



Multnomah County Oregon

Board of Commissioners & Agenda

connecting citizens with information and services

WEB

BOARD OF COMMISSIONERS

Ted Wheeler, Chair

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214
Phone: (503) 988-3308 FAX (503) 988-3093
Email: mult.chair@co.multnomah.or.us

Deborah Kafoury, Commission Dist. 1

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214
Phone: (503) 988-5220 FAX (503) 988-5440
Email: district1@co.multnomah.or.us

Jeff Cogen, Commission Dist. 2

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214
Phone: (503) 988-5219 FAX (503) 988-5440
Email: district2@co.multnomah.or.us

Judy Shiprack, Commission Dist. 3

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214
Phone: (503) 988-5217 FAX (503) 988-5262
Email: district3@co.multnomah.or.us

Diane McKeel, Commission Dist. 4

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214
Phone: (503) 988-5213 FAX (503) 988-5262
Email: district4@co.multnomah.or.us

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JANUARY 26 & 28, 2010

BOARD MEETINGS

FASTLOOK AGENDA ITEMS

Pg 2	9:35 a.m. Thursday Resolution Adopting the County's 2010 State and Federal Legislative Agenda
Pg 2	9:50 a.m. Thursday Resolution Accepting Portland Children's Levy Allocation Plan, and Offering Advice and Counsel to the City of Portland Concerning Same
Pg 3	10:00 a.m. Thursday Presentation of Multnomah County's Comprehensive Annual Financial Report
Pg 3	10:30 a.m. Thursday Proclamation Proclaiming the Last Friday of January 2010 as Earned Income Tax Awareness Day in Multnomah County, Oregon
Pg 3	10:45 a.m. Thursday Public Hearing Order Approving Application for Exceptions to Statewide Planning Goals and Denying Special Plan Area Zone Change Request at Rocky Pointe Marina, Case No. T4-08-001
Pg 3	11:00 a.m. Thursday First Reading of an Ordinance Amending Sauvie Island Multnomah Channel Rural Area Plan Map to Note Exceptions to State Land Use Goals

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file

Tuesday, January 26, 2010 - 9:00 AM
Multnomah Building, Third Floor DCJ Training Room 315
501 SE Hawthorne Boulevard, Portland

WORK SESSION

County Commissioners' Dialogue on Shared Values. *Led by* Vice-Chair
Diane McKeel and Facilitated by Hector Roche. 2 HOURS REQUESTED.

Thursday, January 28, 2010 - 9:30 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

REGULAR MEETING

REGULAR AGENDA

PUBLIC COMMENT - 9:30 AM

Opportunity for Public Comment on non-agenda matters. Testimony limited to three minutes per person unless otherwise designated by the presiding officer. This is a time for the Board to hear public testimony, not for Board deliberation. Fill out a yellow speaker form available at the back of the Boardroom and give it to the Board Clerk. Persons will be called in the order the forms are submitted, unless otherwise recognized by the presiding officer.

- 6 -

DEPARTMENT OF COUNTY MANAGEMENT - 9:30 AM

- R-1 RESOLUTION Approving a Permit to New Song Church for Non Exclusive Use of Parking Spaces at the West End of the Morrison Bridgehead Parking Lot (Lot 24) 2010-011

NON-DEPARTMENTAL - 9:35 AM

- R-2 RESOLUTION Adopting the Multnomah County 2010 State and Federal Legislative Agenda *Substitute Agenda 2010-012*
put in minutes
- R-3 RESOLUTION Accepting the Portland Children's Levy Allocation Plan and Offering Advice and Counsel to the City of Portland Concerning the Recommendations 2010-013

AUDITOR'S OFFICE – 10:00 AM

- R-4 Presentation of Multnomah County's Comprehensive Annual Financial Report; Component Unit Financial Reports; and Schedule of Expenditures of Federal Awards for the Year Ending June 30, 2009. Presented by The Multnomah County Audit Committee represented by Steve March, Mindy Harris, and Craig Stroud and by Moss Adams represented by Jim Lanzarotta, Kevin Mullerleile and Debbie Gregg. 30 MINUTES REQUESTED.

NON-DEPARTMENTAL - 10:30 AM

- R-5 PROCLAMATION Proclaiming the Last Friday of January 2010 as EARNED INCOME TAX AWARENESS DAY, in Multnomah County, Oregon

2010-014

DEPARTMENT OF COMMUNITY SERVICES – 10:45 AM

- R-6 PUBLIC HEARING and Possible Adoption of an ORDER Approving Application for Exceptions to Statewide Planning Goals and Denying Special Plan Area Zone Change Request at Rocky Pointe Marina, Case No. T4-08-001
- R-7 First Reading of a Proposed ORDINANCE Amending the Sauvie Island Multnomah Channel Rural Area Plan Map to Note Exceptions to State Land Use Goals

2010-015

BOARD COMMENT

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MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST NOTICE OF INTENT

(Revised 12/31/09)

Board Clerk Use Only

Meeting Date: 01/28/2010

Agenda Item #: UC-1

Est. Start Time: 9:30 AM

Date Submitted: 01/21/2010

NOTICE OF INTENT to Apply for a One Time \$200,000 Grant from the Mt. Hood Cable Regulatory Commission for the Expansion of the Public Access Computer Program

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	January 28, 2010	Amount of Time Needed:	5 minutes
Department:	Library	Division:	Access Services
Contact(s):	Cindy Gibbon		
Phone:	503-988-5496	Ext.	85496
		I/O Address:	317/ADM
Presenter(s):	Cindy Gibbon/Lance Murty		

General Information

1. What action are you requesting from the Board?

Request approval to apply for a Mt. Hood Cable Regulatory Commission grant to expand public computer equipment at all library locations.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

The Library's public computers are in use over 85% of available time, serving more than 95,000 unique Multnomah County Library patrons last year. For many of these people, the library represents the only place where they can use a computer or access the Internet free of charge. Increasingly, a computer connected to the Internet is the only way to apply for a job, access services (public and private), and interact with others.

The Library provides public computers and public wifi, but the number of computers and time available to use them is limited. This grant would fund a significant number of additional computers,

from 241 to approximately 400, greatly increasing availability and reducing the amount of time the public must wait in order to use a computer.

This grant will impact program offer 80016, IT Services, and will increase the number of public computers by approximately 150, increase the amount of available time for the public to use computers, and increase the percentage utilization.

3. Explain the fiscal impact (current year and ongoing).

This is a one time grant request of \$200,000; \$150,000 for hardware and software, \$50,000 for security, storage carts, staff training, and deployment. The library will budget approximately \$25,000 per year for ongoing support and maintenance as part of its IT costs.

4. Explain any legal and/or policy issues involved.

None

5. Explain any citizen and/or other government participation that has or will take place.

None

ATTACHMENT A

Grant Application/Notice of Intent

If the request is a Grant Application or Notice of Intent, please answer all of the following in detail:

- **Who is the granting agency?**
Mt. Hood Cable Regulatory Commission
- **Specify grant (matching, reporting and other) requirements and goals.**
 - Applicant must be a 501(c)3 non-profit organization, school, college, university, public library or governmental unit located within Multnomah County, OR.
 - Serve residents within Multnomah County, OR.
 - Use the community access channels on the cable system or the Institutional Network in order to support project goals and objectives.
 - Address at least one of the four public benefit areas identified for the grant program.
 - Have only capital costs included for funding from grant funds.
 - Commit to provide matching resources for at least 50 percent of the total project budget from sources other than this grant program.

Public Benefit: Expands the Library's existing service to bridge the digital divide, thereby reducing disparities between those who have access to computers and the Internet, and those who do not.

Matching Resources: IT network and Internet infrastructure costs.

- **Explain grant funding detail – is this a one time only or long term commitment?**
This is a one time only program. The Library's expenditures for network connections through the Institutional Network (I-Net) will be used to meet the matching funds requirement.
- **What are the estimated filing timelines?**
Initial grant application due February 1, 2010.
- **If a grant, what period does the grant cover?**
All expenditures are expected to occur no later than June 30, 2011.
- **When the grant expires, what are funding plans?**
Future support and maintenance will be funded in the Library's operating budget.
- **Is 100% of the central and departmental indirect recovered? If not, please explain why.**
The grant funding may not be used to cover central indirect costs. There are no departmental indirect costs.

ATTACHMENT B


Required Signatures

Elected Official or
Department/
Agency Director:



Date: 01/21/2010

Budget Analyst:



Date: 01/21/2010



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 01/28/2010
Agenda Item #: R-1
Est. Start Time: 9:30 AM
Date Submitted: 01/19/2010

RESOLUTION Approving a Permit to New Song Church for Non Exclusive Use of Parking Spaces at the West End of the Morrison Bridgehead Parking Lot (Lot 24)

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: January 28, 2010 Amount of Time Needed: 5 minutes
Department: County Management Division: Facilities and Property Management
Contact(s): Carla Bangert
Phone: 503 988-4128 Ext 84128 I/O Address: FPM-274
Presenter(s): Carla Bangert, FPM. Beckie Lee, Chief of Staff, Office of Commissioner Kafoury, and Chuck Lindholm, Associate Pastor, New Song Community Church

General Information

1. What action are you requesting from the Board?

Approval for a Permit to New Song Church for non exclusive use of parking spaces at the west end of the Morrison Bridgehead parking lot (lot 24).

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

New Song Church, working as Manna Ministries, approached Multnomah County during the fall of 2009 regarding use of a portion of the west end Morrison Bridgehead parking lot (lot 24) for their Sunday evening feed the homeless program. A 90-day temporary permit was executed to start the program and to see if it would work at this location. It is now the desire to execute a month-to-month Permit for Non Exclusive Use of Parking Spaces at this parking lot to allow the Manna Ministries program to continue.

3. Explain the fiscal impact (current year and ongoing).

Sunday evening use of the approximate 50 parking spaces will be given gratis. Potential revenue loss to Facilities & Property Management for this use on this day is estimated to range from the

current averaged amount of \$2,250.00 to the high-end estimate of approximately \$21,000 a year. This amount would proportionately adjust upward if parking rates were increased in the future. This loss of revenue will force Facilities & Property Management to seek other avenues for maintenance of this property for items other than the parking area such as sidewalks, trees and landscaping.

4. Explain any legal and/or policy issues involved.

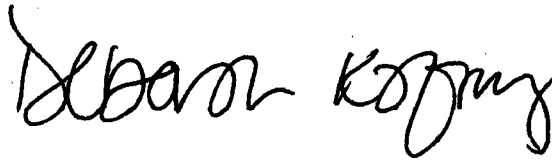
None

5. Explain any citizen and/or other government participation that has or will take place.

None

Required Signature

**Elected Official or
Department/
Agency Director:**



Date: 01/19/2010

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Approval of a Permit to New Song Church for Non Exclusive Use of Parking Spaces at the West End of the Morrison Bridgehead Parking Lot (Lot 24)

The Multnomah County Board of Commissioners Finds:

- a. New Song Church, working as Manna Ministries, approached Multnomah County during the fall of 2009 regarding use of a portion of the west end of the Morrison Bridgehead parking lot for their Sunday evening Feed-the-Homeless Program. The property (Property) is more particularly described in the attached Permit for Non Exclusive Use of Parking Spaces (Permit). A 90-day temporary permit was issued by the Chair to start the program.
- b. The attached Permit has been negotiated to provide non exclusive use of approximately 50 parking spaces needed to provide this service to the homeless community each Sunday evening from 6:00pm to 11:00pm.
- c. It is in the best interests of the County to continue non-exclusive use of the Property under the terms of the attached Permit on a month-to-month basis.

The Multnomah County Board of Commissioners Resolves:

1. The Property is temporarily surplus to any County use for the limited time and purpose described in the Permit.
2. The Board approves the attached Permit. The County Chair is authorized to execute the Permit substantially in the form attached to this Resolution.
3. The County Chair is authorized to execute renewals of the Permit and execute amendments to the Permit without further Board action.

ADOPTED this 28th day of January 2010.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
John S. Thomas, Deputy County Attorney

SUBMITTED BY:

Mindy Harris, Interim Director, Dept. of County Management

Page 1 of 5 – Resolution Approving Permit for Non Exclusive Use of Parking Spaces

PERMIT FOR NON EXCLUSIVE USE OF PARKING SPACES

Multnomah County, Oregon ("County") hereby grants to New Song Church-Manna Ministries ("Manna") the non-exclusive use of parking spaces as follows:

Recitals:

- a. County owns property ("County Property"), part of which is described in Exhibit "A" ("Permit Property"), collectively, "the Properties".
- b. County, in coordination with the Portland Development Commission ("PDC") intends to select a developer for the county Property and to convey the County Property to the developer pursuant to a development agreement.
- c. County currently uses the County Property for parking which provides significant revenue to County.
- d. Manna needs a site in the Downtown Portland area to provide food to homeless individuals one (1) night per week.
- e. The Permit Property is temporarily available on a non-exclusive basis for this purpose on Sunday nights while County seeks proposals for development and continues to contract operation for the commercial parking lot on County Property.
- f. Manna began using the property on November 8, 2009 under a Temporary Use Agreement dated November 20, 2009. The parties desire to enter into this agreement to extend use of the property on a month-to-month basis commencing February 1, 2010.

Agreement:

1. Commencing February 1, 2010 Manna shall have the right to occupy the Permit Property on each Sunday evening from the hours of 6:00p.m. to 11:00p.m. for the purpose of distributing food to homeless persons ("Meal Program") only. The County may suspend or terminate use of the property by Manna under this permit upon 30 days written notice. If the County determines that an emergency exists that prevents use of the property, County may suspend use of the property without notice. This Permit is non-exclusive, as County may need to access the Properties for non-emergency uses during the Meal Program.

2. Manna shall:

- a. At all times keep the Permit Property in a clean, safe and sanitary condition and shall provide trash receptacles which shall be empties and removed promptly after each use.
- b. At all times maintain vehicular ingress and egress over the area shown circled on Exhibit "A".
- c. Provide and remove portable restroom facilities during the hours the Meal Program is in operation. This requirement may be met by providing access to

and directing patrons to the portable restroom facilities provided by Saturday Market under the Burnside Bridge.

- d. Obtain all necessary permits including permits required for preparation and distribution of food.
- e. After each use, promptly clean and restore the Permit Property to its condition prior to commencement of the use.
- f. Promptly report to County any unsafe conditions existing on the Permit Property; immediately cease use of the Permit Property if unsafe conditions are discovered.
- g. Promptly report and repair upon request of County any damage to the Properties occurring during use of the Permit Property.
- h. Promptly report any damage to personal property located on the Properties. Manna shall be liable for all such damage whether to County personal property or personal property owned by others arising out of use of the Permit Property under this Agreement or from the actions of invitees or licensees on the Permit Property.

3. Manna shall provide at its own expense and keep in force during the term of this Agreement, naming County as additional insured, a commercial general liability insurance policy or such successor comparable form of coverage (hereinafter referred to as a "Liability Policy") written on a "per occurrence basis", including without limitation, blanket contractual liability coverage, broad form property damage, independent contractor's coverage, and personal injury coverage, protecting County and Manna against liability occasioned by any covered occurrence on or about the Permit Property. Such policy shall be written by an insurance company acceptable to County in County's sole discretion and licensed to do business in the State of Oregon and shall provide coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily or personal injury (including death) and property damage combined, subject to commercially reasonable deductible. Prior to the time such insurance is first required to be carried by Manna and thereafter, Manna agrees to deliver to County a certificate evidencing such insurance coverage. Said certificate shall contain an endorsement that such insurance may not be canceled except upon ten (10) days' prior written notice to County.

4. Materials and Hazardous Substances:

- a. No materials shall be stored, used, manufactured or disposed of within the Permit Property except in compliance with all deferral, state and local laws applicable thereto. Upon the expiration or termination of this Permit, Manna shall remove immediately all materials from the Permit Property.
- b. Except as provided in sub-section 8.c, no "Hazardous Substances", as defined by ORS 465.200 (16) (2005) and implementing regulations of the State of Oregon Department of Environmental Quality, or which constitute a public health hazard, as defined by rules of the Oregon State Health Division shall be

stored, used, manufactured, released or disposed of within the Permit Property, and no condition shall be permitted within the Permit Property which constitutes a health hazard, as defined by the rules of the Oregon State Health Division.

- c. Manna may use on the Permit Property only those hazardous substances typically used in the prudent and safe operation of a Meal Program, provided Manna's use of such substances is done in a manner in compliance with all applicable federal, state and local laws thereto. Upon the expiration or termination of this Permit, Manna shall remove immediately all hazardous substances from the Permit Property.

6. Manna shall indemnify, defend and hold County harmless from and against all liability, damage loss, and costs of any nature whatsoever, including attorney fees, arising from or relating to the use of the Permit Property city and Manna or their agents, employees, independent contractors, licensees and invitees and any other person whether or not such use is permissive.

7. Manna shall provide monthly reports to County containing the following information:

- Number of persons served during each use of the Permit Property during the reporting period;
- Detailed report of all complaints received from any source concerning use of the Permit Property during the reporting period; and
- All damage to property, if any, occurring during the reporting period.

8. The representatives of the parties to this Agreement are:

For Manna: Chuck Lindholm, Associate Pastor
New Song Community Church – Manna Ministries
2511 NE Martin Luther King Jr. Blvd
Portland, OR 97212
Phone: (503) 422-0777
Fax: (503) 422-1402

For County Carla Bangert
Multnomah County
Facilities and Property Management
401 N Dixon Street
Portland, OR 97227
Phone: (503) 988-4128
Fax: (503) 988-5082

Emergency Contacts

For Manna Chuck Lindholm – Associate Pastor
(503) 422-0777

For County: Craig Flower, Property Manager
(503) 969-7462

9. Manna shall not assign this Agreement without the prior written consent of County.
10. This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

Multnomah County, Oregon

New Song Church – Manna Ministries

By: _____
Ted Wheeler, Chair

By: _____
Title: _____

Date: _____

Date: _____

Reviewed:

By: Agnes Sowle, County Attorney for
Multnomah County



MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (revised 09/22/08)

Board Clerk Use Only

Meeting Date: 01/28/2010
Agenda Item #: R-2
Est. Start Time: 9:35 AM
Date Submitted: 12/28/2009

Agenda Title: **RESOLUTION Adopting the Multnomah County 2010 State and Federal Legislative Agenda**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date: January 28, 2010 **Amount of Time Needed:** 15 minutes
Department: Non-Departmental **Division:** Chair Ted Wheeler's Office
Contact(s): Nancy Bennett
Phone: 503 988-4435 **Ext.** 84435 **I/O Address:** 503/600
Presenter(s): Nancy Bennett, Interim Government Relations Manager

General Information

1. What action are you requesting from the Board?
Adoption of Multnomah County 2010 State and Federal Legislative Agenda
2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.
Adoption of the Multnomah County 2010 State and Federal Legislative Agenda provides official guidance for county lobbyists to represent the county in the state legislature and US Congress in 2010
3. Explain the fiscal impact (current year and ongoing).
n/a
4. Explain any legal and/or policy issues involved.
n/a
5. Explain any citizen and/or other government participation that has or will take place.

Required Signature

Elected Official or
Department/
Agency Director:

Date: 12/28/09



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

(Revised 12/31/09)

Board Clerk Use Only

Meeting Date: 01/28/2010

Agenda Item #: R-3

Est. Start Time: 9:50 AM

Date Submitted: 01/08/2010

Agenda Title: RESOLUTION Accepting the Portland Children's Levy Allocation Plan and Offering Advice and Counsel to the City of Portland Concerning the Recommendations

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	January 28, 2010	Amount of Time Needed:	5-10 minutes
Department:	Non-Departmental	Division:	Chair's Office
Contact(s):	Lisa Hansell		
Phone:	503 823-4133	Ext.:	83308
I/O Address:	503/600		
Presenter(s):	Chair Ted Wheeler, Lisa Hansell, Grant Manager, Portland Children's Levy		

General Information

1. What action are you requesting from the Board?

Adoption of Resolution to accept Portland Children's Levy (PCL) Allocation Plan and Offering Advice and Counsel to the City of Portland Concerning the Recommendations.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

The Portland Children's Levy was authorized by Portland voters in 2002 and renewed in Fall 2008 for an additional five years to fund proven children's programs within the City. The ballot language authorizing the Children's Levy requires that investments be made in early childhood programs, child abuse prevention and intervention programs, programs for children in foster care, and after-school and mentoring programs.

After the Levy was renewed, a competitive funding process was held for each of the program areas. Funding awards were made in Spring 2009 with contracts beginning July 1, 2009. All awards were made as "up to" amounts. After contract negotiations were completed, the total amount contracted was less than the total amount awarded. Additionally, there was a fund balance of program dollars from the previous levy. Consequently, there is \$1,200,000 (over three years) of additional funds available for allocation.

PCL is requesting that the Multnomah County Board of Commissioners accept the recommendations of the Allocation Committee to fund the investments in the after school, mentoring and child abuse prevention and intervention programs in the amounts outlined in the attached memo entitled "Request for County Board Acceptance".

The additional investments will support two additional SUN school sites, a culturally specific after school program, after-school program services for homeless children; expansion of two culturally specific mentoring programs; expansion of a culturally specific early childhood early literacy and kindergarten readiness program; and expansion of a culturally specific child abuse prevention and intervention program to support the children of women who are victims of domestic violence.

3. Explain the fiscal impact (current year and ongoing).

No fiscal impact to County.

4. Explain any legal and/or policy issues involved.

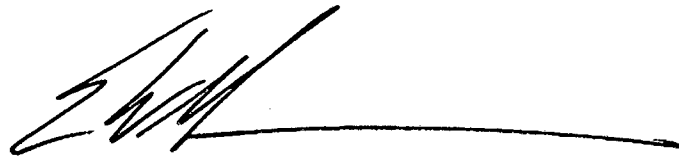
No legal issues involved; supports policies previously set by the Board.

5. Explain any citizen and/or other government participation that has or will take place.

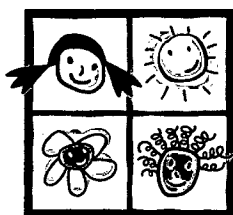
This is a multi-jurisdictional effort that has involved community stakeholders.

Required Signature

**Elected Official
or Department/
Agency
Director:**



Date: 01/11/2010



Investing in our future

portland children's levy

Request for Multnomah County Board Acceptance

Portland Children's Levy Background

In November of 2002, Portland voters approved the Portland Children's Levy (PCL). In the fall of 2008, voters renewed the levy for another five years. The levy generates approximately \$13 million annually for early childhood, after-school and mentoring, child abuse prevention and intervention and foster care programs. Administrative costs for the fund are capped at 5% of revenues and the fund obtains annual audits to assure compliance with the administrative cap. A copy of the 2008 ballot language for the Children's Levy is attached as Exhibit A.

An Allocation Committee governs the PCL and grants funds to programs serving children and families residing in the City of Portland. The Allocation Committee is comprised of a City Commissioner (Dan Saltzman), a County Commissioner (Ted Wheeler), a representative of the Portland Business Alliance (Ron Beltz), a citizen member appointed by the County Board (Adrienne Livingston), and a citizen member appointed by the City Council (Alissa Keny-Guyer).

Request for County Board Acceptance

PCL is requesting that the Multnomah County Board of Commissioners accept the recommendations of the Allocation Committee to fund additional investments in after-school, mentoring, early childhood, and child abuse prevention and intervention programs in the amounts specified in the spreadsheet titled "Exhibit B: Portland Children's Levy – Additional Grant Awards".

2009 Competitive Funding Process Background

After an extensive planning and public input process (May 2008 – January 2009) Requests for Investment in all program areas were published in January 2009 and applications were due in March.

CHIF received 125 applications for funding totaling \$97,178,747 – approximately 2.6 times the funds projected to be available over 3 years. Over 100 community reviewers scored the applications. Public meetings were held to make funding decisions. Committee members made preliminary funding decisions, invited public comment on the preliminary decisions, and then made final funding decisions.

Funding Awards

In June 2009 the Portland Children's Levy awarded funds totaling \$36,741,286 (over three years) to 69 early childhood, child abuse prevention and intervention, foster care, after-school and mentoring programs.

Additional Funds

All funding awards were made as "up to" amounts. After contract negotiations were completed, the total amount contracted was less than the total amount awarded. Additionally, there was a fund balance of program dollars from the previous levy. Consequently, there is \$1,200,000 (over three years) of additional funds available for allocation.

Funding Parameters/Priorities

Given the extensive 2009 competitive funding process, the significant gap between funding requested and funding awarded and the limited amount of available funding, the Allocation Committee decided to allocate the additional funds to programs that participated in the 2009 funding process rather than open a new competitive process.

After hearing public comment regarding proposed funding parameters at the November 13, 2009 meeting, the Allocation Committee set the following parameters/priorities for allocating the additional funds:

- 1) *New (meaning not previously funded by PCL) full service after-school programs.* This was prioritized because it was the most competitive funding category and the demand for new programming in this category significantly exceeded the supply when compared to the other funding categories.
- 2) *Programs that are both new (to PCL) and culturally specific from any funding category.* New programs were prioritized because the bulk of new levy funds (87%) went to fund continuing programming despite the fact that 42% of the total funding requested was for new programming. Culturally specific programs were prioritized to reflect a similar priority in the original Request for Investments and to preserve the percentage of overall PCL funds invested in culturally specific programs.
- 3) *Increasing current grants to culturally specific programs only, in any funding category.* This would help achieve the goal of increasing investment in culturally specific programming.

Funding Decisions

Staff provided Allocation Committee members with summarized application data sheets, aggregated funding slates from the previous funding rounds, a list of 2009 funding awards and staff recommendations for funding. Allocation Committee members submitted individual slates for funding to staff prior to the funding meeting, and staff aggregated the individual slates to determine the level of agreement/disagreement on funding individual applications.

A public meeting was held on December 14, 2009 to make funding decisions. Decisions were made starting with applications all Committee members wanted to fund and proceeding to applications with lower levels of Committee support for funding. Committee members made preliminary funding decisions, invited public comment on the preliminary decisions, and then made final funding decisions.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Accepting the Portland Children's Levy Allocation Plan and Offering Advice and Counsel to the City of Portland Concerning the Recommendations

The Multnomah County Board of Commissioners Finds:

- a. In 2002 the citizens of the City of Portland authorized a five-year property tax levy to fund proven children's programs within the City.
- b. In November 2008 voters approved a renewal of the local option property tax levy to continue supporting the Portland Children's Levy to make targeted investments in proven programs in early childhood, child abuse prevention and intervention, foster care, after-school and mentoring.
- c. In June 2009 the Portland Children's Levy awarded funds totaling \$36,741,286 (over three years) to 69 early childhood, child abuse prevention and intervention, foster care, after-school and mentoring programs.
- d. The Portland Children's Levy has \$1,200,000 (over three years) of additional funds available for allocation.
- e. The City of Portland and Multnomah County entered into an Intergovernmental Agreement to make certain that the funds received from the Levy are allocated in a manner complementary with a coordinated and comprehensive plan, and to ensure accountability and equity throughout the system. As part of the agreement, the City of Portland created the Children's Levy Allocation Committee to provide citizen oversight of the Levy.
- f. Furthermore, the Board of County Commissioners, through its expertise and experience in children's policy and administration, provides the City Council with advice and counsel. In the past the Board has made recommendations regarding allocations for early childhood care and education, for child abuse prevention and intervention programs, services to support children in foster care and for after school and mentoring programs. The Board is now making recommendations to make additional investments in after-school, mentoring, early childhood and child abuse prevention and intervention programs.

The Multnomah County Board of Commissioners Resolves:

1. The Board accepts the attached Allocation Plan of the Allocation Committee for the City of Portland's Children's Levy.
2. Furthermore, the Board forwards the Plan, with its own recommendation for adoption, to the Portland City Council for its consideration.

ADOPTED this 28th day of January, 2010

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Agnes Sowle, County Attorney

SUBMITTED BY:

Ted Wheeler, Multnomah County Chair

Exhibit A: 2008 Children's Levy Ballot Measure

Measure 26-94

Renew five-year levy for Children's Investment Fund

Question

Shall Portland continue supporting child abuse prevention, foster children, early childhood, after-school programs, renewing five-year levy starting 2009? This measure may cause property taxes to increase by more than 3 percent.

Summary

Measure would continue financing Children's Investment Fund to support proven programs designed to help children arrive at school ready to learn, provide safe and constructive after-school alternatives for kids, helps foster children and prevent child abuse and neglect and family violence.

This Children's Investment Fund can only be used for:

- Child abuse prevention and intervention, addressing juvenile crime, school failure, drug and alcohol abuse and homeless youth.
- Early childhood programs making childcare more affordable and prepare children for success in school.
- After-school, summer and mentoring programs: promoting academic achievement, reducing the number of juveniles victimized by crime and increasing graduation rates.
- Children in foster care programs: helping foster children succeed who have been abused and neglected.

Accountability measures include:

- Programs funded must be cost effective and have a proven record of success.
- Investment fund subject to oversight by a citizen committee
- Investment fund subject to annual audits.
- Administrative costs cannot exceed 5 percent.

Levy is \$0.4026 per \$1,000 of assessed property value and produces an estimated \$14 million per year for five years.

Exhibit B:
Portland Children's Levy
Additional Grant Awards December 2009

After School Programs

Applicant Name	Program Name	Funding Awarded
Metropolitan Family Services	Harold Oliver Primary SUN	\$209,090
Campfire USA	David Douglas - 1 SUN School Site	\$209,090
Friendly House	Project Return	\$137,500
Northwest Family Services	Latino Family Empowerment Project	\$243,247
After School Total		\$798,927

Mentoring Programs

Applicant Name	Program Name	Funding Awarded
IRCO	African Immigrant Mentoring	\$160,073
Portland Opportunities Industrialization Center	POIC Mentoring	\$125,000
Mentoring Total		\$285,073

Early Childhood Programs

Applicant Name	Program Name	Funding Awarded
Latino Network	Juntos Aprendemos	\$66,000
Early Childhood Total		\$66,000

Child Abuse Prevention & Intervention Programs

Applicant Name	Program Name	Funding Awarded
Catholic Charities	El Programa Hispano PCHIP	\$50,000
Child Abuse Prevention & Intervention Total		\$50,000

GRAND TOTAL		\$1,200,000
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MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 01/28/2010

Agenda Item #: R-4

Est. Start Time: 10:00 AM

Date Submitted: 01/19/2010

Agenda Title: Presentation of Multnomah County's Comprehensive Annual Financial Report; Component Unit Financial Reports; and Schedule of Expenditures of Federal Awards for the Year Ending June 30, 2009

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date: January 28, 2010 **Amount of Time Needed:** 30 minutes
Department: Non-Departmental **Division:** Auditors Office
Contact(s): Judy Rosenberger
Phone: 503 988-3320 **Ext.** 83320 **I/O Address:** 503/601
Presenter(s): The Multnomah County Audit Committee represented by Steve March, Mindy Harris, and Craig Stroud and by Moss Adams represented by Jim Lanzarotta, Kevin Mullerleile, and Debbie Gregg

General Information

1. What action are you requesting from the Board?

Board briefing of Comprehensive Annual Financial Report, Report for the Schedule of Expenditures of Federal for the year ending June 30, 2009. The Financial reports can be accessed via the internet at the following URL:

<http://www.co.multnomah.or.us/reports> Commissioners and staff, the Report is 228 pages (with no executive summary). I hope you will view it on-line.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

The County's Comprehensive Annual Financial Report provides a summary of the County's overall financial condition, the status of each fund managed by the County for the fiscal year ending June 30, 2009. The report for the Schedule of Expenditures of Federal Awards notes the County's level of compliance with federal requirements for grant funded programs for the fiscal year ending June

30, 2009.

The highlights of the reports are:

- a. The County received an unqualified opinion from the auditors, indicating that the financial statements fairly represent the financial position of Multnomah County.
 - b. The auditors and management did not encounter any disagreements.
 - c. The financial reports were prepared according to generally accepted accounting principles.
 - d. The auditors did not determine any audit adjustments.
 - e. The County complied with:
 - i. The legal requirements related to debt.
 - ii. The appropriate laws pertaining to programs funded by other governmental agencies.
 - iii. ORS 279 regarding awarding of public contracts.
 - iv. Cost accounting guidelines
 - f. In connection with the financial statement audit, there were no significant deficiencies.
 - g. In connection with the audit of the County's expenditures of Federal awards, the auditors identified findings and related questioned costs. Additional information on the findings and questioned costs is noted in the report for the schedule of expenditures of Federal awards.
- 3. Explain the fiscal impact (current year and ongoing).**
No fiscal impact.
- 4. Explain any legal and/or policy issues involved.**
N/A - none
- 5. Explain any citizen and/or other government participation that has or will take place.**
N/A - none

Required Signature

**Elected Official or
Department/
Agency Director:**



Date: Jan. 19, 2010



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

(Revised 12/31/09)

Board Clerk Use Only

Meeting Date: 01/28/2010

Agenda Item #: R-5

Est. Start Time: 10:30 AM

Date Submitted: 01/20/2010

Agenda Title: PROCLAMATION Proclaiming the Last Friday of January 2010 as EARNED INCOME TAX (EITC) AWARENESS DAY, in Multnomah County, Oregon

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	January 28, 2010	Amount of Time Needed:	15 minutes
Department:	Non-Departmental	Division:	District 2
Contact(s):	Warren Fish		
Phone:	503-988-5219	Ext.:	X85219
I/O Address:	503/6		
Presenter(s):	Joshua Todd and Janet Hawkins (CCFC) and Kathy Howell (IRS)		

General Information

1. What action are you requesting from the Board?

Adopting a Proclamation Proclaiming the last Friday of January 2010 as Earned Income Tax (EITC) Awareness Day, and urging all citizens to recognize and participate in its observance.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

Federal Earned Income Tax Credits are a potent anti-poverty tool. Unfortunately, many people eligible for these federal tax credits fail to claim them and the money that should be theirs goes back to the federal treasury. Multnomah County's Family Economic Security Program, which is run through our Commission on Children, Families and Community (CCFC), helps families and employers learn about ways to increase take home pay and make other smart financial choices. The program also supports free tax preparation and financial education programs in Multnomah County.

3. Explain the fiscal impact (current year and ongoing).

None.

4. Explain any legal and/or policy issues involved.

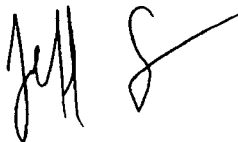
None.

5. Explain any citizen and/or other government participation that has or will take place.

Earned Income Tax (EITC) Awareness Day is recognized all over the country. Multnomah County's Family Economic Security Program works closely with the Internal Revenue Service (IRS) and community organizations (including CASH Oregon) on improving our citizens' access to tax credits and other financial education services. The CCFC and its Poverty Action Council provide citizen oversight to this program.

Required Signature

**Elected Official or
Department/
Agency Director:**

A handwritten signature in black ink, appearing to be "Jill S", is written over a horizontal line.

Date: 01/20/2010

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

PROCLAMATION NO. _____

Proclaiming the Last Friday of January 2010 as EARNED INCOME TAX AWARENESS DAY in Multnomah County, OR

The Multnomah County Board of Commissioners Finds:

- a. The Earned Income Tax Credit (EITC) is a proven anti-poverty tool and method for raising the household income of low-income working families.
- b. Depending on household income and number of dependents, the federal EITC can be worth up to \$3,050 for families with one child and \$5,666 for families with three or more children.
- c. Qualifying taxpayers can often receive an EITC even if they owe no taxes and, for a low-income family, it can make the difference between living below the poverty threshold or living above that threshold.
- d. Overall tax returns claiming the EITC in Multnomah County increased from 2007-2008, with the number of EITC claims generated at 31 free tax preparation sites going from \$2.4 million to \$2.6 million.
- e. Multnomah County's Family Economic Security Project has developed and strengthened its relationship with IRS, CASH Oregon, and other local partners to ensure that local employers and employees are aware of the benefits of the Advance Earned Income Tax Credit program.
- f. Last year, CASH Oregon and its partner AARP Tax-Aide filed 15,000 free tax returns for tri-county with an average adjusted gross income of \$21,000/year.
- g. Multnomah County's Family Economic Security Project works to build financial assets for working individuals and families.
- h. The State of Oregon is currently considering legislation to expand Oregon's EITC program to provide a larger financial credit to working families.

The Multnomah County Board of Commissioners Proclaims:

The last Friday of January 2010 as ***Earned Income Tax Credit Awareness Day*** in Multnomah County, Oregon and urges all citizens to recognize and participate in its observance.

ADOPTED this 28th day of January 2010.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, County Chair

Deborah Kafoury,
Commissioner District 1

Jeff Cogen,
Commissioner District 2

Judy Shiprack,
Commissioner District 3

Diane McKeel,
Commissioner District 4

SUBMITTED BY:
Commissioner Jeff Cogen



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

(revised 12/31/09)

Board Clerk Use Only

Meeting Date: 01/28/2010
Agenda Item #: R-6
Est. Start Time: 10:45 AM
Date Submitted: 01/22/2010

PUBLIC HEARING and Possible Adoption of an ORDER Approving
Agenda Title: Application for Exceptions to Statewide Planning Goals and Denying Special
Title: Plan Area Zone Change Request at Rocky Pointe Marina, Case No. T4-08-001

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date: January 28, 2010 Amount of Time Needed: 45 minutes
Department: Community Services Division: Land Use & Transportation
Contact(s): Joanna Valencia
Phone: 503 988-3043 Ext. 29637 I/O Address: 455/116
Presenter(s): Joanna Valencia

General Information

1. What action are you requesting from the Board?

The action requested is to conduct a quasi-judicial public hearing on a legislative matter and to adopt an order consistent with the recommendation by the County Planning Commission to approve the request for exception to Statewide Planning Goals 11 and 14 to increase the number of floating homes at the Rocky Pointe Marina and to deny the Special Plan Area zone change request to exceed the residential density limit in county code of one floating home per fifty feet of waterfront property. This land use action is being processed as a Type IV action (in compliance with Multnomah County Code 37.0530) in which the Planning Commission recommendation is forwarded to the Board for final decision.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

The owners of the Rocky Pointe Marina are requesting exceptions to statewide planning Goals 14 (Urbanization) and 11(Public Facilities and Services) 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 to expand the marina beyond the allowed one floating dwelling per fifty feet of waterfront. (Multnomah County Code (MCC) 34.6755). State statutes and county code provide a process to apply for and obtain such goal exceptions.

Rocky Pointe Marina was originally approved by Multnomah County in 1993 as a Conditional Use (Permits CS 1-93, HV 1-93, WRG 1-93 and CU 7-93). These permits approved 40 houseboats (i.e. floating homes), 150 boat slips, 7 boathouse spaces and 166 parking spaces. The zoning of the subject property is 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 applicant is requesting exceptions to Goals 14 (Urbanization) and 11 (Public Facilities and Services). The exceptions will allow urban levels of residential development outside an Urban Growth Boundary, contrary to County Comprehensive Framework Plan Policy 6 for Urban Land Area, and Policy 10 which calls for rural scale development on Multiple Use Agriculture designated lands. Oregon Revised Statutes (ORS) 197.732 outline the three options for an exception to any statewide planning goal 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.

Goal 14 and Goal 11 prohibit urban densities and services such as sewer and water outside an Urban Growth Boundary (UGB). Goal 14 limits rural development outside of the UGB to one single family dwelling per parcel. Due to this limitation, an exception to this goal is required to add additional houseboats (dwellings) to the subject property. Goal 11 prohibits urban services such as public sewer and municipal water systems outside of a UGB. An exception to this goal is needed since the proposed development would be served by urban services for both sewer and water. Goals 14 and 11 are intended to prevent premature urbanization of areas outside a UGB.

The recommendation to approve the goal exceptions finds that expansion of the marina can occur consistent with the density limitation of 1 home per 50 feet, and that services for public sewer and municipal water are available to serve the expansion. The areas identified in the attached site plans (Exhibit B) meet the criteria for "irrevocably committed" and "physically developed" exceptions in that urban services and physical improvements already exist, and the project is consistent with existing marina development within the property and surrounding areas already developed at urban residential densities.

The applicant has also submitted a request to establish a Special Plan Area (SPA) zoning district to achieve a density in excess of one houseboat per 50 feet of frontage currently allowed under Policy 26 (houseboats). The Planning Commission recommended denial of this request in finding that the applicant has not demonstrated that the SPA criteria within the Rural Area Plan Policy 15 (particularly with respect to impacts on traffic, natural resources and wildlife) or the zone change criteria of Multnomah County Code 37.0705(B)(2) have been met. Further it was found that 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.

Denial of the Special Plan Area zone change request limits the density of one floating home per fifty feet of waterfront in the Rocky Pointe Marina. Approval of the goal exception as recommended by the Planning Commission identifies the limitations of the expansion of the marina with a limitation consistent with the cap of one home per fifty feet of frontage, allowing for the possibility of 23 new houseboats instead of the requested 36.

3. Explain the fiscal impact (current year and ongoing).

N/A

4. Explain any legal and/or policy issues involved.

The Planning Commission discussed the policy of limiting development to 1 home per 50 feet of waterfront, and felt that this was not the appropriate process to address this and is better addressed under a legislative review where the benefits and impacts of a policy decision to the entire community can be considered instead of making a policy decision one property at a time. This can be addressed under policy and code revisions that can be brought by staff before the Planning Commission in the future.

5. Explain any citizen and/or other government participation that has or will take place.

As part of the process, the State must concur with any goal exception approval granted by the Board. Staff has been working closely with the State Department of Land Conservation and Development (DLCD) to ensure consistency with state requirements and support for the application. A public hearing before the Multnomah County Planning Commission was held on April 6, 2009. This meeting was continued and concluded on May 4, 2009. Testimony from the public was received both in support and in opposition of the project.

Required Signature

**Elected Official
or Department/
Agency Director:**



Date: 01/22/2010

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 Pointe 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.

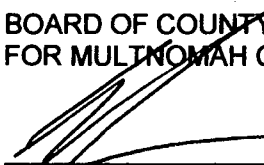
The Multnomah County Board of Commissioners Orders:

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
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

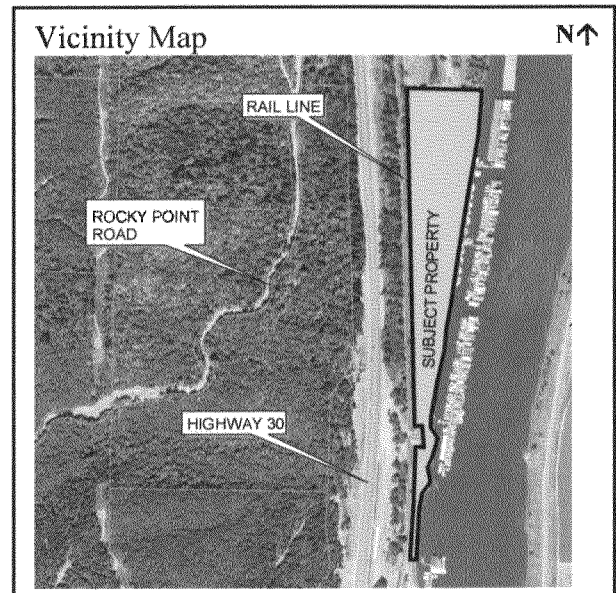
Application for exceptions to statewide planning Goals 14 (Urbanization) and 11 (Public Facilities and Services) to expand the Rocky Pointe Marina and to establish a Special Plan Area zoning district.

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)).

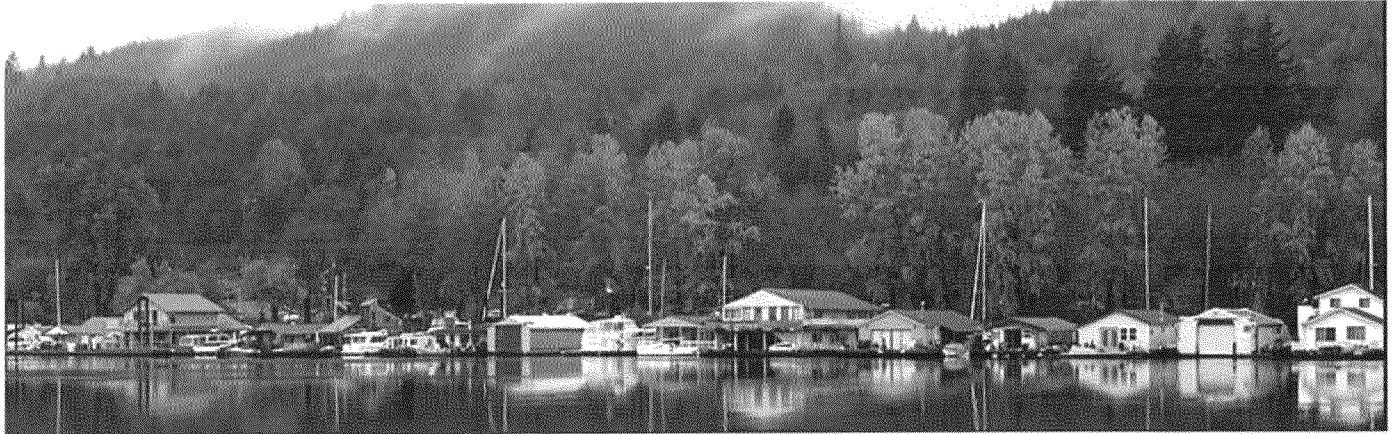


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Findings of Fact

(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 660-004-00040(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.

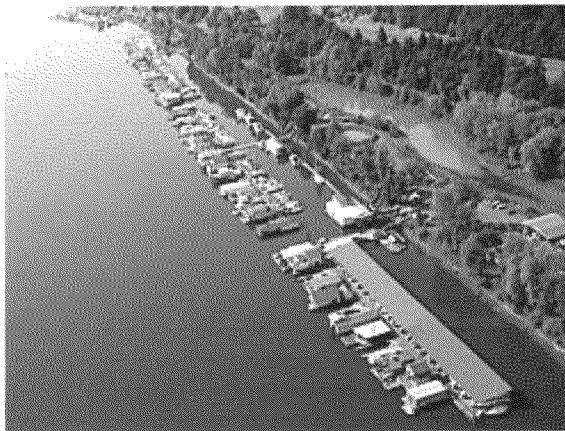
The proposal involves 520-feet of new dock, establishment of an emergency gangway ramp, 36 new floating homes (76 homes resulting) and 65 new auto parking spaces (231 parking spaces resulting). Dry dock repair improvements and expansion of the existing boatyard is also proposed along with establishing 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

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

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.

(* * *)

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- 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-foot 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

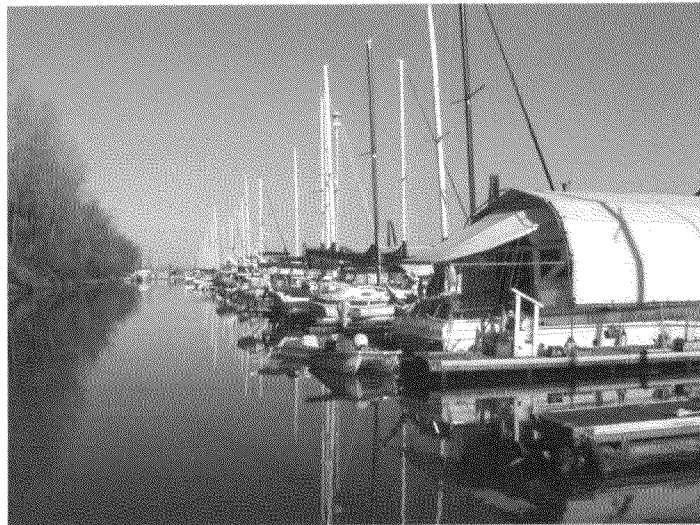
Contribution to Public Recreation - Development which contributes to public recreation opportunities on Multnomah Channel.

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)
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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 exeption 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, Liveboard 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

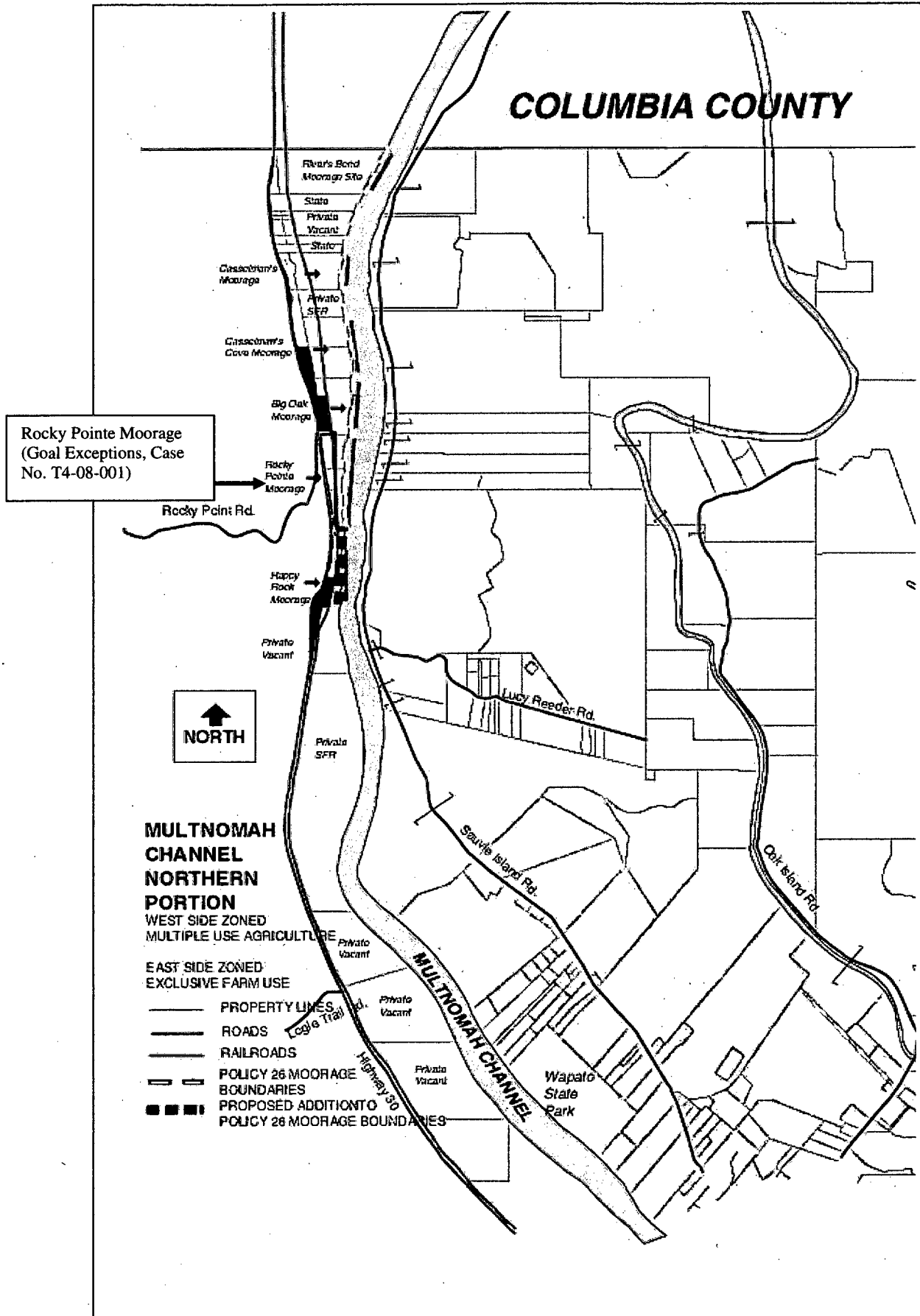
51	Application Authorization – General Application Form – Case T4-08-001 (1 page)	7/03/08
52	Site Plan – Site Plan Showing Two Possible Locations For Floating Community Room Within Proposed Dock Expansion Area (1 page)	1/20/09
53	Land Use Compatibility Statement – Land Use Compatibility Statement Prepared 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, Ore – 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
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OS-2	<i>Superseded Plans - 11 X 17" Scaled Site Plans submitted 10/10/08</i>	<i>10/10/08</i>
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MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

(Revised 12/31/09)

Board Clerk Use Only

Meeting Date: 01/28/2010

Agenda Item #: R-7

Est. Start Time: 11:30 AM

Date Submitted: 01/22/2010

First Reading of a Proposed ORDINANCE Amending the Sauvie Island
Agenda Multnomah Channel Rural Area Plan Map to Note Exceptions to State Land
Title: Use Goals

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date: January 28, 2010 **Amount of Time Needed:** 5 minutes
Department: Community Services **Division:** Land Use & Transportation
Contact(s): Joanna Valencia
Phone: 503 988-3043 **Ext.** 29637 **I/O Address:** 455/116
Presenter(s): Joanna Valencia

General Information

1. What action are you requesting from the Board?

The action requested is the first reading and approval of an ordinance to amend the Multnomah County Sauvie Island/Multnomah Channel Rural Area Plan Map adopted by Ordinance 887 to note the Exceptions to Statewide Planning Goals 11 and 14 to increase the number of floating homes at the Rocky Pointe Marina.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

The applicant is requesting exceptions to Goals 14 (Urbanization) and 11(Public Facilities and Services). The exceptions will allow urban levels of residential development outside an Urban Growth Boundary, contrary to County Comprehensive Framework Plan Policy 6 for Urban Land Area, and Policy 10 which calls for rural scale development on Multiple Use Agriculture designated lands. Oregon Revised Statutes (ORS) 197.732 outline the three options for an exception to any statewide planning goal 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 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. Consistent with the Board Order to approve the Goal Exceptions and deny the Special Plan Area Zone Change Request, this ordinance amends the Multnomah County Sauvie Island/Multnomah Channel Rural Area Plan Map adopted by Ordinance 887 to note the approved Exceptions.

