



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>

_____	Notices
<u>116</u>	Decision Notices
mailed on <u>December 11, 2008</u>	
by <u>VC</u>	

Notice of Hearings Officer Decision

Attached please find notice of the Hearing Officer's decision in the matter of **T3-08-002**. This notice is being mailed to those persons entitled to receive notice under MCC 37.0660(D).

The Hearing Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record. **Appeal instructions and forms are available from the Land Use Board of Appeals at 550 Capitol Street NE, Suite 235, Salem, Oregon 97301; 503-373-1265 (<http://luba.state.or.us/>).**

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



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DECISION OF HEARINGS OFFICER

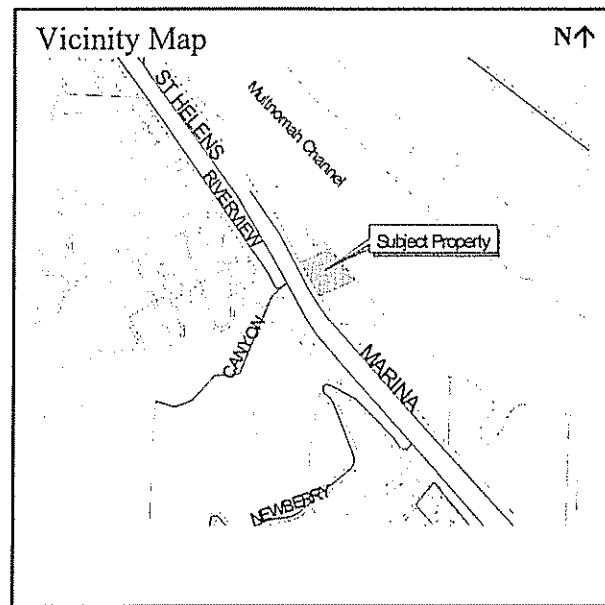
Application for a Conditional Use, Community Service, Willamette River Greenway, Design Review, and Variance Permit

Case File: T3-08-002

Hearings Officer: Liz Fancher

Hearing Date, Time, & Place:

Friday, October 17, 2008, at 1:00 pm
Room 103 at the Land Use Planning Division
1600 SE 190th Avenue, Portland, OR 97233



Location: 12950 NW Marina Way
TL 700, Sec 28D, T 2N, R 1W, W.M.
Tax Account # R97128-0500

Applicant: Mark Hess

Owners: Daniel Gulbrandson

Summary: Applicant is requesting a Conditional Use permit, Community Service approval, Willamette River Greenway permit, Design Review, and a Variance permit for a 45-boat marina (20 in-water boat slips and 25 boat spaces on-land) with accessory marine-related construction and repair, and one floating residence. The proposal includes: 1 floating home slip, 2 boathouse parking spaces, 30 automobile parking stalls, a boat ramp and lift, log salvage yard, and construction and repair activities related to the marina and moorage.

Zoning: Multiple Use Agriculture - 20 (MUA-20)

Overlay Zone: 100 Year Floodplain, Willamette River Greenway

Site Size: 2.13 upland acres and an associated 1.3-acres in submerged land lease area

Applicable Approval Criteria: Multnomah County Code (MCC):

Multiple Use Agriculture-20 (MUA-20) Zoning District: MCC 34.2830 Conditional Uses; MCC 34.2855 Dimensional Requirements; MCC 34.2870 Lot of Record; MCC 34.2875 Lot Sizes for Conditional Uses; MCC 34.2880 Off-Street Parking and Loading; MCC 34.2885 Access

Conditional Use Permits: MCC 34.6315 Conditional Use Approval Criteria

Community Service: MCC 34.6010 Community Service Approval Criteria; MCC 34.6020 Restrictions

Willamette River Greenway: MCC 34.5855 Greenway Design Plan

Waterfront Uses: 34.6750 Houseboats and Houseboat Moorage; 34.6760 Parking; 34.6765 Other Requirements

Design Review: MCC 34.7030 Design Review Plan Contents; MCC 34.7040 Final Design Review Plan; MCC 34.7050 Design Review Criteria; 34.7055 Required Minimum Standards

Variance and Adjustments: MCC 34.7616 Variance Approval Criteria; MCC 34.7611 Adjustment Approval Criteria

Administration and Procedures: MCC Chapter 37

Comprehensive Framework Plan Policy 14 (Development Standards)

Comprehensive Framework Plan Policy 37 (Utilities)

Comprehensive Framework Plan 10 (Multiple Use Agricultural Land)

Comprehensive Framework Plan 13 (Air, Water and Noise Quality)

Comprehensive Framework Plan 15 (Willamette River Greenway)

Comprehensive Framework Plan 16 (Natural Resources)

Comprehensive Framework Plan 26 (Houseboats)

Comprehensive Framework Plan 34 (Traffic Ways)

Comprehensive Framework Plan 38 (Facilities)

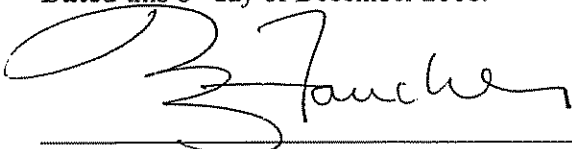
Note re Change to Variance/Adjustment Request

On October 6, 2008, the use of the Pole Barn and the request for a Variance was modified by the applicant in response to correspondence sent by County staff on October 3, 2008 regarding the variance criteria. The applicant clarified the use of the pole barn to be for accessory marina use and that the applicant will pursue appropriate building, electrical, and plumbing permits to remodel the pole barn for accessory marina use. In addition, the applicant agreed to remove portions of the pole barn that encroach more than 40% into the 30-foot front yard setback, with the removal of the encroaching portion of the pole barn to be completed in year two of the phasing plan. The removal of the encroachment and limitation to 40% encroachment, removes the requirement of a Variance Permit for the project. Multnomah County Code (MCC) 34.7601(C) provides for the Adjustment review process by which certain dimensional standards may be modified no more than 40 percent.

Hearing Officer Decision:

The Hearings Officer **denies** the Conditional Use permit, Community Service approval, Willamette River Greenway permit, Design Review and Variance permit for a 45-boat marina, with accessory marine-related construction and repair, and one floating residence. The request for Adjustment Review approval of a 40 percent reduction of the required front yard is denied.

Dated this 8th day of December 2008.



Liz Fancher
Multnomah County Land Use Hearings Officer

Exhibits. See Exhibit List, attached.

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

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

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. The applicant's statements are identified below as '**Applicant:**'. Staff comments and analysis are identified as '**Staff:**' and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*. The Hearings Officer adopts staff findings as findings supporting this decision with the exceptions discussed in the findings labeled "**Hearings Officer:**" which are the hearings officer's finding and that are found following the staff findings.

Land Use History & Current Conditions:

Applicant: A-1 Marina is an existing boat storage and repair enterprise located at 12950 NW Marina Way, just outside the Portland City limits, approximately ¼ mile upstream from the Sauvie Island Bridge.

The marina's owner and operator, Daniel C. Gulbrandson, initially sought permits in 1977 "... to construct a commercial moorage, boat launching ramp, and boat repair facilities along the Multnomah Channel..." (Reference: Corps of Engineers Public Notice 071-OYA-2-002743 dated November 23, 1977).

The National Marine Fisheries Service and the Columbia Region Association of Governments (CRAG) both issued favorable review letters in December 1977 (attached). The Port of Portland issued permit 78-06 in January 1978 authorizing the work described in the Corps notice. The Port of Portland issued permit 80-20 in May 1980, again authorizing the work described in the Corps notice cited above. That same year, Multnomah County issued Willamette River Greenway permit WRG 4-80, which authorized "log salvage." Since 1980, the property has been used for marina-related activities, with docks and pilings extending along Multnomah Channel's west bank.

A 20-year submerged land lease (ML 7112) was secured from the Division of State Lands in 1989. The waterway lease area, along approximately 310-feet of shoreline, extends 180-feet riverward from the channel's ordinary high water line. The lease area encompasses approximately 1.3 acres of water surface abutting the 2.13-acre upland property. The applicant has contacted the DSL concerning the process to renew and modify the waterway lease that will expire in June 2009.

These 2008 applications seek Multnomah County permits to authorize the current marina and its associated activities. The applications include a phased master site plan that would reconfigure the docks, boat slips and other improvements onsite and within the adjacent submerged land lease area.

Staff: The 2.13 acre subject property is zoned Multiple Use Agriculture-20 with zoning overlays for Willamette River Greenway and for the 100-year floodplain. The property is located between Highway 30 to the southwest and Multnomah Channel to the northeast. A heavy rail line is also located between the subject property and Highway 30 to the southwest. More specifically, the subject property lies between the Lucky Landing and Marina Way Moorages, roughly 0.4-miles upstream from the Sauvie Island Bridge.

Although the owner has approached the County in the past requesting a similar range of uses, previous land use applications were withdrawn by the applicant (cases MC 7-98, CS -03 and WRG 0-1). The owner received County approval in 1980 to establish a private boat ramp for the purpose of providing river access for a log processing operation (WRG 4-80). A zoning complaint was received last year in association with an unpermitted boat salvage operation (case UR-06-007). The applicant is attempting to rectify this complaint as part of this land use review.

Hearings Officer: The Flood Insurance Rate Map for the subject property, Community-Panel Number 4101790135B, dated March 18, 1986 (Exhibit A.10) shows that most of the subject property is located within the 100-year flood plain for the Multnomah Channel. The applicant's burden of proof statement says that the base flood elevation is 27 feet elevation NGVD. The applicant has depicted the location of that elevation on an early site plan map, Exhibit A.22, and on an elevation contour map, Exhibit A.25. The location of the boundaries of the 100-year flood plain area shown on the FIRM map and the boundary shown on the applicant's documents are in conflict. The FIRM map boundary, where it crosses the subject property, is a relatively straight line that parallels the railroad. The boundary shown on the applicant's documents is an irregular line that bows out toward the river.

The FIRM map shows that about 90 percent of the subject property is in the mapped 100-year flood plain. The applicant's maps show that less than 50 percent of the subject property is located in the 100-year flood plain area. The applicant also provided a map that shows the part of the subject property that was inundated by the 1996 flood, Exhibit A.29. This map shows that approximately two-thirds of the property was covered by flood waters above the area shown as the 27-foot elevation by the Exhibit A.25 map. This shows that the Exhibit A.25 map's 27-foot contour line does not accurately depict the location of a worst case flood event. As the outer boundary of the flood area does not match the location of the 27' elevation line and that line is below the elevation of the 1996 flood, I reviewed the 1986 FIRM map included in the record by the applicant (Exhibit A.10). The map contains four dark wavy lines with the number 27 located on or in the middle of most of the lines. One of the dark wavy lines extends from the outer boundary of the 100-year flood zone on each side of the Multnomah Channel. The map also contains a disclaimer that says that it "does not reflect changes or amendments which have been made subsequent to the date on the title block." The applicant's representative stated that the 100-year flood elevation is 27 feet but did not explain why that is the case. In order to determine the meaning of the map markings and to determine whether subsequent changes have been made to the FIRM map, I researched the records of the Federal Emergency Management Agency for public official acts of this executive department of the United States and found the following information:

- A. A key to the 1986 FIRM map. The key shows that the wavy line represents the base flood elevation line with elevation in feet.
- B. The key to the 1986 FIRM map also shows that the shaded area on the 1986 FIRM map shows the 100-year flood boundary. This area covers about 90 percent of the subject property.
- C. The key to the 1986 FIRM map explains that the Zone A14 reference means that base flood information has been determined for this area of the FIRM map.
- D. FEMA's official records show that changes have been made to the 1986 FIRM map.
- E. FEMA's records show that a more recent map has been prepared for the area that includes the subject property. That map is Map Number 4101830060E. This map applies a cross-hatched designation of an area where all obstruction of flood waters is prohibited. The applicant did not address the implications, if any, of this mapping on the proposed site plan. This designation extends up onto the subject property, along the bank, for a small distance. A copy of a part of this map has been included as Exhibit J.6 of the record.
- F. FEMA maintains a National Flood Hazard Layer database. I prepared a map using only those layers that meet FEMA standards. That map is Exhibit J.7 of the record. That map shows a base flood elevation of 31 feet in two of the areas where the 1986 FIRM maps showed a 27 feet elevation. That elevation comes closer to approximating the area mapped as the 100 year flood zone on the 1986 and subsequent FEMA maps.
- G. All maps I reviewed continue to show the 100-year flood zone in the same approximate location on the subject property. The major differences are the change in the number assigned to the base flood elevation and the addition of a protective designation to the part of the subject property located closest to the Multnomah Channel.

ORS 40.090 (2) allows me to take official notice of information provided by public official acts of the executive departments of the United States. I, therefore, have taken official notice of the above information provided by FEMA's official records. These records lead me to the conclusion that about 90% of the subject property is located in the 100-year flood plain up to about the 31' foot elevation level.

If I had not taken official notice of FEMA records I would have reached the same conclusion about the location of the flood zone because the applicant failed to provide sufficient information to determine the reason for the discrepancy in the 1986 map and the elevation data he provided and the fact that the 1996 flood inundated parts of the subject property located above the 27-foot elevation line on the subject property. The burden of proof rests with the applicant to establish material facts. In the absence of evidence on the map and elevation data conflict, I would have relied on the map boundary location that is less favorable to the applicant than the elevation data provided by the 1986 map.

Project Description:

Applicant: A1 Marina Site

Conditional Use, Community Service Use, Willamette River Greenway, Design Review, Floodplain Development, Health Hardship Mobile Home, and Grading and Erosion Control Permits for current and planned marina/boat repair uses and phased master plan with 20 wet slips, 25 dry slips, one floating home, a boat lift, 30 parking spaces, and greenway plantings. A variance request would reduce the 30-front yard to 16-feet and allow the pole barn in its current location.

These applications propose a CU for a single floating home moorage and a CS Permit for the marina that would contain 20 "wet" slips (10 covered; 7 open, 3 boathouses) and 25 "dry" slips or upland boat spaces. An existing boat ramp and a proposed travel lift would facilitate the upland boat storage and launches; boat repair activities accessory to the marina would be conducted primarily on the upland site and would be generally confined to daylight hours, Monday through Saturday.

An existing log salvage operation authorized under WRG 4-80 would continue within the waterway lease area in the channel. Logs from damaged or older floating structures and from other sources -- suitable for floatation -- are reused for new or repaired swim float platforms, floating walkways, boathouses, and other marina and moorage purposes. These in-water salvage and construction activities are generally confined to daylight hours, Monday through Saturday, with exceptions for emergency purposes.

The above described log salvage and related construction activities have been conducted at the A-1 Marina site under County Permit WRG 4-80 for almost 30-years. The 2008 CU and CS Permit applications seek authorization to continue marina and moorage related construction and repair activities within the waterway lease area, limited to the days and hours of operation noted above. Further, the in-water construction and repair activities would employ best management practices to protect ground, air, and water qualities, and are limited in scale, accessory to the requested marina and moorage uses, and would have minimal external effects in terms of noise, fumes, odors, vibration, or other off-site impacts. The accessory log salvage, boat repair, and float construction would occasionally involve hiring or contracting with no more than 6 employees on a temporary, seasonal, or project-duration basis. Typical projects include repair or salvage of a damaged boat, construction or repair of a boathouse or houseboat, and building or repairing swim-float platforms or floating walkways.

(Below responses taken from Applicant response letter received October 6, 2008)

The log salvage consists of securing floating logs in the water lease area immediately upstream and downstream of the center gangway, between the floating walks and the shoreline. Logs are individually brought ashore via the boat ramp. The logs are evaluated, trimmed and cut, and returned to the river for reuse in floating walkways, swim floats, and other structures which use logs for floatation.

(Below responses taken from Applicant response letter received August 7, 2008)

This letter supplements and modifies the above-cited applications and specifically responds to your letter dated July 18, 2008, which identified County Staff's issues, questions, and specific code criterion that should be further addressed in the applications concerning property located at 12950 NW Marina Way.

The application for a Health Hardship Permit is hereby withdrawn; any text or plan references to the Temporary Health Hardship Mobile Home should be disregarded during the review of the other requested permits.

The existing pole barn is used for storing the owner's personal private property, including his personal tools, motor vehicles, and other possessions. The pole barn and the personal items stored therein are not associated with the marina and associated business activities proposed with these CU/CS/WRG/DR applications, except to the extent that the Variance request seeks to authorize the reduced front yard setback that would allow the storage building to remain in its current location on the site.

(Below responses taken from Applicant response letter received October 6, 2008)

The applicant will pursue appropriate building, electrical, and plumbing permits to remodel the pole barn for

accessory marina use. In year one, the building will be evaluated to determine what modifications are needed for the change of occupancy. The phasing plan proposes to obtain the permits and initiate the remodel in year three, which concludes 11/01/2011.

The revised site plan and parking detail sheet identifies the location of the 25 upland "dry slips". Boat repair activities accessory to the marina would be conducted primarily on the upland site and would be confined to daylight hours, Monday through Saturday.

(Below responses taken from Applicant response letter received October 6, 2008)

The boat repair is a minor incidental activity to the boat storage. After the pole barn has been remodeled for accessory marina use (Year three) the building will provide a protected and discreet location for more elaborate boat repairs. In the interim, minor boat repairs are performed outside in the boat yard, with temporary tarps for weather protection as needed.

The existing log salvage operation authorized under WRG 4-80 would continue within the waterway lease area in the channel. Logs from damaged or older floating structures and from other sources -- suitable for floatation -- are reused for new or repaired swim float platforms, floating walkways, boathouses, and other marina and moorage purposes. These in-water salvage and construction activities would be confined to daylight hours, Monday through Saturday, with exceptions only for emergency purposes.

The above described log salvage and marine-related construction activities have been conducted at the A-1 Marina site under County Permit WRG 4-80 for almost 30-years. The 2008 CU and CS Permit applications seek authorization to continue marina and moorage related construction and repair activities within the waterway lease area, limited to the days and hours of operation noted above. Further, the in-water construction and repair activities would employ best management practices to protect ground, air, and water qualities, and are limited in scale, accessory to the requested marina and moorage uses, and would have minimal external effects in terms of noise, fumes, odors, vibration, or other off-site impacts. The accessory log salvage, boat repair, and float construction would occasionally involve hiring or contracting with no more than 6 employees on a temporary, seasonal, or project-duration basis. Typical projects include repair or salvage of a damaged boat, construction or repair of a boathouse or houseboat, and building or repairing swim-float platforms or floating walkways.

(Below response taken from email from applicant dated August 15, 2008, RE: A1 Marina and Use of Pole Barn)
This email supplements the Conditional Use, Community Service Use and related applications for the A-1-Marina site located at 12950 NW Marina Way. The purpose of the email is to further explain and clarify the use of the pole barn building on the site, which, as the record for the property indicates, was constructed in approximately 1980 as an exempt agricultural building.

