

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1153

Amending the Sauvie Island/Multnomah Channel Rural Area Plan Map to Note Exceptions to State Land Use Goals

The Multnomah County Board of Commissioners Finds:

- a. On April 6, 2009, the Multnomah County Planning Commission conducted a public hearing as provided for in Multnomah County Code § 37.0530, with respect to requests for exceptions to Statewide Planning Goals 11 and 14 to increase the number of floating homes at Rocky Pointe Marina and for a Special Plan Area zone change to exceed the residential density limit of one floating home per fifty feet of waterfront in the Rocky Pointe Marina (File # T4-08-001). This meeting was continued and concluded on May 4, 2009.
- b. By Resolution T4-08-001 attached as **Exhibit A** and adopted on October 19, 2009, the Planning Commission recommended approval of the requested exceptions to Statewide Planning Goals 11 and 14 and denial of the Special Plan Area zone change based on the findings in the T4-08-001 Staff Report. The property is described and depicted on the Vicinity Map in the Staff Report.
- c. On January 21, 2010, the Multnomah County Board of Commissioners took testimony and on January 28, 2010, conducted a public hearing as provided for in Multnomah County Code § 37.0530, with respect to requests for exceptions to Statewide Planning goals 11 and 14 to increase the number of floating homes at Rocky Pointe Marina and for a Special Plan Area zone change to exceed the residential density limit of one floating home per fifty feet of waterfront in the Rocky Pointe Marina.
- d. On January 28, 2010, the Multnomah County Board of Commissioners adopted an Order Approving the Application for Exceptions to Statewide Planning Goals 11 and 14 and Denying the Special Plan Area Zone Change Request at Rocky Pointe Marina, attached as **Exhibit C** (File # T4-08-001).
- e. The Comprehensive Plan Map designation of the property was last amended in Ordinance 887 as part of the Sauvie Island/Multnomah Channel Rural Area Plan that was adopted in October of 1997.

Multnomah County Ordains as follows:

Section 1. Based upon the findings in the T4-08-001 Staff Report, which is incorporated herein by reference, the Multnomah County Sauvie Island/Multnomah Channel Rural Area Plan Map (Map) adopted by Ordinance 887 is amended to note the Exceptions to statewide planning goals to increase the number of floating homes at Rocky Pointe Marina as shown on the Map attached as **Exhibit B**. This approval is contingent upon Rocky Pointe Marina meeting the conditions of the approvals set out in the T4-08-001 Staff Report.

Section 2. This comprehensive plan amendment of the Sauvie Island/Multnomah Channel Rural Area Plan Map to note exceptions to Statewide Land Use Goals 11 and 14 is effective when the Order Approving the Application for Exceptions to Statewide Planning Goals 11 and 14 and Denying the Special Plan Area Zone Change Request at Rocky Pointe Marina, **Exhibit C**, is final, but not earlier than March 6, 2010.

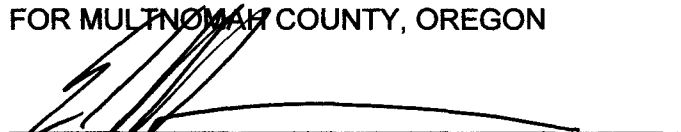
FIRST READING:

January 28, 2010

SECOND READING AND ADOPTION:

February 4, 2010

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By Sandra Duffy
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Department of Community Services

**BEFORE THE PLANNING COMMISSION
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. T4-08-001

Recommend to the Board of County Commissioners approval of a request for exception to Statewide Planning Goals 11 and 14 to increase the number of floating homes at the Rocky Pointe Marina.

Recommend to the Board of County Commissioners denial of a Special Plan Area zone change request to exceed the residential density limit of one floating home per fifty feet of waterfront in the Rocky Pointe Marina.

The Planning Commission Finds:

- a. The Planning Commission is authorized by Multnomah County Code, MCC 37.0540(D) and by ORS 215.110 to recommend to the Board of County Commissioners actions that amend the Multnomah County Comprehensive Plan. The requests described below qualify as a Type IV quasi-judicial land use review, which must be heard by the County's Planning Commission who then forward a recommendation to the Board of County Commissioners (MCC 37.0530(D)).
- b. The County's Multiple Use Agriculture-20 zoning district limits residential development to no more than one dwelling per parcel (Multnomah County Code, MCC 34.2820(C)).
- c. This standard aligns with state wide planning Goal 14 (Urbanization) and Goal 11 (Public Facilities and Services) designed to prevent urbanization of rural lands outside of a City's Urban Growth Boundary.
- d. Owners of the Rocky Pointe Marina (23586 NW Saint Helens Road) have requested exceptions to statewide planning Goals 14 and 11 to add 36 additional floating homes to the existing marina in which 40 floating homes are currently allowed. A Special Plan Area zone change has also been requested by the owners to expand the Rocky Pointe Marina beyond the one floating dwelling per fifty feet of waterfront frontage residential density limitation captured in the County's Conditional Use regulations (MCC 34.6755).
- e. The Planning Commission is recommending the Board of County Commissioners approve the request for exceptions to Statewide Planning Goals 11 and 14 to increase the number of floating homes at the Rocky Pointe Marina. Justification for Goal Exception approval is outlined in the staff report labeled Exhibit A.
- f. The Planning Commission recommends that the Board of County Commissioners deny the Special Plan Area Zone Change request. The Planning Commission finds the Special Plan Area regulations should not be used to consider a request to exceed the one dwelling per 50 feet of waterfront density threshold and that the applicant had not demonstrated the Special Plan Area guidelines were met.

g. Notice of the Planning Commission hearing was published in the 'Oregonian' newspaper and on the County's Land Use Program web site. The Planning Commission held a public hearing on April 6th, 2009 where all interested persons were given an opportunity to appear and be heard. This initial hearing was continued and concluded on May 4th, 2009.

Findings for the Goal Exception approval and Special Plan Area Zone Change denial are contained in the staff report labeled Exhibit A.

The Planning Commission Resolves:

That this resolution, supported by the findings in the staff report (attached as Exhibit A), and in association with the plans delineating the requested exception areas in Exhibit B, are hereby recommended for adoption by the Board of County Commissioners.

ADOPTED this 19 day of October, 2009.

PLANNING COMMISSION
FOR MULTNOMAH COUNTY, OREGON


John Ingle, Chair



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

Staff Report EXHIBIT A

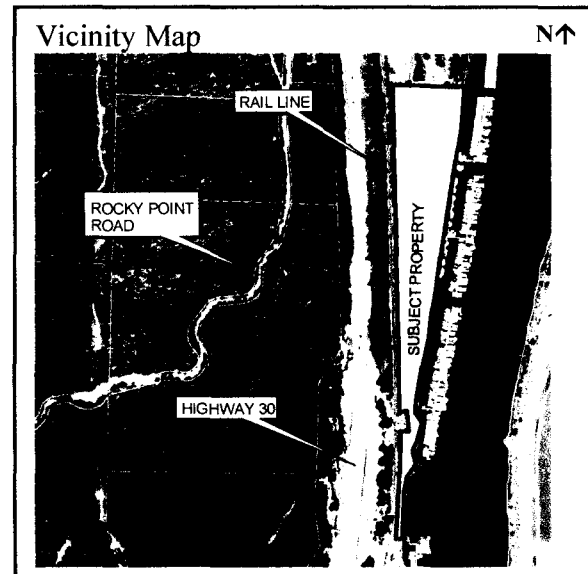
Application for exceptions to statewide planning Goals 14 (Urbanization) and 11 (Public Facilities and Services) to expand the Rocky Pointe Marina and to establish a Special Plan Area zoning district.

Case File: T4-08-001

Scheduled for Public Hearing in front of the
Multnomah County Planning Commission

Planning Commission Hearing Date, Time, & Place:

Monday, April 6th, 2009 at 6:30 PM or soon
thereafter, at the Multnomah County Building,
Room 100 (501 SE Hawthorne Blvd., Portland, OR)



Location: Rocky Pointe Marina is a 16.22-acre parcel at 23586 NW St. Helens Road adjacent to the Multnomah Channel, 1.2-miles south of the Multnomah County/Columbia County line. The property is accessed on the west side by Lower Rocky Point Road which terminates at Highway 30.

The 16.22-acre parcel includes the following two tax lots:

Township 3 North, Range 2 West, Section 36A – Tax Lot 400 (Account # R982360300)
Township 3 North, Range 2 West. Section 36D – Tax Lot 100 (Account# R982360080)

Applicant: Peter Finley Fry, AICP, Ph.D.
2153 SW Main #105
Portland, OR 97205

Owners: (Upland Area)
Stanley & Jeniece Tonneson
23586 NW St. Helens SP U7
Portland, OR 97231

(In-Water Area)
State of Oregon

Summary: The request is for 'Physically Developed' and 'Committed' exceptions to Statewide Planning Goals 14 (Urbanization) and 11 (Public Facilities and Services) and for the establishment of a Special Plan Area subdistrict to allow an alternative to the one houseboat per 50-foot of waterfront frontage carrying capacity limitation of the county's Conditional Use provisions.

This exception envisions the following major alterations to the existing operation: 36 new floating homes, relocation of 30 existing boat slips within the operation, removal of 16 existing boat slips, dry dock repair improvements, 65 new auto parking spaces, expansion of the existing boatyard and construction of approximately 520 linear feet of new dock on the upstream (south) side of the marina. After the proposed improvements are completed, the marina will serve 76 floating dwellings, 150 boat slips, seven (7) boat houses and 231 auto parking spaces.

The site specific development must also be reviewed and approved through pending county land use reviews in the event the goal exception request is approved. These reviews include Conditional Use/Community Service Use, Design Review, Willamette River Greenway, Flood Hazard and Grading and Erosion Control Permits.

The public hearing on this exception request will be considered by the Multnomah County Planning Commission who will either forward a recommendation of approval to the Board of County Commissioners or will deny the request. Staff will present the Planning Commission's recommendation of approval to the Board of Commissioners at a separate public hearing in the event the Planning Commission recommends approval. If approved, the Board's decision must then be affirmed by the State of Oregon Department of Land Conservation and Development.

***Formatting Note:** The double underlined and strikethrough language in yellow within the Staff report below has been amended after the final May 4th Planning Commission hearing. These changes were primarily in response to requests for clarification by the Planning Commission. A few additional changes were made to correct inaccurate references.*

Zoning & Applicable Approval Criteria: **Base Zone:** Multiple Use Agriculture-20 (MUA-20)
Zoning Overlays: Willamette River Greenway, Flood Hazard & National Wetlands Inventory Wetlands

Applicable Standards, Policies and Goals:

- Multnomah County Code (MCC) 37.0705 (Type IV Quasi-Judicial Plan and

Zone Change Approval Criteria))

- Oregon Revised Statutes 197.732 – Goal Exceptions; Criteria; Rules; Review
 - Oregon Administrative Rule 660-014-0030 (Rural Lands Irrevocably Committed to Urban Levels of Development); OAR 660-004-0025 (Exception Requirements for Land Physically Developed to Other Uses) & OAR 660-004-0028 (Exception Requirements for Land Irrevocably Committed to Other Uses)
 - Oregon Statewide Planning Goal 14 (Urbanization) & Goal 11 (Public Facilities and Services)
 - Multnomah County's Comprehensive Framework Plan Policy 6 (Urban Land Area), & Policy 10 (Multiple Use Agriculture Land Area)
 - Multnomah County's Sauvie Island/Multnomah Channel Rural Area Plan Policies 13 (SPA Procedures), 14 (SPA Density) & 15 (SPA Development Criteria)
-

Recommended Planning Commission Decision:

Staff recommends the Planning Commission forward a recommendation of **approval** to the Board of County Commissioners for the Exception request to Statewide Planning Goal 14 and Goal 11, for all proposed areas other than the westerly boatyard expansion and areas of existing commercial development not required to support the residential uses. Expansion of the boatyard does not require an exception because the use is not residential (Goal 14) nor is it dependant upon sewer service (Goal 11). The scope of the commercial activities does not exceed that allowed in the Oregon Administrative Rule and therefore a goal exception is not necessary to continue with these uses.

Staff recommends the Planning Commission **deny** the request to establish a Special Plan Area because, as outlined in this report, the applicant has failed to establish that the project conforms to the approval criteria outlined in Policy 15 of the County's Sauvie Island/Multnomah Channel Rural Area Plan, nor have they shown that there is a public need, which is required in order for a zone change to be approved (MCC 37.0705(B)(2)). If the Planning Commission accepts the staff recommendation, the applicant would potentially be able to expand the houseboat moorage at a density of not more than 1 unit for every 50 feet of frontage provided they obtain the required land use permits. This would allow up to 23 new floating homes.

Recommended Conditions of Approval to Forward to the Board of County Commissioners

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. The property owner(s) must receive county land use permit approval prior to construction of the proposed development (Multnomah County Code, MCC 34.2815). Permits applicable to this proposal include, but are not limited to, Community Service Conditional Use Permit, Willamette River Greenway Permit, Design Review Permit, Flood Hazard Permit and a Grading and Erosion Control Permit.
2. The Irrevocably Committed exception areas to Goal 11 in Exhibit 1 and to Goal 14 in Exhibit 2 shall be amended to exclude the proposed boat yard expansion area west of the existing boat yard (Oregon Administrative Rule, OAR 660-004-0028(2)(a),(b)) & OAR 660-014-0030(4)). The Physically Developed exception to Goal 11 and Goal 14 areas in Exhibit 3 shall be amended to exclude all areas of commercial development not required to support the residential uses such as the boatyard, boatyard office, boat haul out pier, boat wash down pad and building, boatyard restroom, fuel dock, marine sewer pump out station, and four public restroom/laundry facilities (OAR 660-004-0025(1) & OAR 660-014-0030(4)).
3. ~~A minimum setback of 50 feet shall be maintained between the southernmost extent of the in-water development (including moored structures and boats at the Rocky Pointe Marina) and the northernmost extent of Happy Rock Moorage to the south (MCC 37.0705(A)(3)(b)).~~
4. ~~3.~~ A traffic impact study shall be conducted by a traffic engineer retained by the property owner(s) to determine if any traffic mitigation is required, including re-constructing the railroad crossing (Exhibit 33). This study shall be provided to the county prior to re-initiation of the associated Type III land use review currently pending (MCC 37.0705(A)(3)(c)).



TABLE OF CONTENTS

1.0	PROPOSAL SUMMARY	(P. 7)
2.0	PROPERTY DESCRIPTION	(P. 10)
3.0	INITIATION OF ACTION	(P. 11)
4.0	CODE COMPLIANCE	(P. 12)
5.0	LOT OF RECORD	(P. 14)
6.0	ADMINISTRATIVE PROCESS – TYPE IV QUASI-JUDICIAL ACTION (MCC 37.0705)	(P. 14)
6.1	Quasi-Judicial Plan Review Revision	(P. 14)
6.1.2.1	Goal 11 Physically Developed Exception Findings (OAR 660-004-0025)	(P. 15)
6.1.2.2	Goal 11 Committed Exception Findings (OAR 660-004-0028)	(P. 16)
6.1.2.3	Goal 14 Physically Developed & Committed Exception Findings (OAR 660-014-0030)	(P. 27)
6.2	Quasi-Judicial Zone Change	(P. 54 <u>55</u>)
7.0	SPECIAL PLAN AREA PROVISIONS	(P. 56)
8.0	PLANNING AND ZONING FOR EXCEPTION AREAS	(P. 56 <u>57</u>)

9.0	CONCLUSION	(P. 59)
10.0	CASE TIMELINE	(P. 59 60)
11.0	LIST OF EXHIBITS	(P. 60)

Findings of Fact

(Formatting Note: Staff provides findings referenced herein as necessary to address applicable county and state requirements. Headings for each finding are numbered. County and state requirements are referenced using a **bold** font. Planning staff comments and analysis may follow applicant comments. Where this occurs, the notation “**Staff**” precedes staff comments and the notation “*Applicant*” precedes the applicant’s comments).

1.0 PROPOSAL SUMMARY

Applicant: The existing Rocky Pointe Marina site was founded in the late 1920’s/early 1930’s.¹ The original floating home and office/fuel building are still in the same use today. Rocky Pointe has been a moorage, boat repair and fueling station since that time. Rocky Pointe is now one of Oregon’s largest marinas and floating home communities, providing over 200 temporary and permanent spaces with existing amenities that include showers, washers/dryers, portable pump-outs and public on the water sewage disposal. The marina has an existing boat yard that provides full service professional repairs, refits, and upgrades in fiberglass, wood, and metal. The marina also includes a Marina Store, public fueling station, and on-shore parking. In 2006, Rocky Pointe Marina became the first certified “Clean Marina” by the Oregon State Marine Board (Exhibit 1).

The application seeks approval of a “physically developed” and “irrevocably committed” exception to Goals 11 and 14, in order to allow for additional development within the existing facility and for the expansion of the marina to the south. The project proposed to install a new 520 foot +/- dock on the upstream side of the existing marina between the existing marina and the adjacent marina upstream and expansion of the boat yard. The overall concept is to locate boat slips on the bank side and house boats on the stream side (see map). This accomplishes several goals; reduces the impact of shade on the areas close to shore; protects the boats from wake; protects the boats from vandalism; gives the house boats access to sun and views; and presents to the public a neighborhood. Improvements within the “physically developed” exception area will consist of (northern/downstream):

- 21 new houseboats to replace boat slips for a total of 61 houseboats*
- Marina is allowed up to 150 boat slips, with 30 to be relocated to the new dock*
- Floating home repair building (dry dock)*
- Add ~~73~~ (the applicant has since reduced to 65) new parking spaces to the already existing 166 parking spaces*

Improvements within the “irrevocably committed” exception area consist of (northern/downstream):

- Expansion of an acre boat yard up to two and a half acres.*

Improvements within the “irrevocably committed” exception area consist of (southern/upstream):

¹ Applicant’s Source: Aerial photographs from the Oregon Map Library.

- Extending dock to accommodate additional houseboats and boats
- 15 new houseboats
- Relocate 30 existing boat slips to the bank side to a new dock

As stated, improvements include extending the existing up stream dock an additional 520 feet +/- to accommodate 15 floating homes on the outside of the existing dock with 10 new boat slips on the bank side of the dock along with the displaced outside boat slips of 20 from the existing dock to 30 slips on the bank side. The addition of 520 additional feet of dock using modern materials and techniques will not adversely impact the environment, and will provide safer conditions for users and a more functional facility.

The new marina area will consist of floating docks extended from a new/safer five foot ramp replacing the existing four foot main ramp and utility services. The existing four foot ramp will be used as a single emergency only gangway for emergency access to shore, and 40 steel pilings up to 20 inches in diameter will be placed to secure the dock extension. The existing upriver docks and new dock will be increased from 5 feet to 8 feet wide (6 feet of wood decking and 2 feet of grating for utility access) to provide greater safety.

The results will be 76 houseboats (40 existing and 36 new), 150 boat slips (134 front in slips and 16 side slips); 7 boat houses, and ~~239~~ 231² parking spaces (166 existing and ~~73~~ 65 new). The proposed work includes restoration and native re-vegetation designed to improve the existing natural resources. A maintenance plan will provide methods and guideline to protect the resource and landscaped areas. An interpretive trail is proposed for construction along the bank and lake...

(Staff: An inaccurate reference to a 1993 goal exception approved on this site was removed. Staff found no evidence of a Goal Exception approved on this site in 1993).

...Rocky Pointe was originally approved by Multnomah County in 1993 as a conditional use. The marina was approved for 40 houseboats, 150 boat slips, seven boathouse spaces, and 166 parking spaces.

In 1997, Multnomah County adopted a streamlined land use review known as Policy 10 that legalized existing moorages. Rocky Pointe was inventoried, but not forced to participate, as it was a legally established moorage under a 1993 conditional use approval. Since 1993, improvements have been made to the moorage including state mandated improvements and safety and environmental quality systems.

Statewide Planning Goal 11: Goal 11 and related rule limits urban levels of services outside urban growth boundaries and unincorporated communities. An urban level of service includes the extension or establishment of a sewer system outside an urban growth boundary or unincorporated community boundary. A "sewer system" is defined as a system that serves more than one lot or parcel (OAR 660-011-0060(1)(f)). A "Physically Developed" and "Irrevocably Committed" exception to Goal 11, as outlined OAR 660-004-0025 and OAR 660-004-0028, is being proposed for the marina.

² The applicant amended the proposal to involve the double underlined numbers after the narrative was prepared. Because the applicant did not update the narrative to reflect this change, staff has noted the change.

Statewide Planning Goal 14: Although the channel itself was not included in this original exception to Goal 4, the moorages and the facilities supporting the houseboats (located on both sides of the channel) were part of this exception. The Multnomah County code considers houseboats and floating homes as single family dwellings. State rules specifies that the county shall not allow more than one dwelling to be placed on a lot or parcel in the MUA-20 zone (OAR 660-004-0040(7)(f)).

A “Physically Developed” exception to Goal 14 is being taken for the existing developed areas of the marina, and an “Irrevocably Committed” exception to Goal 14 is being taken for the undeveloped portion of the marina proposed for expansion (See Exhibit One showing boundaries of exceptions). The criteria for these exceptions are outlined in OAR 660-014-0030.

Staff: A marina was first constructed on this site prior to the establishment of zoning regulations in the mid 1950’s, was expanded in the 1960’s and again in the 1990’s. The scope of the operation was most recently reviewed by Multnomah County in 1993 and permitted through a public Community Service/Conditional Use review process (Permits CS 1-93, HV 1-93, WRG 1-93 and CU 7-93). The 1993 permit authorized up to 40 houseboats (i.e. floating dwellings), 150 boat slips, seven (7) boathouse spaces and 166 automobile parking spaces.

The applicant is requesting a ‘Physically Developed’ and ‘Committed’ exception to both statewide planning Goals 14 (Urbanization) and 11 (Public Facilities and Services) in order to expand the moorage to the south and allow additional residential infill within the existing operation. All 40 existing floating homes are located within the area delineated by the applicant as part of the Physically Developed exception request (Exhibit 3). An exception to Goal 14 is necessary to expand the moorage because the proposal involves establishing more than one single family dwelling on a parcel. Goal 14, and its implementing Oregon Administrative Rules (OARs), limit rural development outside of an Urban Growth Boundary to one dwelling per parcel.

“Goal 14, Single-Family Dwellings in Exception Areas. 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 an 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.”

“OAR 660-004-0040(7)(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.”

OAR 660-004-0040 became effective on October 4, 2000, and included this provision limiting one dwelling to a lot or parcel under 660-004-0040(7)(f). Staff was informed by Department of Land Conservation and Development staff on August 29th, 2006 that the Goal 14 residential development limitation applies to moorage development and that the channel itself is considered a separate parcel (Exhibit 49). This interpretation prohibits the expansion of houseboat moorages without an exception to Goal 14. An exception to Goal 11 is also necessary because the expansion requires sewer service to cross from one parcel (upland parcel)

into another (channel parcel) which is prohibited by Goal 11 on lands outside an Urban Growth Boundary.

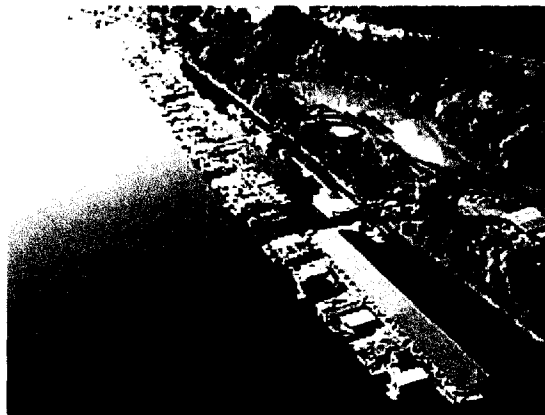
The proposal involves 520-feet of new dock, establishment of an emergency gangway ramp, 36 new floating homes (76 homes resulting) and 65 new auto parking spaces (231 parking spaces resulting). Dry dock repair improvements and expansion of the existing boatyard is also proposed along with establishing a 25-foot by 40-foot floating community meeting room within the in water expansion area. Thirty (30) boat slips will be relocated within the marina. Sixteen (16) boat slips will be removed.

The applicant is requesting the Planning Commission confirm the proposed residential density is appropriate through the Special Plan Area (SPA) master planning provisions as an alternative to the Conditional Use limitation of one houseboat per 50 feet of waterfront frontage (MCC 34.6755). The proposal exceeds this 1:50 residential cap by 13 dwellings when measuring the parcel's waterfront frontage. The result of proposal would equal 1 dwelling per 41.4 feet of frontage, 1:41).

Site specific development will be reviewed by the county through separate applications for Conditional Use/Community Service Use, Design Review, Willamette River Greenway, Flood Hazard and Grading and Erosion Control Permits. The applicant has submitted applications for these permits, and they are on hold pending a decision on the goal exception and SPA request.

2.0

PROPERTY DESCRIPTION



Staff: Rocky Pointe Marina is a 16.22-acre parcel at 23586 NW St. Helens Road between Happy Rock Moorage to the south and McCuddy's Big Oak Marina to the north. The property is at river mile 14 of Multnomah Channel which is a side channel of the Willamette River created as the Willamette splits around Sauvie Island. The property is located 1.2-miles south of the Multnomah County/Columbia County border in the Sauvie Island/Multnomah Channel Rural Plan Area (Exhibits 5, 6, 7, 8, 9 & 10). Land to the west across Highway 30 begins to rise in elevation forming the Tualatin Mountains which are more commonly referred to as the West Hills. Properties west of the site tend to be larger, forested, steep and zoned for Commercial Forest Use. The terrain is nearly level where large tracts of farmland are found across the channel to the east on Sauvie Island.

The subject property is accessed on the west side by Lower Rocky Point Road which terminates

at Highway 30. The Wildwood Golf course is located roughly ½ mile to the southwest. A heavy rail line managed by the Oregon Department of Transportation borders the western side of the site with the channel flowing at an angle along the east side of property, forming a wedge shaped parcel. The property is zoned Multiple Use Agriculture-20 with zoning overlays for the 100-year floodplain, the Willamette River Greenway and for wetlands designated on the National Wetlands Inventory.

The northern end of the property is approximately 500 feet wide and the southern end forms the narrowest point of the property, roughly 16 feet wide (Exhibit 9). A paved, 12-foot wide private access, referred to as Old Lower Rocky Point Road extends from Lower Rocky Point Road, south to Happy Rock Moorage from Highway 30.

Approximately 95% of the nearly level property is within the mapped 100-year floodplain according to Federal Emergency Management Agency Flood Insurance Rate Maps. A wetland area covers approximately 25% - 30% of the property, located along the western and northern half of the property according to National Wetland Inventory maps³. Site vegetation primarily consists of cottonwoods along the riverbank, forested land west of the wetland complex, areas of wetland vegetation adjacent to the wetland and residential grasses.

Upland site improvements include an internal driveway system, auto and trailer parking/storage, boat repair yard, boat yard restroom, water well and well house, fuel/propane tanks, sewer treatment system, sewer evaporation pond, boat ramp, recycling/garbage stations, fencing, and miscellaneous incidental marina operational buildings for storage and office work. Current in-water improvements including three gangway ramps, three main docks with one smaller transient dock paralleling the bank, pilings, slips for floating homes, floating garages and boats. The docks extend across roughly 2,450-feet of the site's ~3,150-feet of channel frontage (Exhibit 4, 11, 12, 13 & 77).

