



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

---

## NOTICE OF DECISION

---

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

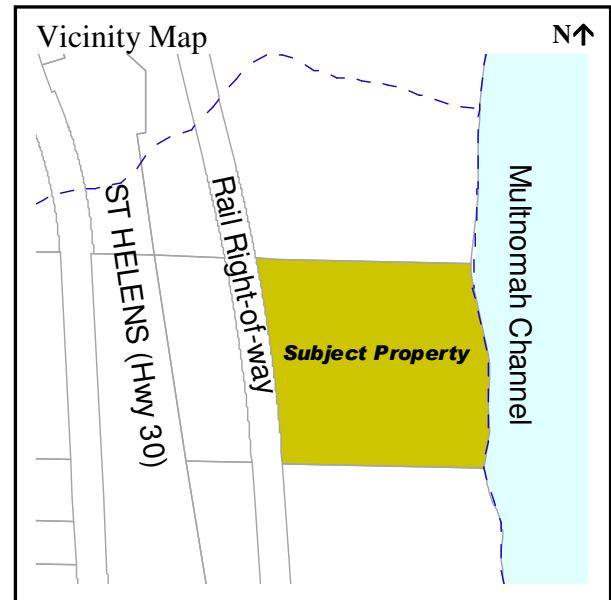
**Case File:** T2-01-091

**Permit:** Willamette River Greenway Permit for a single family dwelling,

**Location:** 26312 NW St. Helens Rd.  
TL 0200, Sec 25D, T3N, R2W, W.M.  
Tax Account #R98225-0120

**Applicant:** Philip Thompson  
33470 Chinook Plaza  
Scappoose, OR 97056

**Owner:** Larry Weilert  
26312 NW St. Helens Rd.  
Portland, OR 97231



---

**Summary:** In addition to the proposed manufactured dwelling, the property contains an un-permitted houseboat moorage and associated facilities. The dwelling application is denied because the property is not in compliance with the Multnomah County Code due to the un-permitted moorage.

**Decision:** Denied.

Unless appealed, this decision is effective June 26, 2002, at 4:30 PM.

---

Issued by:

Chuck Beasley, Planner

For: Kathy Busse - Planning Director

Date: Wednesday, June 12, 2002

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. **For further information on this case, contact Chuck Beasley, Staff Planner at 503-988-3043.**

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is June 26, 2002, at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): 37.0560 Code compliance and applications, the MUA-20 provisions for Review Uses in 34.2825 and Dimensional Requirements in 34.2855, the Willamette River Greenway requirements in 34.5800 through 34.5860, and Framework Plan Policies 10 for the Sauvie Island/Multnomah Channel Rural Area Plan, 13 Air, Water and Noise Quality, 14 Development Limitations, and 38 Facilities.

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

### **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

### **Conditions of Approval**

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

No conditions of approval are imposed on this denial.

#### **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**

(Formatting Note: Staff as necessary to address Multnomah County ordinance requirements provides Findings referenced herein. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Written responses to code criteria prepared by or on behalf of the applicant are identified as “**Applicant:**”. Planning staff comments and analysis may follow applicant responses. Where this occurs, the notation “**Staff:**” precedes the comments.)

### **1. Proposal:**

**Applicant:** Amendment to Application for Willamette River Greenway Permit for Larry Weilert 26312 NW St. Helens Rd., Scappoose, Oregon 97056. This document replaces the current application.

Staff notified us that the application was incomplete, and gave us 180 days for corrections. The 180 day period expires March 29, 2001. One of the things mentioned in the staff notification was that under revised Multnomah County Codes, it is no longer possible to approve anything on a parcel of property while any zoning violation exists. The alleged zoning violation which exists on the Weilert property is the presence of a small moorage for houseboats. This amendment will attempt to correct that violation.

The applicant has always contended that the houseboat moorage is one of several moorages which were intended to be allowed under POLICY 10 of the Comprehensive Plan. To that end, they prepared and duly filed an application and paid a fee which was received by the County on July 14, 1998. The application was subsequently rejected by the County as being incomplete. In the rejection letter, staff noted that there was no evidence on file for a building permit for Mr. Weilert's mobile home. Consequently, absent the required evidence, the mobile home was declared illegal. Mr. Weilert believed that since the mobile home was on the property when he bought it and that the home had been there since Ray Hawk had a landfill there in the 60's and therefore should be grandfathered. This was not acceptable to the County.