The pole barn today continues to be used to store agricultural implements, tools, feed and to house chickens which the owner raises for his own personal consumption (of eggs primarily). The dozen or so chickens raised on the premises (and their eggs) are not used for commercial processing and are not for sale at wholesale or retail, and therefore are not subject to MCC 34.2830(B)(3), which requires a conditional use permit for commercial fowl operations. The pole barn remains permissible under MCC 34.2820(A)(3) and MCC 34.2820(F)(4).

(Below response taken from response from applicant dated October 6, 2008)

The Proposed Phasing Timeline is below:

Year One	Structural/Code Evaluation of pole barn/warehouse
11/01/2009	Remove crane equipment near gangway
	Obtain DSL lease renewal and amendment per plan
Year Two	Remove encroaching portion of pole barn/warehouse
11/01/2010	Install driveway approaches and logs per ODOT permit
	Reconfigure in-water walkways, covered slips per plan
	Install planter islands, landscaping, parking spaces

Year Three Remodel pole barn for accessory marina use
11/01/2011 Install bathroom and new drain field per plan

Year Four Install finger piers and Boat Lift system
11/01/2012

Year Five Construct floating home per plan
11/01/2013

Staff: Applicant is requesting a Conditional Use permit, Community Service approval, Willamette River Greenway permit, Design Review, and a Variance permit for a 45-boat marina, with accessory marine-related construction and repair, and one floating residence. The proposal includes: 1 floating home slip, 2 boathouse parking spaces, 20 in-water boat slips, 25 boat spaces on-land, 30 automobile parking stalls, a boat ramp and lift, log salvage yard, and construction and repair activities related to the marina and moorage.

It should be noted that the request for a Health Hardship Mobile Home was withdrawn on August 7, 2008. On October 6, 2008, the use of the Pole Barn and the request for a variance was further clarified by the client in response to correspondence sent by staff on October 3, 2008 regarding the variance criteria. The applicant clarified the use of the pole barn to be for accessory marina use and that the applicant will pursue appropriate building, electrical, and plumbing permits to remodel the pole barn for accessory marina use. In addition, the applicant has agreed to removal of portions of the pole barn that encroach more than 40% into the 30-foot front yard setback, with the removal of the encroaching portion of the pole barn to be completed in year two of the phasing plan. The removal of the encroachment and limitation to 40% encroachment, removes the requirement of a Variance Permit for the project. Multnomah County Code (MCC) 34.7601(C)), provides for the Adjustment review process by which certain dimensional standards may be modified no more than 40 percent. The Adjustment approval criteria are identified in MCC 34.7611 and are addressed in Section 10.00 in the Findings Below.

MCC 37.0560 allows the County to authorize a new land use on properties that contain violations of Multnomah County code if all problems are resolved. A number of other issues must also be addressed as part of this permit. It should be noted that the landowner has entered into a Voluntary Compliance Agreement for the subject property, Case No. UR-06-007 (Exhibit A.30), to address the code violations. The specific violations are for the current configuration of the marina (covered boat docks and piers) on-site, the use of the marina (covered docks/piers) as commercial boat storage spaces, and the storage of burned out two story floating structures at the marina.

These compliance issues must be considered and approved as part of the proposed development or found to be lawfully established prior to the authorization of the proposed development. Based on the evidence in the historical record, planning staff cannot find that the existing extent of the marina is lawful.

Hearings Officer: Michael Grimmert, Code Compliance Specialist for Multnomah County, inspected the “barn” building on October 28, 2008. The inspection revealed that the barn includes a break room and office area. The break room includes a working refrigerator, microwave oven, coffee maker, clothes washer and dryer and a bathroom with a working toilet. There is a second bathroom on the third floor. The building also contains exercise machines, couches and a wet bar. The applicant’s representative has also advised the County that the “barn” is used to store the applicant’s personal property, such as motor vehicles and that “[a]gricultural uses on the site were discontinued several years ago.” Exhibit J.4, p.6. This evidence makes it clear that the building is not being used as an agricultural building that is exempt from building permit requirements. It also demonstrates that the information provided to the County by the applicant’s representative as late as October 6, 2008, that the site continues to be used for agricultural purposes, was incorrect. This casts doubt on the reliability of other evidence provided to the County by the applicant.

- 1.00 *Administration and Procedures*
- 1.01 **Proof of Ownership**
 - MCC 37.0550 Initiation of Action**

Except as provided in MCC 37.0760, Type I – IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.

Staff: The proposed project is located on Tax Lot 700, Section 28D, Township: 2 North, Range: 1 West. Assessment & Taxation records show that the land is owned by Daniel C. Gulbrandson who has signed the submitted General Application from authorizing Mark R. Hess to be his applicant. Mr. Hess has signed the General Application form and is the applicant for the proposal (Exhibit A.1). This criterion has been met.

1.02 MCC 37.0560 Code Compliance And Applications.

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.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: The following uses must be found by the Hearings officer to be lawfully existing to the extent that they exist today or consider them as part of the proposed A1 Marina: the current configuration of the marina (covered boat docks and piers) on site, and the use of the marina (covered docks/piers) as commercial boat storage spaces. In order to comply with MCC 37.0560, the landowners must resolve these outstanding issues.

1.03 MCC 37.0530(C): Type III decisions involve the greatest amount of discretion and evaluation of subjective approval criteria yet are not required to be heard by the Board. Applications evaluated through this process primarily involve conditional uses and some land divisions applications. The process for these decisions is controlled by ORS 197.763. Notice of the application and Hearings Officer hearing is published and mailed to the applicant, recognized neighborhood association and property owners 750 feet of the subject tract. Notice must be issued at least 20 days pre-hearing, and the staff report must be available at least 7 days pre-hearing. The Hearings Officer shall accept into the record all testimony and evidence relevant to the matter, prior to the close of the hearing. The Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is final. The decision is final the day the signed Hearings Officer decision is mailed pursuant to 37.0660(D).

Staff: The application has followed the procedures for a Type III land use decision. The application was received on June 6, 2008 (Exhibit A.1). A completeness review was completed by the staff and a letter of incomplete application was sent on July 18, 2008. The applicant on July 21, 2008 acknowledged the letter of incomplete application and indicated to staff the applicant's intent to supplement the application to address items to make the application complete. The applicant supplied the information identified in the July 18, 2008 letter of incomplete application by August 20, 2008. The application was declared complete on August 29, 2008. (C.3) On September 25, 2008 a Notice of Public Hearing was mailed to all property owners within 750 feet, recognized neighborhood associations, the applicant and the property

owners (Exhibit C.4). On September 26, 2008 notice was published in the Oregonian.

1.04 MCC 37.0700 Expiration and Extension of Type II or Type III Decisions in Exception Areas and Lands within the UGB.

(B) Notwithstanding Subsection (A) of this section, on exception lands the decision maker may set forth in the written decision, specific instances or time periods when a permit expires.

Staff: It is recognized that the proposed project is not typical and may take longer than two years of the date of the final decision to obtain all necessary building permits and/or initiate the development action or activity approved in the decision. The applicant has identified a 5-year phasing plan for the project as follows.

Year One Structural/Code Evaluation of pole barn/warehouse
11/01/2009 Remove crane equipment near gangway
 Obtain DSL lease renewal and amendment per plan

Year Two Remove encroaching portion of pole barn/warehouse
11/01/2010 Install driveway approaches and logs per ODOT permit
 Reconfigure in-water walkways, covered slips per plan
 Install planter islands, landscaping, parking spaces

Year Three Remodel pole barn for accessory marina use
11/01/2011 Install bathroom and new drain field per plan

Year Four Install finger piers and Boat Lift system
11/01/2012

Year Five Construct floating home per plan
11/01/2013

Hearings Officer: The phasing schedule, as proposed, delays correction of code violations longer than I believe is reasonable. I do not believe that it is fair to neighbors of the subject property to continue to be subjected to the eyesore that is the A-1 Marina. I also believe that public sanitation issues should be addressed in the first phase of development.

2.00 Multiple Use Agriculture - 20 (MUA-20) Criteria

2.01 MCC 34.2830 CONDITIONAL USES

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

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

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

(9) Houseboats and houseboat moorages;

MCC 34.6015 USES

(A) Except as otherwise limited in the EFU district, the following Community Service Uses and those of a similar nature, may be permitted in any district when approved at a public hearing by the approval authority. ...

(1) Boat moorage, marina, or boathouse moorage.

(22) Waste collection, transfer, processing, or recovery facility.

(29) Accessory uses to the above.

Applicant: Multnomah County designates the subject A-1 Marina property as Multiple Use Agricultural in both the County Comprehensive Plan and the Sauvie Island and Multnomah Channel Rural Area Plan. The zoning for the site and environs is MUA-20 (Multiple Use Agricultural, 20-acre minimum lot area).

The entire west (mainland) side of Multnomah Channel is zoned MUA-20. Houseboats and houseboat moorages are listed as a Conditional Use in the Multiple Use Agriculture zoning district. Boat moorages, marinas, and boathouse moorages are considered as Community Service uses, which also require a Conditional Use permit in the MUA-20 zoning district.

Staff: The applicant is proposing to lawfully establish a marina and its related accessory uses. The applicant has applied for a Conditional Use permit, Community Service approval, Willamette River Greenway permit, Design Review, and a Variance permit for a 45-boat marina, with accessory marine-related construction and repair, and one floating residence. The proposal includes: 1 floating home slip, 2 boathouse parking spaces, 20 in-water boat slips, 25 boat spaces on-land, 30 automobile parking stalls, a boat ramp and lift, log salvage yard, and construction and repair activities related to the marina and moorage.

2.02 MCC 34.2855 Dimensional Requirements

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

Applicant: Applicant requests a 14-foot variance to the front yard minimum dimension to allow the existing pole barn to remain in its current location and configuration. The front yard area west of the pole barn abuts the NW Marina Way right-of-way, which abuts the Burlington Northern (BN) railroad right-of-way. Both Marina Way and BN rights-of-way abut the US-30 Right-of-way. The three transportation corridors have a combined Right-of-way width in excess of 200'. The nearest non-right-of-way properties west of the subject site would not be adversely affected by the proposed reduction to the front yard dimension. Neighboring lands west of US 30 are separated from the A-1 Marina site by the 200-foot right-of-way as well as by topography.

Staff: The Multnomah County Transportation Program has reviewed the proposal and provided comments. (Exhibit B.7) The subject property is adjacent to NW Marina Way, which is not a county road at this location. The Right-of-Way is sufficient; therefore there is no need for an increase in the front yard setback. It should be noted that MCC 34.6020(A) requires setbacks specific to Community Service Uses and is addressed in Section 4.02 of the Findings.

The proposed development meets all minimum yard dimensions, except for the pole barn building located in the southwest corner of the property. (Exhibit A.24) The applicant has submitted a variance application requesting a 14-foot variance to the 30-foot minimum front yard requirement for the pole barn. The maximum height of the structures shall be 35 feet. *This criterion has not been met, but a Variance to this front yard standard for the pole barn has been requested as part of this proposal. The Variance Criteria is addressed in Section 10.00 of the Findings.*

2.03 MCC 34.2870 Lot of Record

(A) In addition to the Lot of Record definition standards in MCC 34.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**

- (5) October 13, 2003, zone change from EFU to MUA-20 for some properties, Ord. 395;
- (6) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.
- (B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 34.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.
- (C) Except as otherwise provided by MCC 34.2860, 34.2875, and 34.4300 through 34.4360, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.
- (D) The following shall not be deemed to be a Lot of Record:
 - (1) An area of land described as a tax lot solely for assessment and taxation purposes;
 - (2) An area of land created by the foreclosure of a security interest.
 - (3) An area of land created by court decree.

Applicant: The subject 2.13-acre property was created in 1975 through a contract recorded in Book 1060, Page 38 by Nicholas and Louise Calcagno.

At that time (1975), the property was zoned M-1, Heavy Manufacturing District as provided by Multnomah County Code (MCC) 5.40 – 5.430. Except for certain conditional or community service uses (i.e., schools, churches), the former M-1 zoning did not specify an explicit minimum site size. The subject 2.13-acre parcel, with more than 300-feet of frontage on a public road, appears consistent with the M-1 zoning provisions in effect at the time it was created. The M-1 zoning remained in effect until 1977, when Multiple Use Agricultural MUA-20 zoning was applied to the area.

It is interesting to note that repealed MCC 5.412 indicates the former M-1 zone district would have allowed, among other uses, an auto wrecking yard, a junk yard, and ship building on the subject A-1 Marina site. Although MCC 7.30 suggests a moorage or marina use would have required a Community Service Use approval, even in the M-1 district. The former M-1 and CS zoning provisions included various building setback (yard area) requirements and other standards that could affect the site size needed to satisfy applicable design criteria to accommodate various uses or developments. Although a CS Permit for a moorage or marina was not obtained under the former zoning provisions, the almost 30-year de facto use of the site and the plans and support materials provided with the 2008 permit applications, demonstrates that the 2.13 acre upland site together with the approximately 1.3 acre waterway lease area provide adequate land and water areas and other physical characteristics needed to accommodate the marina and related uses on the site.

Staff: The subject property is 2.13 acres and was in its current configuration as of 1975 as shown on a recorded survey. The parcel is a Lot of Record.

Hearings Officer: MCC 34.005 defines a “Lot of Record” as follows:

“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.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was

recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or

4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See *Date of Creation and Existence* for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU district.)"

As the subject property was created by contract of sale that was recorded prior to October 19, 1978. The applicant's evidence also shows that the parcel complied with zoning minimum lot size, dimensional standards and access requirement which did not impose a specific minimum lot size.

2.04 MCC 34.2875 Lot Sizes for Conditional Uses

The minimum lot size for a Conditional Use permitted pursuant to MCC 34.2830, except subpart (C)(1) thereof, shall be based upon:

- (A) The site size needs of the proposed use;
- (B) The nature of the proposed use in relation to its impact on nearby properties;
- (C) Consideration of the purposes of this district; and
- (D) A finding that the lot or parcel is at least two acres in area.

Staff: (A) The subject property to be used for the A1 Marina is approximately 2.13 acres.

Hearings Officer: I am unable to find that the lot is large enough to meet the needs of the proposed use given the fact that the vast majority of the property is located in the 100-year flood plain. The application assumed that certain areas of the site that are located in the flood plain are above the flood plain and relied on that fact to conclude that the application would comply with County regulations. As a result, the impact of flood plain regulations on the development plans has not been fully considered. Without this analysis, I cannot find that the site size is adequate to meet the needs of the proposed use.

MCC 29.603 requires that all structures and new development proposed for an area of special flood hazard first obtain approval of a Floodplain Development Permit. New development includes paving and grading of the site for development of required parking areas. A survey of the actual location of the flood plain is required. To obtain approval, special engineering and designs are required. The floors of commercial buildings must be located at least 1 foot above the flood plain level. Special rules apply to the development of a septic system. In addition, parking lots for marinas must be located at least two feet above the 100-year flood plain – a condition that cannot be satisfied given the size and location of the parcel. At this time, I cannot determine whether the applicant would be able to obtain approval of the pole barn structure or the garage. After reviewing the flood plain regulations, it seems very unlikely that the existing buildings on site would be able to be retroactively approved as meeting the requirements of the flood plain rules. *This criterion has not been met.*

(B) The applicant has not demonstrated that the size of the property is large enough to allow the proposed development to occur without adverse impacts on nearby properties. An analysis of whether all site needs can be met on a parcel that is located almost entirely in the 100-year flood plain is needed before it can be found that the site size is appropriate in relation to impacts on nearby properties. *This criterion has not been met.*

(C) The purposes of the Multiple Use Agriculture District are to conserve those agricultural lands not suited to full-time commercial farming for diversified or part-time agriculture uses; to encourage the use of non-agricultural lands for other purposes, such as forestry, outdoor recreation, open space, low density

residential development and appropriate conditional uses, when these uses are shown to be compatible with the natural resource base, the character of the area and the applicable County policies [MCC 34.2800 - Purpose].

The proposed marina is located on the Multnomah Channel where a number of moorages and marinas of similar nature are located. This area has a number of recreational opportunities that includes boating, fishing, and other water related recreation. The proposed development requires the review and approval of a conditional use permit. The proposed marina will support the various outdoor recreational opportunities in the area. *This criterion has been met.*

(D) The site is at least 2 acres in area. *This criterion has been met.*

2.05 MCC 34.2880 Off Street Parking and Loading

Off-Street parking and loading shall be provided as required by MCC 34.4100 through 34.4220.

Staff: It should be noted that although the current code does not specify the required number of parking spaces required for a marina, a prior Hearings Officer determined that a ratio of 1 parking space per 2 boat slips is an appropriate starting point for development review. Multnomah County Code (MCC) 34.6760 requires two automotive parking spaces per houseboat (floating dwelling). The proposed project is proposing one houseboat (floating dwelling) with two parking spaces to be located in the carport identified on the site plan. 20 in-water boat slips are proposed with 30 automobile parking stalls identified on the site plan. *See the Findings under Section 8.00 below.*

2.06 MCC 34.2885 Access

Any lot in this district shall abut a street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles.

Staff: The subject property is adjacent to NW Marina Way, which is not a county road at this location. The applicant has obtained Conditional Approval for a State Highway Approach from the Oregon Department of Transportation for the subject property. (Exhibit A.16) *This criterion has been met.*

3.00 Conditional Use Criteria

3.01 MCC 34.6305 GENERAL PROVISIONS

(A) Application for approval of a Conditional Use shall be subject to the provisions for Type III decisions in MCC Chapter 37.

(B) A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the Approval Authority.

(C) The findings and conclusions made by the approval authority and the conditions, modifications or restrictions of approval, if any, shall specifically address the relationships between the proposal and the approval criteria listed in MCC 34.6315 and in the district provisions.

Staff: This application is being processed and is subject to the provisions for Type III decisions in MCC Chapter 27. All recommended findings are justified with the corresponding criteria.

3.02 MCC 34.6315 CONDITIONAL USE APPROVAL CRITERIA

(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

(1) Is consistent with the character of the area;

Applicant: There are seven (7) marinas and moorages along this reach of Multnomah Channel:

1. Fred's Marina
2. Multnomah Yacht Harbor (formerly Lucky Landing)
3. A-1 Moorage (subject property)
4. Marina Way Moorage (formerly Cassidy's Moorage)
5. Larson's Marina
6. Channel Island Moorage
7. Bridgeview Moorage

Fred's Marina -- located about 900-feet upstream from the subject A-1 Marina -- contains both in-water and upland boat storage facilities similar to that proposed for the A-1 Marina site.

Multnomah Yacht Harbor abuts the A-1 Marina site to the southeast and includes floating homes (houseboats), boathouses, boat slips, and a boatlift similar to the A-1 Marina proposal. The upland property is used extensively for open (outdoor) boat storage. The Oregon State Marine Board's online records for marina facilities indicates the Multnomah Yacht Harbor has facilities for 200 boats.

Marina Way Moorage abuts the A-1 Marina site to the northwest and includes floating homes (houseboats), boat slips, and a boat ramp.

