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August 27, 2015
Agenda #: R.1

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MULTNOMAH COUNTY
PLANNING SECTION

Re: Draft Sauvie Island/Multnomah Channel Rural Area Plan

Dear Commissioners:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Conclusion.

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

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

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

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

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

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

Sincerely,

LANDERHOLM, P.S.

STEVE C. MORASCH
Attorney at Law

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cc: Kevin Cook
Cherie Sprando
Jed Tomkins

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ANNE SQUIER,
Petitioner,

vs.

MULTNOMAH COUNTY,
Respondent,

and

FREVACH LAND COMPANY,
Intervenor-Respondent.

LUBA No. 2014-074

FINAL OPINION
AND ORDER

Appeal from Multnomah County.

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

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

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

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

AFFIRMED 02/04/2015

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals a hearings officer's decision on a request for an interpretation, concluding that an exception to Statewide Planning Goal 14 (Urbanization) is not necessary to convert a boat moorage and facilities in an existing marina to allow a houseboat moorage at a maximum density of one houseboat per 50 feet of waterfront.

MOTION TO FILE REPLY BRIEF

Petitioner moves to file a reply brief to address arguments made in the response briefs regarding waiver and preservation of issues. The reply brief is allowed.

MOTION TO FILE AMICUS BRIEF

Pursuant to OAR 661-010-0052, 1000 Friends of Oregon moves to file an *amicus curiae* brief that is aligned with petitioner's interest. Intervenor-respondent Frevach Land Company (intervenor) objects, arguing that the proposed amicus brief should not be allowed, because amicus has not demonstrated that LUBA's "review of relevant issues would be significantly aided by participation of the amicus." OAR 661-010-0052(1).

We agree with intervenor. The proposed amicus brief consists only of the personal recollection of a staff attorney for amicus, stating that she participated in the rule-making leading to adoption of OAR 660-004-0040, an administrative rule that implements Goal 14 with respect to residential use of rural land. In relevant part, amicus states only that she does not recall that the issue of houseboats or houseboat moorages arose during rule-making.

Post-enactment recollections of persons participating in legislative proceedings are not probative legislative history. *Salem-Keizer Association of*

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

MOTIONS TO STRIKE

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This appeal followed.

LEGISLATIVE BACKGROUND

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

A. 1980: MUA-20 Zone Adopted

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

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

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

B. 1982: Waterfront Use Provisions

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

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[6] MCC 34.6750 and 34.6755 provide:

"34.6750- HOUSEBOATS AND HOUSEBOAT MOORAGE

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

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

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

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

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

C. 1986: *Curry County*

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

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

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

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

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

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

"34.6755 DENSITY

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

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

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

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

D. 1997: Ordinance 887 Adopts Rural Area Plan

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

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

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

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

"**Single-Family Dwellings in Exception Areas**

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

F. November 30, 2000: Ordinance 953 Recodifies Zoning Ordinance

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

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

"(a) Was lawfully created;

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

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

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

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

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

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

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

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

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

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

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

FIRST, THIRD, FOURTH AND FIFTH ASSIGNMENTS OF ERROR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[11] ORS 197.646 provides, in relevant part:

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

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

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

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> plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals.
>
> "* * * * *
>
> "(3) When a local government does not adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan, as required by subsection (1) of this section, the new requirements apply directly to the local government's land use decisions. * * * "

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

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

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

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

The hearings officer concluded that the MCC Waterfront Use provisions are acknowledged to comply with Goal 14.[13] The hearings officer initially

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

"(a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;

"(b) Enact land use regulations to implement their comprehensive plans;

"(c) If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;

"(d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and

"(e) Make land use decisions and limited land use decisions subject to an unacknowledged amendment to a comprehensive plan or land use regulation in compliance with those land use goals applicable to the amendment."

