR 660-027-0070(3) and the Multnomah County Urban/Rural Reserves Ordinance Policy 6-A(6) prevent amendments to the zoning or land use regulations that would either (1) allow new uses or (2) increase density through smaller lot sizes. Houseboats are not new uses, since they have been allowed in Multnomah County for years and adding houseboats does not increase density through smaller lot sizes. Therefore the Rural Reserves Rule and Policy 6-A(6) do not apply.

Further, in 2010, LCDC adopted an amendment to the Rural Reserves Rule in OAR 660-027-0070(5) that specifically authorizes "expansion" of existing uses and there is no limitation in the rule on the types of plan amendments or exceptions that may be sought. The argument that the Rural Reserves Rule or County Policy 6-A(6) prohibit new houseboats is false.

5. Conclusion.

In conclusion, over the course of this process, Multnomah County planning staff has made numerous false and misleading statements both to the CAC and to the Planning Commission

regarding the applicability of Goals 14 and 15 and the urban reserves rule to houseboats. As discussed above, all of those arguments are false. There is no state law that prevents Multnomah County from continuing to allow houseboats under the existing rules, including the existing one dwelling per 50 feet of frontage standard. Staff's consistent messages to both the CAC and the Planning Commission to the contrary leave us with a deeply flawed process.

The Sauvie Island Multnomah Channel Rural Area Plan adopted in 1997 struck a balance that allowed a limited number of houseboats and houseboat marinas to be developed in certain designated areas. State law cannot be used as a reason to discard the balance that was struck in 1997 because there is no valid prohibition in state law on new houseboats in Multnomah County approved pursuant to the terms of the existing code and plan policies that have been in effect for nearly 20 years.

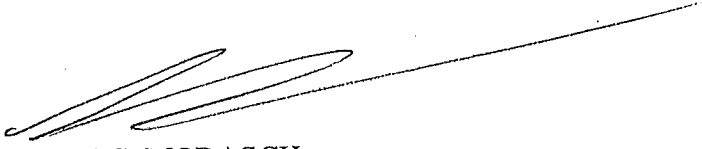
We request that the proposed *de facto* moratorium on new houseboats be rejected. Such a moratorium would make it more difficult to redevelop and modernize existing facilities in an environmentally friendly manner. It is also unfair to the owners and occupants of these moorages that have historically existed along Multnomah Channel.

Finally, we understand that Multnomah County may be entering periodic review. If that's the case, then we request that this issue be addressed as part of a periodic review of the entire comprehensive plan, rather than piecemealing this issue off in a separate post acknowledgement plan amendment.

Multnomah County should continue allowing existing moorages to redevelop at the current density standard of one dwelling per 50 feet of frontage. That density standard has withstood legal challenge to LUBA and it would be manifestly unfair to the existing moorage owners to pull the rug out from under them by imposing a permanent *de facto* moratorium and rendering their moorages non-conforming uses. We respectfully request you reject the Planning Commission's recommendation regarding moorages.

Sincerely,

LANDERHOLM, P.S.



STEVE C. MORASCH
Attorney at Law

SCM/jsd
FREL05-000001 - 1232228.doc

cc: Kevin Cook
Cherie Sprando
Jed Tomkins

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 ANNE SQUIER,
5 *Petitioner,*

6
7 vs.

8
9 MULTNOMAH COUNTY,
10 *Respondent,*

11
12 and

13
14 FREVACH LAND COMPANY,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2014-074

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Multnomah County.

23
24 Carrie A. Richter, Portland, filed the petition for review and argued on
25 behalf of petitioner. With her on the brief was, Edward J. Sullivan and Garvey
26 Schubert Barer.

27
28 Jed Tomkins, Portland, County Counsel, filed a response brief and
29 argued on behalf of respondent.

30
31 Steve C. Morasch, Vancouver, filed the response brief and argued on
32 behalf of intervenor-respondent. With him on the brief was Schwabe
33 Williamson & Wyatt, P.C.

34
35 BASSHAM, Board Member; RYAN, Board Chair; HOLSTUN, Board
36 Member, participated in the decision.

37
38 AFFIRMED

02/04/2015

1 You are entitled to judicial review of this Order. Judicial review is
2 governed by the provisions of ORS 197.850.

1 *Classified Employees v. Salem-Keizer School District 24J*, 186 Or App 19, 27,
2 61 P3d 970 (2003); *David v. City of Hillsboro*, 57 Or LUBA 112, 136, *aff'd*
3 223 Or App 761, 197 P3d 1152 (2008). The amicus brief does not include, or
4 discuss, any legislative history of relevant rule-making. Because the amicus
5 brief does not include anything that would significantly aid LUBA's review,
6 the motion to allow the amicus brief is denied.

7 **MOTIONS TO STRIKE**

8 The county moves to strike the nine-page summary of material facts in
9 the petition for review, arguing that the summary includes a number of legal
10 arguments and includes few citations to the record, contrary to OAR 661-010-
11 0030(4)(b)(C), which requires the petition for review to include a summary of
12 material facts with citations to the pages of the record where support for the
13 facts alleged can be found.

14 Petitioner responds that including legal arguments in the summary of
15 material facts and failing to include record citations for all facts alleged are
16 "technical errors" that do not warrant striking those portions of the brief, absent
17 a showing of prejudice to other parties' substantial rights. OAR 661-010-0005.
18 We agree with petitioner that the county has not demonstrated that petitioner's
19 violations of OAR 661-010-0030(4)(b)(C) warrant striking portions of the
20 petition for review or prejudice the county's substantial rights to prepare and
21 present its positions in this appeal. The legal arguments in the summary are
22 repetitions of arguments located elsewhere in the brief, and the county does not
23 identify any material factual assertions lacking citation to the record. Further,
24 as will soon be evident to the reader, this appeal is almost entirely concerned
25 with legal rather than factual issues. The motion to strike the summary of
26 material facts is denied.

1 The county also moves to strike a sentence in petitioner's statement of
2 the standard of review that asserts that the county's decision misconstrues the
3 applicable law. The county argues that that sentence is argumentative and does
4 not belong in the section of the petition for review setting out the standard of
5 review. The county disputes that its decision misconstrues the applicable law.

6 The motion to strike is denied. The county does not attempt to
7 demonstrate that any violation of LUBA's rules in petitioner's statement of the
8 standard of review prejudices its substantial rights. In such circumstances, a
9 motion to strike is not warranted. The far better practice is to briefly note the
10 violation in the corresponding section of the response brief and clarify any
11 disputed points raised by the violation.

12 **FACTS**

13 Intervenor owns a 16.68-acre parcel adjacent to Multnomah Channel.
14 All but two acres of the property is located within the City of Portland urban
15 growth boundary (UGB). The two acres outside the UGB carry county zoning
16 of Multiple Use Agriculture-20 (MUA-20), codified at Multnomah County
17 Code (MCC) 34.2800 *et seq.* Based on on-line county zoning maps, it appears
18 that the MUA-20 zone also applies to the submerged area of the Multnomah
19 Channel adjacent to the two-acre portion of intervenor's property that includes
20 the existing marina. Those submerged lands are owned by the State of Oregon
21 and presumably leased by the Oregon Department of State Lands to intervenor.
22 The two-acre upland portion of intervenor's property is developed with parking
23 and support facilities for intervenor's existing marina. The marina currently
24 consists of a boat moorage and three unapproved houseboats, or floating

1 dwellings.¹ Intervenor intends to convert the existing boat moorage to a
2 houseboat moorage.

3 The MUA-20 zone allows, as a conditional use, “houseboats and
4 houseboat moorages”² in certain designated areas of the Multnomah Channel,
5 including the two-acre portion of the subject property, subject to standards at
6 MC 34.6750 *et seq.* that could potentially result in relatively dense residential
7 houseboat development. In particular, MCC 34.6755 provides that the
8 “maximum density of houseboats shall not exceed one for each 50 feet of
9 waterfront.” Depending on how the 1:50 ratio in MCC 34.6755 is interpreted
10 and applied to the two-acre portion of intervenor’s property, that upland area
11 could provide facilities to serve a large number of houseboats lining the shore,
12 spaced 50 feet apart.

13 The central dispute in this appeal is whether approving a conditional use
14 application for a maximally dense houseboat moorage allowed in the MUA-20
15 zone requires an exception to Goal 14. Goal 14 generally prohibits urban uses
16 of rural land, including urban levels of residential development, absent an
17 exception to the goal. *1000 Friends of Oregon v. LCDC (Curry County)*, 301
18 Or 447, 724 P2d 268 (1986). In 2000, the Land Conservation and
19 Development Commission (LCDC) adopted an administrative rule, OAR 660-

¹ MCC 34.6750(A) describes a “houseboat” as “any floating structure designed as a dwelling for occupancy by one family and having only one cooking facility.” For purposes of this appeal, we understand a houseboat to consist of a single family residential structure built on a floating barge, which is connected or served by septic, parking and other facilities located on an adjacent upland area.

² MCC 34.6750(B) describes a “houseboat moorage” as “the provision of facilities for two or more houseboats.”

1 004-0040, that clarifies what kinds and density of residential development of
2 rural lands are consistent with Goal 14. Among the key questions in this
3 appeal are whether the relevant county comprehensive plan provisions and land
4 use regulations governing houseboat moorage development are inconsistent
5 with Goal 14 or OAR 660-004-0040 because they allow urban development of
6 rural land and, if so, whether those plan and code provisions are deemed
7 acknowledged to comply with the goal and the rule, such that the goal and rule
8 would not apply directly to a conditional use application to construct a
9 houseboat moorage on intervenor's property. *Byrd v. Stringer*, 295 Or 311,
10 316-17, 666 P2d 1332 (1983).

11 Intervenor's request to the county to answer the above questions was
12 prompted, apparently, by the 2010 adoption of Ordinance 1153, which adopted
13 an exception to Goal 14 to allow expansion of a houseboat moorage at a
14 different marina, the Rocky Pointe Marina, that is also located on land zoned
15 MUA-20. In that proceeding, county staff took the position that OAR 660-
16 0040-0040 requires an exception to Goal 14 to approve the proposed expansion
17 of the Rocky Pointe houseboat moorage.³ The landowner duly applied for a

³ That position was apparently prompted by a 2006 letter from Department of Land Conservation and Development (DLCD) staff, expressing the view that OAR 660-004-0040 and Goal 14 would prohibit approval of a houseboat moorage connected to an upland parcel on which a dwelling is placed, or approval of a dwelling on an upland parcel connected to an existing houseboat moorage. Record 319, 331. The DLCD letter also opined that connecting a houseboat moorage to septic facilities that also serve a dwelling on the upland parcel would constitute a "sewer system" prohibited on rural lands under Statewide Planning Goal 11 (Public Facilities and Services) and its implementing rule, and therefore would also require an exception to Goal 11. Record 331-32. No issue is raised in the present appeal whether a Goal 11

1 Goal 14 exception, and the county board of commissioners ultimately approved
2 the exception and associated comprehensive plan amendment. Intervenor
3 subsequently filed the present request for an interpretation, seeking a county
4 determination whether a Goal 14 exception is necessary to approve a
5 conditional use application to convert a boat marina to a houseboat moorage.⁴
6 In its application, intervenor took the position that (1) a Goal 14 exception is
7 not required because a houseboat moorage is allowed as a conditional use
8 under the county's comprehensive plan and land use code, which are
9 acknowledged to comply with Goal 14, and (2) OAR 660-004-0040 does not
10 regulate houseboat moorages. Record 378.

11 The county planning director agreed with intervenor that no Goal 14
12 exception is required because the county's plan and code provisions
13 authorizing houseboat moorages at urban densities are acknowledged to
14 comply with Goal 14 and OAR 660-004-0040. Petitioner appealed the

exception is necessary to develop intervenor's property with a houseboat
moorage.

⁴ Specifically, intervenor asked the county to answer two questions:

- "1. Is a Goal 14 exception required under OAR 660-004-0040 to redevelop an existing moorage including conversion of existing boat slips to houseboats under the acknowledged provisions of the County code, including MCC 34.6755.
- "2. Assuming a Goal 14 exception is required to redevelop a moorage, does the rural reserve rule in OAR 660-027-0070(3) or the County's implementation of the rural reserves rule in Policy 6-A(6) of the County's comprehensive framework plan prohibit applications for goals exceptions to redevelop an existing moorage?"
Record 378.

1 planning director's interpretation to the hearings officer. After conducting a
2 hearing, the hearings officer issued a decision on July 23, 2014, affirming the
3 planning director's decision that the acknowledged status of the county's plan
4 and code provisions means that no Goal 14 exception is required.
5 Additionally, the hearings officer agreed with intervenor that OAR 660-004-
6 0040 does not regulate houseboat moorages.⁵

7 This appeal followed.

8 **LEGISLATIVE BACKGROUND**

9 Petitioner challenges the hearings officer's decision in five assignments
10 of error. Common to all five assignments of error are contentions regarding the
11 complex history and acknowledged status of the county's comprehensive plan
12 and land use regulations. We here provide a brief overview of the relevant
13 county legislation in the context of the applicable goal, rule and statutory
14 requirements.

15 **A. 1980: MUA-20 Zone Adopted**

16 Historically, houseboat moorages in the Multnomah Channel pre-date
17 the statewide planning program. Goal 14 was originally adopted in 1974, and
18 last amended in 2000. The county's Comprehensive Framework Plan,
19 originally adopted in 1977, includes policies that designate certain areas as
20 suitable for houseboat moorages, including the area of the subject property.
21 The areas on the Multnomah Channel designated for houseboats and houseboat

⁵ Neither the hearings officer nor the planning director answered the second, contingent question posed by intervenor's request for interpretation: whether the rural reserves rule at OAR 660-027-0070 prohibit taking a Goal 14 exception for a houseboat moorage on the subject property. We also do not consider that question.

1 moorages have at all relevant times been zoned MUA-20, a zone that was
2 originally adopted, subject to exceptions to Statewide Planning Goals 3
3 (Agricultural Lands) and 4 (Forest Lands), and acknowledged by LCDC in
4 1980. The MUA-20 zone allows a single family dwelling on a single lot or
5 parcel as a permitted use, with a minimum 20-acre lot size for new residential
6 lots or parcels. As noted, the MUA-20 zone allows "houseboats and houseboat
7 moorages," as a conditional use.

8 **B. 1982: Waterfront Use Provisions**

9 In 1982, the county adopted "Waterfront Use" provisions, codified at
10 *former* MCC 11.15.7505 *et seq.*, that set out standards for houseboat and
11 houseboat moorages allowed as a conditional use in the MUA-20 zone. Record
12 224-25. *Former* MCC 11.15.7505 is identical, word-for-word, with the current
13 "Waterfront Use" provisions codified at MCC 34.6750 *et seq.*, including the
14 maximum 1:50 density ratio.⁶ As discussed below, the county has made no

⁶ MCC 34.6750 and 34.6755 provide:

"34.6750- HOUSEBOATS AND HOUSEBOAT MOORAGE

The location of a houseboat or the location or alteration of an existing houseboat moorage shall be subject to approval of the approval authority:

"(A) Houseboats shall mean any floating structure designed as a dwelling for occupancy by one family and having only one cooking facility.

"(B) Houseboat moorage shall mean the provision of facilities for two or more houseboats.

"(C) Location Requirements: Houseboats shall be permitted only as designated by the Comprehensive Plan.

1 textual or substantive changes to the Waterfront Use standards since 1982. For
2 convenience, we sometimes refer to MCC 11.15.7505 *et seq.* and MCC
3 34.6750 *et seq.* collectively as the “Waterfront Use provisions.”

4 **C. 1986: *Curry County***

5 As noted, in 1986 the Oregon Supreme Court’s *Curry County* decision
6 interpreted Goal 14 to prohibit counties from adopting legislation that allows

“(D) Criteria for Approval: In approving an application pursuant to this subsection, the approval authority shall find that:

“(1) The proposed development is in keeping with the overall land use pattern in the surrounding area;

“(2) The development will not adversely impact, or be adversely affected by normal fluvial processes;

“(3) All other applicable governmental regulations have, or can be satisfied; and

“(4) The proposed development will not generate the untimely extension or expansion of public facilities and services including, but not limited to, schools, roads, police, fire, water and sewer.

“34.6755 DENSITY

“The maximum density of houseboats shall not exceed one for each 50 feet of waterfront frontage. The Hearings Officer in approving a houseboat moorage may reduce the density below the maximum allowed upon finding that:

“(A) Development at the maximum density would place an undue burden on school, fire protection, water, police, road, basic utility or any other applicable service.

“(B) Development at the maximum density would endanger an ecologically fragile natural resource or scenic area.”

1 urban use of rural land, absent an exception to Goal 14. During the early
2 1990s, the county's land use legislation underwent periodic review, but the
3 Land Conservation and Development Commission (LCDC) apparently did not
4 require amendments to any county plan or code provisions governing
5 houseboat moorages at that time.

6 **D. 1997: Ordinance 887 Adopts Rural Area Plan**

7 In 1997, the county enacted Ordinance 887, which adopts the Sauvie
8 Island/Multnomah Channel Rural Area Plan (SI/MC plan) as part of the
9 county's comprehensive framework plan. The subject property is located within
10 the SI/MC plan area. The SI/MC plan includes Policy 10, which establishes a
11 policy to inventory and determine the status of existing houseboat moorages on
12 the Multnomah Channel, many of which were nonconforming uses or
13 otherwise unapproved. The SI/MC plan narrative discusses the existing MUA-
14 20 provisions for houseboat and houseboat moorages, and the Waterfront Use
15 provisions then codified at MCC 11.15.7505, including the maximum 1:50
16 density ratio. Record 117-18. However, Ordinance 887 did not adopt or
17 amend any MCC provisions. The county processed Ordinance 887 as a post-
18 acknowledgment plan amendment, pursuant to ORS 197.610 *et seq.*

19 **E. October 4, 2000: OAR 660-004-0040 is Effective**

20 In 2000, LCDC adopted an amendment to Goal 14 authorizing LCDC to
21 adopt a rule providing that Goal 14 does not prohibit "development and use of
22 one single-family dwelling on a lot or parcel" that meets certain qualifications.⁷

⁷ Goal 14 as amended in 2000 provides, in relevant part:

"Single-Family Dwellings in Exception Areas

1 OAR 660-004-0040, which became effective on October 4, 2000, is that rule.
2 As discussed below, OAR 660-004-0040 generally limits the density and
3 characteristics of residential development of certain rural lands to ensure that
4 such development is consistent with Goal 14 as interpreted by *Curry County*.

5 **F. November 30, 2000: Ordinance 953 Recodifies Zoning**
6 **Ordinance**

7 On November 30, 2000, a few weeks after OAR 660-004-0040 became
8 effective, the county enacted Ordinance 953, which re-organized and re-
9 codified the county's entire land use code, with no substantive changes. The
10 code provisions at MCC 11.15.7505 governing Waterfront Use and houseboat
11 moorages were re-codified at MCC 34.6750 *et seq.*, without any textual
12 changes. The county processed Ordinance 953 as a post-acknowledgment plan
13 amendment.

"Notwithstanding the other provisions of this goal, the commission may by rule provide that this goal does not prohibit the development and use of one single-family dwelling on a lot or parcel that:

"(a) Was lawfully created;

"(b) Lies outside any acknowledged urban growth boundary or unincorporated community boundary;

"(c) Is within an area for which an exception to Statewide Planning Goal 3 or 4 has been acknowledged; and

"(d) Is planned and zoned primarily for residential use."

1 **G. May 16, 2002: Ordinance 982 Amends MUA-20 zone to**
2 **Implement OAR 660-004-0040**

3 On May 16, 2002, the county adopted Ordinance 982, which was
4 intended to implement OAR 660-004-0040 and conform the county's code to
5 the new rule requirements that became effective October 4, 2000. Ordinance
6 982 amended language in the MUA-20 zone, and other zones, in several
7 particulars. However, Ordinance 982 made no changes to MCC 34.6750 or any
8 code provisions concerning houseboat moorages. The county processed
9 Ordinance 982 as a post-acknowledgment plan amendment.

10 **H. October 31, 2002: Ordinance 997 Repeals and Re-Adopts**
11 **Many Ordinances**

12 On October 31, 2002, the county adopted Ordinance 997, which re-
13 pealed and re-adopted, without any changes, a large number of ordinances,
14 including Ordinances 953 and 982, in order to provide publication notice that
15 was omitted when those ordinances were originally adopted.⁸ The county did
16 not process Ordinance 997 as a post-acknowledgment plan amendment.

⁸ Ordinance 997 was apparently prompted by LUBA's remand in *Ramsey v. Multnomah County*, 43 Or LUBA 25, 32 (2002), which involved an appeal of Ordinance 967. LUBA concluded in relevant part that Ordinance 967 was of "no legal effect" because it had been adopted without providing the publication notice required by ORS 215.060. On remand, the county chose to correct that defect, along with similar notice defects involving a number of other ordinances not at issue in *Ramsey*, by repealing and re-adopting those ordinances, which together comprise all or nearly all of the county's land use code.

1 **I. 2010: Ordinance 1153 Adopts Goal 14 Exception for Rocky**
2 **Pointe Houseboat Moorage**

3 Finally, as noted, in 2010, the county board of commissioners adopted
4 Ordinance 1153, which adopts exceptions to Goals 11 and 14 to allow
5 expansion of the Rocky Pointe houseboat moorage, and amends the SI/MC
6 plan map to note that exception.

7 With that overview, we now address the assignments of error.

8 **FIRST, THIRD, FOURTH AND FIFTH ASSIGNMENTS OF ERROR**

9 Petitioner argues, and no party in this appeal appears to dispute, that
10 development of intervenor's property with a houseboat moorage at the
11 maximum intensity potentially allowed under the 1:50 ratio at MCC 34.6755
12 could constitute an "urban use" of rural land for purposes of Goal 14, as
13 interpreted by *Curry County*. To the extent that premise is disputed, we agree
14 with petitioner that a houseboat moorage at that maximum density could easily
15 constitute an urban use.

16 The hearings officer did not conclude otherwise, or even address the
17 issue. Instead, the hearings officer concluded that no exception to Goal 14 is
18 required to approve a conditional use permit application to construct a
19 houseboat moorage that is connected to septic and other services on the two-
20 acre upland portion of intervenor's property zoned MUA-20, because the
21 acknowledged status of the relevant county legislation shields intervenor from
22 direct application of either Goal 14 or OAR 660-004-0040. *Compare* ORS
23 197.175(2)(c) with ORS 197.175(2)(d), *see* n 12. In addition, with respect to
24 OAR 660-004-0040, the hearings officer concluded that the administrative rule
25 simply does not include regulations governing houseboat moorages.

1 Petitioner's challenges to these two core conclusions are scattered across
2 the first, third, fourth and fifth assignments of error. We first address the first
3 assignment of error, which concerns the role of OAR 660-004-0040 in
4 answering the question posed by intervenor's application. We then address the
5 fourth and fifth assignments of error together, which address whether the
6 county's legislation regarding houseboat moorages are acknowledged to
7 comply with Goal 14. Finally, we address the third assignment of error, which
8 concerns whether the SI/MC plan is acknowledged to comply with Goal 14.

9 **A. First Assignment of Error: OAR 660-004-0040**

10 Petitioner argues that the hearings officer erred to the extent she relied
11 on OAR 660-004-0040 to conclude that a conditional use permit for a
12 houseboat moorage can be approved without an exception to Goal 14.

13 The hearings officer concluded, essentially, that OAR 660-004-0040 is
14 silent regarding houseboat moorages, and includes no provisions governing
15 them. On appeal, petitioner disputes some of the hearings officer's reasoning,
16 but does not appear to dispute the ultimate conclusion that OAR 660-0040-
17 0040 does not include provisions that govern houseboat moorages. Intervenor-
18 respondent appears to take a similar view. Intervenor-Respondent's Brief 14
19 ("No provision of OAR 660-004-0040 applies to houseboat moorages"). What
20 appears to concern petitioner under the first assignment of error is what
21 inferences can be drawn from the rule's silence regarding houseboat moorages.

22 Petitioner argues that the hearings officer misunderstood OAR 660-004-
23 0040 to constitute a complete implementation of Goal 14 with respect to
24 residential development of rural residential areas, and therefore may have
25 inferred from the rule's silence regarding houseboat moorages that Goal 14
26 itself is not violated by code provisions that allow high-density houseboat

1 moorages in rural residential areas. If so, petitioner disputes that inference, and
2 argues that the rule's silence regarding houseboat moorages means the rule
3 says nothing about whether high-density houseboat moorages in rural
4 residential areas violate Goal 14 itself. Petitioner argues:

5 "OAR 660-004-0040, which does not expressly address moorages,
6 cannot *sub silentio* serve to shield respondent from its obligations
7 to comply with Goal 14. In the first place, it does not extend an
8 exemption to Goal 14 for floating homes. * * * [U]nless a statute
9 or administrative rule authorizes otherwise, locating urban uses
10 within rural areas requires taking an exception to Goal 14."
11 Petition for Review 21.

12 We understand petitioner to argue that because nothing in OAR 660-040-0040
13 addresses houseboat moorages or whether or under what circumstances they
14 require an exception to Goal 14, the rule should not be understood to support
15 the proposition that a houseboat moorage on intervenor's property would not
16 require an exception to Goal 14 in circumstances where Goal 14 applies
17 directly to a decision approving a houseboat moorage.