Larson's Marina -- located about 600-feet downstream from the subject A-1 Marina -- contains both in-water and upland boat storage facilities as well as boathouses and marine related repair and construction (in-water) similar to that proposed for the A-1 Marina site.

Channel Island Moorage -- located immediately downstream of the Sauvie Island Bridge -- includes floating homes (houseboats), boathouses, boat slips, and a boat ramp.

Bridgeview Moorage -- located about 1000-feet downstream of the Sauvie Island Bridge -- includes floating homes (houseboats), boathouses and boat slips.

The proposed A-1 Marina -- with its associated boat repair activities and marine related repair and construction (in-water), wet and dry boat storage areas, a new travel-lift for launching boats in the boatyard, and a single floating home -- is similar to and consistent with adjacent moorage and marina uses.

Staff: As mentioned by the applicant there is a number of marinas/marinas located adjacent or near the subject property located along the Multnomah Channel. The applicant proposes uses consistent with what can already be found in the surrounding area.

Hearings Officer: The proposed development is consistent with the character of the area if properly landscaped, implemented and operated. The current use of the subject property is not consistent with the character of the area due to the numerous code violations that are occurring on the property. These must be corrected to achieve compliance with this approval criterion. *This criterion can be met.*

3.03 (2) Will not adversely affect natural resources;

Applicant: Trees, shrubs, ornamental and natural landscape plants along the perimeter property lines have been allowed to grow and now provide an effective landscape screen to the adjacent properties. The natural vegetation in the central areas of the site has not been retained, as they would conflict with the marina and boatyard operations.

Staff: As identified in the submitted Greenway Plan the applicant is proposing to maintain all significant trees and shrubs on the site and to plant supplemental trees and shrubs to enhance the natural scenic

qualities within the Greenway. In addition, disturbed areas along the riverbank resulting from installation of proposed finger piers for the travel lift and a new gangway near the upstream lease boundary will be replanted and restored within a brief period of time, and vegetation retained along the riverbank will be supplemented with evergreen and deciduous trees to reduce potential erosion, and partially screen the upland boatyard activities from the river and from adjacent floating homes. In addition, a 150-foot Greenway Building Setback from the Ordinary Low Water Mark has been implemented in the design to prevent additional encroachment of structures towards the Multnomah Channel.

Hearings Officer: I am unable to find that the approval of the proposed development will not adversely affect natural resources. I have not been convinced that the retention of the existing pole barn structure and improvement of a mid-sized parking area in the 100-year flood plain will not adversely affect natural resources associated with the Multnomah Channel. Those resources include the water quality of the river and the fish, birds and other aquatic life that are dependent on the water in the channel and related wetlands and shorelines.

Additionally, a Grading and Erosion Control Permit and Flood Development Permit are required for this project. Retroactive building permits are also needed for existing structures that are being proposed to remain as part of this permit. These permits are designed, in part, to assure that development of the subject property will not adversely affect natural resources. It is not clear that the applicant will be able to obtain approval of these permits for existing development due to the fact that so much of his property may be located in the 100-year flood plain and was not built to comply with these County laws. *This criterion has been met.*

3.04

(3) Will not conflict with farm or forest uses in the area:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Applicant: Response to (3)(a) and (b) above: The proposed use of the applicant's property for a marina will not force any change in, or increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands. The subject marina property is separated from farmlands to the northeast by the approximate 800-foot wide river channel and the approximately 150-foot width levee/earthen berm on the opposite bank. The rights-of-way for US Highway 30, the Burlington Northern Rail line and NW Marina Way provide more than 200-feet of separation between the A-1 Marina property and the adjacent forestlands that occupy higher elevations to the southwest. Nearby farming practices on Sauvie Island and forest practices in the west hills may have some offsite impacts such as dust, noise, chemical drift in the wind, and similar effects. The proposed single floating residence and boat marina uses are sufficiently separated and buffered from these adjacent farming and forest activities by the above noted natural and built features. And conversely, the adjacent farm and forest areas are similarly separated and buffered from any noise, fumes, lights, traffic, or other offsite effects that may be generated from the proposed marina activities and the single floating residence.

Vehicular access to the marina site is through the entry gate from NW Marina Way; the access point is more than 2 miles from the nearest access to farms on Sauvie Island. No interference by traffic entering the applicant's property should be experienced by nearby farmers or timber operators because NW Marina Way does not provide access to those nearby farm or forestlands.

The applicant is willing to sign and record a statement that the owners and the successors in interest in the A-1 Marina property acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices, consistent with State law. Given the property owner's acceptance of this acknowledgement, the proposed use will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands.

Staff: As stated by the applicant the proposed use will not force any change in, or increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands. The proposed project is not adjacent to any farm or forest use, with farmlands being located across the Multnomah Channel, and forestlands being located across US Highway 30 and the railroad southwest of the subject property in higher elevations. As stated in the application, the landowner is willing to sign and record a statement that the owners and the successors in interest in the A-1 Marina Property acknowledge the rights of owners nearby property to conduct forest operations and farming practices. *This criterion is met.*

3.05 **(4) Will not require public services other than those existing or programmed for the area;**

Applicant: The subject property is served by Burlington Water District and an on-site sewage disposal system has been authorized under Building Permit 2008-130825-000-00-SE. The land feasibility study concluded that: "SOILS APPROVED FOR 360SF SAND FILTER FOR MARINA AND DWELLING EQUAL TO 6 BEDROOMS."

The proposed marina, with accessory boat repair and storage for 45-boats, one single residence and a temporary health hardship dwelling will have a negligible effect on public services in terms of schools, roads, utilities, police or fire suppression.

Staff: Service provider forms (Exhibit A.13) have been reviewed and submitted for water service (Burlington Water District), on-site sewage disposal system, and fire flow and access demonstrating that services are available that will not require public services other than those existing or programmed for the area.

Hearings Officer: The development of the site, if shown to be feasible in a future land use review, will not require public services other than those existing or programmed for the area. On the current record, it is not clear whether the proposed septic system plan is feasible given the fact that such a large area of the property is located in the flood plain. A review for compliance with the flood plain rules of Chapter 29 is needed to make this determination. Such a review has not been requested or conducted. *This criterion is not met.*

3.06 **(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

Applicant: The project site is not within a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife. This criterion is met.

Staff: Staff concurs.

3.07 **(6) Will not create hazardous conditions; and**

Applicant: The proposed boat lift and reconfigured docks and slips have been designed to provide adequate upland and water areas for safe maneuvering of boats being stored, repaired or launched. The marina docks and other in-water structures are designed and arranged to maintain sight visibility near the riverward corners of the lease area, providing clear lines of sight from the lease area out to the main river channel to reduce potential boating conflicts in adjacent waters.

In response the zoning compliance case UR-06-003, the owner has removed a significant quantity of scrap materials and unsightly equipment. Several inoperable vehicles have also been removed or repaired. A perimeter security fence discourages trespassers from entering the boatyard.

There are no public boat launches or day-use marina activities proposed. The marina will remain gated and available only to those persons leasing boat storage space. There are no gas pumps or other fuel tanks proposed. An above ground water tank already on the site would remain. The tank is used for storing

rainwater that is used for landscape irrigation and dust control.

Staff: First, it should be noted that the code compliance case number for the subject property is UR-06-007, not as referenced by the applicant to be UR-06-003. The applicant has submitted a Greenway and Design Review Plan. No gas pumps or other fuel tanks are proposed and the marina will be gated with access only available for persons leasing boat storage spaces. Service provider forms (Exhibit A.13) have been reviewed and submitted for water service (Burlington Water District), on-site sewage disposal system, and fire flow and access. In addition the applicant has received conditional approval from ODOT for access (Exhibit A.16).

Hearings Officer: A Grading and Erosion Control Permit and Flood Development Permit are required. Retroactive building permits are also needed for existing structures that are being proposed to remain as part of this permit. These regulations are designed to assure that development of the subject property will not create hazardous conditions. It is not clear that the applicant will be able to obtain approval of these permits due to the fact that so much of his property may be located in the 100-year flood plain. As it stands, development of the site may create hazardous conditions. *This criterion has been met.*

3.08 (7) Will satisfy the applicable policies of the Comprehensive Plan.

Staff: Compliance with this standard is addressed in Section 7.00 of the Findings below.

4.00 *Community Service Criteria*

4.01 MCC 34.6005 GENERAL PROVISIONS

(A) Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority.

(B) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC 34.7000 through 34.7065.

Staff: The applicant has applied for a Design Review approval as part of this application.

4.02 MCC 34.6010 APPROVAL CRITERIA

In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria,

(A) Is consistent with the character of the area;

Applicant: The A-1 Marina site is located on the mainland (west) side of Multnomah Channel, and within the southern section of the channel that is characterized by houseboat moorages and boat marinas. There are seven (7) marinas and moorages along this reach of Multnomah Channel.

Hearings Officer: *Please see* the applicant's findings regarding compliance with 34.6315(A)(1) (Section 3.02 of this decision) for a description of these facilities.

Staff: The character of the area is a rural setting with recreation areas and marinas/moorages along the Multnomah Channel. The subject property currently contains a lawful log salvage operation authorized under Permit No. WRG 4-80. As mentioned by the applicant there is a number of marinas/marinas located adjacent or near the subject property located along the Multnomah Channel. The proposed development is proposing uses consistent with what can already be found in the surrounding area. The subject property is outside the Portland City limits, approximately ¼ mile upstream from the Sauvie Island Bridge. Houseboat moorages and marinas are located along Multnomah Channel's west bank. There are floating homes, boat slips, and docks developed on abutting and adjacent properties upstream and downstream from the A-1 Marina site.

Hearings Officer: The proposed development is consistent with the character of the area if properly landscaped, implemented and operated. The current use of the subject property is not consistent with the

character of the area due to the numerous code violations that are occurring on the property. These must be corrected to achieve compliance with this approval criterion. *This criterion can be met.*

4.03 **(B) Will not adversely affect natural resources;**

Applicant: Trees, shrubs, ornamental and natural landscape plants along the perimeter property lines have been allowed to grow and now provide an effective landscape screen to the adjacent properties. The natural vegetation in the central areas of the site has not been retained, as they would conflict with the marina and boatyard operations.

A new sand filter sewage disposal system will be installed to protect ground and surface water qualities.

Staff: Multnomah Channel is located along the eastern boundary for the subject property and has approximately 310 feet of water frontage. As identified in the submitted Greenway Plan the applicant is proposing to maintain all significant trees and shrubs on the site and to plant supplemental trees and shrubs to enhance the natural scenic qualities within the Greenway. In addition, disturbed areas along the riverbank resulting from installation of proposed finger piers for the travel lift and a new gangway near the upstream lease boundary will be replanted and restored within a brief period of time, and vegetation retained along the riverbank will be supplemented with evergreen and deciduous trees to reduce potential erosion, and partially screen the upland boatyard activities from the river and from adjacent floating homes. In addition, a 150-foot Greenway Building Setback from the Ordinary Low Water Mark has been implemented in the design to prevent additional encroachment of buildings towards the Multnomah Channel. The applicant has also submitted a Certificate of On-Septic demonstrating that the site is capable of providing this service within the subject property and will not impact natural resources. A stormwater certificate will need to be submitted as part of a Grading and Erosion Control Permit review. *This criterion has been met.*

Hearings Officer: I am unable to find that the approval of the proposed development will not adversely affect natural resources. I have not been convinced that the retention of the existing pole barn structure and improvement of a mid-sized parking area in the 100-year flood plain will not adversely affect natural resources associated with the Multnomah Channel. Those resources include the water quality of the river and the fish, birds and other aquatic life that are dependent on the water in the channel and related wetlands and shorelines.

Additionally, a Grading and Erosion Control Permit and Flood Development Permit are required for this project. Retroactive building permits are also needed for existing structures that are being proposed to remain as part of this permit. These permits are designed, in part, to assure that development of the subject property will not adversely affect natural resources. It is not clear that the applicant will be able to obtain approval of these permits for existing development due to the fact that so much of his property may be located in the 100-year flood plain and was not built to comply with these County laws. *This criterion has been met.*

4.04 **(C) Will not conflict with farm or forest uses in the area;**

Applicant: The subject property is separated from farmlands to the northeast by the river and levee on the opposite bank. US Highway 30, Burlington Northern Rail line and NW Marina Way rights-of-way separate the marina site from the adjacent forestlands that occupy higher elevations to the southwest. Nearby farming practices on Sauvie Island may have some offsite impacts such as dust, noise, chemical drift in the wind, and similar effects. The proposed single floating residence and boat marina uses are sufficiently separated and buffered from adjacent farming and forest activities by the above noted natural and built features.

If required, the property owner will sign and record a statement acknowledging that the A-1 Marina owners and successors in interest recognize the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices.

Staff: As stated by the applicant the proposed use will not force any change in, or increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands. The proposed project is not adjacent to any farm or forest use, with farmlands being located across the Multnomah Channel, and forestlands being located across US Highway 30 and the railroad southwest of the subject property in higher elevations. As stated in the application, the landowner is willing to sign and record a statement that the owners and the successors in interest in the A-1 Marina Property acknowledge the rights of owners nearby property to conduct forest operations and farming practices. *This criterion is met.*

4.05 **(D) Will not require public services other than those existing or programmed for the area;**

Applicant: The subject property is served by Burlington Water District for potable water and water for fire protection. An on-site sewage disposal system has been authorized under Building Permit 2008-130825-000-00-SE. The land feasibility study concluded that: *"SOILS APPROVED FOR 360SF SAND FILTER FOR MARINA AND DWELLING EQUAL TO 6 BEDROOMS."*

The proposed 45-boat marina, with accessory marine-related construction and repair and one floating residence, will have negligible effects on demands for public services in terms of schools, roads, utilities, police or fire suppression.

Staff: Service provider forms (Exhibit A.13) have been reviewed and submitted for water service (Burlington Water District), on-site sewage disposal system, and fire flow and access demonstrating that services are available that will not require public services other than those existing or programmed for the area.

Hearings Officer: The development of the site, if shown to be feasible in a future land use review, will not require public services other than those existing or programmed for the area. On the current record, it is not clear whether the proposed septic system plan is feasible given the fact that such a large area of the property is located in the flood plain. A review for compliance with the flood plain rules of Chapter 29 is needed to make this determination. Such a review has not been requested or conducted. *This criterion is not met.*

4.06 **(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

Applicant: The project site is not within a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife.

Staff: Staff concurs.

4.07 **(F) Will not create hazardous conditions;**

Applicant: The proposed boat lift and reconfigured docks and slips have been designed to provide adequate upland and water areas for safe maneuvering of boats being stored, repaired or launched. The marina docks and other in-water structures are designed and arranged to maintain sight visibility near the riverward corners of the lease area, providing clear lines of sight from the lease area out to the main river channel to reduce potential boating conflicts in adjacent waters.

In response the zoning compliance case UR-006-003, the owner has removed a significant quantity of scrap materials and unsightly equipment. Several inoperable vehicles have also been removed or repaired. A perimeter security fence discourages trespassers from entering the boatyard.

Staff: The subject site is located adjacent to the Multnomah Channel. The subject site is mapped as being in the 100-Year Floodplain (Exhibits A.10 and B.6) for the Columbia River. A Flood Development permit pursuant to MCC 29.603 will be required prior to construction of the project.

The Flood Hazard regulations require that the septic system and private water system and well be designed to withstand infiltration of floodwaters into the system, discharge of materials into floodwater, and be designed to avoid impairment by flood damage. The electrical system must be designed or located to prevent water from entering or accumulating during flood stage. No gas pumps or other fuel tanks are proposed and the marina will be gated with access only available for persons leasing boat storage spaces.

Hearings Officer: A Grading and Erosion Control Permit and Flood Development Permit are required. Retroactive building permits are also needed for existing structures that are being proposed to remain as part of this permit. These regulations are designed to assure that development of the subject property will not create hazardous conditions. It is not clear that the applicant will be able to obtain approval of these permits due to the fact that so much of his property may be located in the 100-year flood plain. As it stands, development of the site may create hazardous conditions. *This criterion has not been met*

4.08 **(G) Will satisfy the applicable policies of the Comprehensive Plan;**

Staff: Compliance with this standard is addressed in Section 7.00 of the Findings below.

4.09 **(H) Will satisfy such other applicable approval criteria as are stated in this Section.**

Applicant: In addition to the Conditional Use criteria of the Zoning Code, all proposed individual houseboats and houseboat moorages must meet Waterfront Uses criteria in Section 11.15.7500 of the Zoning Ordinance. The Waterfront Uses section defines Houseboats to mean "any floating structure designed as a dwelling for occupancy by one family and having only one cooking facility." This definition does not include other types of living quarters such as live-aboard boats, and boathouse "combos". In the 1970's, the County established a maximum density of one houseboat for each 50 feet of waterfront frontage. However, the state since determined that permitting multiple dwellings (floating or otherwise) on a single rural-zoned parcel is contrary to Goal 14, Urbanization.

Therefore, this application proposes only one floating home for this 310-foot reach of the channel. The floating home would be the single permanent residence on the A-1 Marina site, which is comprised of the upland 2.13 acres parcel and its associated 1.3-acre submerged land lease area. The other floating structures depicted on the site plan are for non-residential boat storage. The temporary health hardship mobile home has been deleted from the proposal.

The proposed permits are not in conflict with Statewide Goal 14 (Urbanization) because the limited scale of the proposal is compatible with the rural and water-related residential and recreational uses on abutting and adjacent properties. The proposal will not adversely affect the east (island) side of Multnomah Channel, which is predominantly zoned Exclusive Farm Use (EFU). As mandated by state law, the EFU district does not allow houseboat moorages, marinas, or new private boat docks.

Staff: No other applicable community service criteria have been identified.

4.10 **MCC 34.6020 RESTRICTIONS**

A building or use approved under MCC 34.6015 through 34.6050 shall meet the following requirements:

(A) Minimum yards in EFU, MUA-20, RR, and RC, Districts:

- (1) Front yards shall be 30 feet.**
- (2) Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.**
- (3) Rear yards shall be as required in the district.**

Applicant: Applicant requests a 14-foot variance to the front yard minimum dimension to allow the existing pole barn to remain in its current location and configuration. The front yard area west of the pole barn abuts the NW Marina Way right-of-way, which abuts the Burlington Northern (BN) railroad right-of-way. Both Marina Way and BN rights-of-way abut the US-30 Right-of-way. The three transportation corridors have a combined Right-of-way width in excess of 200'. The nearest non-right-of-way properties west of the subject site would not be adversely affected by the proposed reduction to the front yard

dimension. Neighboring lands west of US 30 are separated from the A-1 Marina site by the 200-foot right-of-way as well as by topography.