[13] The hearings officer's findings state, in relevant part:

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

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

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

[14] ORS 197.625(1) provides:

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

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

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

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

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

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[15] Specifically, petitioner argues:

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

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

Relatedly, under the fourth assignment of error, petitioner argues that the hearings officer erred to the extent she relied on the 2000 adoption of Ordinance 953 to conclude that the MCC chapter 34 Waterfront Use provisions are acknowledged to comply with Goal 14. According to petitioner, Ordinance 953 simply recodified the county's land use ordinances, without any changes. Petitioner notes that the notice supplied to DLCD states that the effect of Ordinance 953 was only to "Reorganize and renumber zoning code. No changes to allowed uses or approval criteria." Record 165. Petitioner contends that an ordinance that in relevant part simply reorganizes and renumbers existing zoning code provisions is not a "change" for purposes of the post-acknowledgment plan amendment statutes at ORS 197.610 *et seq.*, or the implementing regulations at OAR 660, chapter 018.[16] Petitioner argues that had anyone appealed Ordinance 953 when it was adopted in 2000, they could

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

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

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

1. Waiver

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

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

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[17] ORS 197.763(1) provides:

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

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

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

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

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

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

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

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

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

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

2. Ordinance 997 did not "de-acknowledge" Ordinance 953

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

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

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

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

Accordingly, the fifth assignment of error is denied.

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

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

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

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

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

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

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

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

Waterfront Use provisions are deemed acknowledged to comply with Goal 14.[20]

The fourth assignment of error is denied.

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

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

That argument is apparently based on the last sentence of OAR 660-004-0040(3)(b), which provides a "safe harbor" for rural residential areas that have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal in a post-acknowledgment plan amendment proceeding that occurred after *Curry County* and before October 4, 2000.[21] The acknowledged

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

[21] OAR 660-004-0040(3)(b) provides:

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

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

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

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

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

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

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

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

The third assignment of error is denied.

D. Conclusion

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

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

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

SECOND ASSIGNMENT OF ERROR

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

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

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

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

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

The third assignment of error is denied.

The county's decision is affirmed.

Oregon
Kate Brown., Governor

Department of Land Conservation and Development
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May 7, 2015

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director

SUBJECT: **Agenda Item 12 May 20-21, 2015, LCDC Meeting**

DIRECTOR'S REPORT

I. INFORMATION UPDATES

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

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

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

1. Department Participation in Appeals

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

2. LUBA Opinions

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

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

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

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

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

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

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

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

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

3. Appellate Court Opinions

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

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

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

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

4. Other Opinions of Interest

None.

5. Appeal Notices of Interest

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

6. Measure 37/49

None.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS, AND CONTRACTS

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

II. DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES

A. OREGON COASTAL MANAGEMENT PROGRAM (OCMP)

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

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

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

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

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

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

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

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

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

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

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

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

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

Federal Consistency

Routine Program Changes

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

Routine program changes in progress:

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

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

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

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

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

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

Major Consistency Reviews

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

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

Database

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

B. DIRECTOR'S OFFICE

An oral update will be provided.

C. ADMINISTRATIVE SERVICES

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

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

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

D. PLANNING SERVICES

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

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

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

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

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

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

E. COMMUNITY SERVICES

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

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

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

1. City of Grants Pass 823-acre expansion to accommodate land for 20 years of projected growth. The city and county also established urban reserves. The department received two objections to the submittal and found that one of the objections did not comply with applicable administrative rule requirements; it was therefore deemed invalid. The director rejected the valid objection and approved the amendment and reserves establishment. The appeal period has expired and the UGB expansion and urban reserves designations are deemed acknowledged.

2. City of Prineville 114-acre expansion for industrial use. The department received no objections to the submittal and the director approved the amendment.

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

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

- The department is involved in mediation of urban growth boundary disputes in Woodburn and Newberg. A tentative agreement on the boundary in Woodburn has been reached pending further work by the city and Marion County to implement the changes. The Newberg city council unanimously adopted resolutions on May 4, 2015, to withdraw from mediation, withdraw the UGB amendment submittal, and schedule repeal of the UGM amendment.

- Lafayette, Springfield, Eugene, Coburg, and McMinnville are actively working on amendments to their urban growth boundaries. We anticipate a submittal from Lafayette soon. The Springfield effort is generating considerable public interest that has led to the city's further examination of options. Eugene's work has also generated concerns in some quarters. Coburg adopted an amendment after DLCD and local advocacy groups raised concerns; Lane County opted to withhold its approval and asked the city to reconsider some of its conclusions. The McMinnville proposal is application-based and if challenged will be reviewed by LUBA, not the commission.