3.0 INITIATION OF ACTION (MCC 37.0550)

Except as provided in MCC 37.0760, 33.7785, 34.7785, 35.7785, and 36.7785, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser, or by a government agency that has the power of eminent domain. PC (legislative) actions may only be initiated by the Board, Planning Commission, or Planning Director.

Staff: Stanley H. Tonneson and Jeniece J. Tonneson are listed as the property owners in county tax assessment records. Both have provided written authorization on the General Application Form for Peter Fry to act as their representative for this project and for Multnomah County to process this request (Exhibit 51). Mr. and Mrs. Tonneson lease the in-water development area from the Division of State Lands (DSL). This includes the proposed expansion area south of the existing moorage. On December 16, 2005, Tami Hubert with DSL stated that they do not object to the proposal (Exhibit 45). A Removal/Fill Permit was issued by DSL February 18th, 2009 to place up to 43 pilings and remove 6 pilings, within the proposed expansion area (Exhibit 42). Staff finds the necessary authorization has been provided to initiate this Type IV action.

³ On-site wetlands are mapped on the National Wetland Inventory as PEMC (Palustrine Emergent Seasonally Flooded) and PSSC (Palustrine Scrub Shrub Seasonally Flooded).

Except as provided in subsection (A), the County shall not make a land use decision or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County. (A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or (2) It is necessary to protect public safety; or (3) It is for work related to and within a valid easement over, on or under an affected property.

Staff: An anonymous complaint filed in 2005 alleged boats were being used for living quarters (exceeding the 40 floating homes permitted by the county), that portions of the access road and parking lot were paved without permits, the boat yard was expanded and several large buildings were erected without permits (complaint #UR-05-008). County code compliance staff confirmed the following compliance issues on the property after investigating the complaint:

SPECIFIC VIOLATIONS

Policy 10 Process

- A. *A Willamette River Greenway Permit was not obtained to reconcile the Policy 10 Process for Rocky Pointe Marina.*

Boatyard Repair area improvements outside of Conditional Use Permit 7-93 (CU 7-93) Authorization

- B. *The expansion of the boatyard repair area: CU 7-93 Condition of Approval # 5 approved boatyard repair area of 10,000 square feet. There is currently +/- 40,000 square feet utilized for the boatyard repair area. The November 2005 site inspection verified the extended area used for boatyard repair. Measurements taken from 2004 aerial photographs of the marina property indicate the boatyard repair area now covers approximately 40,000 square feet.*
- C. *The construction of the cement block explosion resistant building, the placement of a small shed near the north marina northern most property line, the placement of a manufactured home structure and the placement of cloth covered metal frame hangar/boat repair structures in the boat repair yard area, and large rectangular metal storage containers located on the marina properties - none of these structures are included in CU 7-93 Condition of Approval #5.*

Re-configured Marina outside of CU 7-93 Authorization

- D. *The construction of additional bathroom/shower facilities on the marina floats occurred*

without prior land use review and approval. These additional structures were not approved through CU 7-93.

- E. The addition of the fuel dock, pilings, and sewage pump-out station to the middle marina occurred without prior land use review and approval. These improvements were not approved through CU 7-93.*
- F. The addition of a restroom for the office building of the marina occurred without prior land use review and approval. This improvement was not approved through CU 7-93.*

Flood Hazard Regulation Violation (MCC 29.600-29.611)

- G. The construction and/or placement of structures in the regulatory floodplain occurred without prior land use review and approval. This is a violation of MCC 29.603(A) – Permits.*

Grading and Erosion Control Violation (MCC 29.333(C))

- H. The paving of the marina properties from the Rocky Pointe Road entrance north through the boatyard repair area occurred without prior land use review and approval. This is a violation of MCC 29.333(C).*

Increased Number of dwellings above the 40 approved in CU 7-93

- I. Barge houses moored at the marina are included in the number of houseboats approved for the marina in the 1993 permits (40). Mr. Richard Tonneson advised the Code Compliance Specialist during the November site inspection there are several barge houses at the marina used as dwellings. Any barge houses at the marina in addition to the 40 houseboats approved exceeds the permit authorization and is a violation of the 1993 permits issued for the marina reconfiguration (Condition of Approval #1 and #5 of CU 7-93.)*

Increased number of boat slips above the 150 approved in CU 7-93

- J. The number of boat slips (+/-165) at the marina is in excess of the 150 approved in the 1993 marina reconfiguration land use permits. This is a violation of the Condition of Approval #1 and #5 of CU 7-93.*

The land owner has signed a Voluntary Compliance Agreement committing him to resolving these compliance issues. This includes obtaining appropriate land use and building permits for non-compliant development. The owner is also proposing to eliminate all live aboard boats at the operation. Unpermitted work will be reviewed through the following pending permits: Conditional Use/Community Service Use, Willamette River Greenway, Design Review, Variance, Grading and Erosion Control and Flood Development Permit. All necessary permits have been applied for. Therefore, this exception request is a sequencing of permits towards compliance as allowed under MCC 37.0560(A)(1).

5.0 LOT OF RECORD (MCC 36.0005(L)(12))

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 34.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(* * *)

Staff: The applicant applied for county approval in 2008 to consolidate six parcels into one Lot of Record. This request was approved on August 25th, 2008 with permit T1-08-031. A deed consolidating the parcels was recorded with Multnomah County Records October 3rd, 2008 which finalized the action (deed instrument number 2008-139724). Staff finds the subject property is a Lot of Record. Although the state owned channel is considered a separate parcel by DLCD for purposes of Goal 14 density calculations, it is not a discrete parcel subject to the county Lot of Record provisions above.

6.0 ADMINISTRATIVE PROCESS – TYPE IV QUASI-JUDICIAL ACTION (MCC 37.0705)

6.1 MCC 37.0705(A) Quasi-judicial Plan review Revision. The burden of proof is upon the person initiating a quasi-judicial plan revision. That burden shall be to persuade that the following standards are met:

6.1.1 MCC 37.0705(A)(1) The plan revision is consistent with the standards of ORS 197.732 if a goal exception is required, including any OAR's adopted pursuant to these statutes;

~~ORS 197.732 Goal exceptions; criteria; rules; review.~~

~~(1) — As used in this section:~~

~~(a) — “Compatible” is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.~~

~~(b) — “Exception” means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:~~

~~(A) — Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;~~

~~(B) — Does not comply with some or all goal requirements applicable to the subject properties or situations; and~~

~~(C) — Complies with standards under subsection (2) of this section.~~

Applicant: The applicant has applied for two state wide land use planning goal exceptions through Multnomah County.

Staff: The applicant is requesting exceptions to Goals 11 and 14. The exceptions will allow urban levels of residential development outside an Urban Growth Boundary, contrary to Comprehensive Framework Plan Policy 6 for Urban Land Area, and Policy 10 which calls for rural scale development on Multiple Use Agriculture designated lands. Exceptions are limited

to the subject property.

Oregon Revised Statutes (ORS) 197.732 outlines the options for an exception to any statewide planning goal. The three options are commonly referred to as a “physically developed”, “irrevocably committed” and, a “Reasons” exception. The applicant is requesting a physically developed and irrevocably committed exception to both goals pursuant to the procedures of ORS 197.732(1)(a) and (b). The Reasons criteria of ORS 197.732(1)(c) are not applicable to this request. The implementing Oregon Administrative Rules (OARs) provide specific approval criteria which are addressed below.

**Goal 11 Exception Requirements for Land Physically Developed to Other Uses
(OAR 660-004-0025)**

6.1.2 ORS 197.732(1) A local government may adopt an exception to a goal if:

6.1.2.1 ORS 197.732(1)(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

Staff: This standard, amongst other applicable criteria, is reflected verbatim within the administrative rule OAR 660-004-0025 applying to all physically developed exception requests to Goal 11. This physically developed analysis is provided below.

6.1.2.1.1 OAR 660-004-0025(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

Applicant: Rocky Pointe Marina has its own on site waste disposal facility that is permitted with the Oregon Department of Environmental Quality (DEQ) for both a level 1 treatment and level 1 collection for domestic waste water utilizing an activated sludge process. As required under permit in accordance with OAR, Chapter 340, Division 49, a certified supervisor manages the systems and reports to DEQ monthly. This disposal system services the floating homeowners, public restrooms, and public boat dump stations, which are all non-terrestrial. The boat repair facility is the only upland facility hooked up to the sewer. The existing DEQ permit allows for up to 6,500 gallons of effluent per day. Current levels are about 5000 gallons per day. Application is being filed with DEQ to increase volume to meet needs of additional homes proposed.

Staff: The 16.22 acre property is long, wedge shaped and quite narrow towards the southern end. The north end is roughly 500-feet wide tapering down to about 16 feet at the south end. The applicant’s site plan in Exhibit 3 outlines the areas proposed for the Physically Developed Goal 11 exception. It includes all existing houseboats on the channel that are connected to a sewer and water system and upland areas that have been improved with sewer and water related infrastructure. The undeveloped portions of the property, such as the ~5-acre wetland located on the west side of the property and nearby wooded areas, are not included in the Goal 11 physically developed area. In addition, the proposed expansion area is not included in the Goal 11 physically developed exception area. Although a paved access road to Happy Rock Moorage runs along the upland portion of the expansion area, sewer and water lines do not.

The applicant has prepared detailed site plans labeling the types of existing sewer and water related development on the property (Exhibits 4, 16 & 77), including: restrooms, sewer receiving vaults, marine sewer pump, sewer lines, sewage lagoon, the 10,000 gallons per day (gpd) sewer plant, sedimentation vaults, evaporation pond, water well house, water storage and treatment area, fire department connections (FDC), primary electrical transformers and water lines. These improvements are of an urban scale and run the length of the requested upland and in-water exception area and serve residential densities comparable to an urban residential subdivision. The applicant included two small open areas on either side of Lower Rocky Point Road within the Goal 11 Physically Developed exception request tenants of the marina use for recreational purposes including dog running, horseshoes, volleyball and picnics.

In order to approve an exception, the County must determine that the land that is developed with these improvements is unavailable to all other uses that could potentially be approved in the MUA-20 zone (i.e. uses allowed by the applicable goal). In general, the types of uses that could potentially be allowed by the zone include farm uses, forest practices, conservation areas, a single family dwelling, large fills, and structures/buildings used to either support certain businesses and community service uses. These uses cannot be established where sewer and water infrastructure is in place within the areas delineated for the Goal 11 physically developed exception without displacing or interrupting those services. Therefore, a physically developed exception is justified in these areas.

Houseboat and houseboat moorages are a potentially permitted use within the MUA-20 district; however, to put that use in place today would require the establishment or extension of a sewer service, necessitating an exception to Goal 11. Therefore, it is inappropriate for the County to consider houseboats as a potentially allowed use for the purpose of this analysis.

- 6.1.2.1.2 OAR 660-004-0025(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.**

Applicant: The sewer system on the uplands at Rocky Pointe Marina consists of 3 large underground collecting vaults (approximately 500 gallons each). One each located near each of the 3 ramps. These vaults are connected by underground pipes to the final two underground vaults prior to entering the sewage plant. The plant itself consists of tanks with a capacity of 10,000 gallons. When complete, the liquid is discharged into an evaporation pond approximately 100 feet in diameter. The plant and pond are enclosed by a 6 foot cyclone fence. The fence area is buffered by landscaping – over 100 laurel shrubs.

Staff: Goal 11 does not allow sewer systems to be established or extended outside an Urban Growth Boundary. This prevents premature urbanization of rural lands. The applicant's narrative and the prior finding describe the extent and location of the physical development associated with the sewer and water conveyance, collection and treatment. The exception is limited to these areas, which have been mapped by the applicant. The prior finding lists the

types of uses that can be potentially allowed in the MUA-20 district consistent with Goal 11. None of them have been used to justify the exception. When determining whether or not the land is physically developed, Staff considered the development patterns on this site using the submitted application materials, site photos in the code compliance record, aerial photos, site plans and a site visit.

Exception Requirements for Land Irrevocably Committed to Other Uses Relating to the Goal 11 Exception Request (OAR 660-004-0028)

- 6.1.2.2 ORS 197.732(1)(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable;**

(* * *)

Staff: Whether or not land subject to the exception is irrevocably committed to uses not allowed by the applicable goal is determined through review of each of the Goal 11 irrevocably committed standards in OAR 660-004-0028 and OAR 660-014-0030. The necessary irrevocably committed findings required by sub (b) are provided below.

or....(ORS 197.732(1))...

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas that do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

Staff: The standards of sub (c) above apply only to a “reasons” goal exception request which has not been requested. These standards are not applicable.

- 6.1.2.2.1 OAR 660-004-0028(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.**

(a) “committed exception” is taken in accordance with ORS 197.732(1) (b), Goal 2 Part II (b), and with the provisions of this rule;

(b) For the purposes of this rule, an “exception area” is that area of land for which a “committed exception is taken;

(c) An “applicable goal,” as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

Applicant: (a) The applicant has applied for a committed exception, (b) The applicant has applied for a committed exception for the developed areas, (c) The applicant has presented factual findings to each relevant goal to establish compatibility or no adverse impact related to the goal’s purpose.

Staff: The applicant has applied for an irrevocably committed exception to Goal 11 for two portions of the property. The first is an area west of the boat yard at the north end of the property and the second is the proposed in-water expansion area at the south end of the property (Exhibit 1). The findings below address the applicable statutes and establish that the areas identified by the applicant qualify for a committed exception.

The applicant is requesting the exception to Goal 11 to allow the extension of public facilities outside of the urban growth boundary (UGB). Goal 11, “Planning” Section (A)(2) confirms public facilities and services (such as sewer and water) should be provided at levels appropriate for rural use only and should not support urban uses. More central to this request, OAR 660-011-0060(4) allows establishment and/or extension of a sewer system outside a UGB only in order to mitigate a public health hazard which is not relevant in this case. Accordingly, an exception to Goal 11 is required in order to extend the sewer system on this property.

6.1.2.2.2 OAR 660-004-0028(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) The characteristics of the exception area;

Applicant: Rocky Pointe Marina occupies a long narrow strip of waterfront land 3,150 ft long by approximately 16 feet wide at the southern end and increasing in width to just over 400 feet at the northern end with a total of 16.22 acres of which approximately 10 acres along the water are fully developed with road, parking, boatyard and support facilities. The remaining land is a lake, wetlands, natural areas, and landscaping that lay between the marina road and the railroad. The land itself is primarily basalt rock.

Staff: Rather than describing the characteristics of the two committed exception areas, the applicant provided a general description of the Rocky Pointe Marina property. Two distinct portions of the property are proposed in conjunction with the Goal 11 irrevocably committed exception (Exhibit 1). The most prominent area, and the area most central to this application, is the proposed in-water expansion site south of the existing moorage. Within this DSL lease area the applicant intends to construct new residential houseboat slips, boat slips and a gangway ramp. A 25-foot by 40-foot floating community meeting room may also be placed in this area. The lease area is currently undeveloped and adds roughly 550-feet of channel frontage to the moorage. It extends into the channel approximately 200-feet. Upland areas adjacent to the in-water expansion area are not a part of the Goal 11 exception request.

The second portion of the property identified as part of the Goal 11 irrevocably committed exception is a wedge shaped area to the west of the boat yard restroom (Exhibit 1). This area

appears in recent aerial photos to be roughly half wetland area with the remaining area covered in grasses, shrubs and a few trees (Exhibits 11 & 17). The applicant provides a delineation of the narrow wetland in this area in Exhibit 17, which unfortunately does not also show the footprint of the proposed boat repair expansion area. This plan does note 1.2-acres of wetland impact with 1.81 acres of wetland mitigation although it is unclear from the plans exactly where mitigation is proposed. The applicant's Exhibit 17 shows where fill is proposed to create the boatyard expansion. Although no volume of fill is noted, cross sections suggest fill depth would reach roughly 10-feet deep towards the middle of the proposed fill pad.

The applicant is in the process of applying for a joint U.S. Army Corps of Engineers /Department of State Lands permit to fill the wetland portion of this exception area. The applicant has explained that this area must be included in the Goal 11 irrevocably committed exception request in the event the existing boat yard needed to be expanded in the future. Expansion of the boat yard could only occur to the west within the identified exception area because the yard abuts the northern property line, is hampered by the channel to the east and existing development to the south.

Staff does not agree that this area must be included in the exception request. Current code would allow extension of existing water and sewer lines to this portion of the property without the need for a goal exception because the sewer/water lines would not cross a parcel boundary and because the utilities in this area would not serve an additional dwelling. Further, a boat yard is not dependant upon sewer service.

- (b) The characteristics of the adjacent lands;**
- (c) The relationship between the exception area and the lands adjacent to it; and**

Applicant: On the water side, Rocky Pointe Marina leases 10.76 acres of submerged land from the DSL. On the backside of the property, the rocky terrain is sloped upward to the railroad tracks and continued upward slope to Hwy 30. The ground is primarily basalt rock...Rocky Pointe Marina's moorages are a water dependant use. The railroad and State Hwy 30 separate the property from forest and farmlands. On either end (upstream and downstream) are similar commercial marinas.

Staff: The in-water expansion area is a small undeveloped area approximately 550-feet long between two intensely developed moorages. Multnomah Channel forms the eastern boarder of the expansion area. Lower Rocky Point Road, a rail line and the Highway 30 corridor are found west of the expansion area.

The Policy 10 inventory conducted in 1997 by Multnomah County identified 27 floating dwellings associated with Happy Rock Moorage to the south. To the north, Hearing's Officer decision T3-01-005 permitted 14 floating dwellings associated with the McCuddy's operation. Measurements taken from recent aerial photos show approximately 1,300 lineal feet of waterfront currently dedicated to McCuddy's Marina's in-water development to the north, 2,500 lineal feet developed by Rocky Pointe and approximately 750-feet of frontage developed at Happy Rock to the south. Rocky Pointe is clearly the largest marina in the area with 40 floating dwellings and 2,500 feet of developed frontage. County tax assessment records list 1.93 acres associated with Happy Rock Moorage to the south and 13.98 acres associated with McCuddy's Marina to the north.

Policy 10 records confirm Happy Rock Moorage to the south is served by an on-site, DEQ approved urban style sewer system. Permit T3-01-005, in conjunction with Policy 10 records verify McCuddy's is served by a DEQ approved sewer system located at the Cassleman's Cove Marina to the north of McCuddy's and an on-site well which provides public water. The public drinking water source at the Happy Rock Moorage does not appear to come from a well. Under 'Water Source and Permits' within the Policy 10 inventory records, it states "*Each structure is responsible for their own on-board filtration system.*" The county's building permit file for Happy Rock contains an Oregon Water Resources Department Land Use Information Form describing the water use as 27 diversion points benefiting household uses with Multnomah Channel listed as the source of the proposed water use. Rocky Pointe Marina contains a DEQ approved sewer system only serving the site and a well. The applicant has applied for a water right from the Department of Water Resources to serve the proposed expansion.

The in-water expansion area is committed to urban development patterns considering the large, urban scale houseboat moorages that border it to the north and south and the degree to which existing urban sewer and water systems exist on surrounding properties.

The boat yard expansion area in Exhibit 1 at the north end of the property is surrounded by the Rocky Pointe boat yard to the east, McCuddy's Marina to the north, and natural area/wetland areas to the immediate west and south within the subject property. These natural areas form the western half of the subject property north of the access road entry point. West of the subject property the land use changes dramatically with the rail line and Highway 30 corridor. Unlike the in-water expansion area to serve dwellings, the applicant has not made the case that the boat yard expansion area is dependant upon water and sewer infrastructure. Expansion of the boat yard can be considered through the existing Community Service Use permit process. The inclusion in the Amendment to the goal exception for the proposed boat yard expansion area is not justified. Amendment of the goal exception plan in Exhibit 1 to remove the boat yard expansion area has been made a recommended condition of approval.

(d) The other relevant factors set forth in OAR 660-004-0028(6).

Applicant: The primary residential activity is on the waterway; a navigable waterway under the jurisdiction of the federal government. The use crosses the DSL jurisdiction with gangways and boat ramps. The residential use of terrestrial zoned land is limited to parking, boat yard, walking, loading, mail, and waste services.

Staff: Relevant factors of OAR 660-004-0028(6) are addressed below.

- 6.1.2.2.3 OAR 660-004-0028(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1) (b), in Goal 2, Part II (b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:**

(a) Farm use as defined in ORS 215.203;

Applicant: The exception area is basalt rock, wet, steeply sloped, or developed.

Staff: The applicant envisions expanding the boat yard at the north end of the property at some future date to accommodate a larger repair area. Expansion can only occur to the west because the current boat yard is bordered to the east by Multnomah Channel, to the north by a property line and to the south with parking. The applicant is in the process of applying for a permit to fill wetlands within the expansion area from the Department of State Lands/Army Corps of Engineers. The applicant has not demonstrated that the expansion of a boat repair yard is dependant on future sewer/water use. Therefore, there is no justification for an exception to Goal 11 in this area. No further analysis of the proposed boat yard will be provided. The following findings will focus on the proposed in-water expansion area.

Although the applicant is not requesting an exception to Goals 3 (Agricultural Lands) or 4 (Forest Land), it is still impracticable for the owner to farm the in-water exception area. The owner leases the in-water area from the state and an aquiculture based commercial farm use would not be practical amongst two adjacent commercial marina operations. An in-water forest land operation is not feasible under any circumstances. It is not reasonable to find that establishing a non-marina use would be appropriate considering the scale of the existing marina development in the vicinity of the exception area. Other than development in conjunction with an existing marina development, Staff finds establishing a different use allowed by Goal 11 is impractical within the Goal 11 irrevocably committed in-water exception area.

(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and

Applicant: No logging or commercial forestry is practical. Land is either wet, basalt rock, or steeply sloped.

Staff: The in-water exception area can not be used to propagate or harvest commercial timber.

(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

Applicant: No commercial forest operation is proposed or practical.

Staff: Staff concurs with the applicant for the reasons outlined in the previous finding.

6.1.2.2.4 OAR 660-004-0028(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

Applicant: The applicant presents factual findings to each criterion that assert the area devoted for houseboat and sewer development is irrevocably committed to urban use.

Staff: Please see section (6) below for the applicant's response to each applicable factor and staff's associated findings.

6.1.2.2.5 OAR 660-004-0028(5) Findings of fact and a statement of reasons that land subject

to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.

Applicant: All land asserted is developed. The exception requests include both land that is physically developed and land irrevocably committed to urban development. The area of expansion is into an area that is currently vacant. The vacant area had a dock, house, and piers. The house was removed many years ago, the dock removed several years ago, and the piers remain. The piers will be replaced as a result of this project.

Staff: Although the in-water exception area contains six old pilings that will be removed, these pilings do not render this area physically developed.

6.1.2.2.6 OAR 660-004-0028(6) Findings of fact for a committed exception shall address the following factors:

6.1.2.2.6(a) (a) Existing adjacent uses;

Applicant: Rocky Pointe Marina is a long narrow waterfront facility. The backside slopes upward and borders the railroad tracks and further up the hill is Hwy 30. At either end of the property are similar marinas, Happy Rock Moorage at the south, and Big Oak Marina on the north.

Staff: Adjacent lands have already been described in detail. The Goal 11 irrevocably committed exception area is located adjacent to existing marina uses served by sewer. The northern irrevocably committed to Goal 11 boat yard expansion area is not justified as previously stated. The proposed in-water residential expansion area is nearly identical in configuration and density to existing nearby in-water development to the north and south. The existence of sewer systems to support the nearby development justifies an exception for this area.

6.1.2.2.6(b) (b) Existing public facilities and services (water and sewer lines, etc.);

Applicant: All services and utilities exist on the site. Rocky Pointe Marina provides its own DEQ certified sewage collection and processing system and has its own water well, treatment and storage facility.

Staff: Water from an on-site well, fire department fire fighting connections, electrical transformers and private sewer service currently serves both upland and in-water development. The infrastructure currently extends the majority of the property's length. The applicant's engineer has estimated the existing septic load treated by the existing 40 floating homes, and other marina associated uses is approximately 5,000 gallons per day (gpd). The current DEQ permit allows treatment up to 6,500 gpd and according to DEQ, the on-site Davco wastewater treatment plant was designed to handle up to 10,000 gpd. Stuart L Cato, PE, CWRE has confirmed that "based on the existing flows and treatment levels it is our opinion that the proposed addition of 36 more floating homes will not overload the package (sewage) treatment plant with a permitted average monthly flow of 6,500 GPD."

The applicant has received support from local police and fire districts (Exhibits 40 and 41).

The applicant has applied for a water right from the Department of Water Resources to use the existing well to serve the additional floating homes. Given the exception area is mapped as suitable for houseboats within the Sauvie Island Rural Area Plan Policy 26, the capability of service responders was considered when that policy decision was made. Given this information, it is reasonable to conclude that the private sewer system can serve the expansion area.

6.1.2.2.6 (c) Parcel size and ownership patterns of the exception area and adjacent lands:

Applicant: There were 7 parcels of land owned by Stan Tonneson LLC and leased to Rocky Pointe Marina Portland LLC. These lots have been consolidated into one lot of record.

<i>Previous Tax Lots</i>		<i>Consolidated Tax Lots</i>		<i>Proposed Lot of Record</i>	
<i>Existing Lots of Record</i>					
<i>TL400</i>	<i>8.5 acres</i>	<i>TL400</i>	<i>8.73 acres</i>	<i>1 lot</i>	<i>16.22 acres</i>
<i>TL100</i>	<i>8.17</i>	<i>TL100</i>	<i>7.49</i>		
<i>TL200</i>	<i>.33</i>				
<i>TL300</i>	<i>.39</i>				
<i>TL400</i>	<i>.12</i>				
<i>TL500</i>	<i>.20</i>				
<i>TL600</i>	<i>.09</i>				
<i>Total</i>	<i>17.8 acres</i>		<i>16.22 acres</i>		<i>16.22 acres</i>

The land to the west is the railroad and then State Hwy 30. To the south is Happy Rock Marina owned by Ginger Curtis and to the north is Big Oak Marina owned by the McCuddy family.

Staff: The seven properties referenced by the applicant have been consolidated into one parcel under common ownership as previously described. The in-water exception area is located within the channel east of this 16.22 acre parcel. Adjacent marinas to the south and north are owned by two different parties and lands to the west and east are owned by the State of Oregon. Ownership patterns within the exception area are identical to in-water areas to the north and south with the lands owned by the Sate of Oregon and leased to the adjacent private property owner(s).

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goal were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in them selves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and non-resource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining these parcels;

Applicant: The current configuration of Rocky Pointe Marina was permitted by Multnomah

County in 1993 as a Community Service Conditional use. The existing roads and services date back to the 1940's and were upgraded at that time. These include a paved driveway the entire length of the property.

Underground water lines, sewer lines, telephone lines, on site waste water processing and on site water well, treatment and storage to all 3 access ramps to the marina docks and to the boat repair facility at the north end. An Portland General Electric overhead power line and easement runs the length of the property for the benefit of Columbia Public Utility District.