Staff: The proposed development meets all minimum yard dimensions, except for the pole barn building located in the southwest corner of the property. (Exhibit A.24) The applicant has submitted a variance application requesting a 14-foot variance to the 30-foot minimum front yard requirement for the pole barn. The maximum height of the structures shall be 35 feet. *This criterion has not been met, but a Variance to this front yard standard has been requested as part of this proposal. The Variance Criteria is addressed in Section 10.00 of the Findings.*

5.00 ***Willamette River Greenway***

5.01 **34.5855 GREENWAY DESIGN PLAN (MCC 34.5800-34.5865)**

The elements of the Greenway Design Plan are:

- (A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and the river.**

Applicant: The revised site plan depicts the location of existing and proposed landscaping and addresses proposed plantings, maintenance of the landscaping, and areas of restoration of disturbed areas and existing landscaping along the riverbank. The Greenway Design Plan for the proposed marina would maintain and enhance the landscaped area along the riverbank. Significant site clean up already conducted (refer to attached photographic exhibits) provides scenic and aesthetic enhancement and open spaces between the upland boat storage and repair uses and the river.

Hearings Officer: The applicant has submitted a Greenway and Design Review Plan. The plan was revised many times. The latest version of the plan is dated October 17, 2008 (Exhibit H.8) and was submitted at the land use hearing. This plan does not show that the applicant has provided the maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation between the proposed use and the river. In particular, the plan places about 15 vehicle parking spaces close to the river and fails to show any landscaping between those spaces and the channel. General statements about landscaping were provided but they are insufficient to establish that this area will be the maximum possible landscaped area and scenic and aesthetic enhancement of this area.

The applicant plans to remove vegetation along the riverbank when installing the proposed finger piers for the travel lift and a new gangway near the upstream boundary. The applicant indicated that the area will be replanted and restored but provides very little detail regarding this work. Without detail, it is impossible to determine what must be done to comply with the landscape plan and for the Hearings Officer to know what will be provided after the new facilities are installed. *This criterion has not been met.*

5.02 **(B) Reasonable public access to and along the river shall be provided by appropriate legal means to the greatest possible degree and with emphasis on urban and urbanizable areas.**

Applicant: The proposed marina will provide additional private accesses to the river. Public access is maintained along the river within NW Marina Way and US Highway 30, which is a designated bicycle route for the region. These routes generally parallel to and near the river are adequate given the rural character of the area.

Security fencing along the south, west and north property boundaries discourages vandalism and trespass. The proposal will not adversely affect areas of annual flooding, flood plains, or water areas. Areas of erosion or potential erosion will be protected from loss by appropriate means. The Greenway Design Plan exceeds the 150-foot minimum building setback line from the river, except for structures in conjunction with a water-related or a water-dependent use.

Staff: The proposed development is proposing a marina consistent with existing marinas and moorages

located along the banks of the Multnomah Channel. The proposal includes: 1 floating home slip, 2 boathouse parking spaces, 20 in-water boat slips, 25 boat spaces on-land, 30 automobile parking stalls, a boat ramp and lift, log salvage yard, and construction and repair activities related to the marina and moorage. The marina will be available for persons leasing boat storage space, providing for additional access, amenities and services for the members of the public leasing marina space to utilize the recreational opportunity of the Multnomah Channel. River access through the site is not proposed for the general public.

Hearings Officer: Testimony was received from project neighbors that public access for boats is required and that the design of the site plan precludes required public access. It is claimed that other marinas provide good public access and this claim is supported by aerial photographs. The applicant did not respond to this concern so I am unable to determine whether reasonable public access along the river has been provided by this site plan. Additionally, this criterion implies that some type of access by the general public is required and the proposed site plan proposes none other than by business customers. No public access is not "reasonable public access." *This criterion has not been met.*

- 5.03 **(C) Developments shall be directed away from the river to the greatest possible degree, provided, however, that lands in other than rural and natural resource districts may continue in urban uses.**

Applicant: The existing boat ramp and proposed travel lift directs the boat repair and upland boat storage away from the river.

Hearings Officer: It is not clear from the applicant's WRG site plan that the proposed development has been directed away from the river to "the greatest possible degree." The placement of parking spaces along the river bank is not consistent with a development that is directed away from the river. If the amount of boat storage on land was reduced, the parking areas could be moved away from the river to a less visible location. *This criterion has not been met.*

- 5.04 **(D) Agricultural lands shall be preserved and maintained for farm use.**

Applicant: The site size and adjacent water and rights-of-way buffer the boat repair/storage from adjacent agricultural or forest resource lands. There are no agricultural lands on the subject 2.13-acre site.

Staff: The site is not being used for farm purposes. As stated by the applicant the proposed use will not force any change in, or increase the cost of accepted farming practices on surrounding agricultural lands. The proposed project is not adjacent to any farm use, with farmlands being located across the Multnomah Channel. As stated in the application, the landowner is willing to sign and record a statement that the owners and the successors in interest in the A-1 Marina Property acknowledge the rights of owners nearby property to conduct forest operations and farming practices.

Hearings Officer: The subject property is not agricultural land. *This criterion does not apply.*

- 5.05 **(E) The harvesting of timber, beyond the vegetative fringes, shall be conducted in a manner which shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent practicable or will be restored within a brief period of time on those lands inside the Urban Growth Boundary.**

Applicant: The Greenway Design Plan maintains all significant trees and shrubs on the site; supplemental trees and shrubs indicated on the plan will enhance natural scenic qualities within the Greenway. There is no timber harvest proposed as part of this project.

Staff: No commercial harvesting of timber is proposed. *This criterion does not apply.*

- 5.06 **(F) Recreational needs shall be satisfied by public and private means in a manner consistent**

with the carrying capacity of the land and with minimum conflicts with farm uses.

Applicant: The proposed marina provides recreational facilities in a manner and scale consistent with the carrying capacity of the land and without adverse effects to farm uses. The site has adequate areas for parking, boat storage, and landscaping and buffers sufficient to ensure minimum conflicts with the closest farm uses across the river on Sauvie Island.

Staff: The proposed project is in the vicinity of, but not technically adjacent to any farm use, with farmlands being located across the Multnomah Channel. The proposed project addresses recreational opportunities available in the Multnomah Channel and provides services and amenities consistent with the carrying capacity of the land with minimal conflicts with farm uses. Both in-water and in-land development that serves the recreation needs. The applicant has submitted service provider forms (Exhibit A.13) indicating that the land can support the services necessary for the development. *This criterion has been met.*

5.07 **(G) Significant fish and wildlife habitats shall be protected.**

Applicant: The new pilings, docks, and floating walkways will be installed pursuant to Corps and DSL permits and reviews and utilizing best management practices to avoid adverse effects to fish habitats within the channel. There are no wildlife habitats identified or affected by the proposed project.

Staff: Staff concurs that there are no significant wildlife habitats identified or affected by the proposed project. All in-water work will be required to be installed with best management practices and will be reviewed by other agencies consistent with those permitting agencies requirements. A condition is recommended to the Hearings Officer that the applicant be required to obtain all applicable Federal, State and Local permits for the project. *As conditioned, this criterion has been met.*

5.08 **(H) Significant natural and scenic areas and viewpoints and vistas shall be preserved.**

Applicant: The applicant has performed extensive site clean up as documented in the photographic exhibits submitted with the applications. The site clean up provides scenic and aesthetic enhancement and open spaces between the upland boat storage and repair uses and the river. There are no significant natural and scenic areas or viewpoints and vistas affected by the proposed marina or floating home uses.

Staff: The subject property is not located within significant scenic areas and viewpoints and vistas. Natural areas are being preserved and are addressed in plantings and re-vegetation of disturbed areas as identified in the submitted site plans. The applicant has entered signed a Voluntary Compliance Agreement addressing the use of the property as a junkyard. Significant clean-up efforts have occurred enhancing the visual aesthetic of the subject property. The proposal includes significant landscaping and structural improvements as well to improve the natural area. *This criterion has been met.*

5.09 **(I) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

Applicant: Security fencing along the south, west and north property boundaries discourage vandalism and trespass.

(Below responses taken from Applicant response letter received October 6, 2008)

The marina is not open after dark. Night time illumination of the boatyard is provided by three wall-mounted lights on the pole barn; one light is mounted at the two northerly building corners and the third light is in the center of the long-side wall. Each wall-mount light is 18-feet above grade and directed towards the boat yard areas onsite to allow surveillance. The lights are high-pressure sodium vapor, which have an amber hue. The existing 100-foot gangway has 10 low level (15-watt) lights spaced 10-feet apart to illuminate the walk while minimizing excessive or bright lighting directed towards the river. The two new gangways proposed on the plan would have similar low scale lighting.

Staff: As indicated by the applicant a security fence along the south, west and north of the property currently exists and provide for public safety and protection of public and private property. The marina will also be gated with access only available for persons leasing boat storage spaces. The marina is not open in the dark. As mentioned by the applicant, night time illumination of the boatyard is provided by three wall-mounted lights on the pole barn; one light is mounted at the two northerly building corners and the third light is in the center of the long-side wall. Each wall-mount light is 18-feet above grade and directed towards the boat yard areas onsite to allow surveillance. The existing 100-foot gangway has 10 low level (15-watt) lights spaced 10-feet apart to illuminate the walk while minimizing excessive or bright lighting directed towards the river. The two new gangways proposed on the plan would have similar low scale lighting. *This criterion has been met.*

- 5.10 **(J) The natural vegetation along the river, lakes, wetlands and streams shall be enhanced and protected to the maximum extent practicable to assure scenic quality, protection from erosion, screening of uses from the river, and continuous riparian corridors.**

Applicant: The Greenway Design Plan maintains all significant trees and shrubs on the site; supplemental trees and shrubs indicated on the plan will enhance natural scenic qualities within the Greenway. Disturbed areas along the riverbank resulting from installation of proposed finger piers for the travel lift and a new gangway near the upstream lease boundary will be replanted and restored within a brief period of time. Vegetation retained along the riverbank will be supplemented with evergreen and deciduous trees to reduce potential erosion, and partially screen the upland boatyard activities from the river and from adjacent floating homes.

Staff: Multnomah Channel is located along the eastern boundary of the subject property and has approximately 310 feet of water frontage. As identified in the submitted Greenway Plan the applicant is proposing to maintain all significant trees and shrubs on the site and to plant supplemental trees and shrubs to enhance the natural scenic qualities within the Greenway. In addition, disturbed areas along the riverbank resulting from installation of proposed finger piers for the travel lift and a new gangway near the upstream lease boundary will be replanted and restored within a brief period of time, and vegetation retained along the riverbank will be supplemented with evergreen and deciduous trees to reduce potential erosion, and partially screen the upland boatyard activities from the river and from adjacent floating homes. The proposed vegetation plantings along the riverbank of the channel shall be designed by a biologist or the Soil Conservation Service to ensure that it will enhance the channel. A condition has been recommended to the Hearings Officer, that prior to authorization of any building permits, a copy of the vegetation/landscaping plan shall be submitted to the County for review and approval. *As conditioned, this criterion has been met.*

Hearings Officer: This condition of approval requires the County to make a subjective determination regarding the success of the site plan in achieving specified goals. Staff has recommended a condition of approval to require a deferred review of a vegetation/landscape plan as the submitted plans fail to provide sufficient information to find compliance with applicable criteria. In order to impose a condition of this type, I must find that it is feasible for the applicant to comply with the condition. I am unable to make that finding. I am concerned that if I approve the full extent of development proposed for the property and the parking area configuration shown that either might conflict with the applicant's ability to achieve compliance with this criterion. It seems likely that the site plan layout would need to be revised to achieve compliance with the "maximum extent practicable" requirement. Without detailed plans and a description of the existing natural vegetation, other than trees, I cannot determine that the applicant has or can meet this condition. *This criterion is not met.*

- 5.11 **(K) (***) Extraction of Aggregated Deposits. Not applicable)**

- 5.12 **(L) Areas of annual flooding, flood plains, water areas and wetlands shall be preserved in their natural state to the maximum possible extent to protect the water retention, overflow and natural functions.**

Applicant: The proposal will not adversely affect areas of annual flooding, flood plains, or water areas. The 100-year floodplain boundary is noted on the submitted survey as the 27-foot elevation contour line. The only new structures proposed are the floating home and boathouse structures that will be moored within the waterway lease area and will float above the floodwaters during such events. The carport structure on land indicated on the survey contains covered parking for five (5) vehicles, two (2) of which would be designated for the single floating home. The carport structure is located between the 30-foot and 31-foot elevation contour lines depicted on the submitted survey and therefore the two (2) parking spaces designated for the floating home are three (3) to four (4) feet above the 27-foot elevation contour line, which is the 100-year flood elevation. Therefore, the survey demonstrates that the 2 houseboat parking spaces within the carport and access to said parking spaces from NW Marina Way is entirely on those areas of the site above the 29-foot contour line and therefore 2-or-more-feet above the 100-year flood elevation.

Hearings Officer: The subject site is located adjacent to the Multnomah Channel. There are no identified wetlands on the subject property. The subject site is mapped as being in the 100-Year Floodplain (Exhibit A.10) for the Columbia River. The 1986 FIRM map shows that most of the subject property is in the flood plain. The application and its review by the County assumed that most of the subject property was located outside of the flood plain. The applicant's plan, that proposes to retroactively approve intensive development of most of the subject property at the expense of remaining or previously existing natural conditions, has not been shown to preserve the natural state of the flood plain part of the subject property. *This criterion has not been met.*

5.13 **(M) Significant wetland areas shall be protected as provided in MCC 34.5865.**

Applicant: There are no significant wetlands on the site.

Staff: Staff concurs. *This criterion has been met.*

5.14 **(N) Areas of ecological, scientific, historical or archaeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible.**

Applicant: There are no known areas of ecological, scientific, historical or archaeological significance on the site.

Staff: Staff concurs. *This criterion has been met.*

5.15 **(O) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the character of the Greenway.**

Applicant: Areas of erosion or potential erosion will be protected from loss by appropriate means.

Staff: It is unclear what the applicant will do to protect the property from erosion. The information provided on this topic is too scanty to support a finding that areas of erosion or potential erosion will be protected, as required by this criterion. *This criterion is not met.*

5.16 **(P) The quality of the air, water and land resources in and adjacent to the Greenway shall be preserved in development, change of use, or intensification of use of land designated WRG.**

Applicant: The proposed 45-boat marina, with limited accessory marine-related construction and repair and one floating residence, will not create adverse or excessive off-site effects to air, water, or land resources in and adjacent to the Greenway. The scale of the marine-related construction and repair and boat storage has been limited to 45-boats (20-in-water; 25-upland) to demonstrate compatibility with the Greenway environs. The upland boat storage is rural in character with all boats are stored at grade and not

within multi-level racks or buildings. The plan includes one single residence (floating home) and on-site sewage disposal to protect water qualities in the area.

Hearings Officer: The applicant has not proven that the quality of the water and land resources in and adjacent to the Greenway will be preserved once the development plan is complete. The quality of the land was not protected by prior, unauthorized development of the site. Its appearance is marked different than that of other nearby marinas, especially as it relates to the preservation of green, open spaces. As this development occurred without permits and this process seeks to legalize that development, the condition prior to development is relevant and some restoration or intensive preservation of what little natural resources remain on site is needed to achieve compliance with this goal. *This criterion has not been met.*

- 5.17 **(Q) A building setback line of 150 feet from the ordinary low waterline of the Willamette River shall be provided in all rural and natural resource districts, except for non-dwellings provided in conjunction with farm use and except for buildings and structures in conjunction with a water-related or a water dependent use.**

Applicant: The only new structures proposed on the site are the floating home and non-residential boathouse structures that will be moored within the waterway lease area. These water-related and water-dependent uses/structures are not subject to the 150-foot greenway setback from the ordinary low waterline of the Willamette River. The 150-foot building setback line has been added to the site plan.

Staff: A 150-foot building setback from the Ordinary Low Water Mark has been provided and identified for in the site plan. There is one floating home proposed with the rest of the in-water uses for non-residential boathouse structures being moored. *This criterion has been met.*

- 5.18 **(R) Any development, change of use or intensification of use of land classified WRG, shall be subject to design review, pursuant to MCC 34.7000 through 34.7070, to the extent that such design review is consistent with the elements of the Greenway Design Plan.**

Applicant: The application includes a Design Review Permit request.

Staff: A Design Review request has been submitted and is addressed in Section 9.00 in the Findings below. *This criterion has been met.*

- 5.19 **(S) The applicable policies of the Comprehensive Plan are satisfied.**

Staff: This is addressed in Section 7.00 of the Findings below.

6.00 *Waterfront Uses*

6.01 **MCC 34.6750- HOUSEBOATS AND HOUSEBOAT MOORAGE**

(* * *)

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

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

Applicant: The A-1 Marina site is located on the mainland (west) side of Multnomah Channel, and within a section of the channel that is characterized by houseboat moorages and boat marinas. There are seven (7) marinas and moorages along this reach of Multnomah Channel * * *.

Hearings Officer: *Please see* the applicant's findings regarding compliance with 34.6315(A)(1) (Section 3.02 of this decision) for a description of these facilities.

Staff: The proposed development is proposing a marina consistent with existing marinas and moorages located along the banks of the Multnomah Channel. The proposal includes: 1 floating home slip, 2 boathouse parking spaces, 20 in-water boat slips, 25 boat spaces on-land, 30 automobile parking stalls, a boat ramp and lift, log salvage yard, and construction and repair activities related to the marina and moorage. The marina will be available for persons leasing boat storage space, providing for additional access, amenities and services for the public to utilize the recreational opportunity of the Multnomah Channel. In addition, the proposal will be located between two similar uses on the same side of the Multnomah Channel. *This criterion has been met.*

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

Applicant: The proposed A-1 Marina -- with its associated boat repair activities, wet and dry boat storage areas, a new travel-lift for launching boats in the boatyard, and a single floating home -- is similar to the de facto use of the property for the past quarter century. The site has sufficient channel width and depth to support the proposed marina and single floating home.

Staff: The proposed development is proposed to be located on a subject property that should not be adversely affected by normal fluvial processes with the docks being able to rise and fall with the river, and the ramps being able to pivot naturally with the water. The site has been operating as a log salvage yard with existing in-water use. *This criterion has been met.*

Hearings Officer: This criterion is focused on activity occurring in the river and looks to "normal" fluvial processes such as erosion and typical changes in the level of the river. It does not apply to an unusual event such as a 100-year flood event.

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

Applicant: The applicant initially sought permits in 1977 "... to construct a commercial moorage, boat launching ramp, and boat repair facilities along the Multnomah Channel..." (Reference: Corps of Engineers Public Notice 071-OYA-2-002743 dated November 23, 1977). The Port of Portland issued permit 78-06 in January 1978 and permit 80-20 in May 1980 authorizing the work described in the Corps notice cited above. In 1980, Multnomah County issued Willamette River Greenway permit WRG 4-80, which authorized "log salvage" and a 20-year submerged land lease (ML 7112) was secured from the Division of State Lands in 1989. The applicant has contacted the DSL concerning the process to renew and modify the waterway lease that will expire in June 2009.

The Oregon Department of Transportation approved the driveway approaches on June 17, 2008 (ODOT Application #7837). The ODOT approval requires the drive approaches to be paved and striped and marked to indicate the entrance and exit.