18 We generally agree with petitioner on this point. OAR 660-004-0040
19 does not purport to constitute a complete implementation of Goal 14 with
20 respect to residential development of rural lands. Therefore, no inference
21 should be drawn from the rule's silence regarding types of development that
22 are not expressly addressed by the rule. Specifically, no inference should be
23 drawn that such development is either consistent with or prohibited by Goal 14
24 itself.⁹ The rule includes a number of provisions governing minimum lot sizes

⁹ For example, OAR 660-004-0040 does not mention or expressly address certain types of urban residential development such as apartments and similar multi-family dwellings. The absence of provisions addressing such types of urban residential development should not be understood to reflect LCDC's

1 and densities of specific types of residential uses, including single family
2 dwellings, and mobile and manufactured dwelling parks. However, the rule
3 does not mention houseboats or houseboat moorages, and the specific
4 prohibitions and authorizations it includes cannot readily be applied to
5 houseboat moorages. For example, OAR 660-004-0040(7)(f) prohibits local
6 governments from allowing more than one single family dwelling “to be placed
7 on a lot or parcel[.]” However, that prohibition cannot readily be applied to a
8 houseboat, which is not “placed on” a lot or parcel. Houseboats float in the
9 water over submerged lands owned by the state, and by their nature are not
10 “placed on” those submerged lands or any other lands. Further, while the
11 facilities typically necessary to serve a houseboat moorage (septic treatment or
12 storage, parking, garbage, etc.) are usually located on the adjoining upland
13 parcel, nothing cited to us in the rule addresses, and either authorizes or
14 prohibits, approval of such facilities.¹⁰

15 ORS 197.646(1) requires a local government to implement new goal or
16 rule requirements, and ORS 197.646(3) provides that unless and until a local
17 government implements any such new goal or rule requirements, the new
18 requirements apply directly to the local government’s land use decisions.¹¹ As

intent that such uses are not “urban uses” for purposes of Goal 14, or to suggest
that a county could adopt legislation to allow such uses of rural land without an
exception to Goal 14.

¹⁰ As noted, whether a Goal 11 exception would be necessary to place septic
facilities serving a houseboat moorage on the upland parcel is not an issue in
this appeal.

¹¹ ORS 197.646 provides, in relevant part:

“(1) A local government shall amend its acknowledged
comprehensive plan or acknowledged regional framework

1 noted above, the county attempted to comply with ORS 197.646(1) in 2002,
2 when it adopted Ordinance 982, amending the MUA-20 zone to comply with
3 the new requirements imposed by OAR 660-004-0040. However, because
4 OAR 660-004-0040 includes no requirements regarding houseboat moorages,
5 the county was not obligated by ORS 197.646(1) to amend its land use
6 regulations to implement “new requirements” regarding houseboat moorages.
7 For that reason, there are no “new requirements” that potentially could apply
8 directly to a county decision on a conditional use permit application for a
9 houseboat moorage, pursuant to ORS 197.646(3).

10 OAR 660-004-0040 certainly might have been written to include
11 provisions addressing the unusual nature of houseboat moorages, and clarifying
12 the circumstances and density under which houseboat moorages are permitted
13 without an exception to Goal 14. However, for whatever reason, the rule
14 includes no provisions governing them. The rule neither authorizes nor
15 prohibits houseboat moorages, and does not include any standards that could
16 meaningfully be applied to determine whether and what density of houseboat

plan and land use regulations implementing either plan by a
self-initiated post-acknowledgment process under ORS
197.610 to 197.625 to comply with a new requirement in
land use statutes, statewide land use planning goals or rules
implementing the statutes or the goals.

“* * * * *

“(3) When a local government does not adopt amendments to an
acknowledged comprehensive plan, an acknowledged
regional framework plan or land use regulations
implementing either plan, as required by subsection (1) of
this section, the new requirements apply directly to the local
government’s land use decisions. * * * ”

1 moorages can be approved without an exception to Goal 14. Because the rule
2 does not speak to houseboat moorages, we agree with petitioner that the rule
3 has no direct application in answering the question posed by intervenor's
4 request: whether intervenor's existing boat moorage can be converted to a
5 houseboat moorage without taking an exception to Goal 14. The answer to that
6 question depends not on OAR 660-004-0040, which is silent about houseboat
7 moorages, but on whether Goal 14 itself would apply directly to a conditional
8 use permit under the MCC 34.6750 Waterfront Use provisions. And the
9 answer to *that* question depends on whether the MCC Waterfront Use
10 provisions are acknowledged to comply with Goal 14. We address that
11 question below. However, for the reasons above, the arguments under the first
12 assignment of error do not provide an independent basis for reversal or remand,
13 and the first assignment of error is, accordingly, denied.

14 **B. Fourth and Fifth Assignments of Error: MCC Waterfront Use**
15 **provisions Are Acknowledged to Comply with Goal 14**

16 Under the fourth and fifth assignments of error, petitioner challenges the
17 hearings officer's conclusions that the MCC 34.6760 *et seq.* Waterfront Use
18 provisions authorizing a houseboat moorage under the maximum 1:50 ratio are
19 deemed acknowledged to comply with Goal 14. Because the Waterfront Use
20 provisions are not acknowledged to comply with Goal 14, petitioner argues, the
21 goal would apply directly to any conditional use permit to approve a houseboat
22 moorage under the Waterfront Use provisions, pursuant to OAR
23 197.175(2)(c).¹²

¹² ORS 197.175(2) provides, in relevant part:

1 The hearings officer concluded that the MCC Waterfront Use provisions
2 are acknowledged to comply with Goal 14.¹³ The hearings officer initially

“Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:

- “(a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;
- “(b) Enact land use regulations to implement their comprehensive plans;
- “(c) If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;
- “(d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and
- “(e) Make land use decisions and limited land use decisions subject to an unacknowledged amendment to a comprehensive plan or land use regulation in compliance with those land use goals applicable to the amendment.”

¹³ The hearings officer’s findings state, in relevant part:

“The MUA-20 zone and zoning ordinance applicable to lands on Sauvie Island, including MCC 34.6755, was last amended, on October 31, 2002 (Ord. 997) *after* the adoption of OAR 660-004-0040. This 2002 ordinance readopted laws that had been previously adopted by the County. These laws were readopted to cure issues about the sufficiency of the notice used by the County when the laws were adopted. Notice of this law [Ord. 997] was not sent to DLCD as required by ORS 197.610 so it did not obtain acknowledgment. ORS 197.625.

1 noted that the MCC Waterfront Use provisions were adopted on October 31,
2 2002, in Ordinance 997, which was not processed as a post-acknowledgment
3 plan amendment pursuant to ORS 197.610 *et seq.* and thus Ordinance 997 is
4 itself not deemed acknowledged pursuant to ORS 197.625(1).¹⁴

“Ordinance No. 953, however, was one of the laws readopted by Ordinance No. 997. Ordinance No. 953 was adopted after October 4, 2000, the effective date of OAR 660-004-0040. Ordinance No. 953 reorganized and codified all County land use laws. It created new chapters, including separate zoning areas for each planning area of the County, and made other amendments to those laws as indicated by Section 1 of the ordinance. Notice of adoption of Ordinance No. 953 was sent to DLCD as required and this law was acknowledged as required by ORS 197.625 as a post-acknowledgment plan amendment. This means that Ordinance No. 953 and the County’s zoning regulations for the MUA-20 zone and the Sauvie Island apply to any application to modify the moorage/marina on the part of the subject property that is located within Multnomah County. Goal 14 is not directly applicable to the review of an application for developments allowed by that ordinance. ORS 197.625(1).” Record 17 (emphasis in original).

¹⁴ ORS 197.625(1) provides:

“A local decision adopting a change to an acknowledged comprehensive plan or a land use regulation is deemed to be acknowledged when the local government has complied with the requirements of ORS 197.610 and 197.615 and either:

“(a) The 21-day appeal period set out in ORS 197.830 (9) has expired and a notice of intent to appeal has not been filed;
or

“(b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the local decision or, if an appeal of the decision of the board is timely filed, an appellate court affirms the decision.”

1 However, the hearings officer noted that Ordinance 997 simply repealed and
2 readopted a number of ordinances, including Ordinance 953, adopted in
3 November 2000, which had recodified the county's land use code, including
4 the MCC chapter 34 Waterfront Use provisions. Because Ordinance 953 had
5 initially been adopted in 2000 as a post-acknowledgment plan amendment
6 pursuant to ORS 197.610 *et seq.*, the hearings officer concluded that the MCC
7 chapter 34 Waterfront Use provisions were acknowledged to comply with Goal
8 14, and therefore pursuant to ORS 197.625(1) Goal 14 would not apply directly
9 to a conditional use permit application for a houseboat moorage under those
10 code provisions.

11 Under the fifth assignment of error, petitioner argues the houseboat
12 moorage provisions of MCC chapter 34 codified in Ordinance 953 lost
13 whatever acknowledged status they enjoyed in 2002, when Ordinance 997
14 repealed Ordinance 953 and re-adopted it, along with other ordinances, but the
15 county failed to process the re-enacting ordinance, Ordinance 997, as a post-
16 acknowledgment plan amendment. Petitioners contend that because Ordinance
17 997 was not processed as a post-acknowledgment plan amendment and is not
18 itself acknowledged, the ordinances it re-enacted, including Ordinance 953,
19 thereby lost whatever acknowledged status they once possessed.¹⁵ Therefore,

¹⁵ Specifically, petitioner argues:

“[W]hatever benefits of acknowledgment that Ordinance 953 (2000) obtained by acknowledgment when it was initially adopted, those benefits were lost when it was repealed and, because Ordinance 997 (2002) was never acknowledged, the County's regulations governing floating homes are not excused from the application of the Goals and administrative rules.” Petition for Review 37.

1 petitioner argues, the hearings officer erred in concluding that the
2 acknowledged status of the MCC chapter 34 houseboat moorage provisions
3 shields development of a houseboat moorage at the maximum density allowed
4 under MCC 34.6755 from direct application of Goal 14.

5 Relatedly, under the fourth assignment of error, petitioner argues that the
6 hearings officer erred to the extent she relied on the 2000 adoption of
7 Ordinance 953 to conclude that the MCC chapter 34 Waterfront Use provisions
8 are acknowledged to comply with Goal 14. According to petitioner, Ordinance
9 953 simply recodified the county's land use ordinances, without any changes.
10 Petitioner notes that the notice supplied to DLCD states that the effect of
11 Ordinance 953 was only to "Reorganize and renumber zoning code. No
12 changes to allowed uses or approval criteria." Record 165. Petitioner contends
13 that an ordinance that in relevant part simply reorganizes and renumbers
14 existing zoning code provisions is not a "change" for purposes of the post-
15 acknowledgment plan amendment statutes at ORS 197.610 *et seq.*, or the
16 implementing regulations at OAR 660, chapter 018.¹⁶ Petitioner argues that
17 had anyone appealed Ordinance 953 when it was adopted in 2000, they could

¹⁶ ORS 197.610 through ORS 197.625 require local governments to process a "change" to an acknowledged land use regulation pursuant to the procedures set out in those statutes. OAR 660 chapter 018 implements the statute, and in relevant part defines "change" as:

"A change' to an acknowledged comprehensive plan or land use regulation means an amendment to the plan or implementing land use regulations, including an amendment to the plan text or map. This term includes additions and deletions to the acknowledged plan or regulations, the adoption of a new plan or regulation, or the repeal of an acknowledged plan or regulation."

1 not have challenged the re-codified Waterfront Use provisions as being
2 noncompliant with Goal 14, because the text of those provisions were not
3 “changed” at all, but simply renumbered.

4 **1. Waiver**

5 The county and intervenor respond, initially, that no party raised below
6 any argument that the county’s ordinances adopting the MCC chapter 34
7 houseboat provisions *lost* their acknowledged status in 2002 when they were
8 repealed and re-enacted, and therefore that issue is waived pursuant to ORS
9 197.763(1).¹⁷ The county notes that the alarming implication of petitioner’s
10 argument is that the county’s entire land use code, not limited to Ordinance
11 953, is no longer acknowledged to comply with the statewide planning goals,
12 and hence the goals apply directly to every land use decision the county makes.
13 The county argues that if petitioner had clearly raised below the argument
14 made in the fourth and fifth assignments of error, the hearings officer and
15 county staff would have addressed that issue.

16 Petitioner replies that the “raise it or waive it” principle at ORS
17 197.763(1) does not apply, because the hearings officer’s decision is legislative
18 rather than quasi-judicial in nature. According to petitioner, the hearings
19 officer’s decision is legislative because it is not limited to resolving a concrete

¹⁷ ORS 197.763(1) provides:

“An issue which may be the basis for an appeal to [LUBA] shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.”

1 dispute under existing laws, but rather adopts a new policy that will apply
2 broadly to all similarly situated marina owners. *See generally Strawberry Hill*
3 *4 Wheelers v. Benton Co. Bd. Of Comm.*, 287 Or 591, 601 P2d 769 (1979)
4 (factors considered to determine whether a land use decision is quasi-judicial
5 rather than legislative include whether the application is (1) bound to result in a
6 decision, (2) is subject to preexisting criteria, and (3) concerns closely
7 circumscribed factual situation or a relatively small number of persons).

8 We disagree with petitioner that the hearings officer's decision is
9 legislative in character. First, it seems highly doubtful that any hearings
10 officer's decision can be viewed as "legislative"; since as a general proposition
11 only a governing body has the authority and ability to adopt laws or otherwise
12 to make a legislative decision. Second, while the hearings officer's decision on
13 intervenor's request for an interpretation concerning potential development of
14 its property may have implications for other marina owners who are similarly
15 situated as intervenor, consideration of the three *Strawberry Hill* factors point
16 preponderantly toward a quasi-judicial decision in this case. Because the
17 hearings officer's decision was quasi-judicial, ORS 197.763(1) applies.

18 In the alternative, petitioner argues that if ORS 197.763(1) applies and
19 the issue was not adequately raised below, LUBA nonetheless has an
20 obligation to correctly interpret the county's ordinances and resolve petitioner's
21 argument that the houseboat moorage provisions adopted by Ordinance 953
22 lost their acknowledged status when Ordinance 953 was repealed and re-
23 enacted by Ordinance 997, an ordinance that itself is not acknowledged.

24 While LUBA certainly has an obligation to correctly construe the
25 applicable law in resolving issues properly before us, the scope of issues that
26 are properly before LUBA is restricted by ORS 197.763(1). We disagree with

1 petitioner that LUBA has the authority to resolve an issue that ORS 197.763(1)
2 squarely places outside our scope of review.

3 Finally, petitioner argues that the issue raised under the fourth and fifth
4 assignments of error was sufficiently raised during the proceedings below, at
5 Record 48. Although it is a close question, we conclude that as the arguments
6 were framed below, no issue was raised below that Ordinance 997 caused
7 Ordinance 953 to lose its acknowledged status.

8 Petitioner argued initially to the planning director that the county's
9 houseboat moorage provisions had *never* become acknowledged to comply
10 with Goal 14. With respect Ordinance 997, petitioner's view was that
11 Ordinance 997 "simply repealed and readopted various actions to cure notice
12 problems" and did not have the effect of *acknowledging* MCC 34.6755 or the
13 county's houseboat moorage regulations. Record 207. At Record 48,
14 petitioner disputes a finding in the initial planning director's decision that
15 Ordinance 997 was acknowledged, again in apparent service to petitioner's
16 argument that Ordinance 997 did not have the effect of acknowledging the
17 county's houseboat moorage regulations. In other words, the position petitioner
18 presented below was that Ordinance 997 made no change with respect to the
19 acknowledged status of the county's houseboat moorage regulations. On
20 appeal to LUBA, however, petitioner advances the diametrically opposed
21 position: that Ordinance 997 in fact changed the acknowledged status of the
22 county's houseboat moorage regulations, by causing those regulations to *lose*
23 their acknowledged status. Had petitioner raised that issue below with the
24 specificity required by ORS 197.763(1), the hearings officer and the county
25 staff could have responded, and mostly likely would have, because the

1 necessary implication of that position, if accurate, is that *none* of the county's
2 land use regulations are acknowledged.

3 In our view, a reasonable person would not have recognized from
4 petitioner's arguments below—essentially that Ordinance 997 was a non-event
5 with respect to the acknowledgment status of Ordinance 953 and other
6 ordinances adopting the county's houseboat moorage provisions—that
7 petitioner was in fact arguing that Ordinance 997 eliminated the acknowledged
8 status of land use regulations. The issue raised in the fifth assignment of error
9 is therefore waived.

10 **2. Ordinance 997 did not “de-acknowledge” Ordinance 953**

11 Because the waiver issue is a close call, and the merits of the fifth
12 assignment of error are closely related, analytically, to the merits of the fourth
13 assignment of error, we will nonetheless address and resolve the merits of the
14 fifth assignment of error. For the following reasons, we disagree with
15 petitioner that in repealing and re-adopting Ordinance 953, Ordinance 997 had
16 the effect of “de-acknowledging” Ordinance 953.

17 Intervenor argues, and we agree, that because Ordinance 997 simply
18 repealed and re-adopted 34 ordinances, without any changes at all, in order to
19 correct publication notice defects in the 34 original ordinances, Ordinance 997
20 did not accomplish a “change” or amendment to the county's acknowledged
21 land use regulations that would *require* that Ordinance 997 be processed as a
22 post-acknowledgment plan amendment under ORS 197.610 *et seq.*¹⁸ Although

¹⁸ That said, the safer practice is for the local government to process the repeal and re-adoption as a post-acknowledgment plan amendment, even if not required to. Proceeding in that manner would increase certainty over the

1 OAR 660-018-0010(1)(a) defines “change” to include “repeal of an
2 acknowledged plan or regulation,” we believe that language is concerned with
3 a repeal that results in an actual alteration in the local government’s
4 implementation of the applicable goals and administrative rules, for example by
5 deleting a code provision that the local government had formerly relied upon to
6 implement a goal or rule. Where the local government repeals a regulation, but
7 in the same decision re-adopts that same regulation without any change, the
8 repeal does not alter the local government’s implementation of the applicable
9 goals and rules. If the re-adopted but unchanged regulation was acknowledged
10 prior to its repeal and re-adoption, the repeal and re-adoption does not change
11 the acknowledged status of the regulation. As intervenor accurately
12 characterizes it, the adoption of Ordinance 997 was a “non-event” as concerns
13 the acknowledged status of the re-adopted ordinances, at least with respect to
14 whether the statewide planning goals apply directly to subsequent land use
15 decisions made under those re-adopted ordinances.¹⁹

16 Accordingly, the fifth assignment of error is denied.

acknowledged status of the re-adopted ordinances, and reduce potential for disputes such as the present one.

¹⁹ Arguably, a person who did not receive publication notice of one of the ordinances when it was originally adopted, but received that publication notice on its re-adoption, could have timely appealed the re-adopted ordinance and advance whatever legal challenges that person could have made to the original ordinance had the county provided the statutorily required publication notice. However, that is a different question than the one presented in this appeal: whether re-adoption of the ordinance without following the procedures set out in ORS 197.610 *et seq.* “de-acknowledges” the ordinance, such that the statewide planning goals then apply directly to land use decisions made pursuant to the re-adopted ordinance, pursuant to ORS 197.646(3).

1 3. **The MCC chapter 34 Waterfront Use provisions are**
2 **acknowledged to comply with Goal 14**

3 As noted, in the fourth assignment of error petitioner challenges the
4 hearings officer's conclusion that because the MCC chapter 34 Waterfront Use
5 provisions were re-codified in Ordinance 953 (2000), which was processed as a
6 post-acknowledgment plan amendment, those provisions are therefore
7 acknowledged to comply with Goal 14. Petitioner argues that an ordinance that
8 in relevant part simply recodifies and renumbers an existing code provision
9 does not result in the acknowledgment of that code provision, even if the re-
10 codifying ordinance is processed as a post-acknowledgment plan amendment.
11 To borrow a phrase from intervenor, petitioner might argue that Ordinance 953
12 was a "non-event" with respect to the acknowledged status of the Waterfront
13 Use provisions, and that adoption of Ordinance 953 therefore did not have the
14 effect of acknowledging those provisions.

15 In the abstract, petitioner may be correct that an ordinance that merely
16 re-codifies or re-numbers an existing acknowledged code provision, without
17 making any changes in that code provision, does not result in a new
18 acknowledgment of the code provision, even if the re-codifying ordinance is
19 processed as a post-acknowledgment plan amendment. *See* OAR 660-018-
20 0085(1) ("an adopted *change* to a comprehensive plan or land use regulation is
21 deemed to be acknowledged" when the local government has complied with
22 statutory and rule requirements, among other requirements). Where the
23 ordinance merely recodifies or renumbers an existing acknowledged code
24 provision, there may be no "change" to be acknowledged. However, the
25 problem with that argument is that it simply pushes the relevant
26 acknowledgment event further back in time. The MCC chapter 34 Waterfront

1 Use provisions were originally adopted by ordinance in 1982, and have
2 remained unchanged since that date, other than the re-numbering from MCC
3 chapter 11 to MCC chapter 34 that was accomplished by Ordinance 953. There
4 is no dispute that that 1982 ordinance was processed as a post-acknowledgment
5 plan amendment and was acknowledged to comply with Goal 14 when it was
6 adopted in 1982.

7 It is true that the adoption of the 1982 ordinance pre-dated the Supreme
8 Court's *Curry County* decision in 1986, which was the first time an Oregon
9 appellate court interpreted Goal 14 to prohibit establishment of urban uses on
10 rural land. However, that interpretation did not change the fact that Goal 14,
11 like all other statewide planning goals, is not directly applicable to land use
12 decisions made under acknowledged land use regulations. ORS 197.175(2)(d);
13 *see n 12*. *Curry County* did not obligate local governments to apply Goal 14
14 directly to their land use decisions made under acknowledged land use
15 regulations. While any *amendments* to the Waterfront Use provisions must be
16 shown to be consistent with Goal 14, as noted, the text of the Waterfront Use
17 provisions has remained unchanged since 1982. Thus, even if petitioner is
18 correct that Ordinance 953 itself did not have the effect of acknowledging the
19 Waterfront Use provisions, that argument does not mean that the Waterfront
20 Use provisions are unacknowledged, and does not mean that Goal 14 would
21 directly apply to a land use decision made under those provisions, pursuant to
22 ORS 197.175(2)(e). *See n 12*. Petitioner's challenges to the hearings officer's
23 conclusions regarding Ordinance 953 do not provide a basis for reversal or
24 remand.

25 Given that disposition, we need not address petitioner's challenges to
26 other findings that rely in part on Ordinances 887 and 982 to conclude that the

1 Waterfront Use provisions are deemed acknowledged to comply with Goal
2 14.²⁰

3 The fourth assignment of error is denied.

4 **C. Third Assignment of Error: OAR 660-004-0040(3)(b)**

5 Under the third assignment of error, petitioner challenges some of the
6 hearings officer's findings regarding Ordinance 887, which adopted the SI/MC
7 in 1997. We understand petitioner to argue that because the SI/MC was
8 amended in 2010 pursuant to Ordinance 1153—which adopted the Rocky
9 Pointe Goal 14 exception to allow expansion of a houseboat moorage—the
10 1997 acknowledgment of Ordinance 887 no longer shields conditional use
11 applications for houseboat moorages from direct application of Goal 14.

12 That argument is apparently based on the last sentence of OAR 660-004-
13 0040(3)(b), which provides a “safe harbor” for rural residential areas that have
14 been reviewed for compliance with Goal 14 and acknowledged to comply with
15 that goal in a post-acknowledgment plan amendment proceeding that occurred
16 after *Curry County* and before October 4, 2000.²¹ The acknowledged

²⁰ We note however that Ordinances 887 and 982 did not adopt or amend the Waterfront Use provisions. It is not clear how ordinances that did not adopt or amend the Waterfront Use provisions could result in the acknowledgment of those code provisions.

²¹ OAR 660-004-0040(3)(b) provides:

“Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court’s 1986 ruling in *1000 Friends of Oregon v. LCDC*, 301 Or 447 (*Curry County*), and before October 4, 2000. Nothing in this rule shall be construed to

1 regulations governing such areas need not be amended (as otherwise required
2 by ORS 197.646(1)) to comply with the provisions of OAR 660-004-0040. *See*
3 n 11. However, the last sentence of OAR 660-004-0040(3)(b) specifies that “if
4 such a local government later amends its plan’s provisions or land use
5 regulations that apply to any rural residential area, it shall do so in accordance
6 with this rule.” Thus, OAR 660-004-0040(3)(b) provides certain acknowledged
7 regulations a limited “safe harbor” from the otherwise immediate obligation
8 under ORS 197.646(1) and (3) to implement the rule’s requirements or apply
9 those requirements directly. When those regulations are amended, however,
10 the “safe harbor” disappears, and the local government is then obligated to
11 amend the regulations in accordance with the rule. We understand petitioner to
12 argue that when the county amended the SI/MC to adopt a Goal 14 exception
13 for the Rocky Pointe houseboat moorage, any “safe harbor” provided by the
14 1997 acknowledgment of Ordinance 887 disappeared, and the county was
15 thereafter obligated to adopt amendments consistent with the rule’s
16 requirements, or apply those requirements directly to land use decisions.