The parcels of land to the south; TL 400, TL500 and TL600, were acquired in 2002 and added to Rocky Pointe Marina property. There is an existing road on this land that is continuous with the Rocky Pointe driveway. This driveway leads to the marina to the south, Happy Rock Marina, for which they have a permanent easement over Rocky Pointe's property. The proposed expansion will be serviced and accessed by a new five foot gangway ramp. In 2006, Statewide Planning Goal 14 administrative rule came into effect and limited permanent single-family structures to one per tax parcel outside of an Urban Growth Boundary.

Staff: The applicant has explained how the current development patterns on the site were established over time. The parcel is not considered resource land. An exception to the resource goals were taken by the County when the property was first zoned Multiple Use Agriculture-20 on October 6th, 1977 (i.e. an exception zone). The reason the exception areas are unsuitable for resource uses is a function of the proximity and nature of existing commercial marina development along the channel.

Houseboat communities along the channel have existed for over a hundred years. Once little more than floating shacks, houseboat moorages today offer all the amenities of traditional homes. The establishment of moorage communities in this area predates the establishment of statewide planning goals and zoning regulations in Multnomah County. The longevity and intensity of moorage communities have had great influence on the channel's landscape. Moorage sites are limited in the county, and demand for moorage space is high according to the owner.

Interestingly, the Rocky Pointe site was originally used as a ferry landing serving Sauvie Island and contained a school, post office, store and sawmill. The site was quarried for construction rock between the 1920's and 1930's with the first beginnings of the marina seen in the 1940s. Major expansions to the operation occurred in the 1970s and 1990s.

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the lands actual uses. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

Applicant: Rocky Pointe Marina was 7 lots of record that has been consolidated into a single lot of record.

Staff: These factors were considered. The request involves one 16.22 acre developed parcel with no contiguous parcel under the same ownership. The applicant is not arguing small parcel size as justification for the exception.

6.1.2.2.6(d) (d) Neighborhood and regional characteristics;

Applicant: Rocky Pointe Marina is located on the Multnomah Channel about seven miles downstream of the Willamette River and about three miles south of the small but growing community of Scappoose. The Channel has become the "other" boating facility area providing an alternative option to Hayden Island at Jantzen Beach. Multnomah Channel has over 200 floating homes and boat moorage for about 2,000 boats along its 21 mile length from Linnton to St Helens.

Staff: The proposed expansion is in keeping with the most dominant form of development in the neighborhood. Marina development along the west bank of Multnomah Channel extends 5,000 feet downstream and 1,000 feet upstream of the expansion area. The expansion will result in one continuous line of in-water marina/moorage development over one mile long formed by the Happy Rock Moorage on the upstream side, Rocky Pointe in the middle and the McCuddy's Marina on the downstream side. The expansion area will conform to and not destabilize the existing land use pattern in the neighborhood.

6.1.2.2.6(e) (e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

Applicant: Rocky Pointe Marina is a long narrow strip of waterfront land that is bound by Multnomah Channel and on the other side by the railroad tracks and then State Hwy 30 beyond the railroad. There is a power line easement for high voltage lines down the center of the property. There is a continuous roadway and parking from one end to the other. There are mitigated wetlands.

Staff: Staff concurs with the applicant. This exception area is surrounded by both natural and man-made features separating the exception areas from adjacent resource lands. Although not mentioned by the applicant specifically, a small but steep rock outcrop separates the in-water expansion area and access road from lands to the west. Although these features impede practical resource use of these areas by limiting access, the greatest constraints come from the low lying flood prone land, and presence of an access road, wetland areas, hydric soils, rock exposure and general proximity to these features which simply make commercial resource (farm and forest) use of the land impractical.

6.1.2.2.6(f) (f) Physical development according to OAR 660-004-0025; and

Applicant: Rocky Pointe Marina is physically developed with roads, underground utilities, commercial buildings and related facilities to the extent that farming and forestry are not practical if not impossible considering the terrain, soil, size and location.

Staff: OAR 660-004-0025(2) describes physical development as including amenities such as

structures, roads, sewer and water facilities and utility facilities. The in-water Goal 11 committed exception area does not contain physical development as defined above with the exception to six old, abandoned piers proposed to be removed to facilitate expansion.

6.1.2.2.6(g) (g) Other relevant factors.

Applicant: The primary residential activity is on the waterway; a navigable waterway under the jurisdiction of the federal government. The residential use crosses the State jurisdictions with gangways and boat ramps. The residential use of terrestrial zoned land is limited to parking, boat yard, walking, loading, mail, and waste services.

Staff: All relevant factors have been considered. Staff agrees with the applicant that the residential activities primarily occur on the waterway.

6.1.2.2.7 OAR 660-004-0028(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

Applicant: The applicant has provided an aerial photograph.

Staff: The applicant has labeled all existing development and delineated the exception area on site plans and aerial photos to support the exception request (Exhibits 1 – 4, 16, 17, 32 & 77). These photos show adjacent marina development closest to the exception area to the north and south. Staff's aerial photos in Exhibits 6, 11, 12 & 13 provide a larger view of the area showing more of the adjacent development patterns which, in conjunction with the plans submitted by the applicant, are sufficient evidence to justify the exception for the in-water area.

6.1.2.2.8 OAR 660-004-0028(8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

(a) Those adopted or amended as required by a Continuance Order dated after the effective date of section 7 of this rule; and

Applicant: A continuance order is not in effect.

Staff: Staff concurs – not applicable.

(b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations.

Applicant: Multnomah County's Comprehensive Plan specifically allows and supports houseboats in this area as a conditional use. The plan was acknowledged by the State....(In Conclusion)...The sewer system exists and has been permitted by DEQ. The sewer system performs important ecological and public health functions. Individual systems are not practical or desirable.

Staff: This provision justifies the need for the maps and aerial photos which have been provided.

In conclusion, the applicant has submitted the necessary evidence to demonstrate the in-water Goal 11 exception area in Exhibit 1 qualifies for a committed exception; and, is irrevocably committed to uses not allowed by the applicable goal because existing adjacent urban scale houseboat moorages, water and sewer infrastructure, and physical development constraints (related to topography, transportation corridors and water bodies) commit the land to similar uses. The applicant has not justified the proposed upland boat yard expansion area because the boatyard expansion is not dependant on sewer and water utilities. Expansion of the boatyard can be considered under current county code.

6.1.2.3 GOAL 14 PHYSICALLY DEVELOPED & IRREVOCABLY COMMITTED EXCEPTION FINDINGS (OAR 660-014-0030)

6.1.2.3.1 Rural Lands Irrevocably Committed to Urban Levels of Development (OAR 660-014-0030)

OAR 660-014-0030(1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standards (e.g., that it is not appropriate to apply Goal's 14 requirement prohibiting the establishment of urban uses on rural land). If a conclusion that land is irrevocably committed to urban levels of development is supported, the 4 factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

Applicant: Rocky Pointe Marina has been on a developed site since the late 1930's. The original shop/office/fuel dock and caretaker home are still on site and in use. There has been boat repair and fueling on site since the 1950's. Aerial photographs confirm the marina existence in 1938. The current marina was permitted by Multnomah County in 1993 as a Community Service Conditional Use. The area is 16.22 acres. The approval allowed for 40 floating home, 150 boat slips, 7 boatsheds and 166 auto parking spaces. Zoning for the property is Multiple Use Agriculture-20 with zoning overlays for the 100-year floodplain, the Willamette River Greenway, Sauvie Island riparian area, and for wetlands designated on the National Wetlands Inventory.

The shape of the property is a narrow triangle 3,150 feet long along the water and ranging in width from 18 feet at the southern end and 500 feet at the northern end. There is a road running the entire length of the property with a boat repair facility at the northern end. Parking is on either side of the road. There is a lake on the west side of the road. The existing road, parking and upland facilities occupy approximately 10 acres of all previously disturbed land. The balance of land is landscaping and natural areas intermixed within the property. The proposed expansion is within the existing developed property.

The conclusion is that this property is irrevocably committed to an urban level of development as it has been developed and in use for almost 80 years. The property, mostly rock, is completely built out as a marina along the shoreline with all facilities in place. The area of expansion has had docks and piers and a house in the past. The house was removed many years ago, docks were removed several years ago, and the piers remain. The piers will be removed as a result of this project and new environmentally sound piers and docks will be

constructed.

Staff: As a point of rule structure clarification - OAR Division 14 groups irrevocability committed and physically developed criteria under one section (OAR 660-014-0030), unlike Division 004 which more cleanly separates physically developed criteria under section 660-004-0025 and irrevocably committed criteria under section 660-004-0028. Staff confirmed with DLCD staff that OAR 660-014-0030, titled '*Rural Lands Irrevocably Committed to Urban Levels of Development*', must be used to evaluate a request involving both an irrevocably committed and physically developed exception request to Goal 14, despite the section title.

The applicant is requesting a physically developed Goal 14 exception request for the areas surrounding all existing in-water and upland developed areas and a Goal 14 irrevocably committed exception request for the wedge shaped area west of the boat yard, the in-water expansion area and the narrow up-land property located along the access road west of the proposed expansion area towards the southern end of the property. This request has been made so that the county can authorize deviation from the following rule preventing further residential expansion at the Rocky Pointe Marina:

Single Family Dwelling per Parcel Restriction (OAR 660-004-0040(7)(f))

...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...

Findings related to the above described exception requests will all be made under the following OAR 660-014-0030 standards to evaluate whether these rural lands are irrevocably committed to urban levels of development, and/or physically developed to the extent that it is not appropriate to apply the Goal 14 requirement prohibiting the establishment of urban uses on rural land. DLCD staff also clarified that it is possible to find land is irrevocably committed *because* it is physically developed (i.e. clearing the higher evidentiary bar clears the lower one as well).

- 6.1.2.3.2 OAR 660-014-0030(2)** A decision that land has been built upon at urban densities or irrevocably committed to urban levels of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development should be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to urban levels of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

Applicant: The following facilities and structures exist on the property and with water lease. See attached map keyed to the following list;

Upland

- A- roadway: approximately 2,800 feet long by 20 to 30 feet wide*
- B- water well house, storage and treatment*
- C-recycling/garbage/mail center upper ramp/marina*
- D- recycling/garbage station middle ramp/marina*
- E- recycling/garbage station lower ramp/marina*
- F- security gate*

- G- parking – 166 spaces
- H- trailer storage
- I- boat yard restroom
- J- sewage treatment plant
- K- evaporation pond
- L- boatyard shop/office – 3,500 square feet
- M- boat haul out pier
- N- boat wash down pad and building – 2,000 square feet
- O- boatyard – 40,000 square feet
- P- power- Columbia River PUD
- Q- telephone- CenturyTel
- R- fuel storage tanks, above ground – 6,000 gallons

On the Water

- 1- docks – 3,700 feet of primary walkways – 3 ramps
- 2- marina office/store – 1,500 square feet
- 3- fuel dock – 100 foot landing with two gas and one diesel pump marine sewer pump out
- 4- restrooms/laundry – 4 sets of floating buildings each two toilets, two showers; washer and dryer.

Staff: The scope of the existing upland and in-water development has been described above, is illustrated on the applicant's site plan (Exhibit 4), and will be used to evaluate the committed and physically developed exception request to Goal 14.

6.1.2.3.3 OAR 660-014-0030(3) A decision that is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local preceding, that address the following:

6.1.2.3.3(a) (a) Size and extent of commercial and industrial uses;

Applicant: The marina contains a store, office, gas dock, and public restrooms including pumpouts to the traveling public to maintain clean rivers. The marina provides a full service repair and maintenance facility.

Staff: OAR 660-014-0030(2) states “A decision that land has been built upon at urban densities or irrevocably committed to urban levels of development depends on the situation at the specific site”. Therefore; the focus of this physically developed and committed exception to Goal 14 is uses on the site and why those uses render compliance with Goal 14 impracticable.

Commercial uses and improvements supporting the commercial operation within the Goal 14 physically developed exception area, includes the boat yard, boat wash area, fuel dock and storage tanks, marina office and store, marina sewer pump out, restrooms, sewer system, and associated water and electric utilities. According to the Rocky Pointe Marina webpage⁴, the following services are offered:

“Rocky Pointe Marina - Services

⁴ http://www.rpmarina.com/marina_services.asp, accessed 3/2/09 at 11:24

Phone: 503-543-7003

Boat slips - We have 150 boat slips accommodating vessels 30' to 80' in covered and open moorage. We provide 30amp power and water at the docks. All slips are single berth with deep water to handle the draw of deep keeled boats. Mobile pump outs are located on each dock, as well as a pump out station at our fuel dock.

Office/Store/Fuel Dock- The floating marina office and store is open 7 days a week. Gas and diesel are available at a discount to our tenants. Beer, ice, pop, chips, snacks and ice cream are available in our store. A pump out station is located at the fuel dock for your convenience. Visa, Mastercard and Discover Card are happily accepted. In addition to the weekday office staff, Rocky Pointe Marina has an on site caretaker.

Security- Safety and security is very important to us. Rocky Pointe Marina is a gated community and has 16 security cameras recording activity throughout the facility. Our marina does monthly and annual inspections of electrical shore power connections and tests all new arriving tenants boats for proper ground fault and bonding to identify stray current that may potentially cause corrosion or electrocution.

Boatyard- A&D Yacht Services is conveniently located within our facility. A full service boatyard, they can work on your boat in the marina or tow your boat to the Travelift to service your boat. There is a qualified crew on site to help with emergencies as well as routine maintenance.

Boat ramp- Our boat ramp on site suitable for boats up to 20'. Launch is free for tenants or just \$2 for the public. No public parking is available.

Boat trailer parking- Available for moorage tenants with trailers up to 20'

Restrooms/Laundry- Each section of marina has its own restrooms with showers and a coin-op laundry facility."

This goal exception is required to expand the number of residential units rather than to establish or expand commercial or industrial uses. The proposed boat yard expansion area identified by the applicant as irrevocably committed by Goal 14 does not require a goal exception and can be reviewed under current county code. The size and extent of commercial uses is not relevant.

6.1.2.3.3(b) (b) Location, number and density of residential dwellings;

Finding: There are 40 floating homes. The average float size is 30ft wide by 50ft deep with the house size being smaller than the float. The houses are all moored on the outside docks facing the river and are intermixed with the 150 boat slips. (See attached map.)

Staff: The Rocky Pointe marina contains 40 floating dwellings associated with the 16.22 acre parcel. The dwellings are distributed amongst three separate docks, totaling roughly 2,500 lineal feet according to aerial photos.

6.1.2.3.3(c) (c) Location of urban levels of facilities and services; including at least public water and sewer facilities;

Applicant: All necessary utilities currently exist. See attached map for water well/storage, waste water collection and processing, power lines, phones lines, and propane lines.

Staff: According to Policy 10 inventory records, the subject property is served with a DEQ approved sewer system. Public water will serve the proposed development with an on-site well. The location of all sewer and water related improvements can be seen in Exhibit 16 which runs along the eastern side of the property starting at the southernmost gangway ramp. Goal 11 defines a public water system as a system for the provision of piped water for human consumption subject to regulation under ORS 448.119 to 448.285. These statutes apply to any water system serving water to public or commercial premises which are used by an average of at least 10 individuals daily at least 60 days each year (ORS 448.119).

The well's capacity is currently under the level requiring a permitted water right by the State Department of Water Resources. Although the applicant has just begun the permitting process to establish a water right commensurate with the proposed demand, a department staff member indicated to staff over the phone that it is more likely than not that the permit will be approved. This is because the existing well provides the majority of the yield needed to serve the proposal and because Multnomah Channel is not a designated groundwater limited area. The state's water right permitting process is estimated to take 9-12 months.

6.1.2.3.3(d) (d) Parcel sizes and ownership patterns.

Applicant: There were 7 parcels of land owned by Stan Tonneson LLC and leased to Rocky Pointe Marina Portland LLC. They have been consolidated into a single lot of record. The previous lot numbers and sizes are listed below from North to South, see map for additional detail

<i>Previous Tax Lots</i>		<i>Consolidated Tax Lots</i>		<i>Proposed</i>	
<i>Existing Lots of Record</i>				<i>Lot of Record</i>	
<i>TL400</i>	<i>8.5 acres</i>	<i>TL400</i>	<i>8.73 acres</i>	<i>1 lot</i>	<i>16.22 acres</i>
<i>TL100</i>	<i>8.17</i>	<i>TL100</i>	<i>7.49</i>		
<i>TL200</i>	<i>.33</i>				
<i>TL300</i>	<i>.39</i>				
<i>TL400</i>	<i>.12</i>				
<i>TL500</i>	<i>.20</i>				
<i>TL600</i>	<i>.09</i>				
<i>Total</i>	<i>17.8</i>	<i>16.22 acres</i>	<i>16.22 acres</i>		

Staff: According to county tax assessment records, the 16.22 acre Rocky Pointe Marina is owned by Stanley and Jenice Tonneson. Exception areas within the channel are owned by the State of Oregon and leased by the Tonnesons.

6.1.2.3.4 OAR 660-014-0030(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban development rather than a rural level of development.

Applicant: Rocky Pointe Marina was established in the 1930's and has been in existence on the same site providing boat moorage, floating home moorage, boat repair, boat fueling station, boathouse construction, public boat ramp, public restrooms and floating general store. There is a paved road the entire length of the property parallel to the water's edge making the waterfront land accessible. The northern part of the road is a driveway on the Rocky Pointe Marina. The southern part, south of the County's road, is an easement across the Rocky Pointe property to the Happy Rock Marina (south), upstream from Rocky Point. The remainder of land is either lake, wetlands, natural or landscape areas.

Staff: Justification for the Goal 14 physically developed and irrevocably committed exception is limited to the areas serving the existing and proposed residential and residential accessory uses. Valid exception areas must specifically be justified either by the presence of physical improvements necessary to serve the dwellings or by committing the land to urban level development by proximity to the other floating homes.

The justifiable areas for the Goal 14 physically developed exception include all existing docks, gangway ramps, access, parking areas, the footprint of all utilities serving the floating dwellings including sewer and water, the in-water expansion area and the land around the access road to the west. Two small natural areas on either side of Lower Rocky Point Road as the road enters the site are used by tenants for picnics, dog walking, etc. These small recreational areas are committed via recreational support of the residential uses. The 27 floating dwellings to the immediate south of the expansion area further support a conclusion that the area is committed to urban residential densities. The proposed expansion area fills the gap between these two existing urban areas.

The Goal 14 exception areas proposed by the applicant exceed the areas used to serve the existing and proposed residential uses described above and therefore must be modified. There is no clear relationship to some of the areas identified and the reason/need for the Goal 14 exception. Areas supporting commercial marina activities that can operate independent of the houseboats do not qualify for an exception to Goal 14. This includes the future boatyard expansion area, existing boatyard, boatyard office, boat haul out pier, boat wash down pad and building, boatyard restroom, fuel dock, marine sewer pump out station, and four restroom/laundry facilities. The Goal 14 exception areas should be modified to exclude these areas dedicated to commercial uses that could function independent of the homes. The scope of these existing and proposed commercial activities does not exceed the scope in the Oregon Administrative Rule and therefore a goal exception is not necessary to continue with these uses.

- 6.1.2.3.5 OAR 660-014-0030(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.**

Applicant: Rocky Pointe Marina is built to urban densities.

Staff: We concur. There is no need for more detailed findings.

6.1.2.4 Single Family Dwelling per Parcel Restriction (OAR 660-004-0040(7)(f))

...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....

Applicant: The applicant requests a goal exception for this provision. The Multiple Use Agriculture-20 zone that is considered a type of rural residential zone. The applicant requests a goal exception for this provision...(In Conclusion)...The primary residential activity is on the waterway; a navigable waterway under the jurisdiction of the federal government. The residential use crosses the State jurisdictions with gangways and boat ramps. The use of terrestrial zoned land is limited to parking, boat yard, walking, loading, mail, and waste services.

The development is infill, filling a small stretch of currently unused waterway between the existing Rocky Pointe Marina and Happy Rock Marina upstream. No additional expansion is possible. The expansion will not result in additional restrooms, expansion of the store, or any other "urban use".

Staff: The provisions of OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas) do not apply considering the request is for an exception to Goal 14. OAR 660-004-0040 implements Goal 14, with the single family dwelling per parcel provision of 660-004-0040(7)(f) being the primary driver behind this exception request.

(* * *)

- 6.1.3 ORS 197.732(4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons that demonstrate that the standards of subsection (2) of this section have or have not been met.**

Staff: This report sets forth the necessary findings of facts.

- 6.1.4 ORS 197.732(5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.**

Staff: The public notice for the Planning Commission hearing met this requirement.

(* * *)

-
- 6.1.5 MCC 37.0705(A)(2) The proposal conforms to the intent of relevant policies in the comprehensive plan or that the plan policies do not apply. In the case of a land use plan map amendment for a commercial, industrial, or public designation, evidence must also be presented that the plan does not provide adequate areas in appropriate locations for the proposed use; and**

Applicant: The proposed houseboat expansion is a residential use.

Staff: Although the exception areas encompass existing and proposed residential, non-residential and commercial uses associated with the marina and boat yard; The residential

portion of the request is the only use requiring the goal exceptions.

Comprehensive Framework Plan Policy 26 (Houseboats) references a number of other applicable Plans Policies including Policy 2 (Off-Site Effects), 13 (Air, Water, Noise), 15 (Significant Environmental Concern), 16 (Natural Resources), 21 (Housing Choice), 24 (Housing Location), and 38 (Facilities). These overarching policies will be used in the following findings for context, where appropriate. Rural Area Plan (RAP) Policies explaining how the Special Plan Area is intended to be used (RAP Policy 13), what density is acceptable (RAP Policy 14) and what criteria shall be used to evaluate impacts (RAP Policy 15) will also be considered. The RAP Policies are part of the overall Multnomah County Comprehensive Framework Plan and are intended to present decision making guidelines within the Sauvie Island/Multnomah Channel Rural Plan Area.

6.1.5.1 RURAL AREA PLAN POLICY 13:

Multnomah County should adopt procedures to allow existing moorage/marina to become a 'special plan area' under MCC 11.15.6600 [Staff: now MCC 34.5000 *et seq.*] at the initiation of the property owner, to determine uses and densities allowed for each moorage on the channel. The special plan area designation would be allowed when the property owner requests an expansion or alteration, or for any new marina/moorage developments. The provisions of the existing Conditional Use criteria would still be in place in addition to the new special planning area procedure.

Discussion: Each moorage/marina shall be allowed to enter into a special plan area (an existing part of the Multnomah County Zoning Code, which needs some minor amendments to fit the Multnomah Channel situation) procedure with Multnomah County to adopt essentially a master plan or comprehensive plan for each moorage/marina. As an attempt to take all issues into consideration, special plans can determine by looking at each existing or proposed moorage/marina on a case-by-case basis regarding the density, service levels and legal status of the property. At the County's initiation (no application fees), each individual marina/moorage could receive a special plan area designation which would be an overlay designation for each moorage and marina on the Channel. The special plan area will help reduce duplication of efforts by considering the Willamette River Greenway concepts concurrently with other code criteria.

STRATEGY: Multnomah County shall implement this policy by amending the Special Plan Area code of the Zoning Ordinance and by requiring any moorage or marina which is determined to be in violation of the Zoning Code or which proposes changes to an existing moorage to go through the Special Plan Area process.

Applicant: The result of this exception would be to make Rocky Pointe a Special Plan Area.

Staff: The applicant is requesting a SPA designation within the exception areas (i.e. zone change from MUA-20 to MUA-20 with a SPA overlay). With the SPA they are seeking criteria that would lift the 1 houseboat per 50 foot (i.e. 1:50 cap) of waterfront frontage carrying capacity standard in the Conditional Use provisions for moorages. Rural Area Plan Policy 13 indicates the **SPA process shall be used to determine densities for a moorage on a case-by-case basis** and that **all Conditional Use criteria would still be in place** in addition to the new special planning area procedure.

Multnomah County Conditional Use Code 34.6755 caps houseboat density at 1 houseboat per 50-feet (1:50) of waterfront frontage which the applicant is proposing to exceed by 13 dwellings.

The question becomes whether Policy 13 requires that the SPA not exceed the Conditional Use houseboat cap of 1:50, or if it can be determined at the time of SPA review that the 1:50 cap can be exceeded. Although the two statements in bold above could appear to conflict, this would not necessarily be the case for all SPA proposals. A SPA master plan, for example, could involve replacing existing boat slips with covered boathouses (floating boat garages) in which case the appropriate density of the non-residential boathouses could be considered through the SPA process. In this case, the 1:50 cap on residential houseboats would not be applicable to the request which would be subject to all applicable Conditional Use criteria.

Another hypothetical example could be the replacement of boat slips with houseboats so long as houseboat density does not exceed one per 50 feet of the parcel's waterfront frontage. In summary; The SPA analysis is not limited to residential densities and it appears possible to add dwellings through the SPA process up to a 1:50 density.

It is clear from select 'Discussion' and 'Strategy' language of Policy 13 above that future code amendments were intended to specifically address moorage/marina reviews within the SPA portion of county code. These revisions never occurred. It is staff's view that the Planning Commission must first determine whether it is appropriate to use Policy 13 (in combination with Policies 14, 15 & zone change criteria MCC 370705(B)), to consider this request to exceed the 1:50 residential density cap as proposed⁵. Secondly, if the Commission interprets the policies to allow a request of this nature, the Planning Commission must decide whether or not the applicant has justified the SPA overlay designation.

The Hearing's Officer through a Conditional Use review is the appropriate review body to determine the actual number of new houseboats that should be allowed. The Planning Commission will need to set a maximum appropriate residential density for the Hearing's Officer to consider in the event the Planning Commission believes the SPA designation is justified. In determining whether or not to apply a SPA designation the Commission must consider existing and proposed improvements.

6.1.5.2 RURAL AREA PLAN POLICY 14:

The overall density for each existing moorage/marina that chooses to go through the special planning area process shall not exceed the existing levels as measured by factors such as area and length of docks and number of slips (existing in the Multnomah County Moorage Report Listing of Float houses and Watercraft as of July 1, 1997 and reconciled through supplemental information provided by the moorage owner). The actual number of slips for each moorage/marina shall be determined at the time a special plan area is approved for the moorage/marina. The specific plan will look at such things as 'legally existing' issues, non-conforming status and carrying capacity of the land to determine the number of dwellings and other uses allowed in each marina/moorage.

⁵ Using the applicant's estimate of 3,150 linear feet of waterfront parcel frontage, the 76 houseboats will result in a houseboat to frontage ratio of 1:41.

STRATEGY: Multnomah County shall implement this policy at the time each special plan area is adopted.

Applicant: Rocky Pointe Marina will also be reviewed through a conditional use process and, as proposed, complies with all dimensional standards.

Staff: Policy 14 states density within a SPA shall not exceed existing levels. This suggests at first glance that expansion of existing development may not be possible through the SPA review which is intended to establish more flexible and diversified standards and procedures (MCC 34.5000). Policy 14 indicates existing development levels shall be measured by factors such as area and length of docks and number of slips reconciled through the Policy 10 moorage inventory process. The two hypothetical SPA requests introduced in the previous finding would also not be in conflict with the Policy 14 limitation on expansion because no new slips or additional dock would be added to the operation in either example. Staff is not confident the applicant's request to expand the operation to the south is allowable per Policy 14 for the reasons explained below.

The applicant has submitted three different approaches explaining why the proposed density does not exceed existing levels. Staff will briefly summarize each argument below, referencing the materials submitted by exhibit which contains more details.