- Salem is working on updates to the housing and economic development elements of its comprehensive plan. Division regional and specialist staff have had an advisory role in development of the draft updates. The city has tentatively found:

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

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

- The department awarded a technical assistance grant to Lane County to complete a wastewater management feasibility study for the unincorporated community of Goshen, which contains a regionally significant industrial area. The county had adopted an exception to Goal 14 to permit urban-scale industrial uses in the community, but that approval was remanded by LUBA. Based on the feasibility study, there are three options for providing wastewater service to Goshen. The option with the least cost would be for Goshen to be served by the Eugene-Springfield Metro Wastewater District. The county is now preparing new findings for a Goal 14 exception. County counsel is confident that the study addresses issues raised in the LUBA remand.

- The department awarded a technical assistance grant to the Mid-Willamette Valley Council of Governments (COG) for collaboration with the University of Oregon's Resource Assistance for Rural Environments (RARE) program and two cities for comprehensive plan updates. The cities of Donald and Gervais, represented by the COG, partnered and applied for a grant to update their comprehensive plan housing and economic development elements. The two cities were similar enough that the planning could be done for both at the same time to save money and share resources. With department grant assistance, the cities were able to host a RARE participant to be the planner for both cities. As a result, the cities are much more competitive for attracting growth with an updated comprehensive plan and city leaders know more about their future, helping them make timely decisions that impact economic development potential. This type of resource-sharing is having tremendous impacts on small cities and we are using it as a model with other small cities in the region to apply for future technical assistance funding.

F. RETIREMENTS, NEW STAFF AND PROMOTIONS

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

III. LCDC POLICY AND RULEMAKING UPDATES

Sage Grouse Conservation: See agenda item 3
Metropolitan Area Greenhouse Gas Target: See agenda item 6
Primary Processing of Forest Products: See agenda item 10.

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

NOTICE OF DECISION

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

Case File: T2-2013-2907

Permit: Willamette Greenway Permit

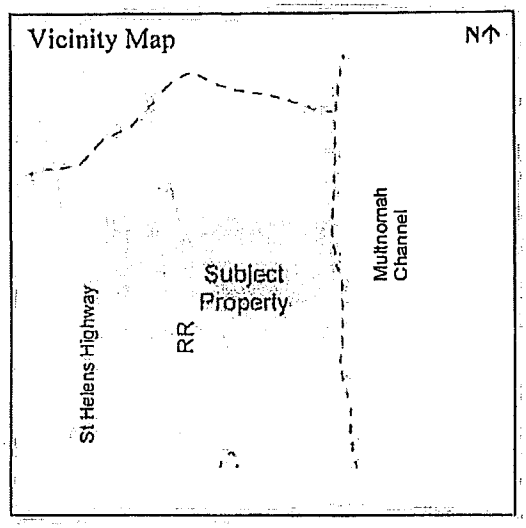
Location: 26312 NW St. Helens Hwy.
Tax Lot 200 & 700, Section 25D,
Township 3 North, Range 2 West, W.M
Tax Account #R982250120 &
R982250890

Applicant: Jay McCaulley

Owners: Elisiva Weilert & Lawrence Huang

Base Zone: Multiple Use Agriculture – 20

Overlays: Willamette River Greenway, Flood Hazard.



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

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

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

Issued by:

By: Bruce W. White

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

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

Even if the Policy 10 decision approved a partially occupied moorage facility with four slips, the three houseboat level of occupancy authorized in that decision must be complied with. As noted, the current occupancy shown on the submitted site plan shows an occupancy of four houseboats. The site plan must be revised to indicate only three houseboats. However, more than just correcting the site plan depiction of the number of houseboats in the moorage, applicant must demonstrate *as a factual matter* that the proper number of houseboats are in the moorage *prior to making application*. This is because any WRG permit that might be granted in this case will not of itself result in the property coming into compliance with the Policy 10 decision, as is required by MCC 37.0560(A)(1). That can only be effected by the applicant taking steps outside the land use permitting process, whatever they may be, to remove one of the houseboats from the site. Only after that has occurred, may he demonstrate compliance with the "prior permit" compliance requirement of MCC 37.0560.[3]

Criterion not met.

