

#1, #2, #3

Applicants &
Representative

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

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

MEETING DATE: Jan 28, 2010

SUBJECT: Case T-4-08-001

AGENDA NUMBER OR TOPIC: R517 Rocky Pointe Marina

FOR: AGAINST: THE ABOVE AGENDA ITEM

NAME: Jen Tonneson, Stan Tonneson, Peter Fry

ADDRESS: 23586 NW St Helens Rd

CITY/STATE/ZIP: Portland, OR 97231

PHONE: DAYS: 503-543-7003 EVES: 503-234-3466

EMAIL: jen@rpmarina.com FAX: 503-543-5190

SPECIFIC ISSUE: goal exception

WRITTEN TESTIMONY:

IF YOU WISH TO ADDRESS THE BOARD:

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

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

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

Rocky Pointe

Marina

23586 NW St. Helens Hwy.
Portland, OR 97231

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

Boatyard
tel 503-543-2785

Commissioner Shiprack
Multnomah County

1-28-2010

Re: Goal Exceptions for Rocky Pointe Marina

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

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

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

Enclosures

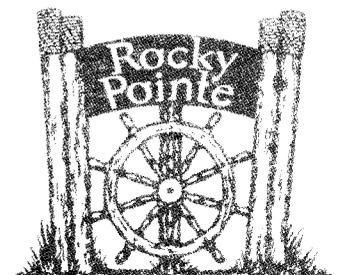
- Six photos showing the high degree of committed development
- Copy of Department of State Lands lease for Rocky Pointe Marina that shows the provision for 15 year perpetual renewals
- Biological Assessment showing no significant long term adverse effects
- A page from our joint application to National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

Thank you,

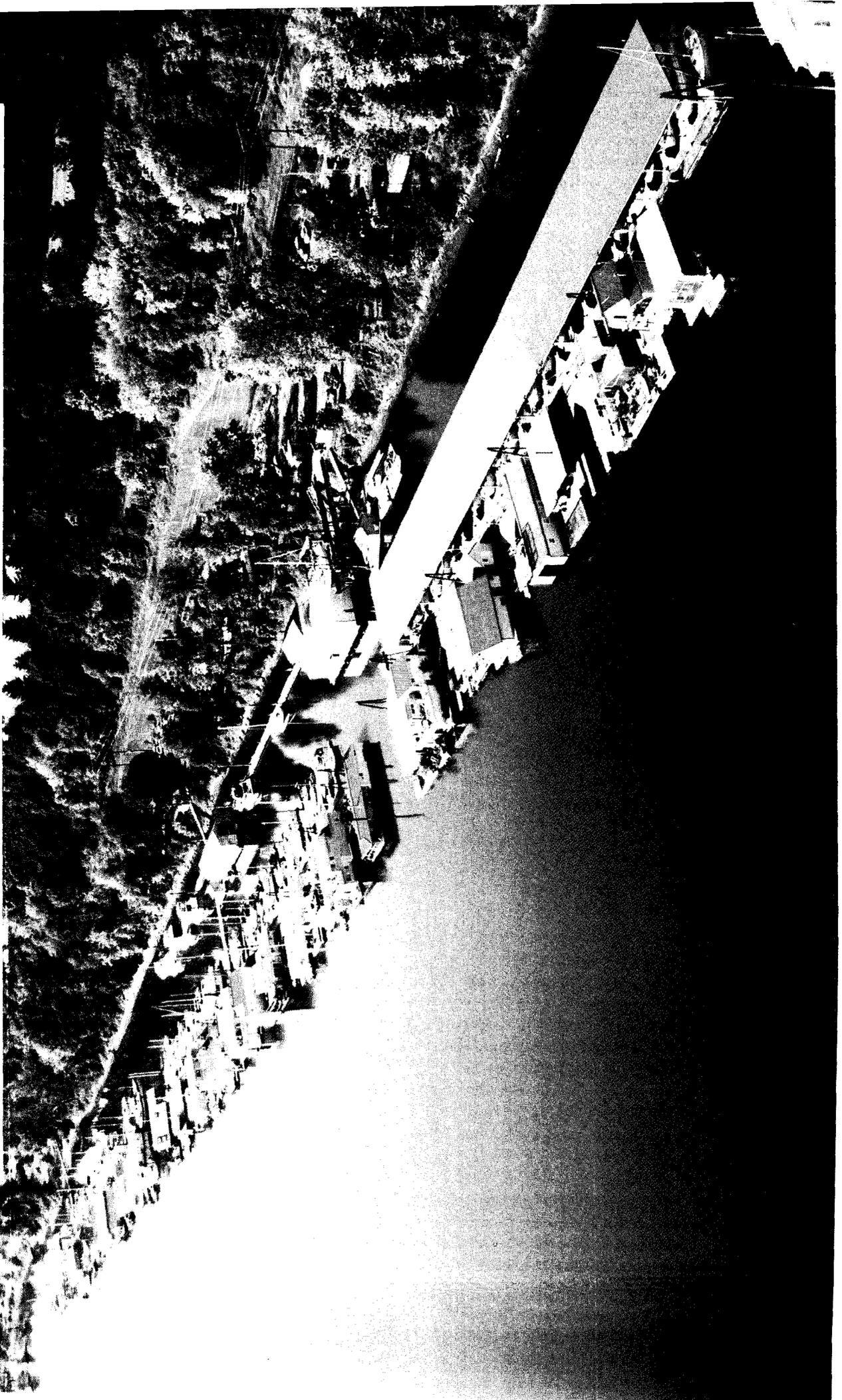
Stan and Jen Tonneson
Rocky Pointe Marina