Density Analysis #1 – Specific vs. General Criteria & Dock Frontage/Number of Slips

The first analysis, prepared by Steve Morasch of Schwabe, Williamson & Wyatt, opens with his opinion that Rural Area Plan Policy 13 allows consideration of residential expansion beyond the 1:50 threshold through the SPA process because this case-by-case density allowance supersedes the more general density provision of MCC 34.6755 (i.e. a basic rule of statutory construction is that when two provisions conflict, the more specific provision governs). This analysis can be found in Exhibit 29. Staff has already explained why no conflict exists between the two requirements.

Mr. Morasch states that even with the addition of the 36 dwellings and new dock, the overall density will not be increased as measured by length of docks and number of slips and reconciled through the Policy 10 marina inventory process. The 1997 Policy 10 inventory confirmed that *"as of June 24th, 1998, Rocky Pointe Marina was operating within their existing permits."* The marina was permitted in 1993⁶ for 197 slips (40 houseboats, 150 boat slips and 7 boathouse spaces). The marina currently contains 197 slips according to Mr. Morasch's analysis (39 floating homes, 150 boat slips and 8 boat houses). The additional boathouse (floating garage) does not appear to have been permitted by the County. Although Mr. Morasch references 39 floating homes, the applicant has indicated the operation currently serves 40 floating homes.

Mr. Morasch calculates 2,276 linear feet of dock, with twice this much frontage used today considering both sides of the dock are used to secure floating homes, boats, boathouses and

⁶ Permits CS 1-93, HV 1-93, WRG 1-93 and CU 7-93

⁷ The owner's ratio exceeds 1.00 because the owner included gangway ramps extending perpendicular to the waterfront in the calculations.

miscellaneous marina related uses (4,552 feet total frontage). The length of dock and description of dock usage provided by Mr. Morasch matches plans approved in 1993 and measurements taken from recent aerial photos. Mr. Morasch's analysis indicates the new 520-feet of dock will contribute another 1,040 linear feet of dock to the operation along with an additional 278 feet of dock freed up through the permanent removal of 16 boat slips. The analysis continues that because the proposal offers 5,870 feet of dock frontage (1,318 more lineal feet than exists now) density between structures will be reduced by the expansion because development would be spread out further apart, thus decreasing density.

It seems counterintuitive that adding additional dwellings would reduce density and it is not clear that spreading development further apart meets the policy intent of retaining density at existing levels. It should also be noted that Mr. Morasch's analysis also places equal value on residential versus non-residential dock frontage which may not be appropriate considering residential uses put greater demands on a site than non-residential uses. On the other hand, Policies 13 and 14 do not appear to distinguish between various uses.

After carefully reviewing Mr. Morasch's analysis, Staff believes a problematic assumption was used within the calculations. This observation was conveyed to the applicant who offered no additional clarification. On Page 4, the analysis assumes 1,318 feet of new dock will be available for new floating homes. This was calculated by adding the 278 feet of frontage freed up by the removal of 16 boat slips and the 1,040 feet of new dock frontage proposed (520-feet x 2 sides). Mr. Morasch uses this 1,318 total to find the current 30.821 feet of dock frontage per dwelling will be reduced because the additional 1,318 feet of frontage available after construction would technically allow an additional 42.76 dwellings which exceeds the number proposed.

The apparent problem with this conclusion is that not all 1,318 feet of frontage freed up by the proposal will be used for dwellings. The application narrative states in a number of locations that the new dock side facing the bank will be used for boat slips rather than dwellings and that the side facing the channel will be used for homes. This would allow only 520-feet of dock frontage for homes, which would provide room for only 16.8 dwellings assuming Mr. Morasch's 30.821 feet of dock frontage required per floating home. By Staff's calculations, the 278 feet of dock frontage freed up by the removal of 16 boat slips would provide room for only 9 more dwellings totaling roughly 25 dwellings rather than the 36 proposed. In addition, removing only 16 boat slips while adding 36 new home slips simply adds additional slips to the operation (i.e. increases density) which is a Policy 14 metric not squarely addressed in the analysis.

Staff also has concerns that establishing all 25 dwellings would not seem to provide the additional space between structures as discussed in the narrative because all space created would now be occupied with new homes. The creation of more space between structures seems to be the overarching point to the analysis concluding that density is reduced. The exception plans also show only 15 channel side spaces along the new dock for homes rather than the 16.8 possible by the calculations above which would seem to drop the number of possible dwellings down somewhere around 23 while maintaining existing residential density within the SPA.

To summarize; Staff does not concur with Mr. Morasch's analysis in Exhibit 29 finding density will be reduced using factors such as dock length and number of slips. Staff is not convinced the numeric assumptions used are accurate, and does not agree that adding 36 slips while

removing only 16 slips reduces density.

Density Analysis #2 – Dock Frontage per. Parcel Frontage

The second analysis was provided by the owner to justify a finding that the density is reduced. This approach is based on the ratio of parcel frontage to dock length. The spreadsheet provided is presented in Exhibit 31. The crux of the argument appears to be that currently, 1.38⁷ linear feet of dock is associated with each linear foot of parcel frontage, which will be reduced to 1.29 linear feet of dock with the new expansion. The owner has mentioned that the reduction is due to the purchase of additional land in 2001 and that even though he is adding dwellings, the resulting development will now have more room and therefore density will be decreased. The applicant provided an interesting analogy relating to a party – i.e. even though additional people showed up to a party, it did not become more crowded and density between the guests was reduced when the party was moved to a larger room. Within this analogy, the room was enlarged with the 2001 land purchase.

A problem with this analysis could be that different frontage lengths are being used for each calculation. The first calculation resulting in 1.38 feet of dock per foot of frontage uses 2,580 feet of frontage, whereas the second calculation uses 3,150 feet of frontage which reduces the ratio from 1.38 to 1.29. The owner claims this methodology is appropriate because he only owned 2,580 feet of frontage in 1997 but now owns 3,150 feet of frontage after purchasing a parcel in 2001. Staff estimates the density would increase from 1.12 ($3,555 \div 3150$) to 1.29 ($4,075 \div 3150$) when comparing the existing lineal feet of dock associated with the entire parcel's water frontage today versus the resulting lineal feet of dock associated with the entire parcel's water frontage after the proposal is constructed.

On the other hand, the owner's analysis could be valid in comparing the parcel frontage length in 1997 (2,580 feet) to the current frontage length (3,150 feet) when one looks closely at the Policy 14 language: *"The overall density for each existing moorage/marina that chooses to go through the special planning area process shall not exceed the existing levels as measured by factors such as area and length of docks and number of slips (existing in the Multnomah County Moorage Report Listing of Float houses and Watercraft as of July 1, 1997 and reconciled through supplemental information provided by the moorage owner)."* The owner asserts he has presented an apples to apples frontage analysis because he did not own the parcel adjacent to the in-water expansion area in 1997. It was purchased in 2001 with the intent of increasing the property frontage.

Regardless of the resulting frontage ratio, one potential problem with this overall argument is that Policy 14 focuses the density analysis on factors such as the length of docks and number of slips rather than the length of property frontage existing in 1997 versus that utilized by the current proposal. In summary, staff does not believe Policy 14 intended a ratio of land frontage to dock length to be considered in isolation for the density analysis.

Density Analysis #3 – Live aboard Boat Reductions

The third analysis concludes a reduction of over 32% in residential density would result, even with the addition of 36 additional floating homes, because the 76 boats currently being lived in full time will be removed. Live aboard boats at the Rocky Pointe Marina are a compliance issue. The owner has not provided evidence that the county authorized the use of boats as residences

and; therefore, the removal of these residences can not be used to justify a reduction in density. Removal is not a choice and is required by county code. As a point of clarification, the owner indicates in Exhibit 30 that live aboard boats are in the process of being removed and that 23 boats remained in late 2008 rather than the 76 used in the calculations.

In conclusion, Staff is not able to find a reduction in density will result using any of the three analyses provided. The Planning Commission has the ability to make a policy decision regarding how density should be measured, using any of the three analyses as guidance, if needed. Each of the three approaches has impacts on the number of dwellings that could result. For example, density analysis #1 provided by Mr. Morasch does not distinguish between a residential and non-residential slip. Considering these uses as equal could overburden the carrying capacity of a property. Analysis #2 is limited to dock frontage versus parcel frontage and does not consider all relevant factors such as the number of slips. Analysis #3 relies on removal of unpermitted development to help mitigate the proposal impacts. It is Staff's position that the county must authorize any living unit within the Multiple Use Agriculture-20 zone regardless of the type of residential unit.

6.1.5.3 RURAL AREA PLAN POLICY 15:

Development on Multnomah Channel within Special Plan Areas shall be judged upon the following criteria.

Water Environmental

River Bank Protection - Development which protects the river bank from erosion caused by boat traffic.

Water Quality - Development which contributes to or does not significantly degrade water quality

Septic tanks/Sewage - Development which is more amenable to safe and sanitary sewage disposal, along with adequate upland facilities for disposal of sewage.

Fish and Wildlife - Development which contributes to or does not have a significant detrimental impact to the fish and wildlife in the water.

Land Environmental

Development in Wetland - Development which does not impact wetlands.

Traffic Increase - Development which minimizes increases in traffic on moorage access roads, on railroad crossings, and onto Highway 30.

Parking - Development which minimizes the amount of parking area necessary.

Ground Water Quality - Development which minimizes impacts to ground water quality.

Need for Restroom Facilities - Development which minimizes the need for additional communal restroom facilities to serve the proposed uses.

Land Wildlife - Development which minimizes impacts to land wildlife.

Necessary Utilities - Development which requires fewer utilities to serve proposed uses.

Floodplain Development - Development which minimizes placement of permanent structures and uses in the floodplain.

Accessory Structures - Development which minimizes the need for accessory on-land structures to serve proposed uses.

Aesthetic

Vegetation on Land - Development which minimizes the loss of land vegetation.

Visibility of Shore - Development which minimizes changes to natural shoreline features.

Massing and Scale - Development which has a human scale or architectural quality to it.

Diversity/Rural character - Development which maintains the existing diversity and rural character of Multnomah Channel.

Lighting - Development which minimizes night lighting of uses.

Vegetation/landscape on Water - Development which minimizes its visibility from the Multnomah Channel waterway.

Safety

Contribution to Channel Traffic - Development which minimizes Channel traffic.

Residential Link - Development with a permanent residence component which provides a human presence to both report emergencies and violations on Multnomah Channel.

Fire Hazard - Development which minimizes fire hazard.

Emergency Services - Development which minimizes the need for emergency services.

Economic - Development which provides economic value to Multnomah County in the form of assessment value and reduced need for public services.

Recreation

Contribution to Public Recreation - Development which contributes to public recreation opportunities on Multnomah Channel.

Protect Public's Right to Access and Utilize Public Waterway - Development which

promotes and does not infringe on public's ability to access the public waterway (Multnomah Channel) for recreational purposes.

Cumulative Impacts

The cumulative impacts of the proposed development on the overall carrying capacity of Multnomah Channel shall be considered and minimized.

The criteria listed shall be weighed and balanced by the hearing body considering each Special Plan Area so as to determine the most appropriate intensity and type of development allowed within each of these areas.

Discussion: It is not intended that each proposed use strictly meet each of the criteria listed above, but rather the criteria be used by the hearing body to weigh the appropriateness of different potential uses. It is assumed that each site within the boundaries of Policy 26 is appropriate for some sort of marine related development unless a single criteria weighs so strongly upon the site that it precludes all or some of the potential marine development uses.

STRATEGY: These criteria shall be included in the general special plan area code and shall be used to review proposed uses in each specific plan area is adopted.

Applicant: Rocky Pointe Marina has submitted a conditional use, site/design review and greenway request that will test its proposal against these criteria.

Staff: The criteria above must be considered at this time to determine if the location, density and type of development proposed within the SPA is appropriate for this site. The proposed SPA includes all Goal 11 and Goal 14 Physically Developed and Irrevocably Committed areas and all commercial and residential uses supported by the marina. The specific criteria are listed below, along with staff analysis considering the appropriateness of the proposed uses. It is staff's view that the SPA should not be approved because the intensity of residential uses proposed exceeds what is appropriate for this site when considering all of the criteria.

6.1.5.3.1 (Water Environmental)

Applicant: The marina has strict operating policies and is regularly inspected to ensure that there are no impacts to air and water. The houseboat population values and enforces quiet.

The majority of the property remains in natural condition. The bank is protected and impacted in relatively few locations; essentially only where the gangways and boat ramps are. A biological assessment reviewed the natural situation, assessed impacts, and dictated specific practices. The project requires permission from the Army Corp of Engineers and Department of Fish and Wildlife and the federal; level and the Oregon State Department of State Lands.

The site has been developed as a marina and related water dependant activities since the 1930's. The development minimizes impacts on the natural surroundings. The majority of development is on the water and upland from the bank. The banks are virtually untouched except for gangways and boat ramps.

River Bank Protection - Development which protects the river bank from erosion caused by boat traffic.

Water Quality - Development which contributes to or does not significantly degrade water quality.

Staff: This request is not yet subject to many of the county's specific development review standards, a number of which would directly evaluate environmental impacts to the riparian area, to fish and wildlife and to water quality. Examples would be the Willamette River Greenway and Grading and Erosion Control permits. These standards will be evaluated by a county Hearing's Officer as part of the Conditional Use Permit review in the event this goal exception is approved and acknowledged by the Department of Land Conservation and Development. This does not prevent the Planning Commission from evaluating the criteria as informed by the Comprehensive Framework Plan Policies, where direction is necessary.

Impacts to water quality are best achieved by providing a buffer between uses and water bodies and mitigating any loss of riparian vegetation to the greatest extent possible. Aerial photos show heavy vegetation running the length of the channel roughly 60-90 feet wide providing an adequate buffer between the upland development and the channel. All upland development is either associated with the in-water uses or in the case of the boat repair yard, is related to in-water uses in general and; therefore, should be located near the channel to consolidate the operation as much as possible. The applicant has indicated that any areas disturbed along the channel bank will be replanted with native landscaping. Disturbed bank areas are expected to be very limited and only associated with installation of the emergency 4-foot wide gangway access ramp serving the in-water expansion.

Rocky Pointe enforces a no-wake zone which will help limit bank erosion associated with boat traffic. The in-water development that will extend the length of the property will also act as a breakwater greatly reducing bank erosion from wave action. The on-site septic system is approved by DEQ, and of adequate capacity to serve the proposed expansion according to an engineer retained by the owner (Exhibits 35, 36, 47). Adequate sewage disposal is critical to water quality protection within the SPA.

Asphalt parking areas are sloped inland, away from the channel to allow runoff to filter through gravel areas and grass before entering the on-site wetland. The marina has a spill response plan in place in the event of a boat yard accident, offers a self contained recycled water boat wash down area to prevent bottom paint, etc. from migrating into the channel and the boat yard expansion area will be designed so that runoff from the existing and proposed boat yard surface will be channeled into a series of swales and filters running through the center of the boat yard. The marina also has received the 'Clean Marina' status from the Oregon State Marine Board attesting to its clean business practices.

The applicant has not adequately addressed how auto parking in support of the houseboats will be provided. Staff suspects the applicant will also need to place a large volume of fill near or in wetland areas to meet current parking standards which could have an impact on water quality. The applicant has not demonstrated the proposed development can fit on the property and meet all applicable standards without impacting wetland areas and/or the channel. The county's Community Service Conditional Use code requires that the owner provide at least two auto parking spaces for each new houseboat, and the parking area including all ingress and egress

thereto, shall located at least 2-feet above the 100-year floodplain (MCC 34.6760). The vast majority of the property is mapped within the 100-year floodplain (Exhibits 14 & 15) suggesting to staff fill materials would likely be needed to create an elevated parking area on the property. In 1993, the applicant estimated 7 – 9 feet of fill would be required at this site to elevate parking areas as required by County code (Exhibit 25). The Hearing's Officer granted a variance to this parking standard in 1993 (Exhibit 25) which can no longer be waived under the county's current variance provisions (MCC 34.7606(B)). Current code also limits fill placed within the floodplain to less than 5,000 cubic yards under the Large Fill provisions (34.6705(D)). The applicant has not demonstrated all development envisioned with the SPA can be accomplished using less than 5,000 cubic yards of fill material.

Many aspects of the SPA are designed to minimize impacts to water quality. Other aspects, such as the new parking areas, have not been fully explored and therefore the applicant has not demonstrated all development in support of the SPA meets this standard.

Septic tanks/Sewage - Development which is more amenable to safe and sanitary sewage disposal, along with adequate upland facilities for disposal of sewage.

Staff: The DEQ permitted sewage treatment system is located within an upland facility which has been determined by an engineer to have adequate capacity to serve existing and proposed development.

Fish and Wildlife - Development which contributes to or does not have a significant detrimental impact to the fish and wildlife in the water.

Staff: The Sauvie Island/Multnomah Channel Rural Area Plan's Natural and Environmental Resources assessment ranked Multnomah Channel as the fourth (out of ten inventoried) most significant waterways with respect to wildlife habitat values. The plan finds the greatest wildlife habitat function is as a travel corridor and that the water and adjacent riparian vegetation provide habitat for waterfowl, heron, cormorants and kingfishers.

The applicant submitted a Biological Assessment prepared by Ellis Ecological Services and Flowing Solutions, LLC assessing impacts of the proposed in-water expansion (Exhibit 23). The report concludes the project is expected to have "no effect" on listed plant or wildlife species or their habitat but that the project is "likely to adversely affect" the following salmonids that are likely to occur in the vicinity of the proposed action: Lower Columbia River Coho Salmon, Lower Columbia River Chinook Salmon, Upper Willamette River Chinook Salmon, Lower Columbia River Steelhead Trout and Upper Willamette River Steelhead Trout. This determination was based on short-term acoustic disturbances caused by pike driving, temporary disturbances to water quality and benthic food organisms during construction and long-term shading effects caused by the new expansion.

The report's executive summary concludes that no significant long term effects to essential fish habitat are anticipated with proper implementation of appropriate conservation measures. Conservation measures recommend in-water work to occur July 1 to October, control of turbidity and contaminants, establishment of a spill prevention and control plan, use of a vibratory hammer for pile driving, cutting old piles at the mud line, installation of anti-perching piling caps, use of encapsulated dock floats. The applicant has also proposed installing grating along the new docks to minimize shading.

Although new in-water development may have a detrimental impact on birds and aquatic species given the surface coverage and noise, the existing moorage improvements within the SPA is a mitigating factor reducing the habitat value of the expansion area. As such, there is not a significant detrimental impact caused by the SPA in-water expansion. The applicant has considered the design of the entire in-water development in the SPA, making adjustments where needed to minimize impacts to fish and wildlife such as replacing sections of existing dock with open grating to minimize light reduction in the shallows and proposing grading along the new dock. In addition, the in-water development is typically located in deep water (25-feet plus) further minimizing light reduction in the shallows.

Wetland areas identified on the National Wetlands Inventory maps are located along the western portion of the site, 1.2 acres of which would need to be filled to expand the boatyard west as envisioned within the SPA according various maps and plans (Exhibits 4, 11, 17, & 74). Although the applicant has mentioned wetland mitigation is possible, Staff has not seen details on the specific mitigation areas or fill volume proposed. Considering the evidence in the record, Staff finds that certain aspects of the SPA such as the boatyard expansion, new auto parking areas could have a detrimental impact on fish and wildlife using the area. Although long-term impacts to fish habitat are not anticipated, short term impacts to fish and fish habitat are likely to be caused by the construction of the in-water expansion area. It appears these temporary impacts can be reduced through mitigating techniques, but cannot be eliminated.

6.1.5.3.2 (Land Environmental)

Development in Wetland - Development which does not impact wetlands.

Staff: Portions of the SPA development are located immediately adjacent to and within wetland areas labeled PEMC (Palustrine Emergent Seasonally Flooded) or PSSC (Palustrine Scrub Shrub Seasonally Flooded) on the National Wetland's Inventory. In 1993, the previous owner's request to establish 50 floating homes was denied and reduced to 40 by a Hearing's Officer who felt 50 dwellings on this site would adversely impact wetlands. Page 19 of the decision noted *"In this case, the hearing's officer finds that the parking needs associated with 50 houseboats, along with the cumulative affects of the other proposed uses and its associated parking, will unnecessarily endanger portions of the wetland and riparian fringe. In short, the applicant is attempting to put too much development in too small of a place, and the resource area is being unnecessarily crowded by parking in order to achieve such density. The hearings officer notes that one way to alleviate such an over crowding is to grant a larger variance for the required parking standards. Although some variation could be warranted under the circumstances, a variance of the magnitude requested by the applicant is not appropriate as noted below. The better solution, in view of all the evidence in the record, is to reduce both the number of houseboats and the number of required parking spaces, in an effort to better protect more fragile and important resource areas from intrusion by roads and parking."* A copy of this decision is presented as Exhibit 24.

The current request for 76 floating homes, in combination with the proposal to fill 1.2-acres of wetlands in the boatyard expansion area leads staff to believe that development under a SPA would likely impact wetlands. The applicant has submitted a generalized wetland mitigation plan on the last page in Exhibit 17 noting an "open water wetland replacement area" which appears to match the existing wetland footprint in aerial photos of the site. Exhibit 17 contains

a mitigation plan plant list but provides no information as to where mitigation planting will occur. Staff suspects the applicant will also need to place a large volume of fill near wetland areas to meet current parking standards as previously discussed. The applicant has not demonstrated the proposed development can fit on the property and meet all applicable standards without impacting wetland areas.

At this point, not enough information has been provided to demonstrate that the SPA designation is appropriate. The applicant should demonstrate the increased residential density will not impact wetland areas and that the mitigation proposed is feasible, appropriate and adequate when considering measures to offset impacts created within the SPA.

Traffic Increase - Development which minimizes increases in traffic on moorage access roads, on railroad crossings, and onto Highway 30.

Parking - Development which minimizes the amount of parking area necessary.

Staff: Traffic from the site will access Highway 30 on Old Lower Rocky Pointe Road, which is a county road. The addition of 36 new dwellings will increase traffic on the local moorage access road, will increase traffic crossing the railroad west of the site and will increase traffic onto Highway 30. The applicant has explained that traffic will actually be reduced with the SPA master plan which removes all 22 live-a-board boats from the property and removes 16 boat slips to help make room for the new dwellings. Staff has not found evidence of approval for the use of any boats to be used as dwellings and therefore the removal of unpermitted live aboard boats can not be used as mitigation to meet this standard. Nothing has been provided to the record addressing how the owner would change his operational practices to reduce traffic.

The removal of 16 recreational boat slips will not offset the increase in transportation demand caused by the addition of 36 new homes. Considering the evidence in the record, Staff finds that development under a SPA designation would increase traffic on local roads and over the rail crossing. The applicant has not provided tangible evidence as to how that increase would be offset to minimize the impact.

No right-of-way dedications are being required by the County Transportation Planning group at this time, although a traffic impact study will be required in the future if the Goal Exception application is approved to determine if traffic mitigation is needed as a result of this proposal (Exhibit 33). A traffic impact study has not yet been submitted by the applicant.

Ground Water Quality - Development which minimizes impacts to ground water quality.

Applicant (Supplied by Andrew Jansky, PE., Flowing Solutions):

The proposed expansion to the work yard includes the addition of approximately 17,800 sf of new impervious area (0.41Ac). In order to estimate the increased runoff due to the proposed development the 10-yr, 24-hr storm was analyzed using the Santa Barbara Unit Hydrograph for the existing site conditions as well as the proposed expansion. The results of this analysis show an increased flow of 0.15cfs and an increased volume of approximately 1900cf. The preliminary grading plan shows adequate room for treatment and storage of this volume of water.

As the soil type and high groundwater make infiltration of the runoff impractical, a treatment chain of swales and mechanical systems will be used to treat the runoff with a pond for storage. The overflow from this pond will be discharged into the existing pond on the site. Discharge from the pond and swales can be controlled through the use of an orifice or weir to restrict the flow rates to existing rates.

While these calculations are preliminary and final design of the site has not been completed, it is clear that it is feasible to maintain runoff rates to those seen under the existing conditions.

The existing areas site includes repaving and adding additional parking spaces. These spaces generally exist and include gravel or grass overflow parking zones. The additional areas are generally small, however one section includes 14,000 sf of parking. The stormwater for the smaller areas can be treated by shed draining to a small grass diffusion strip. The larger area will required the use of pervious pavement or a collection and treatment system using bio-swales. Sufficient area exists adjacent to the proposed parking area to accommodate this type of stormwater treatment.

Staff: Comprehensive Plan Policy 16G (Natural Resources – Water Resource and Wetlands) states it is the county's policy to protect a number of water resources, including groundwater, from a public safety standpoint. The Comprehensive Plan Policies provide general policy decision making context when evaluating more specific Rural Area Plan Policy criteria, such as Policy 15 in this case.

The safety of shallow groundwater quality for public consumption could most easily be impacted by inadequate sewer service and improper storm water runoff treatment. Sewer service is provided throughout the SPA in association with the dwellings, boatyard and marina office. Potable water will be provided throughout the SPA for permanent residents, recreational guests using the boathouses and boat slips, general public purchasing fuel, washing clothes, etc. and boatyard workers.

The sewer system is permitted and routinely inspected by DEQ and, and at the request of both DEQ and the county, has been found by an engineer to have adequate capacity to safely treat all existing and proposed development within the SPA. Grass diversion strips, a series of drainage swales, mechanical treatment and a storm water storage pond is proposed by the engineer to treat runoff from parking areas and the new and expanded boat maintenance yard. The applicant indicated groundwater is typically found 18 feet deep and the well is 146 feet deep suggesting to staff that public drinking water is likely being withdrawn from fairly deep in the local aquifer less susceptible to shallow contamination. Although staff can offer no evidence to this effect, Staff suspects static groundwater may actually be less than 18-feet deep at times considering the low property elevation and proximity to wetland areas and the channel.

Land Wildlife - Development which minimizes impacts to land wildlife.

Staff: The wildlife population around the marina includes geese, ducks, otter, beaver, nutria, muskrats, turtles, frogs, and many birds. As previously stated, the natural portions of the site are predominately outside the SPA in an attempt to minimize wildlife impacts. It is unclear whether the boatyard expansion would have impacts to wildlife. Oregon Department of Fish and Wildlife Staff have been invited to comment on the proposal but have not yet provided feedback. Notice of the public hearing was sent to ODFW staff.

The Biological Assessment prepared by Ellis Ecological Services & Flowing Solutions, LLC (Exhibit 23) focuses only on the in-water work proposed and does not address the boatyard expansion. The report states on page iii that *"No listed plant and wildlife species are known to occur at the Project site. The proposed Project is expected to have "no effect" on listed plant or wildlife species or their habitat."* Rural Area Plan Policy 15 does not limit protection to only listed wildlife species.

Expanding the boatyard north is not an option due to a property line, east due to the riparian area buffer and channel and south due to existing development. Trees will not need to be removed to serve this expansion, although a few shrubs will be. The SPA layout, which corresponds to the outside boundaries of the exception areas, preserves a continuous natural area running along the northern third of the property on the west side. Approximately 30% of the site will be left in the natural state preserving a protected linear wildlife corridor allowing movement through the area west of the SPA.