17 Assuming we have characterized petitioner’s argument correctly, there
18 are several problems with it. First, respondents argue that no issue was raised
19 below that Ordinance 1153 amended Ordinance 887 or the SI/MC, or that the
20 legal effect of any such amendment was to make the rule or Goal 14 directly

require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule.”

1 applicable to land use decisions, and thus that issue is waived. ORS
2 197.763(1). Petitioner has not specifically responded to that waiver challenge,
3 and as far as we can tell respondents are correct that no argument was raised
4 below, at least with the specificity required by ORS 197.763(1), that adoption
5 of Ordinance 1153 amended the SI/MC, with the consequence that Goal 14
6 would apply directly to county approval of houseboat moorages.

7 Second, OAR 660-004-0040(3)(b) expressly provides a limited safe
8 harbor only from the *rule's* requirements. If after October 4, 2000 the local
9 government amends the plan or regulations governing a rural residential area,
10 that safe harbor disappears, and the local government is obligated to conform
11 the amendments to the rule's requirements. Presumably, if the local
12 government fails to do so, the rule's requirements would apply directly,
13 pursuant to ORS 197.646(3). However, we concluded under the first
14 assignment of error that OAR 660-004-0040 does not include any requirements
15 with respect to houseboat moorages. Therefore, the 2010 amendment to the
16 SI/MC did not have the effect of triggering an obligation on the county to
17 amend its houseboat moorage regulations to conform to the rule's
18 requirements, because the rule has no such requirements.

19 OAR 660-004-0040(3)(b) does not purport to provide a safe harbor from
20 Goal 14 requirements that are not embodied in the rule, and the last sentence of
21 OAR 660-004-0040(3)(b) does not obligate the county to implement Goal 14
22 requirements not found in the rule, or suggest that failure to implement such
23 Goal 14 requirements in amending its plan or regulations means that those Goal
24 14 requirements thereafter apply directly to any land use permit the county

1 subsequently issues under its acknowledged plan and land use regulations.²²
2 Petitioner fails to explain how the 2010 amendment to the SI/MC accomplished
3 by Ordinance 1153 had the effect of making Goal 14 itself directly applicable
4 to subsequent county decisions approving a conditional use permit for a
5 houseboat moorage. As respondents note, Ordinance 1153 amended only the
6 SI/MC plan map to indicate that the Rocky Pointe property is subject to a Goal
7 14 exception. There is no dispute that Ordinance 1153 is acknowledged to
8 comply with Goal 14. Petitioner has not provided any legal theory we can
9 understand to the effect that Ordinance 1153 “de-acknowledged” any part of
10 the SI/MC plan, triggered the obligation to amend other portions of the SI/MC
11 plan, or otherwise caused Goal 14 to become directly applicable to county land
12 use permits approving houseboat moorages under the acknowledged plan and
13 land use regulations.

14 The third assignment of error is denied.

15 **D. Conclusion**

16 For the foregoing reasons, petitioner has not demonstrated that the MCC
17 Waterfront Use provisions at MCC 34.7505 and related SI/MC plan provisions
18 are not acknowledged to comply with Goal 14, or that either OAR 660-004-
19 0040 or Goal 14 must be applied directly to a conditional use permit
20 application to site or expand a houseboat moorage under those acknowledged
21 provisions.

22 The first, third, fourth and fifth assignments of error are denied.

²² We understand that the county is currently engaged in a legislative process to update and amend the SI/MC. Future amendments to the SI/MC must, of course, be consistent with Goal 14 as well as OAR 660-004-0040.

1 **SECOND ASSIGNMENT OF ERROR**

2 Petitioner contends that the hearings officer misconstrued the applicable
3 law in concluding that a houseboat moorage at the maximum 1:50 density ratio
4 allowed under MCC 34.6755 is consistent with the county's comprehensive
5 plan policies.

6 The county's conditional use permit standards, at MCC 34.6315(A)(7),
7 require a finding that the proposed use will "satisfy the applicable policies of
8 the Comprehensive Plan." The county's Comprehensive Framework Plan
9 (CFP) includes the SI/MC, and the two documents include several policies
10 concerning houseboat moorages. CFP Policy 26 states in relevant part that it is
11 the county's policy to locate houseboats in accordance with "[a]ny other
12 applicable federal, state or local policies that regulate waterway area
13 development." Policy 26 also sets out criteria for "locating or expanding a
14 houseboat moorage." Policy 26 Strategy B(1) states that the zoning ordinance
15 should be amended to "[a]llow for the location and expansion of houseboat
16 moorages within designated areas."

17 SI/MC Policy 10 establishes a procedure for determining the status of
18 existing houseboat moorages in designated areas, and provides in relevant part
19 that if permitted moorages seek modification or alteration of the use, they must
20 meet all applicable zoning codes in effect at the time.

21 Petitioner argues that under Policies 10 and 26 any location or expansion
22 of an existing moorage is subject to compliance with all state policies that
23 regulate waterway area development, which petitioner argues would include
24 Goal 14. Petitioner repeats some of her arguments, rejected elsewhere, that
25 Goal 14 is directly applicable because the county's Waterfront Use provisions
26 are not acknowledged to comply with Goal 14.

1 Respondents argue that no argument was made below that approval of a
2 houseboat moorage would conflict with Policies 10 or 26, or that those policies
3 effectively subject houseboat moorages to direct application of Goal 14.
4 Petitioner has not directly responded to the waiver challenge. In the petition
5 for review, petitioner cites to Record 209-210 to demonstrate that the issue
6 presented in the third assignment of error was preserved. However, Record
7 209-210 includes no arguments that raise the issue presented in this assignment
8 of error. Therefore that issue is waived.

9 The third assignment of error is denied.

10 The county's decision is affirmed.



Oregon

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May 7, 2015

TO: Land Conservation and Development Commission
FROM: Jim Rue, Director
SUBJECT: Agenda Item 12 May 20-21, 2015, LCDC Meeting

DIRECTOR'S REPORT

I. INFORMATION UPDATES

A. PARTICIPATION IN APPEALS, AND RECENT LUBA AND APPELLATE COURT OPINIONS

ORS 197.090(2) requires the director of the Department of Land Conservation and Development (DLCD and/or department) to report to the Land Conservation and Development Commission (LCDC and/or commission) on each appellate case in which the department participates, and on the position taken in each such case.

ORS 197.040(c)(C) requires LCDC to review recent Land Use Board of Appeals (LUBA) and appellate court decisions to determine whether goal or rule amendments are needed.

1. Department Participation in Appeals

Between February 25, 2015 and April 6, 2015, the department received six copies of notices of appeal filed with LUBA. The department filed none of these notices, and was not named as a party in any of these notices.

2. LUBA Opinions

Between February 3, 2015 and March 17, 2015, the department received copies of 15 recently issued LUBA opinions. Of these, LUBA dismissed seven, remanded two, and affirmed six.

Three decisions concern the application or interpretation of a statewide planning goal or LCDC administrative rule:

Goal 14, OAR 660-004-0040, Application of Goal 14 to Houseboat Moorages; Squier v. Multnomah County, LUBA 2014-074, issued February 4, 2015. LUBA affirmed a Multnomah County hearings officer's decision interpreting the county's code in relation to Goal 14,

“Urbanization,” and OAR 660-004-0040 (the “rural residential rule”) regarding houseboat moorages along Multnomah Channel. The petitioner challenged the hearings officer’s decision that OAR 660-004-0040 does not regulate houseboat moorages, and the decision that a Goal 14 exception is not required. The hearings officer found an exception is not required because a houseboat moorage is allowed as a conditional use under the county’s comprehensive plan and code, which are acknowledged to comply with Goal 14.

LUBA first determined that Multnomah County was correct in determining that OAR 660-004-0040, which interprets Goal 14 provisions regarding rural residential development in light of the 1986 Oregon Supreme Court *Curry County* decision, does not apply to houseboat moorages, in part because the rule does not specifically mention them, and in part because the rule does not include any standards that could meaningfully be applied to determine whether and what density of houseboat moorages can be approved without an exception to Goal 14.

LUBA next determined that the county’s existing code provisions regulating houseboat moorages are acknowledged. LUBA’s determination was based upon a review of the history of the county’s houseboat moorage regulations, which were originally approved in 1982, modified in 1997 by adoption of the Sauvie Island-Multnomah Channel Rural Area Plan, and reapproved without change through county code recodifications in 2000 and 2002. Since the county’s code provisions are acknowledged, ORS 197.646(3), which requires direct application of statewide planning goals to local government decisions when a county’s provisions become unacknowledged by new goal and rule requirements adopted by LCDC, does not apply. LUBA also determined that the county’s decision to process a Goal 14 exception for expansion of a houseboat marina in 2010 did not have the effect of “de-acknowledging” the county’s houseboat moorage provisions.

Goal 3, ORS 197.770, OAR 660-033-0130(2)(c), OAR 660-033-0120 Table 1, Firearms training facilities on agricultural land; *H.T. Rea Farming Corp. v. Umatilla County*, LUBA 2014-077, issued February 19, 2015. LUBA remanded a decision by Umatilla County approving expansion of an existing shooting range near the city of Milton-Freewater in an exclusive farm use zone. The petitioner asserted that OAR 660-033-0130(2)(c), in conjunction with OAR 660-033-0120 Table 1, exceeded LCDC’s authority to allow expansion of existing firearms training facilities on agricultural land. The only statutory authority for such facilities is found in ORS 197.770, which allows only for continuation of operations for a firearms training facility that existed in 1995, and does not allow for expansion of such operations. LUBA did not reach an opinion on this assertion because it remanded the decision for reasons related to the county’s local code, but in a concurring opinion Board Member Ryan opined that LCDC’s rule allowing expansion of existing firearms training facilities on agricultural land exceeded any statutory authority found in ORS 197.770, because it authorized uses (expansion of a firearms training facility) not authorized by the statute.

Goal 3, ORS 215.306, Onsite filming on agricultural land; *Smalley v. Benton County*, LUBA 2014-110, issued March 17, 2015. LUBA affirmed a Benton County decision determining that the petitioner's event facility did not qualify as "on-site filming and events accessory to on-site filming" allowed conditionally on agricultural lands pursuant to ORS 215.306(3)(a). LUBA agreed with the county's determination that, because the statute allowed "on-site filming and activities accessory to on-site filming, that "on-site filming" itself must be the primary use. Since the filming that occurred on the petitioners' property was incidental to the primary events such as weddings, it did not qualify under the statute. LUBA also reviewed the 1995 legislative history regarding the adoption of ORS 215.306 and found no evidence that the legislature intended to classify events that happened to be filmed for personal use as "on-site filming" authorized by the statute.

LUBA's decision in *H.T. Rea Farming Corp. v. Umatilla County*, particularly the concurring opinion from Board Member Ryan, raises a question as to whether OAR 660-033-0120 and 0130, in authorizing some expansion of existing firearms training facilities on agricultural land, exceed the scope of legislative authority granted by ORS 197.770. However, LUBA remanded the county's decision on other grounds, so the Commission does not need to authorize corrective rulemaking at this time.

3. Appellate Court Opinions

Between February 4, 2015 and April 1, 2015, the Oregon Court of Appeals issued five decisions reviewing LUBA decisions. The Court of Appeals affirmed three decisions, one without opinion, and reversed two opinions. Two of these decisions are of note:

Lake Oswego Preservation Society v. City of Lake Oswego, 268 Or App 811 (2015). The Court of Appeals reversed a LUBA decision reversing a City of Lake Oswego decision to remove a historic designation from property (applied pursuant to Goal 5, "Natural Resources, Scenic and Historic Areas, and Open Spaces") within the city pursuant to an interpretation of ORS 197.772(3). LUBA had determined, after review of the 1995 legislative history regarding passage of ORS 197.772, that the legislature had not intended to allow a successor property owner, who did not own the property at the time it was initially designated as historic, to compel the city to remove the designation. In its review of the same legislative history, the Court of Appeals differed with LUBA's interpretation, and determined that the legislature had intended to allow successor property owners to compel removal of an unwanted historic designation. This case has been appealed to the Oregon Supreme Court, which has accepted review.

Ooten v. Clackamas County, 270 Or App. 214 (2015). The Court of Appeals affirmed a LUBA decision remanding Clackamas County's approval of an application for a comprehensive plan amendment and zone change from Rural Residential to Rural Industrial. In approving the plan amendment and zone change the county had determined that, since the property had received an exception to Goal 3, "Agricultural Land," and Goal 4, "Forest Land," in 1980 when it was designated as rural residential, no new goal exception was necessary to redesignate and rezone the property to rural industrial. The Court of Appeals affirmed LUBA's opinion that the county was required to make findings under OAR 660-004-0018 as to whether the plan change and

rezone required new exceptions to Goals 3 and 4, because the plain terms of OAR 660-004-0018 state that exceptions to goals operate to authorize only uses, services, activities, densities and facilities that are “recognized or justified by the applicable exception,” and do not categorically exempt the property covered by the exception from the application of statewide planning goals under a subsequent plan amendment and rezone. The Court of Appeals also affirmed LUBA’s conclusion that the county must demonstrate that all requirements of OAR 660-004-0018(2) are satisfied in order to avoid the need to take a reasons exception to Goals 3 and 4.

4. Other Opinions of Interest

None.

5. Appeal Notices of Interest

Surface Mining in Deschutes County: *Walker v. Deschutes County*, LUBA 215-012, filed February 25, 2015. Appeal of a decision by Deschutes County rezoning 365 acres from Exclusive Farm Use to Surface Mining.

6. Measure 37/49

None.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS, AND CONTRACTS

See “General Fund Grants Program” in subsection II.E, Community Services.

II. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. OREGON COASTAL MANAGEMENT PROGRAM (OCMP)

Most of the OCMP staff participated in Coastal Planner Network meetings on the south and north coast in April. The agenda covered a number of issues including federal consistency, the new ocean shores data viewer and updates on recently completed coastal resiliency projects.

Marine Issues: The Ocean Policy Advisory Council (OPAC) is scheduled to hold a meeting on May 8th in Bandon. Aside from electing new officers and getting updates on activities and programs, OPAC will discuss the National Oceanic and Atmospheric Administration (NOAA) Marine Sanctuary Program. That federal program will be the subject of a special forum held in Bandon the day prior to the OPAC meeting. Experts and officials from NOAA and existing sanctuaries in other states will attend to address the forum. The forum was prompted by the possibility that a local group was preparing to submit a proposal to NOAA that would begin the process to create a marine sanctuary near Cape Blanco. That group has since announced they will not be submitting a request to NOAA, and there are currently no other groups developing a proposal for a marine sanctuary in Oregon. The Oregon Department of Fish and Wildlife will provide an update on the state’s Marine Reserve System implementation to OPAC.

The Northwest National Marine Renewable Energy Center (NNMREC) Pacific Marine Renewable Energy Center (PMEC) Collaborative Workgroup held its quarterly meeting on April 23rd in Portland. The workgroup reviewed and discussed the draft Environmental Assessment that will be used by the Federal Energy Regulatory Commission (FERC) in the licensing application, and by the Bureau of Ocean Energy Management (BOEM) for lease processes for the South Energy Test Site off of Newport. PMEC has selected a route for the cable to shore which will extend the cable to south of Seal Rock near Driftwood State Park, and possibly shift the location of the facility within the BOEM lease block. The primary focus has been on the extension of the regulatory timeline and the completion of the best management practices, monitoring plans and adaptive management framework that will be included in the FERC license agreement.

The Principle Power Windfloat Project BOEM lease application process, for five wind turbine platforms in federal waters 17 miles off Coos Bay, is progressing but behind schedule. Principle Power has formed a partnership agreement with Deepwater Wind of Providence, RI, to build the turbines platforms. Deepwater is an offshore wind and transmission developer, actively developing projects off both the East and West Coasts. The companies are currently attempting to reach a power purchase agreement with regional power companies. This is one of the benchmark requirements that the company must achieve in order to continue to receive the \$47 million grant from the U.S. Department of Energy. The deadline for obtaining the purchase agreement is approaching and no agreement is near as of this time.

The Governor's Office convened a work group of marine scientists and state agency managers on the potential impacts of ocean acidification on Oregon resources. The meeting, on April 30th, drew upon the findings of the West Coast Ocean Acidification and Hypoxia Science Panel. The Governor's Natural Resources Office, Oregon Department of Fish and Wildlife and the Institute for Natural Resources conducted the meeting, which was described as "An Oregon Update and Next Steps: Moving forward the Efforts of the West Coast Ocean Acidification and Hypoxia Science Panel".

Coastal Hazards and Climate Change: As the department reported in the prior director's report, Tillamook County Board of Commissioners unanimously adopted the Neskowin Coastal Hazards Adaptation Plan and associated land use amendments. The amendments were appealed to LUBA, and DLCD intervened in the case. LUBA upheld most of the county's decision but remanded a housing issue to the county for additional findings. The department continues to believe that the amendments will be an important model to assist other coastal communities address increasing coastal erosion.

OCMP staff is finishing work with a NOAA coastal fellow who is studying an array of issues associated with beachfront protection and the related Goal 18 beachfront protective structure eligibility inventory. This information should assist in future policy discussions with applicable agencies and local governments. The NOAA coastal fellow and Coastal Shores Specialist have continued to work with coastal local governments to use and adopt the new Goal 18 beachfront protective structure inventories which provide benefits including simplified eligibility

determinations, greater consistency, and enhanced public awareness. Our current two-year NOAA Coastal Fellow is completing her fellowship and will be presenting her fellowship results in Agenda Item 8, "Shoreline Armoring Analysis."

OCMP staff continues to provide tsunami land use assistance and otherwise participate and support hazard planning efforts in a number of communities. With funds from the OCMP, Clatsop County has started work to address tsunami hazards in their plan. The OCMP just released an updated chapter to the tsunami land use guidance document which includes detailed guidance related to tsunami evacuation facilities improvement planning. This added tool should further the productivity of the overall tsunami land use guide by providing significant assistance to local governments as they develop important financial and development code evacuation financing strategies and options. It should also facilitate more productive OCMP staff assistance to local communities in the future.

OCMP staff has completed work with project co-leads Oregon Sea Grant and the Oregon Partnership for Disaster Resilience and other project partners in south Clatsop County under the NOAA-funded "Coastal Community Resilience Networks Pilot Project" to finalize guidance for resilience planning at the community level.

In a complementary project that involves a broader area, the OCMP and project partner Oregon Sea Grant completed work on a project to 'align' agency climate adaptation priorities in Clatsop and Tillamook Counties. The project is designed to bring all agencies and parties involved in climate change adaptation planning together to collaboratively identify priority climate risks and measures to address those risks. The results of the project will be presented under agenda item 7, "Regional Framework for Climate Adaptation for Clatsop and Tillamook Counties."

Estuary Updates: The OCMP received notice that funding has been allocated under the NOAA Section 309 Project of Special Merit competition to continue the working on Phase II of the Estuary Habitat Atlas project. This project seeks to extend the methods developed during the previous project of special merit work to incorporate additional high-value estuarine data sets that are not coast-wide. Our new work will result in a second generation Oregon Estuaries Coastal and Marine Ecological Classification System product that utilizes the best available modern data for all estuaries encompassed by the previous project of special merit, and at a spatial scale that is highly relevant for effective resource management practices. Funding for this project is expected to start in October of 2015.

Also of note, the OCMP was selected to match for a NOAA Coastal Fellow for 2015-2017. The project the fellow will work is titled "Shorelands at Risk: Building an Inventory of Vulnerable Estuarine Resources." We will report on the results of the matching workshop in the next Director's Report.

Federal Consistency

Routine Program Changes

Through the Routine Program Change (RPC) process discussed in previous reports, the division is continuing to make progress identifying specific “enforceable policies” within the local comprehensive plans and networked state statutes that comprise the OCMP.

Routine program changes in progress:

- City of Tillamook City
- City of Brookings
- City of Bandon

Since last reporting, the following routine program changes have been submitted to NOAA for review:

- City of Newport
- City of Toledo
- City of Lincoln City

Since last reporting, the following routine program change components were approved:

- Comprehensive Statutory Update (November 2014)
- City of Astoria (August 2014)
- City of Warrenton (August 2014)

The plan for moving forward includes contracting out several local jurisdiction RPCs to a consultant. This will allow DLCD to focus its efforts on other important RPC components, including the completion of statutory RPCs, completion of the required necessary data and information lists, and the list of federal license and permits that are subject to consistency review.

Major Consistency Reviews

The department received a consistency certification and associated materials from the Jordan Cove Energy Project and Pacific Connector Gas Pipeline on August 1, 2014. Staff began reviewing the proposed project for consistency with the Oregon Coastal Management Program, and issued a joint public notice with the U.S. Army Corps of Engineers and the Oregon Department of Environmental Quality (DEQ) in fall 2014. The notice was extended into April to coincide with DEQ’s public notice extension. The review will take longer than the federally-mandated six-month review period, and DLCD signed a stay agreement with the applicants in early 2015. The consistency decision is due July 30, 2015.

Oregon LNG (OLNG) consistency review began on July 3, 2013. Six stay agreements have been signed. The last stay agreement was signed on April 15th, expiring on July 12th. Without another stay agreement, the decision on OLNG will be due July 26th.

Database

The division is updating the federal consistency database. The update will result in a streamlined tracking and review process for routine federal actions, which will minimize duplication and increase staff efficiency. The update is part of the department's Information Management Modernization Initiative. The Federal Consistency Database is now live. The division is working on inputting a backlog of permits that were left between the last and current coordinators. While the database is live and usable, inputting the backlog of permits has brought some quirks of the database to light. The coordinator is working with technical staff to address these quirks to make the database more efficient for the department. Currently, the database allows users to track which permits are currently in review and to actively search for permits based on specific search criteria. Further, the database allows permit records to be linked to permit documents within the network.

B. DIRECTOR'S OFFICE

An oral update will be provided.

C. ADMINISTRATIVE SERVICES

Fiscal (Budget, Accounting, and Procurement): The fiscal team continues to work with the director's office and division managers on a monthly basis to ensure accuracy in financial reporting, and timely expenditure projections for 2013-15 while also developing the 2015-17 budget. The department continues to work with the Water Resources Department in providing procurement services.

The accounting team has begun efforts in biennium year-end statewide financial reporting and will continue working to meet state deadlines.

Information Technology: The network administrator continues to provide all IT services for the department and is continuing to work with department management in evaluating and determining current and future technology needs for the department and the commission. For example, Commissioner McArthur is test piloting a tablet and will have results to report out to the commission at a later date. The department continues to recruit for the Information Support Specialist 4 with duties focusing on end user support and SharePoint assistance.

D. PLANNING SERVICES

Transportation: The Transportation and Growth Management (TGM) Program received over 70 pre-applications. Staff at the Oregon Department of Transportation (ODOT) and DLCD are contacting every local government and tribe that submitted a pre-application to help them with the full application, or advise them that their proposal would not be eligible. The application packet was distributed on April 10, and will be due on June 13.

The Federal Highway Administration has selected the Oregon Sustainable Transportation Initiative (OSTI) to receive a 2015 Environmental Excellence Award. The award honors outstanding initiatives and partnerships across the United States that incorporate environmental stewardship into planning and project development, and recognizes exemplary achievements in air quality improvement and climate change.

OSTI is a partnership between ODOT and DLCD. The award recognizes work with the Corvallis Area Metropolitan Planning Organization (CAMPO). Working together, ODOT, DLCD, and CAMPO used the Regional Strategic Planning Model to assess how existing land use and transportation plans could reduce greenhouse gas emissions and improve air quality. The assessment also demonstrated how initiatives such as pricing and promoting eco-driving could further reduce GHG emissions, and CAMPO has already started exploring these options. Further information about the assessment is available on the CAMPO website:
<http://www.corvallisareampo.org/Page.asp?NavID=64>.

OSTI is currently working with the Rogue Valley Metropolitan Planning Organization to prepare a similar assessment for the Rogue Valley metropolitan area. The results of the assessment will be presented to the commission at the November meeting in Medford.

Natural Hazards: NOAA Fisheries Service has not yet publicly released the next version of the “reasonable and prudent alternatives” regarding how the National Flood Insurance Program should be revised to prevent it from jeopardizing threatened salmon. When it is published, we will comment on it and help local governments understand the potential impact to their floodplain management programs.

Measure 49: The recently adopted rules for transfer of development credits had a final legal review and have been filed with the Secretary of State and legislative counsel. Staff is working with interested counties. Several vested rights cases have been active recently, and staff is working with our attorney at the Department of Justice to ensure that counties comply with the law on vested rights determinations.

E. COMMUNITY SERVICES

General Fund Grants Program: The Grants Advisory Committee met on April 29th to complete its recommendation to the commission on 2015-2017 Grants Allocation Plan. See agenda item 14 for the committee’s recommendation.

The 2013-2015 grant period is drawing to a close, so payment and amendment activity is beginning to accelerate. Three of 22 technical assistance grants and one of three periodic review grants are closed. Fewer amendments have been requested than in most biennia, suggesting grantees and grant managers did a good job refining scopes of work at the beginning of the grant period.