Denial of the Special Plan Area zone change request limits the density of one floating home per fifty feet of waterfront in the Rocky Pointe Marina. Approval of the goal exception as recommended by the Planning Commission identifies the limitations of the expansion of the marina with a limitation consistent with the cap of one home per fifty feet of frontage, allowing for the possibility of 23 new houseboats instead of the requested 36.

3. Explain the fiscal impact (current year and ongoing).

N/A

4. Explain any legal and/or policy issues involved.

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.

5. Explain any citizen and/or other government participation that has or will take place.

As part of the process, the State must concur with any goal exception approval granted by the Board. Staff has been working closely with the State Department of Land Conservation and Development (DLCD) to ensure consistency with state requirements and support for the application. A public hearing before the Multnomah County Planning Commission was held on April 6, 2009. This meeting was continued and concluded on May 4, 2009. Testimony from the public was received both in support and in opposition of the project. The Multnomah County Board of Commissioners took public testimony on January 21, 2010 and conducted a public hearing on January 28, 2010. The Board of Commissioners adopted an Order approving the application for Exceptions to Statewide Planning Goals 11 and 14, and denied the Special Plan Area Zone Change request for Rocky Pointe Marina.

Required Signature

**Elected Official
or Department/
Agency Director:**



Date: 01/22/2010

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

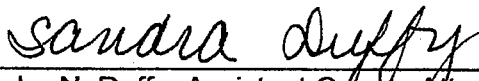


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

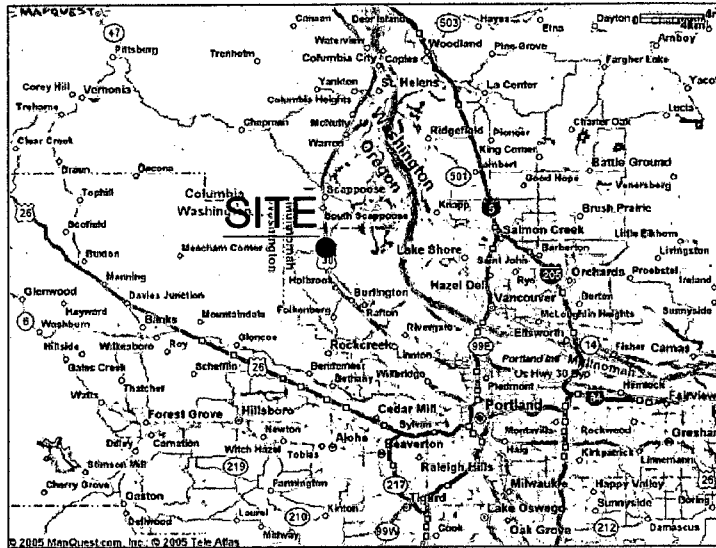
By



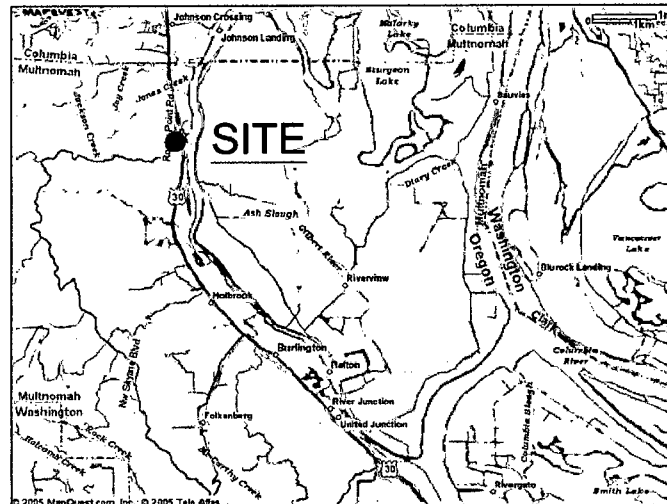
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Department of Community Services




LOCATOR MAP

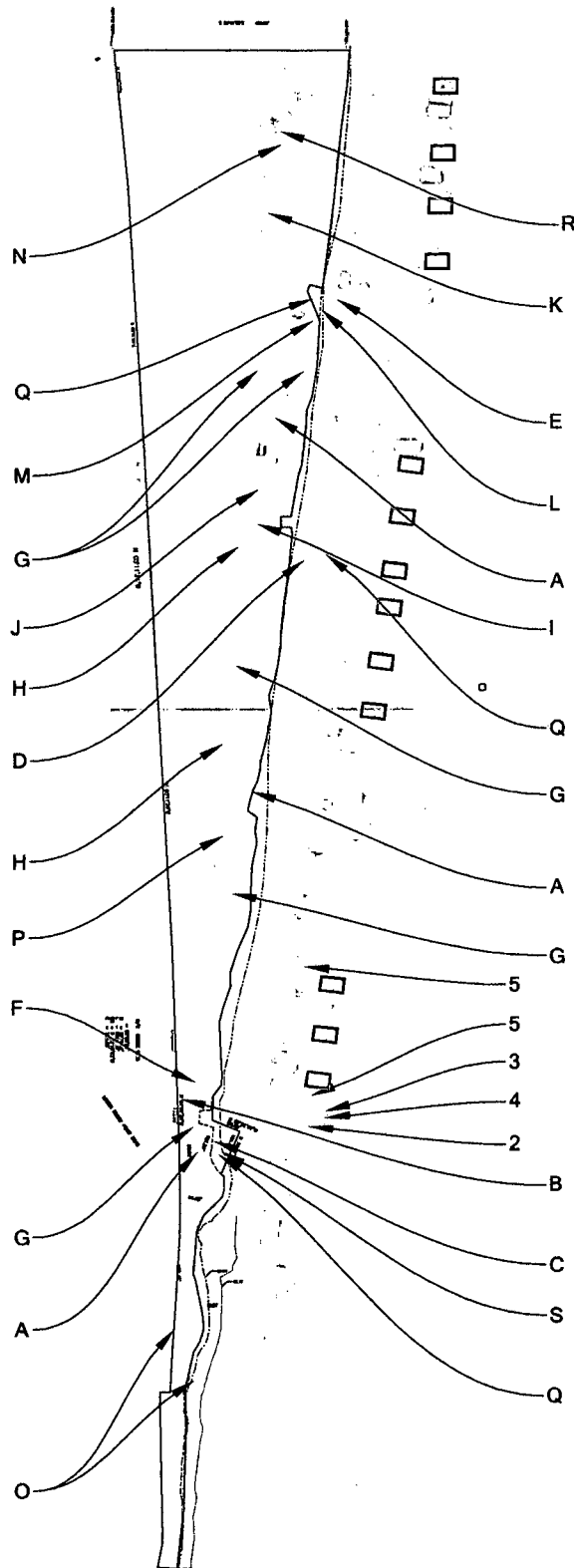


VICINITY MAP

OREGON STATE GOAL EXCEPTIONS

Flowing solutions  Flowing Solutions 3305 SW 87th Avenue Portland, OR 97223 Phone (503) 297-8331 Fax (503) 297-6053	TITLE: LOCATOR MAPS ROCKY POINT MARINA 23586 NW ST. HELENS ROAD PORTLAND, OR 97231	RIVER: MULTNOMAH CHANNEL DATUM: NGVD	REVISED: 7/14/09 SHEET NO. 0
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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- Columba 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 87th Avenue
Portland, OR 97225
Phone (503) 297-6331
Fax (503) 297-6053

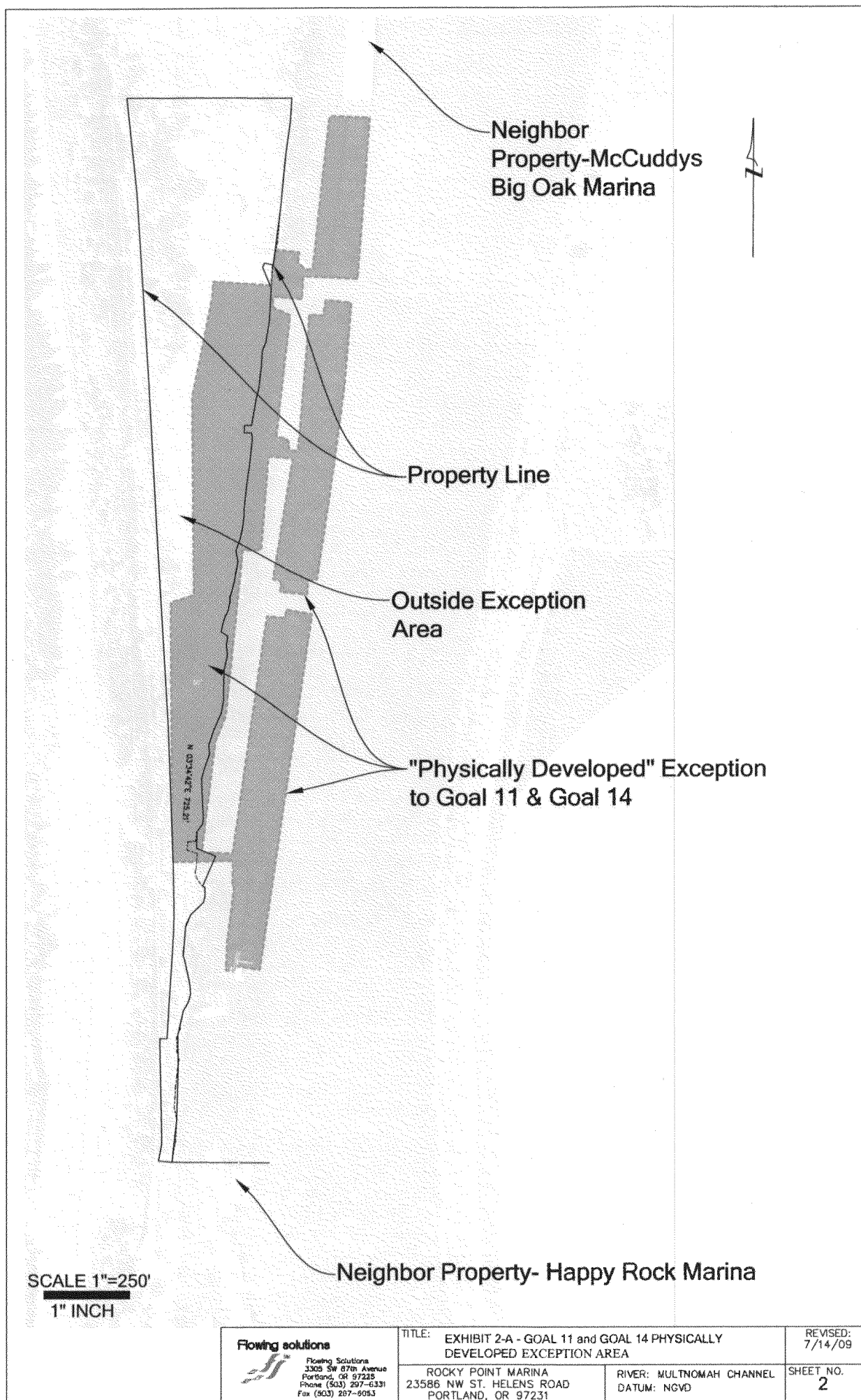
TITLE: EXHIBIT '1' KEY MAP

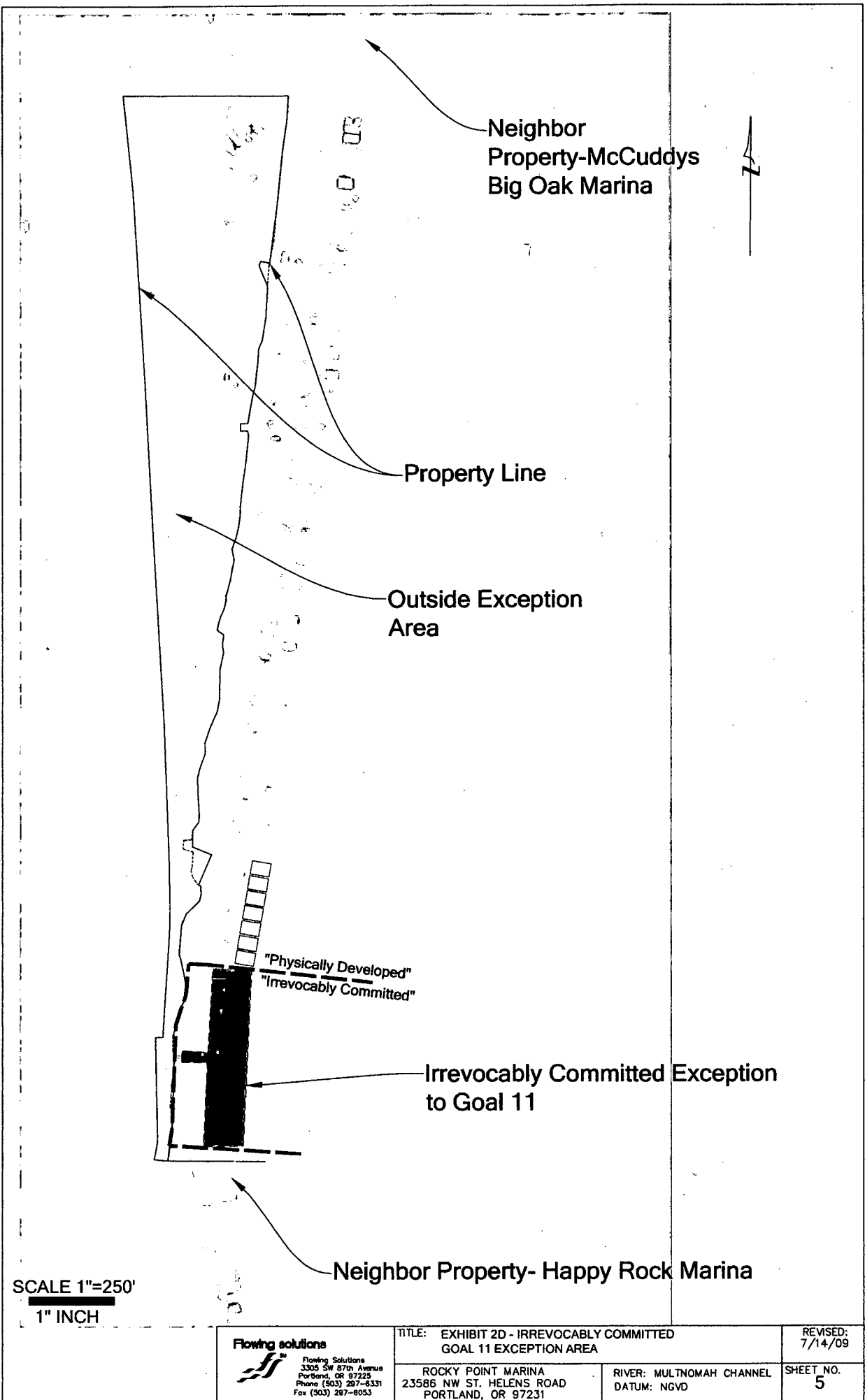
ROCKY POINT MARINA
23586 NW ST. HELENS ROAD
PORTLAND, OR 97231

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

REVISED:
7/14/09

SHEET NO.
1





Flowing solutions

Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 287-6331
Fax (503) 287-8053

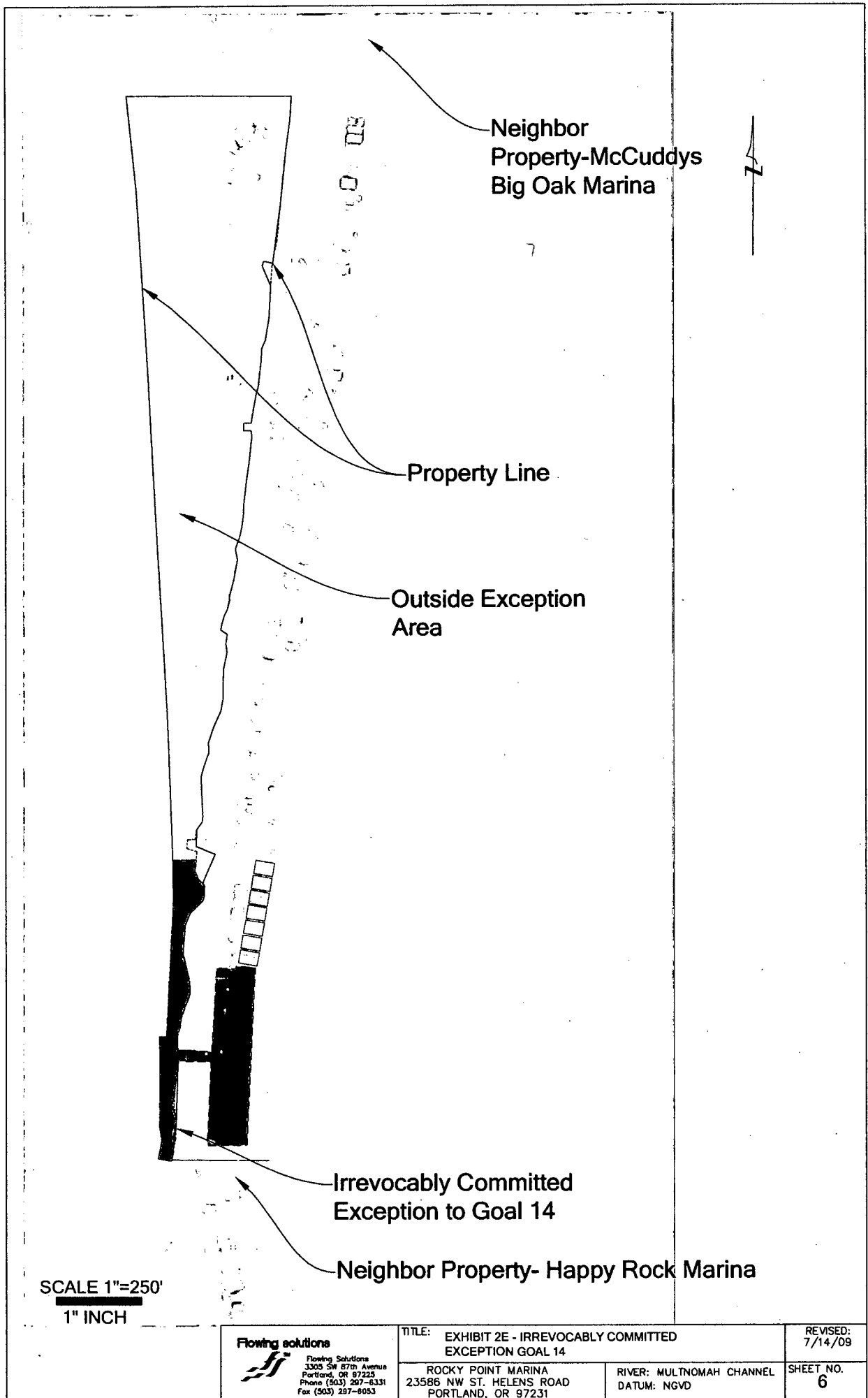
TITLE: EXHIBIT 2D - IRREVOCABLY COMMITTED
GOAL 11 EXCEPTION AREA

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


RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

REVISED:
7/14/09

SHEET NO.
5



Flowing solutions

 Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-8331
Fax (503) 297-8053

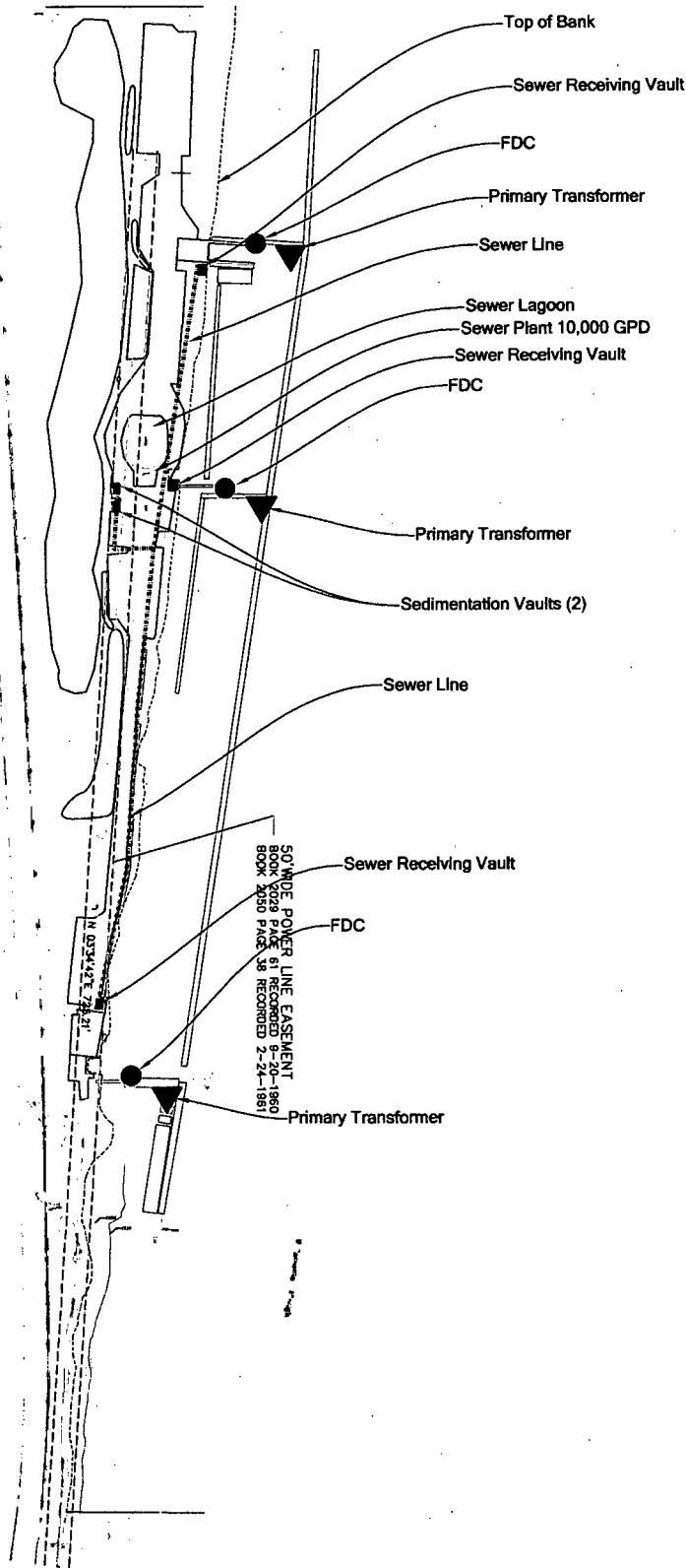
TITLE: EXHIBIT 2E - IRREVOCABLY COMMITTED
EXCEPTION GOAL 14

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

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

REVISED:
7/14/09

SHEET NO.
6



SCALE 1"=250'
1" INCH

Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97223
Phone (503) 297-8331
Fax (503) 297-8053

TITLE:

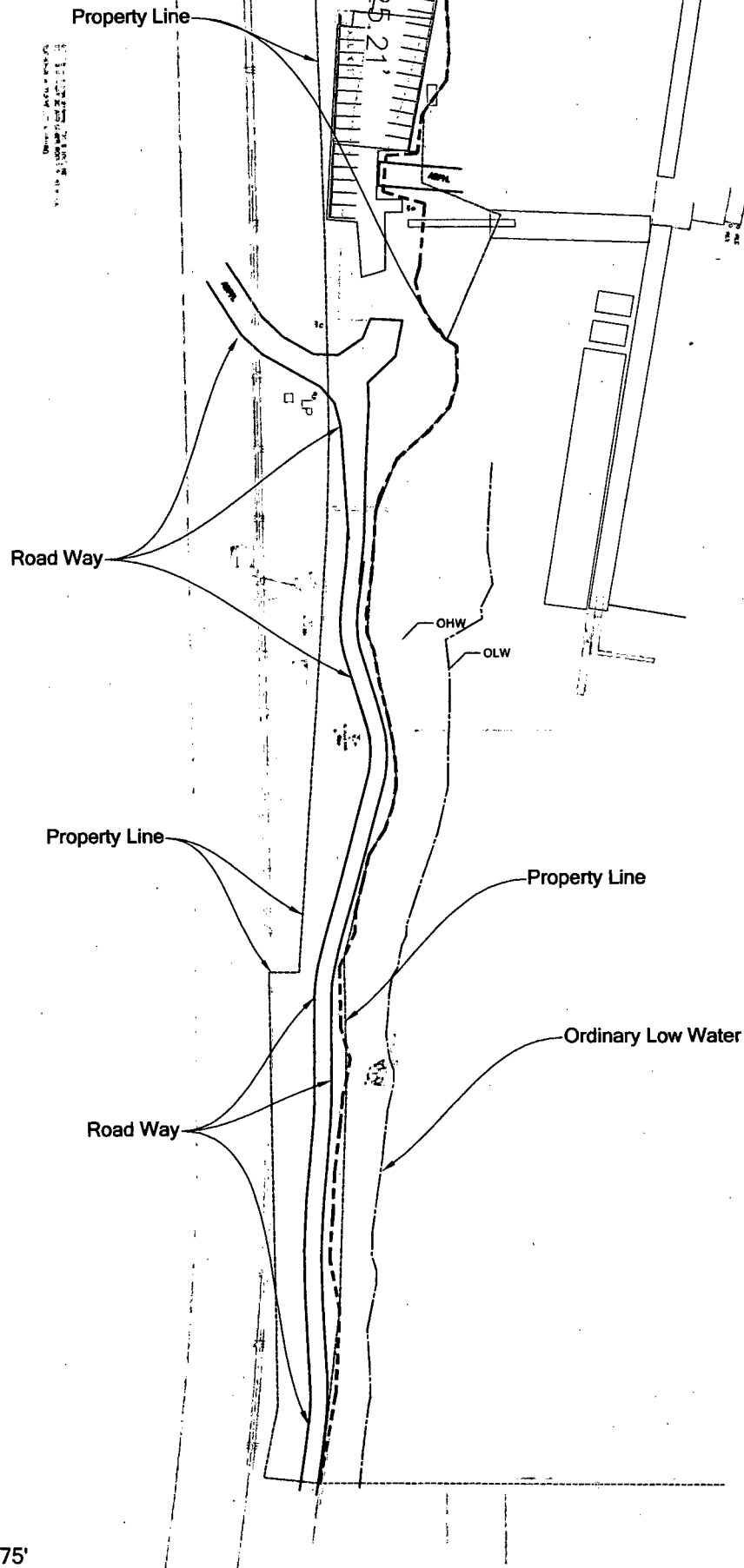
EXHIBIT '3' COMBINATION UTILITY PLAN
(SEWER-FIRE-TRANSFORMERS)

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) 287-8331
Fax (503) 287-8053

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 2030 PAGE 38 RECORDED 2-24-1961

N 03°34'42"E 776.21'

SCALE 1"=200

Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-8331
Fax (503) 297-6053

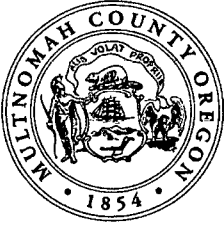
TITLE: EXHIBIT '4" POWER LINE EASEMENT

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

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

REVISED:
7/14/09

SHEET NO.
9



Commissioner Judy Shiprack

Multnomah County Oregon

Suite 600, Multnomah Building
501 SE Hawthorne Boulevard
Portland, Oregon 97214

Phone: (503) 988-5217
FAX: (503) 988-5262
Email: district3@co.multnomah.or.us

MEMORANDUM

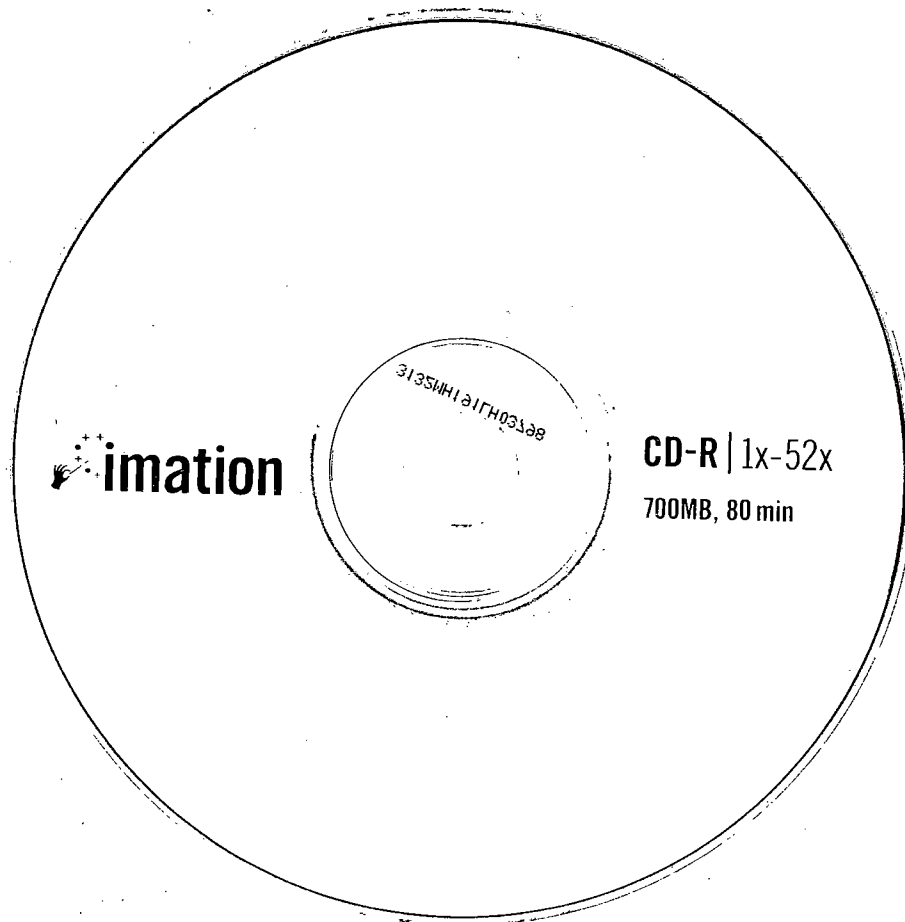
TO: Chair Ted Wheeler
Commissioner Deborah Kafoury
Commissioner Jeff Cogen
Commissioner Diane McKeel
Clerk of the Board Deb Bogstad

FROM: Keith Falkenberg
Staff to Commissioner Judy Shiprack

DATE: January 13, 2010

RE: Commissioner Shiprack will be out of town January 28th – Feb 5th, 2010

Commissioner Shiprack will be out of town January 28th - Feb 5th, 2010. She will be attending the January 28th Board meeting, but because of increased airport security she will need to leave at 10:45 am. She will not be in attendance at the executive session or Board briefings on February 2nd and the Board meeting on February 4th.



1/22/10

Deb,

Here's the CD with
movie file for the
Rocky Pointe Manna
project.

Thanks,
Joanna

#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: A517 Rocky Pointe Marina

FOR: X AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Gen Tonneson, Stan Tonneson, Peter Fry

ADDRESS: 23586 NW St Helens Rd

CITY/STATE/ZIP: Portland, OR 97231

PHONE: _____ DAYS: 503-543-7003

EVES: 503-234-3466

EMAIL: jeu@rpmarina.com

FAX: 503-543-5790

SPECIFIC ISSUE: goal exception

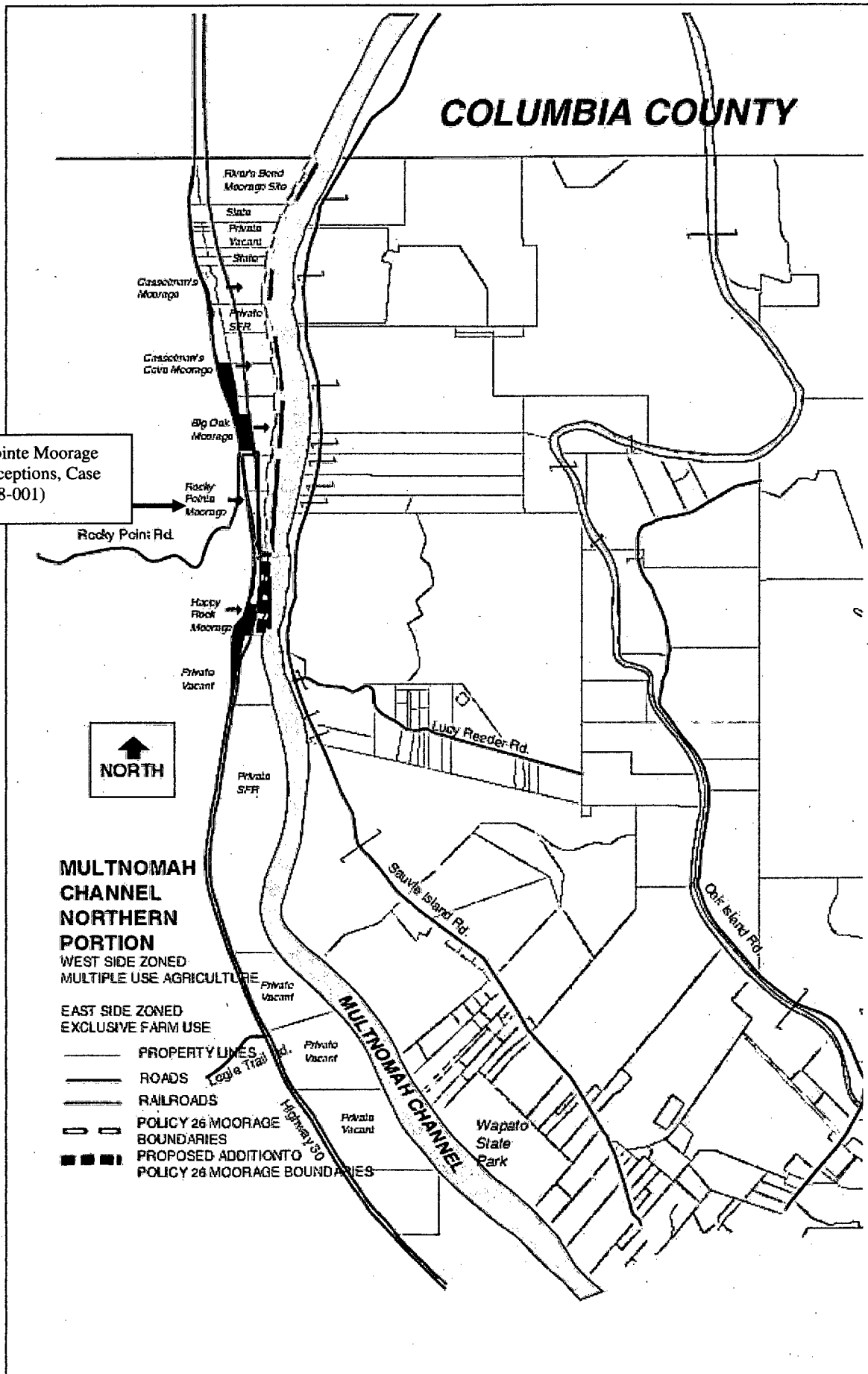
WRITTEN TESTIMONY: _____

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.



Deb - please add these
contacts for changes in
meeting start time or cancellations

rachel@pcmtv.org

bea@pcmtv.org

~~\$100~~

Thanks!

Emily

1:30 pm →

GRAY E white letters

7 $\frac{1}{8}$ "
~~7 $\frac{1}{8}$ "~~ X 2"

BOGSTAD Deborah L

From: OLIVEROS Gina M
Sent: Thursday, December 10, 2009 2:28 PM
To: OLIVEROS Gina M
Subject: STANDARD MILEAGE RATE CHANGE EFFECTIVE JANUARY 1, 2010

Sorry, a slight correction.

The IRS has announced that the business standard mileage rate for transportation expenses paid or incurred **beginning January 1, 2010, will be 50 cents per mile**, down from the 55 cents per mile rate in effect during 2009. Our internal policies tie the County's reimbursement mileage rate to the IRS standards so our effective date will be the same as IRS.

There are two Mileage Expense Report Forms posted on the AP MINT; one for travel through 12/31/2009 and one for travel **on or after 01/01/2010**.

If you have any questions regarding mileage please go to the AP MINT site [MILEAGE](#) or call Central AP at 503.988.3316.

Thanks.

Gina Oliveros
 Central Accounts Payable
 Ph: 503.988.3316 ext 22832

IRS Announces 2010 Standard Mileage Rates

IR-2009-111, Dec. 3, 2009

WASHINGTON — The Internal Revenue Service today issued the 2010 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2010, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 50 cents per mile for business miles driven
- 16.5 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations

The new rates for business, medical and moving purposes are slightly lower than last year's. The mileage rates for 2010 reflect generally lower transportation costs compared to a year ago.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs as determined by the same study. Independent contractor Runzheimer International conducted the study.

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or after claiming a Section 179 deduction for that vehicle. In addition, the business standard mileage rate cannot be used for any vehicle used for hire or for more than four vehicles used simultaneously.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

Revenue Procedure 2009-54 contains additional details regarding the standard mileage rates.

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 Pointe 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
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

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
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Department of Community Services

#1

**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: Reconsidering Reserves

AGENDA NUMBER OR TOPIC: NA Non-Agenda Public Comment

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Jerry Grossnickle

ADDRESS: 13510 NW Old Germantown Rd

CITY/STATE/ZIP: Portland OR 97231

PHONE: _____ DAYS: 503-289-3046

EVES: _____

EMAIL: jerrygbw@aol.com

FAX: 503-283-1479

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.

Jerry Grossnickle
13510 NW Old Germantown Rd.
Portland, OR 97231
Phone 503-289-3046
E-mail: jerrygbw@aol.com

January 28, 2010

The Multnomah Board of County Commission has an opportunity to secure an important legacy for the metro region.

It is no accident that when you look at a regional land-use map, you see at once that the shape of the urban area has a striking anomaly. There is a sharp dagger-like shape that strikes from the northwest into the heart of urban Portland. These are the rural lands of the northwest hills, connecting the wild habitats of the coast range to Forest Park and the City of Portland.

Emblematic of these lands are the resilient and resourceful wildlife that continue to thrive at Portland's very doorstep. Portland may be the only urban landscape outside of Kenya that is regularly visited by roaming herds of big game animals.

Roosevelt elk are native to our hills and fields, but were only recently brought back from the edge of extinction. And they are now a regular feature of rural northwest Multnomah County.

To see these magnificent animals in their own habitat is an amazing experience, available to any hiker, cyclist or motorist lucky enough to be passing through the lands west of Forest Park when the herds are moving through.

I live in this area, and although I have seen the herds many times, I am still thrilled and awed by these animals.

But the land that supports them is being threatened by urban development. Our neighborhood has worked for years, hand in hand with the County, to safeguard the natural habitat and rural values of this area. We were shocked and saddened by the County's unexpected decision on December 10 to leave much of these lands "undesigned."

I urge the Board to reverse this decision and to recommend to the Core 4 that all of areas 5, 6 and 7 be designated Rural Reserves.

This is the legacy that we can leave to the generations that follow us: An urban area conscious of its proximity to and dependence on the natural world, appreciative of the wildlife and the natural landscape that supports it, protective of the streams and their headwaters, and careful with the forests and farmlands that nourish our souls as well as our bodies.

Our (Forest Park Neighborhood Association) Neighborhood Plan Committee asked Dan Kearns, a Portland land-use attorney, to craft an argument to help you reconsider your decision. We addressed it to Commissioner Jeff Cogen, who is on the Core 4, but we want all of you to see it before you make your final decision.

Thank you.



Jerry Grossnickle

Reeve Kearns PC

Attorneys at Law

1225 American Bank Building
621 S.W. Morrison Street
Portland, Oregon 97205
Telephone: 503-225-0713
Facsimile: 503-225-0276
Email: dan@reevekearns.com

Daniel H. Kearns
Direct Dial: 503-225-1127

January 27, 2010

The Honorable Jeff Cogen
Multnomah County Commissioner
501 SE Hawthorn Blvd.
Portland, OR 97214

Re: Rural Reserves - West Hills Planning Areas 5, 6 & 7

Dear Commissioner Cogen:

I represent the Forest Park Neighborhood Association, which has worked closely with Multnomah County and the City of Portland for 35 years on neighborhood and land use issues, seeking to preserve the unique habitat and natural landscape features that are Forest Park. The Forest Park Neighborhood Association has been a credible, competent and constructive voice for land use planning in and around Forest Park. Reserve study Area 7 and a substantial portion of Area 6 in the current Rural Reserves study process are part of the Forest Park Neighborhood Association's territory. I am writing to urge you and the Board of Commissioners to change the decision it made on December 10, 2009 and to designate all of Multnomah County Areas 5, 6, and 7 (now called Area 9 by Metro) as Rural Reserves. All of these areas meet the criteria for Rural Reserve designation, based on natural landscape features and do not meet the criteria for Urban Reserves. They should all be assigned a Rural Reserve designation.

Metro has specifically directed counties to not leave land adjacent to the Urban Growth Boundary undesignated, and we strongly support that position. Contrary to the purpose of the Rural Reserves Rule and process, your recommendation to leave Area 7 undesignated will make this area a target for future urban development. We also urge the Board to designate all of Area 5 as Rural Reserve because of its important wildlife corridor and large-lot mature forest cover. To leave any portion of these areas undesignated is bad public policy and defeats the purpose of reserves -- to provide certainty for long-term planning in these areas.

In light of its long-standing commitment to sound land use planning and its close cooperation with the County in developing and implementing the Multnomah County West Hills Rural Area Plan, the Board of Forest Park Neighborhood Association was surprised and dismayed that the Board of Commissioners on December 10 appeared to jettison both the Rural

January 27, 2010

Page 2

Area Plan and the thoughtful recommendations from the County's Reserves Citizen Advisory Committee, Planning Commission, and City of Portland without serious consideration or cogent explanation. Most concerning is the fact that your final recommendation, and the one adopted by the Board of Commissioners on December 10, 2009, ignores the data and recommendations of the County's advisory bodies and instead reflects a seriously flawed proposal that narrow development interests in the Bethany Area, *e.g.*, Tom VanderZanden and Jim Irvine and their clients, have persistently urged. Your recommendation subjects Area 7 and much of Area 5 to continued threats of development and ignores Metro's directive to designate all areas potentially subject to urbanization with a reserve designation.

Leaving Areas 7a and 7b undesignated is contrary to the reserves regulatory framework in OAR 660, Division 27. As explained below, these areas meet the factors designating Rural Reserves in OAR 660-027-0060; they do not meet the criteria for Urban Reserves in OAR 660-027-0050, and simply leaving them undesignated violates the purpose and policy stated in SB 1011, the Urban/Rural Reserves Rule in OAR 660, Division 27 and Metro Resolution 09-4101. As the City of Portland stated in its comments to the County, explaining their recommendation that Area 7 be designated rural reserve:

We conclude that the suitability criteria support a rural designation over "urban," and a "no designation" is too uncertain and too ambiguous. Further, [no designation] may not meet the statutory purpose statement envisioned on SB 1011 and contained in OAR 660-027-0005 of either protecting lands – for their farm, forest, natural systems or natural landscape features value – or designating them to meet future urban land needs.

We believe this means that where lands meet the rural reserve criteria, and that these outweigh the urban criteria, then there is an affirmative obligation to designate those lands as rural. Urban and rural designations were meant to work together to help ensure livability communities, including the protection of the natural landscape features that define the region for its residents. A "no designation" does not work to achieve this end. Relevant language in the purpose statement states in part,

"...Rural reserves under this division are intended to provide long-term protection for large blocks of agricultural or forest land and for natural landscape features that limit urban development or define natural boundaries of urbanization."

The natural landscape features that extend westward from Forest Park include riparian streams, wildlife habitat, and corridors for ecological and scenic connectivity. These are significant features in themselves. When taken together with the County line, which is the same as the large power line easement, it divides the North Bethany concept plan area and Lower Springville Road/East Bethany properties area in ways that both "limit urban development" and "define natural boundaries of urbanization."

January 27, 2010

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In fact, all of Areas 5, 6 and 7 meet the criteria for Rural Reserves, and Multnomah County should strongly recommend that designation. In addition to the City of Portland recommendation, the Multnomah County Reserves Citizen Advisory Committee and the Multnomah County Planning Commission both recommended Rural Reserve designation for Areas 5, 6, and 7. Instead of following that policy direction, which was based on the physical attributes of these areas and the Rural Reserve factors in OAR 660-027-0060, you recommended that Multnomah County follow the suggestion of the East Bethany developers and a few property owners and leave Area 7 undesignated, and therefore subject to on-going threats of urbanization. Your recommendation only serves the narrow interest of a few developers and property owners in the Bethany Area by keeping open the possibility of urban development for these areas in the future. The reasons for designating these areas Rural Reserve will not diminish or go away over time; likewise, the reasons why they do not merit Urban Reserve status will not change, *e.g.*, inability to extend cost-effective urban services, poor road network, and harm to valuable natural resources. In that light, the County's December 10th recommendation violates the Urban/Rural Reserves Rule in OAR 660, Division 27 and Metro's Resolution No. 09-4101, and we also believe it is a bad public policy decision.

In fact, all of Areas 6 and 7 squarely meet the criteria for Rural Reserve designation under the factors in OAR 660-027-0060(3) due to their natural landscape features. Additionally, nearby Area 5 meets the requirements of OAR 660-027-0060(2) due to its natural landscape features and suitability for long-term forestry, and all of Area 5 should be designated Rural Reserve.

- First, all of these areas are subject to urbanization pressure as clearly shown by the persistent interest and lobbying efforts of a few owners and developers. That urbanization pressure and these development objectives pose a real and imminent threat so long as any part of Areas 6 and 7 remain undesignated. All of Areas 6 and 7 should therefore be protected with a Rural Reserve designation. This is why Metro explicitly stated in Resolution 09-4010 that all such lands should be given a reserve designation and not left undesignated.
- Second, most of Area 5 and large portions of Areas 6 and 7 are mapped as slope hazards by the county,
- Third, all three areas clearly have regionally important fish, plant and wildlife habitat, as shown by the regionally recognized significance of Forest Park as a wildlife and habitat preserve. These areas have the same habitat qualities as Forest Park; Area 5 has extensive forest cover, and they are all interconnected with one another and Forest Park.
- Fourth, multiple headwater streams flow through these areas, and their preservation in a Rural Reserve would protect the water quality of these streams.

January 27, 2010

Page 4

- Fifth, Forest Park and the West Hills have a definite sense of place, which all of these areas share by virtue of their forest cover and interconnected wildlife habitat. The value of preserving views of forests and farms on the NW Hills, which provide a regional landmark, also meets this criterion.
- Sixth, if preserved as Rural Reserves, the western edge of Areas 6 and 7 form a natural boundary between the urban development of the Bethany Area in Washington County and the forested habitat of Forest Park. The effectiveness of this rural-urban boundary was recognized by Metro and affirmed by LUBA and the Court of Appeals in *City of West Linn v. LCDC*, 201 Or.App. 419, 442-443 (2005).¹ This natural boundary will only function if Areas 6 and 7 are designated Rural Reserve.
- Finally, these areas are contiguous with Forest Park and provide easy access to recreational opportunities on Forest Park's trail system – again, a strong attribute in favor of giving all of Areas 6 and 7 a Rural Reserve designation.

Lower Springville Road (part of Area 7, also known as UR-1) contains an active and currently operating commercial farm – a land use that helps qualify the area for Rural Reserve designation. Preservation of Areas 6 and 7 as Rural Reserve compliments the mature forest that covers Area 5 – again a land use that clearly qualifies this area for Rural Reserve designation. All of this could be lost if your recommendation is followed and Areas 5 and 7 remain undesignated.

Equally compelling and agreed to by the City of Portland, the Multnomah County Citizen Advisory Committee, and the Multnomah County Planning Commission is the fact that these areas do not qualify for Urban Reserve designation. None of these areas is easily served with urban services and facilities, particularly transportation facilities, which would be difficult and expensive to up-grade to urban standards. Even the traffic engineer for the Bethany Area developers determined that the surrounding roads, *i.e.*, Skyline Blvd, Springville Road and Germantown Road, would require “major investments,” significant improvements and expansions to serve any urban development in Areas 6 and 7. While water service is possible, there is no plan to serve these areas with sanitary sewer, certainly not without the construction of significant new infrastructure.

1 LUBA and the Court of Appeals affirmed Metro's finding about this natural urban/rural boundary:

“The Bethany expansion area will have clear boundaries that serve to both visibly highlight the line separating urban and rural uses, and to also serve as a buffer between urban development and rural uses. NW 185th Avenue, Abby Creek and its adjoining riparian zone and slopes and the powerline easement coupled with the Multnomah County boundary line all serve to clearly demarcate and buffer the proposed expansion area.”

January 27, 2010

Page 5

These areas are also a "no man's land" of governance. Neither Multnomah County nor the City of Portland have ever exerted any strong governance over these areas. They are simply too far from Portland's corporate limits, and too far from Beaverton (2 miles) for either city to extend urban services or exert governance over them. Given their remote and forested nature, all of Areas 5, 6 and 7 pose significant (*i.e.*, expensive) maintenance problems should any city undertake the provision of urban services to them. Neither Portland nor Beaverton see these areas as priority locations for meeting urban housing needs, a conclusion that even the Bethany Area land owners and developers cannot deny. City of Portland, Forest Park Neighborhood Association, and Forest Park Conservancy are very concerned about the damaging effect that urbanization of Areas 5, 6 and 7 will have on the Forest Park environment.

We hope that in your final analysis, the Multnomah County Board of Commissioners will take the time to fully review the data and advisory group recommendations, and recognize that it would be inappropriate to leave Area 7 and most of Area 5 undesignated. Areas 6 and 7 both have extremely valuable qualities that dovetail perfectly with the Rural Reserve factors, most especially their susceptibility to on-going pressure to urbanize and develop – pressure that comes directly from a few owners and developers. Area 5 is less threatened but holds extremely valuable rural resources and also deserves full protection.

There is still time for the Multnomah County Board of Commissioners to revise and correct its decision in accordance with the unanimous recommendations of City of Portland, the Multnomah County Citizen Advisory Committee, and the Multnomah County Planning Commission. Please designate all of Areas 5, 6 and 7 as Rural Reserve. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Kearns", with a long horizontal flourish extending to the right.

Daniel Kearns

cc: Ted Wheeler, Chairman
Multnomah County Commissioners
Metro Council President and Councilors
Core 4
Sam Adams, Mayor, City of Portland
Amanda Fritz, Commissioner, City of Portland

#2

**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: _____

AGENDA NUMBER OR TOPIC: Public comment on non-agenda matters

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Mary Telford

ADDRESS: 13508 NW Springville Rd.

CITY/STATE/ZIP: Portland OR 97229

PHONE: _____ DAYS: 503-432-8151 EVES: Same

EMAIL: mary@marytelford.com 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.

January 28, 2010

Chair Ted Wheeler and Commissioners
501 SE Hawthorne Boulevard
Portland, Oregon 97214

Dear Chair Wheeler and Board,

I would like to offer some information to help your decision making about Urban and Rural Reserves.

A February 2006 survey conducted by Davis, Hibbitts & Midghall Inc. for Metro showed that Multnomah County residents favor protecting natural resources and preserving farm and forestlands¹. Another survey done for Metro in 2009 had similar findings, but they aren't as quotable so I'm going to share information from the 2006 survey. A link to both surveys is provided in my written comments.