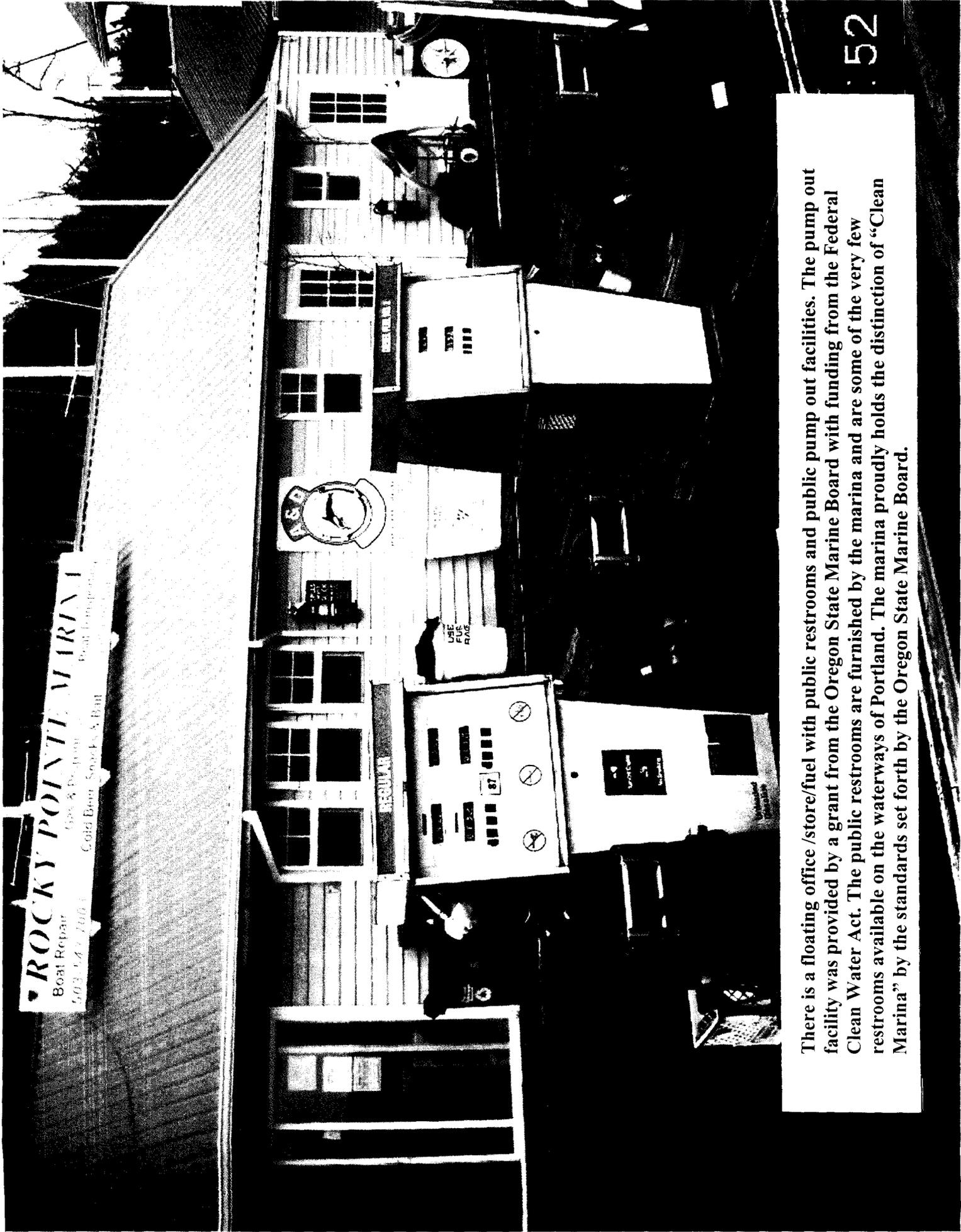


More than just a great marina!
Boat Yard • Professional Boat Repair • Fuel Dock



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

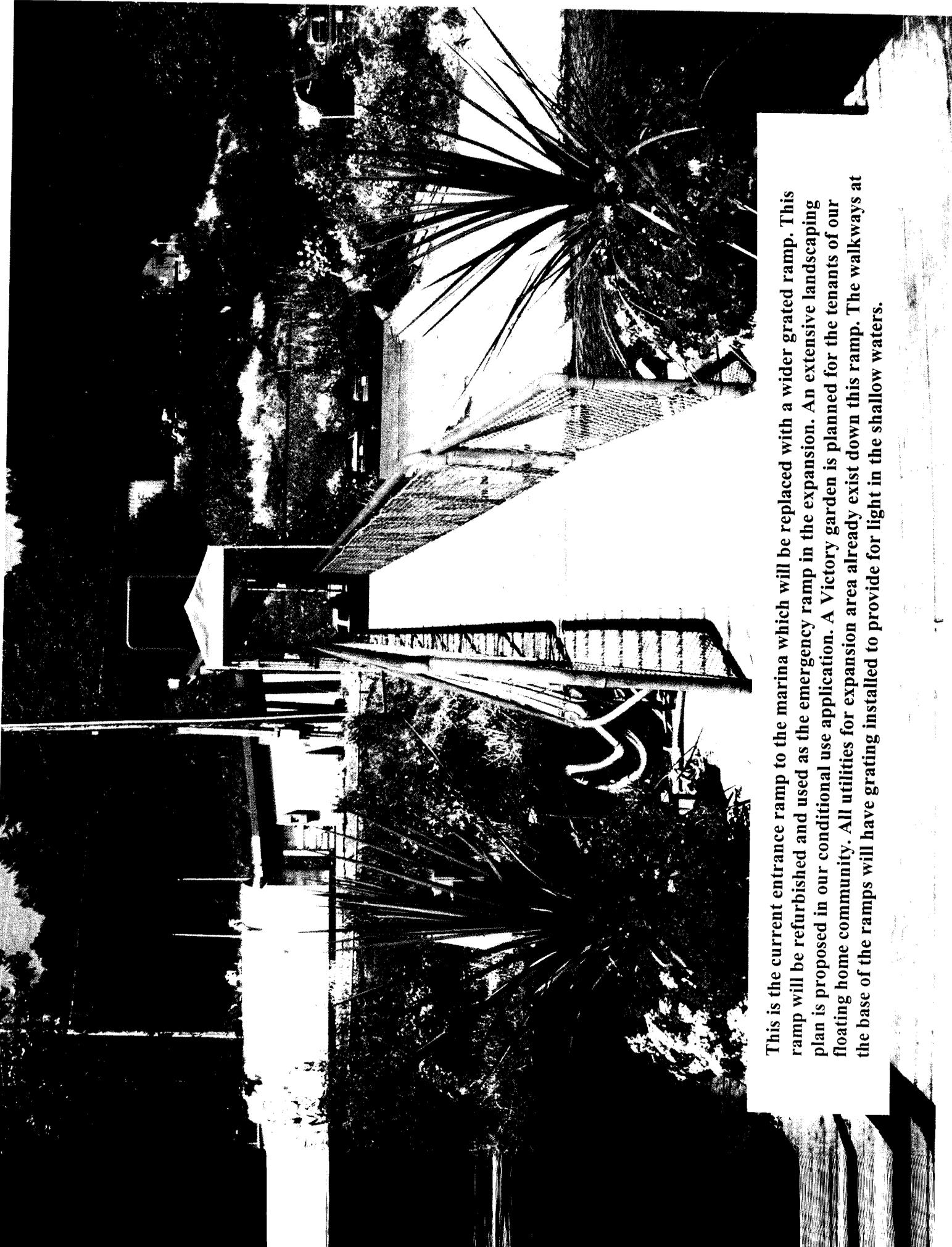