Urban Growth Boundaries: Since the last director's report, the department approved two UGB amendments:

1. City of Grants Pass 823-acre expansion to accommodate land for 20 years of projected growth. The city and county also established urban reserves. The department received two objections to the submittal and found that one of the objections did not comply with applicable administrative rule requirements; it was therefore deemed invalid. The director rejected the valid objection and approved the amendment and reserves establishment. The appeal period has expired and the UGB expansion and urban reserves designations are deemed acknowledged.
2. City of Prineville 114-acre expansion for industrial use. The department received no objections to the submittal and the director approved the amendment.

Periodic Review: In the March director's report, we reported that the department had received periodic review task submittals from Florence, Hermiston, and Troutdale. The department received no objections to any of the submittals. Hermiston's submittal, regarding its transportation system plan, was approved. Troutdale's submittal, which included tasks to update the public facilities and transportation systems plans, was approved and that city has completed periodic review. Florence's submittal updating its coastal element was found incomplete because Lane County had not co-adopted the plan amendments needed to complete the task. No additional task submittals have been received.

Regional activities: In the Willamette Valley Region, the DLCD regional representatives, with assistance and input from department specialists, provide technical and grant management assistance to local communities on a wide variety local planning projects. Currently of note:

- The department is involved in mediation of urban growth boundary disputes in Woodburn and Newberg. A tentative agreement on the boundary in Woodburn has been reached pending further work by the city and Marion County to implement the changes. The Newberg city council unanimously adopted resolutions on May 4, 2015, to withdraw from mediation, withdraw the UGB amendment submittal, and schedule repeal of the UGM amendment.
- Lafayette, Springfield, Eugene, Coburg, and McMinnville are actively working on amendments to their urban growth boundaries. We anticipate a submittal from Lafayette soon. The Springfield effort is generating considerable public interest that has led to the city's further examination of options. Eugene's work has also generated concerns in some quarters. Coburg adopted an amendment after DLCD and local advocacy groups raised concerns; Lane County opted to withhold its approval and asked the city to reconsider some of its conclusions. The McMinnville proposal is application-based and if challenged will be reviewed by LUBA, not the commission.

- Salem is working on updates to the housing and economic development elements of its comprehensive plan. Division regional and specialist staff have had an advisory role in development of the draft updates. The city has tentatively found:
 - A surplus of land for single-family housing and a deficit of land for multifamily housing. Salem's residential land base (about 1,975 acres) has capacity for about 9,000 more single-family houses than will be needed over the 20-year period and a deficit of land for about 2,900 multifamily units (about 207 acres).
 - A deficit of 271 acres of land for commercial uses. The city can address this deficit through establishing neighborhood retail nodes in or near residential areas, encouraging redevelopment of underutilized commercial areas, and targeting conversion of other lands to commercial uses.
 - A 900-acre surplus of industrial land. The city contains high-quality industrial land in areas such as the Mill Creek Corporate Center. This study recommends that Salem manage its high value industrial land base to ensure future opportunities for high-wage employment growth and to protect against conversion of high-value industrial land to other uses.

The city is planning to satisfy the deficits of land for multi-family housing and commercial employment growth within the existing urban growth boundary.

- The department awarded a technical assistance grant to Lane County to complete a wastewater management feasibility study for the unincorporated community of Goshen, which contains a regionally significant industrial area. The county had adopted an exception to Goal 14 to permit urban-scale industrial uses in the community, but that approval was remanded by LUBA. Based on the feasibility study, there are three options for providing wastewater service to Goshen. The option with the least cost would be for Goshen to be served by the Eugene-Springfield Metro Wastewater District. The county is now preparing new findings for a Goal 14 exception. County counsel is confident that the study addresses issues raised in the LUBA remand.
- The department awarded a technical assistance grant to the Mid-Willamette Valley Council of Governments (COG) for collaboration with the University of Oregon's Resource Assistance for Rural Environments (RARE) program and two cities for comprehensive plan updates. The cities of Donald and Gervais, represented by the COG, partnered and applied for a grant to update their comprehensive plan housing and economic development elements. The two cities were similar enough that the planning could be done for both at the same time to save money and share resources. With department grant assistance, the cities were able to host a RARE participant to be the planner for both cities. As a result, the cities are much more competitive for attracting growth with an updated comprehensive plan and city leaders know more about their future, helping them make timely decisions that impact economic development potential. This type of resource-sharing is having tremendous impacts on small cities and we are using it as a model with other small cities in the region to apply for future technical assistance funding.

F. RETIREMENTS, NEW STAFF AND PROMOTIONS

Jeff Weber is retiring after 28 years of service to the department and the state of Oregon. Jeff's most recent work has been with climate change adaptation and resilience. He is presenting on his most recent project under agenda item 7. Meg Gardner, the current NOAA Coastal Fellow will be leaving the department for a position at the Oregon Marine Board. Lisa Corbly, natural hazards planner, left the department for a position with the Multnomah County emergency management department. Bob Rindy is stepping out of his legislative role, and will be focusing entirely on the UGB rulemaking. Bob anticipates retiring at the culmination of that rulemaking project; therefore, the department has begun recruiting for his replacement.

III. LCDC POLICY AND RULEMAKING UPDATES

Sage Grouse Conservation: See agenda item 3

Metropolitan Area Greenhouse Gas Target: See agenda item 6

Primary Processing of Forest Products: See agenda item 10.

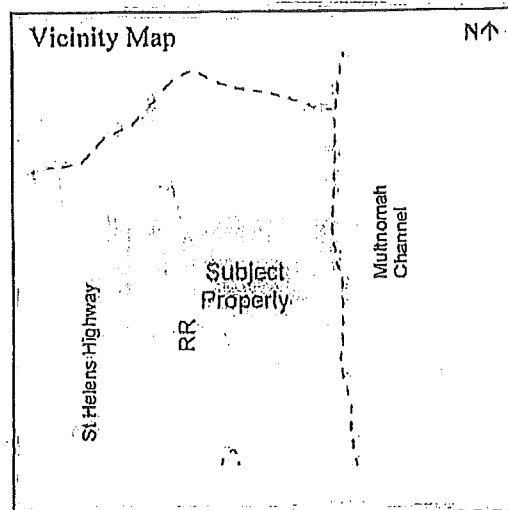


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190th Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.multco.us/landuse>

NOTICE OF DECISION

This notice concerns a Hearings Officer Decision on the land use case cited and described below.

Case File: T2-2013-2907
Permit: Willamette Greenway Permit
Location: 26312 NW St. Helens Hwy.
Tax Lot 200 & 700, Section 25D,
Township 3 North, Range 2 West, W.M
Tax Account #R982250120 &
R982250890
Applicant: Jay McCaulley
Owners: Elisiva Weilert & Lawrence Huang
Base Zone: Multiple Use Agriculture – 20
Overlays: Willamette River Greenway, Flood
Hazard.



Summary: A request for a Willamette Greenway Permit for the existing development on the property for which permits were not previously obtained, including a manufactured home, a shop, three sheds and parking for the floating home moorage.

Decision: The applicant has failed to demonstrate that the existing development on the property for which approval is sought in this case is or can be brought into compliance with applicable County land use requirements; with such outstanding unresolved code violations the application therefore cannot be approved. In addition, applicant has failed to demonstrate compliance with Willamette River Greenway permitting requirements.

This decision is the County's final decision and is effective on the date mailed.

Issued by:

By: Bruce W. White
Bruce W. White, Hearings Officer
Date: Friday, May 30, 2014

complies, the applicant would need to provide the January 1998 site plan referenced as Exhibit B.9 in the Policy 10 Hearing Officer decision. If the moorage arrangement on that plan is consistent with the site plan as submitted in this case, then applicant will have demonstrated compliance with the moorage facilities that were approved by the Policy 10 decision. Otherwise, applicant must modify the moorage facility to be consistent with that that was presented to the Hearing Officer in that prior case as being present on July 1, 1997.

Even if the Policy 10 decision approved a partially occupied moorage facility with four slips, the three houseboat level of occupancy authorized in that decision must be complied with. As noted, the current occupancy shown on the submitted site plan shows an occupancy of four houseboats. The site plan must be revised to indicate only three houseboats. However, more than just correcting the site plan depiction of the number of houseboats in the moorage, applicant must demonstrate *as a factual matter* that the proper number of houseboats are in the moorage *prior to making application*. This is because any WRG permit that might be granted in this case will not of itself result in the property coming into compliance with the Policy 10 decision, as is required by MCC 37.0560(A)(1). That can only be effected by the applicant taking steps outside the land use permitting process, whatever they may be, to remove one of the houseboats from the site. Only after that has occurred, may he demonstrate compliance with the "prior permit" compliance requirement of MCC 37.0560.³

Criterion not met.

4. Willamette Greenway Permit:

Because staff found that the applicant could not meet the threshold code compliance provisions of the code, staff did not address the substantive provisions governing the application, namely the Willamette Greenway permit standards found at MCC 34.5800 et seq. The Hearings Officer has likewise found that the applicant has failed to demonstrate compliance with a threshold code compliance provision, albeit not for the same reasons as staff. Because of this and the shortness of time the Hearings Officer was left with to get this decision out to meet the 150-day deadline for completion of a final local land use decision, the Hearings Officer likewise, will not address all of the individual approval criteria. As noted above, applicant has not demonstrated compliance with the substantive criteria of MCC 34.5855(S), regarding Policy 26 and Policy 37 and this requires that the WRG permit be denied, in addition to denial under MCC 37.0560. Because certain issues raised by opponent Chris Foster at the hearing are likely to rise again unless addressed, the Hearings Officer will address those issues now.

As the Hearings Officer understands it, the essence of Mr. Foster's argument is that houseboats and by extension, houseboat marinas, are not water-dependent uses and therefore have no place in the WRG without an exception being taken to Goal 15, the Statewide Planning Goal that addresses protection of the Willamette River corridor. Mr. Foster characterizes houseboats as residential uses, or homes that have been made to float, and that as ordinary residential uses they have no particular claim to location in the WRG. As a corollary to this argument, Mr. Foster claims that upland activities, such as parking facilities, that support houseboat and houseboat marina uses

³ The Hearings Officer also finds that failure to comply with the Policy 10 decision on the number of houseboats permitted also constitutes a violation of the substantive provisions of MCC 34.5855(S), which requires a demonstration of compliance with relevant comprehensive plan policies. In this case, the comprehensive plan policy is Policy 10 of the Sauvie Island/Multnomah Channel Rural Area Plan, which requires in Section 10(4)(1) that the number of houseboats authorized under Policy 10 not exceed the number determined to be in existence as of July 1, 1997. Policy 10 is referenced as implementing Policy 26 of the Multnomah County Comprehensive Plan regarding houseboats. Policy 26(C)(8).

cannot be located within the 150-foot WRG setback because they do not support water-dependent or water related uses.

Goal 15 in the subject area of Multnomah County is implemented through the Multnomah County Framework Plan and the applicable rural area plan – the Sauvie Island-Multnomah Channel Comprehensive Plan. Policy 26 of the Framework Plan recognizes houseboats and houseboat marinas as uses that may be located within this particular segment of the WRG in the Multnomah channel. Policy 26(C)(9)(a). Policy 10 of the Sauvie Island-Multnomah Channel Rural Area Plan established a process for determining the status of houseboat moorages as of July 1, 1997 in the Multnomah channel. Accordingly, houseboats and houseboat moorages are recognized as uses that are consistent with the Willamette River Greenway and Statewide Planning Goal 15. This recognition is implemented by designation of houseboats and houseboat moorages as a conditional use in the MUA-20 zone, which encompasses the entire western shore of the Multnomah channel. MCC 34.2830(B)(9). As acknowledged provisions of the County's plan and land use regulations, these comprehensive policies and land use regulations implementing Goal 15 may not now be challenged as being inconsistent with the statewide planning goal. *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 971 P2d 350 (1996). The time for such a challenge would have been at the time these policies and implementing land use regulations were adopted. Accordingly, the Hearings Officer finds that Mr. Foster's argument should be rejected at such time as applicant reapplies for a WRG permit for the subject property.

Similarly, the Hearings Officer finds that Mr. Foster's argument that the applicant's proposal includes elements that would violate the 150-foot setback of the WRG should be rejected. With regard to the houseboat and moorage facilities themselves, the setback has no application, since by its terms, the setback applies only to upland facilities. With regard to upland facilities such as parking facilities, those facilities are allowed if they support water-dependent or water related uses. The County has described as conditional uses in the MUA-10 zones "houseboats and houseboat moorages". Mr. Foster argues that houseboats should be characterized as something else – as residential uses that do not fall within the definition of a water-dependent or water-related use and that accordingly, any facility that would support such a use cannot be viewed as supporting a water-dependent use. However, it is undeniable that a houseboat – a floating home – is by definition a water-dependent use. It is designed to float on the water and by its designation as a separately described use is recognized by the County as a legitimate described use. If Mr. Foster objected to the County's description of houseboats and houseboat moorages as separate uses allowed in the WRG, the time for objecting to such a designation was at the time the designation was adopted.

5. ADMINISTRATIVE

Findings:

Staff: The application was submitted on May 22, 2013 was deemed complete with the 150 Day Clock starting on day of submittal. The applicant and owner requested a tolling of the clock through a series of emails (Exhibits C.3 through C.8) from August 13, 2013 through March 25, 2014. Letters of comment are included as Exhibit D.1 and D.2.

Hearings Officer: At the hearing, it was determined that the 150 Day Clock would expire as of May 31, 2014. This decision is issued on Day 149.

Notice of Hearings Officer Decision

Attached please find notice of the Hearings Officer's decision in the matter of **T2-2013-3238**. This notice is being mailed to those persons entitled to receive notice under MCC 37.0660(D).

The Hearings Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record.

Appeal instructions and forms are available from:

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, Oregon 97301

503-373-1265
www.oregon.gov/LUBA

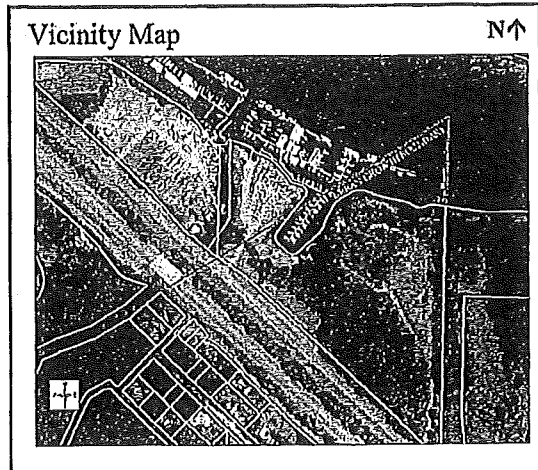
For further information call the Multnomah County Land Use Planning Division at: 503-988-3043.

1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF DECISION

This notice concerns a Hearings Officer's Decision, on appeal, of the land use case(s) cited and described below.

Case File: T2-2013-3238
Permit: Administrative Decision by Planning Director
Location: 12800 NW Marina Way
Tax Lot 200 , Section 34
Township 2 North, Range 1 West, W.M.
Tax Account #R971340030
Applicant: Steve Morasch
Owners: Frevach Land Co.
Base Zone: Multiple Use Agriculture-20 (MUA-20)
Overlays: Willamette River Greenway (WRG),
Flood Hazard

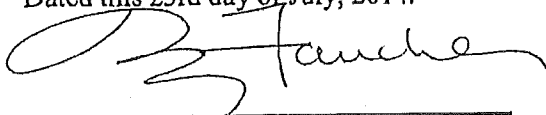


Summary: The applicant has submitted a request for a Planning Director's interpretation of the following two questions for the portion of the subject property that is located outside the Urban Growth Boundary:

- Is Goal 14 exception required under OAR 660-004-0400 to redevelop an existing moorage (marina) including conversion of existing boat slips to houseboats (additional floating homes) under acknowledged provisions of County Code including MCC 34.6755?
- Assuming a Goal 14 exception is required to redevelop a moorage (marina), does the rule reserves rule in OAR 660-027-0070(3) or the County's implementation of rural reserves rule in Policy 6-A(6) of the County's Comprehensive Framework Plan prohibit applications for Goal 14 exceptions to redevelop an existing moorage for additional floating homes?

Decision: Affirmed the Planning Director's determination that a Goal 14 exception is not required for an application to increase the number of floating home at a house boat moorage to the maximum density allowed by MCC 34.6755.

Dated this 23rd day of July, 2014.



Liz Fancher, Hearings Officer

Applicable Approval Criteria: Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): Multnomah County Code (MCC): MCC 34.2830: MUA-20 Conditional Use, MCC 34.6750: Conditional Use Houseboats and Houseboat Moorage, State Wide Planning Goal 14 [(OAR) 660, Division 14] and OAR 660, Division 27: Urban and Rural Reserves

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse>

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as '**Staff:**' and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1. Project Description:

Hearings Officer: The applicant filed a request for a Planning Director's interpretation of the following two questions for the portion of the subject property that is located outside the Urban Growth Boundary (Exhibits A.1 and A.2):

- Is a Goal 14 exception required under OAR 660-004-0400 to redevelop an existing moorage (marina) including conversion of existing boat slips to houseboats (additional floating homes) under acknowledged provisions of County code including MCC 34.6755?
- Assuming a Goal 14 exception is required to redevelop a moorage (marina), does the rule reserves rule in OAR 660-027-0070(3) or the County's implementation of rural reserves rule in Policy 6-A(6) of the County's Comprehensive Framework Plan prohibit applications for Goal 14 exceptions to redevelop an existing moorage to include additional floating homes?

The Planning Director decided the first question in favor of the applicant's position and declined to answer the second question. That determination was appealed and a hearing was held on May 30, 2014 to address the merits of the Planning Director's decision. This decision affirms the Director's decision based on findings that reflect new information provided by the appellant and others.

2. Property Description & History (if needed):

Hearings Officer: The subject property has an existing marina and moorage (Exhibit B.3). It consists mostly of a marina for mooring boats, however, the Policy 10 inventory indicates there were three floating homes and one combo boat house and dwelling unit.

The 16.68-acre subject property is predominately located within the Urban Growth Boundary (UGB) for the City of Portland. About two acres of the property are located outside the UGB (Exhibits B.2 and B4). Multnomah County Land Use Planning has jurisdiction only for the land outside the UGB. The area outside the UGB is zoned Multiple Use Agriculture – 20 (MUA-20).

3. Multiple Use Agriculture – 20 Zone District:

3.1. MUA-20 Rural Residential

MCC 36.2800: The purposes of the Multiple Use Agriculture District are to conserve those agricultural lands not suited to full-time commercial farming for diversified or part-time agriculture uses; to encourage the use of non-agricultural lands for other purposes, such as forestry, outdoor recreation, open space, low density residential development and appropriate Conditional Uses, when these uses are shown to be compatible with the agricultural uses and character of the area, and the applicable County policies.

Hearings Officer: OAR 660-004-0040 provides rules that govern the approval of land use applications in Rural Residential Areas. The rule applies to “lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 “Agricultural Lands,” Goal 4 “Forest Lands,” or both has been taken.

The Oregon Land Conservation and Development Commission (LCDC) acknowledged this rural MUA-20 zone as an exception area to Statewide Planning Goals 3 and 4 (Exhibit B.4). MCC 34.0005 defines a “primary use” as a “permitted use.” It defines a “permitted use” as a use without the need for special administrative review and approval upon satisfaction of the standards and requirements of the code. MCC 34.0005, *Primary Use* and *Permitted Use*. While the term “primary” is a State law term, no party has cited any State law that defines the term. The Hearings Officer did not find any such definition in the OAR Chapter 660-004. The County’s code, also, has been acknowledged as complying with State law and it establishes the uses and character of the MUA-20 zoning district.

In the MUA-20 zone, single-family dwellings are listed as allowed uses; not review uses or conditional uses. They are allowed without special administrative review and approval. MCC 34.2815(C). Rural residential use, therefore, constitute a primary use for which this area is planned, as the term is defined by MCC 34.0005, Definitions because it is a permitted use. This fact, however, is not dispositive as State law requires that the County have zoned the land “primarily for residential uses.” The ordinary meaning of the term “primarily” means “for the most part.” *Merriam-Webster Dictionary On-line*. While the MUA-20 zone continues to allow agricultural and forest use, by allowing residential use as an outright use in a bucolic setting like Sauvie Island, its allowance of single-family homes as a primary use, without review, has virtually guaranteed that the main or primary use of the land will be residential rather than resource. This is reflected in the purpose statement which notes that the agricultural use of these lands is part-time or “diversified.” The Hearings Officer understands this to be a statement that farming will be a hobby or means to achieve tax deferral for residents of a single-family home which will remain the primary use of the property. As the farm use planned for the zone will, most likely, be accompanied by a residential use and the zone allows single-family homes on lots without any farm activity or review, the Hearings Officer finds that the MUA-20 zone is created “primarily for residential uses.” Accordingly, this MUA-20 zone constitutes a “rural residential area” for purposes of OAR 660-004-0040.

Implementation of this MUA-20 zone is guided by the County’s Comprehensive Plan and, more specifically, the Sauvie Island/Multnomah Channel Rural Area Plan (SI/MC) [Ord. 887, October 30, 1997].

3.2. MUA-20 Conditional Uses

MCC 34.2830, Conditional Uses

The following uses may be permitted when found by the approval authority to satisfy the applicable ordinance standards:

(A) Community Service Uses pursuant to the provisions of MCC 34.6000 through 34.6230.

(B) The following Conditional Uses pursuant to the provisions of MCC 34.6300 through 34.6660:

* * *

(9) Houseboats and houseboat moorages

Hearings Officer: Houseboats and houseboat moorages are a conditional use in the MUA-20 Zoning District. Boat moorages, marinas and boathouse moorages are a community service use and, therefore, also a conditional use in the MUA-20 Zoning District.

3.3. Houseboats and Houseboat Moorage

MCC 34.6750- The location of a houseboat or the location or alteration of an existing houseboat moorage shall be subject to approval of the approval authority:

- (A) Houseboats shall mean any floating structure designed as a dwelling for occupancy by one family and having only one cooking facility.
- (B) Houseboat moorage shall mean the provision of facilities for two or more houseboats.
- (C) Location Requirements: Houseboats shall be permitted only as designated by the Comprehensive Plan.
- (D) Criteria for Approval: In approving an application pursuant to this subsection, the approval authority shall find that:
 - (1) The proposed development is in keeping with the overall land use pattern in the surrounding area;
 - (2) The development will not adversely impact, or be adversely affected by normal fluvial processes;
 - (3) All other applicable governmental regulations have, or can be satisfied; and
 - (4) The proposed development will not generate the untimely extension or expansion of public facilities and services including, but not limited to, schools, roads, police, fire, water and sewer.

Hearings Officer: As no development is proposed, the criteria for approval are not applicable to the review of this application.

3.4. Density

MCC 34.6755: The maximum density of houseboats shall not exceed one for each 50 feet of waterfront frontage. The Hearings Officer in approving a houseboat moorage may reduce the density below the maximum allowed upon finding that:

- (A) Development at the maximum density would place an undue burden on school, fire protection, water, police, road, basic utility or any other applicable service.
- (B) Development at the maximum density would endanger an ecologically fragile natural resource or scenic area.

MC/SI Rural Area Plan Policy 12: The County zoning code should be consistent with the County assessor and the state regarding the definitions of houseboats, boathouses and combos. For purposes of density calculation, "houseboats" shall be defined as 1) any houseboat, and 2) any boathouse or combo which is used as a residence (occupied 7 or more days per month).

Hearings Officer: Floating home maximum density through a conditional use permit allows a maximum of one floating home for each 50 feet of waterfront frontage. The definition provided by Policy 12, adopted by Ordinance No. 887, applies when calculating allowed maximum density.

4. GOAL 14: OAR 660-004-0040

Application of Goal 14 to Rural Residential Areas OAR 660-004-0040

- (1) The purpose of this rule is to specify how Goal 14 "Urbanization" applies to rural lands in acknowledged exception areas planned for residential uses.
- (2) (a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 "Agricultural Lands", Goal 4 "Forest Lands", or both has been taken. Such lands are referred to in this rule as "rural residential areas."
 - (b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before October 4, 2000, the effective date of sections (1) to (8) of this rule.
 - (c) This rule does not apply to types of land listed in (A) through (H) of this subsection:
 - (A) Land inside an acknowledged urban growth boundary;
 - (B) Land inside an acknowledged unincorporated community boundary established pursuant to OAR chapter 660, division 22;
 - (C) Land in an acknowledged urban reserve area established pursuant to OAR chapter 660, divisions 21 or 27;
 - (D) Land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;
 - (E) Resource land, as defined in OAR 660-004-0005(2);
 - (F) Nonresource land, as defined in OAR 660-004-0005(3);
 - (G) Marginal land, as defined in former ORS 197.247 (1991 Edition); or
 - (H) Land planned and zoned primarily for rural industrial, commercial, or public use.
- (3) (a) This rule took effect on October 4, 2000.
 - (b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in 1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County), and before October 4, 2000. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule.
- (4) The rural residential areas described in subsection (2)(a) of this rule are "rural lands." Division and development of such lands are subject to Goal 14, which prohibits urban use of rural lands.
- (5) (a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (7) of this rule.