The applicant has a Site Evaluation Report completed by Michael Ebling, City of Portland Sanitarian (Permit#08-130825-SE), which authorizes a sand filter septic system on the site.

The project is exempt from the Storm Water Certificate because the new pavement required for the driveway approaches is pervious/porous material per ODOT specifications and removal of the temporary mobile home has reduced new impervious surfaces necessitating a storm water certificate below the 500-square foot threshold.

Staff: Service provider forms (Exhibit A.13) have been reviewed and submitted for water service (Burlington Water District), on-site sewage disposal system, and fire flow and access. In addition the applicant has received conditional approval from ODOT for access (Exhibit A.16). The applicant is also working with the Division of State Lands to renew and modify the waterway lease set to expire in June 2009.

Hearings Officer: The applicant submitted evidence of very old approvals and did not include copies of approved plans. From this record, it is impossible to tell if the prior approvals authorized the proposed development. As the applicant has indicated that it is intensifying the use and is proposing to add a new area to the existing DSL permit, it is unlikely that the old permits authorize the development proposed. These permits are the Port of Portland permit, the DSL permit and the Corp of Engineers approval. The applicant has not attempted to explain what other governmental regulations might apply and how they are met. Also the Division of State Lands has the legal authority to deny the request to expand the leased area. As the site plan requires the use of this area, this approval is needed for proposed design to be feasible. *This criterion is not met.*

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

Applicant: The subject property is served by Burlington Water District and an on-site sewage disposal system has been authorized under Building Permit 2008-130825-000-00-SE. The land feasibility study concluded that: *"SOILS APPROVED FOR 360SF SAND FILTER FOR MARINA AND DWELLING EQUAL TO 6 BEDROOMS."*

The proposed marina, with accessory boat repair and storage for 45-boats, and one single residence will have a negligible effect on public services in terms of schools, roads, utilities, police or fire suppression.

Staff: Service provider forms (Exhibit A.13) have been reviewed and submitted for water service (Burlington Water District), on-site sewage disposal system, and fire flow and access demonstrating that services are available that will not require public services other than those existing or programmed for the area.

Hearings Officer: The development of the site, if shown to be feasible in a future land use review, will not require public services other than those existing or programmed for the area. On the current record, it is not clear whether the proposed septic system plan is feasible given the fact that such a large area of the property is located in the flood plain. A review for compliance with the flood plain rules of Chapter 29 is needed to make this determination. Such a review has not been requested or conducted. *This criterion is not met.*

6.05 **MCC 34.6760 PARKING**

(A) Two automobile spaces shall be provided for each houseboat.

Applicant: The revised site plan identifies the location of two parking spaces in the carport for the houseboat, one parking space per two boat slips (23-spaces for 45 boats), and seven (7) parking spaces to accommodate the accessory marina uses proposed on site.

Staff: One houseboat is allowed and is proposed for the project. Two automobile spaces are identified on the site-plan and are located within the carport.

Hearings Officer: The spaces proposed have not been shown to comply with the requirements of subsection (B), below. *This criterion has not been met.*

(B) The parking area and all ingress and egress thereto shall be constructed two feet above the elevation of the 100 year flood boundary, and under the provisions of MCC 34.4100 through 34.4220.

Applicant: The 100-year floodplain boundary is noted on the submitted survey as the 27-foot elevation contour line. The carport structure on land indicated on the survey contains covered parking for five (5)

vehicles, two (2) of which would be designated for the single floating home. The carport structure is located between the 30-foot and 31-foot elevation contour lines depicted on the submitted survey and therefore the two (2) parking spaces for the floating home are three (3) to four (4) feet above the 27-foot elevation contour line, which is the 100-year flood elevation. Therefore, the survey demonstrates that the 2 houseboat parking spaces within the carport and access to said parking spaces from NW Marina Way is entirely on areas of the site above the 29-foot contour line and therefore 2-or-more-feet above the 100-year flood elevation. The criterion is met.

Staff: The subject site is located adjacent to the Multnomah Channel. The subject site is mapped as being in the 100-Year Floodplain (Exhibits A.10 and B.6) for the Columbia River.

Hearings Officer: The applicant has failed to establish that the parking area and ingress and egress to the parking area will be constructed two feet above the elevation of the 100 year flood boundary. The 1986 FIRM map, Exhibit A. 10, shows that only a small part of the subject property is outside of the 100-year flood boundary. The applicant's Existing Conditions map shows that there is not two feet of elevation gain in the part of the property located outside of the mapped flood plain area. In addition, more current maps indicate that the flood elevation is 31 feet and no part of the subject property is located at 33 feet in elevation or higher. This means that the request for approval of the houseboat (singular floating dwelling) must be denied. *This criterion is not met and cannot be met through the imposition of a condition of approval.*

6.06 MCC 34.6765 OTHER REQUIREMENTS

(A) All ramps, walkways and moorage spaces shall be designed, constructed and maintained to provide maximum safety in all weather conditions.

Applicant: Acknowledged.

(Below responses taken from Applicant response letter received October 6, 2008)

The existing 100-foot gangway has 10 low level (15-watt) lights spaced 10-feet apart to illuminate the walk while minimizing excessive or bright lighting directed towards the river. The two new gangways proposed on the plan would have similar low scale lighting.

Staff: All ramps, walkways and moorage spaces shall be designed, constructed and maintained to provide maximum safety in all weather conditions. Staff recommends a condition of approval be applied reflecting this requirement for the installing the improvements for the proposal.

6.07 **(B) Lighting adequate to provide for the safety of residents and visitors shall be provided throughout a houseboat moorage.**

Applicant: The lighting plans for the single floating home are not known at this time. Applicant suggests that specific lighting requirements may be attached as conditions to the requested conditional use permit.

(Below responses taken from Applicant response letter received October 6, 2008)

The marina is not open after dark. Night time illumination of the boatyard is provided by three wall-mounted lights on the pole barn; one light is mounted at the two northerly building corners and the third light is in the center of the long-side wall. Each wall-mount light is 18-feet above grade and directed towards the boat yard areas onsite to allow surveillance. The lights are high-pressure sodium vapor, which have an amber hue. The existing 100-foot gangway has 10 low level (15-watt) lights spaced 10-feet apart to illuminate the walk while minimizing excessive or bright lighting directed towards the river. The two new gangways proposed on the plan would have similar low scale lighting.

Staff: Adequate lighting shall be provided for the safety of residents and visitors. Staff recommends that a condition of approval be that a lighting plan shall be submitted as part of the Building Permit Review for review and approval. Any artificial lighting which may be provided shall be shielded or deflected so as to

not shine into adjoining dwellings or other types of living units, and so as not to create a hazard to the traveling public on any street.

6.08 **(C) Siting and design of all pickup and delivery facilities shall insure maximum convenience with minimum adverse visual impacts.**

Applicant: The loading and boat launching areas are indicated on the design review plan and described in the narrative. The existing and proposed landscaping will ensure minimum adverse visual impacts from these activities, which are sited for maximum convenience.

Hearings Officer: It is not clear from the site plan that the site plan design of pickup and delivery facilities insures maximum convenience with minimum adverse visual impacts. *This criterion has not been met.*

7.00 ***Comprehensive Plan Policies***

Applicant: The proposed 45-boat marina, with limited accessory marine-related construction and repair and one floating residence, is consistent with the County's plans and policies listed below:

Policy 2: Off-site Effects

Policy 10: Multiple Use Agricultural Land

Policy 13: Air, Water, and Noise Quality

Policy 14: Development Limitations

Policy 15: Willamette River Greenway

Policy 16: Housing Choices

Policy 21: Housing Location

Policy 26: Houseboats

Policy 27: Commercial Location

Policy 31: Community Facilities and Uses

Policy 34: Traffic Ways

Policy 37: Utilities

Policy 38: Facilities

Policy 39: Parks and Recreation

Statewide Goal 14: Urbanization

The Greenway Design Plan for the A-1 Marina applications is consistent with the Sauvie Island Rural Area Plan as paraphrased and discussed below.

The Multnomah Channel area is outside of the Portland Metropolitan Area's Urban Growth Boundary; it is supposed to remain rural in nature. County Comprehensive Plan Policies affecting Multnomah Channel include:

POLICY 15 Willamette River Greenway

The Comprehensive Framework Plan states that Multnomah County is to protect the natural scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River. It is also the County's policy to require special procedures for review of certain types of development allowed in the underlying base zone in order to ensure the minimum impact on the values identified within the various areas.

POLICY 26 Houseboats

The Comprehensive Framework Plan states that Multnomah County's policy on houseboats is to assist in providing a broad range of housing options that conforms with other County policies concerning off-site effects, air, water and noise quality, the Willamette River Greenway, natural resources, housing choice, housing location, capital improvements, traffic ways, transportation system development, utilities and facilities; and any other applicable federal, state or local policies that regulate waterway area development.

The proposed floating home is consistent with location criteria regarding the mean low water line, protection from siltation, wind, wave action, icy conditions and other hazards, adequate land area to accommodate related facilities, ensuring proper maintenance of dikes, preservation of upland recreational, ecological or wildlife habitat values and exclusion from Exclusive Farm Use zoned uplands.

The areas identified in Policy 26 of the Multnomah County Comprehensive Plan includes the existing A-1 Marina site. The proposed single floating home is consistent with the County's plan policies.

7.01 Statewide Planning Goal 14 (Urbanization)

Applicant: The proposed permits are not in conflict with Statewide Goal 14 (Urbanization) because the limited scale of the proposal is compatible with the rural and water-related residential and recreational uses on abutting and adjacent properties.

The proposal will not adversely affect the east (island) side of Multnomah Channel, which is predominantly zoned Exclusive Farm Use (EFU). As mandated by state law, the EFU district does not allow houseboat moorages, marinas, or new private boat docks. In the 1970's, the County established a maximum density of one houseboat for each 50 feet of waterfront frontage. However, the state since determined that permitting multiple dwellings (floating or otherwise) on a single rural-zoned parcel is contrary to Goal 14, Urbanization.

Therefore, this application proposes only one floating home for this 310-foot reach of the channel. The floating home would be the single permanent residence on the A-1 Marina site, which is comprised of the upland 2.13 acres parcel and its associated 1.3-acre submerged land lease area. The other floating structures depicted on the site plan are for non-residential boat storage.

7.02 Policy 2 Off-Site Effects

The County's policy is to apply conditions to its approval of land use actions where it is necessary to:

- A. Protect the public from the potentially deleterious effects of the proposed use; or**
- B. Fulfill the need for public service demands created by the proposed use.**

Applicant: The subject property is served by Burlington Water District for potable water and water for fire protection. An on-site sewage disposal system has been authorized under Building Permit 2008-130825-000-00-SE. The land feasibility study concluded that: *"SOILS APPROVED FOR 360SF SAND FILTER FOR MARINA AND DWELLING EQUAL TO 6 BEDROOMS "*

Hearings Officer: If this application were approved, conditions of approval would have been imposed to achieve the goals described in Policy 2.

7.03 Policy 10 Multiple Use Agricultural Land

The County's policy is to designate and maintain as multiple use agriculture land, areas which are:

- A. Generally agricultural in nature, with soils, slope and other physical factors indicative of past or present small scale farm use;**
- B. Parcelized to a degree where the average lot size, separate ownerships, and non-farm uses are not conducive to commercial agricultural use;**
- C. Provided with a higher level of services than a commercial agricultural area has; or**
- D. In agricultural or micro-climates which reduce the growing season or affect plant growth in a detrimental manner (flooding, frost, etc.).**

The County's policy, in recognition of the necessity to protect adjacent exclusive farm use areas, is to restrict multiple use agricultural uses to those compatible with exclusive farm use areas.

Applicant: The proposed 45-boat marina, with accessory marine-related construction and repair and one floating residence, would not create adverse or excessive off-site effects. The scale of the boat repair and storage has been limited to 45-boats (20-in-water; 25-upland) to demonstrate compatibility with the MUA-20 environs. The upland boat storage is rural in character; all boats are stored at grade and not within large or multi-level buildings. There are no stacked boat racks or multi-level (urban style) boat warehouses

proposed. The plan includes one single residence (floating home). The site will have on-site sewage disposal to protect water qualities in the area. The existing pole barn/storage building is situated outside the flood hazard area, and the floating home will be designed to float above any floodwaters that may affect the site. The existing barn/storage building exceeds the 150-foot Greenway Setback required from the top of the bank. The proposed single floating home will have a negligible effect on demand for public services such as schools, roads, utilities, and police or fire suppression. The floating home proposed is located within the areas identified in Policy 26 as suitable for houseboats, and the site plan and topography survey indicates that 2 parking spaces elevated at least 2-feet above the 100-year flood (and access thereto) can be provided for the floating home. The proposed marina with a boat ramp and lift, and in-water and upland boat storage, provides additional recreational boating facilities to the area, consistent with community service use and recreation planning policies. The proposal will not adversely affect the east (island) side of Multnomah Channel, which is predominantly zoned Exclusive Farm Use (EFU). As mandated by state law, the EFU district does not allow houseboat moorages, marinas, or new private boat docks.

Hearings Officer: This policy does not apply to the County's quasi-judicial review of this application as it is a policy that guides the zoning of land and the contents of the County's MUA zoning regulations.

7.04 Policy 13 Air, Water and Noise Quality

Multnomah County, recognizing that the health, safety, welfare, and quality of life of its citizens may be adversely affected by air, water and noise pollution, supports efforts to improve air and water quality and to reduce noise levels. Therefore, if a land use proposal is a noise-sensitive use and is located in a noise-impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan: [Amended 1999, Ord. 933 § III]

- 1. Building placement on the site in an area having minimal noise level disruptions.**
- 2. Insulation or other construction techniques to lower interior noise levels in noise-impacted areas. [Amended 1999, Ord. 933 § III]**

Applicant: The above described log salvage and marine-related construction activities have been conducted at the A-1 Marina site under County Permit WRG 4-80 for almost 30-years. The 2008 CU and CS Permit applications seek authorization to continue marina and moorage related construction and repair activities within the waterway lease area, limited to the days and hours of operation noted above. Further, the in-water construction and repair activities would employ best management practices to protect ground, air, and water qualities, and are limited in scale, accessory to the requested marina and moorage uses, and would have minimal external effects in terms of noise, fumes, odors, vibration, or other off-site impacts.

Hearings Officer: The proposed uses of boat repair and construction and log salvage are noise generators. The houseboat is a noise-sensitive use. It will be impacted by noise from the boat repair and salvage uses. It is not clear that buildings have been placed on the site where they will have minimal noise level disruptions or that techniques have been used to lower interior noise levels. This is the finding that must be made to find compliance with Policy 13. *This criterion has not been met.*

7.05 Policy 15 Willamette River Greenway

The County's policy is to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River.

Further, it is the County's policy to protect identified Willamette River Greenway areas by requiring special procedures for the review of certain types of development allowed in the base zone that will ensure the minimum impact on the values identified within the various areas. The procedures shall be designed to mitigate any lost values to the greatest extent possible.

Applicant: The Comprehensive Framework Plan states that Multnomah County is to protect the natural scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River. It

is also the County's policy to require special procedures for review of certain types of development allowed in the underlying base zone in order to ensure the minimum impact on the values identified within the various areas.

Hearings Officer: This policy does not provide independent approval criteria. It is fully implemented by the County's WRG zone regulations – the special provisions that ensure minimum impacts.

7.06 Policy 26 Houseboats

The County, in order to provide a broad range of housing opportunities for its citizens, recognizes houseboats as a housing option. Therefore, it is the County's policy to provide for the location of houseboats in a manner which accords with:

- A. The applicable policies in this plan, including Policies 2 (Off-Site Effects), 13 (Air, Water, Noise), 15 (Willamette River Greenway), 16 (Natural Resources), 21 (Housing Choice), 24 (Housing Location), 32 (Capital Improvements), 34 (Trafficways), 36 (Transportation System Development), 37 (Utilities), and 38 (Facilities).
- B. Any other applicable federal, state or local policies that regulate waterway area development.
- C. The following criteria for locating or expanding a houseboat moorage:
 - 1. The mean low water line exceeds five feet;
 - 2. The moorage area should be protected from siltation problems which might require costly dredging to achieve the proper water depth;
 - 3. The moorage is adequately protected from the adverse effects of wind, wave action, ice conditions, and other hazards;
 - 4. Adequate land area exists to accommodate parking and any accessory building requirements;
 - 5. The proper maintenance and operation of dikes, as determined by the Army Corps of Engineers, is not adversely affected by the moorage;
 - 6. The upland area adjacent to the moorage does not have unique recreational, ecological, or wildlife habitat value;
 - 7. The upland area adjacent to the moorage is not zoned for exclusive agricultural use; and
 - 8. The procedures for which Multnomah County will determine the status of existing moorage/marina uses in the Multnomah Channel as given in Policy 10 of the "Sauvie Island/Multnomah Channel Rural Area Plan," adopted October 30, 1997, by Ordinance No. 887.

The following areas are designated as suitable for houseboats:

- 1. Multnomah Channel (west side).
 - a. From Rocky Point Moorage, or from an area 1650 feet north of the southern boundary of Section 36, T3N, R2W, known as Rocky Point, north to the Columbia County boundary.
 - b. From the City of Portland corporate limits north to 1/2 mile north of the Sauvie Island Bridge.
 - c. Area occupied by Happy Rock Moorage, Sauvie Island Moorage, Parker Moorage, and Mayfair Moorage.
(Added by Policy 10, No. 2, "Sauvie Island / Multnomah Channel Rural Area Plan," Adopted October 30, 1997, Ordinance No. 887).
- 2. Oregon Slough.

* * *

Houseboats and moorages existing outside these areas shall be limited to existing sites and levels of development.

No houseboats shall be located on the Columbia River east of the Sandy River, or in violation of Federal Aviation Administration clear zone standards, or in violation of any other applicable federal, state or local standards.

Applicant: The Comprehensive Framework Plan states that Multnomah County's policy on houseboats is to assist in providing a broad range of housing options that conforms with other County policies concerning off-site effects, air, water and noise quality, the Willamette River Greenway, natural resources, housing choice, housing location, capital improvements, traffic ways, transportation system development, utilities and facilities; and any other applicable federal, state or local policies that regulate waterway area development.

The proposed floating home is consistent with location criteria regarding the mean low water line, protection from siltation, wind, wave action, icy conditions and other hazards, adequate land area to accommodate related facilities, ensuring proper maintenance of dikes, preservation of upland recreational, ecological or wildlife habitat values and exclusion from Exclusive Farm Use zoned uplands.

The areas identified in Policy 26 of the Multnomah County Comprehensive Plan includes the existing A-1 Marina site. The proposed single floating home is consistent with the County's plan policies.

Staff: Staff concurs with the applicant in that the subject property is located in area suitable for houseboats as identified in the policy. *This policy is met.*

7.07 Policy 34 Traffic Ways

The purpose of this policy is to direct the County to develop the existing trafficway system to maximize efficiency, and to consider the mobility of pedestrians by providing safe crossings.