One of the conclusions of the 2006 report reads:

"Environmental values are particularly important to residents throughout the region. Once people are here, their enjoyment of the region is due primarily to environmental considerations. Two-thirds want environmental protection to be more important than economic growth in the coming decade and they want planning designed to protect the region's environmental assets".²

I've provided copies of some of the survey results, and I'd like to mention just a few.

- The top three planning priorities for Multnomah County residents were
 - Protecting area rivers and streams 84%
 - Preserving farm and forestland 74%
 - Protecting air quality 80%
- Only 10% of respondents said that opening farm and forestland for new and expanding businesses is an urgent or high priority.
- 78% of Multnomah County residents preferred adding houses in existing neighborhoods vs. 12% who preferred converting farm and forestland.
- Over three quarters (77%) of Multnomah County residents said farm and forestland should be preserved because of their contribution to the economy, rather than making the land available for businesses. Only 16% preferred

¹ Davis, Hibbitts & Midghall Inc. Regional Attitudes Toward Population Growth and Land Use Issues. Prepared for: METRO. February 2006. Page 13.

² Ibid. Page 24.

allowing business development on farm and forestland.

The report also concludes that "Opinions have remained remarkably consistent over the last 10 years."

Multnomah County residents clearly place a high value the natural resources, farms, and forests in our region. These rural resources are key to our quality of life, and all of our citizens should have access to them.

I hope you will consider the values of county residents as you make decisions about Reserves.

Please designate all of Area 9 (formerly Multnomah County Areas 5, 6, and 7) as Rural Reserves. I support the Agriculture and Natural Resources Coalition Reserves proposal, which would preserve access to natural areas and local food for our citizens.

Thank you.

Mary Telford
13508 NW Springville Rd.
Portland, OR 97229

The 2006 and 2009 surveys are both available on the Metro web site:

<http://www.oregonmetro.gov/index.cfm/go/by.web/id=17655>

REGIONAL MAYORS' & CHAIRS' FORUM

METRO PUBLIC OPINION RESEARCH

Regional Attitudes Toward Population Growth
and Land Use Issues

Select Findings and Observations
February 3, 2006

Presented by

Davis, Hibbitts & Midghall

www.dhmresearch.com

1

Davis, Hibbitts & Midghall, Inc. | Forum Presentation February 2006

Q20-29A. Most urgent/high priorities among planning goals to deal with population growth over 10 years

PLANNING PRIORITIES OVER NEXT TEN YEARS

	Regional
<i>Protecting area rivers and streams</i>	78%
<i>Protecting air quality</i>	74%
<i>Preserving farm and forestland</i>	71%
<i>Protecting existing neighborhoods</i>	64%
Building new roads and highways	46%
Nurturing citizen commitment to community and civic involvement	44%
Acquiring open space for recreation and enjoyment	40%
Building light rail extensions	38%
Revitalizing town centers	23%
Opening up farm and forestland for new and expanding businesses	10%

**PLANNING
PRIORITIES OVER
NEXT TEN YEARS
BY COUNTY**

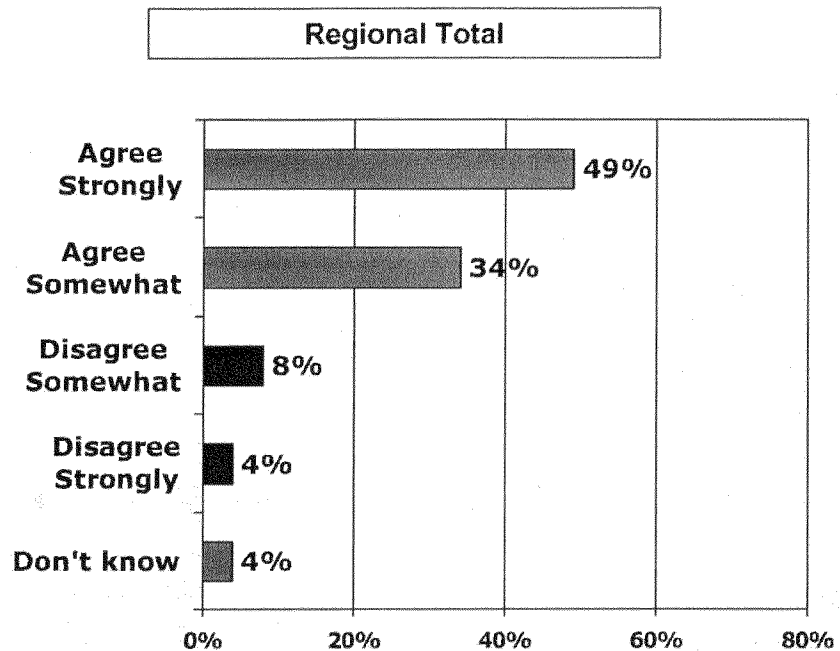
	Multnomah	Washington	Clackamas
Protecting area rivers and streams	84%	78%	73%
Preserving farm and forestland	74%	72%	68%
Protecting air quality	80%	75%	66%
Protecting existing neighborhoods	67%	65%	60%

**PLANNING
PRIORITIES BY
COUNTY**

- Top priorities are the same for all three counties
- Multnomah County residents place more importance on protecting rivers and streams and air quality
- Building roads and highways is in a second tier of priorities—and is more important to Washington County residents

Q7. Land use regulations are an essential tool in protecting our life.

GENERAL ATTITUDES TOWARD LAND USE PLANNING



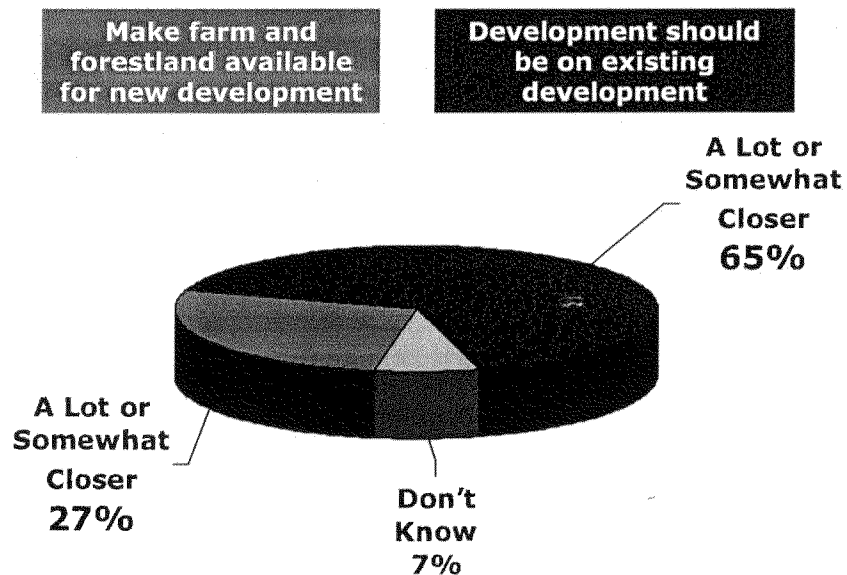
15

Davis, Hibbitts & Midghall, Inc. | Forum Presentation February 2006

Q52B. Which way do you feel: Make farm and forestland available for new development, or development should be on existing development?

PRESERVING FARM AND FORESTLAND IS A VERY IMPORTANT VALUE

Nearly two-thirds say future development should be where development is now—*not by making farm and forestland available*



21

Davis, Hibbitts & Midghall, Inc. | Forum Presentation February 2006

Q53: Which way do you feel: Add houses in existing neighborhoods, or convert farm and forestland for growth?

PRESERVING FARM AND FORESTLAND IS A VERY IMPORTANT VALUE

Even more (72%) say we should add houses in existing/established neighborhoods, rather than converting farm and forestland

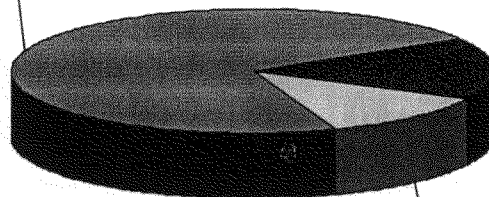
Add houses in existing neighborhoods

Convert farm and forestland for growth

A Lot or Somewhat Closer 72%

A Lot or Somewhat Closer 16%

Don't Know 12%



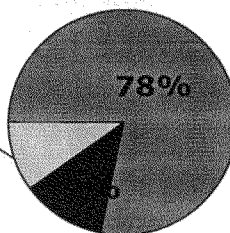
Q53A: Which way do you feel: Add houses in existing neighborhoods, or convert farm and forestland for growth?

PRESERVING FARM AND FORESTLAND IS A VERY IMPORTANT VALUE IN ALL THREE COUNTIES

Add houses in existing neighborhoods

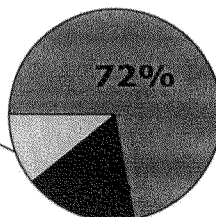
Convert farm and forestland for growth

Don't Know 10%



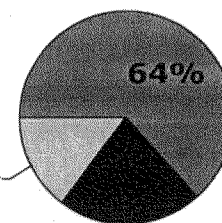
Multnomah County

Don't Know 11%



Washington County

Don't Know 15%



Clackamas County

Q57

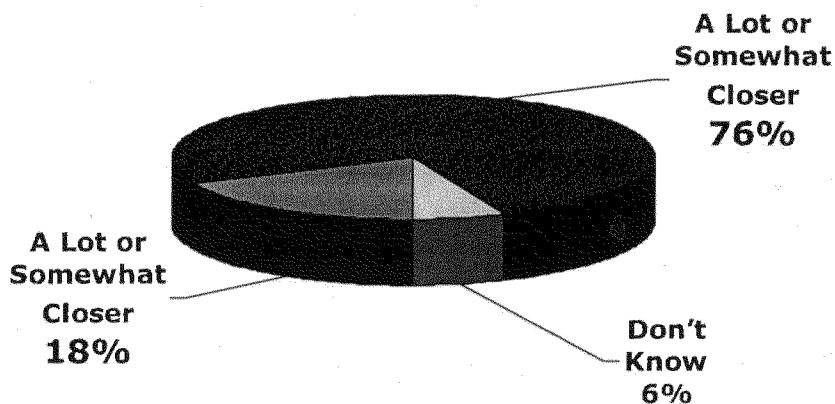
How do you feel: Preserve farm and forestland for contribution they make to our economy or use for other business expansion?

LINK OF FARM AND FORESTLAND TO THE ECONOMY

Over three-quarters say farm and forestland should be preserved *because of the contribution they make to our economy*, rather than making the land available for high tech and other "new" urban business expansion

Allow business development on farm/ forestland

Preserve farm and forestland



25

Davis, Hibbitts & Midghall, Inc. | Forum Presentation February 2006

OBSERVATIONS

- Opinions have remained remarkably consistent over the last ten years
- Opinions among the three counties are generally consistent
- Preserving and not converting farm and forestland are especially important

34

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3

**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: _____

AGENDA NUMBER OR TOPIC: Public Comment on Non Agenda Item

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Susan Andrews

ADDRESS: 13410 NW Springville Rd.

CITY/STATE/ZIP: Portland, OR 97229

PHONE: _____ DAYS: 503 292 6034 EVES: _____

EMAIL: sgoldfield@aol.com FAX: _____

WRITTEN TESTIMONY: Attached to envelope

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.

Submitted by: Susan Andrews
Info as of: January 25, 2010

Support for Rural Reserves in Metro Area 9 /Multnomah Reserves Areas 5-7

**Multnomah County Reserves Citizen
Advisory Committee (CAC)**

Multnomah County Planning Commission

City of Portland

Neighborhood Associations:

Forest Park Neighborhood Association
CPO-7 (adjacent Bethany area Wa. Co.)
Claremont Neighborhood Assn. (Wa. Co.)
Hillside Neighborhood Association (Portland)
Northwest District Association (Portland)

**Agriculture and Natural Resources
Coalition:**

Forest Park Conservancy
Save Helvetia
Tualatin Riverkeepers Washington County
Farm Bureau
Friends of French Prairie
1000 Friends of Oregon
Audubon Society of Portland
Coalition for a Livable Future
Oregon Association of Nurseries
Slow Food
Portland Area Community Supported
Agriculture Coalition
Urban Greenspaces Institute
Oregon Council of Trout Unlimited
Oregon Environmental Council
Friends of Family Farmers
Oregon Tilth
Scotch Church Road Families and Farms
Portland Farmers Market
East Multnomah Soil & Water Conservation
District
West Multnomah Soil & Water Conservation
District
Friends of Council Creek
Multnomah County Chapter of Oregon
League of Conservation Voters

Individuals and elected officials:

Portland Mayor Sam Adams
Amanda Fritz, City of Portland Commissioner
State Rep. Mitch Greenlick
Victoria Lowe, Forest Grove City Council
29 Residents of Springville Road Area, including Malinowski Farms
The Beovich Family, who farm 94 acres on Springville Road

The Great Communities Study considered most of Multnomah Area 7. Their report says:

"The team concurs that preservation of this important ecological area is likely more important to the region than urbanizing it, especially given the other constraints (lack of connectivity and developable land area) and significant opportunities (water quality and view)."

**So why would you leave this area
undesigned?**

#4

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: 01/28/2010

SUBJECT: Urban/Rural Reserves

AGENDA NUMBER OR TOPIC: non-agenda public comment

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Carol Chesarek

ADDRESS: 13300 NW Germantown Road

CITY/STATE/ZIP: Portland, OR 97231

PHONE: _____ DAYS: _____ EVES: _____

EMAIL: _____ FAX: _____

SPECIFIC ISSUE: _____

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.

Carol Chesarek
13300 NW Germantown Road
Portland, Oregon 97231

January 28, 2010

Chair Wheeler and Multnomah County Commissioners
501 SE Hawthorne Blvd.
Portland, Oregon 97214

RE: Rural and Urban Reserves

Chair Wheeler and Commissioners,

Commissioner Cogen said in December that you needed more public input on Reserves, so we're here to help.

Last week, Mollie Nelson and I spoke to you about Governance and Urban Service costs. To summarize last week's messages, Rural Reserves for all of the West Hills, in what Metro now calls Area 9 (Multnomah County Areas 5, 6, and 7), would ensure that we would not face another Area 93 type governance problem for at least 40 years. Rural Reserves also preserve existing rural land uses that probably bring in more in tax revenue than they cost to serve.

Like Mollie, I'd prefer that the county not spend my tax dollars to serve new urban areas.

Rural Reserves shouldn't cost the county anything after the Reserves process ends.

Rural Reserves do not alter any existing property rights or limit any currently allowed uses. They only eliminate the hope of speculative increases in property value that might result if land was brought into the UGB.

As you consider your Reserves decisions, I hope you will all ask how proposed Urban Reserves in our County, and in the region, will make our county more sustainable in a fiscal as well as an environmental sense.

Developing new urban areas will pull public and private money away from existing urban areas. I'm not advocating for no urban growth, but for keeping it limited.

According to a Metro study, infrastructure for UGB expansion areas is twice as expensive as upgrading infrastructure to serve growth in existing urban areas. That's a very rough estimate, but the difference is so large that it seems safe to conclude that infrastructure is generally much more costly in UGB expansion areas.

The full infrastructure cost for North Bethany is estimated to be \$520M, over \$100,000 per home. That's clearly unaffordable for any developer, so Washington County decided to ignore \$186 million in off-site road improvement costs. (And even after ignoring that \$186M and some other costs, the county still hasn't been able to find a workable funding plan.)

It's a good bet that in a few years Washington County will be asking for regional transportation funds to help pay for those off-site road improvements for North Bethany.

Every regional dollar that goes to Washington County to pay for roads to serve new urban areas is a dollar that isn't available to Multnomah County to upgrade and maintain our roads and bridges.

Every private dollar spent on new infrastructure and development in Washington County is a dollar not spent on development or redevelopment in Multnomah County.

These regional reserves decisions have big financial implications for Multnomah County.

The region can't afford to maintain the infrastructure we have, is it sensible to keep building more?

There are several people here today who support Rural Reserves for all of Area 9 (former Multnomah County areas 5, 6, and 7). We also support the Agriculture and Natural Resources Coalition map, in part because we believe that approach would yield a more fiscally sustainable county and region.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Carol Chesarek".

Carol Chesarek

#5

**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: MCC 500 ORS 204.635

AGENDA NUMBER OR TOPIC: Public Comment

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Thomas Buchholz

ADDRESS: 109 10th St

CITY/STATE/ZIP: Oregon City OR

PHONE: _____ DAYS: 503 650 1884 EVES: _____

EMAIL: _____ FAX: _____

SPECIFIC ISSUE: Animal Control

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 25, 2010

Sheriff Daniel Staton
Multnomah County Sheriff's Office
501 SE Hawthorne Blvd., Suite 350
Portland, Oregon, 97214

Dear Sheriff Staton:

My concerns is Multnomah County Code 13.500 (B) "The director and persons duly authorized under ORS 204.635 (2) shall be empowered to exercise the authority of peace officers to the extent necessary to enforce this chapter." (MCC 13.505 (F) (1) Lawful order to impound)

Enclosed is an order to impound (Seizure), served October 6, 2004. The order states, "Multnomah County Animal Services has given you several opportunities since May 11, 2004 to correct these conditions and ongoing violations of the county code."

"...In light of these circumstance and after an extensive investigation I have determined that continuing neglect is occurring in violation of MCC 13.305 (B)(*) that makes it unlawful for any person to [p] hysically mistreat an animal by either abuse or failure to furnish minimum care. In light of the neglect I have determined that the animals housed at your residence require protective custody and Order them immediately impounded pursuant to MCC 1313.505 (B).

You will be held responsible for the costs of impoundment, boarding, and fines/fees associated with impound. Please be advised if you do not voluntarily surrender the animals have the authority under MCC 13.505 (F) to procure a warrant to obtain the possession of the animals."

The above document was signed by the Director of Animal Services Mike Oswald, not an impartial judge. In light of the months between May 11, 2004 and October 6, 2004 the Multnomah County Sheriff's Department should have had ample time to apply to an impartial judge for a search warrant.


ORS 204.635 (3) states, "A deputy has the power to perform an act or duty that the principal has, and a person specially appointed to do a "particular act" has the same power in relation to the particular act authorized..."

Are you authorized by law to put your "John Hancock" on the enclosed document (order of impoundment) or would you apply to an impartial judge for a search warrant, stating the same facts within? By law the Director of Multnomah County Animal Services can have no greater authority than yours.

Another point of concern is the issue of "particular act". Does the term "particular act" necessarily apply to the continuing act of enforcing the state criminal code? Least we forget Sheriff Skipper's predicament. Are Multnomah County Animal Service officers trained to minimum standards and certified by DPSST?

I eagerly await the answers to my questions.

Sincerely,



Tom Buchholz
109 10th Street
Oregon City, OR 97045

cc: Multnomah County Chairman Ted Wheeler
District Attorney Mike Schrunk
Multnomah County Auditor Steve March

ing the director with ten days' prior written notification.

Penalty, see § 13.999

(Ord. 918, passed, 08/06/1998; '90 Code, § 8.10.280, 07/01/1998; Ord. 850, passed, 04/11/1996; Ord. 823, passed, 06/29/1995; Ord. 773, passed, 07/22/1993; Ord. 732, passed, 09/03/1992; Ord. 591, passed, 09/22/1988; Ord. 517, passed, 06/12/1986)

§ 13.405 DECLASSIFICATION OF DANGEROUS DOGS.

A declassification fee in an amount to be set by Board resolution will be assessed when the classification period begins. Declassification will be automatic pursuant to this section.

(A) The following conditions must be met:

(1) Level 1 or Level 2 dogs have been classified for one year without further incident, and two years for Level 3 and Level 4 dogs; and

(2) There have been no violations of the specified regulations; and

(3) Any other condition ordered by the director or hearings officer at the time of classification.

(a) The owner or keeper provides the director with written certification of satisfactory completion of obedience training for the dog classified, with the owner or keeper.

(b) In addition, the director may require the dog owner or keeper to provide written verification that the classified dog has been spayed or neutered.

(B) When the owner or keeper of a potentially dangerous dog meets all of the conditions in this division, the restrictions for Level 1 and Level 2 classified dogs may be removed. Restrictions for Level 3 and Level 4 dogs, and dogs classified as dangerous animals may be removed, with the exception of the secure enclosure.

Penalty, see § 13.999

(Ord. 918, passed, 08/06/1998; '90 Code, § 8.10.285,

07/01/1998; Ord. 909, passed, 06/25/1998; Ord. 850, passed, 04/11/1996; Ord. 517, passed, 06/12/1986)

§ 13.406 OTHER RESTRICTIONS; AUTHORITY TO IMPOSE.

(A) The director or hearings officer shall have authority to determine whether any infraction of this chapter warrants other restrictions and conditions be imposed on the party in violation as provided in § 13.999, in addition to the civil fine.

(B) This determination may be based upon an investigation that includes observation of and testimony about the circumstances and the nature of the infraction, including the animal's behavior, the owner's control of the animal, the care and treatment of the animal, and other relevant evidence as determined by the director. These observations and testimony can be provided by the county animal control officers or by other witnesses who personally observed the circumstances. They shall sign a written statement attesting to the observed circumstances and agree to provide testimony, if necessary.

(C) The director shall give the party in violation written notice by regular or certified mail or personal service of the director's decision imposing a fine and any conditions or restrictions under this section and § 13.999. The notice shall contain a brief explanation why the additional conditions and restrictions were imposed. If the party wishes to challenge the director's decision, the party may appeal, as provided under § 13.508.

('90 Code, § 8.10.290, 07/01/1998; Ord. 850, passed, 04/11/1996; Ord. 732, passed, 09/03/1992)

ADMINISTRATION AND ENFORCEMENT

§ 13.500- POWERS AND DUTIES OF DIRECTOR.

(A) It shall be the responsibility of the director, and those the director designates, to enforce provisions of this chapter.

(B) The director and persons duly authorized under ORS 204.635(2) shall be empowered to exer-

cise the authority of peace officers to the extent necessary to enforce this chapter.

(C) Persons designated by the director to enforce this chapter shall bear satisfactory identification reflecting the authority under which they act, which identification shall be shown to any person requesting it.

(D) No person shall intentionally hinder or interfere with or prevent the exercise of any powers conferred under this chapter or the state statutes incorporated into this chapter under § 13.507, nor shall any person knowingly provide false information to the director. A violation issued under this division is a class C misdemeanor.

(E) The director may waive or modify any of the standards for licensing of facilities as the director considers appropriate to meet peculiar requirements of a particular animal or species.

(F) The director shall be authorized to reduce or waive any fee prescribed by this chapter except those related to licensing and registration.

Penalty, see § 13.999

('90 Code, § 8.10.030, 07/01/1998; Ord. 850, passed, 04/11/1996; Ord. 379, passed, 04/28/1983; Ord. 156, passed, 12/22/1977)

§ 13.501 NOTICE OF INFRACTION.

(A) Whenever a county animal control officer or person designated by the director has reasonable grounds to believe that an animal or facility is in violation of this chapter, that officer or designee shall be authorized to issue the owner or keeper notice of civil infraction.

(B) The notice shall contain the following information:

(1) The name and address, if known, of the owner or person in violation of this chapter and description of the animal, if applicable;

(2) The code section allegedly violated plus a brief descriptive statement of the nature of the violation;

(3) A statement of the amount due as a civil fine for the infraction and notice that the animal is to be impounded if impoundment is authorized hereunder;

(4) A statement explaining all fines are due within 30 days of service of the notice;

(5) A statement advising that if any civil fine is not timely paid, the failure to comply may lead to enhancement of the original fine or additional fines;

(6) A statement that the determination of violation is final unless appealed by filing a written notice of appeal including a fee, in an amount set by Board resolution, to the director of animal control division within 20 days of the date of the notice of infraction was served; and

(7) A statement that an admission of infraction would be on record and could lead to the enhancement of fine on any subsequent infraction issued under this chapter as provided under § 13.999. (Ord. 918, passed, 08/06/1998; '90 Code, § 8.10.035, 07/01/1998; Ord. 909, passed, 06/25/1998; Ord. 850, passed, 04/11/1996; Ord. 732, passed, 09/03/1992)

§ 13.502 SERVICE.

The notice of infraction shall be served on the owner or keeper of the animal or facility in violation of this chapter by personal service or by regular and certified mail with return receipt requested.

(Ord. 918, passed, 08/06/1998; '90 Code, § 8.10.036, 07/01/1998; Ord. 850, passed, 04/11/1996; Ord. 732, passed, 09/03/1992)

§ 13.503 DISMISSAL OF PET LICENSE VIOLATIONS.

Notices of infraction issued for violations of the pet licensing requirement as set forth in §§ 13.100 through 13.103 shall be dismissed by the director upon reasonable proof that the required pet license(s) have been obtained within ten days of service of the notice(s) of infraction.

('90 Code, § 8.10.037, 07/01/1998; Ord. 732, passed, 09/03/1992)

§ 13.504 ADMISSION OF INFRACTION; CONDITIONS.

(A) Any party who is issued a notice of infraction for any offense listed under § 13.999(A) may, in lieu of requesting a hearing, admit the infraction and submit the fine as stated on the notice of infraction to the animal control division. The party may attach a written explanation of mitigating circumstances with the payment of the fine.

(B) Any written explanations submitted under division (A) shall be reviewed by the hearings officer. The hearings officer shall have discretion to reduce the submitted fine and refund any portion not retained based on the written explanation.

(C) When a person issued a notice of infraction for violation of any of the following sections of this chapter: § 13.305(B)(2), (5), (10), (11), or (12); or § 13.306(A), the violation may be compromised as provided in division (D) of this section.

(D) (1) If the person injured, damaged, or otherwise detrimentally impacted by the commission of the violation acknowledges in writing any time before the final decision of the director, hearings officer, or a court of requisite jurisdiction, that the person has received satisfaction for the injury, damage or detrimental impact, the director, hearings officer or court may in their discretion, on payment of any cost or expense incurred, order the notice of infraction dismissed.

(2) The director, hearings officer, or court when issuing an order to dismiss under this section, may impose additional conditions or requirements upon the party issued the violation, if in their determination the additional requirements are necessary to further protect the public health or safety.

(3) Any condition or requirement imposed pursuant to division (D)(2) of this section shall be complied with prior to the entry of the final order dismissing the notice of infraction(s).

(E) The order authorized by division (D) of this section, when made and entered by the director,

hearings officer or court is a bar to another enforcement action for the same violation.

(Ord. 918, passed, 08/06/1998; '90 Code, § 8.10.038, 07/01/1998; Ord. 909, passed, 06/25/1998; Ord. 850, passed, 04/11/1996; Ord. 732, passed, 09/03/1992)

§ 13.505 IMPOUNDMENT.

(A) The director shall operate, maintain or provide for an adequate facility to receive, care for and safely confine any animal delivered to the director's custody under provisions of this chapter, which facility shall be accessible to the public during reasonable hours for the conduct of necessary business concerning impounded animals.

(B) Any animal may be impounded and held at the facility when it is the subject of a violation of this chapter, when an animal requires protective custody and care because of mistreatment or neglect by its owner or keeper or when otherwise ordered impounded by a court, a hearings officer, or the director.

(C) An animal shall be considered impounded from the time the director or the director's designee takes physical custody of the animal.

(D) Impoundment is subject to the following holding period and notice requirements:

(1) An animal bearing identification of ownership shall be held for 144 hours from time of impoundment. The director shall make reasonable effort by phone to give notice of the impoundment to owner or keeper and, if unsuccessful, shall mail written notice to the last known address of the owner or keeper advising of the impoundment, the date by which redemption must be made and the fees payable prior to redemption release.

(2) An animal for which no identification of ownership is known or reasonably determinable shall be held for 72 hours from time of impoundment before any disposition may be made of the animal.

(3) Animals held for periods prescribed under this section, or as otherwise required by ORS 433.340 or 433.390, and not redeemed by the owner

or keeper, shall be subject to such means of disposal as the director considers most humane.

(4) Animals delivered for impoundment by a peace officer who removed the animal from possession of a person in custody of the peace officer shall be held for the period prescribed in division (D)(1) of this section. A receipt shall be given the peace officer, who shall deliver the receipt to the person in custody from whom the animal was taken. The receipt shall recite redemption requirements and shall serve as the notice required by this section.

(E) (1) Any impounded animal shall be released to the owner or keeper or the owner's or keeper's authorized representative upon payment of impoundment, care, rabies, vaccination deposits, license fees, past due fines, and all fees and deposits related to potentially dangerous dog regulations with the addition of the following conditions:

(a) Any animal impounded by court, hearings officer's or director's order shall be released to the owner or keeper or the owner's or keeper's authorized representative upon payment of all fees required in division (E)(1) of this section, and upon receipt of a written order of release from the court of competent jurisdiction or the hearings officer or the director issuing the order.

(b) Any classified potentially dangerous dog shall be released to the owner or keeper or the owner's or keeper's authorized representative upon payment of all fees required in division (E)(1) of this section, and upon verification of satisfactory compliance with the regulations required in §§ 13.401 through 13.406. Failure to be in satisfactory compliance with the potentially dangerous dog regulations within twenty days after the date of impoundment shall result in the owner or keeper forfeiting all rights of ownership of the dog to the county.

(2) An animal held for the prescribed period and not redeemed by its owner or keeper, and which is neither a dangerous or exotic animal or in an unhealthy condition, may be released for adoption subject to the provisions of § 13.506.

(3) The director shall dispose of animals held for the prescribed period without redemption or adoption only by humane means.

(4) At any time the director may euthanize any unlicensed and feral animal, or any unhealthy or injured animal by humane means without regard to the holding period specified in (D)(1)(2) above, provided the animal's injuries must be determined to be life threatening or if the animal is unhealthy the animal's condition must be found to present a health threat to the other animals in the shelter.

(5) Any device attached to any animal upon impoundment shall be retained 30 days by the director should the animal be disposed of as provided in division (E)(3) of this section. Otherwise, the device shall accompany the animal when redeemed or adopted.

(F) (1) Whenever a person in possession of an animal which has been used in the commission of a violation of this chapter and which is the subject of a lawful order of impound refuses to voluntarily release said animal to an animal control officer upon timely and reasonable request, the director shall determine the need to procure the animal's immediate impoundment.

(2) A limited search warrant authorized under this section shall be sought by the division after the director has determined the animals immediate impoundment is necessary based on one or more of the following factors:

(a) The public's health and safety is at risk by the subject animal remaining in the possession of the owner.

(b) The health and welfare of the subject animal is at risk by the animal remaining in the possession of the owner or keeper.

(c) The owner/keeper has failed to comply with requirements specified in § 13.307.

(3) The director shall request the assistance of the Sheriff to procure and execute the limited search warrant. The Sheriff shall prepare the application for the warrant including the affidavit in support thereof. The Sheriff shall obtain the warrant in



Dept of Business and Community Services

MULTNOMAH COUNTY OREGON

Animal Services Division

P.O. Box 698, 1700 West Historic Columbia River Hwy Troutdale, Oregon 97060
(503) 988-PETS (7387) Fax (503) 988-3002

October 6, 2004

ORDER TO IMPOUND

TO: Vicki Lovvorn
11730 SE Salmon St.
Portland, OR 97216

This Impoundment Order is based upon the following facts listed below:

On October 5, 2004, you were served with notice of potential impound of your animals. This notice provided you with the opportunity to demonstrate proof of medical treatment of the animals in your custody. Your veterinarian, Dr. Dahlquist had been to your residence on September 27, 2004, and provided you with specific instructions on treating and correcting medical conditions prevalent in the majority of your animals.

On October 6, 2004, Multnomah County Animal Services returned to your residence with a veterinarian to obtain verification of the required medical treatment. The veterinarian observed and noted the following problems:

1. The medication Ivermectin (used for ear mite treatment) was expired as of April, 2004. The dosages given of Ivermectin were inappropriate.
2. The treatment was not supplied to all animal at once which is the criteria necessary to adequately treat the animals. Some felines have not received any treatment for any of the medical issues.
3. You failed to provide proof of alternate medicine for treatment of pregnant animals and did not have enough flea control medication (enough seen to maybe treat eight (8) animals).
4. Many of the animals had no vaccine records.
5. Cleaning solution mixed at an improper ratio (based on color of solution, rather than required mixture ratio).
6. Maintenance of inadequate records and tracking of animals.
7. No quarantine area.
8. Obtained three (3) additional cats from and outside source and placed them in with the sick population.

Multnomah County Animal Services has given you several opportunities since May 11, 2004 to correct these conditions and on-going violations of the County Code. The poor health of many of your animals has been documented by two veterinarians and animal

services officers, including the communicable nature of the diseases and lack of a viable quarantine area.

In light of these circumstance and after an extensive investigation I have determined that continuing neglect is occurring in violation of MCC 13.305 (B)(8) that makes it unlawful for any person to "[p]hysically mistreat an animal by either abuse or neglect or failure to furnish minimum care." In light of this neglect I have determined that the animals housed at your residence require protective custody and Order them immediately impounded pursuant to MCC § 13.505(B).

You will be held responsible for the costs of impoundment, boarding, and fines/fees associated with impound. Please be advised if you do not voluntarily surrender the animals I have the authority under MCC 13.505 (F) to procure a warrant to obtain the possession of the animals.

Director *W. D. Dill* Date 10/7/04

Person/Legal Entity Served *Timothy (Tim) Miller*

Date of Service 10/7/04

ORDER TO IMPOUND

204.460 [Repealed by 1953 c.306 §18]
 204.465 [Repealed by 1953 c.306 §18]
 204.470 [Repealed by 1953 c.306 §18]
 204.475 [Repealed by 1953 c.306 §18]
 204.480 [Repealed by 1953 c.306 §18]
 204.485 [Repealed by 1953 c.306 §18]
 204.490 [Repealed by 1953 c.306 §18]
 204.495 [Repealed by 1953 c.306 §18]
 204.500 [Repealed by 1953 c.306 §18]
 204.505 [Repealed by 1953 c.306 §18]
 204.510 [Repealed by 1953 c.306 §18]
 204.515 [Repealed by 1953 c.306 §18]
 204.520 [Repealed by 1953 c.306 §18]
 204.525 [Repealed by 1979 c. 492 §1]
 204.530 [Repealed by 1953 c.306 §18]
 204.535 [Repealed by 1953 c.306 §18]
 204.540 [Repealed by 1953 c.306 §18]
 204.545 [Repealed by 1953 c.306 §18]
 204.550 [Repealed by 1953 c.306 §18]
 204.555 [Repealed by 1953 c.306 §18]

DEPUTIES AND OTHER EMPLOYEES

204.601 Number and appointment of deputies and other employees. (1) The county court or board of county commissioners of each county shall fix the number of deputies and employees of county officers whose compensation is to be paid from county funds.

(2) All such deputies and employees shall be appointed by such county officer, and shall hold office during the pleasure of the appointing officer. [1953 c.306 §9]

204.605 [Repealed by 1953 c.306 §18]
 204.610 [Repealed by 1953 c.306 §18]
 204.615 [Repealed by 1953 c.306 §18]
 204.620 [Repealed by 1953 c.306 §18]
 204.625 [Repealed by 1977 c.168 §6]
 204.630 [Amended by 1977 c.168 §1; repealed by 1981 c.48 §8]

204.635 Deputies of sheriff; special appointments; authority of deputy; liability of sheriff for certain deputies. (1) A sheriff's deputies shall be appointed by the sheriff in writing and continue during the pleasure of the sheriff. The sheriff of any county may appoint deputies in the county for the purpose only, and with authority only, to receive and serve summons and civil process in any suit or action. A certified copy of the appointment of a deputy sheriff shall be filed with the county clerk, and the person appointed shall, before entering upon the duties of the office, take and file with the county clerk the oath of office.

(2) A sheriff may also, by special written appointment, authorize any other person to do any particular act. A certified copy of

such appointment shall be filed with the county clerk, unless indorsed upon the process, order or other paper so authorized to be served or executed.

(3) A deputy has the power to perform any act or duty that the principal has, and a person specially appointed to do a particular act has the same power in relation to the particular act authorized. The principal is responsible for the conduct of such deputy or person specially appointed except as provided in subsection (4) of this section.

(4) In counties having a civil service system covering deputy sheriffs, the sheriff shall not be responsible for the conduct of deputy sheriffs or persons specially appointed as provided in subsection (2) of this section. [Amended by 1963 c.331 §12]

204.640 [Repealed by 1981 c.48 §8]
 204.645 [Amended by 1953 c.306 §17; repealed by 1965 c.221 §27]
 204.650 [Repealed by 1981 c.48 §8]
 204.655 [Repealed by 1953 c.306 §18]
 204.660 [Repealed by 1953 c.306 §18]
 204.665 [Repealed by 1953 c.306 §18]
 204.670 [Repealed by 1953 c.306 §18]
 204.675 [Repealed by 1953 c.306 §18]
 204.680 [Repealed by 1953 c.306 §18]
 204.685 [Amended by 1961 c.559 §1; repealed by 1979 c. 492 §1]
 204.690 [Repealed by 1953 c.306 §18]
 204.695 [Repealed by 1953 c.306 §18]
 204.700 [Amended by 1963 c.519 §26; repealed by 1979 c.492 §1]
 204.801 [1953 c.306 §6; repealed by 1981 c.48 §8]
 204.805 [Repealed by 1981 c.48 §8]
 204.810 [Repealed by 1953 c.306 §18]
 204.815 [Repealed by 1953 c.306 §18]
 204.820 [Repealed by 1979 c.492 §1]
 204.825 [Repealed by 1953 c.306 §18]
 204.830 [Repealed by 1953 c.306 §18]
 204.835 [Repealed by 1953 c.306 §18]
 204.840 [Repealed by 1953 c.306 §18]
 204.845 [Repealed by 1979 c.492 §1]
 204.850 [Repealed by 1979 c.492 §1]
 204.855 [Amended by 1957 c.359 §2; 1963 c.519 §27; 1965 c.619 §36; repealed by 1979 c.492 §1]
 204.860 [Repealed by 1953 c.306 §18]
 204.865 [Repealed by 1953 c.306 §18]
 204.870 [Amended by 1963 c.519 §28; repealed by 1981 c.48 §8]
 204.905 [Amended by 1963 c.519 §29; repealed by 1979 c.492 §1]
 204.910 [Amended by 1959 c.53 §1; 1963 c.519 §30; repealed by 1979 c.492 §1]
 204.915 [Repealed by 1959 c.53 §3]
 204.920 [1955 c.441 §1; 1959 c.53 §2; 1963 c.519 §31; 1965 c.344 §28; 1979 c.190 §405; repealed by 1979 c.492 §1]

CHAPTER III.

OF SHERIFFS.

§ 1034. Office of Sheriff, Where Kept, and Office Hours.

The sheriff of each county shall keep an office in such room or building, at the place appointed by law for holding courts therein, as the county court may by order designate. The sheriff's office shall be kept open on the days and during the hours required for the county clerk's office to be so. [L. 1862; D. § 960; H. § 991; B. & C. § 1009.]

OFFICE HOURS: See § 1030, *ante*.

§ 1035. Service of Papers on Sheriff—How Made at Office.

Service of a paper upon the sheriff may be made by delivering it to a person belonging to and in the office during office hours, or if no such person be there, by leaving it in the office, or if the office be not open, by delivering it to the county clerk or his deputy, at the county clerk's office. The service in the cases provided in this section is equivalent to a personal service on the sheriff. [L. 1862; D. § 961; H. § 992; B. & C. § 1010.]

§ 1036. Sheriff May Have Deputy, How Appointed.

A sheriff may have a deputy, to be appointed by him in writing, and to continue during his pleasure. A certified copy of the appointment of a deputy sheriff shall be filed with the county clerk, and the person appointed shall, before entering upon the duties of the office, take and file with the county clerk the oath of office. [L. 1862; D. § 962; H. § 993; B. & C. § 1011.]

Service of notice by deputy sheriff in his own name is insufficient: *Dennison v. Story*, 1 Or. 272.

A sheriff may appoint a jailor for whose acts he shall be responsible, but there is no law requiring the county to pay for his service: *Crossen v. Wasco County*, 6 Or. 216.

Under this section and § 2934, B. & C. (L. 1895, p. 77), the sheriffs of the several counties have power to appoint the number of deputies provided for in that act, who shall be respectively entitled to the salaries

there named, but other deputies must be appointed and their compensation fixed by the county courts under § 11 of said act. The claim of a deputy sheriff for the salary allowed him by law is a personal right, to be enforced in his own name, and not by his superior, unless the claim has been assigned: *Henry v. Yamhill County*, 37 Or. 562, 62 Pac. 375.

The act here referred to has been superseded by other legislation on the subject which will be found in §§ 3062-3095, *post*.

§ 1037. Special Appointment, How Made—Sheriff's Responsibility.

A sheriff may also, by special written appointment, authorize any other person to do any particular act. A certified copy of such appointment shall be filed with the county clerk, unless indorsed upon the process, order, or other paper so authorized to be served or executed. A deputy has the power to perform any act or duty that his principal has, and a person specially appointed to do a particular act has the same power in relation to the particular

(§§ 1034-1037)

act authorized, and the principal is responsible for the conduct of such deputy or person specially appointed. [L. 1862; D. § 963; H. § 994; B. & C. § 1012.]

The sheriff has been designated by the statute as the officer to post local option election notices. If, in the performance of that duty, he employs persons whom he does not, by special written appointment, authorize to perform such service, under this section, and the persons so selected discharge that duty properly, the only credit he usually receives is the satisfaction of having performed an obligation which the law imposed. If his agents fail, however, to post the notices properly, in consequences of which the will of a majority of the people, expressed at the polls, is defeated, the sheriff must necessarily be subjected to the just censure which an outraged public entertains. The self-approbation for an obligation faithfully

performed, and the blame of the community for a service neglected, are generally sufficient inducements to guarantee the performance of a public duty enjoined. These propelling incentives support the conclusion that a sheriff may select as his agents persons whom he does not specially appoint as deputies, and that they may legally post local option election notices: *Roesch v. Henry*, 54 Or. 230, 103 Pac. 443.

A sheriff has power to appoint a keeper for attached property where necessary, and the sheriff is not liable for the compensation of such keeper unless he has expressly agreed to be: *Hawley v. Dawson*, 16 Or. 348, 13 Pac. 592.

§ 1038. Sheriff, When to Furnish Copy of Process.

When any process, order, or paper is delivered to an officer, to be executed or served, he shall deliver to the person delivering it, if required, on payment of his fee, a written memorandum, specifying the names of the parties in the process, order, or paper, the general nature thereof, and the day on which it was received. He shall also, when this Code or other statute requires it, or upon the request of the party served, without fee, deliver to him a copy thereof. [L. 1862; D. § 964; H. § 995; B. & C. § 1013.]

§ 1039. How to Execute Process.

An officer to whom any process, order, or paper is delivered shall execute or serve it according to its command or direction, or as required by this Code or other statute, and must make a written return of the execution or service thereof. [L. 1862; D. § 965; H. § 996; B. & C. § 1014.]

A sheriff has no right to be wiser than his process. What he is in due form commanded to do, he is to do, and will be protected in doing. He cannot refuse to return or execute process, and thus drive the parties to legal proceedings to determine the legality of the judgment under which the execution issued: *Richards v. Nye*, 5 Or. 336.

Where a sheriff has levied on goods of a judgment debtor, under an execution regular on its face, and issued out of a court of competent jurisdiction, he is protected by the writ; and evidence to charge him with knowledge that the judgment on which the execution was based had in fact been paid is inadmissible in an action for illegal seizure: *Barr v. Combs*, 29 Or. 399, 45 Pac. 776.

It is a sheriff's duty in his return to certify only to the acts performed by him in his official capacity in the levy of an execution; and his certificate as to some agreement between the parties, of which he may have had knowledge, is not admissible against either of them: *Barr v. Combs*, *supra*.

If a sheriff neglects or refuses to levy an execution in his hands on property of the judgment debtor, and any injury results to the execution creditor from such neglect or refusal, an action may be maintained against the sheriff on his official bond: *Habersham v. Sears*, 11 Or. 431, 5 Pac. 208, 50 Am. Rep. 481.

In an action against a sheriff for neglect of official duty, the complaint must allege the particular neglect or omission upon which the plaintiff relies: *Kohn v. Hinshaw*, 17 Or. 308, 20 Pac. 629.

A return of the officer making a tax sale, consisting of a printed notice of the tax sale cut from a newspaper, headed, "sheriff's sale for delinquent taxes," which was attached to the delinquent tax roll, and upon which was interlined or written at the time of or after the sale, opposite the name and description of the property, the name of the purchaser and the selling price in each case, to which was attached this certificate: "The foregoing return of delinquent tax sales for the year 1898, is true and correct in every detail. Dated the 27th of October, 1899," is not in compliance with the requirements of the statute: *Ayers v. Lund*, 49 Or. 308, 89 Pac. 806.

A due return showing the advertisement of delinquent property and the sale are essential elements in proceedings to sell land for taxes, and without them there is no evidence of title in the county, since their absence cannot be cured by the legislature, for then there would not be notice: *Ayers v. Lund*, *supra*.

As to when the sheriff has the right to call a jury for his protection in holding property in replevin actions, see § 229, *ante*, and note.

§ 1040. When He May Command the Power of the County.

When an officer finds, or has reason to apprehend, that resistance will
(§§ 1038-1040)

#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: 1-28-10

SUBJECT: Urban and Rural Reserves

AGENDA NUMBER OR TOPIC: Public Comment

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Laura Masterson

ADDRESS: 6632 SE 47th Ave

CITY/STATE/ZIP: Portland OR 97206

PHONE: _____ DAYS: 971-645-3293 EVES: _____

EMAIL: Laura@47thAveFarm.com ~~Masterson~~ FAX: _____

WRITTEN TESTIMONY: emailed & map handout

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.

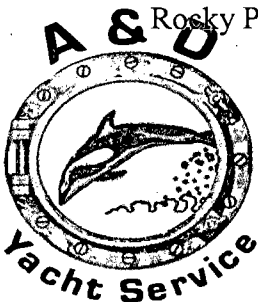
The Conditional Use process will address the concerns raised regarding environmental impact, access, parking, the debris boom, and separation of the marinas.

Enclosures

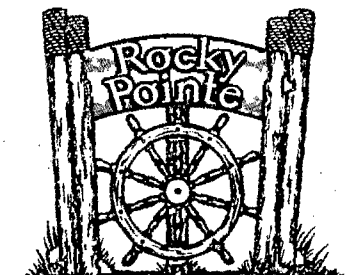
- Six photos showing the high degree of committed development
- Copy of Department of State Lands lease for Rocky Pointe Marina that shows the provision for 15 year perpetual renewals
- Biological Assessment showing no significant long term adverse effects
- A page from our joint application to National 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,

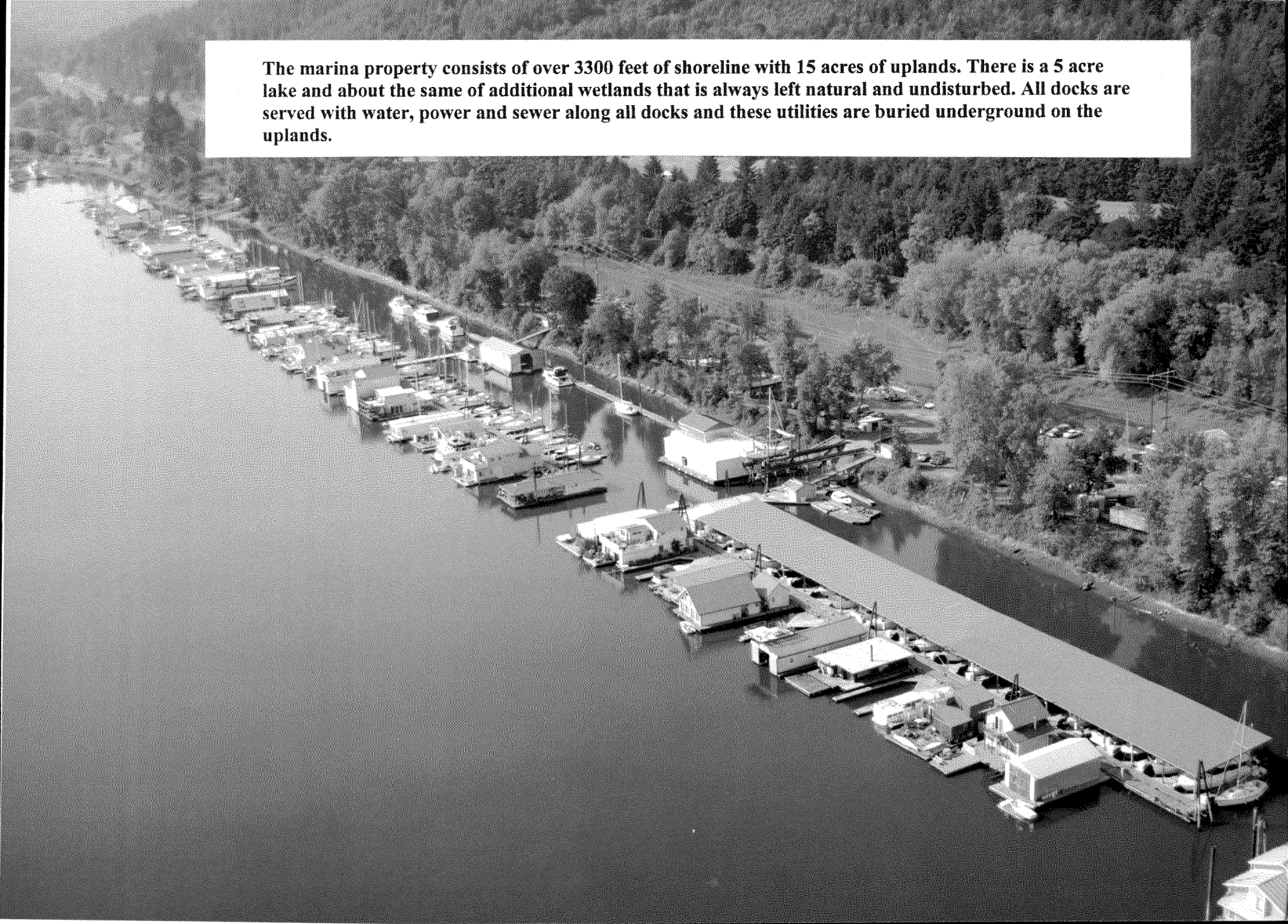
Stan and Jen Tonneson
Rocky Pointe Marina

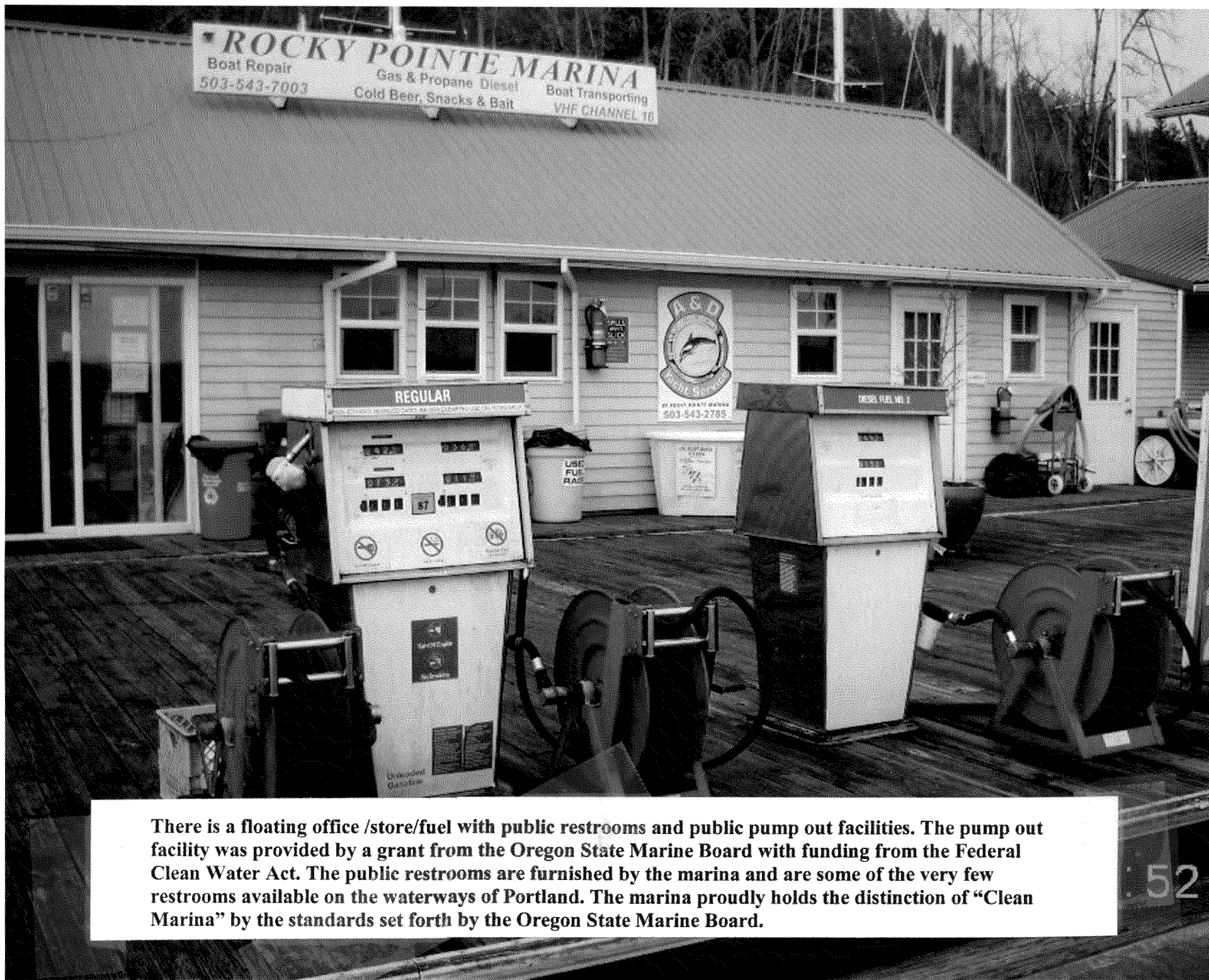


More than just a great marina!
Boat Yard • Professional Boat Repair • Fuel Dock



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.