As previously mentioned, the applicant has not explained how the houseboat auto parking (and access thereto) will be elevated at least 2-feet above the 100-year floodplain to meet current parking codes. After reviewing the FEMA Flood Insurance Rate Map of the property, Staff believes a large amount of fill may be required to create an elevated parking area. The applicant has not provided details on the design or location of the required parking area and therefore, Staff does not have the information necessary to adequately evaluate impacts to wildlife.

Necessary Utilities - Development which requires fewer utilities to serve proposed uses.

Staff: Comprehensive Plan Policy 37 (Utilities) defines necessary utilities as sewer, water, storm water drainage, energy and communications systems. The applicant's site plans in Exhibits 4, 16 & 77 show the location of each of these utilities which run the length of the SPA. It appears feasible that these existing utilities can simply be extended south of the upstream dock to serve the in-water expansion area and extended west from the boatyard into the boatyard expansion area. No new utilities will be required to serve the proposed uses with the SPA.

The well's capacity is currently under the level requiring a permitted water right by the State Department of Water Resources. Although the applicant has just begun the permitting process to establish a water right commensurate with the proposed demand, a department staff member indicated to staff over the phone that it is more likely than not that the permit will be approved. This is because the existing well provides the majority of the yield needed to serve the SPA (post expansion) and considering Multnomah Channel is not designated a groundwater limited area. The state's water right permitting process is estimated to take 9-12 months. Notice of the public hearing was sent to Department of Water Resources staff.

Need for Restroom Facilities - Development which minimizes the need for additional communal restroom facilities to serve the proposed uses.

Staff: All existing dwellings within the SPA have private restroom facilities to minimize the need for additional communal restroom facilities on the site. Public restrooms available to serve the recreational users of the site and employees are found on the docks and in the boat

repair yard. All new dwellings will have private restroom facilities. The applicant is contemplating a floating community meeting room within the expansion area and has not indicated whether that building would contain a restroom. A communal restroom in this building would be reasonable considering it would be a place for community members to congregate and recreate. Without a communal restroom in the building, some tenants using the meeting room would need to walk over ½ a mile to the nearest public restroom, assuming their home was one located at the opposite end of the site.

Floodplain Development - Development which minimizes placement of permanent structures and uses in the floodplain.

Staff: This criterion relates to Comprehensive Plan Policy 14 (Development Limitations), which directs development outside the 100-year floodplain when possible. Ninety-five percent of the subject property appears to be mapped within the 100-year floodplain. Areas outside the floodplain are small pockets along the west side of the property not suitable for development considering setback requirements of the zone. Therefore, the SPA must be located in the floodplain.

It is staffs view that this criterion applies to a permanent structure affixed to the ground and that the majority of new development within the SPA will be floating structures and gangways designed to rise and fall with floods. This ensures development is always located above flood waters meeting the intent of Policy 14. Staff believes the SPA minimizes the placement of permanent structures inside the floodplain.

Accessory Structures - Development which minimizes the need for accessory on-land structures to serve proposed uses.

Staff: The applicant has requested the SPA designation in order to have the ability to depart from the Community Service Use requirement in county code limiting houseboat density to a maximum of one floating dwelling per 50 feet of waterfront frontage (MCC 34.6755). The Rocky Pointe Marina serves a number of uses in addition to the 40 residential floating homes including marine related recreational support and commercial activities associated with fuel sales and boat repair. Although the SPA covers the entire operation, the relevance of this criterion should be viewed solely with respect to minimizing the need for on-land residential accessory structures.

Land structures used to support the residential use of the property include a well house, filter house, sewage treatment plant, three recycling/garbage collection structures, and a mail center. These structures are limited in size and necessary to support the 40 existing floating homes. The applicant has not indicated any new residential accessory structures are proposed on land to support the 36 additional floating structures. The remaining land structures are primarily congregated towards the northern property line and used in conjunction with the boat yard and therefore are not relevant (36' x 48' boat repair building, 24' x 50' portable shelter, utility shed, two 8' x 40' conex containers and a 20' x 60' portable shelter). All buildings on the property are illustrated on the applicants four existing site plans copied from associated case T3-06-005 which show the four sections of the operation (Exhibit 77).

6.1.5.3.3 Aesthetic

Vegetation on Land - Development which minimizes the loss of land vegetation.

Staff: This criterion needs to only be considered within the expansion areas since the existing land development has been in place for decades. The boatyard expansion area can be reviewed under existing county code and as such, there is no need to consider it as part of the SPA criteria. No trees will be removed to establish the emergency gangway ramp to the southern dock expansion area. Without details explaining where and how the residential parking area will be established, Staff is unable to find the SPA minimizes loss of vegetation.

Visibility of Shore - Development which minimizes changes to natural shoreline features.

Staff: Staff is not aware of any changes to the natural shoreline features that have occurred in the past. No changes are proposed. A vegetative buffer 60-90 feet wide between the upland operation and the channel has been established according to aerial photo measurements. Gangway ramps to the in-water development rise above the shoreline.

Massing and Scale - Development which has a human scale or architectural quality to it.

Staff: This standard is met primarily through the separation of more intense commercial boat repair use from the more human scale, lower intensity residential uses on the property. The boat repair use is clustered towards the northern portion of the site adjacent to the property line, while the dwellings are located primarily on the outside of the three docks facing the channel. Homes are proposed on the outside of the proposed dock expansion as well. Parking in support of the existing homes is provided next to the channel clustered around the three existing gangway ramps helping to further separate the residential uses on the property from other uses as much as possible.

Diversity/Rural character - Development which maintains the existing diversity and rural character of Multnomah Channel.

Staff: The rural character of this channel reach is best described as undeveloped natural areas on the east bank, and in-water marina/moorage on the west bank. The proposal maintains the existing character of floating dwellings and boat slips defining the west bank. Moorages are a dominant feature along the channel. They are a part of its character and provide diversity in terms of form of development. The in-water footprint will follow the natural flowline of adjacent marinas.



Lighting - Development which minimizes night lighting of uses.

Staff: Although lighting within the SPA is necessary for safety, it has been designed and sited to minimize impact to neighboring areas according to the owner. Within the channel, only the gangway ramps are illuminated using low wattage lights placed at ground level. For security reasons, the parking area serving the docks must be illuminated at night. Six to Seven floodlights roughly 20 feet tall are directed downward within the parking area. These floodlights are below tree canopy level helping screen the lights and reduce light pollution. Fences and gates are utilized on the property to increase security, especially in the boat yard area, while reducing the need for security lighting.

Vegetation/landscape on Water - Development which minimizes its visibility from the Multnomah Channel waterway.

Staff: The landscaped buffer along the length of the channel helps push upland improvements associated with the residential uses back from the water and provides visual screening. Upland development does not extend above the tree line and all in-water docks and piers are brownish red weathered steel or brown wood helping it blend into the surrounding landscape as much as possible.

Houseboats are a dominant feature along the channel as illustrated in the photo above. Filling the remaining gap between the moorage to the south and the southern extent of the Rocky Pointe Marina will not impact visibility in a meaningful way.

6.1.5.3.4 Safety

Contribution to Channel Traffic - Development which minimizes Channel traffic.

Staff: The in-water expansion area will not extend further out into the channel than surrounding development and therefore will not impede channel traffic. The SPA envisions adding 36 new residences and 65 new auto parking spaces which will not have an effect on channel traffic. To create the space needed to add the homes, 550-feet of dock will be constructed and 16 existing boat slips will be permanently removed. The removal of the boat slips will reduce channel traffic.

Residential Link - Development with a permanent residence component which provides a human presence to both report emergencies and violations on Multnomah Channel.

Staff: The SPA envisions 76 full time residents that can watch over the site and report emergencies and/or violations. The Rocky Pointe Marina also has a full time care-taker living on the middle dock at the center of the marina. Each tenant has been provided with the care-taker's cell phone number.

Fire Hazard - Development which minimizes fire hazard.

Emergency Services - Development which minimizes the need for emergency services.

Staff: The applicant has worked closely with the Scappoose Fire Department in the SPA design to reduce the potential for emergencies. Prominent signage will be posted at each

gangway entrance noting the dwelling numbers accessible from that gangway ramp. In addition to the numerous water stand pipes required around the site by the fire department; five portable 5-horsepower fire pumps are available for additional mobile fire fighting protection. One is located on each of the three docks and one on each of the two service boats. The owner has also decided to run three to four fire drill exercises per year and require each tenant to attend at least one drill a year.

6.1.5.3.5 Economic

Development which provides economic value to Multnomah County in the form of assessment value and reduced need for public services.

Staff: The expansion proposed within the SPA will provide temporary construction jobs and permanently increase the assessed value of the property. The owner is estimating a \$100,000 increase in personal property tax to the county for the new homes proposed. The consolidated development pattern within this SPA will economize on centralized on-site public water and sewer system and no additional public services are necessary to serve the expansion. All public services exist currently.

The additional homes will place additional demand on public police, fire, school services. Michael Greisen, Scappoose Fire District, indicated his office will support the development application assuming the applicant demonstrates a number of fire codes can be met. This will require review of access road constraints by the Fire Chief, installation of no parking signs along the access road, installation of a fire protection standpipe system and installation of gangway walkway and slip number signage (Exhibit 41). The Scappoose Fire Chief agrees that it is feasible that the owner can meet all fire requirements and that nothing needs to be completed before building permits are issued. The applicant has provided the Fire Chief a survey of the access road as requested by the Chief. The applicant has requested that any conditions of approval be incorporated into the pending Conditional Use case that will proceed in the event this goal exception is approved. Staff agrees this request is reasonable and finds that it is feasible that necessary fire service can be provided given the applicant can satisfy fire district requests.

The Multnomah County Sheriff's Office confirmed the level of police service available to serve the proposed project is adequate (Exhibit 40). Paul Peterson, Scappoose School District Superintendent, has reviewed the proposal and provided a letter of support (Exhibit 37).

6.1.5.3.6 Recreation

Contribution to Public Recreation - Development which contributes to public recreation opportunities on Multnomah Channel.

Staff: The SPA includes a public boat ramp which can be used by the general public and residents of the marina to access recreational opportunities on Multnomah Channel. Smaller boats, such as kayaks and canoes, can be launched directly off the dock adjacent to the houseboats.

Protect Public's Right to Access and Utilize Public Waterway - Development which promotes and does not infringe on public's ability to access the public waterway

(Multnomah Channel) for recreational purposes.

Staff: The marina offers a public boat ramp allowing public access to the channel through the site. The in-water development is set back from the channel allowing people to canoe and kayak along the bank rather than be blocked by the SPA houseboat development. The space provided between the docks and riverbank is illustrated in the photo below.



6.1.5.3.7 Cumulative Impacts

The cumulative impacts of the proposed development on the overall carrying capacity of Multnomah Channel shall be considered and minimized.

The criteria listed shall be weighed and balanced by the hearing body considering each Special Plan Area so as to determine the most appropriate intensity and type of development allowed within each of these areas.

In reviewing each Special Plan Area, Multnomah County shall consult with other relevant local, state, and federal agencies, including but not limited to the following agencies:

**Division of State Lands
Oregon Department of Fish and Wildlife
Oregon Parks and Recreation Department
Oregon State Marine Board
U.S. Army Corps of Engineers
Metro Parks and Greenspaces**

Staff: Notice of the project was mailed to every agency above and an opportunity to raise concerns provided. No concerns were provided by any of the agencies above. The expansion area is identified as being an area identified as suitable for houseboat uses in the Sauvie Island/Multnomah Channel Rural Area Plan. That process evaluated carrying capacity of the channel as a whole when setting limits on where houseboat expansions can occur.

-
- 6.1.6 MCC 37.0705(A)(3) The uses allowed by the proposed changes will:**
(a) Not destabilize the land use pattern in the vicinity;

Applicant: The surrounding land uses are very stable with marinas upstream and downstream; and a railroad and state highway between the marina and upland properties that grade steeply up into heavily forested mountains. The proposed expansion is an in-fill on the water lease. Additional land will not be disturbed.

Staff: The land use pattern in the vicinity is defined by linear in-water marina/moorage development consisting of pilings, docks, ramps, slips and various one and two story floating structures. The urban style density and abnormally linear arrangement of this development visually dominates the land use pattern along this reach of the channel. Although large farm tracts are found to the east and large forest tracts to the west, the vicinity is defined in this staff report as the developed reach of Multnomah Channel 5,000 feet downstream and 1,000 feet upstream of the expansion area. Staff believes that considering the channel as the vicinity is appropriate considering how different the in-water urban style development is from surrounding sparsely developed rural upland properties.

The proposed expansion will fill a small gap in existing similar development along the channel's west bank. The expansion will result in one continuous line of in-water marina/moorage development over one mile long formed by the Happy Rock Moorage on the upstream side, Rocky Pointe in the middle and the McCuddy's Marina on the downstream side⁸. The expansion will physically align with, conform to the architectural appearance of and not destabilize the existing land use pattern in the vicinity. It should be noted that the expansion area is already designated as appropriate for houseboat development Policy 16 26 (Houseboats) of the county's Comprehensive Plan.

(b) Not conflict with existing or planed uses on adjacent lands;

Applicant: The marina is isolated from any properties where there could be a conflict.

Staff: Staff is not aware of any planned uses on adjacent lands that would be relevant for this analysis. At the time of this writing, no active land use cases were pending on adjacent properties. Adjacent lands to the north and south are developed with the same type and relative scale of in-water development proposed. The proposal has been amended to accommodate waterway access concerns raised by the owner of Happy Rock Moorage on the upstream side. The most recent plan offers 50-foot separation between the new dock expansion and the Happy Rock Moorage to allow necessary waterway access to the slips on the bank side of Happy Rock's docks. In order to avoid conflict, establishing this 50-foot separation is a recommended condition of approval.

The proposed expansion will not extend further than adjacent development into the channel and therefore will not obstruct river traffic. The rail line and Highway 30 transportation corridors abut the west side of the property and Multnomah Channel to the east. The proposed expansion will not obstruct either the road or rail-line. Staff finds the expansion will not conflict with adjacent lands.

(c) That necessary public services are or will be available to serve allowed uses.

⁸ This operation has been referred to in the past as "McCuddy's", "Big Oak Marina" and "McCuddy's Big Oak Marina".

Applicant: All utilities are currently in place.

Staff: Public services include drinking water, septic disposal, fire and police response and public school availability. The owner has indicated an on-site artesian well currently provides drinking water to the site and has applied for a water right expansion to serve the new dwellings from the Department of Water Resources (Exhibit 53, 38, & 60).

In September of 2008, the owner informed the Department of Environmental Quality (DEQ) of the request to add 36 floating homes with a 10,000 gallon per day on-site Davco wastewater septic treatment plant. On October 22nd, 2008, DEQ staff requested the owner retain an engineer to prepare an evaluation report confirming whether or not the existing system can handle the increased septic load. Stuart L Cato, PE, CWRE has confirmed that *“based on the existing flows and treatment levels it is our opinion that the proposed addition of 36 more floating homes will not overload the package (sewage) treatment plant with a permitted average monthly flow of 6,500 GPD.”*

Michael Greisen, Scappoose Fire District, indicated his office will support the development application assuming the applicant demonstrates a number of fire codes can be met. This will require review of access road constraints by the Fire Chief, installation of no parking signs along the access road, installation of a fire protection standpipe system and installation of gangway walkway and slip number signage (Exhibit 41). The Scappoose Fire Chief agrees that it is feasible that the owner can meet all fire requirements and that nothing needs to be completed before building permits are issued. The applicant has provided the Fire Chief a survey of the access road as requested by the Chief. The applicant has requested that any conditions of approval be incorporated into the pending Conditional Use case that will proceed in the event this goal exception is approved. Staff agrees this request is reasonable and finds it feasible that necessary fire service can be provided given the applicant can satisfy fire district requests.

The Multnomah County Sheriff's Office confirmed the level of police service available to serve the proposed project is adequate (Exhibit 40). Paul Peterson, Scappoose School District Superintendent, has reviewed the proposal and provided a letter of support for the proposal (Exhibit 37). Staff finds all necessary public services are or can be made available to serve the proposal. The applicant will need to provide authorization from the Oregon Department of Water Resources and the Department of Environmental Quality to expand the marina as part of the pending Conditional Use process.

6.1.7 MCC 37.0705(A)(4) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection.

Applicant: There are no errors or mistakes in planning. Multnomah County has clearly identified Rocky Pointe Marina in an area for floating homes as outlined in both the Sauvie Island Plan and the Multnomah County Comprehensive Plan Policy 26 which is part of the county's adopted and acknowledged comprehensive plan.

Staff: Staff concurs with the applicant. This plan revision request is based neither on neighborhood change nor on a zoning mistake. This reach of the channel has been used for non-resource based development for decades and the land zoned accordingly. As the applicant

points out, Comprehensive Plan Policy 26 (Houseboats) specifically calls out the Rocky Pointe Marina as suitable for houseboat development.

6.2 MCC 37.0705(B) Quasi-Judicial Zone Change. The burden of proof is upon the person initiating a zone change request. That burden shall be to persuade that:

6.2.1 MCC 37.0705(B)(1) Granting the request is in the public interest;

Applicant: The public benefits from a diversity of housing types; stewardship of the river; river access; and the provision of an efficient waste treatment system.

Staff: Staff has informed the applicant that the burden of proof lies with the applicant rather than staff. The request will increase housing availability and offer more diverse housing options opportunities in Multnomah County which benefits the public. Comprehensive Policy 24 (Housing Location) supports the location of new housing in areas where services can be provided most economically and efficiently. The extension of existing sewer and water service at the site will be more economical and efficient than the traditional rural development model of a separate on-site system serving each dwelling.

This proposal also aligns with Comprehensive Framework Plan Policy 20 (arrangement of land) encouraging a complementary blend of mixed uses to create a sense of neighborhood identity and stability. Consolidating residential development into one rural location adjacent to a highway also makes it quicker for emergency services to respond to a call. The new dwellings will be located adjacent to numerous recreational opportunities on the property, within the channel, within Forest Park to the southwest and Sauvie Island to the east. The proposal provides a number of benefits to the general public.

6.2.2 MCC 37.0705(B)(2) There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other available property;

Applicant: The site is committed to the proposed use for over fifty years. The exception is to allow additional houseboats and continued improvements to the existing sewer system. The area is developed as a marina and the location is designated by Multnomah County's Comprehensive Plan as appropriate for houseboats. The only location available for this type of exception is along the waterfront. This location is one of the few, if not the only, location where an expansion can occur between two existing marinas in an area that has been developed with docks in the past.

Staff: The applicant submitted additional narrative on March 4th, 2009 addressing public need. A copy is presented as Exhibit 21. In this narrative, the applicant explains the population of the Portland area is expected to increase substantially in the next 10 years and that floating homes have proven to be a favorable housing option and that a currently a need for floating home spaces exists. The applicant projects the new I-5 bridge could possibly displace as much as 100 floating homes increasing demand further in the future.

Staff is not confident a finding of public need can be made for the requested change in zoning to accommodate higher residential densities considering language in the County's Comprehensive Plan Policy 26 (Houseboats), which states: "Moorage sites are limited in the

County, and demand for moorage space is high. Local moorages are all at or near capacity. However, demand for houseboat space should not be equated with need. Houseboats were not considered in Multnomah County's housing needs inventory, nor are they required to fulfill the County's housing obligation. Projected housing demand to the year 2000 can be met with the land already zoned for residential development. Therefore, houseboats may be considered a desired housing choice, but not a needed one." The proposed zone change does not appear to meet this standard.

6.2.3 MCC 37.0705(B)(3) The proposed action fully accords with the applicable elements of the Comprehensive Plan;

Applicant: The applicant submitted findings in support of each applicable element of Multnomah County's Comprehensive Plan; and

Staff: Applicable Comprehensive Plan and Rural Area Plan policies have been evaluated within this report where applicable to the criterion at hand.

6.2.4 MCC 37.0705(B)(4) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection. The existence of home occupations shall not be used as justification for a zone change.

Staff: This zone change request is based neither on neighborhood change nor on a zoning mistake. This reach of the channel has been used for marina based development for decades and the land zoned accordingly. The applicant is not using the existence of home occupations for justification.

7.0 SPECIAL PLAN AREA (MCC 34.5000-34.5010)

MCC 34.5000- Purposes

The general purposes of the Special Plan Area Subdistricts are to implement various provisions of the Comprehensive Plan, the Statewide Planning Goals and the land use control elements of Special Plan Area plans and of plans for neighborhoods and subcommunity vitalization; to aid in realizing opportunities to achieve community, social and economic stability and vigor; to institute desired patterns and improvement standards for land uses according to adopted specific-place plans; to facilitate public-private sector cooperation in the development of such areas; to establish more flexible and diversified standards and procedures; and to provide means to establish such interim land use controls as are deemed necessary, pending the preparation of local area comprehensive plan revisions or development strategies.

MCC 34.5005 - Area Affected

The provisions of a Special Plan Area subdistrict shall apply to specific land areas

according to their designations as subdistricts SPA-1, SPA-2, SPA-3, etc., on the Multnomah County Zoning Map.

MCC 34.5010 - Standards to Establish an SPA Subdistrict

(A) An amendment establishing an SPA subdistrict shall include the following:

- 7.1 MCC 34.5010(A)(1) The designation of the subdistrict as SPA-1, SPA-2, SPA-3, etc., in the text and on the appropriate Sectional Zoning Map;

Staff: Staff does not believe the proposed SPA is justified for the reasons outlined in this report. In the event the Planning Commission finds that the SPA designation is justified, Staff proposes the public hearing be continued until a later date so that Staff can draft appropriate SPA subdistrict zoning text using the standards provided in MCC 34.5010(A)(1) – (11).

8.0 PLANNING AND ZONING FOR EXCEPTION AREAS (OAR 660-004-0018)

- 8.1 OAR 660-004-0018(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

Applicant: The applicant is proposing physically developed and irrevocably committed exceptions to Goal 11 and 14 that is intended to recognize existing marina development and sewer system.

Staff: The following rules apply to this goal exception request because it involves adoption of zoning provisions authorizing an increase in residential density. These rules relate to residential densities (i.e. Goal 14) rather than sewer densities (Goal 11). The physically developed and irrevocably committed exception is intended to allow the continuation of urban level residential development at this site, as has occurred for decades. Exceptions are limited to Goals 11 and 14 as outlined in this report.

- 8.2 OAR 660-004-0018(2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

- (a) That are the same as the existing land uses on the exception site;
- (b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal

requirements; and

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

(c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if applicable, or

(d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

Applicant: The zoning limits the uses, density and public facilities on the subject property and marina to those that are the same as the existing land uses on the exception site/marina pursuant to OAR 660-004-0018(2)(a).

Staff: This standard requires the new zoning resulting from a goal exception to specify a numeric lot size and limit uses, density and services to those that are the same as the existing land uses. With an approved exception in place, the existing Multiple Use Agriculture-20 (MUA-20) zone will be applied to the exception areas because the SPA zone change has not been justified. The MUA-20 zoning code already establishes a 20-acre minimum lot size and specifies the allowed range of uses in MCC 34.2800 – 34.2885, as required by this standard. Additionally, the approved exception would allow the owners to apply for expansion under the 1:50 density limitation codified in the current MUA-20 zone. Staff finds 2(a) is met as long as the expansion does not exceed the 1:50 land use density limitation in current county code⁹.

Although the applicant has justified Exceptions to Statewide Planning Goals 11 and 14 for portions of the proposed exception areas, Staff believes the proposed SPA subdistrict is not justified for the reasons outline in this report. The applicant has not justified an exception is necessary for the boat yard expansion which can be reviewed under current code.

The Multiple Use Agriculture 20 (MUA 20) base zone with associated 20-acre minimum lot size will still apply to the exception areas. The uses listed in the MUA 20 zoning ordinance (MCC 34.2800— 34.2885) apply. Because the SPA has not been justified, the maximum residential density shall be determined by the Community Service/Conditional Use Density standard of MCC 34.6755 apply capping the maximum density to one houseboat for each 50 feet of waterfront frontage.

The Hearings Officer has the authority to reduce density below the maximum allowed if it is determined development at the maximum density would place an undue burden on school, fire protection, water, police, road basic utility or any other applicable service (MCC 34.6755(A)). Additionally, a Hearing's Officer may reduce the approvable density below the 1:50 maximum

⁹ The county's 1:50 density limitation was not derived from state law.

if development at the maximum density would endanger an ecologically fragile natural resource or scenic area (MCC 34.6755(B)).

Therefore, the Hearings Officer, rather than the Planning Commission, is the appropriate review authority to determine appropriate residential density at the Rocky Pointe Marina during the pending Conditional Use/Community Service Use review. The Planning Commission is the appropriate review body to determine whether or not the 1:50 residential density cap must be applied and, if not, what is the appropriate maximum density.

- 8.3 OAR 660-004-0018(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

Applicant: This rule is not applicable because the uses, density and public facilities and services meet section (2) of this rule.

Staff: This standard is not applicable. Provision 2(b) does not have to be met because the project qualifies under 2(a). Section (2) of the rule has been met through application of the current MUA 20 zoning ordinance within the exception area. Section (3) does not apply.

- 8.4 OAR 660-004-0018(4) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required;

(c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, which ever is more stringent.

Applicant: No "reasons" exception is being proposed, and therefore, this rule is not applicable.

Staff: Not applicable. Provision 2(c) does not have to be met because the project qualifies under 2(a). Staff concurs.

9.0 CONCLUSION

Applicant: The marina has existed at this site for almost fifty years. Multnomah County's Comprehensive Plan acknowledges that this area is appropriate for Marinas. The proposed development is infill development between an existing marina upstream and Rocky Pointe Marina. The sewer system is permitted and monitored by the DEQ. The sewer system protects

the river's ecology from human waste and provides a practical and environmentally sound method to retrieve and process the waste. The conditional use process, design review, and greenway review ensured that all proposed and existing development complies with Multnomah County's rules and regulations.

Staff: Staff recommends the Planning Commission forward a recommendation of approval to the Board of County Commissioners for the Exception request to Statewide Planning Goal 14 and Goal 11, for all proposed areas illustrated in Exhibits 1, 2 & 3 other than the westerly boatyard expansion and areas of existing commercial development not required to support the residential uses. Expansion of the boatyard does not require an exception because the use is not residential (Goal 14) nor is it dependant upon sewer service (Goal 11). The scope of the commercial activities does not exceed that allowed in the Oregon Administrative Rule and therefore a goal exception is not necessary to continue with these uses. Staff recommends the Planning Commission direct the applicant to revise the goal exception plans accordingly prior to the Board public hearing.

Staff also recommends the Planning Commission deny the request to exceed the request to establish a Special Plan Area within the Exception Areas allowing the one houseboat per 50 feet of waterfront frontage density cap of MCC 34.6755 to be exceeded. The applicant has not demonstrated the SPA criteria within Rural Area Plan Policy 15 [particularly with respect to impacts on traffic, natural resources and wildlife] or the zone change criteria of MCC 37.0705(B)(2) have been met. Staff respectfully requests that the Planning Commission clarify for the record that as a policy of general applicability - the residential density limitations of MCC 34.6755 apply to any request to establish a Special Plan Area.