The County's policy is to develop a safe and efficient trafficway system using the existing road network, and by:

- A. Maintaining a trafficway classification system;
- B. Improving streets to the standards established by the classification system, where necessary and/or appropriate, to mitigate identified transportation problems;
- C. Placing priority on maintaining the existing trafficways;
- D. Developing additional transportation facilities to meet community and regional transportation needs where capacity of the existing system has been maximized through transportation system management and demand management measures;
- E. Providing a safe and convenient pedestrian environment with road crossings and sidewalk network designed for pedestrian travel;
- F. Limiting the number of, and consolidating ingress and egress points, on arterials and major collectors to preserve traffic flow;
- G. Reducing reliance on the automobile and assuring that the planned transportation system supports patterns of travel and land use which will avoid or mitigate problems of air pollution, traffic congestion and community livability;
- H. Encouraging ride-share and flextime programs to help meet the projected increase in travel demand. The County will work with METRO and Tri-Met to develop ride-share programs, flextime and other transportation demand strategies to achieve the ride-share goal given in the Regional Transportation Plan; and
- I. Implementing the Street Standards Chapter 11.60 and street standards codes and rules, including adherence to access control and intersection design guideline criteria, and establishing a procedure for allowing variances from that ordinance.
- J. Considering and allowing for implementation of regional street design elements (as shown in "Creating Livable Streets: Street Design for 2040" (1997) when planning for improvements to facilities designated on Metro's Regional Street Design Map. [Added 1999, Ord. 926 § 2]
- K. Improving local circulation by keeping through trips on arterial streets and minimizing local trip lengths by increasing street connectivity. [Added 1999, Ord. 926 § 2]

Excluding that portion of Multnomah County included in the Columbia River Gorge National Scenic Area, this policy, and the functional classification of trafficways map accompanying this policy, shall control over conflicting provisions of community plans or other preexisting plans in determining the functional classification of trafficways. Trafficways located within the Columbia River Gorge National Scenic Area are subject to, and superceded by, provisions of the Columbia

River Gorge Scenic Area Management Plan.

Staff: The applicant has obtained Conditional Approval for a State Highway Approach from the Oregon Department of Transportation for the subject property that provides for one entry point and one exit point off NW Marina Way. The on-site circulation pattern allows for two way traffic and allows traffic to circulate on the site without needing to access NW Marina Way. A separate sidewalk system is not proposed. The increase of the accessway between the parking and boat storage stall will allow traffic and space available for pedestrians on the pavement. *This policy has been met.*

7.08 Policy 14 Development Limitations

The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

- A. Slopes exceeding 20%;
- B. Severe soil erosion potential;
- C. Land within the 100 year flood plain;
- D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;
- E. A fragipan less than 30 inches from the surface;
- F. Land subject to slumping, earth slides or movement.

Staff: The soils in the area of development are Sauvie silt loam unit (44) (Exhibit B.6). The Multnomah County Soil Survey indicates that Sauvie silt loam is a poorly drained soil on broad flood plains. Slopes are 0 to 2 percent. Permeability is moderately slow. Run-off is slow and the hazard of erosion is slight. There is no indication of a high seasonal water table or fragipan with this soil. The site is not identified as a slope hazard area, and doesn't have severe soil erosion potential. In addition with the subject property being fairly flat, slumping, earth slides and movement is not prone for the property. The property is located within the flood hazard area.

Hearings Officer: It appears that the 100-year flood plain is more extensive than claimed by the applicant and that the pole barn building and, perhaps, the carport building are located in this flood plain. The applicant has not shown that design and construction techniques for these existing buildings mitigate any potential public harm or associated public cost and impacts on neighbors as required by this policy. *This policy has not been met.*

7.09 Policy 37 Utilities

Water and Disposal Systems

- A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or
- B. Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or
- C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
- D. Shall have an adequate private water system, and a public sewer with adequate capacity.

Drainage

- E. Shall have adequate capacity in the storm water system to handle the run-off; or
- F. The water run-off shall be handled on the site or adequate provisions shall be made; and
- G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Energy and Communications

- H. There shall be an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and
- I. Communications facilities are available.

Applicant: The subject property is served by Burlington Water District for potable water and water for fire protection. An on-site sewage disposal system has been authorized under Building Permit 2008-130825-000-00-SE. The land feasibility study concluded that: *"SOILS APPROVED FOR 360SF SAND FILTER FOR MARINA AND DWELLING EQUAL TO 6 BEDROOMS."*

The proposed 45-boat marina, with accessory marine-related construction and repair and one floating residence, will have negligible effects on demands for public services in terms of schools, roads, utilities, police or fire suppression. The floating home is anticipated to equal at most 3 bedrooms of demand on the septic system, and a single bathroom for the private marina is the only other demand to be placed on the septic system, which the 3-bedrooms of remaining septic capacity would easily accommodate. Until a bathroom is constructed for the marina members, a portable toilet is provided, which is cleaned at least once per week by the provider of the portable facility.

There are no public boat launches or day-use marina activities proposed. The marina will remain gated and available only to those persons leasing boat storage space. There are no gas pumps or other fuel tanks proposed. An above ground water tank already on the site would remain. The tank is used for storing rainwater that is used for landscape irrigation and dust control.

The project is exempt from the Storm Water Certificate because the new pavement required for the driveway approaches is pervious/porous material per ODOT specifications and removal of the temporary mobile home has reduced new impervious surfaces necessitating a storm water certificate below the 500-square foot threshold.

Hearings Officer: It is unknown whether the correct flood plain location was used to assess septic site suitability and whether the flood plain location will change the site suitability. Until that question has been answered, it is not clear that this policy has been or can be met. *This policy is not met.*

7.10 Policy 38 Facilities

It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:

Fire Protection

- B. There is adequate water pressure and flow for fire fighting purposes; and**
- C. The appropriate fire district has had an opportunity to review and comments on the proposal.**

Police Protection

- D. The proposal can receive adequate local Police protection in accordance with the standards of the jurisdiction providing police protection.**

Applicant: The proposed single floating home will have a negligible effect on demand for public services such as schools, roads, utilities, police or fire suppression.

Staff: Service provider forms (Exhibit A.13) have been reviewed and submitted for water service (Burlington Water District), on-site sewage disposal system, and fire flow and access demonstrating that services are available that will not require public services other than those existing or programmed for the area. The proposal is located in unincorporated Multnomah County that is serviced by the County Sheriff's Department. *This policy has been met.*

8.00 Off-Street Parking and Loading Criteria

8.01 MCC 34.4105 GENERAL PROVISIONS

In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to

the requirements of this condition.

Staff: The proposed improvements must meet the Off-Street Parking and Loading Ordinance as the expansion will intensify the use.

8.02 MCC 34.4120 PLAN REQUIRED

A plot plan showing the dimensions, legal description, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit, or for a change of classification to O-P.

Staff: The applicant has submitted a site plan and other plans showing most of the required information. Staff has recommended Condition No. 6 to bring the proposed plans into conformance with these criteria.

Hearings Officer: This information should have been provided with the application and is needed to allow the County to accurately assess the impact of development in the 100-year flood plain. *This requirement has not been met.* This code section, however, is not a mandatory approval criterion and is not being used as a reason to deny approval of the submitted land use applications.

8.03 MCC 34.4130 LOCATION OF PARKING AND LOADING SPACES

(A) Parking spaces required by this Section shall be provided on the lot of the use served by such spaces.

(B) Exception – The Planning Director may authorize the location of required parking spaces other than on the site of the primary use, upon a written finding by the Director that:

Staff: It should be noted that although the current code does not specify the required number of parking spaces required for a marina, a prior Hearings Office determined that a ratio of 1 parking space per 2 boat slips is an appropriate starting point for development review. Multnomah County Code (MCC) 34.6760 requires two automotive parking spaces per houseboat (floating dwelling). The proposed project is proposing one houseboat (floating dwelling) with two parking spaces to be located in the carport identified on the site plan. 20 in-water boat slips are proposed with 30 automobile parking stalls identified on the site plan. Staff recommends to the Hearing's Officer that a condition be placed identifying the required parking spaces for the uses.

8.04 MCC 34.4140 CHANGE OF USE

(A) Any alteration of the use of any land or structure under which an increase in the number of parking or loading spaces is required by this Section shall be unlawful unless the additional spaces are provided.

(B) In case of enlargement or change of use, the number of parking or loading spaces required shall be based on the total area involved in the enlargement or change in use.

MCC 34.4165 DESIGN STANDARDS: SCOPE

(A) The design standards of this section shall apply to all parking, loading, and maneuvering areas except those serving a single or two-family residential dwelling or mobile home on an individual lot.

(B) All parking and loading areas shall provide for the turning, maneuvering and parking of all vehicles on the lot. After July 26, 1979 it shall be unlawful to locate or construct any parking or loading space so that use of the space requires a vehicle to back into the right-of-way of a public street.

Staff: The expansion of the number of spaces for the proposed development requires that parking and vehicle circulation be improved to the County's Off-Street Parking Ordinance. All parking and loading areas for the turning, maneuvering, and parking of all vehicles are provided on the lot.

8.06 MCC 34.4170 ACCESS

(A) Where a parking or loading area does not abut directly on a public street or private street

approved under MCC 34.7700 et seq., the Land Division Chapter, there shall be provided an unobstructed paved drive not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.

(B) Parking or loading space in a public street shall not be counted in fulfilling the parking and loading requirements of this section. Required spaces may be located in a private street when authorized in the approval of such private street.

Staff: The revised site plan (Exhibit A.23) shows the location of proposed parking and traffic circulation. A condition of approval has been recommended that the plan be redrawn showing all improvements meeting the various zoning regulations including this standard. No off-site parking is proposed along the public right-of-way of NW Marina Way.

8.07 MCC 34.4175 DIMENSIONAL STANDARDS

(A) Parking spaces shall meet the following requirements:

(1) At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.

(2) Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.

(3) For parallel parking, the length of the parking space shall be 23 feet.

(4) Space dimensions shall be exclusive of access drives, aisles, ramps or columns.

(B) Aisle width shall be not less than:

(1) 25 feet for 90 degree parking,

(2) 20 feet for less than 90 degree parking, and

(3) 12 feet for parallel parking.

(4) Angle measurements shall be between the center line of the parking space and the center line of the aisle.

Staff: The proposed automobile parking stalls have dimensions of 10 feet by 20 feet. The proposed Site Plan Detail: Parking, Boat Storage and Landscape (Exhibit A.23) shows these parking areas clear of utility connections, columns, aisles or ramps.

There is adequate area on the site to maintain the setbacks and meet the aisle width standard. A condition of approval has been recommended to the Hearings Officer that the plan be redrawn showing all improvements meeting the various zoning regulations including this standard.

8.08 MCC 34.4180 IMPROVEMENTS

(A) Surfacing

(1) All areas used for parking, loading or maneuvering of vehicles shall be surfaced with two inches of blacktop on a four inch crushed rock base or six inches of portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds.

(B) Curbs and Bumper Rails

(1) All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.

(2) The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height and at least three feet from the lot line or any required fence.

(C) Marking – All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 34.4120, and such marking shall be continually maintained.

(D) Drainage – All areas for the parking and maneuvering of vehicles shall be graded and

drained to provide for the disposal of all surface water on the lot.

Applicant: (A)(1) The boat maneuvering and storage areas depicted on the site plan and the perimeter vehicle parking spaces are located on a base of 18-inches to 24-inches of gravel, which is ... "material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds".

(B) As noted above, the walkways, parking areas and boatyard maneuvering and storage areas are overlain with 18 to 24 inches of compacted gravel. The perimeter of the parking and maneuvering areas is or will be defined with logs or railroad ties to provide a curb-like barrier demarcating natural and landscaped areas, generally along the perimeter property lines and above the vegetated riverbank.

(C) The parking and maneuvering areas will be defined with logs or railroad ties and painted markings, reflective materials and colored rocks to provide visual direction to drivers.

(D) There are no new impervious areas proposed onsite in excess of 500-square feet. The existing 18-inches to 24-inches of gravel that covers most of the site receives rain and surface water run-off without affecting adjacent properties or streets.

Staff: The site currently has a gravel surface. All areas used for parking, loading or maneuvering of vehicles shall be surfaced with two inches of blacktop on a four inch crushed rock base or six inches of portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds. A condition of approval has been recommended that the plan be redrawn showing all improvements meeting the various zoning regulations including this standard.

As shown on the submitted site plans railroad ties and landscaping boxes are being used to physically separate areas used for parking, loading, and maneuvering of vehicles public streets. There is currently an existing fence around the perimeter of the property and 5 foot landscaping strips, railroad ties are proposed to address unchanneled motor vehicle access or egress. All areas for the parking and maneuvering of vehicles are identified to be marked in the submitted parking plan. All such marking shall be continually maintained. A condition of approval has been recommended that the plan be redrawn showing all improvements meeting the various zoning regulations including this standard.

A stormwater system is necessary for all newly created impervious surfaces. It appears that the site will be able to handle the generated stormwater run-off, but a Stormwater Certificate and study will need to be completed to verify this. A condition of approval has been recommended that the plan be redrawn showing all improvements meeting the various zoning regulations including this standard.

Hearings Officer: I have not addressed the issue whether gravel surfacing meets the requirements of this code section as I have not approved the application. Photographs in the record show what appears to be a gravel surface less than 18 inches in depth. Additional information on what is meant by 18" base depth of gravel and how that would appear and be verified by the County would have been helpful if this application had been approved.

8.09 MCC 34.4185 LIGHTING

Any artificial lighting which may be provided shall be shielded or deflected so as to not shine into adjoining dwellings or other types of living units, and so as not to create a hazard to the traveling public on any street.

Applicant: (Below responses taken from Applicant response letter received October 6, 2008)

The marina is not open after dark. Night time illumination of the boatyard is provided by three wall-mounted lights on the pole barn; one light is mounted at the two northerly building corners and the third light is in the center of the long-side wall. Each wall-mount light is 18-feet above grade and directed towards the boat yard areas onsite to allow surveillance. The lights are high-pressure sodium vapor, which have an amber hue. The existing 100-foot gangway has 10 low level (15-watt) lights spaced 10-feet apart to illuminate the walk while minimizing excessive or bright lighting directed towards the river. The two new gangways proposed on the plan would have similar low scale lighting.

Staff: The application materials have not shown any lighting to be installed. Staff recommends the hearings officer include a condition of approval regarding this standard for future reference.

8.10 MCC 34.4190 SIGNS

Signs, pursuant to the provisions of MCC 34.7465.

Staff: No signs have been proposed at this time. If in the future a sign is desired, a sign permit will be required.

8.11 MCC 34.4195 DESIGN STANDARDS: SETBACKS

(A) Any required yard which abuts upon a street lot line shall not be used for a parking or loading space, vehicle maneuvering area or access drive other than a drive connecting directly to a street.

(B) A required yard which abuts a street lot line shall not be paved, except for walkways which do not exceed 12 feet in total width and not more than two driveways which do not exceed the width of their curb cuts for each 150 feet of street frontage of the lot.

Staff: The subject property is adjacent to NW Marina Way, which is not a county road at this location. The applicant has obtained Conditional Approval for a State Highway Approach from the Oregon Department of Transportation for the subject property. (Exhibit A.16) The 30 ft setback from the NW Marina right-of-way only has the driveway access proposed. No new improvements are shown within the setback. *This criterion has been met.*

8.12 MCC 34.4200 LANDSCAPE AND SCREENING REQUIREMENTS

(A) The landscaped areas requirements of MCC 34.7055 (C) (3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 34.4165 (A).

Staff: See Section 9.08 for discussion of this criterion.

9.00 Design Review Criteria

Applicant: The proposed 45-boat marina, with limited accessory marine-related construction and repair and one floating residence, will include a new boat lift consisting of two new finger piers 20-feet apart, immediately upstream of the existing boat ramp, with a concrete bulkhead between the two finger piers covering approximately 250-square feet. An engineered plan detail of the piers and bulkhead is included with this response letter. The other proposed development is a new gangway ramp near the southern lease area boundary and reconfigured docks and slips within the waterway lease area as depicted on the plan. The proposal would extend the lease area 15- feet on the upstream end, from 180-feet to 195-feet to add a triangular area to waterway lease and encompassing approximately 2,350 square feet of water surface. Discussions with the State's DSL staff have been initiated and the applicant intends to renew and amend the waterway lease ML 7112 pursuant to the proposed plan and before its expiration in June 2009.

Hearings Officer: The applicant did not address the design of the existing buildings that the applicant is seeking to convert to a new use and/or to legalize. Design review is required for any building associated with the proposed conditional use. MCC 34.6325; 34.7010; 34.7015. The requirement to seek design review for all buildings associated with the proposed use *has not been met.*

9.01 MCC 34.7030 DESIGN REVIEW PLAN CONTENTS

(3) Preliminary Architectural Drawings, indicating floor plans and elevations;

Applicant: Architectural drawings are not available for the floating home or boathouses at this time. No other buildings are proposed.

Staff: Architectural drawings of the floating home or boathouses will need to be submitted as part of the building plan review consistent with permit approvals. In addition, drawings of docks, ramps, and piers shall be submitted for the in-water development for review and approval.

Hearings Officer: Plans for the existing buildings that were constructed without County approval is also needed in order for those buildings to be retained on site as a part of the proposed use being reviewed by this application. This is not an approval criterion but this information is essential for the County to find compliance with design review criteria. *This requirement is not met*

9.02 **MCC 34.7050 DESIGN REVIEW CRITERIA**

(A) Approval of a final design review plan shall be based on the following criteria:

(1) Relation of Design Review Plan Elements to Environment.

(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.

Applicant: The proposed 45-boat marina, with limited accessory marine-related construction and repair and one floating residence, will include a new boat lift consisting of two new finger piers 20-feet apart, immediately upstream of the existing boat ramp, with a concrete bulkhead between the two finger piers covering approximately 250-square feet. An engineered plan detail of the piers and bulkhead is included with this response letter. The other proposed development is a new gangway near the southern lease area boundary and reconfigured docks and slips within the waterway lease area as depicted on the plan. The proposal would extend the lease area 15- feet on the upstream end, from 180-feet to 195-feet to add a triangular area to waterway lease and encompassing approximately 2,350 square feet of water surface. Discussions with the State's DSL staff have been initiated and the applicant intends to renew and amend the waterway lease ML 7112 pursuant to the proposed plan and before its expiration in June 2009.

Hearings Officer: The applicant failed to provide site design review information regarding the existing buildings that were constructed without County permits. The fact that these buildings exist does not excuse them from complying with design review criteria if the applicant wishes to use the buildings as a part of the new use. Otherwise, the buildings would need to be restricted to agricultural use – a use that has been abandoned by the applicant.

(b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.