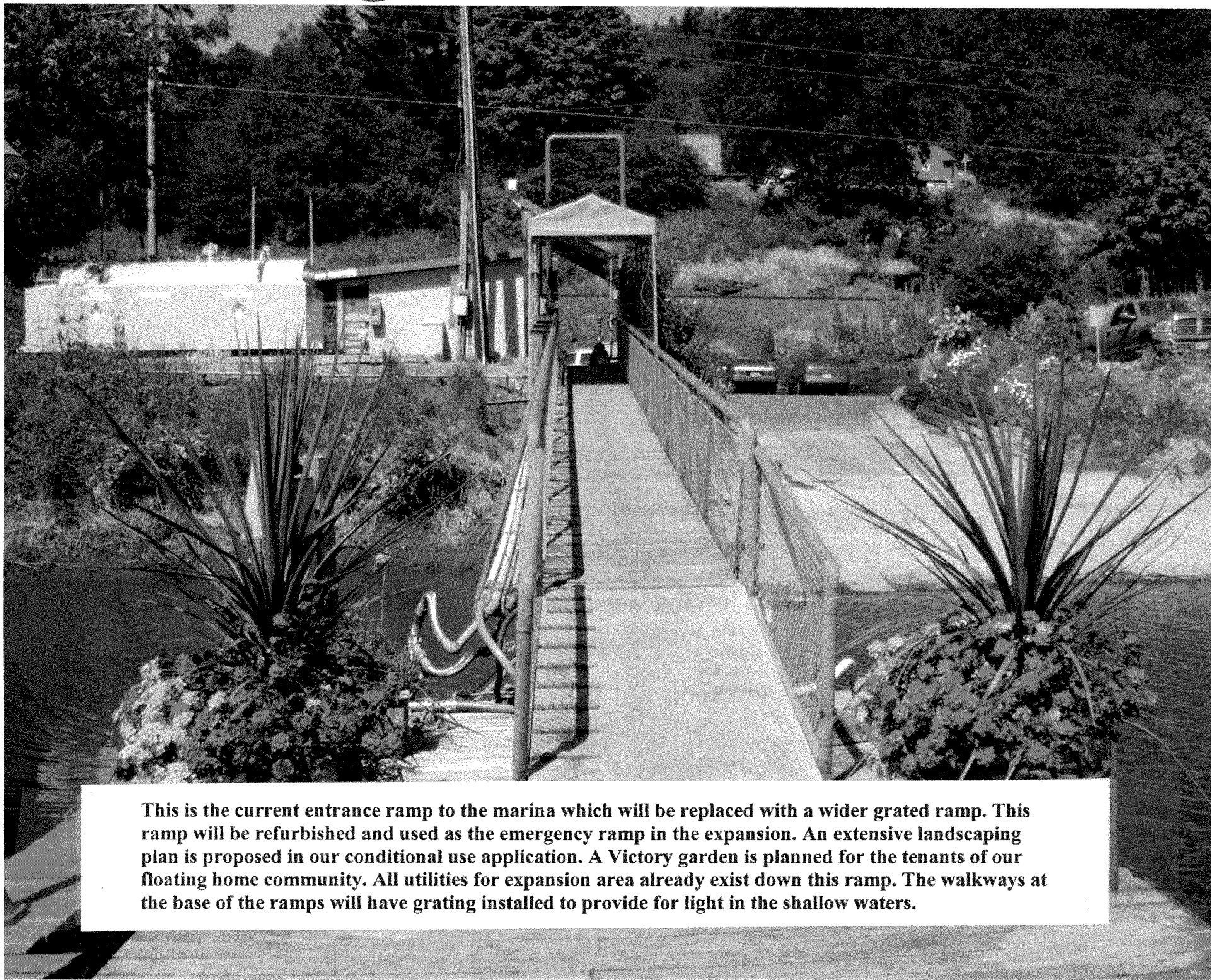




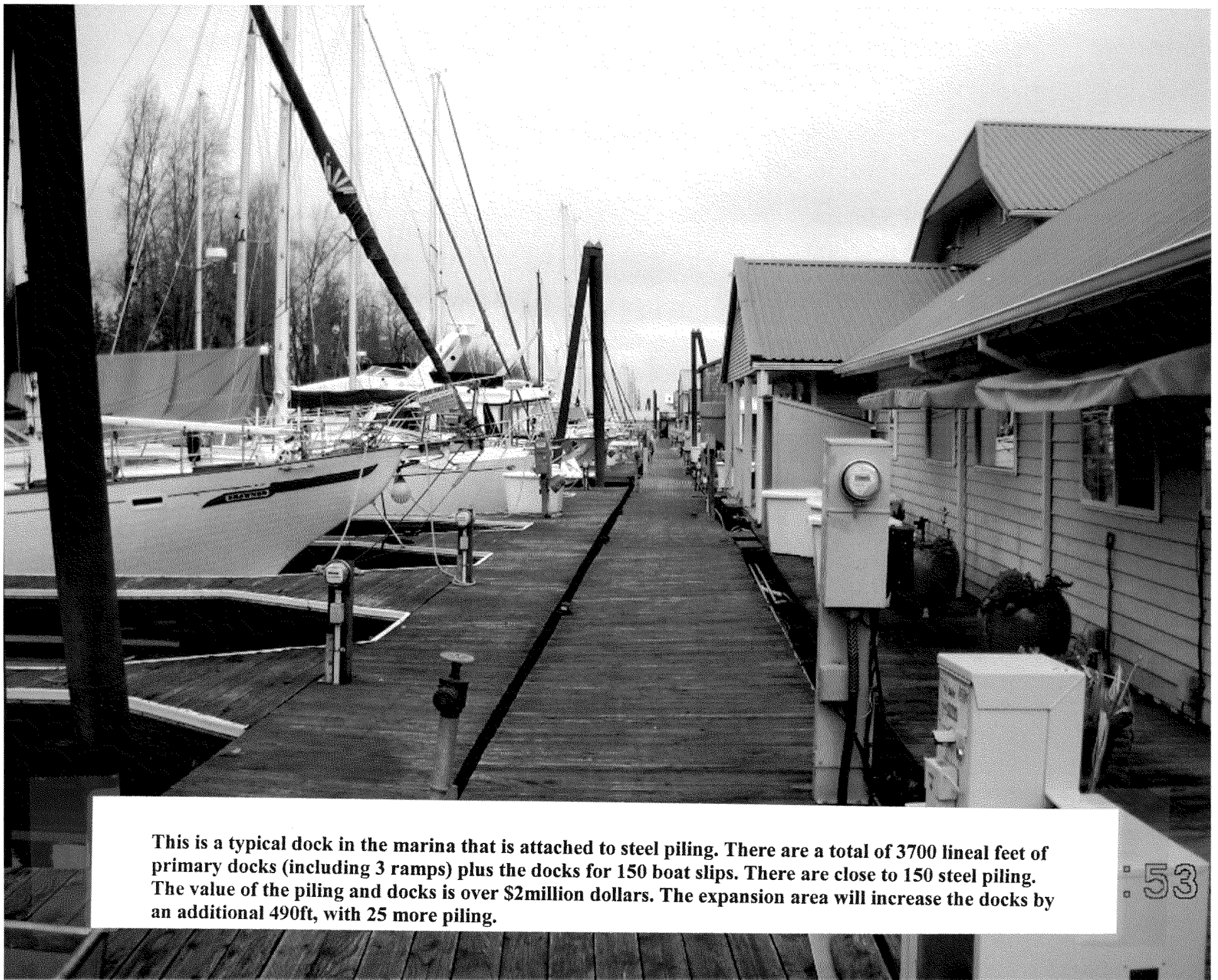
There is a floating office /store/fuel with public restrooms and public pump out facilities. The pump out facility was provided by a grant from the Oregon State Marine Board with funding from the Federal Clean Water Act. The public restrooms are furnished by the marina and are some of the very few restrooms 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.



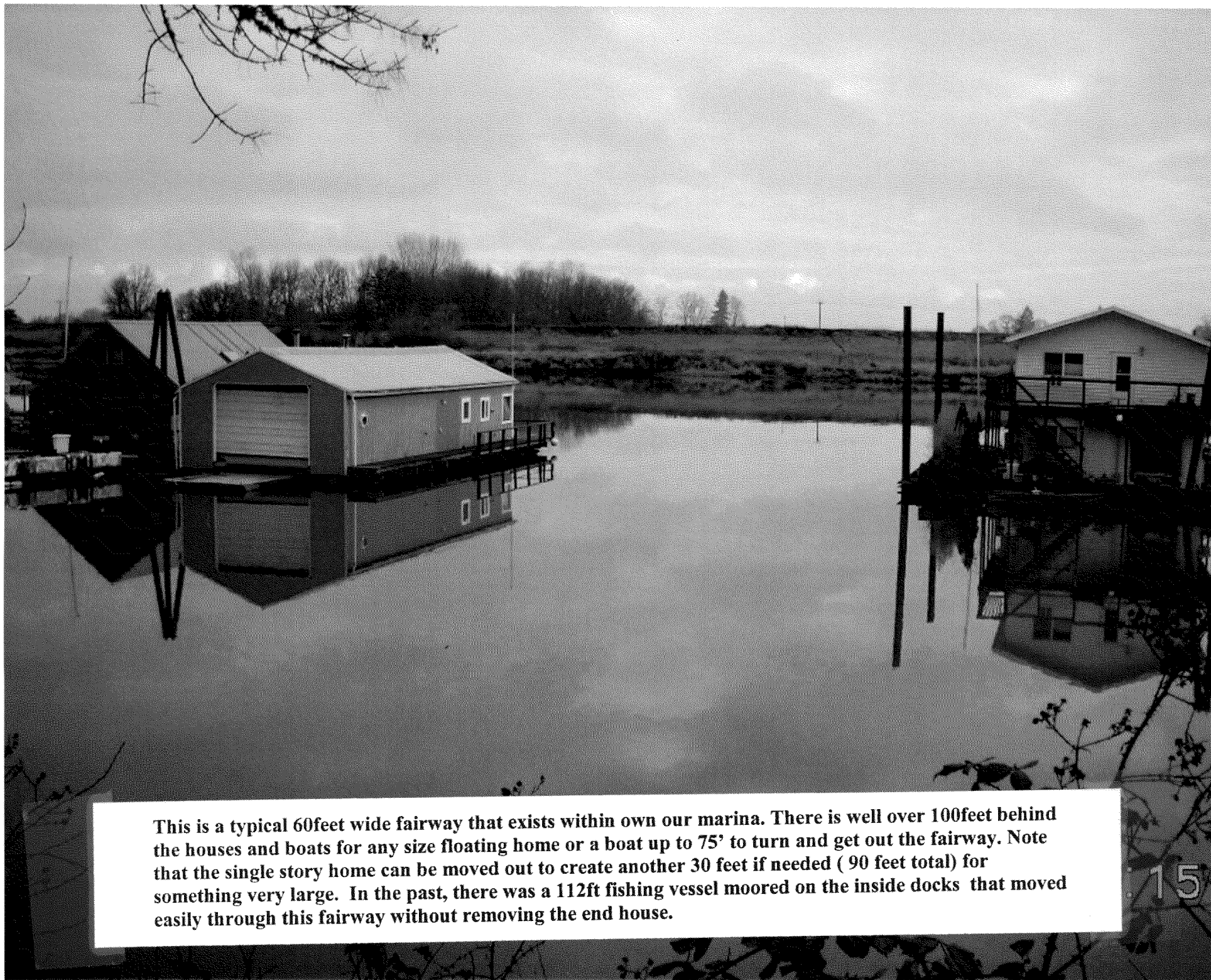
This is the railway system for our Travelift crane that drives out over the water to lift boats out the water. The wash down pit just inland of the rails has a cleaning system that filters and reclaims all the water. The value of the lifting facility exceeds 1/2 million dollars. This picture was taken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



Ellis Ecological Services, Inc.

Potential Effects of Proposed Expansion of Rocky Pointe Marina

A Biological Assessment (BA) has been prepared to address the potential effects of the proposed Rocky Pointe Marina Expansion Project on Endangered Species Act (ESA) listed fish, wildlife, and plant species and their habitats. It provides a detailed description of the project and the existing environmental conditions within the marina. The BA is a standardized communication with state and federal agencies which have legally defined the terms and methods used in making a determination of effect.

Fish-

Based on the analysis of effects and consideration of conservation measures that would be implemented to avoid and reduce these effects, we determined that incidental harm or harassment of juvenile or adult ESA-listed salmonids during the proposed Project is extremely unlikely to occur. However, even a remote possibility cannot be entirely discounted and National Marine Fisheries has defined this level of risk as "*likely to adversely affect*".

Mindful design of the proposed expansion has largely limited the risk of harming or harassing fish to short term construction impacts resulting from the removal of old creosote piling and the driving of new steel pile. Short-term and localized increases in turbidity and temporary acoustic disturbances could create stresses or behavioral changes for fish within the project area during construction activities. By scheduling any in-water work during the preferred Oregon Department of Fish and Wildlife (ODFW) in-water work window for Multnomah Channel (*July 1 to October 31*), vulnerable life stages and peak migration periods will be avoided.

Long-term project effects to fish may arise from the shading caused by over-water and in-water structures. Shading has sometimes been identified as increasing predation on juvenile salmonids and in some environments, such as Puget Sound, it has been shown to effect shallow water plant growth. To ensure there would be no shading problems with this project, grated metal walkways have been used to maximize light penetration. Additionally, the proposed expansion has been intentionally placed so that less than three percent of the entire project (0.69 acres) would be over shallow water habitat.

The potential short-term impacts on water quality and feeding opportunities are expected to be minimal. Project impacts would be limited to short-term "harassment" of ESA-listed salmonids, meaning there is no reasonable expectation that fish will be killed or injured as a result of the Project. The implementation of conservation measures and best management practices will help reduce the potential for effect to listed salmonids.

No significant long-term adverse impacts (months to years) to ESA-listed salmonids are anticipated. The removal of creosote-treated wood piling is expected to improve habitat for listed fish species in the Multnomah Channel. The Project would not affect the long-term survival and/or recovery of any listed salmonids that utilize the Project action area.

Wildlife -

This reach of the Multnomah Channel has been developed as a residential area for decades and continues to support a diversity of wildlife within the vicinity of the project action area. There are no ESA-listed plant or wildlife species known to occur at the Project site, and as such the BA does not discuss potential effects to plants or wildlife. The proposed Project is expected to have "no effect" on ESA-listed plant or wildlife species or their habitat.

Wildlife currently utilizing the channel within the Marina includes species that are typically unconcerned with human presence or activity such as crows, migratory geese, beavers and nutria. Additionally, residents of the existing marina encourage the presence of such backyard birds as humming birds and finches.

Birds that prey on fish such as eagles, osprey and herons are known to forage and roost along the Multnomah Channel, in the vicinity of the proposed project. The closest known bald eagle and osprey nests are located approximately 1.4 and six miles from the proposed project site respectively. Acoustic disturbances resulting from pile driving could deter use during construction activities but will not be of sufficient duration to result in any permanent avoidance of the area. Pile driving activities would occur within the preferred ODFW in-water work window (*July 1st thru October 31st*), which avoids sensitive breeding seasons for both the eagle (February and March) and osprey (March thru May).

The Project site is not considered a source of sediment contamination and construction activities are not expected to significantly increase the bio-availability of contaminants to wildlife. Incidental harm or harassment of bird species by the proposed project would be avoided through prudent use of appropriate conservation measures.

EXECUTIVE SUMMARY

This Biological Assessment (BA) was prepared in accordance with Section 7(c) of the Endangered Species Act (ESA) to address the potential effects of the proposed Rocky Pointe Marina Expansion Project on federally listed fish, wildlife, and plant species and their habitats. Rocky Pointe Marina Portland, LLC is seeking a joint Section 10 removal/fill permit from the U.S. Army Corps of Engineers (Corps) and Oregon Department of State Lands (DSL) to upgrade and expand their existing moorage facility on the Multnomah Channel, near Scappoose, Oregon. The new moorage facility would add 21 houseboat moorages and 10 boat slips designed to accommodate modern floating homes. The Project would include the removal of up to six wood piling (including one that is creosote treated) and the installation of up to 30 hollow, steel piling. This document serves, in part, as consultation with National Marine Fisheries Service (NMFS). Conservation measures are identified in the BA to avoid and minimize adverse effects of the proposed action. Also included in this document is an assessment of the Project effects on Essential Fish Habitat (EFH) as required under the Magnuson-Stevens Act (MSA).

In assessing the potential effects of the proposed Project on listed fish, wildlife, and plant species and their habitats, the environmental baseline was documented, the proposed actions were evaluated to assess the effect on the environmental baseline, and the results of these evaluations were used to arrive at a determination of effect. Emphasis in the effects analysis was placed on short-term and localized sediment disturbance, water quality effects, benthic invertebrate loss/disturbance, acoustic disturbance, and shading effects associated with piling and dock installation at the Project site. Indirect, interrelated, interdependent and cumulative effects of the various Project components were also considered.

Based on the analysis of effects and consideration of conservation measures that would be implemented to avoid and reduce effects, we determined the following:

Fish Species -

The listed fish species that may occur in the vicinity of the proposed Project site include eight Evolutionarily Significant Units (ESUs) and five Distinct Population Segments (DPSs) of anadromous salmonids.

Incidental "take" (i.e. harm or harassment) of juvenile or adult listed salmonids during the proposed Project is unlikely to occur, but cannot be entirely discounted. This risk will be minimized through prudent implementation of appropriate conservation measures. By scheduling any in-water work during the preferred Oregon Department of Fish and Wildlife (ODFW) in-water work periods for Multnomah Channel (*July 1 to October 31*), potential impacts to juvenile salmonids will be minimized through the avoidance of vulnerable life stages and peak migration periods (ODFW 2000). The proposed Project is not expected to significantly detain or adversely affect adult salmonids that migrate upstream through the Multnomah Channel.

Potential short-term and localized adverse effects on listed fish species may include: behavioral changes associated with short-term and localized increases in turbidity and resuspension of

sediment contaminants, temporary acoustic disturbances, and short-term reductions in benthic invertebrate production. The installation of piling, floating docks, and houseboat moorages would increase shading in the Multnomah Channel; these over-water and in-water structures could provide preferred habitat for salmonid predators, and therefore result in increased predation of juvenile salmonids. Shading may also cause a small reduction in aquatic vegetation (i.e. benthic algae and phytoplankton) at the Project site. The installation of piling is not expected to significantly reduce the abundance of benthic food organisms within the Project action area. No maintenance dredging is proposed as part of this Project. The Project site does not experience excessive sediment accumulation and it is not likely that maintenance dredging would be required in the future to maintain navigable depths within the expanded marina.

After evaluating the potential effects and available scientific and commercial data, we conclude that the proposed Project is "*likely to adversely affect*" the following three ESUs and two DPSs of federally listed salmonids that are likely to occur in the vicinity of the proposed action:

- Lower Columbia River Coho Salmon (*Oncorhynchus kisutch*)
- Lower Columbia River Chinook Salmon (*Oncorhynchus tshawytscha*)
- Upper Willamette River Chinook Salmon (*Oncorhynchus tshawytscha*)
- Lower Columbia River Steelhead Trout (*Oncorhynchus mykiss*)
- Upper Willamette River Steelhead Trout (*Oncorhynchus mykiss*)

This determination is primarily based on: (1) localized, short-term (hours to days) acoustic disturbances caused by pile driving that may result in sublethal effects to individual salmonids; (2) temporary disturbances (hours to weeks) to water quality and benthic food organisms that would occur during dock and piling installation in the Multnomah Channel; and (3) long-term shading effects caused by over-water and in-water structures that could result in increased salmonid predation and a reduction in primary productivity. The Project site is not considered a source of sediment contamination. The proposed construction activities are not expected to significantly increase the bioavailability of contaminants to salmonids or their prey base.

Usage of the Multnomah Channel by the remaining eight listed salmonids would be so rare an event that the likelihood of adverse effects would be negligible. Therefore, we conclude that the determination of "*may affect, not likely to adversely affect*" is appropriate for the following eight ESUs/DPSs of federally listed salmonids:

- Columbia River Chum Salmon (*Oncorhynchus keta*)
- Snake River Sockeye Salmon (*Oncorhynchus nerka*)
- Upper Columbia River Steelhead Trout (*Oncorhynchus mykiss*)
- Upper Columbia River Spring Chinook Salmon (*Oncorhynchus tshawytscha*)
- Middle Columbia River Steelhead Trout (*Oncorhynchus mykiss*)
- Snake River Spring/Summer Chinook Salmon (*Oncorhynchus tshawytscha*)
- Snake River Fall Chinook Salmon (*Oncorhynchus tshawytscha*)
- Snake River Basin Steelhead Trout (*Oncorhynchus mykiss*)

The potential short-term impacts on water quality and benthic forage are expected to be minimal. No significant long-term adverse impacts (months to years) to listed salmonids are anticipated.

The removal of creosote-treated wood piling is expected to improve habitat for listed fish species in the Multnomah Channel. No significant indirect, cumulative, interrelated or interdependent effects associated with the proposed Project have been identified.

NMFS has recently established new critical habitat designations for many salmon and steelhead populations on the West Coast (70 FR 52630). Four of the 13 salmonid populations that may occur in Multnomah Channel have designated critical habitat within the Project action area. NMFS is in the process of developing new critical habitat for the Lower Columbia River Coho Salmon ESU. Based on a consideration of potential Project impacts, we conclude that the proposed action is "*likely to adversely affect*" designated critical habitat for the following four listed salmonids within the Project action area: Lower Columbia River chinook salmon, Upper Willamette River chinook salmon, Lower Columbia River steelhead trout, and Upper Willamette River steelhead trout. The effects of the proposed action will lower the value of water quality and forage in the action area over the short term, but will not destroy or adversely modify critical habitat over the long-term.

NMFS is also reviewing the regulatory definition of "destruction or adverse modification" for critical habitat (70 FR 52630). Under the current rule, the proposed Project would result in a "*no destruction or adverse modification*" of designated critical habitat for listed salmonids (*ibid*). Pending issuance of a new regulatory definition, NMFS is relying on the statutory standard, which relates critical habitat to conservation of the species (70 FR 52630). It is possible that NMFS may modify the critical habitat definition prior to implementation of the proposed Project.

Wildlife and Plant Species –

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.

Essential Fish Habitat -

Based on consideration of the EFH requirements of the Coastal Pelagic Species (CPS) fishery, West Coast groundfish fishery, and the Pacific coast salmon fishery, the potential direct, indirect, and cumulative effects of the proposed Project actions are "*likely to adversely affect*" identified EFH for Pacific salmon and starry flounder in the short-term. The implementation of appropriate conservation measures would help minimize impacts to EFH for these species. No significant long-term effects to EFH are anticipated.

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1.0 INTRODUCTION

1.1 BACKGROUND

Rocky Pointe Marina has been in existence since the late 1920's. The majority of its facilities were constructed during the 1960's. The current owners, Rocky Pointe Marina Portland, LLC (RPM) provide houseboat, boathouse, boat slips and covered moorage for approximately 250 tenants. RPM is proposing to upgrade and expand the marina by reconfiguring existing facilities to provide a total of 28 boat slips sized for today's larger recreational boats and 21 contemporary houseboat moorages. The additional structures would be constructed using modern materials and techniques that have less impact to the environment, provide safer conditions for users, and provide for a more functional facility. As such, RPM is seeking a joint Section 10 removal/fill permit from the U.S. Army Corps of Engineers (Corps) and Oregon Department of State Lands (DSL) to conduct work below the ordinary high water elevation (OHWE) in navigable waters.

This Biological Assessment (BA) addresses the potential impacts of the proposed Project on listed fish, wildlife, and plant species and their habitats, in compliance with Section 7(c) of the Endangered Species Act (ESA) of 1973, as amended. Section 7 of the ESA assures that, through consultation (or conferencing for proposed species) with National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS), federal actions do not jeopardize the continued existence of any threatened, endangered or proposed species, or result in the destruction or adverse modification of critical habitat.

The Multnomah Channel, within the Project action area, may provide rearing and migration habitat for eight Evolutionarily Significant Units (ESUs) and five Distinct Population Segments (DPSs) of listed anadromous salmonids. The yellow-billed cuckoo, a candidate species for federal listing, may also be present within the wildlife action area, though its presence has not been documented since 1977 (ORNHIC 2007). The Project action area may also support federal species of concern, including green sturgeon (*Acipenser medirostris*), Pacific lamprey (*Lampetra tridentata*), river lamprey (*Lampetra ayresi*) and Lower Columbia River coastal cutthroat trout (*Oncorhynchus clarki clarki*). Conservation measures and best management practices (BMPs) are provided in Section 8, and are expected to provide protections for a broad range of listed and non-listed species that occur within the Project action area.

The Magnuson-Stevens Act, which was reauthorized and amended in 1996, requires NMFS to recommend conservation and enhancement measures for any federal or state activity that may adversely affect Essential Fish Habitat (EFH). The Project action area provides EFH for coho and chinook salmon and starry flounder. A detailed discussion of EFH is provided in Section 11.

1.2 PROJECT LOCATION

The proposed Project is located on the west bank of the Multnomah Channel (RM 14.5), near Scappoose, Oregon. The geographical location is within Township 3 North, Range 2 West, Section 36 (Figure 1). The Multnomah Channel is a side channel of the Willamette River that

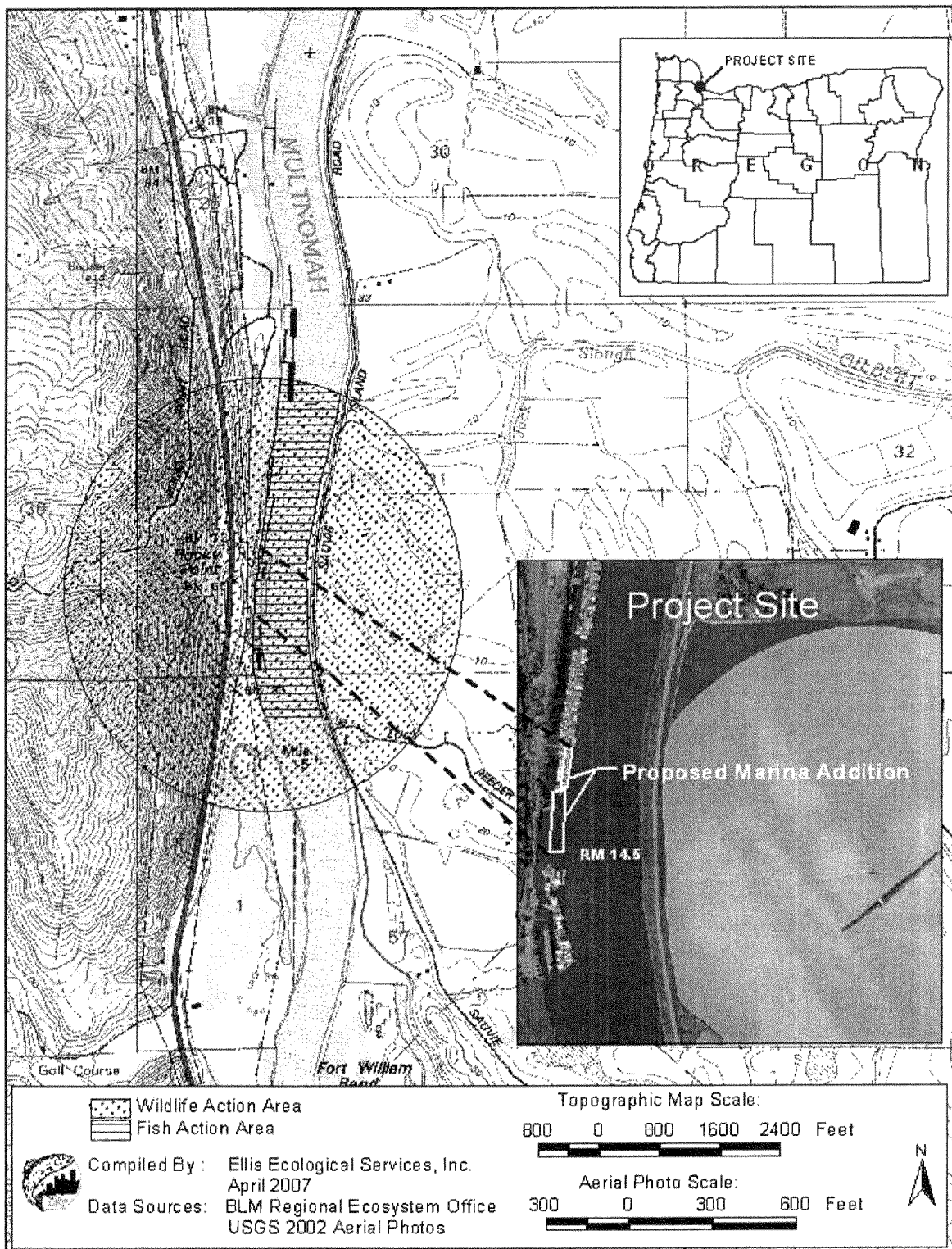


Figure 1. Location of proposed Project site and Project action areas.

connects downstream to the Columbia River (near RM 86.5) at St. Helens, Oregon. Sauvie Island lies between Multnomah Channel and the Columbia River. The Multnomah Channel supports fishing, kayaking, and other recreational activities. RPM provides moorage and marina services for residents and recreational boaters.

1.2.1 Project Site

The "Project site" includes the Multnomah Channel where the marina expansion is proposed (Figure 1). A photograph log of the Project site is provided in Appendix A.

1.2.2 Project Action Area

The "Project action area" is defined as "all areas affected directly or indirectly by the proposed action and not merely the immediate area involved in the action" (50 CFR § 402.02). "Indirect effects" are further defined, as "those that are caused by the proposed action and are later in time, but still are reasonably certain to occur" (*ibid*). For the purposes of this BA, it is assumed that the "action area" for fish species can be defined as the Multnomah Channel, approximately 0.5 miles downstream from the proposed Project site, to a point 0.25 miles upstream from the proposed Project site (Figure 1). The "action area" for fish species includes an area of approximately 81 acres. The boundaries of the action area, both upstream and downstream, were conservatively selected based on an estimated potential worst-case dispersion of turbidity and any associated contaminants during a single tidal cycle. It is expected that any turbidity increases would rapidly dissipate. The boundaries were also selected based on the potential range of acoustic effects on juvenile and adult salmonids from pile driving activities.

For wildlife species, the "action area" includes the Project site, plus the land and waterbodies within 0.5 miles of the Project site (Figure 1). The "action area" for wildlife species includes an area of approximately 604 acres. The size of the wildlife "action area" was determined to provide a worst-case estimate of the potential effects on wildlife species that could occur as a result of the proposed Project. Unless otherwise noted, the "Project action area" encompasses both the "fish action area" and "wildlife action area".

1.3 PURPOSE AND NEED

The purpose of the proposed Project is to provide additional boat slips and houseboat moorage capacity to an existing facility at Rocky Pointe Marina. The existing moorage was constructed based on boat sizes common in the 1960's. Larger boat slips are needed to meet the current and future demand for larger recreational boats. Additionally, the demand for contemporary floating homes is very high and increased moorage space is needed to meet this need.

2.0 EVALUATION METHODS

Factors considered in evaluating potential effects of the proposed Project on listed species occurring within the Project action area included the species' dependence on specific habitat components that may be altered by the proposed Project, the abundance and distribution of habitat, habitat components within the Project action area, distribution and population levels of listed species, the possibility of direct or indirect impact to listed species, the potential for impact to critical habitat, and the ability to compensate for any adverse effects identified. As applicable,

the methods outlined in "*Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale*" (NMFS 1996) and the "*Endangered Species Consultation Handbook*" (USFWS and NMFS 1998) were used as guides to analyze the potential Project effects on fish and wildlife resources at the Project site. The approach used in this BA consisted of determining the environmental baseline, discussing how the proposed Project would affect the environmental baseline, and then interpreting that information to arrive at a determination of effect.

3.0 PROJECT DESCRIPTION

RPM is proposing to expand their moorage facility to accommodate, modern-sized houseboats and additional recreational vehicles. No dredging would be conducted as part of the proposed Project. In-water work activities are scheduled to occur during the summer or early autumn 2008 and continue through 2009.

The proposed marina expansion Project has been designed to reduce impacts to listed fish species and their habitat. Project plan drawings are provided in Appendix B. All new docks, and piling proposed at Rocky Pointe Marina would be located in deep water habitat over 41 feet (ft) riverward from the shoreline (ordinary low water elevation (OLWE) +4.0 ft Columbia River Datum (CRD)), as measured on the west bank of the Multnomah Channel. Existing structures will be reused within the re-configured expansion project.

The marina expansion Project would occur at the current upstream limit of the RPM facility and would include remodeling an existing dock, constructing a new dock, and installing a relocated emergency exit ramp necessitated by the expansion. Linear expansion of the current dock was selected over an earlier four-pod configuration for environmental and economic reasons. The current design minimizes covered area and is situated further off shore, thereby reducing shading effects and near shore impacts.

The proposed remodel would convert 310 feet of existing boat slips to moorage for floating homes. There are currently 20 recreational boat slips, divided by 19 finger floats, on the riverside of the existing walkway, which would be relocated to the shore side of the proposed new construction immediately upstream. In their place, RPM proposes to create 9 houseboat moorages sized and equipped for contemporary floating homes. The moorage slots will measure between 30 ft to 50 ft wide by 55 ft deep and would have no floating dividers.

A new floating dock would be constructed to extend the existing facility upstream 520 ft. A floating walk approximately 8 ft wide (6 ft solid wood decking and 2 ft grated), running roughly parallel to shore would accommodate 12 houseboat moorages on its riverside and 30 recreational boat slips (20 relocated from the existing dock plus 10 additional slips) along its shore side. Sixteen finger floats anchored perpendicularly to the walkway and measuring 3.5 ft wide and 40 ft long would partition the doublewide slips. The floating walk and anticipated houseboats would represent an increase in cover of approximately 28,500 square feet deepwater channel habitat (i.e. >-20 ft CRD). While the majority of the expansion has been placed in deep water habitat some of the floating slip dividers do extend into shallow water habitat (i.e. < -20 ft CRD). Increase in

permanent shading of shallow water habitat due to these 3.5 ft wide finger floats has been limited to approximately 1,032 sq ft.

An emergency exit, as required by the Scappoose Fire Marshall, would be installed at the approximate midpoint of the completed expansion. An existing 4 ft by 75 ft metal ramp currently within the marina, would be refurbished, and relocated to the west bank opposite the new floating dock. No net increase in impacts to shallow water habitat is expected as a result of this relocation. The ramp will be anchored 12 ft above OHW using hinged bolts attached to a concrete abutment. A gated entrance fitted with a panic bar for emergency exit use only will prevent shore side access to the ramp. The ramp would extend perpendicular to the shore and terminate at a 6 ft by 16 ft floating dock. The floating dock would be anchored by one hollow steel or I-beam piling 50 ft from the shoreline. A fairway measuring 30 ft will separate the terminus floating dock and the southern end of the marina expansion. Emergency access to the escape ramp and dock will be provided via a metal ramp measuring 3 ft wide and 30 ft long installed on the dock extension opposite the shore based emergency exit. The retractable ramp would function as a floating bridge that, in case of emergency, would be deployed to bridge the 30-ft gap between the floating houseboat moorage and the emergency exit ramp leading to shore.

The docks and relocated finger floats would be composed of wood logs and pressure treated fir decking to match existing structures. Encapsulated foam floats would be installed to support the floating dock structures. The docks would be secured by up to 30, newly installed, hollow steel piling measuring 20-inches or smaller in diameter. Pile caps would be placed on top of the piling to help prevent roosting of piscivorous birds. Up to six wooden piling would be removed to allow for RPM expansion including one possible creosote-treated piling. The removal of creosote-treated piling would reduce leaching of creosote in the Multnomah Channel and result in localized improvements in water quality.

The remodeled dock and the new construction would be contiguous. Pedestrian access to shore, as well as tenant access to electricity, sewer and water, would be provided by the existing gangway and utility infrastructure at the downstream end of the original boat slip dock.

No excavation would occur below the OHWE. Due to the location of the new construction, no significant impacts to the riverbank are anticipated. The contractor would likely use a small barge to place the floating docks. Installed piling would represent 90 cy of fill. Pile driving may be performed either from shore or from a barge. Conservation measures (Section 8.0) will be followed to reduce acoustic effects of pile driving on listed fish and wildlife species.

All in-water work associated with construction and bank restoration activities would only 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.

4.0 ASSESSMENT METHODS

A search and review of the existing data related to fish and wildlife occurrence in the lower Willamette River and Multnomah Channel was conducted. Very little baseline information is available for the Multnomah Channel. However, the proposed marina expansion is located seven miles downriver from the lower Willamette River mainstem. It is expected that fish use and habitat conditions of the channel are similar to those of the lower Willamette River. As such, we have applied baseline data from the lower Willamette River to the proposed Project site, when appropriate. Fish abundance and habitat survey data were obtained from studies conducted by Ellis Ecological Services (EES) during 2001 and 2002 and Oregon Department of Fish and Wildlife (ODFW) from 2000 through 2003 in the lower Willamette River (EES 2003, ODFW 2002, 2003a, 2005). The NMFS website (<http://www.nwr.noaa.gov>) was reviewed to obtain a listing of anadromous salmonids known to occur within the Project action area. Existing fish species and environmental baseline information were obtained from the Oregon Department of Environmental Quality (DEQ), U.S. Geological Survey (USGS), ODFW and from past EES Projects in the lower Willamette River that have been updated to reflect current conditions and regulatory status.

A reconnaissance of the Project site was performed on May 4, 2007 by EES biologists. During the site visit, photographs were taken of key habitat elements, observations of habitat quality were recorded and existing conditions were evaluated. A photographic log of the Project site is provided in Appendix A. Information pertaining to threatened and endangered species that may occur within a two-mile radius of the proposed Project site was obtained from the Oregon Natural Heritage Information Center (ORNHIC) (ORNHIC 2007). The USFWS (2007) provided a list of threatened, endangered, and proposed species for Multnomah County (Appendix C).

The ORNHIC database indicates several anadromous salmonid ESU/DPSs (chinook salmon, coho salmon and steelhead trout) have been observed within two miles of the proposed Project site (ORNHIC 2007). The yellow-billed cuckoo (*Coccyzus americanus*) is a candidate species that was historically widespread in the Willamette Basin. No recent cuckoo observations have been documented within the Project action area (*ibid*).

In addition to these species, the USFWS county species list included several federally listed or candidate fish, wildlife and plant species that are either considered to be extirpated from Oregon, or are not known to occur in areas potentially affected by the proposed action (USFWS 2007). These species may utilize specific habitats within Multnomah County, but are not expected to occur at the Project site. No recent observations of rare plants in the vicinity of the proposed Project have been documented (ORNHIC 2007). As there would be “*no effect*” to these species, due to their absence from areas potentially affected by the proposed Project, no further analyses are warranted.

5.0 LISTED SPECIES STATUS AND OCCURRENCE

5.1 LISTED FISH SPECIES

Based on review of the NMFS and USFWS web sites (<http://www.nwr.noaa.gov/> and <http://www.fws.gov/>), and letters from ORNHIC and the USFWS (Appendix C), the following five anadromous salmonids are listed as threatened and may utilize the Project action area for rearing and migration:

- Lower Columbia River Coho Salmon (*Oncorhynchus kisutch*)
- Lower Columbia River Chinook Salmon (*O. tshawytscha*)
- Upper Willamette River Chinook Salmon (*O. tshawytscha*)
- Lower Columbia River Steelhead Trout (*O. mykiss*)
- Upper Willamette River Steelhead Trout (*O. mykiss*)

In addition to the salmonids listed above, there is a remote possibility that a few listed juvenile salmonids that were spawned in the Snake or Columbia River systems (upstream from the Willamette River) may migrate far enough upstream into the Willamette River to use the Multnomah Channel during their downstream migrations. Thus, the following eight listed salmonids may potentially be present within the Project action area:

- Snake River Sockeye Salmon (*O. nerka*)
- Upper Columbia River Steelhead Trout (*O. mykiss*)
- Upper Columbia River Spring Chinook Salmon (*O. tshawytscha*)
- Middle Columbia River Steelhead Trout (*O. mykiss*)
- Snake River Spring/Summer Chinook Salmon (*O. tshawytscha*)
- Snake River Fall Chinook Salmon (*O. tshawytscha*)
- Snake River Basin Steelhead Trout (*O. mykiss*)
- Columbia River Chum Salmon (*O. keta*)

We have limited our discussion of these salmonid ESUs/DPSs to a timing chart (Section 5.2) that indicates periods of the year when they could potentially be present in the Multnomah Channel. Adult salmonids migrating to spawning grounds in the Columbia and Snake River systems are not expected to migrate through the Multnomah Channel, as their homing mechanisms would not be able to detect the native streams from which they were spawned.

In addition, the USFWS has listed the Columbia River Bull Trout (*Salvelinus confluentus*) DPS as a threatened species. The boundaries of this DPS include the entire lower Columbia River and its accessible tributaries. The present distribution of bull trout in the Willamette Basin is restricted to isolated small populations in headwater streams. There are no records of bull trout in the lower Willamette River or the Multnomah Channel, and the likelihood that bull trout would be present at the Project site is extremely remote. Therefore, no further discussion of bull trout life history or use of the Project action area will be provided.

Pacific lamprey (*Lampetra tridentata*), river lamprey (*Lampreta avresi*) and green sturgeon (*Acipenser medirostris*) are categorized as "species of concern" by the USFWS and may occur

within the Project action area. While Pacific and river lamprey are known to utilize the lower river, green sturgeon are typically associated with coastal estuaries, such as the Columbia River, and are rarely found in the Willamette River. It is unlikely that green sturgeon would migrate upriver into the Project action area.

It is anticipated that the steps taken to avoid and minimize impacts to listed species also would provide benefits to these species of concern. Detailed descriptions of the listed fish species that may occur at the Project site, as identified by ORNHIC and USFWS, are provided in Section 5.2.

5.2 SPECIES STATUS AND MIGRATION TIMING

5.2.1 Lower Columbia River Chinook Salmon ESU (*Threatened*)

Status and Range: In March 1999, Lower Columbia River chinook salmon were listed by NMFS as threatened under the federal ESA (64 FR 14308). Threatened status was reaffirmed in June 2005 (70 FR 37160). The NMFS BRT reviewed the status of this ESU in 2003 (Good et al. 2005). A majority (71%) of the BRT concluded that the Lower Columbia River Chinook Salmon ESU is “likely to become endangered” in the near future.

Within the Project action area, this ESU includes all naturally spawned populations of chinook salmon in the Willamette River to Willamette Falls, excluding spring-run chinook salmon in the Clackamas River. This ESU is also comprised of seventeen artificial propagation programs, which are listed in 70 FR 37160. Most of the fish from this ESU that migrate past the Project action area are comprised of fall chinook that were spawned in the lower Clackamas River. Detailed life history information pertaining to this ESU is available in Myers et al. 1998.

Critical Habitat: Critical habitat for Lower Columbia River chinook salmon was designated on September 2, 2005, and described in detail in the Federal Register (70 FR 52630). Critical habitat includes the Project action area for fish species, and encompasses the ordinary high-water line (or bankfull width), as defined by the U.S. Army Corps of Engineers in 33 CFR 329.11. This lateral extent of critical habitat applies to all salmonids that had critical habitat redesignated in 2005.

Use of the Project Action Area: Although fall-run and spring-run stocks of chinook salmon are included in this ESU, it is expected that fall chinook that return to spawn in the lower Clackamas River are the most abundant population within this ESU that migrate through the Multnomah Channel and the lower Willamette River. The fall run consists of an early component that return from August through early October and spawn within a few weeks (Kostow 1995) and later components that enter over an extended period of time and spawn from late October through November. Adults migrating to the Clackamas River may be present in Multnomah Channel starting in August and continuing through November, with the peak occurring from late August through October (Table 1).

Biological Assessment

Table 1. Timing of adult upstream migration of federally listed salmonids through the Project action area.

Species/ESU or DPS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Coho Salmon												
Lower Columbia River												
Chinook Salmon												
Upper Willamette River												
Lower Columbia River												
Steelhead Trout												
Lower Columbia River												
Upper Willamette River												

Table 2. Timing of juvenile downstream migration of federally listed salmonids through the Project action area.

Species/ESU or DPS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Coho Salmon												
Lower Columbia River												
Chinook Salmon												
Upper Willamette River												
Lower Columbia River												
Upper Columbia River Spring												
Snake River Spring/Summer												
Snake River Fall												
Steelhead Trout												
Lower Columbia River												
Upper Willamette River												
Middle Columbia River												
Upper Columbia River												
Snake River Basin												
Chum Salmon												
Columbia River												
Sockeye Salmon												
Snake River												

Note: thick bars represent peak periods of migration while thin bars represent estimated total period of occurrence.

The majority of fall-run chinook salmon juveniles emigrate to the marine environment as sub-yearlings (Reimers and Loeffel 1967, Myers et al. 1998). The Clackamas River and other Willamette River tributaries below Willamette Falls may support fall chinook (StreamNet 2005). Juveniles from this ESU would be expected in the lower Willamette River starting from early March to early July, with peak outmigration occurring from mid March through May (ODFW 2003b, 2005) (Table 2).

Although no studies were located on use of the Multnomah Channel by fall subyearling chinook, radio telemetry studies conducted by ODFW (2005) have found that the channel is utilized by yearling chinook during their downstream migration. Subyearling chinook generally move more slowly and feed more frequently when migrating through the lower Columbia and Willamette rivers than yearling salmonids. The Multnomah Channel provides many off-channel habitat areas that may provide preferred rearing habitat for subyearling chinook. It is reasonable to assume that a significant percentage of the subyearling chinook that move downstream along the west side of the Portland Harbor utilize the channel during their downstream migration.

5.2.2 Upper Willamette River Chinook Salmon ESU (Threatened)

Status: In March 1999, NMFS listed the Upper Willamette River chinook salmon as threatened under the federal ESA (64 FR 14307). Threatened status was reaffirmed in June 2005 (70 FR 37160). In 2003, a majority (70%) of the NMFS BRT concluded that the Lower Columbia River Chinook Salmon ESU is "likely to become endangered" in the near future (Good et al. 2005).

This ESU includes all naturally spawned populations of spring-run chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls. This ESU also includes seven artificial propagation programs, including the Clackamas Hatchery and several upper Willamette hatcheries (70 FR 37160). Detailed life history information pertaining to this ESU is available in Myers et al. 1998.

Critical Habitat: Critical habitat for Upper Willamette River chinook salmon was designated on September 2, 2005, and described in detail in the Federal Register (70 FR 52630).

Use of the Project Action Area: Adults from this ESU are expected to begin migrating through the Multnomah Channel and the Lower Willamette River in February, but the majority of the run ascends Willamette Falls from late March to August, with a peak in April and May (WCBRT 2003, ODFW 2003b) (Figure 1). Adults are known to migrate through the Clackamas River from January through June, with the peak occurring in April and May (Murtagh et al. 1992).

The timing of downstream migrating spring chinook smolts was monitored at the Willamette Falls Sullivan Hydroelectric Project bypass facility from 1992 through 1997 by PGE biologists (Domina 1997 & 1998). Wild spring chinook smolts typically begin passing the falls in January, peak numbers occur in March or April and by June the spring outmigration is essentially complete (Table 2). A second and smaller out-migration of wild spring chinook smolts occurs during the autumn, beginning in August, peaking in October or November, and declining to low numbers by mid-December. The timing of yearling spring chinook out-migrants from the Clackamas River is similar to that of Willamette River yearling out-migrants (Domina 1997 & 1998, ODFW 2003a).

Thus, the first out-migration of juvenile spring chinook from this ESU is expected to pass the Project action area from January through June, with a peak in April and May. The second out-migration is expected to pass through the Multnomah Channel from August through mid-December, with the peak occurring in October and November (Table 2).

Although limited studies are available on use of the Multnomah Channel by salmonids, recent radio tracking studies of juvenile salmonids conducted by ODFW have shown that 18% (16 of 89) of the radio-tagged chinook salmon that were recovered used Multnomah Channel during their downstream migration (ODFW 2005). These fish were likely Upper Willamette River spring chinook due to their relatively large size (range from 108 mm to 141 mm). A majority of the radio-tagged salmonids (71%), which includes chinook, coho, and steelhead, were never relocated downstream of the head of Multnomah Channel; thus, their passage route remains undetermined (*ibid*).

5.2.3 Upper Willamette River Steelhead Trout DPS (*Threatened*)

Status and Range: In March 1999, NMFS listed the Upper Willamette River steelhead trout as threatened under the federal ESA (64 FR 14308). Threatened status was reaffirmed in January 2006 (71 FR 834). In 2003, a majority (71%) of the NMFS BRT concluded that the Upper Willamette River Steelhead Trout DPS is "likely to become endangered" in the near future (Good et al. 2005).

This DPS includes all naturally spawned populations of late migrating, winter-run steelhead in the Willamette River (and its tributaries) upstream from Willamette Falls to the Calapooia River (inclusive). No artificial propagation programs are part of this DPS. Detailed life history information pertaining to this DPS is available in Busby et al. 1996.

Critical Habitat: Critical habitat for Upper Willamette River steelhead was designated on September 2, 2005, and described in detail in the Federal Register (70 FR 52630).

Use of the Project Action Area: Adults from this DPS could be expected in the lower Willamette River and Multnomah Channel beginning in January and continuing through mid-May, with the peak occurring in late March or April, when steelhead typically ascend Willamette Falls and return to spawn in the mid Willamette River and its tributaries, upstream to the Calapooia River (WCBRT 2003) (Table 1). Steelhead smolts from this DPS would be expected to be present in the lower Willamette River and Multnomah Channel from March through mid-July, with peak migration occurring in May (Table 2).

Recent radio tracking studies of juvenile salmonids conducted by ODFW showed that no radio-tagged steelhead (0 of 28) used the channel during their downstream migration (ODFW 2005). Although yearling steelhead typically exhibit a directed migration toward the ocean, it is expected that some juvenile steelhead migrate through the channel. As previously described for spring chinook, a majority of the radio-tagged salmonids (71%), which included chinook, coho, and steelhead, were never relocated downstream of the head of Multnomah Channel; thus, it is possible that some radio-tagged steelhead used the channel to migrate downstream (*ibid*).

5.2.4 Lower Columbia River Steelhead Trout DPS (*Threatened*)

Status and Range: In March 1998, NMFS listed the Lower Columbia River steelhead trout as threatened under the federal ESA (63 FR 13347). Threatened status was reaffirmed in June 2005 (70 FR 37160). In 2003, a majority (73%) of the NMFS BRT concluded that the Lower Columbia River Steelhead Trout DPS is "likely to become endangered" in the near future (Good et al. 2005).