4. **Willamette Greenway Permit:**

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

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

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

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

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

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

5. ADMINISTRATIVE

Findings:

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

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

Department of Community Services
Land Use and Transportation Planning Program
www.multco.us/landuse

Multnomah County

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

Notice of Hearings Officer Decision

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

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

Appeal instructions and forms are available from:

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

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

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

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NOTICE OF DECISION

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

Case File: T2-2013-3238

Permit: Administrative Decision by Planning Director

Location: 12800 NW Marina Way
Tax Lot 200 , Section 34
Township 2 North, Range 1 West, W.M.
Tax Account #R971340030

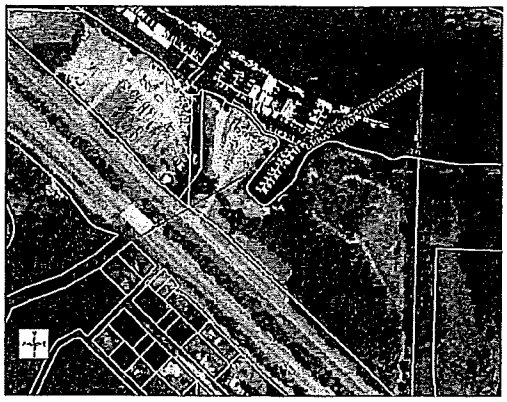
Applicant: Steve Morasch

Owners: Frevach Land Co.

Base Zone: Multiple Use Agriculture-20 (MUA-20)

Overlays: Willamette River Greenway (WRG), Flood Hazard

Vicinity Map N↑



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

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

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

Dated this 23rd day of July, 2014.

Liz Fancher, Hearings Officer

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

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

Notice to Mortgagee, Lien Holder, Vendor, or Seller:
ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

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

1. Project Description:

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

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

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

2. Property Description & History (if needed):

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

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

3. Multiple Use Agriculture – 20 Zone District:

3.1. MUA-20 Rural Residential

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

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

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

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

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

3.2. <u>MUA-20 Conditional Uses</u>

MCC 34.2830, Conditional Uses

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

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

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

* * *

(9) Houseboats and houseboat moorages

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

3.3. Houseboats and Houseboat Moorage

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

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

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

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

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

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

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

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

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

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

3.4. Density

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

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

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

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

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

4. GOAL 14: OAR 660-004-0040

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

(1) The purpose of this rule is to specify how Goal 14 "Urbanization" applies to rural lands in acknowledged exception areas planned for residential uses.

(2) (a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 "Agricultural Lands", Goal 4 "Forest Lands", or both has been taken. Such lands are referred to in this rule as "rural residential areas."

(b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before October 4, 2000, the effective date of sections (1) to (8) of this rule.

(c) This rule does not apply to types of land listed in (A) through (H) of this subsection:

(A) Land inside an acknowledged urban growth boundary;

(B) Land inside an acknowledged unincorporated community boundary established pursuant to OAR chapter 660, division 22;

(C) Land in an acknowledged urban reserve area established pursuant to OAR chapter 660, divisions 21 or 27;

(D) Land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;

(E) Resource land, as defined in OAR 660-004-0005(2);

(F) Nonresource land, as defined in OAR 660-004-0005(3);

(G) Marginal land, as defined in former ORS 197.247 (1991 Edition); or

(H) Land planned and zoned primarily for rural industrial, commercial, or public use.

(3) (a) This rule took effect on October 4, 2000.

(b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in 1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County), and before October 4, 2000. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule.

(4) The rural residential areas described in subsection (2)(a) of this rule are "rural lands." Division and development of such lands are subject to Goal 14, which prohibits urban use of rural lands.

(5) (a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (7) of this rule.

(b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.

(c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area that was in effect on October 4, 2000, and acknowledged to comply with the statewide planning goals.

(6) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.

(7) (a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.

(b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as "the minimum lot size."

(c) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect.

(d) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.

(e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:

(A) The number of new dwelling units to be clustered or developed as a PUD does not exceed 10;

(B) The number of new lots or parcels to be created does not exceed 10;

(C) None of the new lots or parcels will be smaller than two acres;

(D) The development is not to be served by a new community sewer system;

(E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community;

(F) The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on October 4, 2000 as the minimum lot size for the area;

(G) Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comprehensive Plan

Sauvie Island/Multnomah Channel Rural Area Plan

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

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

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

Comprehensive Framework Plan

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

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

Zoning Ordinance

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

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

Decision by Planning Director

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Rural Reserves 660-027-0070

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

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

6. Conclusion

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

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

7. Exhibits

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

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

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

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