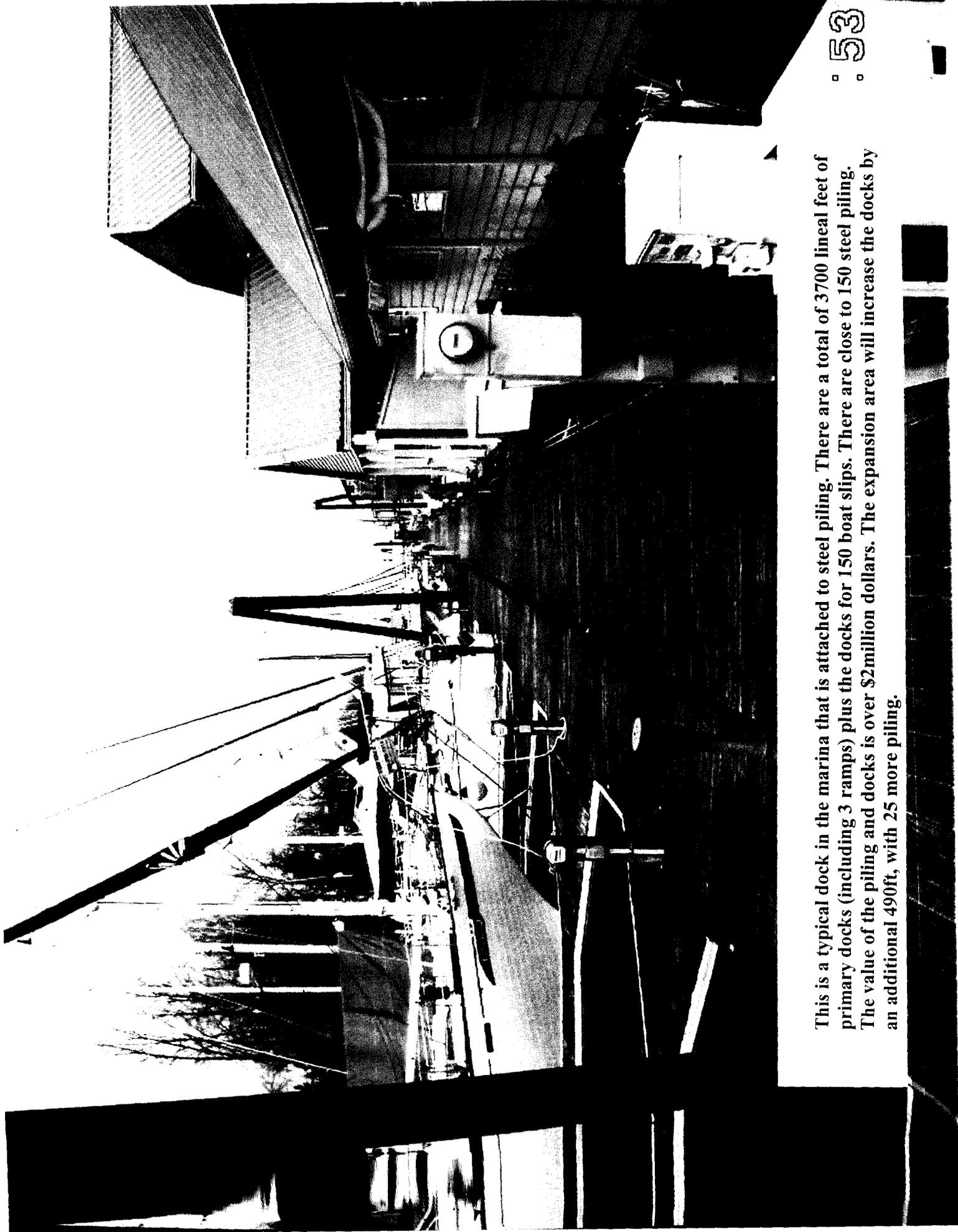
There is a floating office /store/fuel with public restrooms and public pump out facilities. The pump out facility was provided by a grant from the Oregon State Marine Board with funding from the Federal Clean Water Act. The public restrooms are furnished by the marina and are some of the very few restrooms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