Within the Project action area, this DPS occupies the Willamette River (and its tributaries) up to Willamette Falls. The Clackamas River is the principal spawning and rearing area for Lower Columbia River steelhead that utilize the lower Willamette River. Only late-run, winter steelhead are included in the Clackamas River population. Ten artificial propagation programs are considered to be part of the DPS, including the Clackamas Hatchery (70 FR 37160). Detailed life history information pertaining to this DPS is available in Busby et al. 1996.

Critical Habitat: Critical habitat for Lower Columbia River steelhead was designated on September 2, 2005, and described in detail in the Federal Register (70 FR 52630).

Use of the Project Action Area: The late run winter steelhead that spawn in the Clackamas River typically reach their spawning grounds in March and April. Most of these fish would pass Multnomah Channel and the lower Willamette River a few weeks earlier (Table 1). However, extended pre-spawning residency in downriver areas is unlikely because these fish enter freshwater in a mature state and do not typically hold for long periods prior to spawning.

Counts of juvenile steelhead out-migrating from the Clackamas River have been monitored at PGE's North Fork dam fish facility. The five year (1995-99) monthly out-migration averages for Clackamas River naturally spawned steelhead indicate that out-migration starts in April, peaks in May and is complete by mid July (Table 2). Steelhead smolts are predominately 2+ years of age and typically move rapidly downstream to the ocean. Therefore, only a short lag time (a few days) between the timing shown for the North Fork counting station and the passage of these smolts through the lower Willamette River would be anticipated. As described for Upper Willamette River steelhead, some juveniles from this DPS are expected to migrate downstream through the Multnomah Channel.

5.2.5 Lower Columbia River Coho Salmon ESU (*Threatened*)

Status and Range: NMFS listed the Lower Columbia River coho salmon as threatened under the federal ESA in June 2005 (70 FR 37160). This ESU includes all naturally spawned populations of coho salmon from Columbia River and its tributaries in Washington and Oregon, from the mouth of the Columbia, up to and including the Big White Salmon and Hood Rivers. This ESU includes the lower Willamette River up to Willamette Falls. Twenty-five artificial propagation programs are also considered to be part of this ESU (70 FR 37160), including the Eagle Creek National Fish Hatchery, located in the Clackamas River Basin.

The NMFS Biological Review Team (BRT) most recently reviewed the status of this ESU in 2001 (NMFS 2001a). A majority (68%) of votes for the Lower Columbia River Coho Salmon ESU fell in the "danger of extinction" category, with the remainder falling in the "likely to

become endangered" category. Detailed life history information pertaining to this ESU is available in Weitkamp et al. 1995.

Critical Habitat: Critical habitat for Lower Columbia River Coho Salmon has not yet been proposed or designated.

Use of the Project Action Area: Most adult coho salmon migrate through the lower Willamette River and Multnomah Channel from August through December, with the peak occurring from mid-August through mid-November (ODFW 2003b). However, there may be some late-run native fish that enter the Clackamas River from late December to March (Cramer and Cramer 1994). Thus, adults are expected to migrate through the Project action area from August to March, with the majority passing in October and November, and a small peak in February for the late-run Clackamas adults (Table 1). Juveniles generally spend about one year in fresh water before migrating to the ocean. Juvenile coho salmon are likely to migrate through the lower Willamette River and Multnomah Channel throughout their downstream migration, which begins in late March, peaks in mid-May, and declines through June (ODFW 2003b) (Table 2).

Recent radio tracking studies of juvenile salmonids conducted by ODFW showed that 13 percent of radio-tagged coho salmon (7 of 54) recovered below the head of Multnomah Channel used the channel during their downstream migration (ODFW 2005). A majority of the radio-tagged salmonids (71%), which included chinook, coho, and steelhead, were never relocated downstream of the head of Multnomah Channel; thus, their passage route remains undetermined (*ibid*).

5.3 NON-SALMONID SPECIES OCCURRENCE AND USE OF THE PROJECT ACTION AREA

In 2002, EES collected resident fish species in the lower Willamette River (from river mile 3.5 to above Willamette Falls) to provide tissue samples for contaminant analysis (Table 3). Threespine stickleback, prickly sculpin, yellow perch, and smallmouth bass were the most abundant fish species collected in the area (EES 2003). Most of these samples were collected in the Portland Harbor, and are likely found throughout the Multnomah Channel and Project action area. Electrofishing efforts conducted by EES in the lower Willamette River did not indicate a particular abundance of predator fish species (EES 2003). A list of fish species known to occur in the lower Willamette River is shown in Table 3.

ODFW (2003a) performed population surveys for resident fish species by beach seine, gillnet, and electrofishing at twenty standard sites in the lower Willamette River, from the mouth to Willamette Falls, from May 2000 to June 2002. These species may also occur within Multnomah Channel, including the Project action area. ODFW considered juvenile salmonid predators to include the following species: northern pikeminnow, largemouth bass, smallmouth bass, and walleye. Only fish greater than 250 mm were classified as predators, as smaller individuals are not likely to consume large numbers of salmonids. Throughout the entire sampling area, northern pikeminnow were collected by at least one gear type at 78% of the sampling sites, followed by smallmouth bass (43%), walleye (13%), and largemouth bass (9%) (ODFW 2003a).

Table 3. List of fish species that may occur in the lower Willamette River and Multnomah Channel (EES 2003).

Fish Species		
Family, Species	Common Name	Willamette River
Petromyzontidae	Lampreys	X
Acipenseridae	Sturgeons	X
<i>Acipenser transmontanus</i>	White Sturgeon ^{a3}	X
Clupeidae	Herrings	X
<i>Alosa sapidissima</i>	American shad ^{a2}	X
Salmonidae	Trouts and salmon	X
<i>Oncorhynchus kisutch</i>	Coho salmon ^{b3}	X
<i>Oncorhynchus tshawytscha</i>	Chinook salmon ^{b3}	X
<i>Oncorhynchus keta</i>	Chum salmon ^{b3}	
<i>Oncorhynchus nerka</i>	Sockeye salmon ^{b3}	
<i>Oncorhynchus clarki clarki</i>	Coastal cutthroat trout ^{b3}	
<i>Oncorhynchus mykiss</i>	Steelhead trout ^{b3}	X
Cyprinidae	Carps and minnows	X
<i>Ptychocheilus oregonensis</i>	Northern pikeminnow ^{c1}	X
<i>Mylocheilus caurinus</i>	Peamouth ^{b2}	X
<i>Acrochilus alutaceus</i>	Chiselmouth ^{e2}	X
<i>Richardsonius balteatus</i>	Redside shiner ^{b1}	
<i>Cyprinus carpio</i>	Common carp ^{a1}	X
<i>Carassius auratus</i>	Goldfish ^{a1}	X
Catastomidae	Suckers	X
<i>Catostomus macrocheilus</i>	Largescale sucker ^{a1}	X
Cobitidae	Loaches	
<i>Misgurnus anguillicaudatus</i>	Oriental weatherfish ^{a1}	
Ictaluridae	Catfishes	X
<i>Ameiurus natalis</i>	Yellow bullhead ^{a1}	X
<i>Ameiurus nebulosis</i>	Brown bullhead ^{a1}	X
<i>Ictalurus punctatus</i>	Channel catfish ^{a1}	X
Cyprinodontidae	Killifishes	X
<i>Fundulus diaphanous</i>	Banded killifish ^{b2}	X
Gasterosteidae	Sticklebacks	X
<i>Gasterosteus aculeatus</i>	Threespine stickleback ^{b2}	X
Centrarchidae	Sunfishes	X
<i>Pomoxis annularis</i>	White crappie ^{b1}	X
<i>Pomoxis nigromaculatus</i>	Black crappie ^{b1}	X
<i>Micropterus dolomieu</i>	Smallmouth bass ^{c2}	X
<i>Micropterus salmoides</i>	Largemouth bass ^{c1}	X
<i>Lepomis macrochirus</i>	Bluegill ^{b1}	X
<i>Lepomis gibbosus</i>	Pumpkinseed ^{b1}	X
<i>Lepomis gulosus</i>	Warmouth bass ^{c1}	X
Percidae	Perches	X
<i>Perca flavescens</i>	Yellow perch ^{b2}	X
<i>Morone saxatilis</i>	Striped bass ^{c2}	X

Fish Species		
Family, Species	Common Name	Willamette River
<i>Stizostedion vitreum</i>	Walleye ^{c2}	X
Cottidae	Sculpins	X
<i>Cottus perplexus</i>	Reticulate sculpin ^{b1}	
<i>Cottus asper</i>	Prickly sculpin ^{b1}	X
Pleuronectidae	Flounders	X
<i>Platichthys stellatus</i>	Starry Flounder ^{c1}	X

Note: an "X" indicates species was captured in the lower Willamette River (EES 2003).

Trophic Group: a= omnivore; b=insectivore; c=piscivore; d=parasitic; e=herbivore

Pollution Tolerance: 1= tolerant; 2= intermediate; 3= intolerant

5.4 MACROINVERTEBRATE COMMUNITY

Benthic macroinvertebrates known to be present in the lower Willamette River include oligochaetes, mysid shrimp, the amphipod *Americorophium salmonis* (formerly known as *Corophium salmonis*), and chironomid (midge) larvae (Sanborn 1973). Other benthic organisms known to occur include crayfish and mollusks. Zooplankton organisms including several species of cladocera, copepods, and hydracarina (water mites) have been found in the past (Misitano 1973). Fishman Environmental Services (FES) reported that a variety of fish collected near the Morrison Bridge in Portland contained mayfly nymphs in their stomachs on June 17, 1999 (FES 1999). In addition, FES reported seeing large schools of mysid shrimp and mysids were found in the stomachs of largemouth and smallmouth bass during the spring of 1999.

Although no studies were located on benthic invertebrate production in Multnomah Channel, it is expected that the channel supports a similar benthic community structure as the lower Willamette River. The channel has a higher percentage of shallow water habitat, relative to the lower Willamette River, and is expected to provide an important benthic food source for juvenile salmonids. However, the presence of rocky substrate along the shoreline of the Project site may limit the habitat suitability for benthic invertebrates and result in less abundance of invertebrates relative to finer grained substrates in other portions of the Multnomah Channel.

5.5 LISTED WILDLIFE SPECIES

5.5.1 Bald Eagle (De-listed)

Status The bald eagle was listed as endangered in the conterminous United States under the Endangered Species Preservation Act on March 6, 1967 (32 FR 4001) and has been listed as endangered under the ESA since its implementation in 1973. The population in the Pacific Northwest was later down-listed on February 14, 1978 to threatened. Bald eagles in the remaining states were subsequently down-listed to threatened on July 12, 1995 (60 FR 36000). Bald eagle populations have rebounded considerably within the last few years, with nearly all recovery goals met for Oregon, Washington, and other regions of the country. On July 6, 1999, the USFWS proposed de-listing bald eagles from the ESA. On June 28, 2007, bald eagle was formally removed from the list of threatened and endangered species. Bald eagle and golden eagle are, and will continue to be, protected under the Bald Eagle and Golden Eagle Protection

Act of 1940 (as amended) and the Migratory Bird Treaty Act. No further discussion of bald eagle will be presented in this document.

5.6 LISTED PLANT SPECIES

No recent observations of listed plant species have been documented within a two-mile radius of the Project site (ORNHIC 2007). Although the federally endangered *Howellia* (*Howellia aquatilis*) was listed by ORNHIC, this species has not been found near the Project site since 1886. This species historically occurred over a large area of the Pacific Northwest. *Howellia* grows in firm, consolidated sediments associated with glacial potholes and former river oxbows which flood in spring but usually dry to some degree by late summer. Microhabitats include shallow water and the edges of deep ponds that are partially surrounded by deciduous trees such as black cottonwood and aspen. It is a hydrophytic annual plant that grows 4 to 24 inches in height. It has extensively branched stems with both submerged and emergent flowers. Low genetic variability of *Howellia* limits the species to a highly specific habitat (USFWS 1994). *Howellia* is threatened by loss of wetland habitat and habitat changes due to timber harvesting, livestock grazing, residential development and competition from introduced plant species, such as reed canary grass and purple loosestrife.

Use of the Project Action Area: There are no records of *Howellia* occurring within two miles of the Project site. *Howellia* occurs in low elevation ponds or sloughs, which are present along Multnomah Channel. However, *Howellia* has not been observed since 1886 in the vicinity of the Project action area and is considered extirpated in Oregon.

6.0 BASELINE AQUATIC HABITAT CONDITIONS

In describing the existing baseline riparian and aquatic habitat conditions for the Project action area, we have utilized NMFS' guidelines for "*Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale*" (NMFS 1996). The environmental baseline includes the "past and present impacts of all Federal, State or private activities and other human activities in the action area, the anticipated impacts of all proposed Federal Projects in the action area that have undergone formal or early Section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process." (50 CFR § 402.02).

This baseline section also addresses the designated critical habitat primary constituent elements (PCEs) that will apply for four of the five threatened and endangered salmonid ESUs/ DPSs (70 FR 52630). PCEs consist of the physical and biological features identified as essential to the conservation of the listed species, as identified in 70 FR 52630. Although critical habitat has not yet been designated for the Lower Columbia River Coho Salmon ESU, it is anticipated that these PCEs will also apply for coho salmon.

Freshwater rearing sites and freshwater migration corridors are the only PCEs for Pacific salmon that apply to the Project action area (70 FR 52630). The essential physical and biological features for these PCEs are shown in Table 4. The potential Project effects on the critical habitat PCEs are discussed in Section 9. Although the critical habitat PCEs also include freshwater

spawning, estuarine, nearshore marine, and offshore marine habitats, these habitat types do not occur within the Project action area and would not be affected by the proposed Project. Thus, no further information on these PCEs is warranted.

Although NMFS guidelines are routinely used for evaluating the effects of an action on listed species and their designated critical habitat in BAs, its basic components are a useful guide for

Table 4. Types of habitats and essential physical and biological features described as PCE's for salmonid critical habitat within the Project action area.

Habitat	Essential Physical and Biological Features	Species Life Stage
Freshwater rearing	Water quantity and floodplain connectivity	Juvenile growth and mobility
	Water quality and forage	Juvenile development
	Natural cover	Juvenile mobility and survival
Freshwater migration	Free of artificial obstructions, water quality and quantity, and natural cover	Juvenile and adult mobility and survival

assessing the existing environmental baseline conditions for anadromous species. NMFS makes clear, however, that its guidelines will not apply to every watershed or basin, in which case,

NMFS requests that more biologically appropriate values should be provided (NMFS 1996). Indeed, some of the habitat indicators, including road density/location, drainage network, pool frequency/quality, and width/depth ratio were designed for natal streams in forested upland areas and simply do not apply to the lower Willamette River or the Multnomah Channel. Thus, no further information will be provided for these NMFS indicators.

The NMFS 1996 matrix criteria were established to evaluate specific habitat features at the watershed scale (NMFS 1996). The proposed Project is not expected to impact any habitat pathways and indicators outside the Project action area. As such, we have indicated where modifications were made for the specific conditions found in the Project action area. For each appropriate habitat indicator, we have determined whether it is "properly functioning", "at risk", or "not properly functioning" (*ibid.*).

6.1 WATER QUALITY

The Oregon Department of Environmental Quality (DEQ) is responsible for reviewing waters of the state and designating those that are not in compliance with water quality standards, in accordance with Section 303(d) of the Clean Water Act.

The Multnomah Channel is not included on the 2002 DEQ 303(d) list as water quality limited. However, the Willamette River, from the mouth to RM 24.8 is water quality limited for many water quality parameters, including biological criteria, dieldrin, aldrin, DDT/DDE, PAHs, PCBs, manganese, iron, and pentachlorophenol (DEQ 2003). In September 2006, the U.S. Environmental Protection Agency (EPA) approved a Total Maximum Daily Load (TMDL) for

mercury, bacteria, and temperature in the lower Willamette River Basin (<http://www.deq.state.or.us/wq/tmdls/willamette.htm>). A TMDL is the total amount of a pollutant that can enter a waterbody without exceeding the State water quality criterion for that pollutant. At this time, the DEQ is not proposing TMDLs for the other water quality parameters included on the 303(d) list.

Since the Project action area includes the Multnomah Channel, which is a side channel of the Willamette River, water quality conditions in the channel are expected to be similar to conditions in the lower Willamette River. As such, the supporting data used to make determinations for the lower Willamette River have been applied to the Project action area. As water quality is a critical pathway for the Multnomah Channel and lower Willamette River, some additional detail has been provided in terms of relevant indicators.

6.1.1 Temperature

The Willamette River Basin temperature TMDL adheres to the temperature standards approved by EPA in March 2004 (OAR 340-041-0028). The temperature standards for the Willamette River Basin were established to protect cold-water species such as anadromous salmonids. The Willamette River, within the Project action area, is identified by the DEQ as providing rearing and migration habitat for salmon and steelhead. The temperature standard as described in OAR 340-041-0028(4) reads, "Unless superseded by the natural conditions criteria described in section (8) of this rule, or by subsequently adopted site-specific criteria approved by EPA", the temperature criteria are as follows:

- (i) The seven-day-average maximum temperature of a stream identified as having salmon and trout rearing and migration use may not exceed 18.0°C (64.4°F).

Recent temperature data, collected in the lower Willamette River by the DEQ Laboratory (DEQ 2007) at the Spokane, Portland, and Seattle (SP&S) railroad bridge (RM 7.0) were reviewed for the time-period 1991 to 2006. The bridge is located on the Willamette River, approximately 11 miles upstream of the Project site. Temperatures at this location ranged from a low of 41°F (5°C) to a high of 76.1°F (24.5°C). The mean river temperature was 56.3°F (13.5°C) (95% confidence level of $\pm 2.1^\circ\text{F}$ (1.2°C)) for this period of record.

These point-in-time temperature readings routinely exceeded 68°F (20°C) in August. These data indicate that mid-summer temperatures sometimes exceed the DEQ temperature standard. However, it is important to note that DEQ temperature criteria are based on a seven-day average maximum temperature. The data from the SP&S railroad bridge are only collected approximately once every two months and are not adequate for the calculation of a seven-day average maximum temperature.

In April through June, during peak periods of juvenile salmonid presence in the lower Willamette River, river temperatures have averaged 56°F (13.3°C) (95% confidence level of $\pm 2.1^\circ\text{F}$ (1.2°C)) and ranged from 48.2°F (9°C) to 66.7°F (19.3°C) (DEQ 2007). Fisheries data in the lower Willamette River indicates that the abundance of juvenile salmonids generally drops dramatically in July (USACE 2000, ODFW 2003b).

Relatively few juvenile salmonids are expected to migrate or rear in the Project action area in August. The NMFS' PFC criteria for juvenile salmonid rearing and migration are 50°F (10.0°C) to 57°F (13.9°C) for a "properly functioning condition" and 57°F (13.9°C) to 64°F (17.8°C) for an "at risk" condition. Given our analysis of the data available, we conclude that water temperature conditions within the Project action area are "at risk" in terms of salmonid rearing and migration.

6.1.2 Turbidity

NMFS' criteria for properly functioning conditions for sediment are based on requirements in streams where spawning and rearing take place. Although some rearing of juvenile salmonids probably occurs in the Multnomah Channel and the lower Willamette River as they migrate downstream to the ocean, the Project action area is used primarily as a migratory corridor. There is no known spawning habitat for salmonids in the lower Willamette River or Multnomah Channel. Furthermore, "sediment" is a term loosely used by some fisheries biologists to refer to the fine-grained material that can fill interstitial spaces in spawning gravels. However, the term "sediment" in larger river systems can be sometimes confused with the term "substrate". We have therefore modified this discussion to focus on turbidity, which is highly correlated with suspended sediment or more appropriately "total suspended solids". River sediments are discussed further in Section 6.3.2.

The effect of elevated turbidity levels on salmonids is a complex issue, and differs based on their developmental stage and the specific *in situ* conditions that they encounter. Although low to moderate turbidity levels can enhance survival of juvenile salmonids by providing cover from predation (Gregory and Levings 1998), high levels can reduce feeding efficiency, food availability, clog gillrakers, and erode gill filaments (Bruton 1985, Gregory 1993). Long-term turbidity increases may also reduce the amount of light in the water column, decreasing phytoplankton growth and limiting the depth of submerged plants (USACE 2001).

Available turbidity data for the lower Willamette River were reviewed to describe ambient turbidity levels in the vicinity of the Project action area. Water quality data obtained by the DEQ Laboratory at the Spokane, Portland, and Seattle (SP&S) railroad bridge (RM 7.0) for the period 1991-2006 were reviewed (DEQ 2007). Average turbidity levels in the lower Willamette River tend to be greater in fall and winter. The average monthly turbidity levels for the months of December, January, and February (1991-2006) were 29, 24, and 39 nephelometric turbidity units (NTUs), respectively. Maximum turbidity levels for December, January and February were 53, 46, and 149 NTUs, respectively. Turbidity levels were generally much lower during the summer and early autumn with average monthly values ranging between 4 and 6 NTUs for the months of July through October. Maximum turbidity levels during these months did not exceed 18 NTUs. Overall, turbidity conditions in the lower Willamette River appear to fall within the "moderate" turbidity range for a large river. Turbidity conditions in the Multnomah Channel are expected to be similar to conditions in the lower Willamette River. As such, the Project action area is considered to be "at risk" relative to NMFS' matrix criteria.

6.1.3 Chemical Contamination/Nutrients

Chemical contamination and nutrient loading in the lower Willamette River are influenced by municipal and industrial point sources and non-point sources. In the Willamette River Basin, the largest individual quantities of point source pollution are discharged by industries. Several paper

mills (e.g., Blue Heron Paper Company and West Linn Paper Company) and wastewater treatment plants are located upriver from the Project site and release treated effluent to the river. These point sources are regulated and tracked through TMDL and National Pollutant Discharge Elimination System (NPDES) permit processes. Non-point sources may include sedimentation caused by erosion, stormwater runoff, and agricultural runoff. These sources are dispersed throughout the watershed and are not easily regulated.

The EPA recently approved TMDLs for mercury and bacteria within the Willamette River Basin (DEQ 2006). The mercury TMDL focuses on protecting human health by decreasing mercury concentrations in fish within the entire Willamette Basin. The bacteria TMDL applies exclusively to the Willamette River mainstem and has been developed to reduce bacterial levels in support of water contact recreation. Unlike the new temperature TMDL for the Willamette Basin, these TMDLs were not designed to protect beneficial uses pertaining to listed fish and wildlife species. Thus, no further information on the mercury or bacteria TMDLs will be presented in this document.

No site-specific sediment contaminant studies have been conducted at the Project site. The Project site is not considered a source of chemical contamination. However, based on the presence of known chemical contaminants within the lower Willamette River, we conclude that this habitat parameter is "at risk" within the Project action area.

6.2 HABITAT ACCESS

6.2.1 *Physical Migratory Barriers*

The Multnomah Channel is a free flowing side channel of the Willamette River that provides unobstructed migratory access for both juvenile and adult salmonids. There are no physical barriers to fish migration downstream of Multnomah Channel in the Columbia River. Upstream from the proposed Project site, Willamette Falls historically represented an impassible obstacle to migration of fall chinook salmon, coho salmon, chum salmon, and cutthroat trout. Only steelhead and some spring chinook salmon were known to ascend the falls. Fish passage facilities were constructed at the falls in the early 1900s and were upgraded in 1971. Continued loss of adult and juvenile salmonids, delay of upstream migration, and inadequate evaluation of mitigation efforts, however, remain as problems at Willamette Falls. However, within and downriver from the Project action area, salmonid access is uninhibited and is considered to be "properly functioning" for physical barriers.

6.2.2 *Access Between Riverine Habitat Types*

Salmonids utilize several habitat types during their life history. Within the Project action area, habitat modification and control of the hydrologic regime has limited salmonid access to productive feeding habitats. There are some off-channel habitats along the western shoreline of the channel, within the Project action area that may provide preferred rearing and/or overwintering habitat for juvenile salmonids. However, much of the Multnomah Channel has been diked and realigned to prevent flooding and to provide suitable conditions for agricultural development and moorage for houseboats and recreational vessels. These activities have reduced salmonid access to shallow water/off-channel habitats, relative to historic conditions.

Based on these factors, connectivity between riverine habitat types is considered to be "at risk" within the Project action area.

6.3 HABITAT FORMING PROCESSES

The habitat forming processes described below are important factors in the formation and maintenance of the riverine habitat types found within the Project action area. The criteria for pool frequency and pool quality were not developed for large river environments and therefore have been excluded from this assessment.

6.3.1 *Flows/Hydrology*

Hydrological processes are the primary factors influencing the formation of riverine habitats within the Project action area. These processes are dependant upon ocean tides, precipitation, temperature (freezing and thawing), and dam operations. Sediment deposition (accretion) and carving (erosion) is determined through the interaction of these hydrological processes (USACE 2001).

The Multnomah Channel is a 21.75-mile long side channel of the Willamette River. The channel is tidally influenced and primarily fed by the Willamette River, which flows northward from the confluence of the Coast Fork and Middle Fork Willamette rivers before joining with the Columbia River. The Willamette River is approximately 187 miles in length, drains a surface area of approximately 11,478 square miles, and is regulated by one mainstem dam (Willamette Falls) and 13 tributary dams, which largely regulate flows. Impoundment Projects are regulated to reduce flooding in the winter and increase flows during the summer. Operation of these impoundments has modified water flow and temperature regimes, which has resulted in a mix of beneficial and detrimental effects on fish production. Minimum stream flows are maintained to protect fish production by increasing available habitat, increasing fish passage at Willamette Falls, and diluting pollution (ODFW 1990). Highest discharges generally occur during January and February, while lowest discharges occur in August and September. The extensive system of dikes and levees in the Multnomah Channel help to regulate flow and prevent flooding of developments located in floodplain areas. Flows in the Multnomah Channel have been significantly altered relative to pre-development conditions. It is concluded that this habitat parameter is "not properly functioning" within the Project action area.

6.3.2 *Substrate/Sediments*

The NMFS criteria for substrate pertains to spawning suitability. Substrate within the Project action area is not suitable for salmonid spawning. Based on river morphology and tidal influences within Multnomah Channel and the lower Willamette River, it is likely that the grain size of historic depositional materials were likely dominated by sand with occasional small gravel and silt/clay (Rosgen 1996). This is consistent with current studies that have shown that substrate in the lower Willamette River (below Willamette Falls) and in several of its low-gradient, valley-floor tributaries are primarily composed of sand/silt substrate (Farr and Ward 1993). Silt loads to the lower Willamette River and Multnomah Channel have increased over historic levels due to logging, agriculture, road building, and urban and suburban development within the watershed. However, given that the Project action area has never been used for salmonid spawning, it is concluded that substrate/sediment conditions are "properly functioning" with respect to historic conditions.

Substrate in the Multnomah Channel is similar to substrate conditions in the lower Willamette River, which is primarily composed of sand and silt material from RM 1 to RM 11 (Striplin 2002). The lower velocity conditions in the Multnomah Channel are expected to result in a greater percentage of fine sand and silt than in the mainstem Willamette or Columbia Rivers.

Although the Project action area does not provide suitable spawning habitat for anadromous salmonids, the substrate supports habitat for food organisms used by migrating juvenile salmonids. Fine-grained substrates favor a high abundance of macroinvertebrates and high taxa richness. Thus, it is possible that juvenile salmonids, particularly subyearling fall chinook, may gain foraging benefits by using the Multnomah Channel during their downstream migration. However, the west shoreline at the Project site is composed of rocky bedrock that likely limits burrowing habitat for benthic macroinvertebrates. Thus, it is likely that benthic production is somewhat limited along the shoreline at the Project site.

6.3.3 *Large Woody Debris*

No comprehensive survey data of large woody debris (LWD) frequency was found for the lower Willamette River or the Multnomah Channel, within the Project action area. The south bank at the head of Multnomah Channel contains several large diameter black cottonwood and Oregon ash trees that may provide LWD recruitment. Few downed, large diameter trees were observed along shoreline areas within the Project action area. Historic diking and filling activities within the Multnomah Channel have reduced the potential for LWD recruitment, particularly on the northern shoreline of the channel. Overall, the production of large woody debris and associated nearshore cover, detritus input, and terrestrial insect production within the Project action area appears to be moderate to good. However, due to the discontinuous availability of LWD, this parameter is considered to be "at risk".

6.4 HABITAT TYPES

6.4.1 *Shallow Water and Flats Habitat*

Juvenile salmonid usage of shallow water and shoreline habitats in the lower Willamette River is not well understood. However, these habitats are considered important for juvenile salmonids, because they provide food resources (benthic macroinvertebrates, zooplankton, and emergent insects) and refuge from predators in the main river. Most definitions of shallow-water habitat available in the literature are somewhat vague or only apply to wetland or estuarine habitats. There is no formal published definition of shallow water habitat or flats habitat that applies to the Project action area.

Although juvenile outmigrants may occupy the entire Multnomah Channel, subyearling salmonids are expected to migrate close to the water surface and near the shoreline during rearing (within a few meters of the shoreline at water depths of less than one meter) (ODFW 2005). The reduction of current often associated with shallow water habitat provides an additional benefit to juvenile fish by significantly reducing their energy requirements. Because juveniles are small and have relatively weak swimming capabilities, feeding is most effective in areas where current velocities are slow. Although not well understood or studied, velocities of 30 cm/s or less are considered best for optimal foraging opportunity (Bottom et al. 2001).

Although the Multnomah Channel has been scoured by flows from the Willamette River, the channel has not been dredged to facilitate the transport of large shipping vessels. Diking and filling activities along portions of the Multnomah Channel have reduced shallow water habitat relative to historic conditions. However, the channel still supports important shallow water habitat areas that can be utilized by rearing salmonids.

Flats habitat are also important to juvenile salmonids by providing suitable substrate conditions to support primary productivity (benthic algae) and prey species (benthic macroinvertebrates). Large woody debris may collect on flats habitat and provide some complexity and cover for juvenile salmonids. Sediment deposition and tidal/wave action are important factors that help develop and shape flats habitat. Although flats are most frequently identified in the estuary in the form of intertidal mudflats and sandflats, flats habitat also occur in the Multnomah Channel. However, diking and filling activities have reduced flats habitat, relative to historic conditions. Dredging operations are routinely performed along shoreline areas (such as marinas and moorages) to facilitate navigation by recreational boaters. Flats habitat is generally limited within the Project action area. Overall, this habitat parameter is considered to be "at risk" with respect to historic conditions.

6.4.2 Deep Water Habitat

Fish use of deep water habitat may include rearing and migration, with juvenile salmonids primarily foraging on zooplankton. Although ocean-type salmonids (i.e. subyearling chinook) may temporarily occupy these habitats, they are believed to prefer shallow-water habitat for rearing and migration. Deep water habitat is used primarily by stream-type (yearling) juveniles and adult salmonids from all species, and also serves an important function as an importer of phytoplankton and microdetritus from upstream areas. As depth increases, less light is available for plants to conduct photosynthesis. This reduction in light penetration can result in less phytoplankton growth as well as limit the depth of submerged plants. Although no bathymetry data were found for the Multnomah Channel, it is likely that shoaling and shallow flats were more historically abundant in the Project action area before diking and filling activities changed the hydrological processes of the Multnomah Channel. As a result of these activities, there are less functional shallow water habitats within the Project action area that can provide rearing opportunities for subyearling salmonids. The increase of deep water habitat areas may have also reduced the productivity of benthic algae, which may provide a food source for salmonid prey species. The ratio of deep water to shallow water habitat has increased over time, and the expansion of deep water habitat has reduced the amount of subyearling salmonid habitat within the Project action area. Therefore, we conclude that the percentage of deep water habitat has increased beyond suitable levels and is considered "at risk", relative to historic conditions.

6.4.3 Refugia Habitat

NMFS 1996 defines "refugia" as important remnant habitat for sensitive aquatic species. May and Peterson 2003 provides a more descriptive definition of "refugia": "habitats or environmental factors that provide spatial and temporal resistance and/or resilience to aquatic communities impacted by natural and anthropogenic disturbances". By this definition, refugia represent a convergence of several ecological factors, including off-channel habitat, floodplain connectivity, large woody debris, and riparian reserves.

The shoreline areas along Multnomah Channel may provide important rearing opportunities for salmonids. The channel has lower velocities during flood events than the mainstem Willamette River, and thus, may provide salmonids refuge from high water conditions. However, dike and fill activities have reduced off-channel areas and limited floodplain access to rearing fish along portions of the upper Multnomah Channel. For this reason, refugia habitat conditions within the Project action area are considered "at risk" with respect to historic conditions.

6.5 WATERSHED CONDITIONS

6.5.1 *Disturbance History*

The Multnomah Channel within the action area has undergone major changes in its surface area and physical features over the past 100 years due to natural and man-made changes. In the 1930's, the Corps implemented a dike system to control the annual flooding of Sauvie Island. The dike system significantly reduced the amount of off-channel habitat, shallow water habitat, and riparian reserves available to juvenile salmonids on the south side of Sauvie Island, within the Project action area. In addition, natural high flow events, which historically contributed large quantities of sand and silt to the area have been dampened over the years through the development of the extensive system of dams in the Willamette River.

Sauvie Island and the Multnomah Channel provide a mixture of agricultural uses, recreational uses, and natural protected areas. The upper end of the Multnomah Channel has been relatively undisturbed, relative to portions of the lower Willamette River that flow through the city of Portland. The NMFS matrix criteria for disturbance history were designed to evaluate the entire watershed based on Equivalent Clearcut Area (ECA) and are not applicable to the Project action area (NMFS 1996). However, historical diking, filling, and draining activities have significantly impacted portions of the Project action area. We conclude that the Project action area is "at risk" with respect to disturbance history.

6.5.2 *Riparian Reserves*

Riparian vegetation within the Project action area is important in providing a source of organic matter and terrestrial insects to the Multnomah Channel. Complex root systems associated with these riparian areas help to stabilize the riverbank. Riparian reserves also provide habitat for wildlife species and improve water quality by filtering stormwater runoff, trapping sediments, and absorbing chemical contaminants.

Large forested wetlands and smaller emergent and scrub/shrub wetlands are present along portions of the Multnomah Channel. The riparian community within the Project action area consists of some black cottonwood, Oregon ash, willow, red alder, big-leaf maple, and black hawthorn. However, riparian reserves are limited at the Project site. Invasive species, such as reed canarygrass and Himalayan blackberry are common along the west shoreline. Very little riparian vegetation is present along the east shoreline (Sauvie Island).

There are some large, mature hardwoods adjacent to the channel that could provide suitable roosting habitat for bald eagle and other bird species. The riparian canopy provides some

potential for future recruitment of LWD, although limited amounts of LWD were observed. Riparian reserves along this bank have been fragmented to support a variety of land use practices (agricultural, industrial, recreational), relative to historic riparian conditions. Riparian reserves within the Project action area have suffered a moderate loss of connectivity and function and would be considered "at risk" by NMFS matrix criteria.

7.0 BASELINE TERRESTRIAL HABITAT CONDITIONS

The Project action area for wildlife contains some historic bottomland forest and forested wetlands, dominated by black cottonwood and Oregon ash. Pacific willow may occur along the riverbanks of Multnomah Channel, and other trees found in this association are red alder, big-leaf maple, black hawthorn, and western red cedar. The understory is relatively sparse, but contains some red osier dogwood, red elderberry, Indian plum, snowberry and Himalayan blackberry (*ibid*). Tree canopy cover within the bottomland forest ranges from patchy cover (20 percent canopy closure) to relatively dense cover (80 percent closure). Snags and large woody debris are common, particularly along the riverbank and beach. Riparian habitat along portions of the Multnomah Channel, within the Project action area, has been reduced by channelization and development of marina facilities.

No recent surveys for listed plant species within the Project action were located. However, many of the species identified by the USFWS as potentially occurring within Multnomah County, including golden paintbrush, Bradshaw's lomatium, Willamette daisy, and Kincaid's lupine, require heavy clay soils found on native wet prairies of the Willamette Valley. No heavy clay soils or native prairie communities occur within the Project action area. Nelson's checker-mallow requires gravelly well-drained soils that are not found within the Project action area. Howellia occurs in low elevation ponds or sloughs, which are present along Multnomah Channel. However, Howellia has not been observed since 1886 in the vicinity of the Project action area and is considered extirpated in Oregon.

No listed wildlife species are known to occur within the Project action area.

8.0 CONSERVATION MEASURES

Rocky Pointe Marina will implement the following impact minimization techniques and best management practices (BMPs):

8.1 TIMING OF IN-WATER WORK

- All in-water work associated with the proposed Project, including dock placement, pile removal/installation, and bank restoration will be conducted during the preferred in-water work periods for Multnomah Channel (*July 1 to October*) to minimize potential impacts to juvenile salmonids through the avoidance of vulnerable life stages and peak migration periods (ODFW 2000).

8.2 CONTROL OF TURBIDITY AND CONTAMINANTS

- An erosion and sediment control plan will be developed for anticipated site conditions to ensure water quality standards are met.
- Soils that are temporarily exposed and or/disturbed during installation of the concrete abutment anchoring the emergency ramp will be stabilized with biofilter bags, silt fencing and/or straw bales.
- All equipment staging areas will be surrounded with sediment fencing during construction activities. The sediment fencing will be located above the OHWE to prevent Project-generated sediments and gravel from entering the Multnomah Channel.
- Erosion control devices will be inspected on a routine basis. If inspection shows the erosion controls are ineffective, work crews will be mobilized immediately, during working and off-hours, to make repairs, install replacements or install additional controls as necessary.
- Turbidity will be visually monitored during in-water work activities to ensure that turbidity levels do not exceed state water quality standards. Should monitoring indicate a concern, corrective action will immediately occur.
- No riparian shrubs or trees will be removed during dock construction or piling installation/removal.

8.3 SPILL PREVENTION AND CONTROL

- The equipment staging areas will be located above the OHWE and nearby storm drains will be protected from potential sediment releases caused by the proposed Project.
- All equipment used will be clean and inspected daily prior to use to ensure that the equipment has no fluid leaks. Should a leak develop during use, the leaking equipment shall be shut down and not used again until it has been adequately repaired. At no time will any fuels or oils be allowed to enter any water body.
- Floating spill containment booms and absorbent booms will be maintained on site during all phases of construction to facilitate the cleanup of hazardous material spills. Containment booms will be installed in instances where there is a potential for release of petroleum or other toxic substances. Absorbent booms will be deployed within the containment boom if sheen is observed.
- A spill prevention, control and containment plan will be prepared and implemented.

8.4 PILE INSTALLATION AND REMOVAL

- Piling required to anchor the docks and walkways shall be installed with a vibratory hammer, to the extent practicable, to reduce acoustic impacts to fish and wildlife species.
- Should impact drivers be required, the smallest feasible or practicable driver and the minimum force necessary will be used to complete the job. A diesel hammer or a hydraulic impact hammer will be used, when necessary, and the drop height will be set to the minimum necessary to drive the piling. A block of wood or other sound dampening substance will be placed between the hammer and the piling to reduce acoustic impacts.
- Removal of wood piling will either be performed by cutting the piling off at the mudline or by using a vibratory hammer. Care will be used during piling removal to minimize short-term and localized sediment resuspension that may result from sediments that adhere to piling. This material will not be washed off the piling or otherwise allowed to reenter the waterway.
- Piles will be fitted with anti-perching devices to prevent predation by piscivorous birds.
- If at any time, listed salmonids are observed in distress or a listed salmonid is killed, operations will cease and NMFS will be notified.

8.5 DOCK CONSTRUCTION

- Synthetic floats used to support the docks and walkways shall be completely encapsulated with concrete to prevent adverse effects to fish and wildlife. The concrete will be applied to the floats and allowed to dry prior to installation in the Multnomah Channel to prevent uncured concrete from contacting the waterway.
- The marina will educate boaters about pollution and its prevention and provide specific information about ESA-listed species, their biological requirements, and measures the public may take to minimize adverse effects to listed species and their habitat. If practicable, public signs on pollution prevention will be installed at the parking lot and/or marina facility.

9.0 EFFECTS ANALYSIS

The following sections address direct, indirect, interrelated, interdependent, and cumulative effects of the proposed action on listed species and applicable critical habitats. Potential *direct effects* are identified as effects that occur at or very close to the time of the action itself. *Indirect effects* "are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur" (50 CFR § 402.02). *Interrelated actions* are those "that are part of a larger action and depend on the larger action for their justification" (*ibid.*). *Interdependent actions* are defined as those "with no independent utility apart from the proposed action" (*ibid.*). *Cumulative impacts* as defined by rule "are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the

Federal action subject to consultation" (*ibid.*). The effects of the proposed action consist of direct, indirect, interrelated, and interdependent effects (*ibid.*). In conducting a jeopardy analysis, USFWS and NMFS determines "whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat (50 CFR § 402.14(g)(3)-(4)).

Evaluation for potential impacts of the proposed action on listed species and critical habitats in the Multnomah Channel were conducted following the general guidelines described in: "*Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale*" (NMFS 1996) and the "*Endangered Species Consultation Handbook*" (USFWS and NMFS 1998). No significant changes to the relevant NMFS pathways and indicators are anticipated. Only relevant indicators, which may be affected by the proposed action, are discussed below and have been modified as necessary to address the specific conditions found in the Multnomah Channel.

9.1 DIRECT EFFECTS TO LISTED FISH SPECIES

Incidental "take" (i.e. harm or harassment) of juvenile or adult listed salmonids during the proposed Project will be minimized through the implementation of conservation measures as described in Section 8.0. By scheduling any in-water work during the preferred ODFW in-water work period for the Multnomah Channel (*July 1 to October 31*), potential impacts to listed juvenile salmonids will be minimized through the avoidance of vulnerable life stages and peak migration periods. Any adult or juvenile salmonids that may be present in the channel during these periods are expected to readily avoid activities such as dock construction and piling removal and installation. Potential direct Project impacts to listed fish species or their habitat may include short-term and localized increases in turbidity, resuspension of sediment contaminants, acoustic impacts, and loss/disturbance of benthic forage. The Project would also cause some long-term increases in shading from the new docks, and moorage of recreational vessels and houseboats. The Project has been re-designed to reduce shading impacts from 56,000 sq ft to approximately 28,500 sq ft. and to reduce the amount of floating dock space by half. Due to the location of the offshore dock structures, the proposed Project would not impede or obstruct migration for adult or juvenile salmonids. No significant long-term effects on listed fish species are anticipated.

Potential direct effects on designated critical habitat PCEs for listed salmonids would include short-term and localized water quality effects (i.e. increases in turbidity, resuspension of sediment contaminants), temporary disturbances to benthic forage for juvenile salmonids, and increases in shading, which can reduce primary productivity. No significant long-term effects on designated critical habitat are anticipated. Removal of creosote-treated wood piling in the Multnomah Channel is expected to improve localized habitat for listed fish species.

9.1.1 Turbidity

The proposed Project would result in localized, short-term increases in turbidity and associated suspended sediments due to disturbance of the substrate by construction and positioning of the new floating docks and the removal and installation of piling. Although low levels of turbidity and short-term pulses of moderate turbidity levels may not harm salmonids, prolonged exposure

to moderate and high turbidity levels can cause a number of negative environmental conditions for salmon and trout including:

- reduced light penetration, which in turn affects the reactive distance of juvenile and adult salmonids for food capture;
- increased straying rates of adult salmon;
- force juvenile salmon from preferred habitat, and;
- increase embryo mortality through deposition of fine sediments on spawning gravel.

The placement of the floating docks (e.g. positioning of boats and barges in shallow water habitat) and installation and removal of piling would result in some minor sediment disturbances and turbidity increases in Multnomah Channel. The resuspension and transportation of sediments would be limited to short-term pulses during piling removal when sediments that adhere to piling are transported through the water column. Piling installation would displace some sediments and result in low-level turbidity increases. However, water quality standards are expected to be easily met during the proposed activities. Visual monitoring will be performed for turbidity during in-water work activities to ensure that turbidity levels do not exceed state water quality standards. Should monitoring indicate a concern, corrective action will immediately occur.

It is anticipated that any downriver turbidity increases associated with the proposed Project would dilute rapidly as the plume dissipates. Turbidity caused by the proposed action would become undetectable within a half-mile downstream of the proposed Project site. Turbidity increases from the proposed Project are not expected to drift beyond one-quarter mile upstream of the Project site during a flood tide. Similarly, any movements of river sediments related to the proposed Project would not be measurable beyond these boundaries that are reasonably attributable to the proposed action.

All proposed activities that require in-water work would be conducted during the ODFW in-water work period. During this period of the year, numbers of juvenile salmonids are expected to be relatively low. The proposed Project is not expected to significantly detain or adversely affect adult salmonids that migrate upstream through Multnomah Channel during the in-water work window. By restricting operations to low periods of utilization by anadromous salmonids, and implementing the afore-mentioned conservation measures (Section 8.0), any effects of turbidity on listed anadromous salmonids would be minimized.

If the proposed activities are conducted as indicated above, we conclude that the short-term and localized increases in turbidity associated with the proposed action would not result in significant adverse effects to feeding behavior, use of preferred habitat, or upstream/downstream migration routes of any listed anadromous salmonids. Turbidity levels in the lower Willamette River are not expected to approach levels that would be detrimental to salmonids. Also, as discussed previously, there is no suitable substrate in the area for anadromous salmonid spawning. Therefore, sediment deposition on spawning substrate is not an issue.

For the reasons listed above, any temporary and localized turbidity increases caused by the proposed Project would be minimal and are not expected to force juvenile or adult salmonids

from use of designated critical habitat in the lower Willamette River. No long-term adverse effects to any designated critical habitat PCEs for listed salmonids are anticipated.

9.1.2 Chemical Contaminants

The primary concern regarding effects of sediment contaminants at the proposed Project site involves the exposure of resuspended contaminated sediments to salmonids and to organisms that provide food for juvenile salmonids. The Project action area is not considered a significant source of chemical contamination. However, several chemical constituents of concern, including TBT, PCBs, DDT, and PAHs have been identified within the Portland Harbor Superfund Area, located upstream in the lower Willamette River. It is possible that low levels of sediment contaminants have migrated from historic upriver sources to the proposed Project site. There are also several municipal and industrial point sources in the Willamette River that may contribute to contaminant levels in the Multnomah Channel. In addition, creosote leaching from wooden piling has likely resulted in elevated levels of PAHs in the sediments at the Project site.

The removal and installation of piling would cause some short-term and localized sediment resuspension in the Multnomah Channel. However, these activities are expected to result in much less sediment impacts than other more intrusive activities, such as maintenance dredging. Any sediment resuspension is expected to be minimal and would occur during periods of low utilization by juvenile salmonids. The conservation measures listed in Section 8.0 would further minimize the potential for contaminant effects on listed salmonids or their prey base.

The proposed removal of the creosote-treated wood piling at the Project site would help reduce the bioavailability of chemical contaminants to listed salmonids and their prey base. Creosote can be toxic to aquatic organisms and the environment. Only steel piling would be installed during the marina expansion Project; no treated wood piling would be placed in Multnomah Channel. Removal of these creosote-treated structures would have a beneficial impact on water quality in the channel.

Any resuspension of chemical contaminants caused by Project activities would not cause any long-term adverse effects on any designated critical habitat PCEs for listed salmonids. Although low levels of chemical contaminants may occur at the Project site, Project activities are not expected to significantly increase the contaminant bioavailability to salmonids or their food base.

9.1.3 Benthic Macroinvertebrates

Shallow water habitat in the lower Willamette River is considered important for juvenile anadromous salmonids because it provides food resources (benthic macroinvertebrates) and the shallow river-edge habitat may be utilized by juveniles as refuge from the main river currents. Approximately three percent of the proposed marina expansion Project is located in shallow water habitat (i.e. ≤ -20 ft CRD). Although no studies were found for the Multnomah Channel, ODFW studies in the lower Willamette River have found that juvenile salmonids utilize shallow water habitats along the shoreline during periods of the year. Some minimal disturbance of substrate may occur from use of spud barges during installation of the docks and piling. Some additional short-term disturbance of substrate is expected during installation of the new piling and removal of the old piling. The physical displacement of substrate associated with piling installation would remove about 74 square ft of benthic invertebrate habitat.

The substrate along the west shoreline of Multnomah Channel consists of a significant percentage of bedrock, which is not preferred habitat for benthic macroinvertebrates. However, finer grained substrate (i.e. sand and silt) is present along the channel floor. Thus, offshore portions of the expansion area likely provide some areas of deposition of sand and silt material that may be utilized by benthic invertebrates.

The benthic macroinvertebrates most commonly utilized by downstream migrating juvenile salmonids include midge larvae (Chironomidae) and the amphipod *A. salmonis*. Both midges and *A. salmonis* have the ability to rapidly recolonize disturbed areas. Midges typically are among the first benthic organisms to recolonize denuded substrates. Larval drift from upstream areas is generally the first source of new recruits. In addition, many midge species have short life cycles, which enable them to increase their numbers rapidly. Individuals of *A. salmonis* periodically move from the substrate into the water column and then resettle at other locations on the substrate (Holton et al. 1984). These movements allow redistribution of individuals within the population and provide a mechanism for recolonization.

Based on the above analyses, we conclude that there would be a potential for a small, short-term loss of benthic food organisms for juvenile anadromous salmonids. However, these short-term disturbances are not likely to have a significant effect on growth or survival of juvenile salmonids due to the scheduling of Project activities during periods of minimal salmonid use and the limited area affected by the proposed action.

The temporary and localized disturbance of benthic forage caused by the proposed Project would not cause any long-term adverse effects on any designated critical habitat PCEs for listed salmonids. As described above, some benthic invertebrates would be lost due to substrate disturbance and piling installation/removal. However, benthic invertebrates are expected to rapidly recolonize the affected areas once the proposed Project is complete.

9.1.4 Acoustic Disturbance

Pile driving can create a considerable amount of noise. The impact of the weight causes sound waves to radiate outward. Acoustic disturbances associated with pile driving may potentially disrupt the foraging behavior of juvenile salmonids, cause them to move away from the shoreline or delay migratory progress. Disturbances can also drive juvenile salmonids into deeper water. This can be especially detrimental in the spring, when salmonid concentrations are high and predation can have a significant impact on survival (Anderson 1990). Another concern is that sound may "mask" approaching predators or that salmonids may become habituated to the sound and fail to respond appropriately in the future. Hawkins and Johnstone (1978) found that adult Atlantic salmon may be able to detect sounds as far as 2,000 ft from a pile driving rig. However, juvenile fish may have less developed hearing abilities so the threshold could be much less.

Although studies documenting the acoustic effects of pile driving on salmonids are limited, two studies conducted in Washington's Puget Sound offer behavioral responses to pile driving disturbances. Anderson (1990) studied the effects of pile driving on juvenile chum and pink salmon in the Puget Sound and found that fish avoided the construction activity to some degree, but some were observed swimming around the pile driving rigs during periods of active

construction. Feist et al. (1996) found that salmonids were capable of detecting the sound of drop-hammer pile driving nearly 2,000 ft away, and the sound was at least 20 dB above ambient levels. Juvenile chum and pink salmon did not move away from shore or stop foraging in response to pile driving. However, fewer fish schools were observed near the site on pile-driving days than on non-pile driving days. Also, qualitative observations indicated that fish had habituated to the sound of pile driving, which may be responsible for higher predation rates near the Project area (*ibid*). Anderson also observed fish startling was greater at the initiation of a pile-driving episode than after pile driving had commenced. No conclusive evidence has shown any long-term effects on juvenile growth rates or feeding patterns from the sound waves created from pile driving (Feist 1991). However, recent studies have indicated that high decibel levels may cause fish injury or death (Meyers pers. comm. 2003). More studies are needed to determine the degree of impact of pile driving on juvenile and adult salmonids.

The proposed Project intends to use pile drivers, fitted with vibratory hammers, to install up to 30 hollow steel piling to secure the new docks. Vibratory hammers would be used to minimize the potential effects of acoustic disturbance. An impact hammer may be necessary to batter (i.e. "proof piles"), or drive piles if installation activities cannot penetrate the substrate through use of the vibratory hammer. However, the use of impact hammers will be limited, and conservation measures (Section 8.0) will be followed, to minimize the potential acoustic effects of impact hammers on juvenile salmonids. It is possible that acoustic disturbances caused by in-water pile driving may result in sublethal effects to individual salmonids. However, piling installation and removal will take place during the in-water work period; thus, limiting the effects to relatively few juveniles.