Applicant: The proposed floating home is consistent with location criteria regarding the mean low water line, protection from siltation, wind, wave action, icy conditions and other hazards, adequate land area to accommodate related facilities, ensuring proper maintenance of dikes, preservation of upland recreational, ecological or wildlife habitat values and exclusion from Exclusive Farm Use zoned uplands.

Hearings Officer: As a complete plan has not been submitted, I am unable to determine compliance with this approval criterion.

(c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.

Applicant: The proposed plan utilizes a waterfront site for a boat marina with accessory boat repair and marine construction and a single floating home. The design groups the boat slips at the perimeter of the lease area, with the new boat lift adjacent to the existing boat ramp, allowing a shared boat turning basin. Marine construction activities are placed in the center of the lease area to minimize off-site effects to upstream and downstream floating homes on adjacent sites.

Hearings Officer: As a complete plan has not been submitted, I am unable to determine compliance with

this approval criterion.

- 9.03 **(2) Safety and Privacy – The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.**

Applicant: The perimeter security fencing discourages vandalism and trespass. The design groups the boat slips at the perimeter of the lease area, with the new boat lift adjacent to the existing boat ramp, allowing a shared boat turning basin. Marine construction activities are placed in the center of the lease area to minimize off-site effects and maintain privacy for upstream and downstream floating homes on adjacent sites.

(Below responses taken from Applicant response letter received October 6, 2008)

As noted above, the walkways, parking areas and boatyard maneuvering and storage areas are overlain with 18 to 24 inches of compacted gravel. The perimeter of the parking and maneuvering areas is or will be defined with logs or railroad ties to provide a curb-like barrier demarcating natural and landscaped areas, generally along the perimeter property lines and above the vegetated riverbank. The parking and maneuvering areas will be defined with logs or railroad ties and painted markings, reflective materials and colored rocks to provide visual direction to drivers. The site plans provided demonstrate the proposed reconfigured docks, slips, lift, ramp, and upland parking and boat storage areas have adequate dimensions and placement for maneuvering boats and vehicles.

Hearings Officer: As a complete plan has not been submitted, I am unable to determine compliance with this approval criterion.

- 9.04 **(3) Special Needs of Handicapped – Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheel-chairs and Braille signs.**

Applicant: The site plan provides ample aisle widths in the parking area and gangways for pedestrians and handicapped persons to access to the docks and slips.

(Below responses taken from Applicant response letter received October 6, 2008)

A handicapped accessible parking space is proposed immediately northwest (downstream) from the gangway ramp. This space is not near the portable toilet that is maintained on the site because the temporary toilet is not ADA compliant.

Hearings Officer: As a complete plan has not been submitted, I am unable to determine compliance with this approval criterion.

- 9.05 **(4) Preservation of Natural Landscape – The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.**

Applicant: The landscape plans are indicated on the design review plan and described in the narrative. Applicant suggests that specific landscape requirements may be attached as conditions to the conditional or community service use permits requested. The plan would maintain significant trees and shrubs on the site and preserved trees will be protected during construction. The parking and landscape detail sheet depicts the locations and dimensions of new landscape areas in the parking areas. The landscaping includes Incense or Hogan Cedars, selected for their narrow, columnar growth habits and 20 to 40-foot heights at maturity.

Staff: Staff understands from the applicant that no trees are proposed for removal. Vegetation along the river will be supplemented with evergreen and deciduous trees to reduce potential erosion, and partially

screen the upland boatyard activities from the river and from adjacent floating homes. Disturbed areas along the riverbank resulting from installation of proposed finger piers for the travel lift and a new gangway near the upstream boundary will be replanted and restored within a brief period of time.

Hearings Officer: The application does not provide enough detail about plans for the protection of natural landscaping to allow me to conclude that the landscape and existing grade will be preserved to the maximum practical degree. It is clear that existing vegetation along or near the river will be removed for piers and the gangway. Precisely what will be done to address this disturbance is unknown. What will be replanted and restored and to what extent is unclear. *This criterion is not met.*

- 9.06 **(5) Pedestrian and Vehicular circulation and Parking – The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.**

Applicant: The site plan provides ample aisle widths in the parking area and gangways for pedestrians and handicapped persons to access to the docks and slips. The scale and nature of the parking facility (30-cars for a private marina) does not give rise to a need for separate pedestrian-only facilities.

(Below responses taken from Applicant response letter received October 6, 2008)

As noted above, the walkways, parking areas and boatyard maneuvering and storage areas are overlain with 18 to 24 inches of compacted gravel. The perimeter of the parking and maneuvering areas is or will be defined with logs or railroad ties to provide a curb-like barrier demarcating natural and landscaped areas, generally along the perimeter property lines and above the vegetated riverbank. The parking and maneuvering areas will be defined with logs or railroad ties and painted markings, reflective materials and colored rocks to provide visual direction to drivers. The site plans provided demonstrate the proposed reconfigured docks, slips, lift, ramp, and upland parking and boat storage areas have adequate dimensions and placement for maneuvering boats and vehicles.

Hearings Officer: The plan continued to change through the date of the hearing. The plan appears crowded. Without a scaled plan, it is difficult to find compliance with this approval criterion.

- 9.07 **(6) Drainage – Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.**

Applicant: There are no new impervious areas proposed onsite in excess of 500-square feet. The existing 18-inches to 24-inches of gravel that covers most of the site receives rain and surface water run-off without affecting adjacent properties or streets.

Hearings Officer: If the staff recommendation regarding paving the parking area had been imposed, surface drainage facilities would have been needed.

- 9.08 **(7) Buffering and Screening – Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.**

Applicant: The landscape plans are indicated on the design review plan and described in the narrative. Applicant suggests that specific landscape requirements may be attached as conditions to the conditional or community service use permits requested. The Design Review Plan would maintain significant trees and shrubs on the site and vegetation retained along the riverbank will be supplemented with evergreen and deciduous trees to reduce potential erosion, and partially screen the upland boatyard activities from the river.

Hearings Officer: The applicant has proposed to store boats close to the south property line. A five-foot

landscape strip is indicated but no detail about the development of that area is provided. It is not clear that this area is adequately buffered from the property to the south. Storage of boats and cars is also proposed within five feet of the north property line. There appears to be more landscaping along this boundary but it has not been demonstrated that this landscaping minimizes adverse impacts on neighboring properties. Result, I am unable to conclude that they will be properly buffered. I am also unable to identify where, on site, the applicant plans to provide for trash receptacles and recycling facilities so I cannot find they are properly screened. *This criterion has not been met.*

- 9.09 (8) Utilities – All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.

Applicant: The existing above ground utilities indicated on the survey would remain.

9.10 MCC 34.7055 REQUIRED MINIMUM STANDARDS

(C) Required Landscape Areas

The following landscape requirements are established for developments subject to design review plan approval:

- (1) A minimum of 15% of the lot area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.
- (2) All areas subject to the final design review plan and not otherwise improved shall be landscaped.
- (3) The following landscape requirements shall apply to parking and loading areas:
 - (a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totaling no less than 25 square feet per parking space.
 - (b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.
 - (c) A landscaped strip separating a parking or loading area from a street shall contain:
 1. Street trees spaced as appropriate to the species, not to exceed 50 feet apart, on the average;
 2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and
 3. Vegetative ground cover.
 - (d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.
 - (e) A parking landscape area shall have a width of not less than 5 feet.
- (4) Provision shall be made for watering planting areas where such care is required.
- (5) Required landscaping shall be continuously maintained.
- (6) Maximum height of tree species shall be considered when planting under overhead utility lines.
- (7) Landscaped means the improvement of land by means such as contouring, planting, and the location of outdoor structures, furniture, walkways and similar features.

Applicant: The landscape plans are indicated on the design review plan and described in the narrative. Applicant suggests that specific landscape requirements may be attached as conditions to the requested conditional or community service use permits. The Design Review Plan would maintain all existing trees and shrubs on the site and vegetation retained along the riverbank will be supplemented with evergreen and deciduous trees to reduce potential erosion and partially screen the upland boatyard activities from the river. Applicant acknowledges his obligation to maintain all landscaped areas. Tree selections have taken into consideration overhead utility lines in relation to the landscaping. There is no use of contouring proposed, and applicant contends that the scale and nature of the parking facility (30-cars for a private marina plus 2-spaces for the houseboat) and generous 30-foot more-or-less drive-aisle widths obviates the need for separate pedestrian-only facilities throughout the site.

(c)(e) The parking and landscape detail sheet depicts the locations and dimensions of new landscape areas in the parking areas and elsewhere on the site. The new landscaped parking area islands and perimeter site buffers will be supplemented with several 5-foot to 6-foot height Incense or Hogan Cedar trees (subject to price and availability). These evergreen trees were selected because of their narrow, columnar growth habits, drought tolerance, and eventual 20 to 40-foot heights at maturity.

(4) The applicant manually waters site landscaping.

(7) The landscape plans are indicated on the design review plan and described in the narrative. Applicant suggests that specific landscape requirements may be attached as conditions to the requested conditional or community service use permits. The Design Review Plan would maintain all existing trees and shrubs on the site and vegetation retained will be supplemented with evergreen and deciduous trees to reduce potential erosion and partially screen the boatyard activities from off-site view. Applicant acknowledges his obligation to maintain all landscaped areas. Tree selections have taken into consideration overhead utility lines in relation to the landscaping. There is no use of contouring proposed, and applicant contends that the scale and nature of the parking facility (30-cars for a private marina) and ample drive-aisle widths does not support a need for separate pedestrian-only facilities throughout the site.

Hearings Officer: The proposed site plan, Exhibit H.8, fails to provide the required street trees. It is not clear that all areas subject to the final design review plan and not otherwise improved will be landscaped or that the landscaped area proposed meets the 15% requirement. *This criterion is not met.*

10.00 *Variance and Adjustment Review Criteria*

10.01 **MCC 34.7616 Variance Approval Criteria**

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 34.7606 upon finding that all the following standards in (A) through (F) are met:

(A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to:

- (1) The size, shape, natural features and topography of the property, or**
- (2) The location or size of existing physical improvements on the site, or**
- (3) The nature of the use compared to surrounding uses, or**
- (4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district, or**
- (5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.**
- (6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.**

Applicant: A circumstance or condition applies to the property that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition relates to the size and topography of the property and the location of existing physical improvements on the site. The existing pole barn/storage building was sited 30-feet from the front fence line rather than 30-feet from the front property line. The placement of the building is near the southwest corner of the site, which is removed from adjacent floating home residences on adjoining moorage properties, and also places the building above the 100-year flood elevation and outside the flood hazard area.

Imposition of the 30-foot front setback requirement would substantially affect the use of the subject property to a greater degree than it restricts other properties in the vicinity or district because other properties in the area do not contain buildings constructed within the yard setback area.

(Below responses taken from Applicant response letter received October 6, 2008)

The applicant appreciates this consideration by staff (*From October 3, 2008 Email from Staff: Variance. In taking a look at the variance criteria, we're not sure the proposal can meet all criteria in regards to a*

unique circumstance/condition, owner's making or personal circumstance, etc. In taking a look at historical records, as best we can tell that Mr. Gulbrandson has been the landowner. In discussing things, we may be able to consider things under the adjustment criteria (MCC 34.7611), however the encroachment is limited to 40% of the required 30 feet setback limiting encroachment to 12 feet) and agrees to remove the portions of the pole barn that encroach more than 40% (12-feet) into the 30-foot front yard. The removal of the encroaching portion of pole barn/warehouse would be completed in year two of the phasing plan (by 11/01/2010).

Staff: The pole barn was constructed as part of the approved WRG 4-80 permit to operate a log salvage operation. The building is existing and has been part of the marina operation. There is no indication that a circumstance or condition applies to the property that does not apply generally to other property in the same vicinity or zoning district. The building was constructed was sited in the wrong place, and was sited 30-feet from the front fence line rather than 30-feet from the front property line. At the time of the siting of the building, the property was owned by the same landowner. *This criterion is not met.*

It should be noted that on October 6, 2008, the use of the Pole Barn and the request for a variance was further clarified by the client in response to correspondence sent by staff on October 3, 2008 regarding the variance criteria. The applicant clarified the use of the pole barn to be for accessory marina use and that the applicant will pursue appropriate building, electrical, and plumbing permits to remodel the pole barn for accessory marina use. In addition, the applicant has agreed to removal of portions of the pole barn that encroach more than 40% into the 30-foot front yard setback, with the removal of the encroaching portion of the pole barn to be completed in year two of the phasing plan. The removal of the encroachment and limitation to 40% encroachment, removes the requirement of a Variance Permit for the project. Multnomah County Code (MCC) 34.7601(C) provides for the Adjustment review process by which certain dimensional standards may be modified no more than 40 percent. The Adjustment approval criteria are identified in MCC 34.7611 and are addressed in Section 10.07 in the Findings below.

- 10.02 **(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.**

Applicant: The circumstance is not the present property owner's making and does not result solely from personal circumstances of the applicant or property owner.

Staff: As provided by the applicant, the existing pole barn/storage building was sited 30-feet from the front fence line rather than 30-feet from the front property line. In taking a look at historical records, Mr. Gulbrandson has been the landowner and was at the time of construction of the pole barn. *This criterion is not met.*

It should be noted that on October 6, 2008, the use of the Pole Barn and the request for a variance was further clarified by the client in response to correspondence sent by staff on October 3, 2008 regarding the variance criteria. The applicant clarified the use of the pole barn to be for accessory marina use and that the applicant will pursue appropriate building, electrical, and plumbing permits to remodel the pole barn for accessory marina use. In addition, the applicant has agreed to removal of portions of the pole barn that encroach more than 40% into the 30-foot front yard setback, with the removal of the encroaching portion of the pole barn to be completed in year two of the phasing plan. The removal of the encroachment and limitation to 40% encroachment, removes the requirement of a Variance Permit for the project. Multnomah County Code (MCC) 34.7601(C) provides for the Adjustment review process by which certain dimensional standards may be modified no more than 40 percent. The Adjustment approval criteria are identified in MCC 34.7611 and are addressed in Section 10.07 in the Findings below.

- 10.03 **(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.**

Applicant: There is practical difficulty and unnecessary hardship to the property owner if the 30-foot setback standard is applied retroactively and a 14-foot section of the building were required to be removed.

Staff: The structure is existing and has been in operation since 1980. The submitted development proposal considers the location of the pole barn and allows for the proposed uses to be sited on-site consistent with a marina use. *This criterion is met.*

It should be noted that on October 6, 2008, the use of the Pole Barn and the request for a variance was further clarified by the client in response to correspondence sent by staff on October 3, 2008 regarding the variance criteria. The applicant clarified the use of the pole barn to be for accessory marina use and that the applicant will pursue appropriate building, electrical, and plumbing permits to remodel the pole barn for accessory marina use. In addition, the applicant has agreed to removal of portions of the pole barn that encroach more than 40% into the 30-foot front yard setback, with the removal of the encroaching portion of the pole barn to be completed in year two of the phasing plan. The removal of the encroachment and limitation to 40% encroachment, removes the requirement of a Variance Permit for the project. Multnomah County Code (MCC) 34.7601(C) provides for the Adjustment review process by which certain dimensional standards may be modified no more than 40 percent. The Adjustment approval criteria are identified in MCC 34.7611 and are addressed in Section 10.07 in the Findings below.

10.04 **(D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zoning district in which the property is located, or adversely affects the appropriate development of adjoining properties.**

Applicant: The authorization of the variance will not harm the public or injure property in the vicinity or zoning district in which the property is located, nor adversely affect the appropriate development of adjoining properties. The abutting property immediately to the west is public and railroad rights-of-way for a distance exceeding 200-feet. The 14-foot reduction to the 30-foot minimum setback will not impair development on abutting or adjacent properties.

Hearings Officer: The pole barn has been in existence since 1980. There has been no indication of detrimental or injurious effects of the pole barn to property in the vicinity or zoning district. Allowing the building to be located closer to the road is not materially detrimental to the public welfare or injurious. The area of the property in the setback area is also a better location than one outside the setback area because the closer one gets to the river, the greater the risk of flooding. *This criterion is met.*

Note: The pole barn was constructed in the 100-year flood plain shown on the 1986 FEMA map. This finding does not mean that the retention of a structure that was built without permits is not materially detrimental to the public welfare or injurious to property in the vicinity or zoning district due to its location in the flood plain. Rather, the finding applies only to the relative merits of the location proposed versus the location required by the front yard setback.

Staff: *It should be noted that on October 6, 2008, the use of the Pole Barn and the request for a variance was further clarified by the client in response to correspondence sent by staff on October 3, 2008 regarding the variance criteria. The applicant clarified the use of the pole barn to be for accessory marina use and that the applicant will pursue appropriate building, electrical, and plumbing permits to remodel the pole barn for accessory marina use. In addition, the applicant has agreed to removal of portions of the pole barn that encroach more than 40% into the 30-foot front yard setback, with the removal of the encroaching portion of the pole barn to be completed in year two of the phasing plan. The removal of the encroachment and limitation to 40% encroachment, removes the requirement of a Variance Permit for the project. Multnomah County Code (MCC) 34.7601(C) provides for the Adjustment review process by which certain dimensional standards may be modified no more than 40 percent. The Adjustment approval criteria are identified in MCC 34.7611 and are addressed in Section 10.07 in the Findings below.*

10.05 **(E) The Variance requested is the minimum necessary variation from the Code requirement which**

would alleviate the difficulty.

Applicant: The Variance requested is the minimum necessary variation from the Code requirement to alleviate the difficulty.

Staff: The building is existing, therefore the requested variance is for the minimum necessary variation from the code requirement to alleviate the difficulty. *This criterion is met.*

It should be noted that on October 6, 2008, the use of the Pole Barn and the request for a variance was further clarified by the client in response to correspondence sent by staff on October 3, 2008 regarding the variance criteria. The applicant clarified the use of the pole barn to be for accessory marina use and that the applicant will pursue appropriate building, electrical, and plumbing permits to remodel the pole barn for accessory marina use. In addition, the applicant has agreed to removal of portions of the pole barn that encroach more than 40% into the 30-foot front yard setback, with the removal of the encroaching portion of the pole barn to be completed in year two of the phasing plan. The removal of the encroachment and limitation to 40% encroachment, removes the requirement of a Variance Permit for the project. Multnomah County Code (MCC) 34.7601(C) provides for the Adjustment review process by which certain dimensional standards may be modified no more than 40 percent. The Adjustment approval criteria are identified in MCC 34.7611 and are addressed in Section 10.07 in the Findings below.

- 10.06 **(F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.**

Applicant: The potential impacts resulting from the variance are mitigated to the extent practical through provision of landscaping and open space within the remaining 16-foot front yard and retention and maintenance of several trees and ornamental landscaping within the abutting Marina Way right-of-way, consistent with the ODOT Permit #7837.