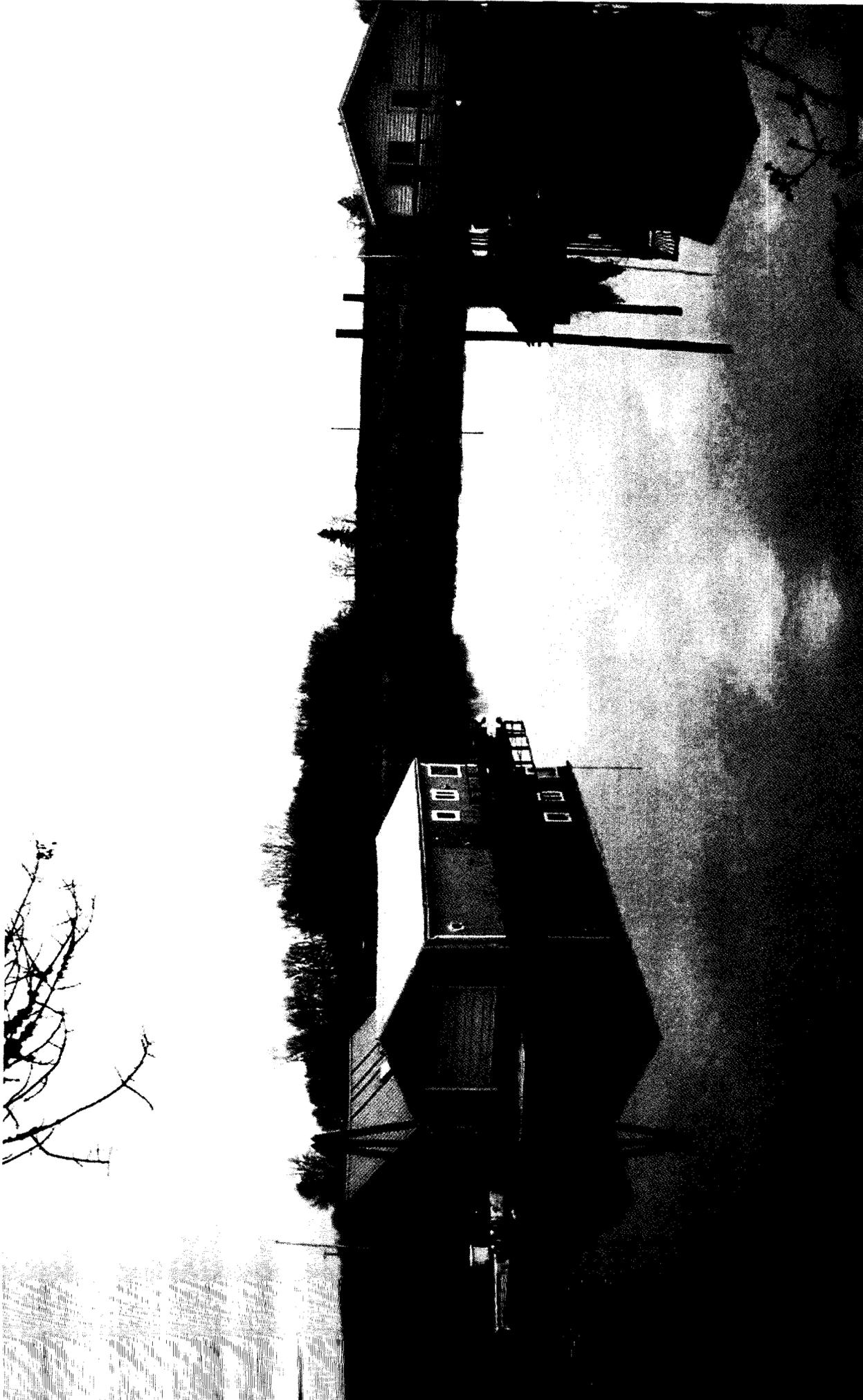
This is the railway system for our Travelift crane that drives out over the water to lift boats out the water. The wash down pit just inland of the rails has a cleaning system that filters and reclaims all the water. The value of the lifting facility exceeds 1/2 million dollars. This picture was taken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