10.0 CASE TIME LINE

Application submitted: 7/03/08

Application deemed incomplete by staff: 8/1/08

Application deemed complete by the applicant: 12/30/08

Notice sent to the Department of Land Conservation and Development: 2/19/09

Newspaper notice of Planning Commission hearing published: 3/11/09

Direct notice of Planning Commission hearing mailed: 3/17/09

11.0 LIST OF EXHIBITS

**MOST RELEVANT EXHIBITS ARE SHADED
SUPERSEDED EXHIBITS ARE ITALICIZED**

<i>Exhibit #</i>	<i>Description</i>	<i>Date Submitted (by applicant or staff)</i>
1	Site Plan – Irrevocably Committed Goal 11 Exception Areas (1 page)	11/10/08
2	Site Plan – Irrevocably Committed Goal 14 Exception Areas (1 page)	11/10/08

3	Site Plan – Physically Developed Goal 11 and Goal 14 Exception Areas (1 page)	11/10/08
4	Site Plan – Existing Site Development Plan (1 page)	11/10/08
5	Site Plan – Property Vicinity Plan (1 page)	11/10/08
6	Site Plan – Vicinity Plan using 2004 Aerial Photo (1 page)	3/18/09
7	Zoning Map – Base Zoning Map of Township 3 North, Range 1 West (Willamette Meridian), Section 36A & D (1 page)	3/18/09
8	Zoning Map – GIS Produced Base Zoning Map of surrounding area (1 page)	3/18/09
9	Tax Assessment Map – Tax Assessment Map of Township 3 North, Range 1 West (Willamette Meridian), Section 36A & D (1 page)	3/18/09
10	Comprehensive Plan Map – Current Comprehensive Plan Map Showing Policy 26 Moorage Boundaries (1 page)	3/18/09
11	Aerial Photo – 2004 Aerial Photo of Downstream Portion of the Rocky Pointe Marina (1 page)	3/18/09
12	Aerial Photo – 2004 Aerial Photo of Middle Portion of the Rocky Pointe Marina (1 page)	3/18/09
13	Aerial Photo – 2004 Aerial Photo of Upstream Portion of the Rocky Pointe Marina (1 page)	3/18/09
14	Aerial Photo - 2004 Aerial Photo Showing 100-Year Floodplain Boundaries (1 page)	3/18/09
15	FIRM MAP – FEMA Flood Insurance Rate Map (Community-Panel Number 410179 0030 B, revised March 18, 1986) Showing 100-Year Floodplain Boundaries (1 page)	3/18/09
16	Site Plans – Various Plans Showing Site Improvements Relating to Sewer Improvements, Roadway Locations, and Power Easements (3 pages)	11/10/08
17	Site Plans – Various Plans Showing Wetland Location, Proposed Fill Location, Typical Fill Cross-Section Views and a Wetland Mitigation Plan Within the Proposed Boat Yard Expansion Area (8 pages)	2/10/09
18	Narrative – Applicant’s Narrative Addressing Goal Exception and SPA Criteria (40 pages)	10/15/08
19	Narrative – Stormwater Narrative Submitted by Andrew Jansky, PE. Flowing Solutions, LLC (1 page)	9/30/08
20	Superseded Narrative - Applicant’s Narrative Addressing Goal Exception and SPA Criteria (47 pages)	9/30/08

21	Narrative – Applicant’s Narrative Addressing Density, Public Need and Parking Issues (4 pages)	3/5/09
22	Narrative – Narrative Describing Aerobic Sewage Treatment Process (3 pages)	7/3/08
23	Narrative – Biological Assessment for the Rocky Pointe Marina Expansion Prepared by Ellis Ecological Services and Flowing Solutions, LLC (55 pages)	2/10/09
24	Decision – Hearing’s Officer Decision CS 1-93, WRG 1-93, HV 1-93, CU 7-93 issued July 30, 1993 for the Rocky Pointe Marina (32 pages)	3/18/09
25	Decision – Staff Administrative Decision for final Design Review Plan, Grading and Erosion Control Permit and Floodplain Development Permit (DR 28-93, HD 33-93 & FD 6-93), issued January 24, 1994 for the Rocky Pointe Marina. Copies of approved site plans included (21 pages)	3/18/09
26	<i>Superseded Narrative - Applicant’s Narrative Addressing Goal Exception and SPA Criteria (40 pages)</i>	7/3/08
27	<i>Superseded Plans – Applicant’s Goal Exception Plan, Existing Development Plan and Sewer Improvement Plan (3 pages)</i>	7/3/08
28	<i>Superseded Plans – Applicant’s Vicinity Map, Goal Exception Plan, Existing Development Plan, Road Access, Sewer Improvement and Utility Plan (7 pages)</i>	9/30/08
29	Narrative – Residential Density Analysis prepared by Steve C. Morasch, Schwabe, Williamson & Wyatt (4 pages)	11/14/08
30	Narrative – Residential Density Analysis prepared by Stan and Jen Tonneson (1 page)	2/9/09
31	Narrative – Residential Density Spreadsheet prepared by Stan Tonneson (1 page)	2/11/09
32	Comment – Comments Submitted by Ross Kevlin, Oregon Department of Transportation (1 page)	7/28/08
33	Comment – Comments Provided by Ken Born, Multnomah County Transportation Planner (3 pages)	9/10/08
34	Comment – 11/16/07 Comments Provided by Charles R. Gilbert, Oregon Department of Transportation Rail Crossing Compliance Specialist (7 pages)	7/03/08
35	Comment – Copy of 9/7/06 Fax from Lyle Christensen, State of Oregon Department of Environmental Quality (1 page)	7/03/08
36	Comment – Copy of 10/22/08 email from Garry L. Sage, EIT, State of Oregon Department of Environmental Quality (1 page)	10/27/08

37	Comment – Comments provided by Paul Peterson, Scappoose School District Superintendent (1 page)	7/03/08
38	Comment – Copy of 8/14/08 email from Darrell Hedin, State of Oregon Department of Water Resources District 18 and Certification of Water Service Form Completed by the Land Owner For the “Artesian Well” (4 pages)	8/14/08
39	Comment – Land Owner Responses to Concerns Raised 1/31/09 by Estella (Ginger) Curtis of Happy Rock Moorage (3 pages)	2/2/09
40	Comment – Police Services Review Form filled out by Bernie Gusto, Multnomah County Sheriff’s Office on October 4, 2005 (1 page)	7/03/08
41	Comment – Fire District Access Review Form, Fire Flow Requirement Form, 2/16/07 letter, 10/24/07 email, 2/05/09 email and 2/6/09 email from Mike (9 pages)	7/03/08, 7/03/08, 2/16/07, 10/24/07, 2/05/09 & 2/6/09, respectively
42	Permit – Department of State Lands Removal/Fill Permit 2004-00812 for the Rocky Pointe Marina issued February 18, 2009 (4 pages)	2/18/09
43	<i>Superseded Permit – Department of State Lands Removal/Fill Permit 2004-00812 for the Rocky Pointe Marina issued November 28, 2008 (5 pages)</i>	11/28/08
44	<i>Superseded Permit – Department of State Lands Removal/Fill Permit 2004-00812 for the Rocky Pointe Marina issued December 21, 2007 (4 pages)</i>	7/03/08
45	Comment – Comment Letter from Tami Hubert, State of Oregon Department of State Lands Property Manager (1 page)	7/03/08
46	Comment – Email from Michael V. McCabe, Oregon Department of State Lands, Explaining Why DSL Revised Permit 2004-00801 Two Times (2 pages)	2/17/09
47	Narrative – Sewage Treatment Capacity Report Prepared December, 2008 by Stuart L Cato PE/WRE, Slca Consulting Civil Engineers & 1/2/09 Letter (same author) Providing Additional Information on Showers, Liveaboard Boats and Evaporation Sewage Pond (15 pages)	1/15/09
48	Certification – Oregon State marine Board ‘Clean Marina’ Certification for the Rocky Pointe Marina (1 page)	10/13/08
49	Letter – 8/29/06 Letter from Doug White, Department of Land Conservation and Development, Addressing Goal Exception Need to Expand Moorages (2 pages)	3/18/09
50	Deeds/Easements – Copies of Historic Deeds and Easements Involving All or Portions Of the Subject Property (21 pages)	8/15/08

51	Application Authorization – General Application Form – Case T4-08-001 (1 page)	7/03/08
52	Site Plan – Site Plan Showing Two Possible Locations For Floating Community Room Within Proposed Dock Expansion Area (1 page)	1/20/09
53	Land Use Compatibility Statement – Land Use Compatibility Statement Prepared 1.21.09 For the State of Oregon Water Resources Department by Adam Barber, Multnomah County Senior Planner (3 pages)	1/21/09
54	Notice – DLCD Notice of Proposed Amendment mailed to DLCD 2/19/09 [7 pages. The attached application materials sent with the DLCD notice are not included in Exhibit 54 to minimize un-necessary duplication within the record. These materials (i.e. site plans & narrative) have previously been introduced into the record above. The original DLCD notice, with all attachments, is contained in the permanent case file record and available for review]	2/19/09
55	Letter – Letter Deeming Case T4-08-001 Incomplete on August 1, 2008 (9 pages)	8/1/08
56	Letter – Acknowledgement Letter Asking Whether the Applicant Agrees or Refuses to Provide The Additional Information Within 180-Days (1 page)	8/1/08
57	Letter – Applicant’s Acknowledgement to Provide the Additional Information Within 180-Days (1 page)	8/7/08
58	Letter – Owner’s Acknowledgement to Provide the Additional Information Within 180-Days (1 page)	8/12/08
59	Letter – Letter to Applicant Asking For Further Justification On Why the 1:50 Density Ratio Can Be Exceeded Through the Special Plan Area Process (2 pages)	9/29/08
60	Email – Email to Owner Asking For Additional Information Regarding Water and Sewer Permits (1 page)	12/9/08
61	Email – Email From Applicant Deeming Case Complete on December 30 th , 2008	12/30/08
62	Letter – Letter To Michael Greisen, Scappoose Fire Chief, Asking For Clarification on Fire District Requirements (1 page)	12/31/08
63	Email – Email from Stan Tonneson, Property Owner, Clarifying Historic and Current Use of Portions of the Property Used for Recreation (1 page)	1/15/09
64	Letter – Letter Offering METRO’s Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09
65	Letter – Letter Offering U.S. Army Corps of Engineer’s Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09

66	Letter – Letter Offering Oregon Department of Fish and Wildlife’s Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09
67	Letter – Letter Offering the Oregon Department of State Land’s Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09
68	Letter – Letter Offering the Oregon Parks and Recreation’s Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09
69	Letter – Letter Offering the Oregon State Marine Board’s Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09
70	Hearing Notice – Public Notice of April 6 th Planning Commission Public Hearing Mailed 3/17/09 (2 pages. Mailing List Provided in the Permanent Record)	3/17/09
71	Meeting Notes – Copy of 11/20/07 Pre-Application Meeting Notes PA-07-013 (7-pages)	3/18/09
72	Letter – Letter from Adam Barber, case planner to Multnomah County Planning Commission outlining Goal Exception/Special Plan Area/Zone Change Criteria (14 pages)	3/10/09
73	Email – Email From Owner Authorizing Staff to Amend Notation on Submitted Goal Exception Plan Clarifying Requested Goal Exception Areas (1 page)	1/22/09
74	Map – National Wetland Inventory Map of Property and Surrounding Areas (1:24,000 Scale – Sauvie Island, Oreg – Wash. 1989) – 1 page	3/18/09
75	Guidebook – Oregon Clean Marina Guidebook Prepared By the Oregon State Marine Board, August 2005 (192 pages – Copy Contained in Permanent Case File)	2/10/09
76	Phone Note – Adam Barber, case planner’s, notes from phone conversation with Cary Goodman, ODOT Rail, confirming the rail crossing near the site entrance is already designated a public rail crossing and that the State of Oregon owns the right-of-way on either side of the rail line running along the west boundary of the site (1 page)	3/18/09
77	Plans – Plans Showing Current Development Patterns Across the Site (4 pages)	7/03/08
78	Marketing Pamphlet – Copy of Tri-Fold Marketing Pamphlet for the Rocky Pointe Marina (2 pages)	3/18/09

OVERSIZED EXHIBITS

OS-1	<i>Superseded Plans - 11 X 17” Scaled Site Plans submitted 9/30/08</i>	9/30/08
------	---	---------

OS-2	<i>Superseded Plans - 11 X 17" Scaled Site Plans submitted 10/10/08</i>	<i>10/10/08</i>
-------------	--	------------------------

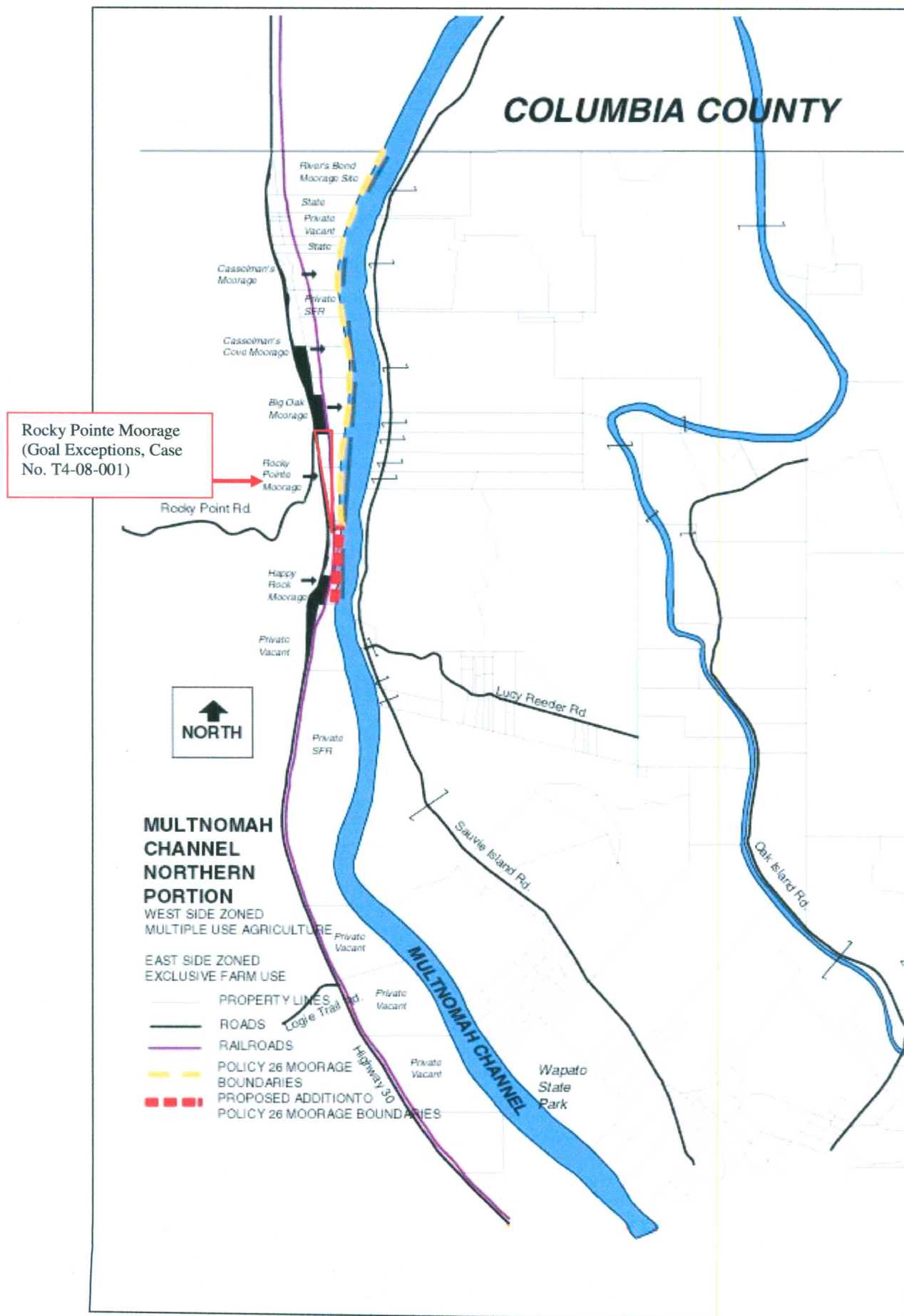


EXHIBIT C

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 2010-015

Approving Application for Exceptions to Statewide Planning Goals and Denying Special Plan Area Zone Change Request at Rocky Point Marina, Case No. T4-08-001

The Multnomah County Board of Commissioners Finds:

- a. On October 19, 2009, with respect to T4-08-001, the Planning Commission recommended approval of the requested exceptions to Statewide Planning Goals 11 and 14 and denial of the Special Plan Area zone change at Rocky Pointe Marina.
- b. On January 21 and 28, 2010, the Multnomah County Board of Commissioners noticed and held public hearings regarding the T4-08-001 application and Planning Commission's recommendations.

The Multnomah County Board of Commissioners Orders:

1. The Board approves the T4-08-001 requested exceptions to Statewide Planning Goals 11 and 14 contingent upon Rocky Pointe Marina meeting the conditions of the approvals set out in the T4-08-001 Staff Report.
2. The T4-08-001 Special Plan Area zone change request to exceed the residential density limit in the county code of one floating home per fifty feet of waterfront property is denied.
3. The findings and conclusions contained in the T4-08-001 Staff Report are affirmed and adopted by reference.

ADOPTED this 28th day of January 2010.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

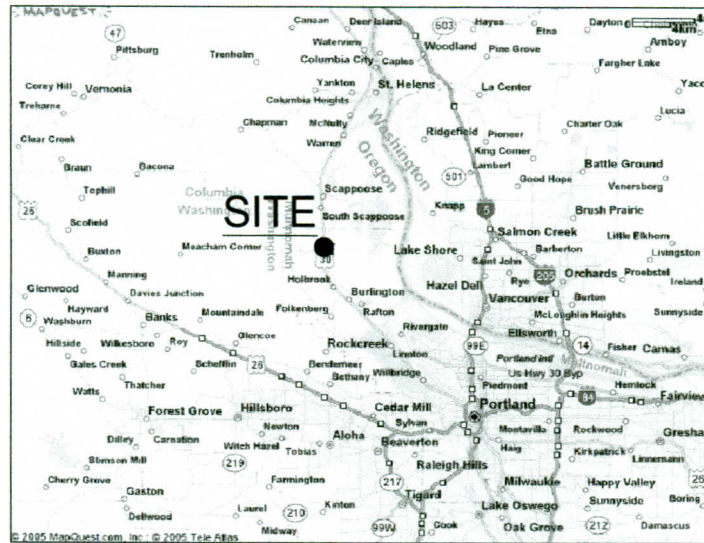
Dated: January 28, 2010

REVIEWED:

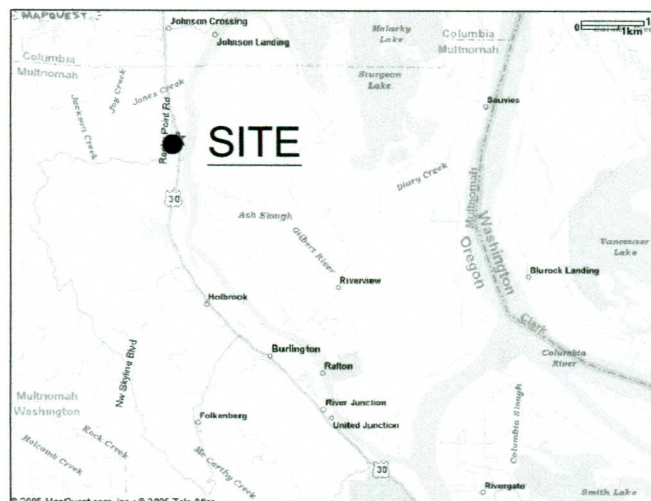
AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:
M. Cecilia Johnson, Director, Department of Community Services




LOCATOR MAP

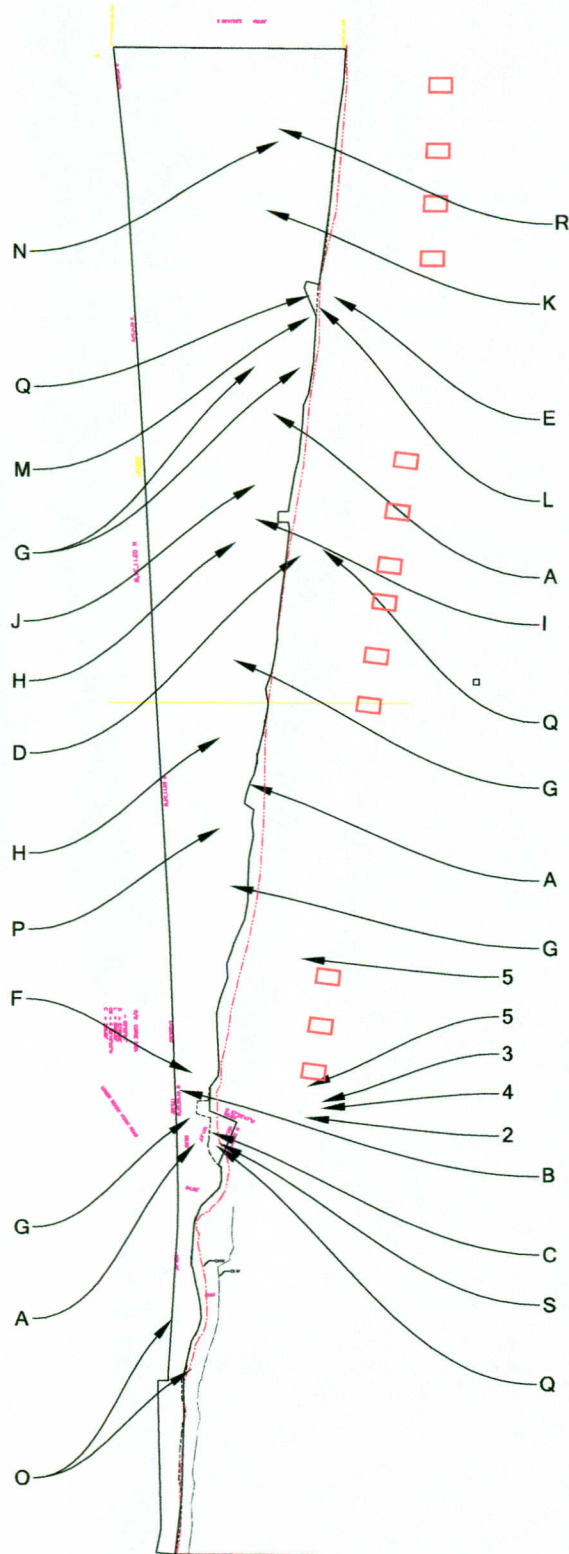


VICINITY MAP

OREGON STATE GOAL EXCEPTIONS

Flowing solutions  Flowing Solutions 3305 SW 87th Avenue Portland, OR 97225 Phone (503) 297-6331 Fax (503) 297-6053	TITLE: LOCATOR MAPS ROCKY POINT MARINA 23586 NW ST. HELENS ROAD PORTLAND, OR 97231	REVISED: 7/14/09 SHEET NO. 0
RIVER: MULTNOMAH CHANNEL DATUM: NGVD		

NOTE: Boxes Indicate Proposed House Boat Conversion/Additions



- A. roadway
- B. water well house, storage and treatment
- C. recycling/garbage/mail center (upper)
- D. recycling/garbage station (middle)
- E. recycling/garbage station (lower)
- F. security gate
- G. parking (167 space)
- H. trailer storage
- I. sewage treatment plant
- J. evaporation pond
- K. boatyard shop/office
- L. boat haul out pier
- M. boat wash down pad and building
- N. boatyard
- O. power- Columiba PUD
- P. telephone - CenturyTel
- Q. fuel storage tanks
- R. boat yard restroom
- S. propane storage tanks

- 1. docks
- 2. marina office/store
- 3. fuel dock
- 4. marine sewer pump out
- 5. restrooms/laundry (4 bldg)

SCALE 1"=250'
1" INCH

NOTE: Utilities Are Underground, Both Sides of Road From Main Ramp to Boat Yard

Flowing solutions

Flowing Solutions
3305 SW 67th Avenue
Portland, OR 97225
Phone (503) 297-6331
Fax (503) 297-6053