- (b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.
- (c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area that was in effect on October 4, 2000, and acknowledged to comply with the statewide planning goals.
- (6) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.
- (7) (a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.
- (b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as "the minimum lot size."
- (c) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect.
- (d) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.
- (e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:
 - (A) The number of new dwelling units to be clustered or developed as a PUD does not exceed 10;
 - (B) The number of new lots or parcels to be created does not exceed 10;
 - (C) None of the new lots or parcels will be smaller than two acres;
 - (D) The development is not to be served by a new community sewer system;
 - (E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community;
 - (F) The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on October 4, 2000 as the minimum lot size for the area;
 - (G) Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there; and

(H) For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.

(f) Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.

(g) In rural residential areas, the establishment of a new "mobile home park" or "manufactured dwelling park" as defined in ORS 446.003(23) and (30) shall be considered an urban use if the density of manufactured dwellings in the park exceeds the density for residential development set by this rule's requirements for minimum lot and parcel sizes. Such a park may be established only if an exception to Goal 14 is taken.

Hearings Officer: The applicant has requested a Planning Director's interpretation for the following question:

"Is a Goal 14 exception required under OAR 660-004-0400 to redevelop an existing moorage (marina) including conversion of existing boat slips to houseboats (additional floating homes) under acknowledged provisions of County code, including MCC 34.6755?"

Three rules of law apply to the question presented. First, to the extent that a land use application is subject to the acknowledged provisions of the County's Comprehensive Plan or land use regulations, the County must render its land use decision on the application in compliance with such acknowledged provisions rather than the statewide planning goals and rules implemented by such provisions. ORS 197.175 (2)(d); *Byrd v Stringer*, 295 Or 311 (1983); *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 46 (1996) ("local land use decisions by jurisdictions with acknowledged plans and regulations are not reviewable for compliance with the statewide goals and rules").

Second, changes to the County's comprehensive plan or land use regulations are deemed to be acknowledged when the County has complied with the requirements of ORS 197.610 and 197.615 and the changes were not appealed or were affirmed on appeal. ORS 197.625 (1).

Third, when LCDC amends the statewide planning goals or implementing rules, after a period of one year, the County must apply those changes directly to local land use decisions if its policies and regulations are not consistent with the amendment. The state rules must be applied until such time as a conforming amendment of the County code or plan is acknowledged. See ORS 197.250; ORS 197.175 (2)(d); ORS 197.625.

Here, the present concern arises due to LCDC's changes in 2000 to Statewide Planning Goal 14 and OAR Chapter 660-004 (by adopting OAR 660-004-0040). These changes were made in response to *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447,

(1986). One such change was the adoption of OAR 660-004-0040(7). One of the requirements of OAR 660-004-0040(7) is that "a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area." OAR 660-004-0040(7)(f). This requirement was adopted in 2000 and has remained essentially the same to date as shown by a review of the administrative rule records of the Department of Land Conservation and Development. The DLCD records also show that the same is true for all parts of OAR 660-004-0040 relevant to addressing the issues presented by this application.

OAR 660-004-0040(7) contains limitations on the density of development allowed in the rural residential areas – expressed in terms of minimum lot sizes. Additionally, the rule requires Goal exceptions are mobile and manufactured home park developments that exceed an equivalent density. OAR 660-004-0040. Goal exceptions are not, however, required for properties that contain facilities that support floating homes moored on the river. The fact that the State believed it necessary to impose a density requirement on properties developed as mobile or manufactured home parks indicates that the State did not view mobile and manufactured homes to be a "permanent single-family dwelling" subject to the one home per parcel restriction of OAR 660-004-0040(7)(f). OAR 660-004-0040(7)(h) also supports the view that floating homes are not "permanent single-family dwellings." Subsection (7)(h) provides special rights for lots or parcels with multiple permanent single-family homes. It allows land divisions that create new parcels for each permanent single-family home if the home was on the parcel prior to adoption of OAR 660-004-0040. This shows that the State assumes that permanent single-family homes are located on parcels; not floating on the river adjacent to parcels.

Floating homes in marinas are similar to mobile homes. They are in a "park" setting and can be moved. They are not "permanently" affixed to the ground. They float over water and leased land below the river owned by the Department of State Lands. The parcel identified for marina and floating home park use provides a location for accessory and support uses for the floating homes (e.g. parking, septic/sewage treatment/storage, garbage disposal, etc.) but the homes are not located on or above the private, dry land. As a result, the Hearings Officer agrees with the applicant's position that floating homes are not subject to the one permanent single-family dwelling limit of OAR 660-004-0040(7)(f).

In the text of OAR 660-004-0040, LCDC recognized that some rural residential areas had been reviewed for compliance with Goal 14 and acknowledged as complying with that goal after the *Curry County* decision was issued in 1986. It said that those jurisdictions need not amend their land use regulations to comply OAR 660-004-0040 which implements the *Curry County* decision. According to OAR 660-004-0040(3), no further local amendments are required if conforming amendments were made and acknowledged between the issuance of *Curry County* and October 4, 2000. Laws adopted or amended on or after that date were required to comply with OAR 660-004-0040. When acknowledged, those laws were deemed to comply with Goal 14 as interpreted by OAR 660-004-0040.

The present application most directly implicates the provisions in the Sauvie Island/Multnomah Channel Plan and MCC 34.6755 that establish a floating home maximum density of one floating home for each 50 feet of waterfront frontage. The concern is whether a land use decision relating to a proposal for additional floating homes must be made in compliance with the foregoing local provisions or in compliance with

LCDC's changes to Goal 14 and OAR 660-004-0040. The answer is that, under current law, such decisions must be made in compliance with the County's acknowledged land use regulations for floating homes and marinas. They are not subject to review for compliance with Goal 14.

Comprehensive Plan

Sauvie Island/Multnomah Channel Rural Area Plan

Multnomah County applies rules from the Sauvie Island/Multnomah Channel Rural Area as relevant approval criteria for moorages and marinas. These comprehensive plan regulations were acknowledged after 1986 and before October 2, 2000 and do not need to be amended to comply with OAR 660-004-0040, until amended by the County. OAR 660-004-0040(3)(b).

Ordinance No. 887 was adopted on October 30, 1997 (Ord. 887), *after* issuance of the *Curry County* decision. This ordinance amended the County's Framework Plan to to create a process for Multnomah County to use to determine the status of existing moorages and marinas and to authorize the County to create special plan areas for moorages. It also adopted the Sauvie Island/Multnomah Channel plan which is a comprehensive plan for Sauvie Island that supplements the Framework Plan. The SI/MC plan recognizes the fact that the Framework Plan Policy 26 allows houseboats in an area identified by that Plan. It also states that land zoned MUA-20 allows houseboat moorages to be approved as conditional uses and marinas as community services uses. It also says that the Waterfront Use Zoning Criteria determines the density allowed in houseboat moorages (one per 50' of waterfront frontage), unless reduced for environmental reasons and provides a definition for houseboats to use in applying the density rules. The Plan contains policies that direct the County to amend its Framework Plan Policy 26 regarding marinas as accomplished by Ordinance No. 887. No appeal of Ord. 887 is pending and no further appeal of that ordinance is available. As a result, the SI/MC is acknowledged. ORS 197.625(1).

The Sauvie Island/Multnomah Channel plan requires that when moorages permitted under the plan "subsequently seek a modification or alteration of their inventoried use, they must meet all applicable zoning codes in effect at that time." The relevant zoning ordinance is discussed, below.

Comprehensive Framework Plan

The Planning Director's decision did not address the relevant plan provisions of the Comprehensive Framework Plan. Policy 10 contains lot size requirements for conditional uses in the MUA-20 zone but these are written to apply to the County when amending the MUA-20 zone, rather than as policies that apply during the review of a development application. Policy 26 contains criteria for locating or expanding a houseboat moorage. If these provisions were acknowledged on or after the day in 1986 that the *Curry County* case was decided, they may be applied to the review of the expansion of a moorage without consideration of the provisions of OAR 660-004-0040 or Goal 14. This conclusion is based on the analysis of post-Curry County and pre-OAR 660-004-0040 law, above, and on an analysis of the effect of acknowledgment for laws adopted on or after October 4, 2000, below.

In the event that Policy 26 was not acknowledged after the issuance of the *Curry County* decision, the question is whether this fact would trigger a requirement that the applicant obtain approval of a goal exception to expand the moorage/marina. The answer is no. Policy 26 contains two relevant sections. One section imposes criteria that apply to the siting or expansion of houseboat moorages. These criteria apply only when the underlying zoning ordinance allows the development. Its effect is to limit sites where development is allowed – not to authorize the use or a density of development that may trigger the need for approval of an exception to Goal 14. Another section designates areas suitable for houseboats and says that houseboats and moorages are limited to existing site and levels of development. The SI/MC Rural Area Plan adopted by Ord. 887 says that Policy 26 should be rewritten so that moorages and marinas will only be permitted in the area where houseboats are currently permitted by Policy 26 and in specified locations. The Framework Plan was rewritten to include these provisions which restricted development otherwise allowed by the County's zoning ordinance. As this is a limitation of the applicability of uses allowed by the MUA-20 zone, a lack of acknowledgment in the relevant time periods discussed above would not result in a need to seek approval of a goal exception to expand a houseboat moorage/marina.

Zoning Ordinance

The MUA-20 zone and zoning ordinance applicable to lands on Sauvie Island, including MCC 34.6755, was last amended, on October 31, 2002 (Ord. 997) *after* the adoption of OAR 660-004-0040. This 2002 ordinance readopted laws that had been previously adopted by the County. These laws were readopted to cure issues about the sufficiency of the notice used by the County when the laws were adopted. Notice of this law was not sent to DLCD as required by ORS 197.610 so it did not obtain acknowledgment. ORS 197.625.

Ordinance No. 953, however, was one of the laws readopted by Ordinance No. 997. Ordinance No. 953 was adopted after October 4, 2000, the effective date of OAR 660-004-0040. Ordinance No. 953 reorganized and codified all County land use laws. It created new chapters, included separate zoning areas for each planning area of the County, and made other amendments to those laws as indicated by Section 1 of the ordinance. Notice of adoption of Ordinance No. 953 was sent to DLCD as required and this law was acknowledged as required by ORS 197.625 as a post-acknowledgment plan amendment. This means that Ordinance No. 953 and the County's zoning regulations for the MUA-20 zone and Sauvie Island apply to any application to modify the moorage/marina on the part of the subject property that is located in Multnomah County. Goal 14 is not directly applicable to the review of an application for developments allowed by that ordinance. ORS 197.625(1).

Decision by Planning Director

Consequently, because the County's provisions establishing floating home maximum densities in its zoning code and comprehensive plan are acknowledged, the Planning Director found that a Goal 14 Exception is not required for approval of an increase in the number of floating homes at a moorage/marina if it complies with the County's comprehensive plan and zoning regulations. That determination was appealed and is affirmed by the Hearings Officer in this decision. The issues raised to challenge the Director's determination are summarized (*italics*) and addressed (plain text) below:

- (1) *Ordinance 997 simply repealed and readopted an existing law. It should not be considered to have been acknowledged for its content.*

Response: For other reasons, the Hearings Officer has determined that Ordinance No. 997 was not acknowledged. Ordinance No. 953, however, was acknowledged and was adopted after the effective date of OAR 660-004-0040.

Ordinance No. 953 created separate zoning ordinances for most rural areas in the County, including Sauvie Island and the Multnomah Channel Rural Area. This ordinance was adopted after the effective date of OAR 660-004-0040 and is acknowledged as being in compliance with the administrative rule and its density regulations. This ordinance did more than simply readopt an existing law. It involved a restructuring of the code and amendments to county ordinances. The ordinance indicates that the code was revised and amended. It was, when it was adopted, subject to appeal. When it was not timely appealed, it was acknowledged. Substantive changes to the applicable administrative rules that implement the goals in rural residential areas have not been made since 2000. As a result, Multnomah County is not currently under an obligation to update its zoning laws (MUA-10 zone) to conform to administrative rules or to apply the rule directly to a land use application seeking approval of development of a floating home marina or moorage allowed by the County's acknowledged land use regulations.

- (2) *A Goal 11 exception would be required for the expansion of a moorage/floating residence park because they would require water and sewer services that would serve an urban use.* Squier, May 30, 2014, p. 1

This issue is not presented by the question posed by the applicant. It, also, is not necessary to resolve this issue to answer the question presented by the applicant.

- (3) *A Goal 14 exception is required based on the text of Goal 14 and the Curry County decision.* Squier, May 30, 2014, pp. 1-4.

The effect of acknowledgment is to preclude a review of the acknowledged local land use law for compliance with Goal 14 until the local law is amended or Goal 14 is amended in a way that requires a change in the County's law. It also precludes review for compliance with administrative rules that implement Goal 14 unless and until amended by LCDC.

- (4) *Multnomah County has not aligned the provisions for moorages on Multnomah Channel with the principles of Curry County. The current MUA-20 zone is identical to the MUA-20 zone in effect in 1982.* Squier, May 30, 2014, p 4.

The MUA-20 zone was codified and readopted after October 2, 2000 and the ordinances that readopted the zone have been acknowledged. The fact that the terms of a part of the ordinance, the MUA-20 zone, have not changed is not material. Any party, including LCDC or DLCD, could have challenged any of those provisions as violating Goal 14 when they were readopted because the County decided to readopt rather than amend the rules. ORS 197.625 applies both to amendments and the adoption and, by logical extension, re-adoption of land use laws

(5) *In 1993, LCDC declined to acknowledge issues regarding compliance with the Curry County decision based on "extenuating circumstances that requires the Director to take additional time to complete the review."* Squier, Ex. AWS 6, May 30, 2014.

LCDC's decision Order of Postponement in 1993 deferred making a decision of compliance of the County's land use laws with the *Curry County* decision. This fact does not, however, render the subsequent acknowledgement of those laws through the post-acknowledgment plan amendment process in 2000 ineffective.

(6) *Ordinance No. 887 did not focus on code provisions for conditional uses in the MUA-20 zone and did not change the moorage standards, including provisions regarding density. Unamended provisions of law should not be viewed as an acknowledged amendment for purposes of reviewing applications involving moorages and marinas.* Squier, May 30, 2014, pp. 4-5.

Ms. Squier does not explain which County laws were not amended by Ordinance No. 887 and should not be viewed as having been adopted after issuance of the *Curry County* decision. Ordinance No. 887 did two significant things: it amended the County's Framework Plan (comprehensive plan) to create a moorage inventory process that provides a path for moorages-marinas to become lawfully established rather than grandfathered or illegal uses and to authorize the County to create special plan area designations for expansions or alterations new and altered moorages-marinas. It also adopted the entire Sauvie Island/Multnomah Channel Rural Area Plan. That Plan, contrary to Ms. Squier's assertion, addresses moorage density, creates a policy that recommends that the County restrict areas available for new and expanded houseboat moorages and provides a definition for use in applying the houseboat density rules, including the density rule of the MUA-20 zoning district.

(7) *The MUA-20 zone is not a rural residential zone so the grant of acknowledgment status in the OAR 660-004-0040(3)(b) is not effective and a Goal exception is required.* Squier, 5/30/14, p. 6.

The role of OAR 660-004-0040(3)(b) is not to acknowledge laws. Rather, it is to protect acknowledged laws from the impact of OAR 660-004-0040. If the zone is not a rural residential zone, OAR 660-004-0040 does not apply and the density limits set by that rule are irrelevant. The County's applicable land use laws are all acknowledged and no exception is required for development allowed by those laws unless an LCDC rule or State statute imposes such a requirement.

(8) *ORS 197.646(3) requires direct application of Goal 14 since no change occurred to allow for the "shield" that would result from acknowledgment.* Squier, 5/30/14, p. 6.

The laws in question changed or were readopted. They are "shielded" by acknowledgment.

(9) *DLCD staff have offered their opinion that exceptions are required and Multnomah County required an exception from Goals 11 and 14 in a prior, similar marina case.* Squier, 5/30/14, pp. 6-7. *DLCD also claimed, in the Rocky Pointe Marina case, that an exception to Goal 14 was required because the boats are moored on one parcel and support facilities are located on another.* Squier, 5/30/14, Ex. AWS 10.



ADAMS, Jennifer

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Rural Plan

Boxthegnat . <boxthegnat@gmail.com>

To: simcplanning@multco.us

Mon, Aug 24, 2015 at 9:47 PM

To: Multnomah County Board of Commissioners,

As a resident of Sauvie Island for the past 13 years I would like to say that I strongly support the Sauvie Island Rural Plan. Sauvie Island has a limited infrastructure and already has traffic problems. I feel that limiting the amount of land that can be used for events and non-farm activities will help protect natural resources and preserve the rural character of the island.

I also believe it is important to bring the moorages and marinas into compliance with laws governing development and rural densities. The need for moorages and marinas to meet state standards for sewage collection is also of critical importance to me.

I would like to see violations of these policies investigated and code requirements enforced. I also feel that the policy should be changed to allow citizens to report possible violations anonymously.

Thank you,

Jennifer Adams
18109 NW Sauvie Island rd.



BAGON, Leslie & Frank

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Rural Area Plan

'FL Bagon' via SIMCPLANNING <simcplanning@multco.us>

Mon, Aug 24, 2015 at 1:09 PM

Reply-To: FL Bagon <flbagon@yahoo.com>

To: "simcplanning@multco.us" <simcplanning@multco.us>

To: Multnomah County Board of Commissioners :

We are residents of Sauvie Island for a number of years and have seen exponential growth in not only the number of those who visit the island but also the number of events that are held every year. We have seen traffic come to a standstill during Halloween season and have been captive in our home. If an emergency vehicle had to attend to a crisis it would be impossible. The resources of this island are often stretched beyond its capabilities. For this reason I believe the vision statement is sound in its stance on agri-tourism. I am also hopeful that enforcement will be a key element in implementing this vision.

The rural character of this island continues to be compromised and it is my opinion that it would be a treasure that could be lost to those only looking to exploit it's natural beauty.

Please say yes to the Sauvie Island Rural Area Plan.

Sincerely,

Leslie and Frank Bagon
18100 NW Sauvie Island Rd



DAVIS, Tim
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Embarrassing 1950s-style language and attitude toward cyclists on Sauvie Island that only hurts all of us

Tim Davis <pdxfan@gmail.com>

Tue, Aug 25, 2015 at 4:19 PM

To: simcplanning@multco.us, district1@multco.us, mult.chair@multco.us

Dear Multnomah County Commission,

This is Tim Davis, and I am shocked by how Portland and Multnomah County **continues** to regress on ALL forms of transportation! We are getting lapped by cities all over North America and Europe when it comes to bicycle-friendly (which means ***people***-friendly) infrastructure, and I'm constantly having to fight an uphill battle when it comes to our elected leaders' attitudes toward all forms of transportation other than single-occupancy vehicles.

But the irony is that if we were to quadruple the percentage of people BIKING on our streets, it would benefit ALL users of our streets, **including** those who solely drive cars from A to B!! Literally every major urban visionary around the world knows this by now. But we in Portland are STILL stuck in the 1950s!!

So, the saddest part of all is that I'm no longer surprised by the language in Multnomah County's draft Sauvie Island transportation plan stating that it would discourage "recreational bicycle activities." Plus, how do you claim to encourage bicycle riding for transportation while simultaneously discouraging it for recreation?

I really do fully understand what you're trying to say about "recreational cyclists," but cyclists have a legal right to use our **publicly** funded roads for any type of riding, whether for recreation, commuting or any other purpose. So, your language in the plan that can easily appear to be anti-cycling needs to be removed from the plan immediately.

Plus, Sauvie Island has INCREDIBLE potential to be one of the most beautifully pastoral **people***-friendly places near any big city in the U.S. If Sauvie Island were this close to New York, Chicago or Montreal, it would be a PARADISE for cycling (and thus for ALL road users!). All you have to do is **visit** at least 50 cities in North America and Europe to see the incredible infrastructure that is being provided for those who get from A to B by bicycle.

For example, go to Amsterdam, and you'll see that it is INCREDIBLY easy to get around by ALL forms of transportation. In fact, it's easier to drive a CAR in Amsterdam than it is to bike, because there are **very** few people driving cars! So, it's an absolute dream to walk, bike, drive or take transit in Amsterdam.

And yet we in Portland (claiming to be bike-friendly) are falling behind EVERY big city I've visited in the past two years. I've visited over 70 cities, and we are behind literally ALL of them when it comes to any progress at all on cycling. This unbelievably disturbing trend needs to be reversed NOW so that we can benefit ALL users of our streets!!

Thank you so much for your consideration,
Tim Davis



HERMES, Lukas
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island/Multnomah Channel Plan Updates comment

Lukas Hermes <l2hermes@hotmail.com>

Tue, Aug 25, 2015 at 2:43 PM

To: "simcplanning@multco.us" <simcplanning@multco.us>

To whom it may concern,

As a citizen that visits Sauvie Island using my bicycle as transportation, I feel that the current language in section 5.9 looking to discourage recreational cycling to be counter productive. If the goal is to reduce recreational visits by all modes during certain events, then say that. To single out cycling seems discriminatory and certainly is less productive than discouraging recreational automotive visits.

I ask that the language in section 5.9 be revise to end the sentence prior to the clause "without encouraging purely recreational bicycle activities that may increase this level of vehicle conflict on roadways."

Thank you for your consideration.

Best regards, Lukas R. Hermes (Portland resident)



HARTLINE, Jane

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Rural Plan

Jane Hartline <lostlagoon@involved.com>

Wed, Aug 19, 2015 at 7:30 AM

To: simcplanning@multco.us

Please make the following letter part of the record for the proceeding next week on the Sauvie Island Rural Plan:

County Commissioners:

I will be out of town next week when you deliberate on the Sauvie Island Rural Plan, so am sending comments via this email.

Several biologists, agency staff and I worked collaboratively on the natural resources policies in the plan and we are very proud of them and the impact they will have on our island wildlife and habitats. The natural resources policies were not controversial in any of the hearings and seemed to be universally approved of by agency folks and island residents alike.

In addition the recommended Transportation System Plan also includes policies that protect fish and wildlife, and I would urge you to adopt these as well.

Sauvie island is a treasure, not only for people, but for thousands of critters that depend on the habitat here. Rare turtles, frogs, waterfowl and songbirds are at the mercy of our stewardship of the land. These policies are for them, and I hope you will adopt them as written.

Jane Hartline

Island Resident, Director of the Sauvie Island Habitat Partnership
and Board member of the West Multnomah Conservation District



Jane Hartline, Director

Sauvie Island Habitat Partnership

14745 NW Gillihan Road

Sauvie Island, OR 97231

jane@lostlagoonfarm.com



GRUMMON, Geoff

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Transportation System Plan

Geoff Grummon-Beale <ggrummon@gmail.com>

Tue, Aug 25, 2015 at 4:01 PM

To: simcplanning@multco.us

As someone who regularly rides a bicycle on Sauvie Island, I feel strongly that the following statement in the plan should be changed from

Policy 5.9 – Implement a range of Transportation Demand Management (TDM) policies encouraging existing businesses and requiring new development (beyond single family residential use and agricultural uses) to help reduce vehicle miles traveled (VMT), maximize use of existing facilities and alleviate congestion on US 30 and county roads caused by seasonal and special event traffic. Support the use of bicycle transportation alternative to automotive use without encouraging purely recreational bicycle activities that may increase this level of vehicle conflict on roadways.

To this:

Policy 5.9 – Implement a range of Transportation Demand Management (TDM) policies encouraging existing businesses and requiring new development (beyond single family residential use and agricultural uses) to help reduce vehicle miles traveled (VMT), maximize use of existing facilities and alleviate congestion on US 30 and county roads caused by seasonal and special event traffic. Support the use of bicycle transportation alternative to automotive use.

Thank you,

Geoff Grummon
Portland, OR



HAMILTON, Rebecca

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Draft Plan comment

Rebecca Hamilton <becca.s.hamilton@gmail.com>

To: simcplanning@multco.us

Tue, Aug 25, 2015 at 3:12 PM

To Whom it May Concern,

I am writing to express my deep disappointment and concern over the language regarding recreational cycling in the draft Sauvie Island transportation plan. Specifically:

"Implement a range of Transportation Demand Management (TDM) policies encouraging existing businesses and requiring new development (beyond single family residential use and agricultural uses) to help reduce vehicle miles traveled (VMT), maximize use of existing facilities and alleviate congestion on US 30 and county roads caused by seasonal and special event traffic. **Support the use of bicycle transportation alternative to automotive use without encouraging purely recreational bicycle activities that may increase this level of vehicle conflict on roadways.**"

This position is discriminatory and short-sighted. Cyclists are road users who are fully within their legal rights to use these publicly funded roads for recreation, for pure transportation, or for transportation that they happen to find enjoyable, just like car drivers or motorcyclists. By codifying and promoting this negative attitude towards one type of road user you will encourage negative behavior towards those users - behavior that could be threatening, menacing, or physically dangerous for *all* cyclists, not just the recreational cyclists you intend to exclude.