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



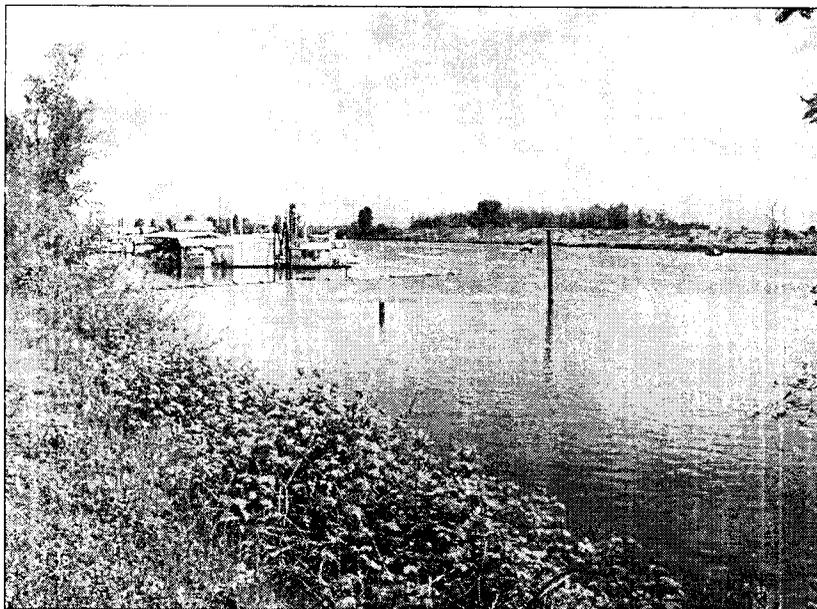
This is a typical dock in the marina that is attached to steel piling. There are a total of 3700 lineal feet of primary docks (including 3 ramps) plus the docks for 150 boat slips. There are close to 150 steel piling. The value of the piling and docks is over \$2million dollars. The expansion area will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



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

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

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



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

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

For submittal to:
National Marine Fisheries
Service

And:
U.S. Fish and Wildlife Service

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

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

April 7, 2008

Hereinafter referred to as the "Leasehold".

SECTION 1 - LEASE TERM AND RENEWAL

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

SECTION 2 - AUTHORIZED USES

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

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

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

COE APPLICATION

Total New Impact:

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

ADDITIONAL MEASURES INTEGRATED BASED ON REVIEW COMMENTS-

Specific efforts include:

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

Project Drawings:

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

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

Location map (must be legible with street names)

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

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

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

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

Estimated Start Date September 2011

Estimate Completion Date September 2015

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

APPENDIX B

ROCKY POINTE MARINA LANDSCAPE PLAN

CONCEPT

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

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

DEVELOPED AREA

PLANT LIST

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

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

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

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

#4 Public Comment

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
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MEETING DATE: 1-28-10

SUBJECT: Rocky Pointe Marina T4-08-001

AGENDA NUMBER OR TOPIC: R-6

FOR: _____ AGAINST: X THE ABOVE AGENDA ITEM

NAME: Ryan Seeliger

ADDRESS: 23570 NW St. Helens Rd

CITY/STATE/ZIP: Portland, OR

PHONE: DAYS: 503-578-7520 EVES: 503-543-8608

EMAIL: seeliger@mac.com FAX: 503-578-7520

WRITTEN TESTIMONY:

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

IF YOU WISH TO ADDRESS THE BOARD:

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#5 DONATED
time to me
See license

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

Please complete this form and return to the Board Clerk
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MEETING DATE: THURS, JAN. 29, 2010

SUBJECT: ROCKY POINT MARINA EXPANSION

AGENDA NUMBER OR TOPIC: R-6

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

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

CITY/STATE/ZIP: PORTLAND, OR, 97231

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

EMAIL: CWB CONSTRUCTION @ YALCO.COM FAX: _____

WRITTEN TESTIMONY: VIDEO

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VALENCIA Joanna F

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

Carl,

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

George Plummer

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

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

Sir,

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

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

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

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

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

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

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

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

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

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

Sincerely,
Carl Engelgau

DID NOT WISH
TO SPEAK

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

Please complete this form and return to the Board Clerk
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MEETING DATE: Jan 28-10

SUBJECT: Rocky Point Marina

AGENDA NUMBER OR TOPIC: 2-6

FOR: _____ AGAINST: THE ABOVE AGENDA ITEM

NAME: Melvin K. FRICE

ADDRESS: P.O. Box 326

CITY/STATE/ZIP: Scappoose, OR 97056

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

EMAIL: m7mikef@mac.com FAX: —

WRITTEN TESTIMONY: Video

IF YOU WISH TO ADDRESS THE BOARD:

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#6

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
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MEETING DATE: JANUARY 28, 2010

SUBJECT: T4-08-001

AGENDA NUMBER OR TOPIC: R-6 & R7

FOR: AGAINST: THE ABOVE AGENDA ITEM

NAME: JAMC GAULLEY

ADDRESS: 1555 N. JANTZEN AV

CITY/STATE/ZIP: PORTLAND OR 97217

PHONE: DAYS: (503) 755-9526 EVES: SAME

EMAIL: MARINEENV@COMCAST.NET FAX: _____

WRITTEN TESTIMONY: ATTACHED

IF YOU WISH TO ADDRESS THE BOARD:

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

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

January 28, 2010

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

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

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

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

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

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

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

#7

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
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MEETING DATE: JAN 28, 2010

SUBJECT: _____

AGENDA NUMBER OR TOPIC: Rocky Point T4-03-001

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: WEST MULTNOMAH SWCD Brian Lightcap

ADDRESS: 2701 NW Vaughn

CITY/STATE/ZIP: Portland, OR

PHONE: _____ DAYS: _____ EVES: _____

EMAIL: _____ FAX: _____

WRITTEN TESTIMONY: Additional comts to those
provided 21 Jan 10

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WEST MULTNOMAH



SOIL & WATER CONSERVATION DISTRICT

January 28, 2010

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

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

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

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

P: 503.238.4775 ♦ F: 503.326.3942

WWW.WMSWCD.ORG

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

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

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

Sincerely,



Brian Lightcap
Chair WMSWCD

#8

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk

This form is a public record

MEETING DATE: 1/25/10

SUBJECT: Rocky Pointe Local Exemptions

AGENDA NUMBER OR TOPIC:

FOR: _____ AGAINST: THE ABOVE AGENDA ITEM

NAME: Chris Foster

ADDRESS: 1540 NW McNamara Rd

CITY/STATE/ZIP: Portland OR

PHONE: DAYS: 503.621.3564

EVENINGS: _____

EMAIL: foster@eurpa.com

FAX: _____

WRITTEN TESTIMONY:

ljos

IF YOU WISH TO ADDRESS THE BOARD:

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

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

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

January 28, 2010

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

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

Dear Commissioners,

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

Goal 11 Exception

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

660-004-0025

Exception Requirements for Land Physically Developed to Other Uses

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

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

660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

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

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

Goal 14 Exception

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

660-014-0030

Rural Lands Irrevocably Committed to Urban Levels of Development

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

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

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

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

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

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

(d) Parcel sizes and ownership patterns.

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

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

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

January 28th, 2010

Foster

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