Staff: Buffering and screening is proposed in the form of a perimeter fence and a 5 foot landscape planting strip around the subject property. In addition, landscaping and open space is proposed to buffer and screen the pole barn in the remaining 16-foot front property setback. There is existing vegetation in the side setback screening the pole barn from the nearest impacted neighbor to the south. *This criterion is met.*

It should be noted that on October 6, 2008, the use of the Pole Barn and the request for a variance was further clarified by the client in response to correspondence sent by staff on October 3, 2008 regarding the variance criteria. The applicant clarified the use of the pole barn to be for accessory marina use and that the applicant will pursue appropriate building, electrical, and plumbing permits to remodel the pole barn for accessory marina use. In addition, the applicant has agreed to removal of portions of the pole barn that encroach more than 40% into the 30-foot front yard setback, with the removal of the encroaching portion of the pole barn to be completed in year two of the phasing plan. The removal of the encroachment and limitation to 40% encroachment, removes the requirement of a Variance Permit for the project. Multnomah County Code (MCC) 34.7601(C) provides for the Adjustment review process by which certain dimensional standards may be modified no more than 40 percent. The Adjustment approval criteria are identified in MCC 34.7611 and are addressed in Section 10.07 in the Findings below.

10.07 **MCC 34.7611 Adjustment Approval Criteria**

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 34.7606 upon finding that all the following standards in (A) through (E) are met:

- (A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Applicant:

(Below responses taken from Applicant response letter received October 6, 2008)

The applicant appreciates this consideration by staff (*From October 3, 2008 Email from Staff: Variance. In taking a look at the variance criteria, we're not sure the proposal can meet all criteria in regards to a unique circumstance/condition, owner's making or personal circumstance, etc. In taking a look at historical records, as best we can tell that Mr. Gulbrandson has been the landowner. In discussing things, we may be able to consider things under the adjustment criteria (MCC 34.7611), however the encroachment is limited to 40% of the required 30 feet setback limiting encroachment to 12 feet*) and agrees to remove the portions of the pole barn that encroach more than 40% (12-feet) into the 30-foot front yard. The removal of the encroaching portion of pole barn/warehouse would be completed in year two of the phasing plan (by 11/01/2010).

Staff: MCC 34.7606 lists the types of dimensional standards eligible for adjustments. It includes front yard setbacks. Dimensional standards cannot be reduced more than 40 percent. The pole barn will be altered so that it will be located no closer than 18 feet from the front lot line. The front yard requirement is 30 feet. In order for the County to approve an Adjustment of the front yard requirement, the encroachment cannot exceed 12 feet. It shall be required that portions of the pole barn that encroach more than 40% into the required setback shall be removed and completed by year two of the phasing plan (by 11/01/2010).

Hearings Officer: The applicant and staff findings above fail to demonstrate that approval of the adjustment will equally or better meet the purpose of the setback regulations being modified. *This criterion has not been met.*

(B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

Applicant: The potential impacts resulting from the variance are mitigated to the extent practical through provision of landscaping and open space within the remaining 16-foot front yard and retention and maintenance of several trees and ornamental landscaping within the abutting Marina Way right-of-way, consistent with the ODOT Permit #7837.

Staff: The subject property and properties in the immediate vicinity have a mixture of mature trees, vegetation and landscaping that provide privacy between properties. The requested setback still provides for 18 feet in addition to a 200 foot right-of-way to the front property line. In addition the setbacks to the side and rear property line meet or exceed requirements providing for continued privacy and light for the property and surrounding properties. As indicated by the applicant, a security fence along the south, west and north of the property currently exists and provide for public safety and protection of public and private property. Further as indicated in the site plan, birch trees and big leaf maples screens and provides a buffer to the closest and adjacent property to the southwest corner.

Hearings Officer: The applicant's final site plan, Exhibit H.8, show grass between the building and the street. This landscaping does not mitigate the impact of moving the building closer to the road "to the extent practical." A more significant visual separation, such as what would be created by planting a tall hedge or large trees, would be more likely to create the type of separation intended by this criterion. *This criterion has not been met.*

(C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zoning district; and

Staff: Only one adjustment is being requested. *This criterion is not applicable.*

(D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices

on the subject property and adjoining lands; and

Staff: The subject property is not zoned farm (EFU) or forest (CFU). *This criterion is not applicable.*

(E) If in a Rural Residential (RR) or Rural Center (RC) zone, the proposal will not significantly detract from the livability or appearance of the residential area.

Staff: The subject property is not zoned Rural Residential (RR) or Rural Center (RC). *This criterion is not applicable.*

11.00 **Conclusion**

Hearings Officer: The applicant has failed to establish that all approval standards for the proposed A-1 Marina project can be met. In addition, the hearings officer is unable to conclude from the record before the County that compliance with approval criteria can be achieved by the imposition of reasonable conditions of approval. The Hearings Officer, therefore, denies the Conditional Use, Community Service, Willamette River Greenway, Design Review, Variance and Adjustment Permits.

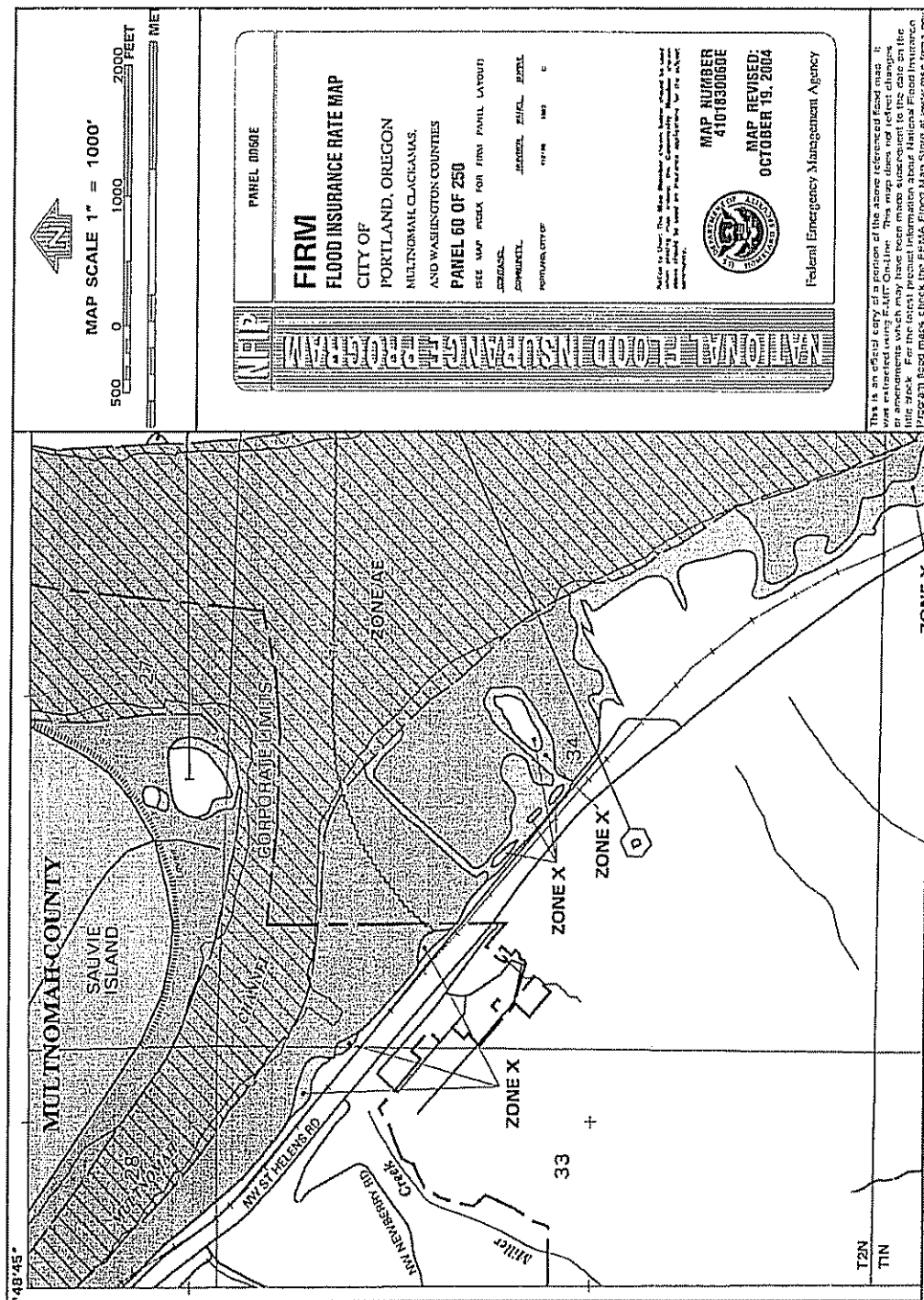
EXHIBIT LIST for A-1 Marina Decision (T3-08-002)

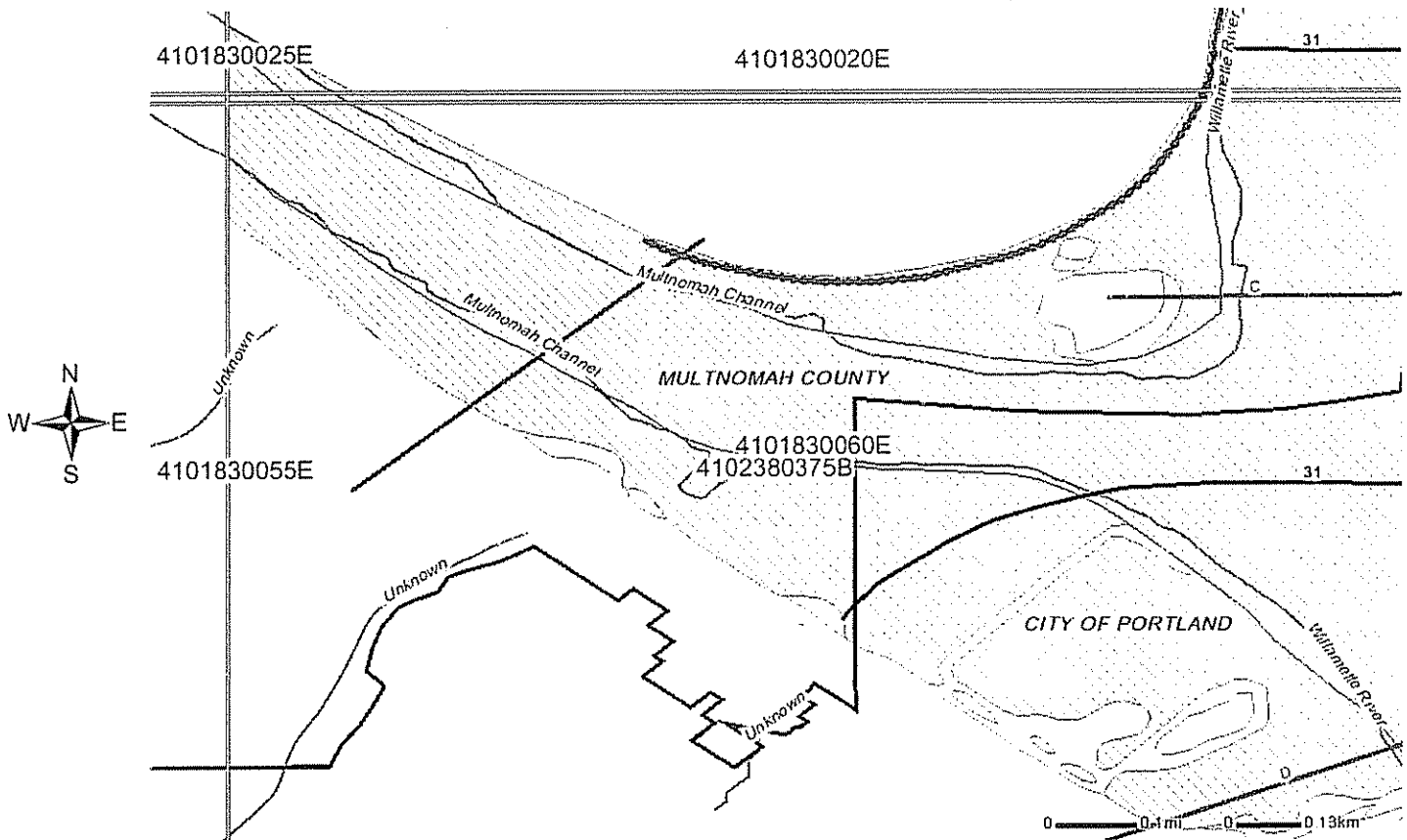
Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	6/20/08
A.2	3	A&T Property Information and Map 2N1W28	6/20/08
A.3	3	Applicant Project Narrative and Code Narrative Cover Pages and Table of Contents	6/20/08
A.4	1	Greenway Design Review Plan June 20, 2008	6/20/08
A.5	2	Background and Application Summary	6/20/08
A.6	18	Pre Application Meeting Notes (May 24, 2007, PA-07-006) and Applicant submittal	6/20/08
A.7	2	Maps, Plans and Aerial Photos, and Survey	6/20/08
A.8	6	Conditional Use and Community Service Permit Narrative	6/20/08
A.9	3	Willamette River Green Permit Narrative	6/20/08
A.10	5	Design Review Narrative, Floodplain Narrative and FEMA map and GEC Narrative	6/20/08
A.11	4	Health Hardship Mobile Home Narrative	6/20/08
A.12	5	Lot of Record Information	6/20/08
A.13	24	Service Provider Forms <ul style="list-style-type: none">▪ Division of State Lands Waterway Lease (ML-752)▪ ODOT State Highway Approach▪ Certification of Water Service▪ City of Portland Sanitation Site Evaluation Report▪ Fire District Review- Fire Flow▪ Fire District Review- Fire Access▪ State Historic Preservation Office	6/20/08
A.14	18	Variance Narrative	6/20/08
A.15	6	Application Supplemental Materials	7/10/08
A.16	6	ODOT Conditional Approval for State Highway Approach	8/14/08
A.17	1	Email: A1 Marina and Use of Pole Barn	8/15/08
A.18	27	August 4, 2008 Applicant Response and Revised Site	8/6/08

		Plans (2) dated August 6, 2008	
A.19	25	August 7, 2008 Applicant Response Narrative	8/7/08
A.20	1	Site Analysis Diagram	8/19/08
A.21	1	Greenway Setback Line Plan	8/7/08
A.22	1	100 Year Flood Area Site Plan	8/7/08
A.23	1	Site Plan Detail dated August 20, 2008	8/20/08
A.24	1	Greenway Design Review Plan dated August 20, 2008	8/20/08
A.25	1	Site Survey	6/27/08
A.26	10	October 6, 2008 Applicant Response to October 3, 2008 Staff Email	10/6/08
A.27	1	Applicant Acknowledgement of Incompleteness Letter and intent to provide materials	7/21/08
A.28	1	State of Oregon Division of State Lands: Marina Way Moorage Area Multnomah Channel (Oversized Exhibit)	6/20/08
A.29	1	2006 Aerial Photography and 1996 Metro Flood Map (Oversized Exhibit)	6/20/08
A.30	24	Voluntary Compliance Agreement	6/20/08
'B'		Staff Exhibits	Date of Document
B.1	3	Willamette River Greenway Permit (WRG 4-80)	12/3/80
B.2	2	County Land Use Cards	N/A
B.3	7	Joint Permit Application Form for 12 new steel pilings	6/11/02
B.4	5	Building Permit Review to remove and deconstruct shed and barn	1/9/07
B.5	4	1966 County Zoning Map and surveys	N/A
B.6	2	Multnomah County Soil Survey Information	7/18/08
B.7	1	Transportation Memo	9/23/08
'C'		Administration & Procedures	Date
C.1	12	Letter of incomplete application	7/18/08
C.2	2	August 22, 2008 Letter to applicant: Payment of balance between Health Hardship Fee and Variance Fee	8/22/08
C.3	3	Letter of Complete Application and Instructions for posting notice and sign pick-up confirmation	9/23/08

C.4	4	Notice of Public Hearing	9/26/08
C.5	12	Oregonian Affidavit of Publication	9/29/08
C.6	61	Staff Report	10/7/08
'H'		Hearing Exhibits	Date
H.1	1	Police Services Review	10/17/08
H.2	2	October 7 correspondence from Mark Hess regarding building location	10/17/08
H.3	1	October 13 correspondence from Carter Webb regarding proposal	10/17/08
H.4	2	October 17 correspondence from Mark and Julie Valeske	10/17/08
H.5	4	October 16 correspondence from Joseph and Shirley Ashton, Multnomah Yacht Harbor, LLC	10/17/08
H.6	4	October 15 correspondence from Mark Hess re: code compliance	10/17/08
H.7	3	October 15 correspondence from Mark Hess re: condition 6a and surfacing	10/17/08
H.8	1	Greenway Design Review Plan revision 10/17/08	10/17/08
H.9	1	Site Plan- Log Storage revision 10/17/08	10/17/08
H.10	20	Dustless pervious surfacing information- L.R. Buckley	10/17/08
H.11	3	October 17 statement from Marilyn Zornado	10/17/08
H.12	1	October 17 correspondence from Thomas Magruder	10/17/08
H.13	2	October 17 correspondence from Mark Valeske	10/17/08
H.14	3	October 17 correspondence from Dwight James	10/17/08
H.15	1	October 16 correspondence from Jean Adams	10/17/08
H.16	1	Arial photo from 2000	10/17/08
H.17	1	Photo of waterfront	10/17/08
H.18	1	Photo of burnt out building	10/17/08
H.19	1	Photo of paving company use	10/17/08
H.20	1	Google earth photo of current conditions	10/17/08
H.21	1	Sign-In Sheet	10/17/08
'J'		Post-Hearing Exhibits	Date
J.1	7	Memorandum from Michael Grimmett to Joanna Valencia dated October 29, 2008 with four attachments	10/31/08

J.2	3	Memorandum from Joanna Valencia to Liz Fancher dated October 30, 2008	10/31/08
J.3	4	Letter from Marilyn Zornado and Alan Garren dated October 30, 2008	10/31/08
J.4	26	Post-Hearing Supplement from A-1 Marina	10/31/08
J.5	2	November 5, 2008 letter from Mark Hess for A-1 Marina	11/5/08
J.6	1	FIRM Map Number 4101830060E, Map Revised October 19, 2004	12/2/08
J.7	1	DFIRM FEMA map with most current data layers meeting FEMA standards for area including subject property	12/02/08





Legend

- | | | | |
|--|--|--|---------------------------------|
| | Completed LOMAs | | Cross Section with NAVD88 datum |
| | LOMR's | | Cross Section with other datum |
| | DFIRM Panels | | Streams |
| | Bench Marks | | States |
| | General Structures | | Land Areas |
| | Culverts | | US |
| | Foot Bridges | | Other Countries |
| | Dams | | |
| | Levees | | |
| | Wing Walls | | |
| | Base Flood Elevation | | |
| | BFE with NAVD29 datum | | |
| | BFE with NAVD88 datum | | |
| | BFE with other datum | | |
| | Cross Section Lines | | |
| | Cross Section with NAVD79 datum (cont) | | |



FEMA

Tuesday, 2 December 2008 12:49

This map contains DFIRM and basemap data layers meeting FEMA standards

EXHIBIT J-7