If you are trying to limit cycling on and around the island in order to reduce VMT, maximize use of existing facilities, and alleviate congestion on US 30 as well as reducing vehicle conflict on the roadways, the public deserves to see a traffic study performed and stamped by a professional engineer that supports your implied claim that recreational cycling is a significant contributor to any of these conditions. Given the relative volume of car drivers to cyclists, it is highly unlikely that this is the case. Also, crash records for the island are not indicative of a safety concern caused by car/bicycle "vehicle conflicts". Your justification for this discriminatory position is backed by indefensible claims.

I strongly urge you to remove this divisive, discriminatory language from the plan.

Rebecca Hamilton
Multnomah County Resident



GREENFIELD, Mark

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Multnomah Channel Rural Area Plan and TSP

Mark J. Greenfield <markgreenfield@involved.com>

Fri, Aug 14, 2015 at 11:15 AM

To: simcplanning@multco.us

Cc: Multnomah County Planning Planning County <adam.t.barber@multco.us>, Multnomah County Planning Planning County <joanna.valencia@multco.us>

Dear Kevin - attached is my written testimony for submittal to the Board of Commissioners on the above matters. Please forward this to each Board member prior to the August 25 work session. Also, please include this letter in the record of this proceeding, and please provide me with a copy of the SIMC Rural Area Plan and TSP in their final adopted forms. Thank you.

Mark J. Greenfield
14745 NW Gillihan Road
Portland, Oregon 97231
(503) 227-2979
markgreenfield@involved.com

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999K

MARK J. GREENFIELD

14745 N.W. Gillihan Road
Portland, Oregon 97231

Telephone: (503) 227-2979
Facsimile: (503) 292-1636

August 14, 2015

Chair Deborah Kafoury and Commissioners
Multnomah County Board of Commissioners
501 SE Hawthorne Blvd, Suite 600
Portland, Oregon 97214

Subject: Recommended 2015 Sauvie Island/Multnomah Channel (SIMC)
Rural Area Plan and Transportation System Plan (TSP)

Dear Chair Kafoury and Commissioners:

Thank you for this opportunity to testify on the recommended Sauvie Island/Multnomah Channel Rural Area Plan and Transportation System Plan.

As both a Sauvie Island resident and a member of the Community Advisory Committee, I am very pleased with how both of these plans have turned out. The recommended SIMC Rural Area Plan is vastly improved over the draft plan initially proposed to the Planning Commission, as it provides much more detail, specificity, clarity and certainty in its language and a much greater level of commitment to policies that reflect the values of islanders, channel residents and island visitors as reflected in the Vision Statement. Islanders insisted on policies that actually mean something – that make clear policies choices on key issues. The Planning Commission's recommended plan provides this. Their recommended policies provide a strong basis for preserving and maintaining the island's existing agricultural and rural character by providing meaningful policies to preserve the island's agricultural lands for productive farm use and specific, meaningful policies that protect the natural resources of the island and channel. Their recommended policies on moorages and marinas accurately reflect state land use laws and goals relating to urban and rural development and the Willamette River Greenway, and the policies and strategies in the TSP recognize the pressing need to manage travel demand on the island. I have great praise and admiration for the Planning Commission in this process.

I also wish to thank the Planning Staff, which did an excellent job of setting out and presenting alternative policies choices to the Planning Commission and presenting those choices in a fair and unbiased way. I greatly appreciate that staff was receptive to changes that I and other island and channel residents offered, both to the Rural Area Plan and to the Transportation System Plan, and I feel like staff has embraced the changes that the Planning Commission adopted in its recommendation to the Board.

That said, there are several modifications and additions I wish to offer to further improve the Rural Area Plan. Six island and channel residents developed these modifications, including Anne Squier (a former member of the Land Conservation and Development

Commission), Linda Wisner (the former President of the Sauvie Island Community Association), Jane Hartline (Director of Sauvie Island Habitat Partnership), and local residents Cindy Reid, Tim Larson and myself. Two of our proposals involve changes to recommended plan language. The other two address new issues that the Planning Commission felt were better handled at the Board level.

1. Page 3, Community Vision, 1st sentence. Change the first sentence as follows:

“The policies in this document ~~should~~ are to be read in harmony with the following vision statement.”

Discussion: The vision statement reflects the vision people have for Sauvie Island and the channel and gives context to the policies that follow. It is appropriate for persons applying these policies as applicants, staff or interested persons to consider the vision statement in determining how the plan policies apply. The word “should” simply makes this optional.

2. Page 18, Agriculture & Agri-Tourism Policy 1.3. Change Policy 1.3 to read as follows:

Policy 1.3.

Develop and adopt a tiered review process for farm stand operations on EFU land distinguishing between operations that include promotional activities and those that do not. Farm stands that occupy one acre or less (including parking) and do not include promotional activities or events shall be reviewed through the County’s Type I process, based on objective standards. Farm stands that occupy more than one acre or include promotional events or activities shall be reviewed under the County’s Type II application process. ~~Until implementing code is adopted, the following shall apply:~~

(a) ~~Proposed farm stands that would occupy more than one acre or include promotional events or activities shall be sited to maximize retention of agricultural land in productive farm use. The amount of land identified for farm stand promotional events or activities shall be the minimum necessary to accomplish the objective of supporting farming operations on the property.~~

~~(b) Until code provisions are adopted that accomplish this objective, the following standards shall apply: in order to limit the overall amount of acreage proposed for the farm stand structures and events consistent with the following standards:~~

(1) The amount of land identified for the farm stand structures and associated permanent parking shall not exceed two acres.

(2) ~~The amount of land identified for farm stand promotional activities shall be the minimum necessary to accomplish the objective of supporting farming operations on the property.~~ Absent compelling need for additional area, the area identified for promotional events or activities, including corn mazes and event parking, shall not exceed five percent or five acres of the property on which the farm stand is located, whichever is less.

(3) An applicant may seek approval to accommodate temporary parking on additional acreage during September and October of a calendar year on areas that have already been harvested or used for pasture during the current growing season. The temporary parking area shall not be graveled or otherwise rendered less productive for agricultural use in the following year.

(4) An applicant owning or leasing multiple properties in farm use on Sauvie Island shall be limited to only one Type II farm stand.

(5) Multnomah County may require consideration of alternative site plans that use less agricultural land or interfere less with agricultural operations on adjacent lands.

(6) Farm stand signage shall maintain and complement the rural character of the island.

Discussion: Our proposed change to Policy 1.3 is very similar to the Planning Commission's recommended language but with one significant change. As recommended by the Planning Commission, the standards under subsection (a) would apply only "until implementing code is adopted." The difficulty with this is that once code is adopted, this policy gets stripped of the language establishing the direction the implementing ordinances must follow. I do not think this was the Planning Commission's intention.

We do not object to the Planning Commission's desire to be able to consider measures other than the ones set out in the recommended plan, but we still want the language in the policy that establishes the objective for implementing code language to remain. Consequently we recommend that Policy 1.3 be amended in the manner shown above.

3. New Policies Addressing Plan and Code Consistency. Add the following new goal and policies in a new section under the heading Plan and Code Consistency:

Plan and Code Consistency

Goal: To ensure the continued applicability of the policies in the 2015 Sauvie Island/Multnomah Channel (SIMC) Rural Area Plan and their implementing ordinances throughout the planning period.

Policy 6.1. This 2015 SIMC Rural Area Plan supersedes and replaces in its entirety the 1997 Sauvie Island/Multnomah Channel Rural Area Plan.

Policy 6.2 Absent explicit language in a countywide land use or comprehensive framework plan that it would control over the policies in the SIMC Rural Area Plan in a given instance, the policies in this 2015 SIMC Rural Area Plan and the regulations adopted to implement this plan shall control in the event of any conflict with policies in the countywide plan or its implementing regulations.

Policy 6.3 Any countywide land use comprehensive framework plan shall retain and incorporate by reference the policies contained in this 2015 SIMC Rural Area Plan.

Discussion: The recommended plan contains no policies addressing Plan and Code consistency. The Planning Commission deferred this issue to the Board of Commissioners. Policies on this subject are very important, especially now that Multnomah County is moving forward to update its countywide comprehensive plan. The 2015 SIMC Rural Area Plan must stand *on its own merits* over the coming 15-20 years. It must control in the event of possible conflicting policies in a more general plan addressing other portions of the County that may not share this rural area's issues and concerns. Far too much work and citizen effort has gone into this plan to allow a situation to arise that could render portions of it meaningless. I think we speak for a great many islanders and channel residents in making this statement. We want our plan to be a living, breathing, meaningful document.

4. New Policies Addressing Plan, Code and Permit Enforcement. Add the following new goal and policies:

Plan, Code and Permit Enforcement

Goal: To maintain the integrity of the Sauvie Island/Multnomah Channel Rural Area Plan through fair, consistent, meaningful and effective enforcement of Plan and Code requirements and conditions of development approvals.

Policy 7.1 Coordinate and work with appropriate local, state and federal agencies to ensure compliance with the County's Zoning Code and policies.

Policy 7.2 Investigate and enforce compliance with permit conditions and ordinance requirements in all cases of verifiable permit or code violations, including potential violations observed by County staff, reported by citizens, or brought to staff's attention whether anonymously or for attribution.

Policy 7.3. Enforce permit conditions and ordinance requirements in a manner that is diligent, consistent, fair to all interests and effective.

(a). Exercise enforcement in a manner flexible enough to allow the level of enforcement that best fits the type and circumstances of the code or condition violation(s).

(b) Where circumstances warrant, seek voluntary compliance with code requirements or permit approval conditions by providing first-time violators with information about and an opportunity to comply with the Zoning Code or permit conditions within reasonable timeframes with little or no penalty. Closely monitor and enforce such reasonable timeframes to come into compliance to ensure that violators are not unnecessarily delaying compliance.

(c) Set fines at a level that is substantially commensurate with the nature of the violation and sufficiently large that a knowing violator makes no profit from it. The level of fine should act as a strong incentive for voluntary code compliance and a strong disincentive to violate the Zoning Code or permit conditions.

Discussion: The recommended plan contains no policies addressing plan, code and permit enforcement. Again, the Planning Commission deferred this issue to the Board of Commissioners. Concerns regarding plan, code and permit enforcement (or more accurately, the lack of fair and effective enforcement) were raised repeatedly by many area residents during the scoping sessions, at CAC meetings and in hearings held to date before the Planning Commission. They relate to structures, events, activities, signs, noise, and other matters occurring without authorization or in violation of standards on the island or channel. Three key points stand out. First, there is a need for stronger and more diligent enforcement, both of plan or code provisions and of conditions of development approval. Second, a better system is needed than one that requires residents to report their neighbors, sometimes repeatedly. Third, the voluntary compliance system does not appear to be working. When compliance is ignored, measures strong enough to ensure compliance must be imposed to preserve the integrity of the plan and maintain the island's existing rural character.

As we testified before the Planning Commission, we recognize that the vast majority of islanders do comply with their conditions of permit approvals. But some do not, sometimes in ways that are very visible to the community. These violations can harm neighbors in the community and negatively impact the island's rural character, and they encourage others to violate permit conditions or code standards with feelings of impunity.

The plan needs a goal and policies addressing enforcement. Perhaps because of budgetary implications, the Planning Commission deferred this issue to the Board.

Our proposed new goal and policies are a combination of (1) the goal and policies we earlier recommended to the Planning Commission, and (2) language that has been developed in the context of the Framework Plan update which is currently underway.

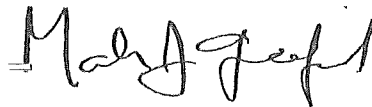
Conclusions

Again, I applaud the Planning Commission for its work on the recommended SIMC Rural Area Plan and TSP. These documents are vast improvements over the existing RAP and TSP. I also applaud the work of the consultants – Winterbrook Planning and Kittelson & Associates.

I urge the Board to adopt the policies recommended by the Planning Commission with the additional changes and additions recommended herein. The issues of plan consistency and plan and code enforcement are very important and really must be addressed. In particular, enforcement must be considered in a new light as local residents, myself included, believe that the voluntary compliance program as currently constituted is not working.

Thank you for considering these proposed changes to the recommended SIMC plan. At the public hearing, I will likely take some time to discuss several policies included in the Planning Commission recommendation, but I would be happy as well to discuss these proposed policies in more detail if you so desire.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark J. Greenfield". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark J. Greenfield

cc: Adam Barber
Kevin Cook
Joanna Valencia

Transmittal

River's Bend Marina
27448 Northwest Saint Helens Road
Scappoose, Oregon 97056
503-543-6223

HAMER, Jan
August 27, 2015
Agenda #: R.1



August 24, 2015

Multnomah County Commissioners

Jules Bailey

Diane McKeel

Loretta Smith

Debra Kafoury- Chair

Judy Shiprack

Re: Sauvie Island/Multnomah Channel Rural Area Plan-
Marina/Moorages

Dear Commissioners:

*Houseboats and policy 26

As an active member of the Citizens Advisory Board, I am submitting these comments on behalf of the Marina/ Moorages on Multnomah Channel. As a whole, they are a very small group of communities but an important part of Multnomah County's diverse housing population and unique history.

Mr. Mark Hess, a Multnomah County Planner at that time, wrote a one of a kind, very comprehensive report, dated February 19, 1992, titled "Houseboat Densities and Related Marina Issues. It studied and supported planned but slow growth opportunities in the Channel through the regulatory process document, "Policy 26", adopted in 1977. I highly recommend you read a copy prior to adopting any new amendments. During the CAC process, the

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Marina/Moorage sub-committee recommended to allow the existing Marina/moorages, only be allowed to reconfigure to fit in more houseboats if requested, within their existing Division of State Lands waterway lease boundaries. Policy 26 is very limiting in its application of the "one per 50" standard. The addition of new houseboats in the existing moorages, has been very slow over the years because of very limited parking space availability, sewer system capacity limits within existing marina/moorages and meeting the remaining list of County sighting criteria. As an example, there have been over 20 plus slips available slips open for the last two years, with only one being occupied last year.

The County Planning Group seems to base their reasoning for restricting the marine communities on their interpretation of the "Urban and Rural Reserve Program". Many documents were published and handed out stating that your existing land uses and zoning would remain the same. Example attached.

Also attached are County staff reports and Case file # C10-99 resolution documents that define floating structures i.e. including houseboats and verify that they are water dependant.

I recommend that policy 26 remain as County Code.

*Goal 14

Please note that in Steve Morasch's letter submitted to you last week, noted that the statements made at the Planning Commission Hearings by the County Planning staff that described the LUBA Decision on Goal 14, were inaccurate and negatively influenced the Planning Commission's recommendation on the amendments on Marina/Moorages.

*Live-a- board Boats

The remaining documents attached, strongly supports that boats are not to be treated as dwellings as the county has pro-ported.

DEQ mandated years ago, that a marina slip that could fit a boat big enough to live on or use as extended stay on the water, must have a hard sewer connection point available nearby and a system for pumping it as noted in the attached documents. Some of the existing Marina'Moorages in the Channel are currently set up that way if they have the sewage disposal capacity, however there are currently very few boats that are moored and used as extended stay or full time live-a-board boats.


Affordable housing in the Metro area is always in the news and in grate need and supported and regulated by the Tri-Counties and several state agencies. Other than the so called Portland low income high rise apartments and other low income (affordable housing) projects all around the METRO area, "Manufactured Housing Parks" like some marina/ moorages facilities, are examples of housing for low income people and families.

LIVE -A-BOARD BOATS ARE THE RIVER COMMUNITIES VERSION OF "AFFORDABLE HOUSING" WHERE APPLICABLE.

I recommend it continue to be allowed in a limited way where the Marina/Moorges meets the criteria established during the Rural Area Plan hearings and work sessions and the vessel not be counted as a dwelling against the policy 26 "one per 50 foot" density limit but be limited by the sewage capacity of the facility and slip availability within existing waterway foot prints.

Thank you for your consideration.

River's Bend Marina



Jan R. Hamer

cc: Kevin Cook-Multnomah County Planning

Urban and Rural Reserves



How would an urban or rural reserve designation affect my property?

If you own land outside the current Portland metropolitan area urban growth boundary (UGB) and it lies within an area that is designated later this year as an urban or rural reserve, there will be **no change** to the legal use of your land. All current land use regulations and zoning remain the same and still apply.

A **rural reserve designation** means that your rural land will not be considered for inclusion within the UGB for the next 40 to 50 years. Aside from that, there are no changes. All other current legal uses remain the same. A rural reserve designation does not serve as a basis for a Measure 49 claim as the designation, by itself, does not reduce the current zoning of the property.

An **urban reserve designation** means that your land will be among lands around the region that Metro will consider for inclusion within the UGB over the next 40 – 50 years. Metro is required by state law to maintain a 20-year supply of buildable land inside the boundary. Every five years, Metro conducts an inventory of buildable land, forecasts population growth for the next 20 years and, if necessary, expands the UGB accordingly. The next UGB expansion consideration is required by state law in 2010.

Not all land will be designated as an urban or rural reserve. If your land is not designated as urban or rural reserve, your land use regulations and zoning are remain unaffected.

What would a rural reserve designation mean for my community?

An urban or rural reserve designation will prevent the Clackamas, Multnomah and Washington counties from amending land use regulations to allow new uses or smaller lots or parcels than were allowed at the time of the designation. This means that if a rural unincorporated community is designated as a rural reserve, land owners within that community cannot modify zoning to accommodate more growth (known as "up-zoning") for the next 40 to 50 years.

If my property is in an urban reserve, when will it come into the UGB?

Being designated an urban reserve provides no indication when or even if your property may be drawn upon for inclusion in the UGB. Part or all of an urban reserve may be added to the UGB if and when Metro determines there is need to accommodate growth in that area.

Additional information is available at: www.oregonmetro.gov/reserves

**LAND USE PLANNING DIVISION**1600 SE 190TH Avenue Portland, OR 97233

(503) 988-3043 FAX: (503) 988-3389

<http://www.multnomah.lib.or.us/lup/home/welcome.htm>

January 27, 2000

Re: Moorage definitions (Case file # C 10-99)

Dear Moorage Owners:

We'd like to hear from you regarding this proposal. Enclosed you will find the agenda and staff report for an upcoming public hearing held before the Planning Commission regarding changing or adding definitions for floating homes, boat houses and combos to the Multnomah County Code. Please take a moment to look the material over and provide any comments you wish.

To comment on this proposal, you may write to or call the Planning Division or attend and speak at the hearing. Instructions for submitting written comments can be found on the agenda.

Please call me if you have any questions at 988-3043. Thank you for your consideration of this planning amendment.

Sincerely,

Virginia Dodson

Land use planner

1-27-2000 1:26PM

FROM

P. 3

CHERIE SPORANDO
FRED'S MARINA
12800 NW MARINA WAY
PORTLAND, OR 97231

MIKE YERGER
LUCKY LANDING
4904 WILLAMETTE OR
VANCOUVER, WA 98661

DAN GULBRANDSON
A-1 MOORAGE
12950 NW MARINA WAY
PORTLAND, OR 97231

DANA OLSEN
MARINA WAY MOORAGE
13000 NW MARINA WAY
PORTLAND, OR 97231

JANET LARSON
LARSON'S 1 & 2
14426 NW LARSON RD.
PORTLAND, OR 97231

STEVEN PIZZA PRES.
CHANNEL ISLAND MARINA ASSOC
14555 NW LARSON RD
PORTLAND, OR 97231

JODY SHEER
BRIDGEVIEW INVESTMENT CORP
14900 NW MILL RD
PORTLAND, OR 97231

GRANT JOHNSON
SAUVIE ISLAND MOORAGE
17506T NW SAUVIE ISLAND RD
PORTLAND, OR 97231

CONNIE PARKER
PARKERS MARINE
18015 NW SAUVIE ISLAND RD
PORTLAND, OR 97231

J MICHAEL ALBRITCH PRES
MAYFAIR MOORAGE INC
15500 NW FERRY RD BOX Z
PORTLAND, OR 97231-1331

JOSH ENYART
CLARENCE MULLICAN'S BOOM
15499 SW TWIN FIR RD
LAKE OSWEGO, OR 97035

GINGER & CURTIS CURTIS
HAPPY ROCK MOORAGE
23500 NW ST HELENS RD
PORTLAND, OR 97231

RICH TONNESON
ROCKY POINT MARINA
23586 NW ST HELENS RD
PORTLAND, OR 97231

RICHARD & DELLA SCHENDEL
SCHENDEL'S BIG OAK MARINA
PO BOX 778
SCAPPOOSE, OR 97056

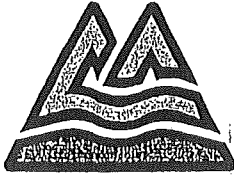
BILL CASSELMAN
CASSELMAN'S COVE
PO BOX 1106
SCAPPOOSE, OR 97056

LARRY WEILERT
26312 NW ST HELENS RD
SCAPPOOSE, OR 97056

SHERRY CASSELMAN
CASSELMAN'S WHARF
PO BOX 1106
SCAPPOOSE, OR 97056

JAN. HAMER
RIVER'S BEND MARINA
27448 NW ST HELENS RD
SCAPPOOSE, OR 97056

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MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
LAND USE PLANNING
1600 SE 190TH AVE.
PORTLAND, OREGON 97233
(503) 248-3043

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DIANE LINN • DISTRICT 1 COMMISSIONER
SERENA CRUZ • DISTRICT 2 COMMISSIONER
LISA NAITO • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

PLANNING COMMISSION AGENDA

DATE/TIME: February 7, 2000 @ 6:30 p.m.

PLACE: Multnomah County Planning Office, Room 103
1600 SE 190th Ave., Portland Oregon 97233

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes from January 24, 2000
- IV. Opportunity for Public Comment on Non-Agenda items
- V. Director's Comments
- VI. Public Hearing regarding the definitions of Houseboat, boathouse and combo. MCC .0010; .2132 & .7505 C 10-99.
- VII. Public Hearing to consider Emergency/Disaster Response Provisions MCC .11.15 C 11-99.
- VIII. Adjournment

* Material delivered to the address above ten days in advance of the meeting will be distributed to the commission. If bringing written materials to the meeting, please give the Commission Staff twelve copies for the commission and staff.

The next Planning Commission meeting will be March 6, 2000



LAND USE PLANNING DIVISION

1600 SE 190TH Avenue Portland, OR 97233

Phone: (503) 988-3043 FAX: (503) 988 -3389

<http://www.multnomah.lib.or.us/lup/home/welcome.html>

Staff Report *For a Public Hearing before the Planning Commission* *on February 7, 2000*

DEFINITIONS FOR HOUSEBOATS, BOATHOUSES AND COMBOS **Case File: C 10-99**

Proposal:

Policy 12 of the Sauvie Island Rural Area Plan states that "The County zoning code should be consistent with the County assessor and the state regarding the definitions of houseboats, boathouses and combos. For purposes of density calculations, "houseboats" shall be defined as 1) any houseboat, and 2) any boathouse or combo which is used as a residence (occupied 7 or more days per month)."

On February 7, 2000, the Planning Commission will conduct a public hearing on a legislative plan amendment, initiated by the Multnomah County Land Use Planning Division. If approved, new definitions will be added to the Multnomah County Code, conflicting definitions removed, and sections changed for consistency.

Background/Analysis:

The "Sauvie Island Rural Area Plan" Policy 12 states that "There has been a problem with regards to the numbers of units allowed and permitted under existing approvals depending on the definition of dwelling the County uses. There have also been recent revisions to the assessor's definitions that may be even more of a problem. The County Zoning code decides whether a structure is a dwelling based on information regarding kitchen and restroom facilities. The County assessor make the determination based on different information, as does the State of Oregon. The issue becomes a problem when the County staff uses the assessor's information to determine the number of dwellings existing within a moorage/marina and consistency becomes an issue of real importance to the moorage owners."

Staff surveyed both the Division of State lands (DSL), the Marine Board, and the County Assessor for their definitions for boathouse, houseboat and combination boathouse (combo). Staff also reviewed existing definitions already in the MCC. Below are listed the findings from this review.

Existing definitions from the Multnomah County Code:

- Houseboats shall mean any floating structure designed as a dwelling for occupancy by one family and having only one cooking facility. *From 11.15.7505 Waterfront Uses CU*

- Houseboat moorage shall mean the provision of facilities for two or more houseboats. *From 11.15.7505 Waterfront Uses CU*
- Dwelling Unit – a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. *From 11.15.0010 Definitions*

The Division of State Lands (DSL) Administrative Rules have the following definitions:

- "Boat House" means a covered or enclosed structure used exclusively to store, shelter, or protect a boat or boats and boating equipment.
- "Combination Boat House" or "Combo" means a boat house which is combined with, attached to, or a part of a floating home, or which includes facilities which could be used as a dwelling.
- "Floating Home" means a moored floating structure that is secured and stationary and is used primarily as a dwelling and not as a boat or floating recreational cabin.

State Marine Board has the following definitions from ORS 830:

- "Boat" means every description of watercraft used or capable of being used as a means of transportation on the water, but does not include aircraft equipped to land on water, boathouses, floating homes, air mattresses, beach and water toys or single inner tubes.
- "Boathouse" means a covered structure on floats or piles used for the protected moorage of boats.
- "Floating home" means a moored structure that is secured to a pier or pilings and is used primarily as a domicile and not as a boat.