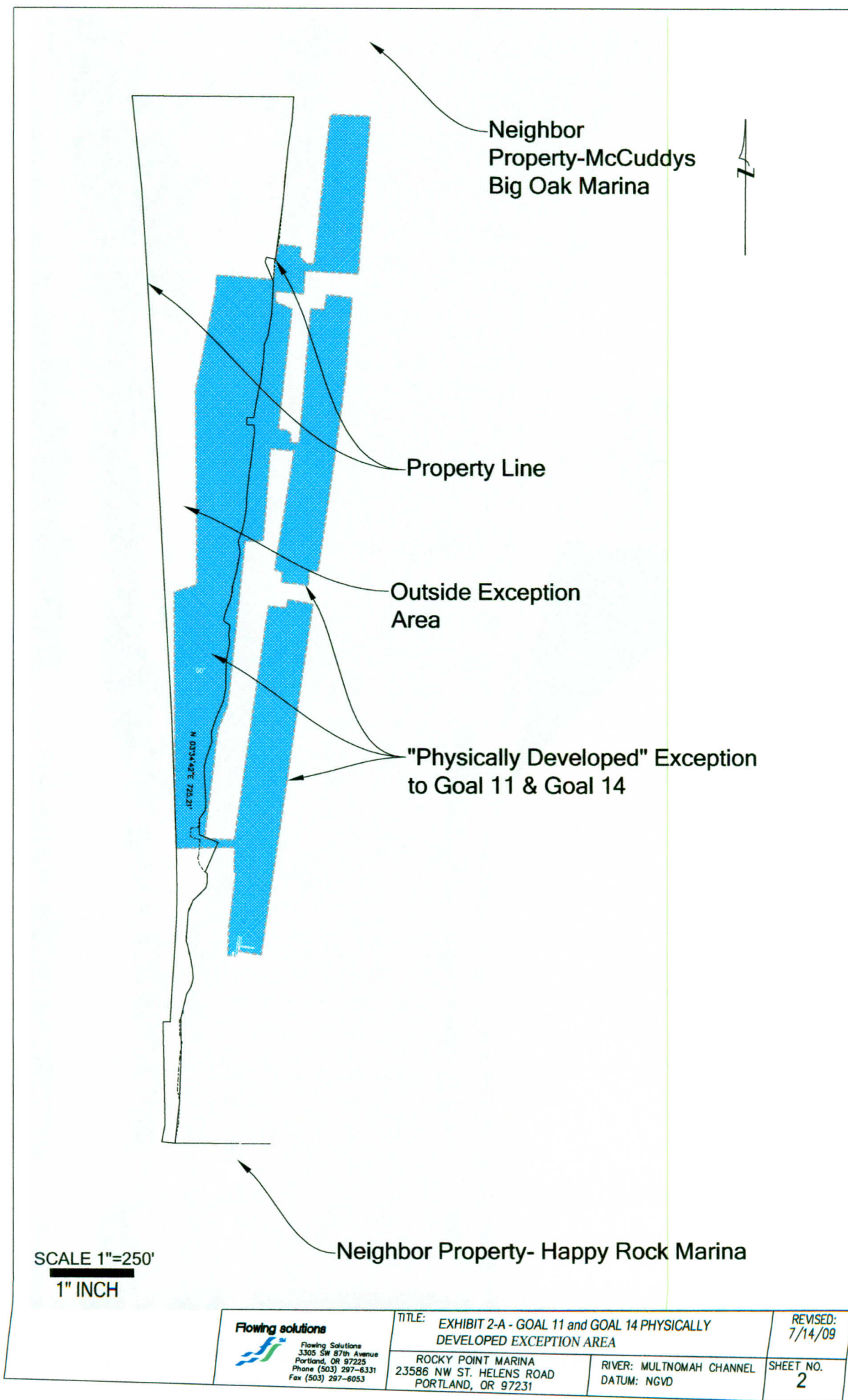
TITLE: EXHIBIT '1' KEY MAP

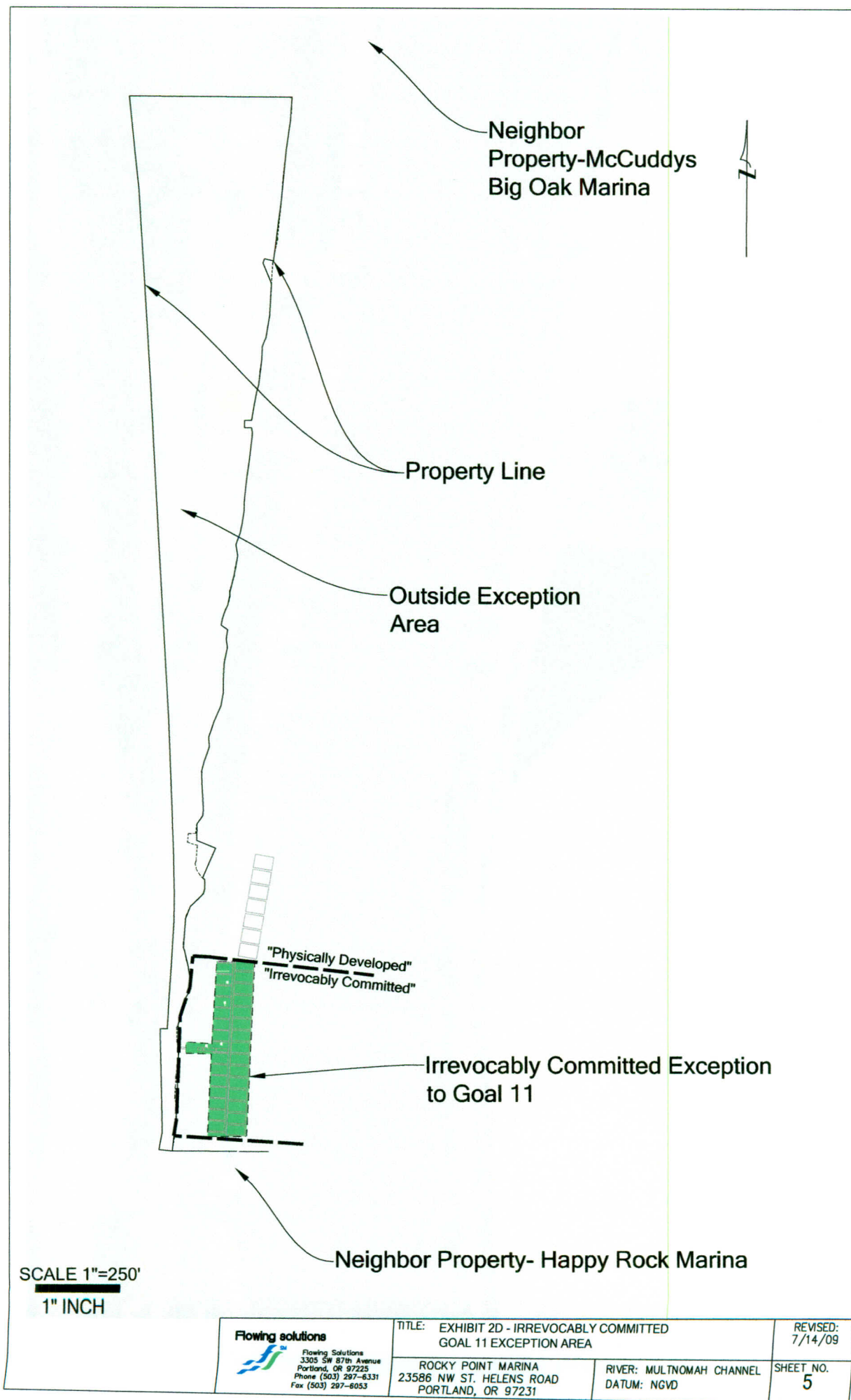
ROCKY POINT MARINA
23586 NW ST. HELENS ROAD
PORTLAND, OR 97231

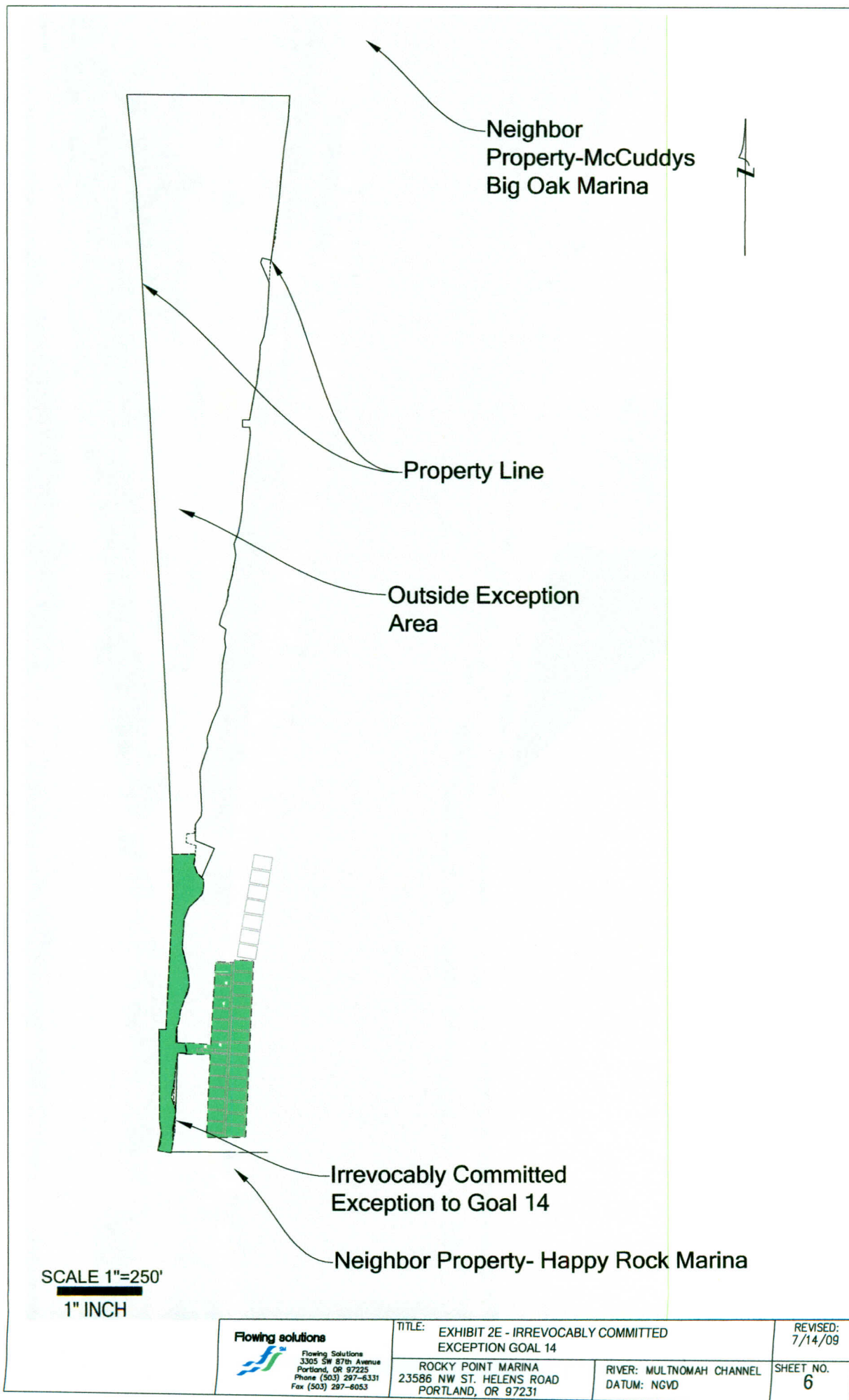
RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

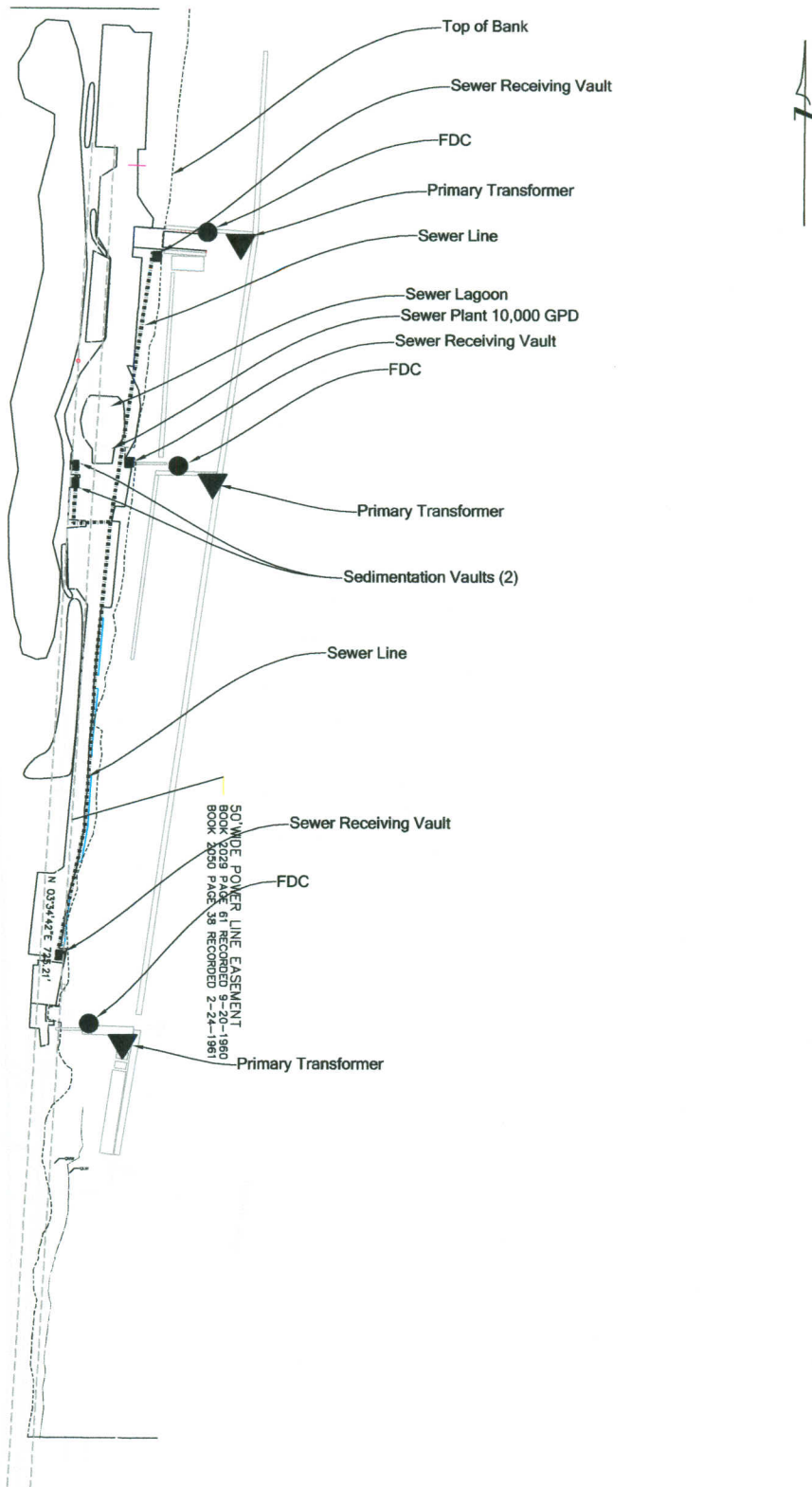
REVISED:
7/14/09

SHEET NO.
1









SCALE 1"=250'
1" INCH

Flowing solutions

Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6331
Fax (503) 297-8053

TITLE:

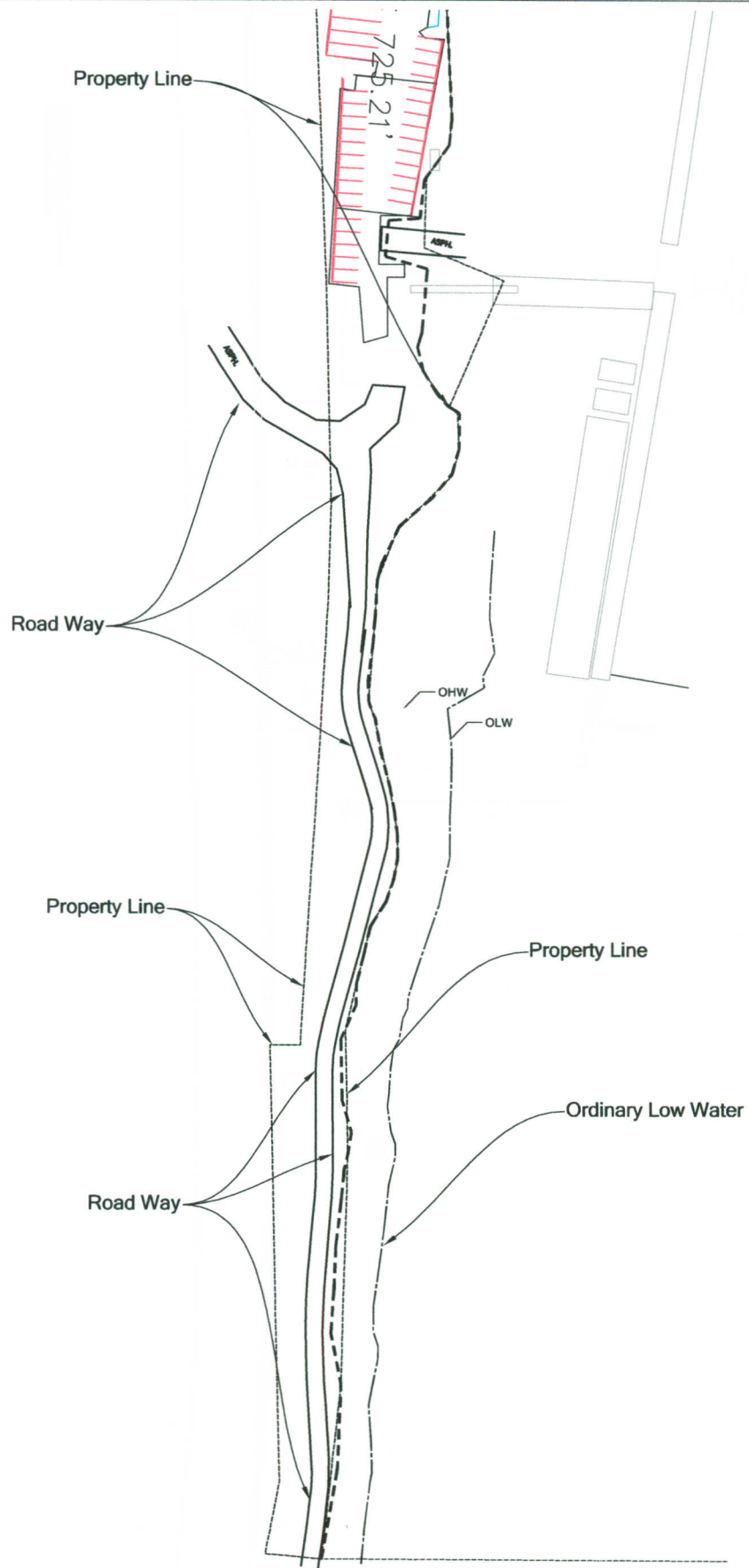
EXHIBIT '3" COMBINATION UTILITY PLAN
(SEWER-FIRE-TRANSFORMERS)

ROCKY POINT MARINA
23586 NW ST. HELENS ROAD
PORTLAND, OR 97231

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

REVISED:
7/14/09

SHEET NO.
7



SCALE 1"=75'

Flowing solutions

Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6331
Fax (503) 297-6053

TITLE: EXHIBIT '4" PROPERTY LINE-ROAD LOCATION

ROCKY POINT MARINA
23586 NW ST. HELENS ROAD
PORTLAND, OR 97231

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

REVISED:
7/14/09

SHEET NO.
8

EASEMENT (PROJECTED)

EXISTING BUILDING

POWER EASEMENT

EXISTING BUILDING

POWER EASEMENT

EXISTING BUILDING

50.0'

50' WIDE POWER LINE EASEMENT
BOOK 2029 PAGE 61 RECORDED 9-20-1960
BOOK 2050 PAGE 38 RECORDED 2-24-1961

N 05°34'42"E 745.21'

SCALE 1"=200

Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6331
Fax (503) 297-6053

TITLE:

EXHIBIT '4" POWER LINE EASEMENT

ROCKY POINT MARINA
23586 NW ST. HELENS ROAD
PORTLAND, OR 97231

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

REVISED:
7/14/09

SHEET NO.
9

#1, #2, #3

Applicants &
Representative

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP**

Please complete this form and return to the Board Clerk

This form is a public record

MEETING DATE: Jan 28, 2010

SUBJECT: Case T-4-08-001

AGENDA NUMBER OR TOPIC:

R517 Rocky Pointe Marina

FOR: X

AGAINST: _____

THE ABOVE AGENDA ITEM

NAME: Ken Tonnerson, Stan Tonnerson, Peter Fry

ADDRESS: 23586 NW St Helens Rd

CITY/STATE/ZIP: Portland, OR 97231

PHONE: _____ DAYS: 503-543-7003

EVES: 503-234-3466

EMAIL: jen@rpmarina.com

FAX: 503-543-5190

SPECIFIC ISSUE: goal exception

WRITTEN TESTIMONY: _____

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

Rocky Pointe

Marina

23586 NW St. Helens Hwy.
Portland, OR 97231

Marina
tel 503-543-7003
fax 503-543-5170

Boatyard
tel 503-543-2785

Commissioner Shiprack
Multnomah County

1-28-2010

Re: Goal Exceptions for Rocky Pointe Marina

Please find enclosed our responses to last week's testimony.

This has been a long process with close cooperation of the Department of Land conservation and development, your staff, and the Multnomah County Planning Commission. We hope that you can adopt the Multnomah County Planning Commission's recommendation. Should you feel a need for more information to support our goal exception, we ask for a continuance to provide that information.

The Conditional Use process will address the concerns raised regarding environmental impact, access, parking, the debris boom, and separation of the marinas.

Enclosures

- Six photos showing the high degree of committed development
- Copy of Department of State Lands lease for Rocky Pointe Marina that shows the provision for 15 year perpetual renewals
- Biological Assessment showing no significant long term adverse effects
- A page from our joint application to National Marine Fisheries and Army Corp of Engineers listing impacts and all the construction mitigation proposed
- Landscape and maintenance plan proposed for our property. After the site meeting with Multnomah County Soil and Water Conservation District on 1-27-2010, this plan will be refined with their assistance. to create the best possible plan.

Thank you,

Stan and Jen Tonneson
Rocky Pointe Marina

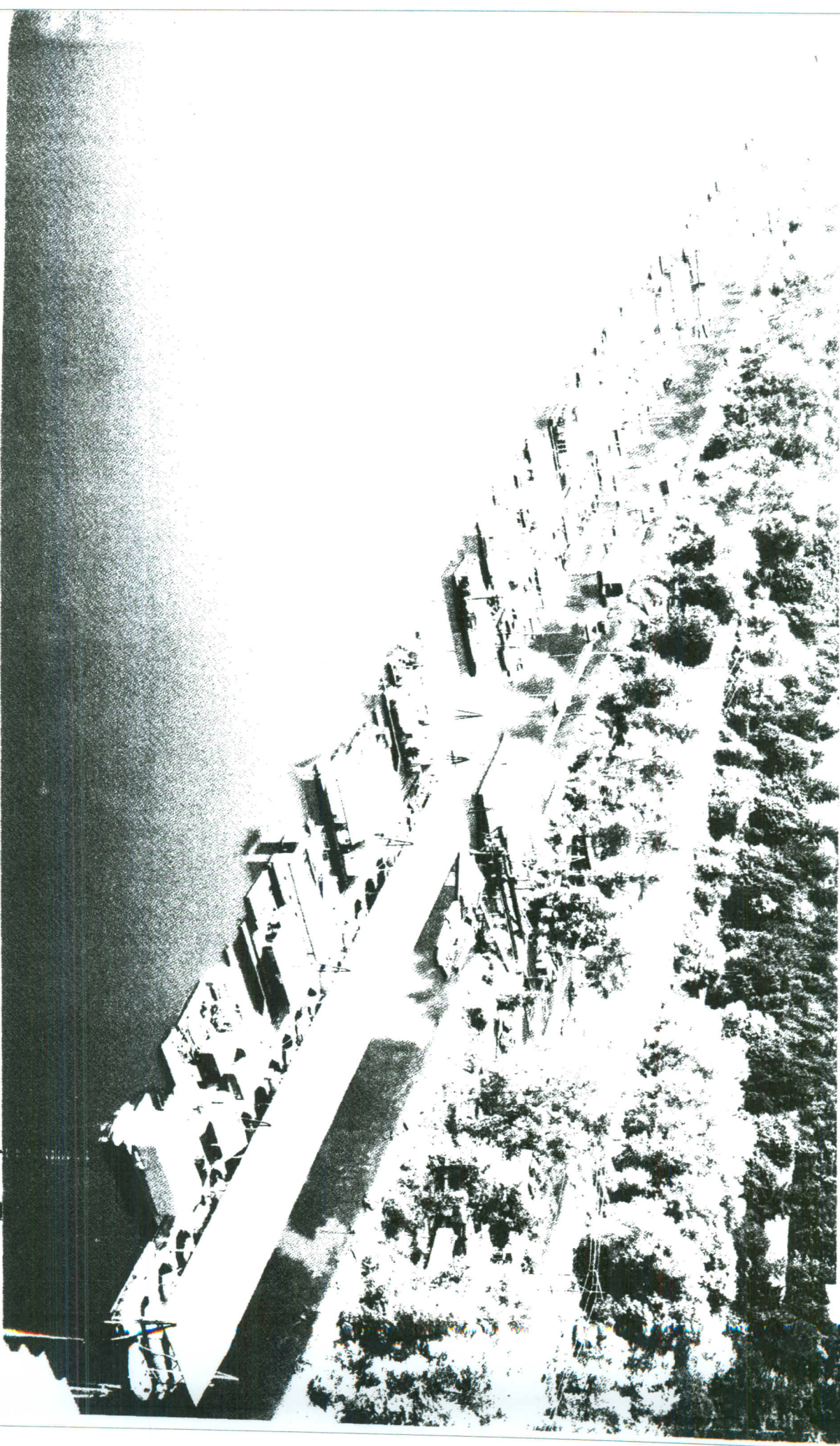


More than just a great marina!

Boat Yard • Professional Boat Repair • Fuel Dock




The marina property consists of over 3300 feet of shoreline with 15 acres of uplands. There is a 5 acre lake and about the same of additional wetlands that is always left natural and undisturbed. All docks are served with water, power and sewer along all docks and these utilities are buried underground on the uplands.





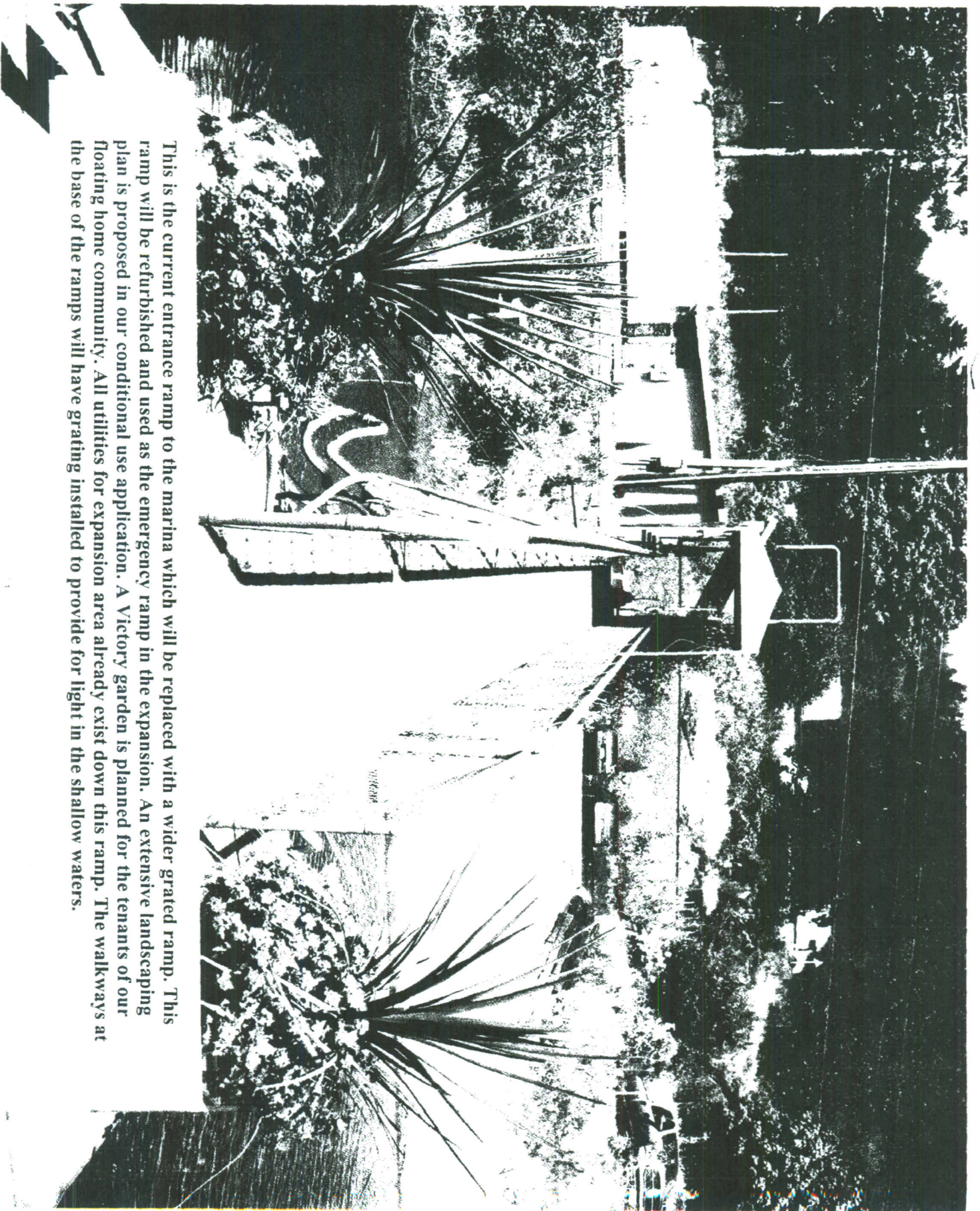
There is a floating office /store/fuel with public restrooms and public pump out facilities. The pump out facility was provided by a grant from the Oregon State Marine Board with funding from the Federal Clean Water Act. The public restrooms are furnished by the marina and are some of the very few restrooms available on the waterways of Portland. The marina proudly holds the distinction of "Clean Marina" by the standards set forth by the Oregon State Marine Board.