The few existing non-treated wood piling at the site would be removed by cutting the piling off at the mud line. An attempt will be made to remove the single creosote-treated piling in its entirety using a vibratory hammer. No significant impacts to juvenile or adult salmonids are anticipated from these activities.

9.1.5 Primary Productivity

Although no data are available on primary productivity at the proposed Project site, it is expected that primary productivity at the proposed Project site is dominated by diatoms and green algae (phytoplankton) that are primarily dispersed within the water column. However, diatoms may also be attached to aquatic vegetation or benthic organisms at the Project site (USGS 1997). The shallow water habitats within the Project action area may also support benthic algae and other types of phytoplankton. Approximately three percent of the proposed marina expansion design would occur in shallow water habitat (i.e. ≤ -20 ft CRD), or within the depths where benthic algae can effectively perform photosynthesis.

Portions of the main and finger walkways would be placed above shallow water habitat. The substrate along the shoreline at the Project site is dominated by bedrock. This type of substrate is not conducive to growth of rooted aquatic plants because of the difficulty in anchoring in bedrock substrate. Although no site-specific vegetation surveys have been conducted at the Project site, it is expected that aquatic rooted vegetation is limited along the west shoreline of Multnomah Channel at the Project site. However, sand and silt substrates are likely common offshore where the new moorage would be constructed. These substrates may facilitate growth

of some benthic algae. However, it is expected that phytoplankton is the primary producer within the Project action area.

Over water structures can reduce the amount of light available to phytoplankton and benthic algae, which can ultimately reduce primary productivity. The new floating docks would cause localized shading and may result in a small reduction in photosynthesis by benthic plants and phytoplankton. The moorage of recreational vessels and houseboats at the expanded marina will further exacerbate shading conditions at the Project site. The new dock and moored houseboats would cover approximately 28,500 sq ft. To reduce shading impacts, the main walk would not exceed six ft in width of solid decking. Finger floats dividing the open boat slips on the west side of the expansion would be limited in width to 3.5 ft and would account for an increase in shallow habitat shading of approximately 1,000 sq ft. Although shading caused by the new floating docks and moored houseboats may slightly decrease benthic algae and phytoplankton production, the potential loss of primary productivity would be minimal, considering the location of the proposed Project and Project designs and conservation measures that would be utilized to reduce shading impacts.

Overall, the proposed Project is not expected to significantly affect primary productivity (i.e. benthic algae and phytoplankton) within the Project action area. For the reasons listed above, the potential, localized loss of primary productivity that may result from shading under the new floating dock would not cause any long-term adverse effects on designated critical habitat PCEs for listed salmonids.

9.1.6 *Shading and Predation*

Depending upon the design, location, and timing; there has been concern presented by NMFS on similar Projects that the presence of in-water and over-water structures, such as barges, piers, and bridges, can affect habitat function by shading an area and creating visual barriers to migrating fish; or by providing cover for predators, thereby increasing their ability to ambush juvenile salmonids as they migrate downstream.

In the Willamette River, salmonid predators are known to include northern pikeminnow, largemouth bass, smallmouth bass, and walleye. In studies on smallmouth bass, Bevelhimer (1996) indicates that ambush cover and low light intensities create a predatory advantage and can also increase foraging efficiency for salmonid predators. Studies in the Willamette River have shown that smallmouth bass and largemouth bass have a strong affinity to structures, such as piers, docks, and associated pilings, and have been observed foraging and spawning in the vicinity of these structures (ODFW 2003b). ODFW studies found that largemouth bass and smallmouth bass were captured at significantly higher rates at sites containing artificial structures (e.g. riprap, piling) than at sites with natural bank habitats (*ibid*). Largemouth and smallmouth bass are opportunistic predators that may prey on juvenile salmonids, likely due to the overlap in rearing habitat.

The new docks, piling, and boat moorages would cause some localized increase in shading, which could increase habitat for juvenile salmonid predators. However, as previously mentioned, the Project design includes shading reduction measures to help reduce potential predator increases. Aspects of the marina design that are anticipated to minimize the use of the

area by predators are minimization of floating structures, the narrow docks and finger walkways and the 20-inch diameter piling. Floating structures less than six feet in width usually do not provide adequate cover for large predators. The 20-inch diameter piling provides little refuge from the current on their downstream sides. Thus, it is not expected that predators would be attracted to the area by either of these marina components.

Although we cannot rule out the possibility that a few predators may benefit from the new over-water structures at the marina expansion area, the Project is not expected to significantly increase predator habitat in the Multnomah Channel. The emergency ramp originating from the bank will cross some shallow water habitat, however it will be suspended well above the surface of the water and is narrow enough (6 ft) to preclude effects from shading. All other dock structures would be placed at least 41 ft riverward from the shoreline during low flow conditions, which would reduce predatory habitat and allow an uninhibited passage route for juvenile salmonids along the shoreline.

Barges would only be used for a limited period of time to install the floating docks and support the pile driving equipment. The use of these platforms is common within the lower Willamette River and Multnomah Channel. Few salmonids will be present in the Project action area during the summer and early fall months when the proposed Project would occur. Due to the temporary and localized use of barges and timing of operation during the in-water work window, we conclude that there are no detrimental effects related to shading associated with barge placement.

9.1.7 Chemical Spills

The proposed Project will adhere to conservation measures regarding oil and fuel spills and ensure that all personnel are aware of spill prevention and response procedures.

9.2 CRITICAL HABITAT EFFECTS

Four of the 13 salmonid populations that may occur in Multnomah Channel have designated critical habitat within the Project action area. These populations include: Lower Columbia River chinook salmon, Upper Willamette River chinook salmon, Lower Columbia River steelhead trout, and Upper Willamette River steelhead trout. Designated critical habitat for federally listed salmonids consists of freshwater rearing sites and freshwater migration corridors and their essential physical and biological features, also known as PCEs (70 FR 52630). The PCEs for the Project action area and potential Project impacts on these features are summarized in Table 5. The proposed Project is "*likely to adversely affect*" the value of some of these PCEs in the Project action area in the short term, but is not expected to negatively impact these PCEs over the long term. The proposed Project would not destroy or adversely modify critical habitat for listed salmonids.

9.3 INDIRECT EFFECTS

No significant indirect effects were identified that affect any federally listed species. The Project would increase moorage capacity for private recreational boats at the Project site. Thus, the increased boat usage following implementation of the Project could increase the potential for boat related contaminant spills and sewage releases within the Multnomah Channel. However, Multnomah Channel currently

experiences a high number of recreational boaters each year. The increase in boat usage at the Project site would be insignificant when compared with existing boat usage within the Multnomah Channel.

Table 5. Potential Project effects on specific critical habitat PCE's for listed salmonids that are known to use the Project action area.

Site	PCE's	Potential Project Effects
Freshwater rearing	Water Quantity	No effects are anticipated.
	Floodplain Connectivity	Floodplain connectivity is limited within the Project action area. No effects are anticipated.
	Water Quality	Turbidity levels will temporarily increase during Project activities but are expected to be primarily limited to the expansion area. Some chemical contaminants may be resuspended by in-water work. Over the long term, water quality will be maintained. Removal of creosote-treated piling will reduce leaching of PAH's into the channel.
	Forage	Short-term loss of benthic invertebrates may result from substrate disturbance. Benthic organisms are expected to recolonize the expansion area following in-water work activities. Some loss of primary productivity may occur from shading, which could cause a reduction in the abundance of detritus-feeders at the Project site.
	Natural Cover	No effects are anticipated
Freshwater migration	Free Passage	Passage will not be significantly affected during Project construction. Placement of the new floating docks offshore will maintain free passage for juvenile salmonids along the shoreline.
	Water Quantity	No effects are anticipated.
	Water Quality	Short-term and localized increases in turbidity are not expected to preclude migration for juvenile and adult salmonids. Over the long term, water quality will be maintained.
	Natural Cover	No effects are anticipated.

Rocky Pointe Marina was designated as Oregon's first Clean Marina in June 2006. The Clean Marina Program works with marinas to eliminate or reduce the input of polluting materials, such as oil, paint, cleaning chemicals, sewage, fish waste, and trash, into the environment. Rocky Pointe Marina is trained and equipped to handle contaminant spills that may occur at the marina. Existing utilities-power, water, phone, propane, sewer have been determined sufficient to handle increase pressure resulting from the anticipated houseboats. No significant indirect effects on any designated critical habitat PCEs for listed salmonids are anticipated.

9.4 INTERRELATED AND INTERDEPENDENT EFFECTS

No interrelated or interdependent effects of the proposed action on listed fish species were identified. Additionally, no interrelated or interdependent effects on any designated critical habitat PCEs for listed salmonids are anticipated.

9.5 CUMULATIVE EFFECTS

Additional Projects within the watershed are anticipated as population growth continues in the region. Associated road and commercial development, as well as maintenance and upgrading of the existing infrastructure, are therefore likely to occur in the foreseeable future. Within the Project action area, gradual habitat and water quality improvements may also occur over time as federal, state and private conservation and habitat enhancement efforts are implemented.

A standard of "reasonably certain to occur" is clarified as "those actions that are likely to occur, bearing in mind the economic, administrative, or legal hurdles which remain to be cleared". Further, NMFS provides that "speculative actions that are factored into the cumulative effects analysis add needless complexity into the consultation process..." (51 FR 19933). No specific state or private actions have been identified within the Project action area that meets this standard. Further, activities described above are speculative in nature and cannot be quantified in this document. Therefore, we conclude that there would be no cumulative effects associated with state or private activities. No cumulative effects on any designated critical habitat PCEs for listed salmonids are anticipated.

10.0 EFFECTS DETERMINATION

The USFWS and NMFS have published guidelines for making determinations of effect for listed species and critical habitats protected under the federal ESA. A determination of "**no effect**" is the appropriate conclusion when "the proposed action will not affect (i.e. harm or harass) listed species or critical habitat." "Harm" is an act that actually injures or kills listed species (50 CFR § 17.3). "Harassment" is defined as an "intentional or negligent act or omission which creates the likelihood of injury to listed species by annoying it to such an extent as to **significantly** disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering" (50 CFR § 17.3).

A determination of "**is not likely to adversely affect**" is "the appropriate conclusion when effects on listed species or critical habitats are expected to be discountable, or insignificant, or completely beneficial." The guidelines offer further clarification indicating that; "**insignificant effects** relate to the size of impact and should never reach the scale where take occurs. **Discountable effects** are those extremely unlikely to occur. Based on best judgment, a person would not (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur." A "**likely to adversely affect**" determination is "the appropriate conclusion if any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not: discountable, insignificant, or beneficial" (NMFS 1996, USFWS and NMFS 1998).

After evaluating the potential effects and available scientific and commercial data, we conclude that the proposed action is "*likely to adversely affect*" the following five ESUs/DPSs of federally listed salmonids known to occur within the Project action area:

- Lower Columbia River Coho Salmon (*Oncorhynchus kisutch*)
- Lower Columbia River Steelhead (*Oncorhynchus mykiss*)
- Lower Columbia River Chinook Salmon (*Oncorhynchus tshawytscha*)
- Upper Willamette River Steelhead Trout (*Oncorhynchus mykiss*)
- Upper Willamette River Chinook Salmon (*Oncorhynchus tshawytscha*)

This determination is primarily based on: (1) short-term (minutes to hours), localized acoustic disturbances during pile driving that may result in sublethal effects to individual salmonids; (2) temporary (hours to weeks) water quality and benthic disturbances that would occur during dock placement and the installation and/or removal of piling in the Multnomah Channel; and (3) long-term shading effects caused by over-water and in-water structures that could result in increased salmonid predation and a reduction in primary productivity.

The possibility that some listed salmonids could be present in the Project action area during the proposed marina expansion Project gives rise to the potential for adverse affects to listed salmonids. A determination of "*likely to adversely affect*" is the appropriate conclusion since the potential Project effects cannot conclusively be classified as "discountable, insignificant, or beneficial" (NMFS 1996, USFWS and NMFS 1998). The potential Project effects on acoustic levels, water quality and benthic forage cannot be termed "insignificant" since insignificant effects are defined as "effects that should never reach the scale where take occurs" (*ibid*). Under the ESA definition, "take" includes both harm and harassment (50 CFR § 17.3). Pile driving has the potential to cause harm (injury or mortality) to listed salmonids; all Project impacts could result in short-term "harassment" of listed salmonids (*ibid*). The implementation of conservation measures will help reduce the potential for take of listed salmonids. No significant long-term adverse impacts (months to years) are anticipated. The Project would not cause adverse, long-term impacts that would affect the survival and/or recovery of any listed salmonids that utilize the Project action area.

Usage of the Multnomah Channel by the remaining eight listed salmonids would be so rare an event that the likelihood of adverse effects would be negligible. Therefore, we conclude that the determination of "*may affect, not likely to adversely affect*" is appropriate for the following eight ESUs/DPSs of federally listed salmonids:

- Columbia River Chum Salmon (*Oncorhynchus keta*)
- Snake River Sockeye Salmon (*Oncorhynchus nerka*)
- Upper Columbia River Steelhead Trout (*Oncorhynchus mykiss*)
- Upper Columbia River Spring Chinook Salmon (*Oncorhynchus tshawytscha*)
- Middle Columbia River Steelhead Trout (*Oncorhynchus mykiss*)
- Snake River Spring/Summer Chinook Salmon (*Oncorhynchus tshawytscha*)
- Snake River Fall Chinook Salmon (*Oncorhynchus tshawytscha*)
- Snake River Basin Steelhead Trout (*Oncorhynchus mykiss*)

The proposed action will not significantly "hinder the attainment of relevant functioning indicators" as defined in "Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale" (NMFS 1996). The proposed Project would not result in the "*destruction or adverse modification*" of designated critical habitat. No significant indirect, cumulative, interrelated or interdependent effects on listed salmonids or their critical habitats were identified with the proposed Project.

11.0 ESSENTIAL FISH HABITAT

The Magnuson-Stevens Act (MSA) requires proposed Projects with a federal nexus to evaluate their impacts on habitat of commercially managed fish populations. EFH has been defined for the purposes of the MSA as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity" (16 U.S.C. 1802(10)). NMFS has further added the following interpretations to clarify this definition:

- "Waters" include aquatic areas and their associated physical, chemical and biological properties that are used by fish, and may include areas historically used by fish where appropriate;
- "Substrate" includes sediment, hard bottom, structures underlying the waters and associated biological communities;
- "Necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and
- "Spawning, breeding, feeding, or growth to maturity" covers the full life cycle of a species (50 CFR § 600.10).

The analysis of the effects provided below regarding the proposed Rocky Pointe Marina Expansion Project is made pursuant to Section 305(b)(2) of the MSA. Under this act, Federal agencies are required to consult with NMFS regarding any of their actions authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken that may "adversely affect" EFH. "Adverse effect" means any impact that reduces the quality and/or quantity of EFH, which can include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR § 600.810).

Cumulative impacts are incremental impacts, occurring within a watershed or marine ecosystem context, which may result from individually minor, but collectively significant actions. The assessment of cumulative impacts is intended, in a generic sense, to examine actions occurring within the watershed or marine ecosystem that adversely affect the ecological structure or function of EFH. The assessment should specifically consider the habitat variables that control or limit a managed species' use of a habitat. It should also consider the effects of all impacts that affect either the quantity or quality of EFH (50 CFR § 600.815).

For any federal action that may adversely affect EFH (except those activities covered by a General Concurrence), federal agencies must provide NMFS with a written assessment of the effects of that action on EFH. EFH consultations can be completed using the ESA Section 7 consultation process provided that the action agency supplies the information required by 50 CFR § 600.920 (NMFS 2001b).

An EFH assessment must contain:

- 1) a description of the proposed action;
- 2) an analysis of the effects, including cumulative effects, of the proposed action on EFH, the managed species, and associated species, such as major prey species, including affected life history stages;
- 3) the federal agency's views regarding the effects of the action on EFH; and

The earlier sections of this document present a detailed description of the proposed Project and all potential impacts to species listed as threatened or endangered under the ESA. The following section presents an identification of EFH within the Project action area, an analysis of effects, and a determination of these effects on EFH.

11.1 IDENTIFICATION OF EFH

11.1.1 Coastal Pelagic Fish Species

The CPS fishery includes four finfish species [Pacific sardine (*Sardinops sagax*), Pacific mackerel (*Scomber japonicus*), northern anchovy (*Engraulis mordax*), and jack mackerel (*Trachurus symmetricus*)] and the invertebrate, market squid (*Logigo opalescens*) (NMFS 1998). All of these species are restricted to marine and saline estuarine waters and are not known to occur in the lower Willamette River or Multnomah Channel.

11.1.2 West Coast Groundfish

The West Coast Groundfish Fisheries Management Plan (FMP) manages 83 species over a large and ecologically diverse area. Of the 83 species, starry flounder (*Platichthys stellatus*) is the only species expected to occur within the Project action area. The EFH for Pacific coast groundfish is defined as the aquatic habitat necessary to allow for groundfish production to support long-term sustainable fisheries for groundfish and for groundfish contributions to a healthy ecosystem. The boundaries for West Coast groundfish EFH are generally defined as all waters from the mean higher high water line, and the upriver extent of saltwater intrusion in river mouths along the coasts of Washington, Oregon and California seaward to the boundary of the U.S. EEZ (64 FR 49092). However, more specific definitions of EFH on a species by species basis are provided in an appendix (Casillas et al. 1998) to the Pacific Coast Groundfish Fishery Amendment 11 (64 FR 49092). The habitat description for starry flounder notes "adults and juveniles are known to swim great distances (>120 km) up major coastal rivers but not following any migratory trend." Therefore, in the case of starry flounder, it appears that EFH includes the freshwater of major coastal rivers used by adults and juveniles.

Starry flounder occur in the lower Willamette River and are expected to occur within the Project action area. Several starry flounder have been captured in shallow water habitat areas in the lower Willamette River, near St. Johns Bridge (EES 2003). The starry flounder that were captured in shallow water habitat ranged in length from 94 mm to 454 mm. According to Hart (1973), maturity in males occurs at about 300 mm and in females at about 350 mm. Based on the length frequency distribution of the starry flounder caught in shallow water habitat upriver from the Project site, it appears that most of the fish were juveniles.

11.1.3 Pacific Coast Salmon

In September 2000, NMFS approved the Pacific Fishery Management Council's Amendment 14 to the Pacific Coast Salmon Plan. Appendix A to Amendment 14 defines freshwater EFH for chinook salmon and coho salmon as including all streams, lakes, ponds, wetlands, tributaries and other water bodies currently viable and most of the habitat historically accessible to these species in Washington, Oregon and California within specific hydrologic units. The Multnomah Channel, at the Project site, is included in this definition for both species.

11.2 EFH EFFECTS ANALYSIS

11.2.1 Direct Effects

EFH for the CPS fishery is not known to be present in the Project action area. The starry flounder is the only West Coast groundfish expected to occur in the Project action area. EFH for the starry flounder includes the deep water and shallow water habitat within the Project action area. Chinook salmon and coho salmon are the two salmonid species that are managed in the Multnomah Channel for EFH.

The direct effects of the proposed Project that could affect starry flounder EFH include substrate disturbances caused by proposed dock placement and piling installation/removal in the Multnomah Channel. As described in Section 9.0 of the BA, substrate disturbances and water quality impacts would be short-term and localized to the Project site, and minimized through the implementation of appropriate conservation measures. The west shoreline of the channel is dominated by bedrock and does not provide preferred substrate conditions for starry flounder. However, preferred habitat for starry flounder (sand and silty substrate) is common in the channel mainstem. Project activities may degrade water quality conditions in the short-term and cause increases in shading that may reduce habitat suitability for starry flounder. However, the shading reduction measures incorporated in the Project design are expected to minimize long-term adverse effects on starry flounder EFH.

The EFH for chinook and coho salmon consists of the water and substrate in the shallow water, deep water, and off-channel habitats within the Project action area. The direct Project effects on these areas have been thoroughly described in Section 9.0 of the BA. We conclude from this analysis that the proposed Project would adversely affect EFH for coho or chinook salmon in the short term. No adverse effects to EFH for these species are anticipated over the long-term.

11.2.2 Indirect and Cumulative Effects

Potential indirect and cumulative effects of the proposed Project on chinook salmon and coho salmon were discussed in the BA (Section 9.0). Indirect effects, as defined for EFH

consultations under 50 CFR 600.810, include the short-term disturbance of benthic food organisms. The substrate disturbances caused by the proposed activities would be primarily limited to the proposed expansion area. Also, because the Project action area is located on the periphery of the distribution of starry flounder, it is unlikely that food is a limiting factor for the fish that migrate into the Project action area. Based on these analyses, we conclude that the temporary loss of benthic production associated with the proposed Project activities would not adversely affect Pacific Coast Salmon EFH or West Coast Groundfish EFH over the long term.

Cumulative affects associated with the proposed actions are unlikely to affect EFH. Any cumulative or indirect impacts associated with other Projects planned in the vicinity of the Project area would be required to comply with existing or emerging development standards required to protect habitat for fish species. These standards are intended to protect water quality, hydrologic conditions, stream habitat conditions, riparian buffers, and wetlands.

11.3 EFH EFFECTS DETERMINATION

The potential direct, indirect, and cumulative effects of the proposed Project "*may adversely affect*" identified EFH in the short-term for the Project action area evaluated, based on consideration of the EFH requirements of the CPS fishery, West Coast groundfish fishery, and the Pacific coast salmon fishery. No significant adverse long-term effects on EFH are anticipated. It is expected that the conservation measures described in the BA are also applicable to EFH and would satisfy the requirements pursuant to Section 305(b)(4)(A) of the MSA.

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APPENDIX A. PHOTOGRAPH LOG.

APPENDIX B. PROJECT DRAWINGS.

**APPENDIX C. U.S. FISH AND WILDLIFE SERVICE SPECIES LIST FOR
MULTNOMAH COUNTY.**

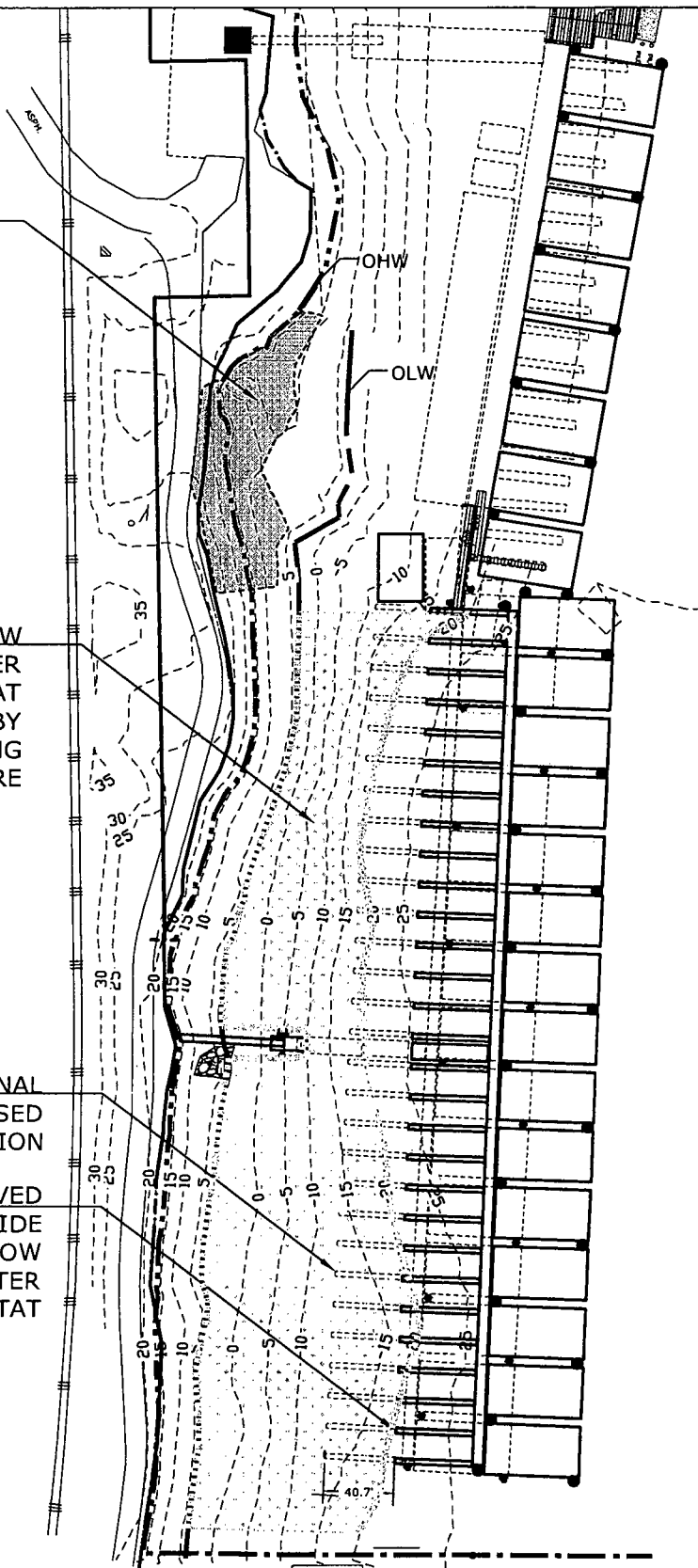
NOTE: CONTOURS BASED ON WEDDEL AND ASSOCIATES HYDRO MAPPING

INVASIVE
REMOVAL AND
REPLANTING
ZONE

SHALLOW
WATER
HABITAT
PROTECTED BY
MOVING
STRUCTURE

ORIGINAL
PROPOSED
LOCATION

DOCKS MOVED
OUTSIDE
SHALLOW
WATER
HABITAT



Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6311
Fax (503) 297-6053

TITLE: SITE-IMPACT MINIMIZATION, AVOIDANCE

1"=100'

DATE:

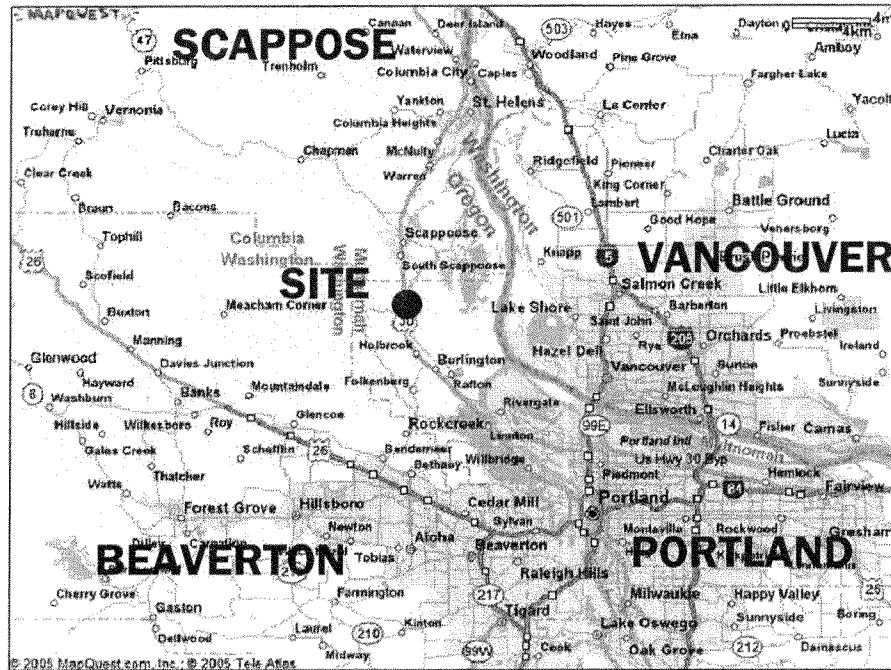
7/29/09

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

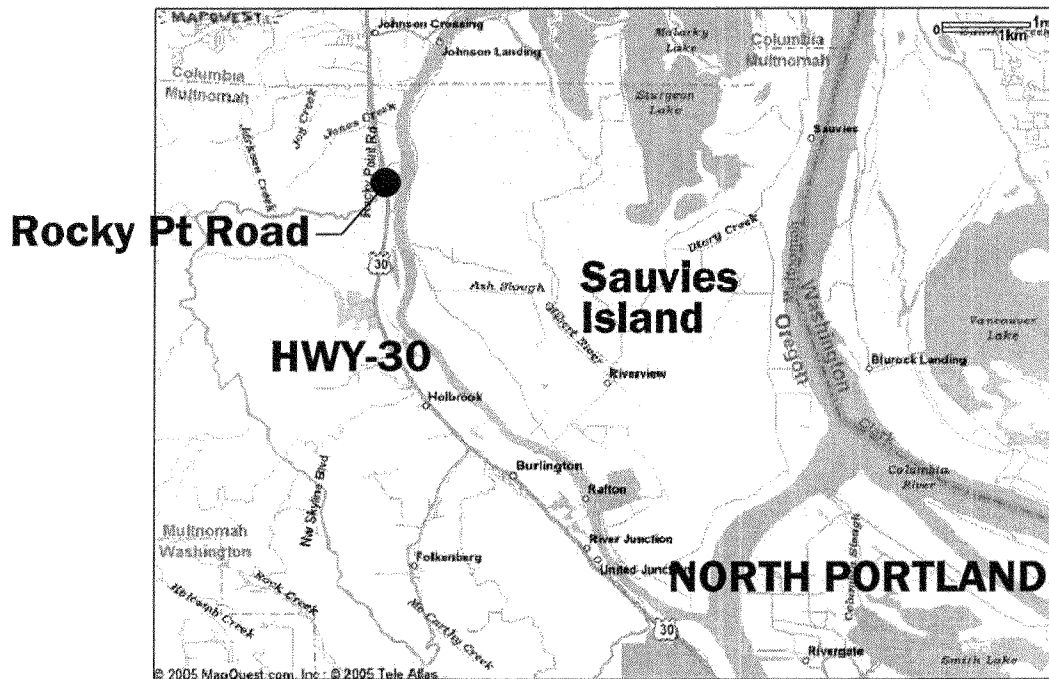
RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

SHEET NO.
10

Appendix B



LOCATOR



VICINITY MAP

Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6311
Fax (503) 297-6053

TITLE:

VICINTIY MAP

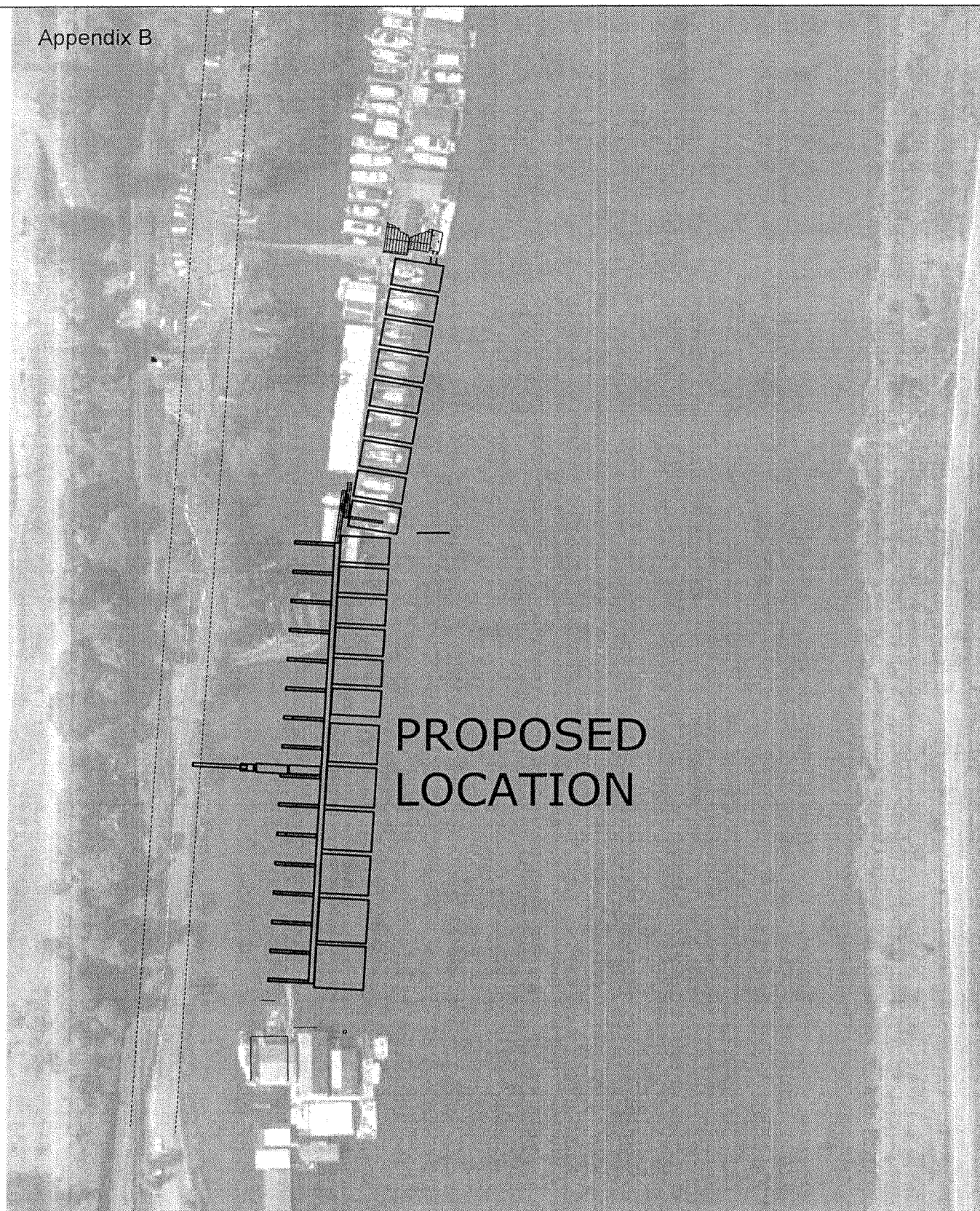
DATE: 4/25/08

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

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

SHEET NO.
1

Appendix B



Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6311
Fax (503) 297-6053

TITLE:

SITE PHOTO

1"=150'

DATE: 4/25/08

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

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

SHEET NO.
2

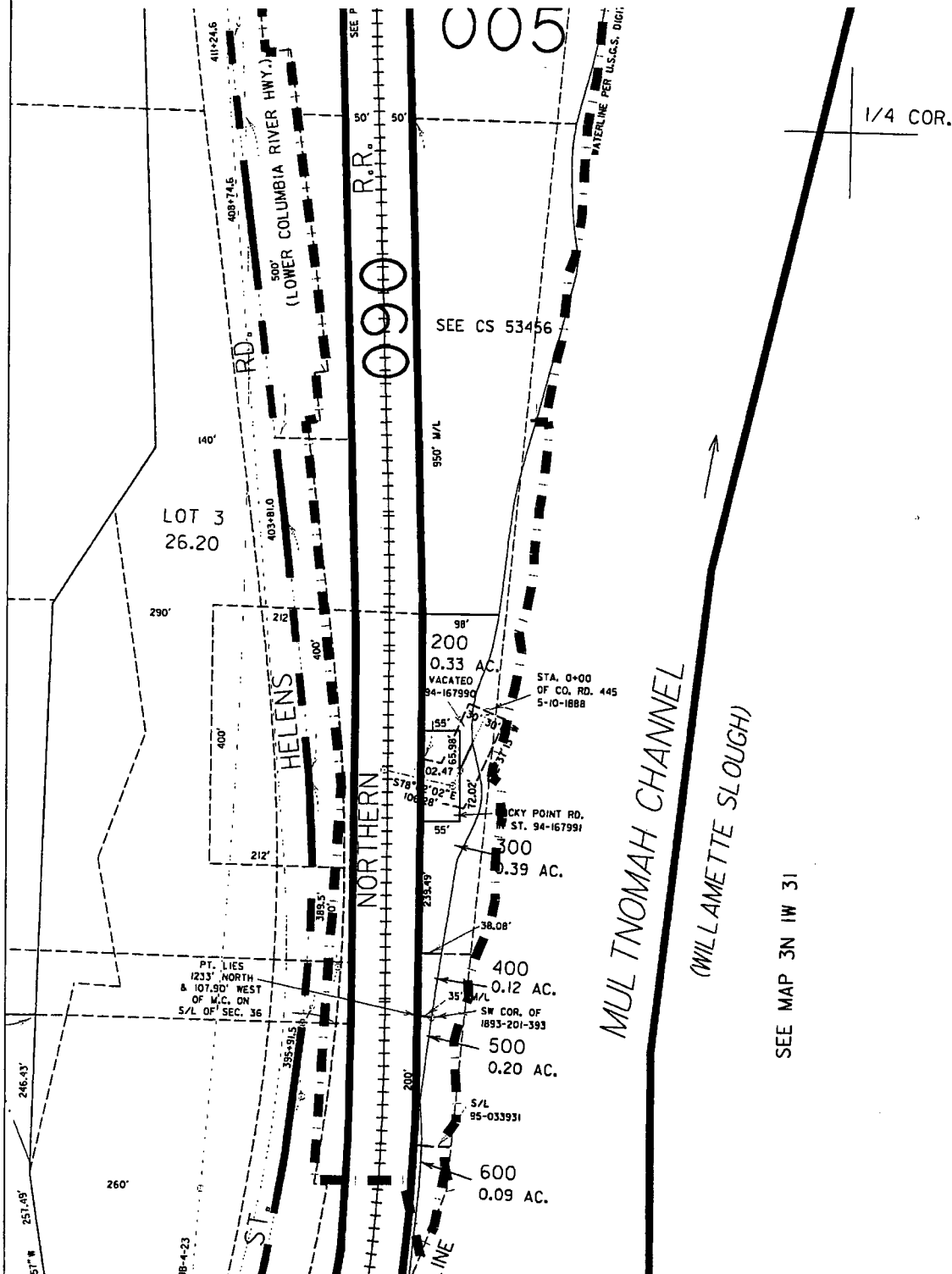
Appendix B

SE1/4 SEC. 36 T.3N. R.2W. W.M.
MULTNOMAH COUNTY

SEE MAP 3N 2W 36A

1" = 200'

3N 2W 36D



Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6311
Fax (503) 297-6053

TITLE: TAX LOT CONSOLIDATION

1"=250'

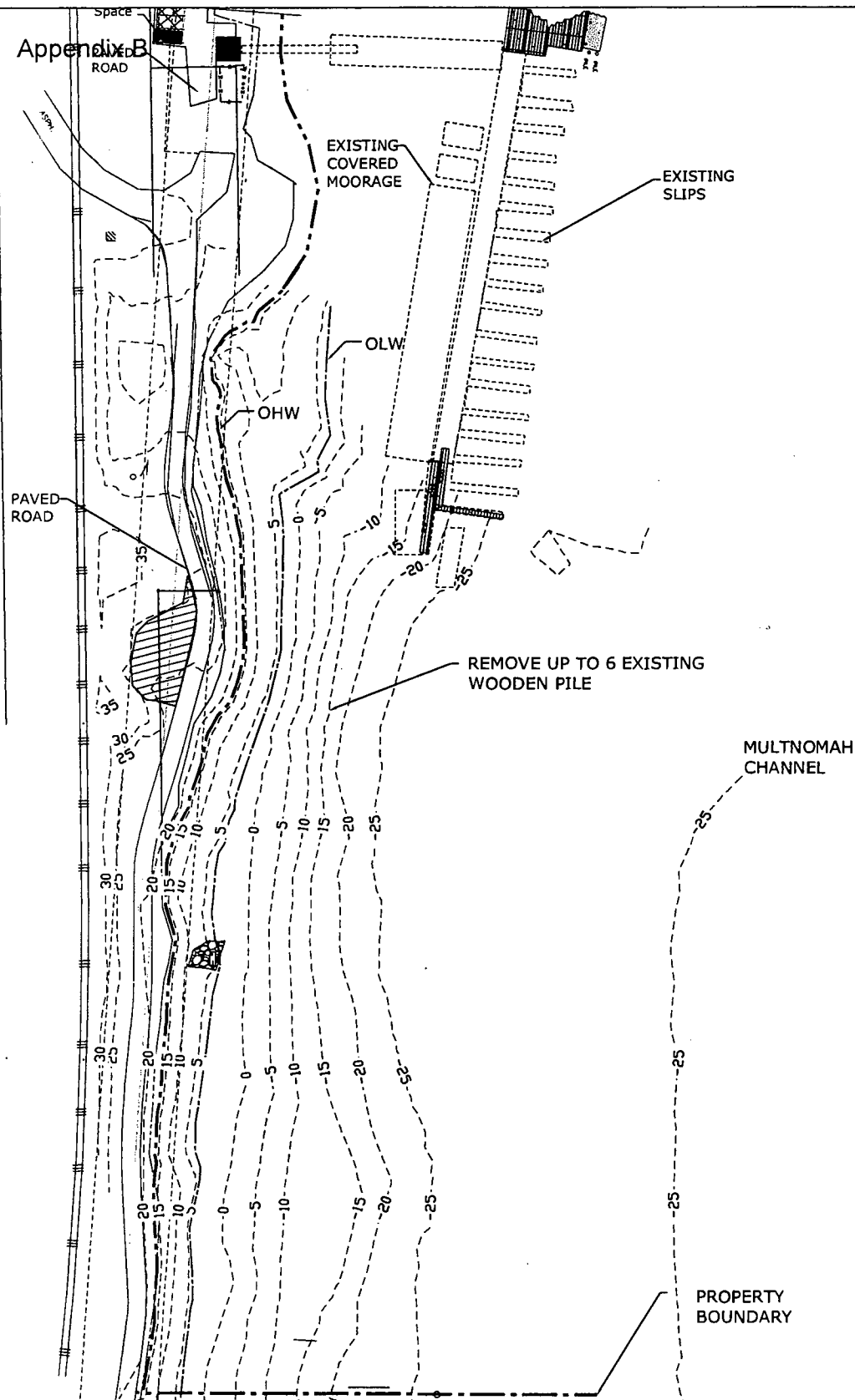
DATE: 4/25/08

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

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

SHEET NO.
3

Appendix B



Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6311
Fax (503) 297-6053

TITLE: EXISTING SITE

1"=100'

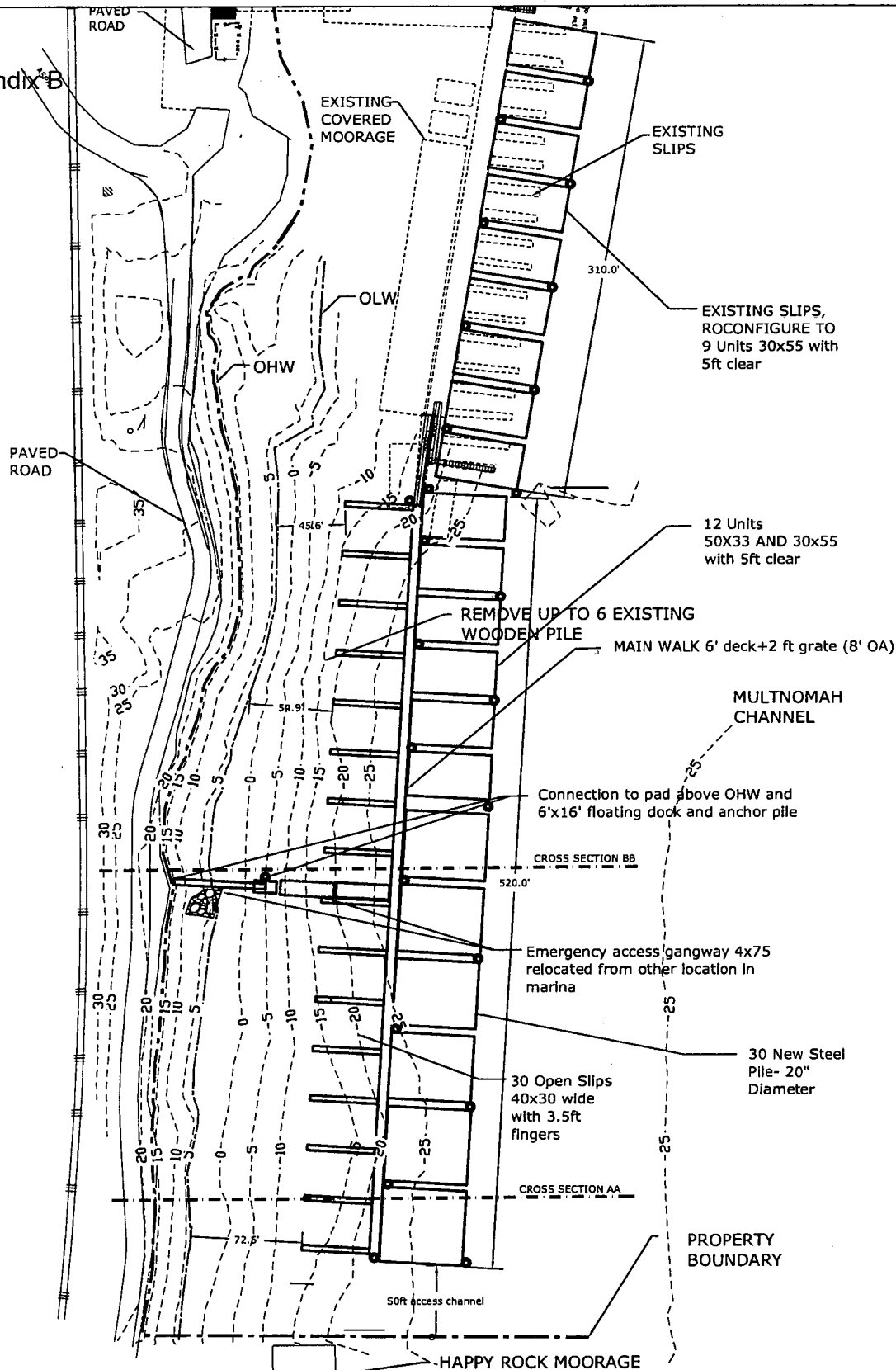
DATE: 4/25/08

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

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

SHEET NO.
4

Appendix B



Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6311
Fax (503) 297-6053

TITLE: SITE-MARINA-PROPOSED

1"=100'

DATE: 4/25/08

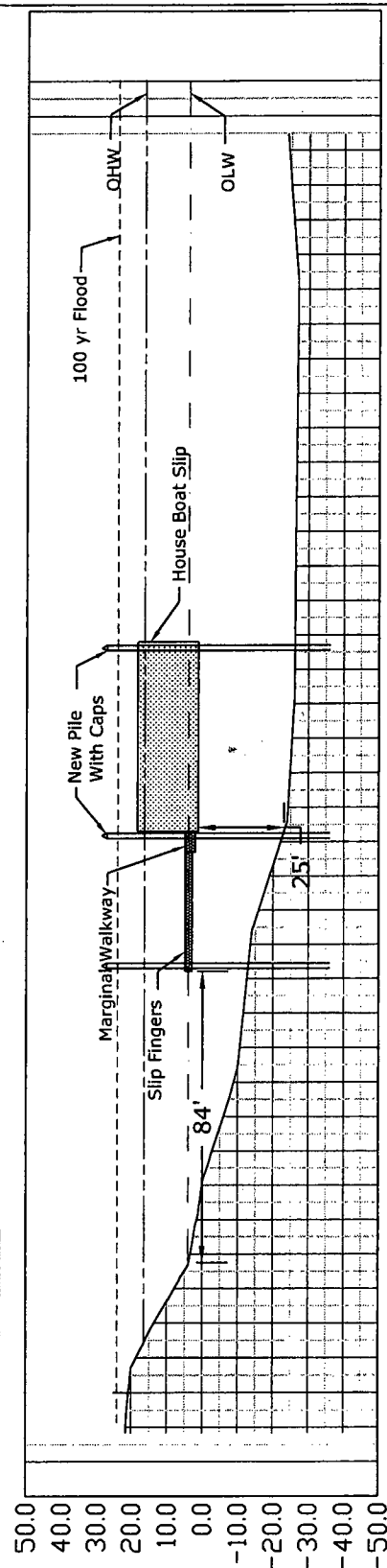
ROCKY POINT MARINA
23586 NW ST. HELENS ROAD
PORTLAND, OR 97231

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

SHEET NO.
5

Appendix B

Section-AA



Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6311
Fax (503) 297-6053

TITLE:

SECTION AA

1"=50'

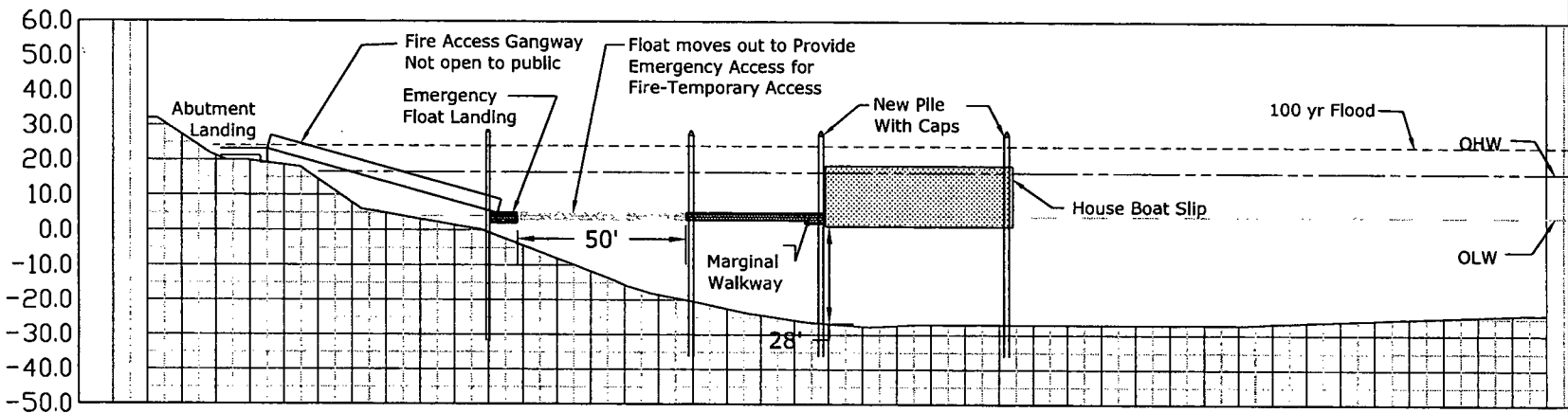
DATE: 4/25/08

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

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

SHEET NO.
6

Section-BB



Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6311
Fax (503) 297-6053

TITLE:

SECTION BB

1"=50'

DATE: 4/25/08

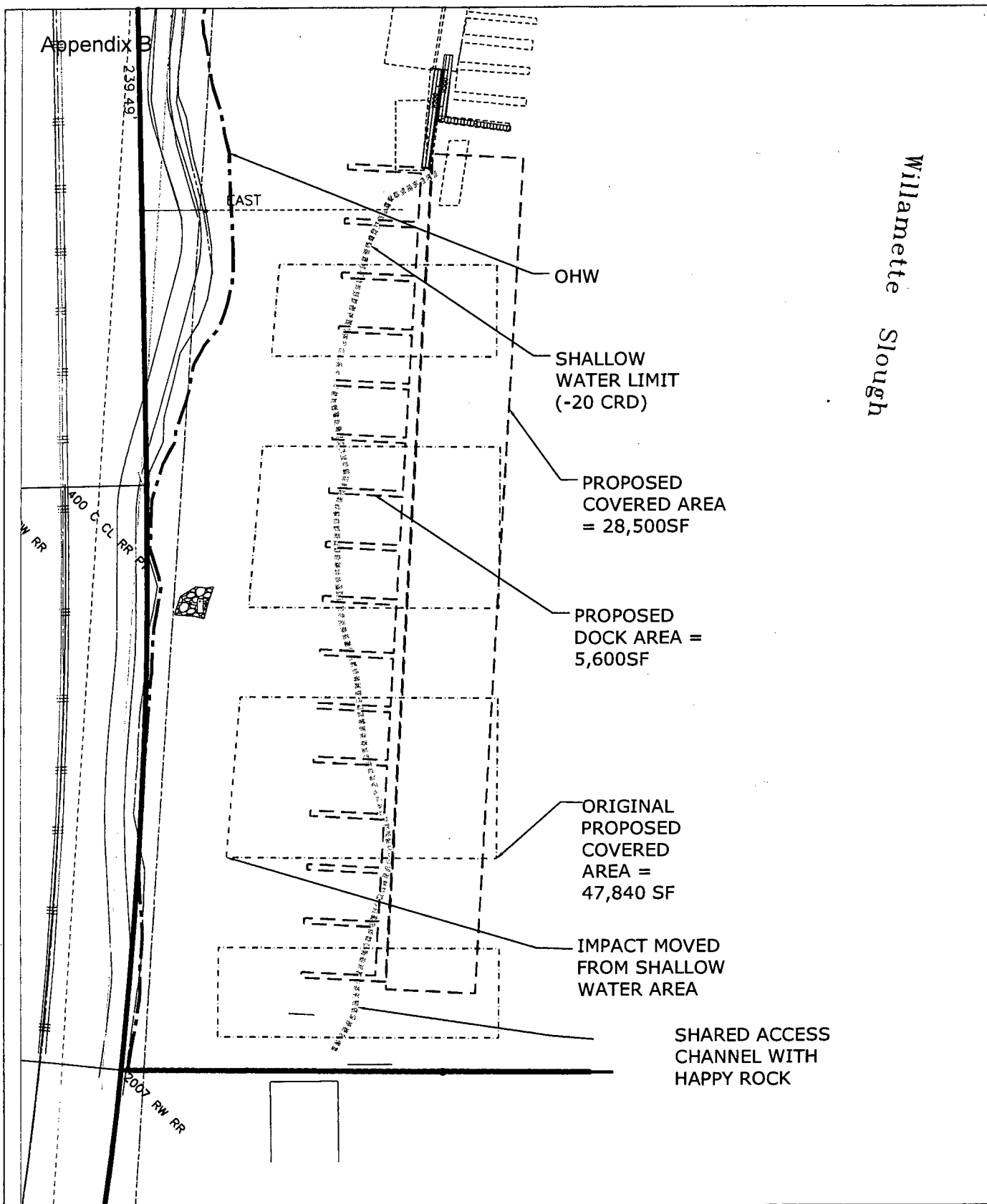
ROCKY POINT MARINA
23586 NW ST. HELENS ROAD
PORTLAND, OR 97231

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

SHEET NO.
7

Appendix B

Willamette Slough



Flowing solutions



Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6311
Fax (503) 297-6053

TITLE:

ALTERNATIVE IMPACT COMPARISON

1"=80'

DATE: 4/25/08

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

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

SHEET NO.
8

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.