Multnomah County Assessment & Taxation Department:

- Boathouse (BH) is a covered area for a boat
- Houseboat (HB) is a dwelling or floating home
- Combo (BH/C) is a combination boathouse and houseboat where the dwelling area is less than 50% of the total area. (HB/C) is a combo where the dwelling area is more than 50% of the total area.

Staff finds the use of the terms 'boathouse' and 'houseboat' confusing. A houseboat could also refer to a boat that is lived in. To avoid confusion and be consistent with the DSL definitions, staff recommends substituting 'floating home' for 'houseboat' and using DSL's definition for 'floating home'. A 'Combo' is another term used by DSL and the Assessment and Taxation Department. There is no definition for it in the Multnomah County Code. Because a combo is a type of dwelling unit, it is important to include it when calculating densities, regardless as to how much area is devoted to living space. Therefore, staff recommends adding the term 'combo' into the definition sections and using DSL's definition.

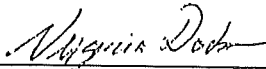
Defining the term 'boat', using the Marine Board's list of definitions, clarifies that a boat is not a boat house and is not a floating home. Thus, boats will not be counted as dwelling units when calculating densities for development under the County's current regulations. Boat house is also not defined in the Multnomah County Code, but boat houses and boat house moorages are a listed Community Service use. Therefore it is important to define what a boat house is and isn't. Again, staff recommends using DSL's definition for boat house.

Policy 12 also directs the County to calculate densities of dwellings within moorages based on the number of houseboat (floating homes) and boathouse or combos which are occupied 7 or more days per month. Under the Waterfront Uses section of the Code (11.15.7510), therefore, language has been changed to reflect this policy direction. Other proposed revisions to the Code are to substitute, where appropriate, old language for the new terms as defined. Also note that Comprehensive Plan Policies 24 and 26 were altered to reflect the new terms and density definitions.

Recommendation:

Staff recommends the Planning Commission conduct a public hearing and recommend to the County Board of Commissioners that they amend the Multnomah County Code by defining floating home, boat, boathouse, and combo, and changing related code provisions and the Comprehensive Plan Policies for consistency with the Sauvie Island Rural Area Plan.

**Multnomah County Department of Environmental Services
Land Use Planning Division**

By: 
Virginia Dodson, Planner
For Kathy Busse, Planning Director
Date: February 7, 2000

Attachments:

- Draft resolution for Planning Commission approval of this item
- Draft copy of an ordinance for the Multnomah County Board of Commissioners which contains a decision approving the proposed change.

**DECISION OF THE
MULTNOMAH COUNTY PLANNING COMMISSION**

In the matter of recommending adoption of an Ordinance
amending MCC Chapter 11.15, the Zoning Ordinance,
to adopt definitions for floating home, boat, boathouse,
and combo, and change related code provisions and
the Comprehensive Plan Policies for consistency with
the Sauvie Island Rural Area Plan.

**RESOLUTION
C 10-99**

WHEREAS, the Planning Commission is authorized by Multnomah County Code Chapter 11.05 and by ORS 215.110, to recommend to the Board of County Commissioners the adoption of Ordinances to implement the Multnomah County Comprehensive Plan; and

WHEREAS, the Draft Ordinance, hereby attached to this Resolution as Attachment A, sets forth the Findings necessary to justify this plan change; and

WHEREAS, notice of the Planning Commission public hearing was sent to floating home moorages in Multnomah County; and

WHEREAS, the Planning Commission considered these amendments at a public hearing on February 7, 2000; where all interested person were given an opportunity to appear and be heard.

NOW, THEREFORE BE IT RESOLVED that the Multnomah County Planning Commission hereby recommends that the attached draft ordinance, containing changes and additions to the Multnomah County Code and Comprehensive Plan Policies, be adopted by the Multnomah County Board of Commissioners.

APPROVED this 7th of February, 2000

By _____
John Ingle, Chair
Multnomah County Planning Commission
Multnomah County, Oregon

~~Small boats and houseboats~~ - deleted
~~Small boats and houseboats~~ - added

Original Issue: The County needs an accurate inventory of all existing moorages and marinas

✓ **Policy 9: The County should develop and maintain a current inventory of all marinas and moorages.**

Discussion: If the County is to legalize all existing marinas and moorages, an accurate account of all floating structures on the channel must be done as soon as possible.

Original Issue: The definitions of floating structures need to be updated/revised

✓ **Policy 10: The County zoning code should be consistent with the County assessor and the state regarding the definitions of houseboats, boathouses and combos. Houseboats should be redefined to: floating structures (excluding vessels) that are habitable (defined as having a potable water ~~and sewer~~ hookup) including houseboats, combos and boathouses.** *Supports issue that boats are not dwellings*

Discussion: There has been a problem with regards to the numbers of units allowed and permitted under existing approvals depending on the definition of dwelling the County uses. There have also been recent revisions to the assessor's definitions that may be even more of a problem. The County Zoning Code decides whether a structure is a dwelling based on information regarding kitchen and restroom facilities. The County assessor makes the determination based on different information as does the state. The issue becomes a problem with the Planning Section uses the assessor's information to determine the number of dwellings existing within a moorage/marina and consistency becomes an issue of real importance to the moorage owners.

Original Issues: Log storage should remain as a use permitted outright

With regards to uses allowed in the channel, the subcommittee embarked on a task of ranking and prioritizing all uses by 7 criteria: water environment impacts, land environment impacts, aesthetics, safety, economic, recreation and residential. Within each of these criteria was a range of 1 to 9 additional factors that the uses were ranked by in terms of impact to the criteria. An example of the worksheet is attached. The committee then ranked the use against the impact with a range of -3 to +3. Each major criteria was given a weight of importance based on the values of the subcommittee. After all of the votes were in, the committee came up with a ranking of desirable uses for the channel.

Policy 11: The County zoning code should be updated to reflect a less burdensome application procedure for moving to more desirable uses in the channel.

Comp Plan 1983

2. Mobile homes on individual lots in all Urban Residential Districts except Urban Future must:
 - a. have a minimum floor area of 1,000 square feet;
 - b. have a pitched roof with a pitch of at least a nominal three feet in height for each 12 feet in width (3:12);
 - c. be placed on an excavated and back-filled foundation and enclosed at the perimeter;
 - d. be manufactured after June 15, 1976, and carry a State insignia indicating compliance with Oregon State mobile home construction or equipment standards;
 - e. be multisectional. A "tip-out" or "expandable" unit is not considered to be a multisectional home; and
 - f. be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce heat loss to levels equivalent to the performance standards required of single family dwellings constructed under the state building code as defined in ORS 455.010.

B. Rural and Natural Resource Areas.

1. Mobile homes within the rural and natural resource areas shall be permitted on individual lots, subject to:
 - a. standards relating to foundations and other improvements specified in the Community Development Ordinance; and
 - b. meeting the most recent mobile home standards, as set forth by the State Department of Commerce.

~~POLICY 26 HOUSEBOATS~~

Supports Issue

that houseboats are water dependent

THE COUNTY, IN ORDER TO PROVIDE A BROAD RANGE OF HOUSING OPPORTUNITIES FOR ITS CITIZENS, RECOGNIZES HOUSEBOATS AS A HOUSING OPTION. THEREFORE, IT IS THE COUNTY'S POLICY TO PROVIDE FOR THE LOCATION OF HOUSEBOATS IN A MANNER WHICH ACCORDS WITH:

- A. THE APPLICABLE POLICIES IN THIS PLAN, INCLUDING POLICIES 2 (OFF-SITE EFFECTS), 13 (AIR, WATER, NOISE), 15 (WILLAMETTE RIVER GREENWAY), 16 (NATURAL RESOURCES), 21 (HOUSING CHOICE), 24 (HOUSING LOCATION), 32 (CAPITAL IMPROVEMENTS), 34 (TRAFFICWAYS), 36 (TRANSPORTATION SYSTEM DEVELOPMENT), 37 (UTILITIES), and 38 (FACILITIES).
- B. ANY OTHER APPLICABLE FEDERAL, STATE OR LOCAL POLICIES THAT REGULATE WATERWAY AREA DEVELOPMENT.

~~C. THE FOLLOWING CRITERIA FOR LOCATING OR EXPANDING A HOUSEBOAT MOORAGE~~

1. THE MEAN LOW WATER LINE EXCEEDS FIVE FEET;
2. THE MOORAGE AREA SHOULD BE PROTECTED FROM SILTATION PROBLEMS WHICH MIGHT REQUIRE COSTLY DREDGING TO ACHIEVE THE PROPER WATER DEPTH;
3. THE MOORAGE IS ADEQUATELY PROTECTED FROM THE ADVERSE EFFECTS OF WIND, WAVE ACTION, ICY CONDITIONS, AND OTHER HAZARDS;
4. ADEQUATE LAND AREA EXISTS TO ACCOMMODATE PARKING AND ANY ACCESSORY BUILDING REQUIREMENTS;

AGENDA

SAUVIE ISLAND/MULTNOMAH CHANNEL RURAL AREA PLAN CITIZENS' ADVISORY COMMITTEE

Tuesday, March 26, 1996
7:00 PM to 9:00 PM
SAUVIE ISLAND SCHOOL

1. Call to Order
2. Environmental Quality & Natural Hazards Review
3. Environmental and Natural Resources
4. Public Facilities
5. Questions/Other Matters
6. Adjournment

*Page 13 discussed
3 Agency Guidelines for
scenic corridor plans for
live-a-board boats.*

Questions? Please contact Gordon Howard or Susan Muir at 248-3048

Neither the opinion nor the prior County case are land use laws that guide the Hearings Officer in answering the question posed by the applicant. Neither act as binding legal precedent. The Board of Commissioners determination that a goal exception to Goal 14 was necessary is an interpretation of State law and is not due deference on appeal. As a result, the Hearings Officer must decide this application based on a correct interpretation of that law and is not bound by the Board's decision.

The fact that, in a moorage, houseboats are located on one parcel and served by sewage facilities on another may require approval of an exception to Goal 11 to accompany an application to expand an existing moorage/marina. It is not clear, however, why this fact would require approval of an exception to Goal 14. As this argument has not been adequately developed and the Hearings Officer is unable to identify any language in Goal 14 that would support such a legal position, it is denied.

(10) The redevelopment of the property would be a conversion of the property to a new, urban density use that requires approval of a goal exception. Squier, 5/30/14, p. 7.

If the redevelopment proposed is allowed by acknowledged land use laws adopted or amended after the *Curry County* decision, it does not require approval of a goal exception to Goal 14.

(11) The County's Ordinance No. 997 was not a "self-initiated" change to comply with Goal 14 so ORS 197.646 continues to apply after Ordinance No. 997 was acknowledged. Foster, June 2, 2014, p. 2.

Ordinance No. 997 is not acknowledged. Ordinance No. 953, however, is acknowledged and Ordinance No. 997 corrected a notice issue related to the County's adoption of that law.

Ordinance No. 953 was acknowledged under the authority of ORS 197.625 as complying with the goals and goal rules. After acknowledgment, the goals and goal rules do not apply unless the conditions specified in ORS 197.646, changes in the law under which Ordinance No. 953 was acknowledged, have occurred. OAR 660-004-0040 has not changed, in a material way, since Ordinance No. 953 was acknowledged.

(12) Ordinance No. 887 was not repealed and readopted by Ordinance No. 997. It was not acknowledged after OAR 660-004-0040 was adopted. It was never reviewed for compliance with Goal 14 and acknowledged because LCDC deferred that issue in 1993. Foster, June 2, 2014, p. 3.

Ordinance No. 887 is effectively "acknowledged" as complying with OAR 660-004-0040 by the terms of the administrative rule, as discussed above. OAR 660-004-0040(3)(b). Ordinance No. 887 was adopted after LCDC deferred its consideration of the rural reserves and *Curry County* case. It was adopted as a post acknowledgment plan amendment under ORS 197.625; not as an amendment adopted to comply with a periodic review order. When adopted, Ordinance No. 887 was subject to appeal by LCDC or others to determine whether it complied with Goal 14. No such appeal was filed so the law, therefore, is acknowledged as complying with Goal 14.

(13) An exception to Goal 14 is required for anything more than one houseboat on a parcel over 2 acres or to allow a single houseboat on a parcel less than two acres.
Squier, June 2, 2014, p. 5.

The two-acre minimum lot size applies to the creation of new parcels. It does not apply to existing parcels that are legally created. It, also, is not a density limitation on the density of development of land that is not being divided with code-allowed uses. If a density limitation/goal exception requirement had been intended for marinas, one like that created for manufactured home parks would have been included in OAR 660-004-0040.

5. Rural Reserves 660-027-0070

OAR 660-027-0070(3) Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves, except as specified in sections (4) through (6) of this rule.

Hearings Officer: Multnomah County adopted rural reserves under Ordinances 1161 and 1165. The applicant's second question for the Planning Director is based on the assumption that "a Goal 14 exception is required" and implicates provisions in OAR 660-027-0070 that limit the authority to take certain exceptions to the statewide planning goals. The Planning Director and Hearings Officer have found that a Goal 14 exception is not required under the circumstances presented in the application. As a result, this issue is moot.

6. Conclusion

Based on the findings and other information provided, the applicant has carried the burden necessary for the Administrative Decision by Planning Director that a Goal 14 Exception is not required for approval of an increase in the number of floating homes at a moorage in compliance with the County's zoning regulations. The Planning Director's decision is affirmed.

This decision is based on the law in effect at the time this application was decided. The legal conclusions reached in this decision are based on those laws only. Subsequent changes to the law may reopen the question or, conclusively require approval of a goal exception for the dense residential development allowed in houseboat moorages under the County's current, acknowledged land use laws. Although discussed, this decision does not address and resolve the issue whether a Goal 11 exception is required for an expansion of a moorage/marina.

7. Exhibits

- "A" Applicant's Exhibits
- "B" Staff Exhibits
- "C" Letter of Comment
- "D" Procedural
- "E" Appeal

"H" Public Hearing
 "I" Post-Hearing
 "J" Rebuttal

Exhibit #	# of Pages	Description of Exhibit	Date Received/Submitted
A.1	1	Application Form	12/23/13
A.2	6	Narrative	12/23/13
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	4/9/14
B.2	1	A&T Tax Map with Property Highlighted	4/9/14
B.3	1	2012 Aerial Photo for Subject Property	NA
B.4	1	2012 Aerial Photo of Subject Property with UGB Shown	NA
B.5	4	Notice of Adoption SI/MC Plan	NA
'C'	#	Comments	Date
C.1	4	Letter dated 13 February, 2014 by Anne Squier	2/13/14
'D'	#	Procedural	Date
D.1	2	Complete Application Letter	1/22/14
D.2	4	Opportunity to Comment Notice	1/30/14
D.3	10	Notice of Decision	4/14/14
D.4	4	Notice of Public Hearing	5/8/14
'E'	#	Appeal	Date
E.1	2	Notice of Appeal submitted by Anne W. Squier	4/28/14
'H'	#	Submitted at Public Hearing	Date
H.1	22	Narrative and exhibits submitted by Christopher H. Foster	5/30/14
H.2	12	Narrative with Oregon Statewide Planning Goals and Guidelines attached submitted by Anne W. Squier	5/30/14
H.3	121	Exhibits labeled AWS 1 through AWS 11 submitted by Anne W. Squier	5/30/14
H.4	1	Sign-in listed for the Public Hearing	5/30/14
'I'	#	Post Hearing Submittal	Date
I.1	55	Ordinance No. 887	6/5/14
I.2	1	Notice of Proposed Amendment to DLCD for Ordinance No. 887	6/5/14
I.3	1	Notice of Adoption to DLCD for Ordinance No. 887	6/5/14
I.4	2	Planning Commission Public Notice for Ordinance No. 887	6/5/14

I.5	4	Ordinance No. 953	6/5/14
I.6	1	Notice of Proposed Amendment to DLCD for Ordinance No. 953	6/5/14
I.7	2	Notice of Adoption to DLCD for Ordinance No. 953	6/5/14
I.8	9	Staff Report to Multnomah County Board of Commissioners for Ordinance No. 953	6/5/14
I.9	6	Ordinance No. 997	6/5/14
I.10	1	Staff memorandum to Hearings Officer detailing the previous nine exhibits	6/5/14
I.11	13	Email dated June 6, 2014 from Christopher Foster with attached narrative and exhibit	6/6/14
I.12	14	Email dated June 6, 2014 from Steve Morasch with attached narrative and exhibits	6/6/14
I.13	1	Email dated June 9, 2014 from Anne Squier	6/9/14
I.14	21	Exhibits attached to June 9, 2014 from Anne Squier including a CD	6/9/14
'J'	#	Post Hearing Rebuttals	Date
J.1	1	Email dated June 11, 2014 from Steve Morasch with CD exhibit (audio files from the September 2, 2010 LCDC hearing)	6/11/14
J.2	5	Email dated June 11, 2014 from Anne Squier with attached rebuttal and exhibit	6/11/14
J.3	6	Email dated June 12, 2014 from Steve Morasch with attached exhibit	6/12/14
J.4	2	Email dated June 13, 2014 from Christopher Foster with attached rebuttal	6/13/14



WHITE, Skip
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Land Use Plan Sauvie Island

Skip White <duckcrossing@msn.com>

Tue, Aug 25, 2015 at 8:53 PM

To: deborah.kafoury@multco.us, district1@multco.us, district2@multco.us, district3@multco.us, district4@multco.us, simcplanning@multco.us, "Mark J. Greenfield" <markgreenfield@involved.com>

Cc: Skip and JoAnn White <duckcrossing@msn.com>

We strongly support the proposed land use plan as prepared by a citizen committee. Our main concern is once proposed changes are approved will County Board provide means for enforcement? Will responsible agencies such as Sheriff's Department, building inspectors and other county agencies provide enforcement. If county agencies' enforcement is complaint driven, it is imperative that parties seeking enforcement must remain anonymous.

**JoAnn Waters-White, Winfield White
17757 NW Sauvie Island Road**



YORK, Angel
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Transportation Plan

Angel York <aniola@gmail.com>

Tue, Aug 25, 2015 at 2:43 PM

To: simcplanning@multco.us, mult.chair@multco.us, district1@multco.us
Cc: "bikeloudpdx@gmail.com" <bikeloudpdx@gmail.com>

Dear Folks Who Can Do Something at Multnomah County,

First, and most importantly, I want to thank you for taking the time to consider the vital issue of safe access to Sauvie Island. I know you have a lot of work to take care of, and I trust that you're working hard to reach a solution that is in the best interests of all members of the public who transport themselves to, from, and around Sauvie Island. I live in North Portland, so recreational access to Sauvie Island is important to me.

I'm also writing to express my surprise and concern at the part up the proposed transportation plan for Sauvie Island which states "Support the use of bicycle transportation alternative to automotive use without encouraging purely recreational bicycle activities that may increase this level of vehicle conflict on roadways." Again, I trust that you are trying to find a solution that best meets the needs of all members of the public who require access to Sauvie Island.

It is my understanding that the Multnomah County Bicycle and Pedestrian Advisory Committee specifically advised dropping this section of the plan. As someone who studies transportation infrastructure, I note that when the concern is alleviating congestion, there's a solution! A wide body of evidence shows that a decrease in automotive use and an increase in biking and walking will do far more to alleviate congestion than the current plan proposal.

In the spirit of alleviating congestion, I would encourage you to follow the direction of the bike/ped advisory committee, perhaps even going so far as to reword the statement as follows:

Support the use of automotive transportation alternative to bicycle use without encouraging purely recreational automotive activities that may increase this level of vehicle conflict on roadways.

An acquaintance of mine mentioned that you may be proposing an off-street MUP. If this would create comprehensive access to, from, and around Sauvie Island, then I am super-excited about that.

Thank you for your time. I appreciate that you are willing to listen to the advisory committee and the public on this important safety matter. Please let me know if you have any further questions on this topic.

Angel York
North Portland



VALENTINE, Kristin

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Bicycling unfriendliness

Kristin Valentine <kristinw@gmail.com>

Tue, Aug 25, 2015 at 1:07 PM

To: simcplanning@multco.us

Cc: mult.chair@multco.us, district1@multco.us

Is this for real? <http://bikeportland.org/2015/08/25/advocate-sounds-alarm-sauvie-island-transportation-plan-discourage-recreational-bicycle-activities-156249>

Discourage cycling? Collect a fee? WTF

This area is extremely popular with people for recreation, whether they drive or bike or whatever. Why discourage folks specifically on 2 wheels? Most people who go out there to ride do so on the weekends I have to imagine, when there are fewer farm work vehicles on the road, if that's the concern. I've been riding out there for decades, never had a problem. In fact, I would say as a newer cyclist, it was a great place to get my feet wet, since there can be little traffic on an early Saturday morning, and a loop is only 13 miles.

Otherwise, discourage ALL people, regardless of how they get there. Actually, the island should probably just put a up a gated fence, keep all the riff raff out.



WHALEN, Jamie
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Unacceptable Language in Sauvie Island use plan.

MrFocus503 . <focus503@gmail.com>

Tue, Aug 25, 2015 at 2:27 PM

To: simcplanning@multco.us, mult.chair@multco.us, district1@multco.us, odfw.info@state.or.us

Dear Sirs,

I am writing to express my sincere objections to Policy 5.9 in the *Manage Travel Demand section* of the draft Sauvie Island/Multnomah Channel Transportation System Plan.

"Implement a range of Transportation Demand Management (TDM) policies encouraging existing businesses and requiring new development (beyond single family residential use and agricultural uses) to help reduce vehicle miles traveled (VMT), maximize use of existing facilities and alleviate congestion on US 30 and county roads caused by seasonal and special event traffic. **Support the use of bicycle transportation alternative to automotive use without encouraging purely recreational bicycle activities that may increase this level of vehicle conflict on roadways.**"

As a resident, consumer, taxpayer and constituent of Multnomah County in the State of Oregon, I find the above sentiment absolutely unacceptable and discriminatory.

I have never had single conflict with any "agricultural or farming" vehicle while riding out there. I have had several conflicts (if you count driving across the center line into my path a conflict) with large pickups which weren't engaged in agricultural or farming operations, that is not towing a farm implement, loaded with construction materials, or hauling produce. But have all the hallmarks of hunters and or fisherman (possibly local cranks).

My family has been a customer of Sauvie Island businesses for more than 20 years, and I'll see to it that we never purchase so much as solitary green bean from a Sauvie Island business again if that language makes it to the final.

I've spent the last 30 years of my life waiting behind trucks hauling boats, RV's, and ATV's creeping along highways and byways throughout the western U.S. Country roads are rotten with them in the fall and the spring.

And such as food is available for purchase at any number of merchants **all of these activities are purely recreational**. Are you listening ODFW?

I'm getting awful sick of the entitled, parochial, redneck attitudes of some of my fellow Oregonians. (ok, that's nothing new)

On the other hand, If you want to talk about discouraging people from coming into the city of Portland (ie: closing highways 30, 26, 5, or 84) I may be open to compromise.

Respectfully yours,
Jamie Whalen
Native Oregonian (1970)
North Portland



WICK, Darin
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Transportation Plan Draft

darin <darin@darinwick.com>
To: simcplanning@multco.us
Cc: mult.chair@multco.us, district1@multco.us

Tue, Aug 25, 2015 at 2:53 PM

To County Staff, County Chair Kafoury, and Commissioner Bailey,

I was recently made aware that the County's draft Rural Area Plan for Sauvie Island includes, in Policy 5.9, recommends supporting "the use of bicycle transportation alternative to automotive use without encouraging purely recreational bicycle activities" (page 59). It fails to identify any way of making such a distinction: How do you discourage recreational uses without discouraging non-recreational uses?

If the goal of this policy, as stated elsewhere in the Draft Plan, is to reduce the impact of transportation on the island's natural environment and agricultural land, it would be more effective to discourage recreational automobile use, and to encourage recreational users to favor transit and active transportation. The draft Transportation System Plan details several good approaches to this, and I suspect Sauvie Island would benefit from their application.

I hope that, per the recommendation of the County Bicycle and Pedestrian Advisory Committee, the language about discouraging cycling will be removed from the plan before it is finalized. I look forward to seeing safer and lower-impact transportation facilities on Sauvie Island in the future.

Regards,

Darin Wick

Portsmouth Neighborhood Resident

Rocky Pointe

Marina

Boatyard

3586 NW St. Helens Hwy.
Portland, OR 97231

Multnomah County Commissioners
Deborah Kafoury-chair
Jules Bailey
Loretta Smith
Judy Shiprack
Diane McKeel

TONNESON, Stan

August 27, 2015

Agenda #: R.1

RECEIVED

AUG 24 2015

at Rocky Pointe Marina

Marina

tel 503.543.7003
fax 503.543.5170

Boatyard

tel 503.543.2785

Re: Sauvie Island/Multnomah Channel Planning/ Floating Home Expansions

I am a member of the CAC and the moorage/marina subcommittee that has brought this proposed policy too you. I have also been before the Multnomah County Board of Commissioners several times in my 5 year process to get approval for additional floating homes at my marina that you did approve in 2010 ,T3-06-005.