This is the railway system for our Travelift crane that drives out over the water to lift boats out the water. The wash down pit just inland of the rails has a cleaning system that filters and reclaims all the water. The value of the lifting facility exceeds 1/2 million dollars.


This picture was taken during our annual tenant fire training developed by our marina and the Scappoose Fire District.

This is the current entrance ramp to the marina which will be replaced with a wider grated ramp. This ramp will be refurbished and used as the emergency ramp in the expansion. An extensive landscaping plan is proposed in our conditional use application. A Victory garden is planned for the tenants of our floating home community. All utilities for expansion area already exist down this ramp. The walkways at the base of the ramps will have grating installed to provide for light in the shallow waters.





This is a typical dock in the marina that is attached to steel piling. There are a total of 3700 lineal feet of primary docks (including 3 ramps) plus the docks for 150 boat slips. There are close to 150 steel piling. The value of the piling and docks is over \$2million dollars. The expansion area will increase the docks by an additional 490ft, with 25 more piling.



This is a typical 60feet wide fairway that exists within own our marina. There is well over 100feet behind the houses and boats for any size floating home or a boat up to 75' to turn and get out the fairway. Note that the single story home can be moved out to create another 30 feet if needed (90 feet total) for something very large. In the past, there was a 112ft fishing vessel moored on the inside docks that moved easily through this fairway without removing the end house.

BIOLOGICAL ASSESSMENT
ROCKY POINTE MARINA EXPANSION
MULTNOMAH CHANNEL
MULTNOMAH COUNTY, OREGON

**ADDRESSING POTENTIAL IMPACTS ON FEDERALLY LISTED FISH, WILDLIFE,
PLANTS AND THEIR HABITATS**



Prepared for:
Rocky Pointe Marina Portland,
LLC
23586 N.W. St. Helens Hwy.
Portland, OR 97231

On behalf of:
U.S. Army Corps of Engineers

For submittal to:
National Marine Fisheries
Service

And:
U.S. Fish and Wildlife Service

Prepared by:
Ellis Ecological Services
20988 S. Springwater Road
Estacada, OR 97023

And:
Flowing Solutions, LLC
3305 SW 87th Ave
Portland, OR 97225

April 7, 2008

APPENDIX B

ROCKY POINTE MARINA LANDSCAPE PLAN

CONCEPT

These areas are the developed spaces around the upper marina parking area and bank side below the railroad tracks, as well as the following described separate native ecosystems.

1. The dry bank area of the proposed marina site will have a list of drought tolerant plant material, including native material and low maintenance plants for easy care and naturalizing with out being invasive.
2. The natural area along the river side of the marina that extends from the upper marina through the middle and lower marina. These areas are now covered in Populus fremontii and Fraxinus americana. The addition of evergreen natives and under story native materials for seasonal enjoyment and beauty will be our goal for these areas. A walking path through all three marinas will also have plant labels with the common names and the botanical names for interpretation.
3. The final eco system is wet lands and man made lake area that will be kept totally native with invasive and obnoxious weeds being removed to protect our space. The addition of wet lands plants and shrubs will be listed for wildlife attraction and maintenance for this area. A future trail for this area will also be described.

DEVELOPED AREA

PLANT LIST

Ceanothus thyrsiflorus (wild lilac) Blue blossom, compact plant ideal for gardens close to buildings with western exposure. Size 6 tall'-5'wide, minimal care. Native to rocky slopes, evergreen and blooming in spring.

Garrya elliptica (silktassel) evergreen shrub 4 to 8', flower tassels in December/February. Pale green in color (male plant) the female plant has purplish fruit that shows in June-September. Use as screen or informal hedge.

Chamaecyparis nootkatensis 'Glauca' (Alaska blue cedar) more than 15' tall blue green in color, fine textured foliage, sweeping branches, upright pyramidal form.

Cedrus atlantica 'Glauca Pendula' (Atlas cedar) weeping blue cedar will have a spreading habit with a steely blue color. This tree will be staked to create the shape we want on the rocky hill

All in-water work associated with construction activities would occur during the preferred ODFW in-water work periods for the Multnomah Channel (July 1 to October 31). Construction activities would generally be conducted between the hours of 7:00 AM and 7:00 PM.

COE Application

Total New Impact:

- 30 20" New steel piling for both phases of work
- 30 New single slips 15ftx40ft
- 15 New floating home spaces 30ftx55ft
- Total Additional Coverage 36,200 sf
- Other changes reconfigure within existing marina foot print and modify use only
- Replant native species within 6,500 sf of off channel shoreline
- Remove invasive species along 3000 lf of shoreline adjacent to project.
- No dredging or filling proposed

ADDITIONAL MEASURES INTEGRATED BASED ON REVIEW COMMENTS-

Specific efforts include:

- Discard linear float system along shoreline from consideration
- Eliminate 600 CY of Section 404 fill along shoreline for marina support parking
- Eliminate 13 house boat conversions within existing north marina from proposal
- Relocate large covered areas from near shore pod design toward center of river
- Eliminated additional work at haul out/travel lift
- Relocate proposed marina into deep water (greater than 20 ft)
- Relocate southern existing marina into deep water (greater than 20 ft)
- Existing covered moorage will be moved into deep water (rather than light panels)*
- Remove 4 boat houses from upper moorage
- Remove old docks from near shore area in proposed marina area
- Remove up to 6 treated wood piling and one dolphin piling from work zone
- Reduced proposed coverage by 41% from 47,840 sf 28,500 sf
- Reduce proposed pile count from 55 to 30.
- + Replace treated wood in 310 lf of dock with plastic wood and grated deck
- + Replace treated wood substructure with steel framing
- + Relocate large covered areas from near shore pod design toward center of river
- + Add grating to existing docks in existing marina where feasible
- + Add grating to proposed docks - 30% open area in main walkways
- + Replant native species within 6,500 sf of off channel shoreline
- + Remove invasive species along 3000 lf of shoreline adjacent to project.

Project Drawings:

How many project drawing sheets are included with this application? (must be on separate 8½ X 11 sheets) 11 ____

Note: A complete application must include a location map, site plan and cross-section drawings:

Location map (must be legible with street names)

Site plan (include project footprint, proposed contours, ordinary high water or wetland boundary, proposed impacts, staging areas, temporary impacts, location of cross section(s), as applicable)

Cross section(s) (include existing and proposed elevations, ordinary high water or wetland boundary)

Will any construction debris, runoff, etc., enter a wetland or waterway? ☐ Yes ☒ No

If yes, describe the type of discharge and show the discharge location on the site plan.

Estimated Start Date September 2011

Estimate Completion Date September 2015

Work will occur during the recommended in-water work period. Work may be phased over time due to budget.

Hereinafter referred to as the "Leasehold".

SECTION 1 - LEASE TERM AND RENEWAL

- 1.1 **Term:** This Lease shall continue for the remaining 8 years of the original lease which commenced on February 1, 1994, the month and date of which shall be known as the "Lease Anniversary Date," and expiring on January 31, 2014, which date shall be known as the "Lease Expiration Date."
- 1.2 **Renewal:** Lessee shall have an option to renew this Lease for an additional period of 15 years after the original and each renewal lease term provided that Lessee has submitted a completed lease renewal application form to State not less than one hundred and eighty (180) days prior to the Lease Expiration Date. Upon receipt of such application, this Lease shall be renewed by State unless:
- 1.2.1 State determines, in its sole discretion, that Lessee has not complied with the terms of this Lease, the applicable statutes and Oregon Administrative Rules; or
- 1.2.2 Lessee is no longer the preference right holder as provided in ORS 274.040(1) and defined in OAR 141-082-0020(49); or
- 1.2.3 State determines that the renewal of this Lease for all or any portion of the Leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010.
- 1.3 Except as otherwise provided in this Lease, State shall provide Lessee two (2) years advance written notice of its intent to not renew this Lease for all or any portion of the Leasehold. In the event State determines not to renew this Lease, but less than two (2) years remain in the Lease term, State shall, at Lessee's request, extend the term of this Lease to complete the two (2) year notice period, within which time Lessee shall vacate that portion of the Leasehold upon which the Lease is not being renewed and relocate any sublessees in an orderly fashion.

SECTION 2 - AUTHORIZED USES

- 2.1 **Purpose:** This Lease grants Lessee the right to use the Leasehold for the specific purpose(s) described below in accordance with the Lease terms and conditions, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

Commercial Marina and Floating Home Moorage with maximum of 40 floating homes, 150 boatslips and 7 boathouse spaces.

#4 Public Comment

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP**

Please complete this form and return to the Board Clerk

This form is a public record

MEETING DATE: 1-28-10

SUBJECT: Rocky Pointe Marina T4-08-001

AGENDA NUMBER OR TOPIC: R6

FOR: _____ AGAINST: X THE ABOVE AGENDA ITEM

NAME: Ryan Seeliger

ADDRESS: 23570 NW St. Helens Rd

CITY/STATE/ZIP: Portland, OR

PHONE: DAYS: 503-578-7520

EVES: 503-543-8608

EMAIL: seeliger@mac.com

FAX: 503-578-7520

WRITTEN TESTIMONY:

Member of Happy Rock Home Owners' Association
showing video of approx 7mins in length.

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

#5 DONATED
time to me
See license

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP**

Please complete this form and return to the Board Clerk

This form is a public record

MEETING DATE: THURS, JAN 29, 2008

SUBJECT: ROCKY POINT MARINA EXPANSION

AGENDA NUMBER OR TOPIC: R-6

FOR: _____ AGAINST: ☒ THE ABOVE AGENDA ITEM
NAME: CARL ENGELGAU ENGELGAU

ADDRESS: 23566 N.W. ST. JOHNS RD.

CITY/STATE/ZIP: PORTLAND, OR 97231

PHONE: DAYS: 503-543-3755 EVES: _____

EMAIL: COWECONSTRUCTION@YAHOO.COM FAX: _____

WRITTEN TESTIMONY: VIDEO

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

VALENCIA Joanna F

From: PLUMMER George A
Sent: Wednesday, January 27, 2010 1:11 PM
To: 'cweconstruction@yahoo.com'
Cc: VALENCIA Joanna F
Subject: RE: Rocky Pointe Expansion

Carl,

Thanks for your comment. I have forwarded your email to Joanna Valencia the planner handling this case.

George Plummer

-----Original Message-----

From: CWE CONSTRUCTION [mailto:cweconstruction@yahoo.com]
Sent: Tuesday, January 26, 2010 2:21 PM
To: PLUMMER George A
Cc: Kim Atwill; John Atwill; Wayne and Lee Derrick; Steve Dysart; Cindy Engelgau; Sandy Farewell; Mike and Jan Frice and Rojeskie; Letha Hale; John and Denise Hartman; David Jacob-Daub; Frank Maduzia Jr.; Ron Neering; Ryan Seeliger; Justin Seeliger; Greg and Marilyn VanSickle; bettsstover@oregonrealty.com; kramaniac@hotmail.com; Joe and Myrna
Subject: Rocky Pointe Expansion

Sir,

My name is Carl Engelgau. I've been a resident at Happy Rock Moorage for almost fifteen years. As a registered GC I've worked on the river for almost two decades and witnessed first-hand Rocky Pointe's ambitions to annex our moorage.

They've tried to intimidate us, block us, tattle on us, squeeze us, threaten us, and litigate us ever since they acquired that little strip of land between our moorages. They know and we know that strip is useless without either of two things happening:

- 1) Acquire Happy Rock Moorage and its parking area.
- 2) Fill in a large area of the channel along that little strip to widen the road.

Please be aware that Happy Rock Home Owners' Association, an Oregon non-profit corporation, is exercising its right to purchase Happy Rock Moorage from its current owner, Ginger Curtis. In so doing, we are eliminating the likelihood of any part of our moorage becoming part of Rocky Pointe's overall plan for development. I'm sure this is not in agreement with what you may have been told by Rocky Pointe's representatives, but be assured that we are fighting for our lives here and we intend to prevail.

Collectively, our residents are concerned about several issues we don't see clearly addressed in Rocky Pointe's proposed development. These are as follows:

- 1) We are opposed to massive filling-in of our river, especially at that location, which is a traditional fishing spot and wildlife habitat.
- 2) Has anyone taken into account what effect the congestion of several hundred dump truck loads would cause to our only egress?
- 3) Has Portland Western R.R. been notified and signed off on the project? You should know there are significant discrepancies in the proposed overlay map that indicate encroachment on R.R. property, either by design, or to conceal the true extent of planned encroachment into the channel with fill.

4) We see no provision for a hammerhead turnaround for fire and emergency vehicles. Does this mean you advocate people using our parking area for a turnaround? What about other vehicles?

5) If there's going to be a ramp midway between our moorages, how is traffic to that ramp going to be handled without encroaching on our privacy and security? What about foot traffic?

6) Lastly, and most significantly, Rocky Pointe is apparently rescinding their offer of 150' egress between our moorages. Perhaps they felt magnanimous when they thought the point would be moot after they buy us out. Since that's not likely to happen we need this matter addressed fully before any decision by the counsel can be made.

Please let me know who is in charge of Rocky Pointe's planning review so we can contact him or her with our concerns. Thank you very much for your prompt attention to this matter.

Sincerely,
Carl Engelgau

DID NOT WISH
TO SPEAK

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP**

Please complete this form and return to the Board Clerk

This form is a public record

MEETING DATE: Jan 28-10

SUBJECT: Rocky Pointe Marina

AGENDA NUMBER OR TOPIC: B-6

FOR: _____ AGAINST: X THE ABOVE AGENDA ITEM

NAME: Melvin K. FRIE

ADDRESS: P.O. Box 326

CITY/STATE/ZIP: Scappoose OR 97056

PHONE: _____ DAYS: 503-543-2587 EVES: 503-543-27374

EMAIL: m7mikef@mac.com FAX: _____

WRITTEN TESTIMONY: Video

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

#6

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP**

Please complete this form and return to the Board Clerk

This form is a public record

MEETING DATE: JANUARY 28, 2010

SUBJECT: T4-08-001

AGENDA NUMBER OR TOPIC:

R-6 & R7

FOR: ☒ AGAINST: ☐ THE ABOVE AGENDA ITEM

NAME: JAMCULLY

ADDRESS: 1555 N. JANTZEN AV

CITY/STATE/ZIP: PORTLAND OR 97217

PHONE: DAYS: (503) 735-9526 EVES: SAME

EMAIL: MARINEENV@COMCAST.NET FAX: _____

WRITTEN TESTIMONY: ATTACHED

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

Jay McCaulley
1555 N Jantzen Avenue
Portland, OR 97217
(503) 735-9526
fax (503) 735-9844

**TESTIMONEY IN FAVOR OF T4-08-001
GOAL EXCEPTIONS**

January 28, 2010

I too was involved in the rule promulgation regarding the Sauvie Island/Multnomah Rural Area Plan in the late 1990's. Those who testified last week in opposition to this proposal failed to mention that the plan was passed in favor of designating this reach of the channel for floating homes, despite their participation and objections. At the same time it was designated as a Special Plan Area (SPA) to accommodate reasonable expansion of the floating home community. Unfortunately, although the ordinance passed, rules were never even proposed for implementation.

In addition to granting these goal exceptions, the Commission should direct staff to finish the work started back then to implement the SPA ordinance.

Another objection was in regard to committing "public waterways" to this type of use.

For clarity, the State, through the State Land Board and the Department of State Lands is in the business of leasing state owned waterways for such purposes. Revenue generated through this program is dedicated to the Common School Trust Fund. In addition to scrutiny at the local level, the DSL and Corps of Engineers must reconcile all ESA and environmental concerns, as well as the public trust values through extensive review by the natural resource agencies and public comment prior to state and federal authorizations. I submit they have the expertise in regard to these issues, and they will address them at the appropriate time in this process.

There are approximately 150 floating homes in the community between the Happy Rock Moorage and the County line. This is the only area designated by the County for floating homes. This reach is within 1.5 miles of the UGB in Scappoose. While it is not within the tri-county planning area, it is certainly within the sphere of influence of that UGB. State planning rules require studying all areas within 3 miles of a UGB when considering expansion of the UGB; this was not considered. While designated for agriculture, this area is not used for agriculture and has not been used for agriculture for several decades. An opportunity was lost when this area was overlooked for inclusion in the expansion of the UGB, recognizing the committed uses in this area. At the very least it should have been considered for an Urban Reserve designation.

Additionally, with expansion of the I-5 Bridge there will be a public need for relocation of the floating homes that will be displaced; good planning by Multnomah County will make this area a logical place to accommodate this need.

The commission should approve these goal exceptions and finally recognize the committed uses in this area as designated by the Sauvie Island Plan.

#7

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP**

Please complete this form and return to the Board Clerk

This form is a public record

MEETING DATE: JAN 28, 2010

SUBJECT: _____

AGENDA NUMBER OR TOPIC: Rocky Point T4-08-001

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: WEST MULTNOMAH SUCD BRIAN LIGHTCAP

ADDRESS: 2701 NW Vaughn

CITY/STATE/ZIP: Portland, OR

PHONE: _____ DAYS: _____ EVES: _____

EMAIL: _____ FAX: _____

WRITTEN TESTIMONY: Additional comts to those
produced 21 Jan 10

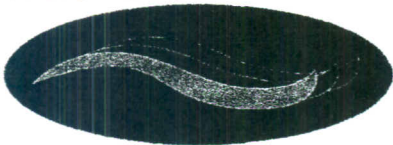
IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

WEST MULTNOMAH



SOIL & WATER CONSERVATION DISTRICT

January 28, 2010

TO: Multnomah County Commissioners
RE: T4-08-001

Our board has voted unanimously that I represent the board's concerns regarding this expansion of facilities. The following are just a few of the matters of concern. **Note that our District Manager, myself and another board member visited the site with the applicants..**

- We note that in 1993 the County rejected an expansion to 50 houseboats, allowing only 40. The public deserves in plain language, how the staff can now reconcile an additional 23 (applicant proposed 36).
- Page 11. The project continues to move forward with apparent integrity even with its tainted history of code violations and according to conversations with DSL, fill violations. **New owners have done their best to address these matters.**
- We note that agencies with more comprehensive decision roles such as the County, DSL and the USACE are working on this project, but other agencies DEQ, WRD are also work on separate decisions, well in advance of the County.
- Page 15. We are confused by the statements regarding the present use versus actual capacity of the of the waste treatment system. Was the applicant saying that no disturbance of vegetation or wetlands will be required with the 36 floating home expansion in association with waste treatment? **No issue here.**
- Page 16. Non native species such as laurel and other plants are out of place in this wetland/floodplain area. The species of laurel, though non-native is not the one that is spreading throughout the West Hills. **We suggested that evergreen huckleberry and tall Oregon grape be added over time.**
- Page 17. "Special area" designation of this or any other expansion because it is irrevocably committed to urban justification, is not a solution for floating homes built on and over public waters. Moorage development along the channel in both Columbia and Multnomah County has always been a concern. Does a special area designation help protect the Greenway's integrity? **Staff recommendations in this area address this comment.**
- Page 19. The wetland impact areas are of great concern to the board. With all the impacts of miles of moorages, especially in Columbia County and as well as the Sauvie Island dike extending for 20 plus miles along the other side of the channel, the presence of all wetlands is very important. We will discuss ways to stress this point as we comment to the USACE and DSL. **Discussion in the staff report regarding wetland losses and available mitigation were misleading, especially with the unaddressed parking concerns. We understand this is a technical code matter; however, compliance with code could require expansion of parking into wetlands, increase impervious surfaces, and have esthetic impacts.**
- The USACE has to evaluate 26 public interest factors in its ultimate decision, including cumulative impacts. Un-enforced or unseen wetland fill violations are part of cumulative impacts, thus, diminishing the amount of wetlands that the applicant is divulging. Wetland degradation is also a cumulative impact. **Our concerns about cumulative impacts remain.**
- Page 41. Does the Commission believe that it is possible for the County to properly evaluate this matter because the Channel spans two counties. We would like to hear the Commission's view on which state, county or Federal agency can do a cumulative impact assessment. There are losses to shoreline vegetation quality, floodplain capacity, water quality, certainly esthetics (see page 49). That photo is just a small hint of cumulative impacts. Until this matter is dealt with, the notion of seriously deliberating beyond the very generous 1993 decision to allow 40 floating house is a moot point. We note that an aggressive landscaping plan may do more harm than good. **There is a good presence of native plants there now. Some in plantings of certain species like Oregon white oak, white ash, black hawthorn and cascara buckthornae would promote selective management of blackberries.**
- Page 42. Unresolved parking issues were seen by staff; thus we don't know what the wetland and water quality impacts will be. Some idea of what the future will be on this matter would be to see the current parking constraints. Has there been wetland degradation or losses in attempt to address seasonal parking issues? **Our comment above on wetland applies here.**

2701 NW VAUGHN STREET, SUITE 450 ♦ PORTLAND, OR 97210

P: 503.238.4775 ♦ F: 503.326.3942

WWW.WMSWCD.ORG

- Page 52. How important is it to point out that agencies such as the USACE, DSL, State Parks, Metro, ODFW and several others didn't comment.

It is very discouraging when private parties tread on the public trust by not adhering to earlier County and state decisions, especially when public land and waters are involved.. The landowner, County, the public, and many agencies worked very hard in 1993 to make the decision with all the complex factors to allow 40 floating houses. What is different about the history between that 1993 decision and what the County is embarking on now. The channel is a rather narrow waterway with waterway commerce, some moorages and a very significant number of fisheries. **Note that the channel is a little wider at Rocky Point.**

The West Multnomah SWCD and all its partners are working very hard for the last ten years for the restoration of Sturgeon Lake (connected to Multnomah Channel) and restoring juvenile salmonid rearing areas. We have been very successful at overcoming numerous environmental hurdles, gaining the attention and financial support of natural resource agencies and organizations. Water quality and habitat along the channel is an important factor for our projects success. We will always be concerned about developments along the channel. The above comments highlight our concerns and we ask that you provide the board an additional opportunity to comment in the areas mentioned above. There are other comments and information that the board may wish to provide after more discussion at our board meeting.

Sincerely,


Brian Lightcap
Chair WMSWCD

#8

**MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP**

Please complete this form and return to the Board Clerk
This form is a public record

MEETING DATE: 1/25/10

SUBJECT: Rocky Pointe Eval Exemption

AGENDA NUMBER OR TOPIC: _____

FOR: _____ AGAINST: ✓ THE ABOVE AGENDA ITEM

NAME: Chris Foster

ADDRESS: 1540 NW McNamara Rd

CITY/STATE/ZIP: Portland OR 97201

PHONE: _____ DAYS: 503.621.3564

EVE: _____

EMAIL: foster@eurpa.com

FAX: _____

WRITTEN TESTIMONY: _____

yes

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes**.
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

January 28, 2010

Christopher H. Foster
15400 NW McNamee Rd.
Portland OR. 97231

Re: Rocky Point Goal Exceptions, Case File T-4-08-001

Dear Commissioners,

The state land use goals are the fundamental principles in our planning system. As general rule, goal exceptions are reserved for circumstance where there are no possible alternatives.

Goal 11 Exception

The Applicant misconstrues or falls short of the exceptions requirement with regard to Goal 11 under the applicable OARs. James vs. Josephine County LUBA No. 98-135 (1999) sets out what it takes to meet the standards of OARs 660-004-0025 (1) and 660-004-0028 (1). Simply stated, the real test is whether uses that would be allowed by Goal 11 are “no longer available” or are “impracticable” due to the subject either being “physically developed” or “irrevocably committed”.

660-004-0025

Exception Requirements for Land Physically Developed to Other Uses

- (1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.*

The physically developed claim for the existing marina in-water area fails to sufficiently examine uses that do not require or would otherwise be allowed without the Goal 11 exception. Most notably are boat slips where 150 presently exist as the predominate use. The applicant seeks the exception because they would prefer to add floating homes over other allowed uses that do not require the exception. Further, with the applicant as evidenced by the plans submitted, intends to partially dismantle and reconfigure the over water existing sewer system, the claim that is physically developed is apparently only temporal or the area is in some sense, available. Adding to this is the fact that these structures float on waterway not owned by Applicant, under the terms of a Dept. of State Lands lease. On land, there are most certainly some areas (for example, the sewage lagoon) that are no longer available for compliance with Goal 11. However, the examination of what still is available within the broader proposed exception area is insufficient.

660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

- (1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable*

The Applicant seeks an irrevocably committed exception on the vacant waterway expansion area that is in public ownership. The Applicant has not demonstrated that that allowed uses are “impracticable” or that the area is “irrevocably committed” to floating homes. To the contrary, many uses that do not require a Goal 11 exception might easily be established including, but not limited to docks and boat slips which could include rural non-residential sewer or water services. Again, the applicant seeks the Goal 11 exception because of a preference for floating homes over allowed uses and misses the most relevant factor in the analysis. The test is especially challenging in the public waterway where they do not own the proposed development area and the lease is by law revocable.

Goal 14 Exception

Unlike a Goal 11 exception where OAR 660-004-0025 and 660-004-0028 rule, Goal 14 directs us to the alternative standard of OAR 660-014-0030. The test remains to be one of determining if certain lands are “irrevocably committed”.

660-014-0030

Rural Lands Irrevocably Committed to Urban Levels of Development

(1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (erg., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

(2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

(a) Size and extent of commercial and industrial uses;

(b) Location, number and density of residential dwellings;

(c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and

(d) Parcel sizes and ownership patterns.

(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.

(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities

The Applicant seeks to establish that the vacant in-water expansion area is irrevocably committed to floating homes at urban densities. Recently, the Applicant acquired the adjoining shoreside parcel to the south of the existing development and consolidated holdings into a single parcel. The vacant water area expansion fronts the newly acquired land area. Most relevant to the factors above is the fact that nowhere is there an examination of rural uses that would be allowed without the Goal 14 exception. The predominate use of the existing facility is boat slips (they outnumber house by over 3 to 1) and a goal exception would not be required to expand this use. The floating homes are only a preference. Again, it hard to imagine the vacant expansion area being “irrevocably committed” to floating homes at

January 28th, 2010

Foster

urban densities without a full examination of the lawful alternatives or rural uses. Remember too, this is public waterway, not owned by the Applicant and the terms of the lease are revocable. It's located in a rural area predominated by resource land with minimal services on shore other than the private communal sewer and water. The commercial services that do exist are rural in nature and largely present to serve recreational boating & fishing. The bottom line test at (4) is whether or not the area proposed for the Goal 14 exception (the in-water expansion area) *"is committed to urban uses and urban development rather than a rural level of development"*. Nothing in the record commits the vacant expansion area to the specific use of floating homes or eliminates the possibility of uses that comply with Goal 14. Our code provides for a number of uses that do comply and that are both prevalent and compatible in the surroundings. Any of the points in the Goal 11 discussion are relevant too. In sum, the Applicant misconstrues the test or has not carried the burden of proof.