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.

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

Cedrus atlantica 'Glauc 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

October 16, 2007

side beside the water run off area.

Picea glauca 'pendula' ('Weeping blue spruce) Distinctive in its formal conical shape but pendulous. Two of these plants, combined with the *Chamaecyparis* as the largest of the three evergreens, will set off the focal grouping of this very visible area. .

Spirea prunifolia (Bridle wreath *Spiraea*) Graceful shrub up to 6' in height, small dark green leaves turning red in the fall. The white flowers form a wand of white in June.

MAINTENANCE PLAN

- All the invasive material will be removed from the rocky bank area directly below railroad tracks.
- Planting holes will have to be created using tree planting standards for current size and ten year growth expectation.
- The railroad will have to be contacted about shoring up the railroad track slope before installation of the plant material.
- Materials that have been chosen for this developed site will need once a year pruning in the fall and will need to be fertilized twice a year with a water soluble type fertilizer.
- Controlling incoming invasive plant material will be the most important issue for this site, so during the growing seasons weed removal on a monthly basis should keep this area in shape.
- The site is covered in various size rocks so a top dressing will only be necessary around the new plantings.
- New plant material will require irrigation for at least the first year. In subsequent years the plants will need irrigating only in drought conditions.

DRY BANK AREA

PLANT LIST

This area that starts in the upper marina and runs north along the bank to the new proposed site has various native material growing very well so it will be left and pruned back where needed. Western Hazelnut (*Corylus cornuata* var. *cal.*), Nooka rose (*Rosa nutkana*) *Ribes sanguineum* (Red flowering current) and *Symphoricarpos* spp (Snowberry) are the majority of the native plants on this bank side.

Acer circinatum (vine maple) Small tree 5'-25' high great in full sun with sharp drainage. This deciduous tree will turn a bright red in the fall.

Philadelphus lewisii sometimes referred to as Western mock orange is an erect shrub that blooms in June-July with a white fragrant bloom that can be detected by anyone who passes by. Mature height is 8' to 10' with a spread of 4' to 6'.

Physocarpus opulifolius common name Nine Bark because of its peeling bark. This shrub grows to 8' high and produces clusters of white blooms in spring.

October 16, 2007

Holodiscus discolor (ocean spray) is found on dry rocky slopes growing up to 20' in, ten years producing creamy white flowers in the spring.

Symphoricarpos albus (Snowberry) Small deciduous shrub with erect branching, flowering in late summer producing white fruit that remains attached after the leaves drop in the fall. Found growing on the edges of the plant material described above.

Amelanchier alnifolia (serviceberry) growing to 15', this plant has blue-green foliage with delicate 2" flowers and a brilliant red/yellow fall color. The fruit is edible for humans and wildlife.

Arctostaphylos Columbiana (hart' manzanita) This plant is an evergreen shrub that grows to 10' loves rocky slopes in full sun, Highly drought tolerant with fragrant white flowers and edible fruit with reddish brown bark.

Arctostaphylos uva-ursi (kinnikinnick) An evergreen ground cover whose winter color is burgundy and is a fast growing landscaping plant for steep banks and rockeries.

This site has seasonal native plants that come into bloom at different times of the seasons and these plants once established will require little or no summer watering. Native grasses and perennials are established on all of these sites and change with water level as well as the seasons. By selecting the right native plant for each of the different eco systems we will continue to feed the wildlife and be very low impact to our special environment here at Rocky Pointe Marina.

MAINTENANCE PLAN

- All the invasive material will be removed and the trees and shrubs that will be left will be pruned.
- Planting holes will also have to be created for the new materials.
- A continuous walking trail will be established next to the road in this area and also maintained on a monthly basis. This will include weed eradication and smoothing of the bark surface to ensure stable footing.
- Like all of the eco systems, controlling the invasive species on a monthly basis will be high priority.
- To determine which invasive species are present, we will be following the Oregon invasive species council list for all the plant material that we will be controlling on site,
- After the material has been planted, watered in and fertilized, a yearly pruning will keep these plants in healthy condition. Like the developed site this material will need irrigation for the first year to establish a healthy root zone.
- The soil for transplanting will be a combination of compost and existing soil from the site for an easy transition for the plant material.

NATURAL AREA

PLANT LIST

The natural area runs the west side length of the property of Rocky Pointe marina encompassing all three marinas.

The native material found in this area is mostly Oregon Ash cottonwood, native shrubs like Oregon grape, Western serviceberry, and creek dogwood to mention a few. The banks along the river are kept in place very well by the roots of all this different materials providing fall color and food for the various wildlife found here.

The interpretive walking trail will run the length of this area and have plant identification tags for the plant materials and some wildlife that can be found here. The trail will be 4' wide and be made of hard packed and rolled bark,. To enhance this site we plan to add mostly evergreen native plant material for seasonal interest in this eca system.

Rhododendron occidentale (Western azalea) grows to 8' high -6' wide with flowers of rose color to white with red or orange blotches.

Rhododendron macrophyllum (Western rhododendron) Rangy growth to 4-10' high, the leaves are 2-6" long and are dark green in color. The flower trusses appear in May-June and are rosy pink in color.

Philadelphus lemoinei (Mock Orange) Deciduous shrub growing to 6' high with a 4' spread. Flowers in summer are white and very fragrant.

Sambucus caerulea (Blue Elderberry) Native shrub 4-10' high that produces blue berries in the fall that are edible and used for jam jellies and wine, and are also enjoyed by the varied bird population.

Mahonia aquifolium (Oregon grape) this plant can grow to 6' high with a tall erect habit. The flowers are yellow and bloom in March to May bearing fruit in the fall that is blue and edible.

Chamaecyparis nootkatensis (Alaskan Cedar) Also known as a false cypress this plant can grow past 15, in ten years This cedar will add another habitat for our bird life and winter interest along our walking path.

MAINTENANCE PLAN

- In this eco system the construction of the trail the full length of the property should be completed before any installation of the new materials. The trail should be checked monthly for maintenance issues.
- The trail will wander along without disturbing the existing plant life on the top of the bank over looking the river.
- Selective pruning will need to take place and dead tree removal should happen before trail construction begins.

October 16, 2007

- Invasive species should be removed and controlled through out the various eco systems.
- After placating, material should be watered for the first year when needed to ensure health and naturalizing.
- The maintenance needs in this area should be minimal with pruning and trail upkeep when necessary.
- Around headwalks of the marinas the pruning, watering and fertilizing should be more frequent due to the intense perennial gardening in these areas.

WETLAND/LAKE AREA

PLANT LIST

This area also runs the length of the lower and middle marina across the road from the natural area. The area is home to all types of wildlife and wetland tree and plants, Oregon ash and sitka willows to mention a few. There are some native evergreens that could be added to this eco system to add year around interest to the area.

Thuja plicata (Western red cedar) prefers moist but not soggy soil and can reach 100' in some conditions. This would be a grand addition for our grassy area off the end of the lake.

Taxus brevifolia (Western yew) evergreen conifer to 80' high likes shade and part sun a great tree for those spots that the Oregon Ash dominate now in this area.

Pinus Varcontorta (Shore Pine) another evergreen conifer to add to the deciduous stand of trees in this area. This tree could be used in the grassy area of this eco system.

Around the lake and boggy areas of this site plant material is not to be added. Established shrubs and trees are flourishing, creating the correct eco balance.

Plants for the bio swales should include rushes, sedges, monkey flower, camas, red osier dogwoods and Pacific ninebark.

MAINTENANCE PLAN

- There are invasive wetland plants that need to be removed from this wetland eco system. On the marina side of the lake the native grasses should be kept at a reasonable height throughout the summer months.
- The grassy park like area where the evergreens are to be planted should also be mowed throughout the summer months.
- Like the other eco systems a monthly check for weed control and invasive plant removal should take place.
- Pruning and dead tree removal should be conducted when needed.
- For the first year the new plant material needs to be watered regularly, especially during the dry months.

#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: R-6

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 28, 2010

SUBJECT: ROCK POINT MARINA EXPANSION

AGENDA NUMBER OR TOPIC: R-6

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

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

CITY/STATE/ZIP: PORTLAND, OR 97231

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

EMAIL: CWB CONSTRUCTION @ 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 Engलगau; Sandy Farewell; Mike and Jan Frice and Rojaske; 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 Engलगau. 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. Price

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: J McCULLY

ADDRESS: 1555 N. JANTZEN AVE

CITY/STATE/ZIP: PORTLAND OR 97217

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

EMAIL: W MARNEENV@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 BLAN LIGHTCAP

ADDRESS: 2701 NW Vaughn

CITY/STATE/ZIP: Portland, OR

PHONE: _____ DAYS: _____ EVES: _____

EMAIL: _____ FAX: _____

WRITTEN TESTIMONY: Additional comts to those
provided 21 Jan 10

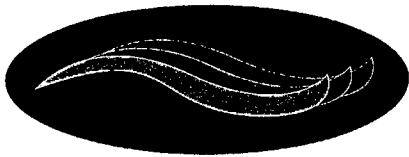
IF YOU WISH TO ADDRESS THE BOARD:

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 buckthorne 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

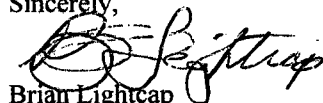
WWW.WMSWCD.ORG

- 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: 1/28/10

SUBJECT: Rocky Pointe Local Exceptions

AGENDA NUMBER OR TOPIC: _____

FOR: _____

AGAINST: ☒

THE ABOVE AGENDA ITEM

NAME: Chris Foster

ADDRESS: 15400 NW McNamee Rd

CITY/STATE/ZIP: Portland OR

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.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 2010-011

Approval of a Permit to New Song Church for Non Exclusive Use of Parking Spaces at the West End of the Morrison Bridgehead Parking Lot (Lot 24)

The Multnomah County Board of Commissioners Finds:

- a. New Song Church, working as Manna Ministries, approached Multnomah County during the fall of 2009 regarding use of a portion of the west end of the Morrison Bridgehead parking lot for their Sunday evening Feed-the-Homeless Program. The property (Property) is more particularly described in the attached Permit for Non Exclusive Use of Parking Spaces (Permit). A 90-day temporary permit was issued by the Chair to start the program.
- b. The attached Permit has been negotiated to provide non exclusive use of approximately 50 parking spaces needed to provide this service to the homeless community each Sunday evening from 6:00pm to 11:00pm.
- c. It is in the best interests of the County to continue non-exclusive use of the Property under the terms of the attached Permit on a month-to-month basis.

The Multnomah County Board of Commissioners Resolves:

1. The Property is temporarily surplus to any County use for the limited time and purpose described in the Permit.
2. The Board approves the attached Permit. The County Chair is authorized to execute the Permit substantially in the form attached to this Resolution.
3. The County Chair is authorized to execute renewals of the Permit and execute amendments to the Permit without further Board action.

ADOPTED this 28th day of January 2010.

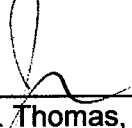


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
John S. Thomas, Deputy County Attorney

SUBMITTED BY:

Mindy Harris, Interim Director, Dept. of County Management

Page 1 of 5 – Resolution 2010-011 Approving Permit for Non Exclusive Use of Parking Spaces

PERMIT FOR NON EXCLUSIVE USE OF PARKING SPACES

Multnomah County, Oregon ("County") hereby grants to New Song Church-Manna Ministries ("Manna") the non-exclusive use of parking spaces as follows:

Recitals:

- a. County owns property ("County Property"), part of which is described in Exhibit "A" ("Permit Property"), collectively, "the Properties".
- b. County, in coordination with the Portland Development Commission ("PDC") intends to select a developer for the county Property and to convey the County Property to the developer pursuant to a development agreement.
- c. County currently uses the County Property for parking which provides significant revenue to County.
- d. Manna needs a site in the Downtown Portland area to provide food to homeless individuals one (1) night per week.
- e. The Permit Property is temporarily available on a non-exclusive basis for this purpose on Sunday nights while County seeks proposals for development and continues to contract operation for the commercial parking lot on County Property.
- f. Manna began using the property on November 8, 2009 under a Temporary Use Agreement dated November 20, 2009. The parties desire to enter into this agreement to extend use of the property on a month-to-month basis commencing February 1, 2010.

Agreement:

1. Commencing February 1, 2010 Manna shall have the right to occupy the Permit Property on each Sunday evening from the hours of 6:00p.m. to 11:00p.m. for the purpose of distributing food to homeless persons ("Meal Program") only. The County may suspend or terminate use of the property by Manna under this permit upon 30 days written notice. If the County determines that an emergency exists that prevents use of the property, County may suspend use of the property without notice. This Permit is non-exclusive, as County may need to access the Properties for non-emergency uses during the Meal Program.

2. Manna shall:

- a. At all times keep the Permit Property in a clean, safe and sanitary condition and shall provide trash receptacles which shall be empties and removed promptly after each use.
- b. At all times maintain vehicular ingress and egress over the area shown circled on Exhibit "A".
- c. Provide and remove portable restroom facilities during the hours the Meal Program is in operation. This requirement may be met by providing access to

and directing patrons to the portable restroom facilities provided by Saturday Market under the Burnside Bridge.

- d. Obtain all necessary permits including permits required for preparation and distribution of food.
- e. After each use, promptly clean and restore the Permit Property to its condition prior to commencement of the use.
- f. Promptly report to County any unsafe conditions existing on the Permit Property; immediately cease use of the Permit Property if unsafe conditions are discovered.
- g. Promptly report and repair upon request of County any damage to the Properties occurring during use of the Permit Property.
- h. Promptly report any damage to personal property located on the Properties. Manna shall be liable for all such damage whether to County personal property or personal property owned by others arising out of use of the Permit Property under this Agreement or from the actions of invitees or licensees on the Permit Property.

3. Manna shall provide at its own expense and keep in force during the term of this Agreement, naming County as additional insured, a commercial general liability insurance policy or such successor comparable form of coverage (hereinafter referred to as a "Liability Policy") written on a "per occurrence basis", including without limitation, blanket contractual liability coverage, broad form property damage, independent contractor's coverage, and personal injury coverage, protecting County and Manna against liability occasioned by any covered occurrence on or about the Permit Property. Such policy shall be written by an insurance company acceptable to County in County's sole discretion and licensed to do business in the State of Oregon and shall provide coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily or personal injury (including death) and property damage combined, subject to commercially reasonable deductible. Prior to the time such insurance is first required to be carried by Manna and thereafter, Manna agrees to deliver to County a certificate evidencing such insurance coverage. Said certificate shall contain an endorsement that such insurance may not be canceled except upon ten (10) days' prior written notice to County.

4. Materials and Hazardous Substances:

- a. No materials shall be stored, used, manufactured or disposed of within the Permit Property except in compliance with all deferral, state and local laws applicable thereto. Upon the expiration or termination of this Permit, Manna shall remove immediately all materials from the Permit Property.
- b. Except as provided in sub-section 8.c, no "Hazardous Substances", as defined by ORS 465.200 (16) (2005) and implementing regulations of the State of Oregon Department of Environmental Quality, or which constitute a public health hazard, as defined by rules of the Oregon State Health Division shall be

stored, used, manufactured, released or disposed of within the Permit Property, and no condition shall be permitted within the Permit Property which constitutes a health hazard, as defined by the rules of the Oregon State Health Division.

- c. Manna may use on the Permit Property only those hazardous substances typically used in the prudent and safe operation of a Meal Program, provided Manna's use of such substances is done in a manner in compliance with all applicable federal, state and local laws thereto. Upon the expiration or termination of this Permit, Manna shall remove immediately all hazardous substances from the Permit Property.

6. Manna shall indemnify, defend and hold County harmless from and against all liability, damage loss, and costs of any nature whatsoever, including attorney fees, arising from or relating to the use of the Permit Property city and Manna or their agents, employees, independent contractors, licensees and invitees and any other person whether or not such use is permissive.

7. Manna shall provide monthly reports to County containing the following information:

- Number of persons served during each use of the Permit Property during the reporting period;
- Detailed report of all complaints received from any source concerning use of the Permit Property during the reporting period; and
- All damage to property, if any, occurring during the reporting period.

8. The representatives of the parties to this Agreement are:

For Manna: Chuck Lindholm, Associate Pastor
New Song Community Church – Manna Ministries
2511 NE Martin Luther King Jr. Blvd
Portland, OR 97212
Phone: (503) 422-0777
Fax: (503) 422-1402

For County: Carla Bangert
Multnomah County
Facilities and Property Management
401 N Dixon Street
Portland, OR 97227
Phone: (503) 988-4128
Fax: (503) 988-5082

Emergency Contacts

For Manna: Chuck Lindholm – Associate Pastor
(503) 422-0777

For County: Craig Flower, Property Manager
(503) 969-7462

9. Manna shall not assign this Agreement without the prior written consent of County.

10. This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

Multnomah County, Oregon

New Song Church – Manna Ministries

By: _____
Ted Wheeler, Chair

By: _____
Title: _____

Date: _____

Date: _____

Reviewed:

By: Agnes Sowle, County Attorney for
Multnomah County

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

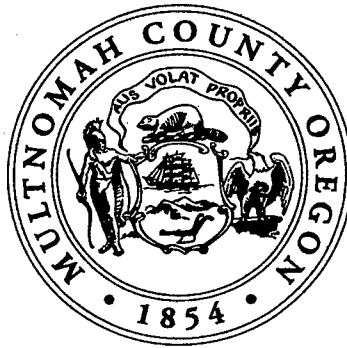
RESOLUTION NO. 2010-012

Adopting the Multnomah County 2010 State and Federal Legislative Agenda

The Multnomah County Board of Commissioner Finds:

- a. County officials are elected to protect the health and welfare of their constituents.
- b. Multnomah County has a vested interest in advancing state and federal legislative initiatives on behalf of its residents, especially vulnerable populations.
- c. Multnomah County finds that it is necessary to have a 2010 legislative agenda that harnesses county resources efficiently to promote priorities set by the Board of County Commissioners.
- d. Multnomah County Board of County Commissioners has developed a legislative agenda that identifies key initiatives to pursue in the state legislature and the Congress in 2010.
- e. Multnomah County 2010 legislative agenda promotes the physical and mental well-being of its residents through robust public services, good government, environmental stewardship, and the public's safety.
- f. Multnomah County 2010 legislative agenda provides specific policy guidance to county officials and its lobbyists acting on its behalf in the state legislature and Congress.

Multnomah County Oregon
2010 State & Federal Legislative Agenda



January 28, 2010

BOARD OF COUNTY COMMISSIONERS
501 SE HAWTHORNE, SUITE 600
PORTLAND, OREGON 97214
(503) 988-5895

TED WHEELER • CHAIR
DEBORAH KAFOURY • DISTRICT 1
JEFF COGEN • DISTRICT 2
JUDY SHIPRACK • DISTRICT 3
DIANE MCKEEL • DISTRICT 4



2010 STATE PRIORITIES
February Supplemental Legislative Session



COUNTY SPONSORED BILLS

Local Control. Support legislation to lift preemptions and other restrictions on local government, including the preemption on local tobacco taxes. In the 2009 Oregon legislative session, the House of Representatives passed HB 2616 to remove the state preemption on local government tobacco taxes. The legislature adjourned before the Senate could fully consider the bill.

Supervision of Forced Released Inmates. Seek legislation that provides supervisory authority over inmates released as the result of jail capacity limits. Multnomah County does not have the legal authority to supervise and impose conditions of release for these inmates.

Human Trafficking Hotline Info Posting. Seek legislation that encourages retail establishments that sell alcohol to voluntarily post information on the national hotline for human trafficking. Public awareness of sex trafficking of minors is relatively low despite recent a nationwide law enforcement operation. The posting of hotline information can aid in reducing human trafficking. Other states have taken such steps in the effort to stop this exploitation of minors.

Cancellation of Taxes on Low-Value Manufactured Homes. Seek legislation that permits the cancellation of personal property taxes for manufactured homes whose assessed values are less than \$15,000. Multnomah County sees very little return on investment with these accounts because the cost of billing, servicing and collecting these accounts is high compared with revenue received. These homeowners are also generally very poor and unable to pay.

PRIORITIES

State 2009-11 Budget. Support efforts to protect state funded public safety and human service programs. The March 2010 state revenue forecast and the outcome of Measures 66 and 67 will determine the legislative action the Oregon Legislature undertakes. Multnomah County will respond accordingly to support or oppose legislative actions that promote the county's interests.

Wapato Jail. Seek a partnership with the Department of Corrections to utilize the Wapato Jail facility. The 525-bed facility offers many options that can meet county and state public safety needs.

Elections. Support legislation that removes the requirement to create a new voter precinct as the result of non-contiguous land being annexed by cities. The requirement places an administrative burden that is costly to Multnomah County.

Mental Health. Monitor the progress and outcomes of SB 5529's budget notes on mental health integration and psychiatric acute care funds. Support efforts that expand resources for both subacute and acute psychiatric care. Monitor reform efforts in the state's mental health system. Support efforts to ensure that uninsured populations are cared for and cost-effectively managed by the county. Oppose legislation that undermines Multnomah County's mental health system.

Health Privacy. Support legislation that permits the exchange of patient mental health information between health providers and mental health organizations as it pertains to state efforts in integrating physical and mental health care. Multnomah County mental health system is a significant provider of mental health services. How patient information is used and shared is

important to the well being of the individual and an important responsibility for physical and mental health care providers.

Commercial Surety Bonds Industry. Oppose legislation that reinstitutes the bail bonds industry in Oregon. A bail bonds system would undermine Multnomah County's Pretrial Release Services system and introduce the potential for abuse without any guarantee for improving failure to appear rates.



LOCAL CONTROL

ISSUE: *State preemptions and other restrictions on local government discourage creative solutions to local problems and undermine local authority. Multnomah County needs to have all the tools in its toolbox to meet the needs of its residents.*

POSITION: Support lifting state preemptions and oppose any new state preemption that reduces local authority or local revenue sources.

STATE MANDATES

ISSUE: *Multnomah County is bearing the brunt of underfunded services required by the State in corrections, health and human services, and other areas including court facilities. As a result, Multnomah County has supplemented what it receives from the state with County General Funds in order to meet its statutory obligations. Given the economic situation and growing community needs, the County General Fund is not able to sustain these services.*

POSITION: Support adequate funding to cover actual costs of providing state required services and oppose efforts that underfund these services.

MENTAL HEALTH SYSTEM

ISSUE: *First responders that treat persons suffering a mental health crisis do not have a viable and cost effective alternative to hospital emergency rooms or the County jail to take these persons for proper treatment. This means improper care and added expense to emergency responders, local area hospitals, and the jail system. The lack of a sub-acute assessment and treatment facility in Multnomah County is a huge gap in the mental health system.*

POSITION: Support efforts that expand resources for both subacute and acute psychiatric care. Monitor reform efforts in the state's mental health system to ensure that uninsured populations are cared for and cost-effectively managed for the county.

PUBLIC SAFETY

ISSUE: *Multnomah County is a very important part of the state's public safety system due to it being the most populated county in the state with the most active law enforcement, judicial, and parole and probation systems in the state. Multnomah County has proven that local knowledge combined with evidence based practices is a national model of success.*

POSITION: Support legislation and state partnerships that provide the best results in public safety and maximize resources in Multnomah County. This includes facilitating state partnerships in juvenile parole and probation services and with the county's Wapato Jail facility.

OREGON HEALTH PLAN

ISSUE: *During the 2002 recession, the state drastically reduced the Oregon Health Plan Standard population to cut costs. Many thousands of Oregonians lost coverage. The consequences have dramatically driven up costs for the county's health clinics and for hospital emergency rooms. Reductions in enrollment have resulted in a loss of matching state and federal dollars to Multnomah County to pay for residential treatment services.*

POSITION: Support efforts to increase the Oregon Health Plan Standard population. Greater coverage reduces the out-of-pocket expenses for Multnomah County's health clinics.

PROPERTY TAX LIMITATION

ISSUE: *Measure 50 created a permanent structural deficit for local government in Oregon. Multnomah County cannot finance public services with revenues generated by a property tax rate that grows slower than real market inflation. Measure 50 property tax system has created inequity for homeowners with equal valued homes but taxed unequally.*

POSITION: Support changes to the Oregon Constitution that make Oregon's property tax system more equitable for property owners and more in sync with real market conditions.

SUSTAINABILITY

ISSUE: *Multnomah County strives to be more environmentally friendly and energy conscious in its operations. As a government that serves the state's most populated county, there is enormous opportunity to make a difference in promoting the local economy, reducing pollution, and conserving natural resources.*

POSITION: Support legislation that makes it easier for Multnomah County and its households to adopt environmental friendly practices in day to day operations.

TRANSPORTATION

ISSUE: *Multnomah County is responsible for the maintenance of six Willamette River bridges and nearly 300 miles of roads. The Oregon Jobs and Transportation Act provided the County with needed funding. The State will need to continue working on sustainable revenues for the future that will provide maintenance to the existing system as well as continued growth.*

POSITION: Support a fair and reliable system of revenue sources for maintaining the existing transportation system as well as stewarding sustainable growth. Protect the County's revenue sources by advocating for a hold harmless provision for Bridge funding.



111th CONGRESS FEDERAL AGENDA FY2011 APPROPRIATIONS



PUBLIC INFRASTRUCTURE

SELLWOOD BRIDGE

The Sellwood Bridge is the busiest two-lane bridge in Oregon with over 30,000 daily vehicle crossing. The 90-year old bridge rates very low in federal safety standards as a result of its age and the geological movement of the West Hills buckling the structure. Weight restrictions have been in place since 2004, affecting freight trucks and buses as well as the local economy. Multnomah County has completed the Sellwood Bridge Project DEIS and selected a Locally Preferred Alternative in February 2009. Construction is scheduled to begin in 2012. The cost is estimated at \$330 million in 2014 dollars.

POSITION: Multnomah County seeks \$5 million in FY2011 to conduct the Final Design and right-of-way acquisition for the Sellwood Bridge project. The county is seeking \$40 million in the Surface Transportation Reauthorization Act to complete the project.

BEAVER CREEK CULVERTS

The lower Beaver Creek in Multnomah County is critical habitat to federally endangered species including Lower Columbia River Chinook Salmon and Steelhead Trout, and candidate species including Lower Columbia River Coho Salmon. The existing waterway and wetland are neither conducive to fish passage nor other wildlife. Replacing the Beaver Creek Culverts will improve the habit and enhance fish passage.

POSITION: Multnomah County seeks \$6 million for the replacement of the 3 downstream-most culverts, (Troutdale Rd., Stark St., and Cochran Rd.) with larger culverts or bridges, opening 4.6 miles of Beaver Creek to fish passage. Included is restoration of natural substrate under bridges and culverts; stabilization of stream bed to ensure no head-cutting occurs; removal of non-native exotic (plant) species and replant with native species along bank; and, enhance a forested wetland adjacent to the Stark St. crossing by removal of non-native species with native species. This would improve habitat for many wildlife species including neotropical migratory birds that use riparian habitat for nesting and cover, small mammals that use riparian areas as migration corridors, and native amphibians and reptiles that would utilize wetland habitats.

PUBLIC SAFETY

FINANCIAL AND ELDER ABUSE PROSECUTION PROJECT

While seniors comprise just 13 percent of the general population; they possess 50 percent of the total wealth, making them disproportionately targeted for financial fraud and abuse. As seniors live longer, they become increasingly vulnerable to financial manipulation, abuse and neglect. Financial abuse is the fastest growing form of abuse. It is estimated that for every one case of elder abuse, neglect, exploitation, or self-neglect reported to authorities, approximately five go

unreported. Between 2007 and 2009, Multnomah County had 1361 cases of financial elder abuse.

POSITION: Multnomah County seeks \$595,000 for investigating financial fraud, prosecuting perpetrators, gathering forensic data, providing support services to victims, educating the public and senior care providers, providing forensic nursing, coordinating services among agencies; and providing enhanced referral services.

HEALTH/HUMAN SERVICES

EAST COUNTY SCHOOL BASED HEALTH CLINIC

By working in partnership with schools, families, healthcare providers, and community agencies, the Multnomah County School Based Health Clinic(SBHC) Program is able to provide health care for the county's school-age youth in the most readily accessible locations. This results in the early identification and intervention of health issues and the reduction of barriers to care. SBHCs play a major role in the local health care delivery system's ability to curb high-risk behaviors and thus foster academic success for the county's youth. Expansion of these services will support better access to SBHC services to the youth of East County as poverty has shifted in this area.

POSITION: Multnomah County seeks \$350,000 to for capital costs for a health clinic that would serve local income school children with the Centennial and Gresham/Barlow school districts.

GATEKEEPER PROJECT

The Gatekeeper model is a national best practice program that identifies at-risk older adults and people with disabilities living in our community and links them to critical social and health services. The program trains volunteers to identify signs and symptoms such as confusion, depression, poor health, functional disability, financial exploitation or unsafe living conditions that may indicate vulnerable adults needing assistance. Volunteers could be meter readers, bank tellers, letter carriers and others that come into contact with older adults or people with disabilities in their daily work activities.

POSITION: Multnomah County seeks \$100,000 to recruit and train 840 volunteer Gatekeepers and 24 Gatekeeper volunteer trainers.

SUPPORTED APPROPRIATION REQUESTS FROM COUNTY PARTNERS

LUKE-DORF MENTAL HEALTH SUPPORTIVE HOUSING

The single greatest impediment to diverting many mentally ill persons away from the criminal justice system is the absence of housing resources supported housing in particular. Supported housing, and the use of specialized courts like Community and Mental Health Court, focuses on the underlying issues that result in criminal justice involvement. For a variety of reasons, mentally ill persons with criminal backgrounds are excluded or unwelcome in many types of public housing. While those barriers are surmountable over the long term, they present a formidable challenge when attempting to expedite a speedy diversion for a homeless person from the criminal justice system. A supported housing resource dedicated to specialized courts such as Community Court and Mental Health Court would allow Multnomah County to place appropriate persons in a managed environment that provides mental health services while permanent living and treatment alternatives are arranged. Without an interim intervention like this, homeless mentally ill persons will have little opportunity for a successful court diversion.

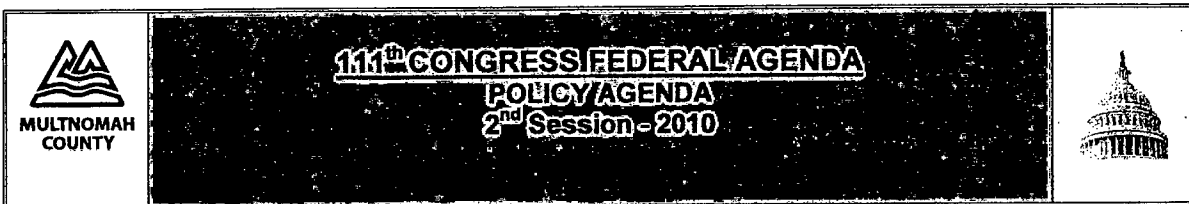
POSITION: Multnomah County supports Luke-Dorf's request for \$2 million in capital funds to

construct housing in the county.

HUMAN TRAFFICKING VICTIMS SHELTER

The biggest obstacle to getting victims of trafficking and forced prostitution off of the streets is a lack of a safe facility where victims can sleep, get physical and mental treatment, and simply be comfortable. The only options currently available are placing the child in foster care or putting them in jail. By providing the victims with a secure and comfortable environment the victims will be given access to the resources and supports they need to provide for themselves away from the predators that control them with fear and intimidation. Not only will this help those wishing to exit the sex trade, but it will also help law enforcement and the District Attorney's Office achieve more convictions. While victims may initially be willing to testify against their abusers, when they have no safe place to stay they nearly always return to the same pimps and thugs who abuse them. This shelter will provide them with the safe bed and moral support that will encourage them to stay under supervision and make the difficult decision to testify against their pimp. Without such a facility, we have very little chance of ending the practice of human trafficking and forced prostitution in our region.

POSITION: Multnomah County will support efforts undertaken by a service provider (to be determined) to seek federal capital funds if needed for building a shelter to serve victims of human trafficking.



HEALTH/HUMAN SERVICES

AFFORDABLE HEALTH CARE FOR AMERICA ACT/ PATIENT PROTECTION & AFFORDABLE CARE ACT (HR. 3962/HR. 3590)

Experts from across the political spectrum agree that America's health system is broken and unsustainable in its present configuration. Families in Multnomah County are experiencing this crisis right now, confronting the high cost of health care that threatens their financial stability, leaves them exposed to higher premiums and deductibles, and puts them at risk for a possible loss of health insurance. It costs Multnomah County \$61.5 million in county general funds to meet the health needs of its residents including \$19 million for public health, \$14 million for indigent care, \$13 million for corrections health, \$1.5 million for local Medicaid match, and \$14 million for mental health and addictions obligations.

POSITION: Multnomah County supports the inclusion of the following provisions in the federal effort to reform health care.

- 1) Inclusion of new federal designation: "Federally Qualified Behavioral Healthcare Centers"
- 2) Simplification of Medicaid coverage for nurse home visitations
- 3) Public Health Investment Fund/Prevention & Public Health Fund
- 4) Reimbursement of jail for health care costs for pre-adjudicated population eligible for Medicaid
- 5) Extension of the FMAP increase from the ARRA
- 6) Clarification that Medicaid does not prohibit state coverage of therapeutic foster care

FULL SERVICE COMMUNITY SCHOOLS ACT (HR. 3545 – Co-sponsor: Blumenauer)

Multnomah County's SUN schools are an active and robust community school system of 58 schools and 6 regional service centers that links academic support, early childhood programs, parent involvement and education, anti-poverty assistance, health care, mental health and addictions treatment in a culturally suitable environment for the county's diverse school population.

POSITION: Multnomah County would seek federal grants authorized in HR 3534 to strengthen its community school system.

RESTORING THE PARTNERSHIP FOR COUNTY HEALTH CARE COSTS ACT OF 2009 (HR. 2009)

An estimated 21 percent of persons booked in Multnomah County's jails in pre-trial status have private or public health insurance coverage, i.e. Oregon Health Plan, Medicaid, Medicare, or SSI. Health care costs in county jails could be reimbursed, providing much needed relief for the county's fiscal health.

POSITION: Multnomah County supports the passage of this legislation with an amendment that requires private health insurance to reimburse for health care provided by county jail staff.

PUBLIC SAFETY

JUVENILE JUSTICE DELINQUENCY PREVENTION ACT OF 2009 (S. 678)

Multnomah County juvenile justice program is a national model of successful implementation of the goals of the Juvenile Justice Delinquency Prevention Act of 1974. Most importantly, the county has reduced re-offense rates and delinquency of juveniles in its custody using evidence-based practices that prioritize safety. The county's success is in jeopardy because the Act has not been reauthorized. The federal leadership responsible for this success has declined considerably.

POSITION: Multnomah County supports the reauthorization of the Act, specifically raising the authorization levels for Title V grants. Since 2002, Multnomah County has lost over \$900,000 in federal juvenile justice funding that came to the county. The impact of these federal cuts has meant *fewer juvenile prevention and intervention services to young people and their families*. In 2002, Multnomah County served 1,200 young people a year in its juvenile justice system. Today it is down to 600 young people despite the need.

YOUTH PROMISE ACT OF 2009 (S. 435/HR. 1064)

Multnomah County sets the national standard on incorporating evidence-based practices to reduce juvenile delinquency and criminal street gang activity. The National Association of Counties, the National Conference of State Legislatures, and US Dept. of Justice have heralded the county's success. Close to 73% of youth served by the county's gang intervention services complete their programs. Of those served, 76% do not recidivate while in the program and 74% do not recidivate one year after completing the program. The Youth Promise Act will support evidenced based prevention and intervention strategies proposed by local councils with federal grants. Grants provided under the act could help retain juvenile justice probation officers.

POSITION: Multnomah County supports the passage of the Youth Promise Act. The Act provides for a thorough evaluation of gang and youth violence prevention programs, including analyses of cost savings to society yielded by investing in prevention and intervention rather than in more costly prosecution and incarceration approaches.

RECIDIVISM REDUCTION ACT of 2009 (HR. 2829)

Key federal benefits are regularly suspended or terminated upon incarceration and take considerable time to be reinstated after an individual is released. Without the health coverage and other benefits, many newly released individuals cannot fully focus on securing gainful employment and developing a supportive home life. Without these benefits, counties and states end up paying the "full freight" of any health care, disability and other support for people under the supervision of the county's parole and probation, and juvenile justice department as they wind through the system.

POSITION: Multnomah County supports the Recidivism Reduction Act of 2009. HR. 2829 will ensure prompt access to supplemental security income, Social Security disability, and Medicaid benefits for persons released from certain public institutions (such as a jail, or a juvenile detention center).

NATIONAL CRIMINAL JUSTICE COMMISSION ACT OF 2009 (S. 714)

With the highest incarceration rate in the world, overcrowded prisons, growing gang violence, lack of focus in reintegrating ex-convicts who have paid their debts to society, the criminal justice system in the United States is in great need of repair. Prison spending continues to outpace education and human services in many states. Communities throughout the country would benefit tremendously from a comprehensive review of policies and practices that produces meaning reform.

POSITION: Multnomah County supports the passage of the National Criminal Justice Commission Act. The Act will create commission charged with a top-to-bottom review of the criminal justice system and propose recommendations designed to reduce the overall incarceration rate; to improve drug policy; to improve mental illness treatments, to improve prison management, and to establish a system for reintegrating ex-offenders.

SECOND CHANCE ACT OF 2007 (HR. 1593/S. 1060)

When the Congress passed and the President signed the Second Chance Act of 2007, the law provided an important source of federal funds for critical re-entry services such as family-based substance abuse treatment, education programs in jail facilities, job training, mentoring and for program evaluation. Unfortunately, the global recession of 2008 have had a severe impact on local governments' ability meeting the federal match requirement. Many parole and probation services have been reduced, including employment, education, housing, and treatment services. **POSITION:** Multnomah County supports removing the local match requirement as a result of the recession's recession impact on the county's budget.

TRAFFICKING DETERRANCE & VICTIMS SUPPORT ACT OF 2010

Human trafficking of minors for prostitution is growing problem in Multnomah County and in the nation. In order to effectively stop human trafficking in the United States, a comprehensive approach that includes law enforcement and prosecution, victims' assistance, counseling, public outreach, shelters for victims, and investigations is needed.

POSITION: Multnomah County supports the effort to introduce legislation that authorizes a pilot project of six block grants to provide a comprehensive approach to addressing human trafficking. The grants would be administered by the Office Justice Programs in the Byrner-JAG grants.

LAND USE/TRANSPORTATION

SURFACE TRANSPORTATION REAUTHORIZATION ACT

The reauthorization of the federal surface transportation act is the critical final piece of the Sellwood Bridge Project's funding plan. Multnomah County has successfully pulled together diverse sources of funds to complete the reconstruction of the bridge. The plan includes \$30 million from ODOT, \$100 million from the City of Portland, and \$127 million in new county vehicle registration fees from Multnomah County. Clackamas County is considering a vehicle registration fee that would contribute \$22 million to the replacement of the Sellwood Bridge.

POSITION: Multnomah County requests an authorization of \$40 million to complete the reconstruction of the Sellwood Bridge.

HEALTHY PLACES ACT OF 2006 (S. 2506/HR. 5088)

The Portland metropolitan region is undertaking a massive project in rebuilding the Interstate 5 bridge between Oregon and Washington, as known as the Columbia River Crossing. The volume of pollution from vehicles crossing the I-5 bridge 24/7 greatly affects the health of the many neighborhoods on both sides of the river. Multnomah County's Health Department took the initiative to submit its assessment of the health impacts during the development of the DEIS. The assessment was an invaluable tool for decision-makers, transportation planners, and the public in understanding the health effects of each bridge options.

POSITION: Multnomah County supports a federal grant program that encourages local public health agencies to conduct health impact assessments for transportation projects.

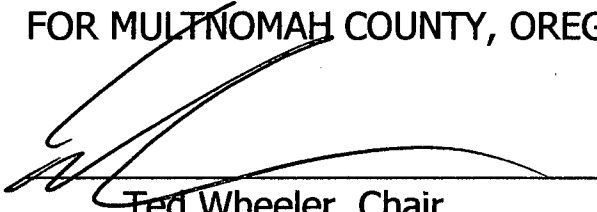
The Multnomah County Board of Commissioner Resolves:

1. To undertake all activities and use the necessary resources wisely to promote the success of the Multnomah County Oregon 2010 State and Federal Legislative Agenda, attached hereto; and
2. To reserve the right to modify any policy position in the 2010 State and Federal Legislative Agenda.

ADOPTED this 28th day of January 2010.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By


Agnes Sowle, County Attorney

SUBMITTED BY:

Chair Ted Wheeler

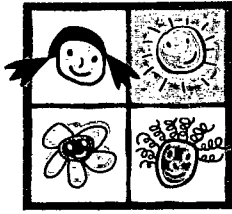
BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 2010-013

Accepting the Portland Children's Levy Allocation Plan and Offering Advice and Counsel to the City of Portland Concerning the Recommendations

The Multnomah County Board of Commissioners Finds:

- a. In 2002 the citizens of the City of Portland authorized a five-year property tax levy to fund proven children's programs within the City.
- b. In November 2008 voters approved a renewal of the local option property tax levy to continue supporting the Portland Children's Levy to make targeted investments in proven programs in early childhood, child abuse prevention and intervention, foster care, after-school and mentoring.
- c. In June 2009 the Portland Children's Levy awarded funds totaling \$36,741,286 (over three years) to 69 early childhood, child abuse prevention and intervention, foster care, after-school and mentoring programs.
- d. The Portland Children's Levy has \$1,200,000 (over three years) of additional funds available for allocation.
- e. The City of Portland and Multnomah County entered into an Intergovernmental Agreement to make certain that the funds received from the Levy are allocated in a manner complementary with a coordinated and comprehensive plan, and to ensure accountability and equity throughout the system. As part of the agreement, the City of Portland created the Children's Levy Allocation Committee to provide citizen oversight of the Levy.
- f. Furthermore, the Board of County Commissioners, through its expertise and experience in children's policy and administration, provides the City Council with advice and counsel. In the past the Board has made recommendations regarding allocations for early childhood care and education, for child abuse prevention and intervention programs, services to support children in foster care and for after school and mentoring programs. The Board is now making recommendations to make additional investments in after-school, mentoring, early childhood and child abuse prevention and intervention programs.



Investing in our future

**portland
children's
levy**

Request for Multnomah County Board Acceptance

Portland Children's Levy Background

In November of 2002, Portland voters approved the Portland Children's Levy (PCL). In the fall of 2008, voters renewed the levy for another five years. The levy generates approximately \$13 million annually for early childhood, after-school and mentoring, child abuse prevention and intervention and foster care programs. Administrative costs for the fund are capped at 5% of revenues and the fund obtains annual audits to assure compliance with the administrative cap. A copy of the 2008 ballot language for the Children's Levy is attached as Exhibit A.

An Allocation Committee governs the PCL and grants funds to programs serving children and families residing in the City of Portland. The Allocation Committee is comprised of a City Commissioner (Dan Saltzman), a County Commissioner (Ted Wheeler), a representative of the Portland Business Alliance (Ron Beltz), a citizen member appointed by the County Board (Adrienne Livingston), and a citizen member appointed by the City Council (Alissa Keny-Guyer).

Request for County Board Acceptance

PCL is requesting that the Multnomah County Board of Commissioners accept the recommendations of the Allocation Committee to fund additional investments in after-school, mentoring, early childhood, and child abuse prevention and intervention programs in the amounts specified in the spreadsheet titled "Exhibit B: Portland Children's Levy – Additional Grant Awards".

2009 Competitive Funding Process Background

After an extensive planning and public input process (May 2008 – January 2009) Requests for Investment in all program areas were published in January 2009 and applications were due in March.

CHIF received 125 applications for funding totaling \$97,178,747 – approximately 2.6 times the funds projected to be available over 3 years. Over 100 community reviewers scored the applications. Public meetings were held to make funding decisions. Committee members made preliminary funding decisions, invited public comment on the preliminary decisions, and then made final funding decisions.

Funding Awards

In June 2009 the Portland Children's Levy awarded funds totaling \$36,741,286 (over three years) to 69 early childhood, child abuse prevention and intervention, foster care, after-school and mentoring programs.

Additional Funds

All funding awards were made as "up to" amounts. After contract negotiations were completed, the total amount contracted was less than the total amount awarded. Additionally, there was a fund balance of program dollars from the previous levy. Consequently, there is \$1,200,000 (over three years) of additional funds available for allocation.

Funding Parameters/Priorities

Given the extensive 2009 competitive funding process, the significant gap between funding requested and funding awarded and the limited amount of available funding, the Allocation Committee decided to allocate the additional funds to programs that participated in the 2009 funding process rather than open a new competitive process.

After hearing public comment regarding proposed funding parameters at the November 13, 2009 meeting, the Allocation Committee set the following parameters/priorities for allocating the additional funds:

- 1) *New (meaning not previously funded by PCL) full service after-school programs.* This was prioritized because it was the most competitive funding category and the demand for new programming in this category significantly exceeded the supply when compared to the other funding categories.
- 2) *Programs that are both new (to PCL) and culturally specific from any funding category.* New programs were prioritized because the bulk of new levy funds (87%) went to fund continuing programming despite the fact that 42% of the total funding requested was for new programming. Culturally specific programs were prioritized to reflect a similar priority in the original Request for Investments and to preserve the percentage of overall PCL funds invested in culturally specific programs.
- 3) *Increasing current grants to culturally specific programs only, in any funding category.* This would help achieve the goal of increasing investment in culturally specific programming.

Funding Decisions

Staff provided Allocation Committee members with summarized application data sheets, aggregated funding slates from the previous funding rounds, a list of 2009 funding awards and staff recommendations for funding. Allocation Committee members submitted individual slates for funding to staff prior to the funding meeting, and staff aggregated the individual slates to determine the level of agreement/disagreement on funding individual applications.

A public meeting was held on December 14, 2009 to make funding decisions. Decisions were made starting with applications all Committee members wanted to fund and proceeding to applications with lower levels of Committee support for funding. Committee members made preliminary funding decisions, invited public comment on the preliminary decisions, and then made final funding decisions.

Exhibit A: 2008 Children's Levy Ballot Measure

Measure 26-94

Renew five-year levy for Children's Investment Fund

Question

Shall Portland continue supporting child abuse prevention, foster children, early childhood, after-school programs, renewing five-year levy starting 2009? This measure may cause property taxes to increase by more than 3 percent.

Summary

Measure would continue financing Children's Investment Fund to support proven programs designed to help children arrive at school ready to learn, provide safe and constructive after-school alternatives for kids, helps foster children and prevent child abuse and neglect and family violence.

This Children's Investment Fund can only be used for:

- Child abuse prevention and intervention, addressing juvenile crime, school failure, drug and alcohol abuse and homeless youth.
- Early childhood programs making childcare more affordable and prepare children for success in school.
- After-school, summer and mentoring programs: promoting academic achievement, reducing the number of juveniles victimized by crime and increasing graduation rates.
- Children in foster care programs: helping foster children succeed who have been abused and neglected.

Accountability measures include:

- Programs funded must be cost effective and have a proven record of success.
- Investment fund subject to oversight by a citizen committee
- Investment fund subject to annual audits.
- Administrative costs cannot exceed 5 percent.

Levy is \$0.4026 per \$1,000 of assessed property value and produces an estimated \$14 million per year for five years.

Exhibit B:
Portland Children's Levy
Additional Grant Awards December 2009

After School Programs

Applicant Name	Program Name	Funding Awarded
Metropolitan Family Services	Harold Oliver Primary SUN	\$209,090
Campfire USA	David Douglas - 1 SUN School Site	\$209,090
Friendly House	Project Return	\$137,500
Northwest Family Services	Latino Family Empowerment Project	\$243,247
After School Total		\$798,927

Mentoring Programs

Applicant Name	Program Name	Funding Awarded
IRCO	African Immigrant Mentoring	\$160,073
Portland Opportunities Industrialization Center	POIC Mentoring	\$125,000
Mentoring Total		\$285,073

Early Childhood Programs

Applicant Name	Program Name	Funding Awarded
Latino Network	Juntos Aprendemos	\$66,000
Early Childhood Total		\$66,000

Child Abuse Prevention & Intervention Programs

Applicant Name	Program Name	Funding Awarded
Catholic Charities	El Programa Hispano PCHIP	\$50,000
Child Abuse Prevention & Intervention Total		\$50,000

GRAND TOTAL		\$1,200,000
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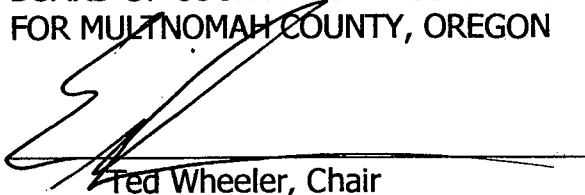
The Multnomah County Board of Commissioners Resolves:

1. The Board accepts the attached Allocation Plan of the Allocation Committee for the City of Portland's Children's Levy.
2. Furthermore, the Board forwards the Plan, with its own recommendation for adoption, to the Portland City Council for its consideration.

ADOPTED this 28th day of January, 2010



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Agnes Sowle, County Attorney

SUBMITTED BY:

Ted Wheeler, Multnomah County Chair

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

PROCLAMATION NO. 2010-014

Proclaiming the Last Friday of January 2010 as EARNED INCOME TAX AWARENESS DAY in Multnomah County, OR

The Multnomah County Board of Commissioners Finds:


- a. The Earned Income Tax Credit (EITC) is a proven anti-poverty tool and method for raising the household income of low-income working families.
- b. Depending on household income and number of dependents, the federal EITC can be worth up \$3,050 for families with one child and \$5,666 for families with three or more children.
- c. Qualifying taxpayers can often receive an EITC even if they owe no taxes and, for a low-income family, it can make the difference between living below the poverty threshold or living above that threshold.
- d. Overall tax returns claiming the EITC in Multnomah County increased from 2007-2008, with the number of EITC claims generated at 31 free tax preparation sites going from \$2.4 million to \$2.6 million.
- e. Multnomah County's Family Economic Security Project has developed and strengthened its relationship with IRS, CASH Oregon, and other local partners to ensure that local employers and employees are aware of the benefits of the Advance Earned Income Tax Credit program.
- f. Last year, CASH Oregon and its partner AARP Tax-Aide filed 15,000 free tax returns for tri-county with an average adjusted gross income of \$21,000/year.
- g. Multnomah County's Family Economic Security Project works to build financial assets for working individuals and families.
- h. The State of Oregon is currently considering legislation to expand Oregon's EITC program to provide a larger financial credit to working families.