Today, nearly 5 years further in the process we are just starting to build homes. There are countless hoops and hurdles to getting permission including National Marine Fisheries, Army Corp of Engineers, Oregon Department of State Lands, ODFW, DEQ and City of Portland just to name a few. Nearly all require mitigation, upgrades or improvements. Faith in future financial returns from the floating homes drive this investment. There is little of no money in boat moorage. The Portland area has a surplus of boat moorage keeping rates very low and no money for improvements. For privately owned marinas, floating homes justify improvements that all enjoy. All the mitigation improvements provide for a better environment.

There are only 5 marinas on the Multnomah Channel that could add floating homes based on the 1 per 50 ft. Although I cannot predict the future there is only one marina that I know of actively seeking to add floating homes and that is Fred's Marina. Fred's is a multi-generation family marina just like Rocky Pointe. It takes years of planning to start an expansion process and then another 5 to 10 years to get permits. IN my personal situation the long term planning of exercising our property rights started with my father who passed onto to me. Fred's Marina is also a family business wishing to exercise their rights to pass on to their children. To take away the existing rights of marina owners that were clarified in 1996 is wrong. Fred's has spent an enormous amount of money fighting the battle to exercise their property rights.

I suggest that there be at least a last opportunity window of perhaps 5 years to exercise the right to add floating homes up to the 1 per 50 limits. The zoning approval is just the first hurdle. There are dozens more all of which will produce a better, safer and more environmental friendly facility.

Stan Tonneson





TOCHEN, Dan
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Policies to restrict cycling on Sauvie Island are a step backwards

_pdx Dan <dan_pdx@hotmail.com>
To: "simcplanning@multco.us" <simcplanning@multco.us>

Tue, Aug 25, 2015 at 4:04 PM

To Whom it May Concern,

I am writing to express my deep disappointment and concern over the language regarding recreational cycling in the draft Sauvie Island transportation plan. Specifically:

"Implement a range of Transportation Demand Management (TDM) policies encouraging existing businesses and requiring new development (beyond single family residential use and agricultural uses) to help reduce vehicle miles traveled (VMT), maximize use of existing facilities and alleviate congestion on US 30 and county roads caused by seasonal and special event traffic. Support the use of bicycle transportation alternative to automotive use without encouraging purely recreational bicycle activities that may increase this level of vehicle conflict on roadways."

This position is short-sighted and rooted purely in antipathy for cyclists, not in any objective reason. Cyclists are road users who are fully within their legal rights to use these publicly funded roads for recreation, for pure transportation, or for transportation that they happen to find enjoyable, just like car drivers or motorcyclists. By codifying and promoting this negative attitude towards one type of road user you will encourage negative behavior towards those users - behavior that could be threatening, menacing, or physically dangerous for all cyclists, not just the recreational cyclists you intend to exclude. Moreover, the number of bicycles on Sauvie Island roads at any given time is a fraction of the number of cars -- targeting the smaller, less hazardous group of road users that causes the least amount of wear and tear on the roads doesn't make sense and is simply not good policy.

I strongly urge you to remove this divisive and poorly-considered language from the plan.

Best regards,

Dan Tochen

4133 SE Lincoln St

Portland, OR 97214



THOMAS, J. Blake
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Is. Rural Plan

Blake Thomas <squishi@spiritone.com>

Tue, Aug 25, 2015 at 8:38 AM

To: simcplanning@multco.us

To: Multnomah County Board of Commissioners,

I have read the Sauvie Island Rural Plan and am in complete support of it.

Thank you,

J. Blake Thomas
18149 NW Sauvie Is. Rd.
Portland, OR 97231



SUGAHARA, Kenji

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island Rural Area Plan

T. Kenji Sugahara <kenji@obra.org>

Wed, Aug 12, 2015 at 11:23 AM

To: karen.c.schilling@multco.us, kevin.c.cook@co.multnomah.or.us, Harry Dalgaard III <harry@traveloregon.com>, Nastassja Pace <staj@traveloregon.com>, portlandracing <kris@portlandracing.com>

Dear Karen,

It was brought to my attention that the Sauvie Island Rural Plan will be coming up for public hearing on the 27th.

I am very concerned about proposed Policy 1.5 regarding the "establishment of more restrictive permitting thresholds for the number of visitors and the frequency or duration of events than the maximums authorized by state law." My organization's promoters have events tied in with the farm experience at Kruger's Farm. Our organization firmly oppose the establishment of more restrictive thresholds and ask that the county adopt SB 960.

I am highly concerned about the make-up of the agri-tourism sub-committee and their general consensus that agri-tourism is not desired due to "high visitor impacts". It looks as if the concerns of one sub-committee member has not been addressed, specifically the comment "I ask that the county conduct a study based on science and facts to determine, the truth about the island having reached a carrying capacity before any policies [are] changed [and] is [not] proposed based on [a] few people[s] hear say." (page 2, Exhibit 2: Ag Policy Discussion Table) Further, Appendix 2: Agriculture & Agri-Tourism Background Report is incomplete as comments and issues are often cut-off, especially on Exhibit 2.

I am also very concerned that there were no representatives listed on the TAC from either Travel Portland, Travel Oregon or any other Destination Marketing Organizations. These organizations have an unmatched expertise in agri-tourism and work extensively with the legislature and localities on these issues. If they were involved with the process, please let me know. If they were not involved with the process, I ask that you work with them to ensure that both county employees and county commissioners are briefed by at least one of the organizations.

I look forward to hearing your response.

Sincerely,

Kenji Sugahara
Executive Director & Attorney
Oregon Bicycle Racing Association
Oregon Tourism Commissioner
Phone: 503-302-4935
<http://www.obra.org>



SIMS, Matthew
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Cycling on Sauvie

Matthew Sims <msims@reboundmd.com>

Tue, Aug 25, 2015 at 5:31 PM

To: "simcplanning@multco.us" <simcplanning@multco.us>

To Whom It May Concern:

Please do not remove cycling from the island. I understand the concern about traffic and safety, but it's such a special place. My girlfriend and I are planning on renting a tandem bicycle and riding out from Portland to visit the farms and swim in the Columbia; this will be her first experience. We'll be respectful and try to ride as far to the right as possible and pull over when needed to allow larger vehicles to pass. Furthermore, the island is the first place I take people from out of town and the aspect that I highlight most is that it's my favorite place to ride in all of the Portland metro region—which is a strong statement in itself.

Sincerely,

Matthew Sims | *Physical Therapy Aide*

Rebound Orthopedics & Neurosurgery

2121 NE 139th St., Suite 325 (Bldg.A)

Vancouver, WA 98686

TEL 360-449-8700 | FAX 360-449-8776

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SQUIER, Anne
August 27, 2015
Agenda #: R.1

Anne W. Squier
13370 NW Marina Way*
Portland, OR 97231
wompsett@earthlink.net
503.318.8080 (cell)

18 August, 2015

Chair Deborah Kafoury and Commissioners
Multnomah County Planning Board of Commissioners
501 SE Hawthorne Blvd., Suite 600
Portland, OR 97214

Re: Consideration of 2015 Sauvie Island/Multnomah Channel Rural Area Plan

Dear Chair Kafoury and Commissioners Bailey, Smith, Shiprack, and McKeel:

I hope to testify at the hearing re Sauvie Island planning on August 27th, but will be out of state until late on the 26th and believe it best to submit written comment in case any travel delays prevent my being there in person.

I urge that the Board adopt the Sauvie Island/Multnomah Channel Plan (SI/MC RAP) as recommended by the Planning Commission. There are a few changes, mentioned below and attached, that would strengthen its ability to protect the Island's agricultural productivity and the unparalleled rural, natural resource, and recreational treasures of both Multnomah Channel and the Island. But my overwhelming message to you is that the CAC, Island residents, the local community, and your Planning Commission have labored for nearly two years to produce a solid framework to preserve the distinctive character of the Island and the Channel for future generations. That plan should be adopted, implemented, and enforced.

Multnomah Channel policies have been my primary focus in participating throughout the planning process, although I have commented and submitted suggestions on most other topics as well. I served on the TAC for Channel planning. I believe the set of Channel policies in the recommended plan will serve the County well, align the County with state land use law and policy, and will enhance the habitat values of the Channel.

I support the Marina and Floating Home policies as recommended. I am unaware of any state or local definition that classifies Floating Homes as water dependent uses. The recommended policies are consistent with the rural nature and land use classifications of the area; they reinforce Willamette River Greenway principles; and they align with the Climate Action Plan.

* Note this is a new numerical address. After 33 years in the same place and with the same address, the county has assigned a new house number. Please no longer use 13402.

As mentioned previously, there are a very few tweaks that would greatly improve this plan. They have been laid out by Mark Greenfield in the letter he submitted on August 14th, and are attached at the end of this letter. I worked with Mark and other citizens to develop these concepts, and strongly recommend that you make those changes.

As to the well- constructed Transportation System Plan (TSP), I simply want to emphasize the importance of following through with meaningful Transportation Demand management, once the TSP is in place. The TSP nicely lays out many options for reducing transportation overload, but does not select among those. A near-future task should be pursuing implementation of a selection of those (or additional) options.

My personal thanks to your planning staff and Planning Commission for persevering, listening carefully, and working for the long term future of Sauvie Island and Multnomah Channel.

Sincerely,



Anne W. Squier

Attachment:

August 14, 2015

[RECOMMENDATIONS FROM GREENFIELD LETTER]

1. **Page 3, Community Vision, 1st sentence.** Change the first sentence as follows:

“The policies in this document ~~should~~ are to be read in harmony with the following vision statement.”

Discussion: The vision statement reflects the vision people have for Sauvie Island and the channel and gives context to the policies that follow. It is appropriate for persons applying these policies as applicants, staff or interested persons to consider the vision statement in determining how the plan policies apply. The word “should” simply makes this optional.

2. **Page 18, Agriculture & Agri-Tourism Policy 1.3.** Change Policy 1.3 to read as follows:

Policy 1.3.

Develop and adopt a tiered review process for farm stand operations on EFU land distinguishing between operations that include promotional activities and those that do not. Farm stands that occupy one acre or less (including parking) and do not include promotional activities or events shall be reviewed through the County’s Type I process, based on objective standards. Farm stands that occupy more than one acre or include promotional events or activities shall be reviewed under the County’s Type II application process. ~~Until implementing code is adopted, the following shall apply:~~

(a)——_Proposed farm stands that would occupy more than one acre or include promotional events or activities shall be sited to maximize retention of agricultural land in productive farm use. The amount of land identified for farm stand promotional events or activities shall be the minimum necessary to accomplish the objective of supporting farming operations on the property.

~~(b) Until code provisions are adopted that accomplish this objective, the following standards shall apply in order to limit the overall amount of acreage proposed for the farm stand structures and events consistent with the following standards:-~~

(1) The amount of land identified for the farm stand structures and associated permanent parking shall not exceed two acres.

~~(2) The amount of land identified for farm stand promotional activities shall be the minimum necessary to accomplish the objective of supporting farming operations on the property. Absent compelling need for additional area, the area identified for promotional events or activities, including corn mazes and event parking, shall not exceed five percent or five acres of the property on which the farm stand is located, whichever is less.~~

(3) An applicant may seek approval to accommodate temporary parking on additional acreage during September and October of a calendar year on areas that have already been harvested or used for pasture during the current growing season. The temporary parking area shall not be graveled or otherwise rendered less productive for agricultural use in the following year.

(4) An applicant owning or leasing multiple properties in farm use on Sauvie Island shall be limited to only one Type II farm stand.

(5) Multnomah County may require consideration of alternative site plans that use less agricultural land or interfere less with agricultural operations on adjacent lands.

(6) Farm stand signage shall maintain and complement the rural character of the island.

Discussion: Our proposed change to Policy 1.3 is very similar to the Planning Commission's recommended language but with one significant change. As recommended by the Planning Commission, the standards under subsection (a) would apply only "until implementing code is adopted." The difficulty with this is that once code is adopted, this policy gets stripped of the language establishing the direction the implementing ordinances must follow. I do not think this was the Planning Commission's intention.

We do not object to the Planning Commission's desire to be able to consider measures other than the ones set out in the recommended plan, but we still want the language in the policy that establishes the objective for implementing code language to remain. Consequently we recommend that Policy 1.3 be amended in the manner shown above.

3. New Policies Addressing Plan and Code Consistency. Add the following new goal and policies in a new section under the heading Plan and Code Consistency:

Plan and Code Consistency

Goal: To ensure the continued applicability of the policies in the 2015 Sauvie Island/Multnomah Channel (SIMC) Rural Area Plan and their implementing ordinances throughout the planning period.

Policy 6.1. This 2015 SIMC Rural Area Plan supersedes and replaces in its entirety the 1997 Sauvie Island/Multnomah Channel Rural Area Plan.

Policy 6.2 Absent explicit language in a countywide land use or comprehensive framework plan that it would control over the policies in the SIMC Rural Area Plan in a given instance, the policies in this 2015 SIMC Rural Area Plan and the regulations adopted to implement this plan shall control in the event of any conflict with policies in the countywide plan or its implementing regulations.

Policy 6.3 Any countywide land use comprehensive framework plan shall retain and incorporate by reference the policies contained in this 2015 SIMC Rural Area Plan.

Discussion: The recommended plan contains no policies addressing Plan and Code consistency. The Planning Commission deferred this issue to the Board of Commissioners. Policies on this subject are very important, especially now that Multnomah County is moving forward to update its countywide comprehensive plan. The 2015 SIMC Rural Area Plan must stand *on its own merits* over the coming 15-20 years. It must control in the event of possible conflicting policies in a

more general plan addressing other portions of the County that may not share this rural area's issues and concerns. Far too much work and citizen effort has gone into this plan to allow a situation to arise that could render portions of it meaningless. I think we speak for a great many islanders and channel residents in making this statement. We want our plan to be a living, breathing, meaningful document.

4. New Policies Addressing Plan, Code and Permit Enforcement. Add the following new goal and policies:

Plan, Code and Permit Enforcement

Goal: To maintain the integrity of the Sauvie Island/Multnomah Channel Rural Area Plan through fair, consistent, meaningful and effective enforcement of Plan and Code requirements and conditions of development approvals.

Policy 7.1 Coordinate and work with appropriate local, state and federal agencies to ensure compliance with the County's Zoning Code and policies.

Policy 7.2 Investigate and enforce compliance with permit conditions and ordinance requirements in all cases of verifiable permit or code violations, including potential violations observed by County staff, reported by citizens, or brought to staff's attention whether anonymously or for attribution.

Policy 7.3. Enforce permit conditions and ordinance requirements in a manner that is diligent, consistent, fair to all interests and effective.

(a). Exercise enforcement in a manner flexible enough to allow the level of enforcement that best fits the type and circumstances of the code or condition violation(s).

(b) Where circumstances warrant, seek voluntary compliance with code requirements or permit approval conditions by providing first-time violators with information about and an opportunity to comply with the Zoning Code or permit conditions within reasonable timeframes with little or no penalty. Closely monitor and enforce such reasonable timeframes to come into compliance to ensure that violators are not unnecessarily delaying compliance.

(c) Set fines at a level that is substantially commensurate with the nature of the violation and sufficiently large that a knowing violator makes no profit from it. The level of fine should act as a strong incentive for voluntary code compliance and a strong disincentive to violate the Zoning Code or permit conditions.

Discussion: The recommended plan contains no policies addressing plan, code and permit enforcement. Again, the Planning Commission deferred this issue to the Board of Commissioners. Concerns regarding plan, code and permit enforcement (or more accurately, the lack of fair and effective enforcement) were raised repeatedly by many area residents during the scoping sessions, at CAC meetings and in hearings held to date before the Planning Commission. They relate to structures, events, activities, signs, noise, and other matters occurring without authorization or in violation of standards on the island or channel. Three key points stand out. First, there is a need for stronger and more diligent enforcement, both of plan or code provisions and of conditions of development approval. Second, a better system is needed than one that requires residents to report their neighbors, sometimes repeatedly. Third, the voluntary compliance system does not appear to be working. When compliance is ignored, measures strong enough to ensure compliance must be imposed to preserve the integrity of the plan and maintain the island's existing rural character.

As we testified before the Planning Commission, we recognize that the vast majority of islanders do comply with their conditions of permit approvals. But some do not, sometimes in ways that are very visible to the community. These violations can harm neighbors in the community and negatively impact the island's rural character, and they encourage others to violate permit conditions or code standards with feelings of impunity.

The plan needs a goal and policies addressing enforcement. Perhaps because of budgetary implications, the Planning Commission deferred this issue to the Board.

Our proposed new goal and policies are a combination of (1) the goal and policies we earlier recommended to the Planning Commission, and (2) language that has been developed in the context of the Framework Plan update which is currently underway.



NEWMAN, Adam
August 27, 2015
Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island and Multnomah Channel Rural Area Plan and Transportation Plan

Adam Newman <adam@bicycletimesmag.com>
To: simcplanning@multco.us

Tue, Aug 25, 2015 at 2:31 PM

To Whom It May Concern:

My name is Adam Newman. I'm the editor of a national cycling magazine, Bicycle Times, and a resident of Portland.

I was dismayed when I learned of the language in the draft of the Sauvie Island and Multnomah Channel Rural Area Plan and Transportation Plan that reflects cycling.

The notion that bicycling on Sauvie Island and in the immediate area is a problem that needs to be solved is simply unacceptable. Instead Multnomah County should be doing everything it can to promote cycling on the island as a safe, environmentally-friendly and low-impact means to draw visitors to the island.

I strongly encourage you to accept the recommendation of the Multnomah County Bicycle and Pedestrian Advisory Committee that the language be removed.

Sincerely,

- Adam Newman

Adam Newman
Editor, Bicycle Times magazine
bicycletimesmag.com
@adamgnewman



REPLINGER, John

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island and Multnomah Channel Rural Area Plan and Transportation System Plan

jrportland@comcast.net <jrportland@comcast.net>
To: simcplanning@multco.us

Tue, Aug 25, 2015 at 7:38 PM

To Whom It May Concern:

I am writing to indicate my opposition to language in the draft plan that seeks to discourage "recreational bicycle activities" on Sauvie Island.

In years past I did occasionally participate in various "recreational" activities in the Sauvie Island area including birding, bicycling, and the purchase of agricultural products. I think it is unreasonable and indefensible to single out one recreational activity and seek to discourage that entirely legal activity and seek to tell participants in that activity that they are unwelcome.

Do I also get to discourage people from outside of my neighborhood from driving past my house or parking on the street nearby if they are using the nearby city park, nearby businesses, or a nearby private venue that allows concerts and various other "recreational activities?"

If the County takes this step of allowing residents of an area to have a major say in discouraging legal uses that are allowed on all similar facilities and lands, where will this lead?

Sincerely,
John Replinger
6330 SE 36th Avenue
Portland, OR 97202



SILODOR, Susan

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Fwd: Multnomah County Planning Commission

Adam BARBER <adam.t.barber@multco.us>

Wed, Aug 5, 2015 at 7:16 AM

To: Kevin COOK <kevin.c.cook@multco.us>, Joanna VALENCIA <joanna.valencia@multco.us>

Kevin and Joanna,

FYI - Commissioner Silodor mentioned to me Monday night that she isn't able to attend the Board hearing but would like to submit a letter into the record to be forwarded with the Board packet. I believe this email is that letter and I noticed that she copied D1. We should include this with the Board packet if possible, perhaps with any other post PC hearing letters received.

adam

----- Forwarded message -----

From: **Susan Silodor** <susansilodor@yahoo.com>

Date: Tue, Aug 4, 2015 at 5:42 PM

Subject: Multnomah County Planning Commission

To: Adam BARBER <adam.t.barber@multco.us>

Cc: Commissioner Jules Bailey <jules.bailey@multco.us>

I wanted to take a moment to thank staff for all the work they've done on the Sauvie Island R.A.P. Having sat on both sides of the table, I am keenly aware of the challenges that both staff and community faced. But I have to say, the plan that ultimately emerged, the one before the Commissioners, is a fine and successful example of team effort.

As a Planning Commissioner, I wholeheartedly support this plan. As an island resident, I appreciate the openness of the staff and Planning Commission and the willingness to recognize the concerns of residents as a top priority.

The 2015 R.A.P. recognizes the critical importance of the rural character of Sauvie Island and the challenges it faces, both from commercial development and recreational use. Most important...it focuses on solutions, which is, I believe, what the island residents have been looking for.

I hope you will receive this plan with as much optimism and enthusiasm as it has generated among those most affected, the residents. And I look forward to approval of the plan.

Thank you,

Susan Silodor
Multnomah County Planning Commission

Sent from Yahoo Mail for iPad

Adam Barber, CPESC
Interim Planning Director

Multnomah County Land Use Planning Division
1600 SE 190th Avenue, Suite 116
Portland, Oregon 97233

503-988-0168
adam.t.barber@multco.us



PAULSEN, Kirk

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island DRAFT Transportation Plan Language Concerns about Recreational Cycling

Kirk Paulsen <kirk.paulsen@gmail.com>

Tue, Aug 25, 2015 at 2:17 PM

To: simcplanning@multco.us, mult.chair@multco.us, district1@multco.us

Hello,

I've been made aware of some very unfortunate language within the DRAFT Transportation Plan for Sauvie Island as it relates to bicycling. The fact that 'recreational cycling' is specifically addressed as its own activity is concerning enough, but coupled with the idea that such cycling should be discouraged is discriminatory and could easily lead to unsafe encounters on the roadway.

Personally, I really enjoy what Sauvie Island has to offer. It's a beautiful setting, and there are many destinations worth visiting. However, I don't own a car, so when I visit the island I ride my bike there. It's not a recreational trip, it's a trip to a destination by bike. But is it viewed as a recreational trip by somebody that doesn't want anymore bikes on the island? Possibly, and that's upsetting as all I want to do is get to a place of business to support them and enjoy the scenery along the way, but I've experienced my fair share of harassment on the island while biking and it isn't fun. Language like this only further solidifies hatred towards people that bike, whether that person biking chooses to do so for pure recreational purposes or utilitarian purposes, or a combination of the two.

Please remove language within the DRAFT Transportation Plan that refers to recreational cycling and the act of discouraging it, as it is harmful language and will lead to exacerbating existing friction between people that do not want anymore bicyclists on the roads and the people they perceive to be recreational cyclists, whether they are recreating or not.

Thank you for considering this request.

Cheers,
-Kirk



HERSTEIN, Adam

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Sauvie Island

Adam Herstein <aherstein@gmail.com>

Tue, Aug 25, 2015 at 1:25 PM

To: simcplanning@multco.us

Sauvie Island has the potential to be a great recreational and fun destination for people to ride around mostly flat, bucolic farmlands while supporting local agriculture. Banning cycling is the complete wrong approach here.

What should be done is to create a new TriMet bus route to connect to the #16 and circulate around the island to various farms and businesses. Then create parallel bike paths to the main roads so that people riding don't have to share space with people driving trucks and farm equipment.

—

Adam Herstein
aherstein@gmail.com



HOLTZ, Andrew

August 27, 2015

Agenda #: R.1

Kevin COOK <kevin.c.cook@multco.us>

Support recreational bicycling. Fix Policy 5.9 of the Sauvie Island plan.

Andrew Holtz <holtzreport@juno.com>

Tue, Aug 25, 2015 at 1:03 PM

Reply-To: holtzreport@juno.com

To: simcplanning@multco.us

Cc: mult.chair@multco.us, district1@multco.us, district2@multco.us, district3@multco.us, district4@co.multnomah.or.us, district4@multco.us

Commissioners:

The county must support and enhance the health and well-being of our community, as well as the quality of life of residents. That includes encouraging recreational bicycling, which provides powerful benefits not only to people who bicycle, but to the economy, livability and safety of the entire county.

The proposed Policy 5.9 of the draft Sauvie Island/Multnomah Channel Rural Area Plan must be changed to remove the dangerous phrase opposing support for recreational bicycling. The phrase "without encouraging purely recreational bicycle activities that may increase this level of vehicle conflict on roadways" should be deleted.

I understand that Sauvie Island residents are bothered by clogged roads, but almost all of the congestion is created by motor vehicles. Attempting to dissuade people from riding bicycles on the island is wrong-headed and pointless.

We live in a floating home on the Willamette River in Sellwood. On nice summer weekends and during peak fishing season, the river in front of our home is filled with boaters, some of them peering in our windows or blasting their stereos. But the river, like the roads on Sauvie Island, are public... and they are among the things that make living here so wonderful for everyone in the county. To say the county should not encourage recreational bicycling on public roads would be like me advocating closure of the Willamette Park boat ramp, because it "encourages" those recreational boaters. That action would be selfish, wrong, and undermine fundamental county values.

I am a member of the Multnomah County Bicycle & Pedestrian CAC (MBPCAC) and a member of the current Multnomah County Comprehensive Plan & TSP update CAC. These comments are just mine as an individual, but it should be noted that the Bicycle & Pedestrian CAC conveyed its strong objection to the draft language of Policy 5.9 to county staff at its July 8, 2015 meeting. The MBPCAC was created by ordinance to directly advise the Board on relevant matters. The Commissioners should heed the voice of the committee in this case.

Regards,

Andrew Holtz

6901 SE Oaks Park Way, #18

Portland, OR 97202

Office: 503-292-1699

Holtzreport@juno.com