The Multnomah County Board of Commissioners Proclaims:

The last Friday of January 2010 as ***Earned Income Tax Credit Awareness Day*** in Multnomah County, Oregon and urges all citizens to recognize and participate in its observance.


ADOPTED this 28th day of January 2010.

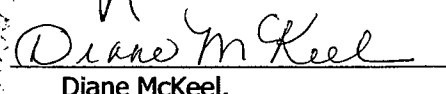
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

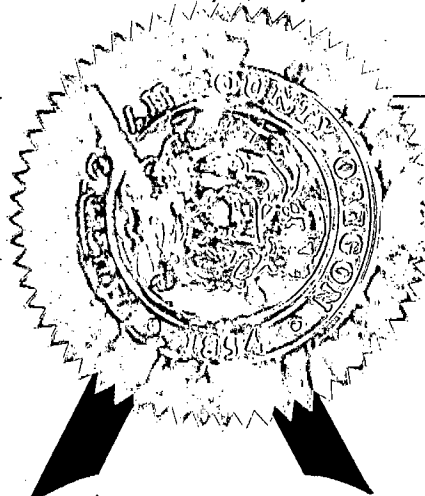

Ted Wheeler, County Chair


Deborah Kafoury,
Commissioner District 1


Judy Shiprack,
Commissioner District 3


Jeff Cogen,
Commissioner District 2


Diane McKeel,
Commissioner District 4



SUBMITTED BY:
Commissioner Jeff Cogen

BOGSTAD Deborah L

From: LANGLOIS Ruth R
Sent: Thursday, January 28, 2010 9:56 AM
To: BOGSTAD Deborah L
Subject: FW: ACCT 481641343 NCCB

This will be going towards your budget now... The 4 letter code for your office is NCCB

Ruth Richman Langlois

Executive Assistant to
Multnomah County Chair Ted Wheeler
503.988.5531-direct line
ruth.r.langlois@co.multnomah.or.us

From: Oregon Field Support [<mailto:OregonFieldSupport@sprint.com>]
Sent: Thursday, January 28, 2010 9:32 AM
To: BOEGLIN Muriel L; Oregon Field Support
Cc: McMurray, Derek R [CK]; LANGLOIS Ruth R
Subject: RE: ACCT 481641343 NCCB

Please Note:

The rate plan has been changed eff 02/11-10 (bill cycle date)

From: BOEGLIN Muriel L [<mailto:muriel.l.boeglin@co.multnomah.or.us>]
Sent: Thursday, January 28, 2010 7:17 AM
To: Oregon Field Support
Cc: McMurray, Derek R [CK]; LANGLOIS Ruth R
Subject: RE: ACCT 481641343 NCCB

Please put 503-793-0094 on her own 1000 minute plan. She will not be sharing minutes.

Thanks!

Muriel

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

From: Oregon Field Support [<mailto:OregonFieldSupport@sprint.com>]
Sent: Wednesday, January 27, 2010 4:04 PM
To: BOEGLIN Muriel L; Oregon Field Support
Cc: LANGLOIS Ruth R; BENNETT Nancy; BOCK Lori J; McMurray, Derek R [CK]
Subject: RE: ACCT 481641343 NCCO

Mobile 5037930094

- I. Voice Mail feature has been reset.
 - II. Unlimited Text Msg feature has been added.
 - III. Current Rate plan (National Team Share 900)
 - IV. Future dated rate plan eff 02/11-10 (**National Team Share 1200**)
-

From: BOEGLIN Muriel L [<mailto:muriel.l.boeglin@co.multnomah.or.us>]
Sent: Wednesday, January 27, 2010 3:31 PM
To: Oregon Field Support

1/28/2010

Cc: LANGLOIS Ruth R; BENNETT Nancy; BOCK Lori J; McMurray, Derek R [CK]
Subject: ACCT 481641343 NCCB
Importance: High

This user is with the Chair of The Boards Office. For some reason Nancy Bennett can't get voice messages off her bb.

Please add voice mail to 5037930094 and reset the password to the generic. Also, need to make sure that she is on the 1000 minutes cell rate plan and unlimited text messaging. Please keep all other information the same. Any questions please let me know.

Thank you in advance!
Muriel Boeglin

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

From: LANGLOIS Ruth R
Sent: Wednesday, January 27, 2010 3:23 PM
To: BOEGLIN Muriel L
Subject: Nancy Bennett's BB - 503.793.0094
Importance: High

I need some help. Nancy needs her voicemail operational, for some reason it is not now. She needs texting capabilities, voicemail, email and probably a lot of minutes as she is headed to Salem next week. Lori was working on it but I think I dropped the ball... Can you help?

R

Ruth Richman Langlois

Executive Assistant to
Multnomah County Chair Ted Wheeler
503.988.5531-direct line
ruth.r.langlois@co.multnomah.or.us

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1/28/2010

BOGSTAD Deborah L

From: BOEGLIN Muriel L
Sent: Thursday, January 28, 2010 11:05 AM
To: LANGLOIS Ruth R
Cc: BOGSTAD Deborah L
Subject: PHILLIP KENNEDY-WONG

Hi Ruth,

I will be giving NCCO an AT&T credit of \$1274.16 and billing back to NCCB per our conversation this morning. If you have any questions please let me know.

Thanks!

Muriel Boeglin
Multnomah County Telecomm
4747 E Burnside St.
Portland, Oregon 97215
(W) 503-988-3300
(F) 503-988-5250

BOGSTAD Deborah L

From: DUFFY Sandra N
Sent: Thursday, January 21, 2010 4:18 PM
To: VALENCIA Joanna F; KINOSHITA Carol; BOGSTAD Deborah L; DUFFY Sandra N
Subject: Rocky Pointe

Joanna and Deb:

Carol is finalizing the Ordinance and the Order.

Joanna, can you send Deb and me Exhibits A and B? Exhibit C is the Order and we will have two versions of that:

One will be the formal order to be signed by the Chair. The other will be that Order with "Exhibit C" marked on it. Carol will take care of that (and provide you an electronic copy).

For now (before the second reading), Carol's "Exhibit C" version will be attached to the ordinance that is available to the public. When the ordinance is signed and the Order is signed, a copy of the signed Order will be attached as Exhibit C to the ordinance for the official record.

Sandy

BOGSTAD Deborah L

From: DUFFY Sandra N
Sent: Friday, January 22, 2010 9:27 AM
To: BOGSTAD Deborah L
Subject: FW: Rocky Pointe
Attachments: ORD_RockyPointeMarina 1-21-10.doc; ExA-RockyPointe-PC-Resolution.pdf; ExB-SI RAP Map Rocky Pointe Identified.pdf; RockyPointeOrder-ExC.doc; RockyPointeOrder.doc

Deb, here are the documents. You will see that there is an Order which will be the original document to be signed by the Chair. AND there is another Order document marked as Exhibit C to be attached to the Ordinance. You can either have the Chair sign both of those documents, or you can take the signed original Order, mark it as Exhibit C, and then attach it to the original signed Ordinance. Got that?

Joanna and I are still working on the two APRs.

Sandy

From: KINOSHITA Carol
Sent: Thursday, January 21, 2010 6:03 PM
To: DUFFY Sandra N; VALENCIA Joanna F
Subject: FW: Rocky Pointe

I just noticed I forgot to remove the "attached" from the staff report in paragraph 1 of the Order so it's fixed in this batch (sorry).

Carol

From: KINOSHITA Carol
Sent: Thursday, January 21, 2010 5:30 PM
To: VALENCIA Joanna F; DUFFY Sandra N
Subject: RE: Rocky Pointe

Here are the final Rocky Pointe documents for 1/28 and APRs (I only changed the titles to conform to the docs—the order is R-6 and the ordinance is R-7) for your editing enjoyment! Please let me know if I can be of any further assistance. Thanx!

Carol

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 Pointe 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: _____

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

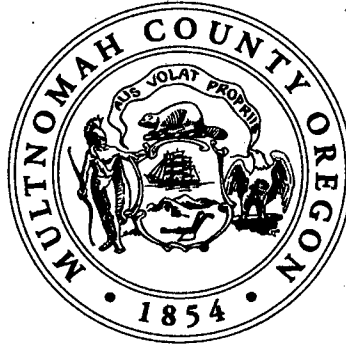
By _____
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Department of Community Services

Multnomah County Oregon

2010 State & Federal Legislative Agenda



January 28, 2010

BOARD OF COUNTY COMMISSIONERS
501 SE HAWTHORNE, SUITE 600
PORTLAND, OREGON 97214
(503) 988-5895

TED WHEELER • CHAIR
DEBORAH KAFOURY • DISTRICT 1
JEFF COGEN • DISTRICT 2
JUDY SHIPRACK • DISTRICT 3
DIANE MCKEEL • DISTRICT 4

Board of County Commissioners Statement

The Multnomah County Board of County Commissioners is pleased to present its 2010 state and federal legislative agenda. The agenda is the result of discussions with community members, consultations with our partners within and outside the county, technical advice from county professionals, and collaboration among commissioners.

The agenda provides guidance to state and federal entities on the needs and interests of Multnomah County. It also provides standing authority for the county's lobbyists to represent the agenda before state and federal officials in legislative settings. The agenda is both a reflection of the values of the Board of County Commissioners and a response to the economic and social conditions in Multnomah County.

While the national economy has shown some signs of recovery, unemployment continues to be high for Multnomah County and Oregon. The county's unemployment rate is 10.9% and the national rate is 9.8%. This means that the need for county public services will remain high, especially in human services and public safety.

At the state level, Oregon will go to the polls later this month to vote on two tax measures that impact the state's 2009-2011 budget. The Oregon Legislature passed the measures as part of a budget balancing plan that included \$2 billion in cuts to state agencies, use of reserve funds, and federal stimulus dollars. The outcome of the votes will affect Multnomah County's FY 2010 budget.

Regardless of the outcome of the votes, Multnomah County stands ready to partner with the State of Oregon and the federal government to promote the well being of our communities and residents.

Sincerely,

Ted Wheeler, Chair

Deborah Kafoury, District 1

Jeff Cogen, District 2

Judy Shiprack, District 3

Diane McKeel, District 4

Multnomah County Oregon
Economic Snapshot
Fall 2009

	<u>Multnomah County</u>	<u>Oregon</u>
Population, 2008 estimate	714,567	3,790,060
Median household income, 2007	\$48,876	\$48,735
Persons below poverty, 2007	15.0%	13.0%
No. of Businesses (non-farm), 2006	24,692	110,684
Size of workforce (non-farm), 2006	403,119	1,461,664
Unemployment Rate (Not seasonally adjusted Sept. 2009)	10.9%	11.5%

Source: US Census



2010 STATE PRIORITIES
February Supplemental Legislative Session



COUNTY SPONSORED BILLS

Local Control. Support legislation to lift preemptions and other restrictions on local government, including the preemption on local tobacco taxes. In the 2009 Oregon legislative session, the House of Representatives passed HB 2616 to remove the state preemption on local government tobacco taxes. The legislature adjourned before the Senate could fully consider the bill.

Property Tax Abatement Housing Incentive. Seek legislation to grandfather the property tax abatements of mixed-use developments participating in property tax abatement housing incentive programs prior to August 2009. According to a recent opinion by the Attorney General, the abatement has been incorrectly applied to the commercial portions of the developments. In order to not financially jeopardize the housing portion of the developments, the grandfathering is necessary as a first step to making changes to property tax abatement housing incentive programs.

Supervision of Forced Released Inmates. Seek legislation that provides supervisory authority over inmates released as the result of jail capacity limits. Multnomah County does not have the legal authority to supervise and impose conditions of release for these inmates; thereby imposing an unnecessary risk to public safety.

Human Trafficking Hotline Info Posting. Seek legislation that encourages retail establishments that sell alcohol to voluntarily post information on the national hotline for human trafficking. Public awareness of sex trafficking of minors is relatively low despite recent a nationwide law enforcement operation. The posting of hotline information can aid in reducing human trafficking. Other states have taken such steps in the effort to stop this exploitation of minors.

Cancellation of Taxes on Low-Value Manufactured Homes. Seek legislation that permits the cancellation of personal property taxes for manufactured homes whose assessed values are less than \$15,000. Multnomah County sees very little return on investment with these accounts because the cost of billing, servicing and collecting these accounts is high compared with revenue received. These homeowners are also generally very poor and unable to pay.

PRIORITIES

State 2009-11 Budget. Support efforts to maintain or increase state funded public safety and human services that affect Multnomah County's ability to protect vulnerable populations and to maintain public safety. The March 2010 state revenue forecast and the outcome of Measures 66 and 67 will determine the legislative action the Oregon Legislature undertakes. Multnomah County will respond accordingly to support or oppose legislative actions that promote the county's interests.

Wapato Jail. Seek a partnership with the Department of Corrections to utilize the Wapato Jail facility. The 525-bed facility offers many options that can meet county and state public safety needs.

Elections. Support legislation that removes the requirement to create a new voter precinct as the result of non-contiguous land being annexed by cities. The requirement places an administrative burden that is costly to Multnomah County.

Mental Health. Monitor the progress and outcomes of SB 5529's budget notes on mental health integration and psychiatric acute care funds. Support efforts that expand resources for both subacute and acute psychiatric care. Monitor reform efforts in the state's mental health system. Support efforts to ensure that uninsured populations are cared for and cost-effectively managed by the county. Oppose legislation that undermines Multnomah County's mental health system.

Health Privacy. Support legislation that permits the exchange of patient mental health information between health providers and mental health organizations as it pertains to state efforts in integrating physical and mental health care. Multnomah County mental health system is a significant provider of mental health services. How patient information is used and shared is important to the well being of the individual and an important responsibility for physical and mental health care providers.

Commercial Surety Bonds Industry. Oppose legislation that reinstitutes the bail bonds industry in Oregon. A bail bonds system would undermine Multnomah County's Pretrial Release Services system and introduce the potential for abuse without any guarantee for improving failure to appear rates.



2009-2011 STATE AGENDA POLICY AGENDA

(Carried over from 2009- descriptions modified slightly)



LOCAL CONTROL

ISSUE: *State preemptions and other restrictions on local government discourage creative solutions to local problems and undermine local authority. Multnomah County needs to have all the tools in its toolbox to meet the needs of its residents.*

POSITION: Support lifting state preemptions and oppose any new state preemption that reduces local authority or local revenue sources.

STATE MANDATES

ISSUE: *Multnomah County is bearing the brunt of underfunded services required by the State in corrections, health and human services, and other areas including court facilities. As a result, Multnomah County has supplemented what it receives from the state with County General Funds in order to meet its statutory obligations. Given the economic situation and growing community needs, the County General Fund is not able to sustain these services.*

POSITION: Support adequate funding to cover actual costs of providing state required services and oppose efforts that underfund these services.

MENTAL HEALTH SYSTEM

ISSUE: *First responders that treat persons suffering a mental health crisis do not have a viable and cost effective alternative to hospital emergency rooms or the County jail to take these persons for proper treatment. This means improper care and added expense to emergency responders, local area hospitals, and the jail system. The lack of a sub-acute assessment and treatment facility in Multnomah County is a huge gap in the mental health system.*

POSITION: Support efforts that expand resources for both subacute and acute psychiatric care. Monitor reform efforts in the state's mental health system to ensure that uninsured populations are cared for and cost-effectively managed for the county.

PUBLIC SAFETY

ISSUE: *Multnomah County is a very important part of the state's public safety system due to it being the most populated county in the state with the most active law enforcement, judicial, and parole and probation systems in the state. Multnomah County has proven that local knowledge combined with evidence based practices is a national model of success.*

POSITION: Support legislation and state partnerships that provide the best results in public safety and maximize resources in Multnomah County. This includes facilitating state partnerships in juvenile parole and probation services and with the county's Wapato Jail facility.

OREGON HEALTH PLAN

ISSUE: *During the 2002 recession, the state drastically reduced the Oregon Health Plan Standard population to cut costs. Many thousands of Oregonians lost coverage. The consequences have dramatically driven up costs for the county's health clinics and for hospital emergency rooms. Reductions in enrollment have resulted in a loss of matching state and federal dollars to Multnomah County to pay for residential treatment services.*

POSITION: Support efforts to increase the Oregon Health Plan Standard population. Greater coverage reduces the out-of-pocket expenses for Multnomah County's health clinics.

PROPERTY TAX LIMITATION

ISSUE: *Measure 50 created a permanent structural deficit for local government in Oregon. Multnomah County cannot finance public services with revenues generated by a property tax rate that grows slower than real market inflation. Measure 50 property tax system has created inequity for homeowners with equal valued homes but taxed unequally.*

POSITION: Support changes to the Oregon Constitution that make Oregon's property tax system more equitable for property owners and more in sync with real market conditions.

SUSTAINABILITY

ISSUE: *Multnomah County strives to be more environmentally friendly and energy conscious in its operations. As a government that serves the state's most populated county, there is enormous opportunity to make a difference in promoting the local economy, reducing pollution, and conserving natural resources.*

POSITION: Support legislation that makes it easier for Multnomah County and its households to adopt environmental friendly practices in day to day operations.

TRANSPORTATION

ISSUE: *Multnomah County is responsible for the maintenance of six Willamette River bridges and nearly 300 miles of roads. The Oregon Jobs and Transportation Act provided the County with needed funding. The State will need to continue working on sustainable revenues for the future that will provide maintenance to the existing system as well as continued growth.*

POSITION: Support a fair and reliable system of revenue sources for maintaining the existing transportation system as well as stewarding sustainable growth. Protect the County's revenue sources by advocating for a hold harmless provision for Bridge funding.



**2009-2011 STATE AGENDA
BUDGET AGENDA**
(Carried over from 2009 - No changes)



Multnomah County will work to ensure that the programs below are adequately funded based on the following principles:

- 1) **Ensure that services for vulnerable populations are protected.**
- 2) **Ensure that state cuts do not create an additional unfunded mandate for Multnomah County.**

COUNTY PROGRAMS AFFECTED BY THE STATE BUDGET	
<u>DEPT. OF COUNTY HUMAN SERVICES</u>	DEVELOPMENTAL DISABILITIES Administration and Support
	DEVELOPMENTAL DISABILITIES Services for Children
	AGING AND DISABILITIES SERVICES Access & Early Intervention Services
	AGING AND DISABILITIES SERVICES Adult Care Home Program
	AGING AND DISABILITIES SERVICES Long Term Care
	AGING AND DISABILITIES SERVICES Adult Protective Services
	AGING AND DISABILITIES SERVICES Administration
	Note: for all AGING AND DISABILITIES SERVICES programs receiving Medicaid funding
	MENTAL HEALTH Quality Management and Protective Services
	Mental Health Crisis Services
	MENTAL HEALTH Commitment Services - Waitlist Reduction for State Hospital Admissions
	MENTAL HEALTH Commitment Services - Involuntary Investigation Services
	MENTAL HEALTH Commitment Services - Emergency Holds for Uninsured Individuals
	MENTAL HEALTH Residential Services - Transitional Housing for Adults
	MENTAL HEALTH Residential Services - Residential Services for Adults
	Early Psychosis Intervention Services
	Adult Addictions Treatment Continuum - A/D Residential Treatment
	Adult Addictions Treatment Continuum - Adult Outpatient A/D Treatment
	Youth Gang Prevention
	Housing Stabilization for Vulnerable Populations
	Runaway Youth Services
	Social & Support Services for Educational Success
	Anti-Poverty Services
	Child Development Services
<u>DEPT. OF COMMUNITY JUSTICE</u>	Gang Transition Svcs - GRIT
	Gang Transition Svcs - EMGET
	Individualized Svcs - FLEX
	OCCF JCP Prevention
	Juvenile Crime Prevention - Basic
	OYA JCP Diversion
	State Mental Health
	CASA
	Parole Hearing
	DOC 1145
	DOC Measure 57 (new)
	DOC Subsidy

	DOC AIP
	DOC Sex Offender DepoProvera
	DOC Prisoner Re-Entry
	OYA Timber Backfill
	OYA SRTP
COUNTY HEALTH DEPARTMENT	La Clinica
	Public Health and Regional Health Systems Emergency
	Communicable Disease Prevention & Control
	STD/HIV/Hep C Community Prevention Program
	Services for Persons Living with HIV
	Early Childhood Svcs for First Time Parents
	Early Childhood Svcs for High Risk Prenatal
	Early Childhood Svcs for High Risk Infants and Children
	Immunization
	Lead Poisoning Prevention
	Medicaid/Medicare Eligibility
	Dental Services
	Women, Infants and Children (WIC)
	North Portland Health Clinic
	Northeast Health Clinic
	Westside Health Clinic
	Westside Health Clinic Van and Homeless Outreach
	Mid County Health Clinic
	East County Health Clinic
	School Based Health Centers
	Pharmacy
	Health Planning and Evaluation
	Chronic Disease Prevention
LIBRARY	Early Childhood Resources
SHERIFF'S OFFICE	MCIJ
	River Patrol
	Fac. Security Unit
DEPT. OF COMMUNITY SERVICES	Transportation - Road & Bridge Services and Capital



111th CONGRESS FEDERAL AGENDA FY2011 APPROPRIATIONS



PUBLIC INFRASTRUCTURE

SELLWOOD BRIDGE

The Sellwood Bridge is the busiest two-lane bridge in Oregon with over 30,000 daily vehicle crossing. The 90-year old bridge rates very low in federal safety standards as a result of its age and the geological movement of the West Hills buckling the structure. Weight restrictions have been in place since 2004, affecting freight trucks and buses as well as the local economy. Multnomah County has completed the Sellwood Bridge Project DEIS and selected a Locally Preferred Alternative in February 2009. Construction is scheduled to begin in 2012. The cost is estimated at \$330 million in 2014 dollars. The County's funding plan for the construction of the Sellwood Bridge includes the following contributions:

\$127M Multnomah County (\$19 per year vehicle registration fee passed in October 2009)
\$ 11M Previously secured funds remaining from EIS phase*
\$100M City of Portland (new revenues from the Jobs and Transportation Act)
\$ 22M Clackamas County (new vehicle registration fee)
\$ 30M State of Oregon* (Jobs and Transportation Act)
\$ 40M Request to Federal Authorization of Transportation Act*

Of this funding, \$168 million is secured (). An additional \$122 million secured by early 2010 is anticipated. The remaining \$40 million request is dependent on the authorization of the surface transportation bill.*

POSITION: Multnomah County seeks \$5 million in FY2011 to conduct the Final Design and right-of-way acquisition for the Sellwood Bridge project. The county is seeking \$40 million in the Surface Transportation Reauthorization Act to complete the project.

BEAVER CREEK CULVERTS

The lower Beaver Creek in Multnomah County is critical habitat to federally endangered species including Lower Columbia River Chinook Salmon and Steelhead Trout, and candidate species including Lower Columbia River Coho Salmon. The existing waterway and wetland are neither conducive to fish passage nor other wildlife. Replacing the Beaver Creek Culverts will improve the habit and enhance fish passage.

POSITION: Multnomah County seeks \$6 million for the replacement of the 3 downstream-most culverts, (Troutdale Rd., Stark St., and Cochran Rd.) with larger culverts or bridges, opening 4.6 miles of Beaver Creek to fish passage. Included is restoration of natural substrate under bridges and culverts; stabilization of stream bed to ensure no head-cutting occurs; removal of non-native exotic (plant) species and replant with native species along bank; and, enhance a forested wetland adjacent to the Stark St. crossing by removal of non-native species with native species. This would improve habitat for many wildlife species including neotropical migratory birds that use riparian habitat for nesting and cover, small mammals that use riparian areas as migration corridors, and native amphibians and reptiles that would utilize wetland habitats.

SANDY RIVER TRAIL CONNECTIONS

The National Scenic Area Act authorized \$10 million for construction of recreation facilities in the Columbia River Gorge, a national recreational area along the Oregon/Washington border. Only half of the funds have been appropriated and none have been expended in Multnomah County. Consistent with the intent of the Act, the Columbia Gorge Management Plan prioritizes trail construction at the Sandy River Delta, Gorge Gateway area and Lewis and Clark State Park.

POSITION: Multnomah County seeks \$5 million to implement the Sandy River Connections Trail. The Concept Plan was completed in January 2008 and all of the parties have agreed to support its implementation, recognizing increasing public demand for recreational opportunities in this "Gateway to the Gorge."

PUBLIC SAFETY

RE-ENTRY SERVICES

Multnomah County is responsible for thousands of individuals who re-enter society after completing their prison or jail sentences. Research has shown that successful re-entry is increased when support services are provided such as employment assistance, transitional housing, mental health and addiction treatment. This reduces the likelihood of the individuals re-offending. Seven out of ten individuals who re-enter from prison from county's adult probation and parole division do not recidivate for as long as three years.

POSITION: Multnomah County is seeking \$1.5 million in federal Byrne Grant dollars to support re-entry services. These funds will increase the number of eligible individuals by a third for transitional services, to double the number of transitional housing beds available for returning offenders, increase outpatient treatment slots, and retain mentors and an employment specialist.

FINANCIAL AND ELDER ABUSE PROSECUTION PROJECT

While seniors comprise just 13 percent of the general population; they possess 50 percent of the total wealth, making them disproportionately targeted for financial fraud and abuse. As seniors live longer, they become increasingly vulnerable to financial manipulation, abuse and neglect. Financial abuse is the fastest growing form of abuse. It is estimated that for every one case of elder abuse, neglect, exploitation, or self-neglect reported to authorities, approximately five go unreported. Between 2007 and 2009, Multnomah County had 1361 cases of financial elder abuse.

POSITION: Multnomah County seeks \$595,000 for investigating financial fraud, prosecuting perpetrators, gathering forensic data, providing support services to victims, educating the public and senior care providers, providing forensic nursing, coordinating services among agencies; and providing enhanced referral services.

HEALTH/HUMAN SERVICES

EAST COUNTY SCHOOL BASED HEALTH CLINIC

By working in partnership with schools, families, healthcare providers, and community agencies, the Multnomah County School Based Health Clinic(SBHC) Program is able to provide health care for the county's school-age youth in the most readily accessible locations. This results in the early identification and intervention of health issues and the reduction of barriers to care. SBHCs play a major role in the local health care delivery system's ability to curb high-risk behaviors and thus foster academic success for the county's youth. Expansion of these services will support better access to SBHC services to the youth of East County as poverty is shifted in this area.

POSITION: Multnomah County seeks \$350,000 to for capital costs for a health clinic that would serve local income school children with the Centennial and Gresham/Barlow school districts.

GATEKEEPER PROJECT

The Gatekeeper model is a national best practice program that identifies at-risk older adults and people with disabilities living in our community and links them to critical social and health services. The program trains volunteers to identify signs and symptoms such as confusion, depression, poor health, functional disability, financial exploitation or unsafe living conditions that may indicate vulnerable adults needing assistance. Volunteers could be meter readers, bank tellers, letter carriers and others that come into contact with older adults or people with disabilities in their daily work activities.

POSITION: Multnomah County seeks \$100,000 to recruit and train 840 volunteer Gatekeepers and 24 Gatekeeper volunteer trainers.

SUPPORTED APPROPRIATION REQUESTS FROM COUNTY PARTNERS

LUKE-DORF MENTAL HEALTH SUPPORTIVE HOUSING

The single greatest impediment to diverting many mentally ill persons away from the criminal justice system is the absence of housing resources supported housing in particular. Supported housing, and the use of specialized courts like Community and Mental Health Court, focuses on the underlying issues that result in criminal justice involvement. For a variety of reasons, mentally ill persons with criminal backgrounds are excluded or unwelcome in many types of public housing. While those barriers are surmountable over the long term, they present a formidable challenge when attempting to expedite a speedy diversion for a homeless person from the criminal justice system. A supported housing resource dedicated to specialized courts such as Community Court and Mental Health Court would allow Multnomah County to place appropriate persons in a managed environment that provides mental health services while permanent living and treatment alternatives are arranged. Without an interim intervention like this, homeless mentally ill persons will have little opportunity for a successful court diversion.

POSITION: Multnomah County supports Luke-Dorf's request for \$2 million in capital funds to construct housing in the county.

HUMAN TRAFFICKING VICTIMS SHELTER

The biggest obstacle to getting victims of trafficking and forced prostitution off of the streets is a lack of a safe facility where victims can sleep, get physical and mental treatment, and simply be comfortable. The only options currently available are placing the child in foster care or putting them in jail. By providing the victims with a secure and comfortable environment the victims will be given access to the resources and supports they need to provide for themselves away from the predators that control them with fear and intimidation. Not only will this help those wishing to exit the sex trade, but it will also help law enforcement and the District Attorney's Office achieve more convictions. While victims may initially be willing to testify against their abusers, when they have no safe place to stay they nearly always return to the same pimps and thugs who abuse them. This shelter will provide them with the safe bed and moral support that will encourage them to stay under supervision and make the difficult decision to testify against their pimp. Without such a facility, we have very little chance of ending the practice of human trafficking and forced prostitution in our region.

POSITION: Multnomah County will support efforts undertaken by a service provider (to be determined) to seek federal capital funds if needed for building a shelter to serve victims of human trafficking.

REGIONAL JUSTICE INFORMATION NETWORK

Current information sharing practices among law enforcement agencies are inefficient and potentially unsafe for the public. Inaccurate information, delays, and redundancies can lead to decision-making by public safety agencies based on imperfect information, creating unnecessary risk. Multnomah County with the support of the Sheriff, District Attorney, Portland Police, and the state circuit courts conducted a feasibility study in 2009.

POSITION: Multnomah County supports a regional effort to request federal funds to develop and create the Regional Justice Information Network. Multnomah County will work with the Local Public Safety Coordinating Council in this effort.



111th CONGRESS FEDERAL AGENDA
POLICY AGENDA
2nd Session - 2010



HEALTH/HUMAN SERVICES

AFFORDABLE HEALTH CARE FOR AMERICA ACT/ PATIENT PROTECTION & AFFORDABLE CARE ACT (HR. 3962/HR. 3590)

Experts from across the political spectrum agree that America's health system is broken and unsustainable in its present configuration. Families in Multnomah County are experiencing this crisis right now, confronting the high cost of health care that threatens their financial stability, leaves them exposed to higher premiums and deductibles, and puts them at risk for a possible loss of health insurance. It costs Multnomah County \$61.5 million in county general funds to meet the health needs of its residents including \$19 million for public health, \$14 million for indigent care, \$13 million for corrections health, \$1.5 million for local Medicaid match, and \$14 million for mental health and addictions obligations.

POSITION: Multnomah County supports the inclusion of the following provisions in the federal effort to reform health care.

- 1) Inclusion of new federal designation: "Federally Qualified Behavioral Healthcare Centers"
- 2) Simplification of Medicaid coverage for nurse home visitations
- 3) Public Health Investment Fund/Prevention & Public Health Fund
- 4) Reimbursement of jail for health care costs for pre-adjudicated population eligible for Medicaid
- 5) Extension of the FMAP increase from the ARRA
- 6) Clarification that Medicaid does not prohibit state coverage of therapeutic foster care

FULL SERVICE COMMUNITY SCHOOLS ACT (HR. 3545 – Co-sponsor: Blumenauer)

Multnomah County's SUN schools are an active and robust community school system of 58 schools and 6 regional service centers that links academic support, early childhood programs, parent involvement and education, anti-poverty assistance, health care, mental health and addictions treatment in a culturally suitable environment for the county's diverse school population.

POSITION: Multnomah County would seek federal grants authorized in HR 3534 to strengthen its community school system.

RESTORING THE PARTNERSHIP FOR COUNTY HEALTH CARE COSTS ACT OF 2009 (HR. 2009)

An estimated 21 percent of persons booked in Multnomah County's jails in pre-trial status have private or public health insurance coverage, i.e. Oregon Health Plan, Medicaid, Medicare, or SSI. Health care costs in county jails could be reimbursed, providing much needed relief for the county's fiscal health.

POSITION: Multnomah County supports the passage of this legislation with an amendment that requires private health insurance to reimburse for health care provided by county jail staff.

PUBLIC SAFETY

JUVENILE JUSTICE DELINQUENCY PREVENTION ACT OF 2009 (S. 678)

Multnomah County juvenile justice program is a national model of successful implementation of the goals of the Juvenile Justice Delinquency Prevention Act of 1974. Most importantly, the county has reduced re-offense rates and delinquency of juveniles in its custody using evidence-based practices that prioritize safety. The county's success is in jeopardy because the Act has not been reauthorized. The federal leadership responsible for this success has declined considerably.

POSITION: Multnomah County supports the reauthorization of the Act, specifically raising the authorization levels for Title V grants. Since 2002, Multnomah County has lost over \$900,000 in federal juvenile justice funding that came to the county. The impact of these federal cuts has meant *fewer juvenile prevention and intervention services to young people and their families*. In 2002, Multnomah County served 1,200 young people a year in its juvenile justice system. Today it is down to 600 young people despite the need.

YOUTH PROMISE ACT OF 2009 (S. 435/HR. 1064)

Multnomah County sets the national standard on incorporating evidence-based practices to reduce juvenile delinquency and criminal street gang activity. The National Association of Counties, the National Conference of State Legislatures, and US Dept. of Justice have heralded the county's success. Close to 73% of youth served by the county's gang intervention services complete their programs. Of those served, 76% do not recidivate while in the program and 74% do not recidivate one year after completing the program. The Youth Promise Act will support evidenced based prevention and intervention strategies proposed by local councils with federal grants. Grants provided under the act could help retain juvenile justice probation officers.

POSITION: Multnomah County supports the passage of the Youth Promise Act. The Act provides for a thorough evaluation of gang and youth violence prevention programs, including analyses of cost savings to society yielded by investing in prevention and intervention rather than in more costly prosecution and incarceration approaches.

RECIDIVISM REDUCTION ACT of 2009 (HR. 2829)

Key federal benefits are regularly suspended or terminated upon incarceration and take considerable time to be reinstated after an individual is released. Without the health coverage and other benefits, many newly released individuals cannot fully focus on securing gainful employment and developing a supportive home life. Without these benefits, counties and states end up paying the "full freight" of any health care, disability and other support for people under the supervision of the county's parole and probation, and juvenile justice department as they wind through the system.

POSITION: Multnomah County supports the Recidivism Reduction Act of 2009. HR. 2829 will ensure prompt access to supplemental security income, Social Security disability, and Medicaid benefits for persons released from certain public institutions (such as a jail, or a juvenile detention center).

NATIONAL CRIMINAL JUSTICE COMMISSION ACT OF 2009 (S. 714)

With the highest incarceration rate in the world, overcrowded prisons, growing gang violence, lack of focus in reintegrating ex-convicts who have paid their debts to society, the criminal justice system in the United States is in great need of repair. Prison spending continues to outpace education and human services in many states. Communities throughout the country would benefit tremendously from a comprehensive review of policies and practices that produces meaning reform.

POSITION: Multnomah County supports the passage of the National Criminal Justice Commission Act. The Act will create commission charged with a top-to-bottom review of the criminal justice system and propose recommendations designed to reduce the overall incarceration rate; to improve drug policy; to improve mental illness treatments, to improve prison management, and to establish a system for reintegrating ex-offenders.

SECOND CHANCE ACT OF 2007 (HR. 1593/S. 1060)

When the Congress passed and the President signed the Second Chance Act of 2007, the law provided an important source of federal funds for critical re-entry services such as family-based substance abuse treatment, education programs in jail facilities, job training, mentoring and for program evaluation. Unfortunately, the global recession of 2008 have had a severe impact on local governments' ability meeting the federal match requirement. Many parole and probation services have been reduced, including employment, education, housing, and treatment services. **POSITION:** Multnomah County supports removing the local match requirement as a result of the recession's recession impact on the county's budget.

TRAFFICKING DETERRANCE & VICTIMS SUPPORT ACT OF 2010

Human trafficking of minors for prostitution is growing problem in Multnomah County and in the nation. In order to effectively stop human trafficking in the United States, a comprehensive approach that includes law enforcement and prosecution, victims' assistance, counseling, public outreach, shelters for victims, and investigations is needed.

POSITION: Multnomah County supports the effort to introduce legislation that authorizes a pilot project of six block grants to provide a comprehensive approach to addressing human trafficking. The grants would be administered by the Office Justice Programs in the Byrner-JAG grants.

LAND USE/TRANSPORTATION

SURFACE TRANSPORTATION REAUTHORIZATION ACT

The reauthorization of the federal surface transportation act is the critical final piece of the Sellwood Bridge Project's funding plan. Multnomah County has successfully pulled together diverse sources of funds to complete the reconstruction of the bridge. The plan includes \$30 million from ODOT, \$100 million from the City of Portland, and \$127 million in new county vehicle registration fees from Multnomah County. Clackamas County is considering a vehicle registration fee that would contribute \$22 million to the replacement of the Sellwood Bridge.

POSITION: Multnomah County requests an authorization of \$40 million to complete the reconstruction of the Sellwood Bridge.

HEALTHY PLACES ACT OF 2006 (S. 2506/HR. 5088)

The Portland metropolitan region is undertaking a massive project in rebuilding the Interstate 5 bridge between Oregon and Washington, as known as the Columbia River Crossing. The volume of pollution from vehicles crossing the I-5 bridge 24/7 greatly affects the health of the many neighborhoods on both sides of the river. Multnomah County's Health Department took the initiative to submit its assessment of the health impacts during the development of the DEIS. The assessment was an invaluable tool for decision-makers, transportation planners, and the public in understanding the health effects of each bridge options.

POSITION: Multnomah County supports a federal grant program that encourages local public health agencies to conduct health impact assessments for transportation projects.



Services Provided By Multnomah County



The People



**Commissioner
Deborah Kafoury
District 1**



**Commissioner
Jeff Cogen
District 2**



**Chair
Ted Wheeler**



**Commissioner
Judy Shiprack
District 3**



**Commissioner
Diane McKeel
District 4**

Department of Community Justice

- Adult Probation and Parole
- Felony Field Supervision
- Community Service
- Day Reporting Center; Jail Sanctions Alternative
- Domestic Violence Supervision
- GED and Employment Preparation for Adult Offenders
- Adult Pre-Trial Services
- Residential and Outpatient Alcohol and Drug Program
- Juvenile Probation
- Juvenile Detention
- Community-Based Detention Alternatives
- Education Provided in Detention
- Gang Transitional Services

Department of Community Services

- Animal Shelter
- Elections
- Land Use
- Roads and Bridges

Department of County Human Services

- Adult Foster Care Homes
- Alcohol and Drug Treatment
- Assisting Seniors and People with Disabilities
- Case Management for People with Developmental Disabilities
- Domestic Violence Prevention
- Energy Assistance
- Gambling Addiction Treatment
- Homeless Youth
- Mental Health Services
- Oregon Project Independence
- Public Guardianship
- SUN Community Schools
- Weatherization

Department of County Management

- Excise Tax Collection
- Assessment and Taxation
- Budget
- Employee Benefits
- Human Resources
- Labor Relations
- PERS
- Finance/Risk Management
- Facilities and Property Mgmt.
- Diversity and Equity
- Deferred Comp.
- Sustainability
- Emergency Management
- Fleet
- Distribution
- Warehouse
- Records Management

Department of Health

- Early Childhood Services
- Immunizations
- Lead Poisoning Prevention
- Medicaid Eligibility
- Outreach for Women Infant and Children (WIC)
- Providing Medical and Dental Services in Health Centers
- Restaurant Inspections
- School Based Health Centers
- Surveillance of Communicable Diseases
- Vector Control

Department of Libraries

- Early literacy services
- School age services
- Lifelong learning programs
- Reference and information services
- Public access computing
- Community gathering places
- Lending books and other media
- Outreach programs for at-risk populations

For more info: Phillip Kennedy-Wong (503) 830-4746, Multnomah County Gov't Relations Mgr.

For Information:
Nancy Bennett
Interim Government Relations Manager
Multnomah County
501 SE Hawthorne Blvd., Ste. 600
Portland, OR 97214
(503) 988-4435
nancy.bennett@co.multnomah.or.us

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Adopting the Multnomah County 2010 State and Federal Legislative Agenda

The Multnomah County Board of Commissioner Finds:

- a. County officials are elected to protect the health and welfare of their constituents.
- b. Multnomah County has a vested interest in advancing state and federal legislative initiatives on behalf of its residents, especially vulnerable populations.
- c. Multnomah County finds that it is necessary to have a 2010 legislative agenda that harnesses county resources efficiently to promote priorities set by the Board of County Commissioners.
- d. Multnomah County Board of County Commissioners has developed a legislative agenda that identifies key initiatives to pursue in the state legislature and the Congress in 2010.
- e. Multnomah County 2010 legislative agenda promotes the physical and mental well-being of its residents through robust public services, good government, environmental stewardship, and the public's safety.
- f. Multnomah County 2010 legislative agenda provides specific policy guidance to county officials and its lobbyists acting on its behalf in the state legislature and Congress.

The Multnomah County Board of Commissioner Resolves:

1. To undertake all activities and use the necessary resources wisely to promote the success of the Multnomah County Oregon 2010 State and Federal Legislative Agenda, attached hereto; and
2. To reserve the right to modify any policy position in the 2010 State and Federal Legislative Agenda.

ADOPTED this 28th day of January 2010.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Agnes Sowle, County Attorney

SUBMITTED BY:
Chair Ted Wheeler

Submitted by: Susan Andrews
Info as of: January 25, 2010

Support for Rural Reserves in Metro Area 9 /Multnomah Reserves Areas 5-7

**Multnomah County Reserves Citizen
Advisory Committee (CAC)**

Multnomah County Planning Commission

City of Portland

Neighborhood Associations:

Forest Park Neighborhood Association
CPO-7 (adjacent Bethany area Wa. Co.)
Claremont Neighborhood Assn. (Wa. Co.)
Hillside Neighborhood Association (Portland)
Northwest District Association (Portland)

**Agriculture and Natural Resources
Coalition:**

Forest Park Conservancy
Save Helvetia
Tualatin Riverkeepers Washington County
Farm Bureau
Friends of French Prairie
1000 Friends of Oregon
Audubon Society of Portland
Coalition for a Livable Future
Oregon Association of Nurseries
Slow Food
Portland Area Community Supported
Agriculture Coalition
Urban Greenspaces Institute
Oregon Council of Trout Unlimited
Oregon Environmental Council
Friends of Family Farmers
Oregon Tilth
Scotch Church Road Families and Farms
Portland Farmers Market
East Multnomah Soil & Water Conservation
District
West Multnomah Soil & Water Conservation
District
Friends of Council Creek
Multnomah County Chapter of Oregon
League of Conservation Voters

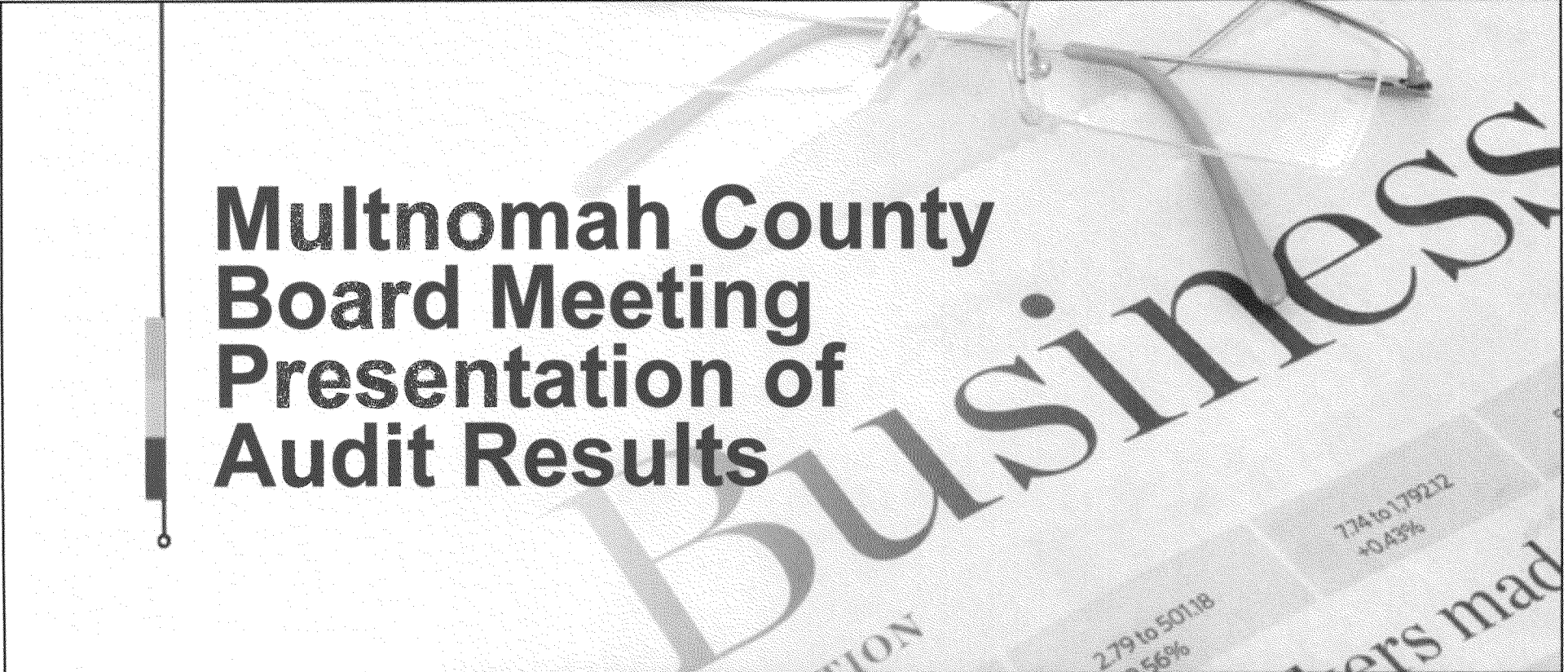
Individuals and elected officials:

Portland Mayor Sam Adams
Amanda Fritz, City of Portland Commissioner
State Rep. Mitch Greenlick
Victoria Lowe, Forest Grove City Council
29 Residents of Springville Road Area, including Malinowski Farms
The Beovich Family, who farm 94 acres on Springville Road

The Great Communities Study considered most of Multnomah Area 7. Their report says:

"The team concurs that preservation of this important ecological area is likely more important to the region than urbanizing it, especially given the other constraints (lack of connectivity and developable land area) and significant opportunities (water quality and view)."

**So why would you leave this area
undesignated?**



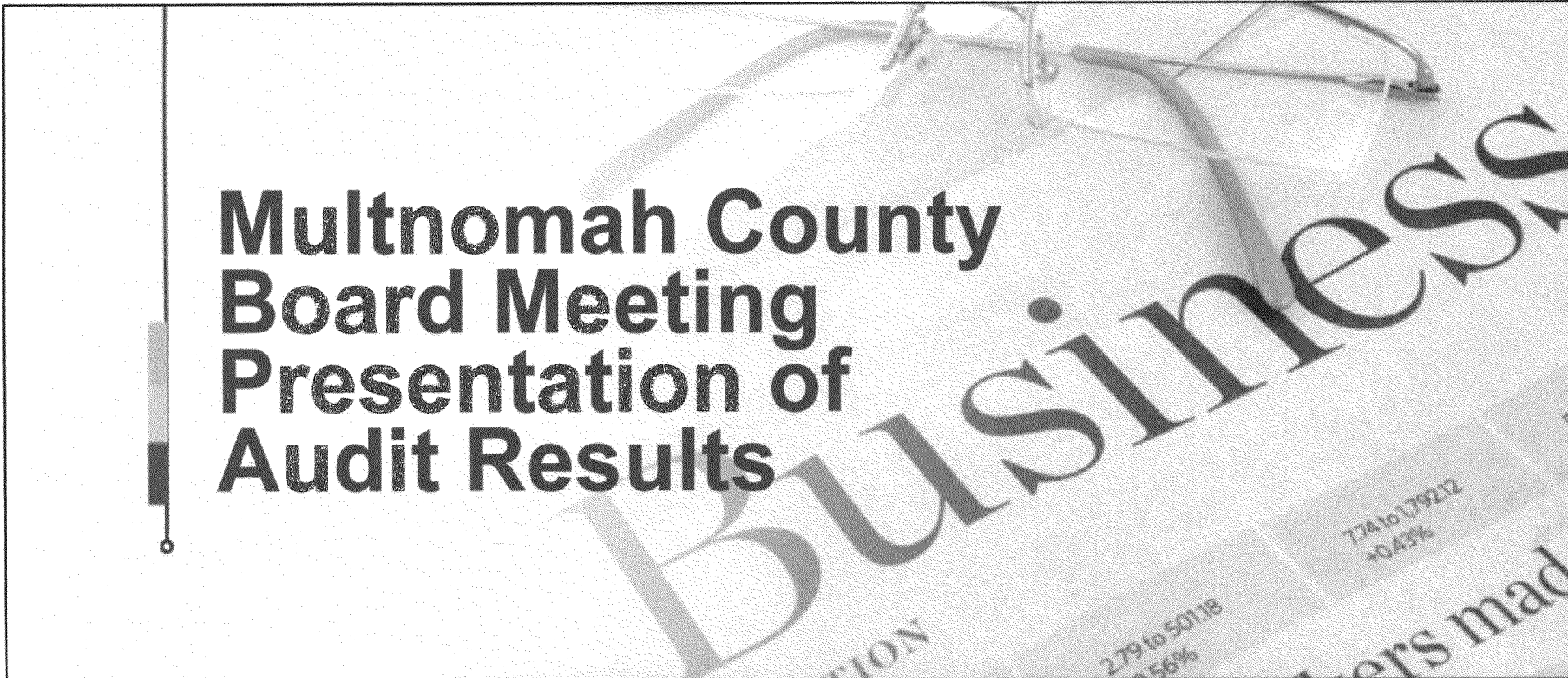
Multnomah County Board Meeting Presentation of Audit Results

January 28, 2010

Jim Lanzarotta, Partner

Kevin Mullerleile, Senior Manager

Debbie Gregg, Senior Manager



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What we will cover

- Nature of services provided
- Auditor's opinion and reports
- SAS 114 required communications
- Best practices observations and recommendations
- New accounting/auditing standards
- Comments

Nature of Services Provided

- Audit of the financial statements
- Testing for Oregon Legal Compliance
- Testing County compliance with Federal Grant requirements
- Technical review of the County's Comprehensive Annual Financial Report

Audit Opinion & Reports

- Unqualified (clean) opinion, page 12
- Report on State Legal Compliance, page 170
 - Three instances of expenditures in excess of budgeted amounts, (footnote 2.B)
 - Two in Federal and State Program Fund
 - One in Revenue Bond Fund

Audit Opinion & Reports

- Report on compliance and internal controls required by Government Audit Standards (separate bound single audit report)
 - No internal control deficiencies or non-compliance matters noted
- Report on compliance and internal controls over Major Federal Grant Programs (separate bound single audit report)
 - Clean opinion on Federal grant compliance
 - Significant control deficiency and compliance finding for payroll reporting for the Social Services Block grant
 - Control deficiency and compliance finding for lack of retaining eligibility documentation for health center patients under the Consolidated Health Centers grant

SAS 114 Required Communications

- Significant difficulties encountered in the audit - none
- Corrected and uncorrected misstatements – none
- Disagreements with management - none



Best Practices / Recommendations

- Prior year observations addressed by management
 - Formal account reconciliation process / checklist
 - Accounting for state pass through grants
 - Periodic review of vendor disbursements for P.O. policy adherence
 - Timely billings on grant-funded projects
 - Timely, periodic review of old accounts payable
 - Review of debt covenants for compliance
 - Review of capital assets for impairment

Best Practices / Recommendations

- Current year observations and recommendations
 - Review of SAP user access for inappropriate roles
 - Improve controls over approved vendor contract prices
 - Improve communication of non-routine capital asset transactions with finance management staff
 - Improve internal communications controls over possible pollution remediation projects
 - Continued emphasis on improving 'time and effort' studies over payroll charged to federal grants
 - Improve reporting of federal CFDA#'s to grant subrecipients

The Accounting Standards

- New accounting standards
 - GASB 51 – Accounting for intangibles, effective FYE 6/30/10
 - GASB 54 – Fund balance accounting, effective FYE 6/30/11



Comments

- Questions?

Acknowledgements

- Thanks to Mindy Harris for her leadership; Cara Fitzpatrick & Susan Luce and their technical accounting team for their excellent facilitation of our audit procedures; and Steve March, Judith Devilliers and members of the Audit Committee for their guidance and oversight