Mr. Weilert's records were lost in the flood of 1996, and it proved impossible to re-create them. Additionally, the staff's inventory performed in response to Policy 10 showed only three houseboats on the property when indeed there had been four. Eventually the Policy 10 application was abandoned, and Mr. Weilert and his agent Mr. Dinsmore decided to pursue a different course of action, which eventually resulted in the subject application for a WRG permit for Mr. Weilert's house. These applications are expensive, and the applicants determined to file at a later date for approval of a moorage on the property for the four existing houseboats.

Due to the requirement that no zoning violations can exist on the property, this application is now being amended to include the information to include a moorage for three houseboats under the provisions of Policy 10. Should this application be approved, the existing fourth houseboat will be relocated to another moorage.

**Staff:** The applicant requested after-the-fact approval of the relocated mobile home in this application which was submitted on 10/1/01. As is indicated in the letter from staff dated 10/30/01 (Exhibit E), the applicant has had the option of submitting an application for a Willamette River Greenway (WRG) permit

for the moorage pursuant to the provisions of Policy 10 of the Sauvie Island Multnomah Channel Rural Area Plan, but has not done so. The Pre-application conference notes from the November, 1998 meeting also advised the applicant that the WRG process was available to him (Exhibit H). In his letter dated April 11, 2002 (received April 15, 2002), the applicant requested that the application be processed in its current form. Therefore, pursuant to the provisions for complete applications and the 150 day rule in MCC 37.0600(D), April 15, 2002 is the day the application is deemed complete.

The findings in this decision are limited to the single family dwelling use because that is the request that was received, and amendment of the application to include another use, the houseboat moorage, would constitute a new application. In addition, no application for a WRG permit for the moorage has been received. The single family dwelling request is not approved because the property is not in compliance with the Multnomah County Code as required in MCC 37.0540 due to the unpermitted moorage. The applicant claims that the moorage should be permitted under Policy 10 of the Sauvie Island/Multnomah Channel Rural Area Plan, and, coupled with the testimony in the amended application related to the moorage use, the property is therefore in compliance with the Code. Staff has indicated during the Moorage Inventory process in June of 1998 (Exhibit N), and in the Pre-application process in November of 1998 (Exhibit O), that the moorage does not qualify as a permitted use under Policy 10. Findings in response to the Policy 10 compliance testimony submitted by the applicant are included in this decision in order to allow the applicant to appeal the Policy 10 question as part of this application. These findings begin on page 13 of this decision.

Even if the applicant were to demonstrate that the moorage qualifies under Policy 10, a WRG application for the moorage would need to be approved in order for the property to gain compliance with the Multnomah County Code. Staff finds that it is not reasonable to condition approval of the dwelling application on approval of a discretionary land use decision (WRG permit) for which there is no application pending, and no assurance of approval.

## **2. Exhibits:**

- A. Applicants' resubmittal dated March 29, 2002, including letter summarizing "Policy 10" compliance evidence, narrative addressing WRG approval criteria and Framework Plan policies, and documents in sections with the following titles: Deed, Division of State Lands (DSL), U.S. Army Corps of Engineers, Rail Crossing Permits, Department of Environmental Quality (DEQ), Septic Tank Feasibility, Scappoose Rural Fire, Flood Plain Certificate, and Letters Requesting Approvals.
- B. Applicants' acknowledgement of incomplete application and intent to complete application.
- C. Letter from applicant dated April 1, 2002 and attached Fire District letter.
- D. Letter from applicant dated April 11, 2002 requesting application to be processed as submitted.
- E. Letter from staff indicating additional information needed and effect of MCC 37.0560 Code Compliance, dated 10/30/01.
- F. Letter-reminder of 180 day application complete deadline.
- G. Letter dated May 1, 2002, acknowledgement of request to process application with material submitted.
- H. Pre-Application Conference notes, file no. PA 19-98, November 5, 1998.
- I. Aerial Photographs of the site dated 1977, 1986, and 1998.
- J. Warranty Deed dated March 19, 1971.
- K. Letter from Scappoose Rural Fire District dated May 6, 2002.
- L. Letter from Daniel and Qiao Henriod dated May 14, 2002.
- M. Letter from ODOT dated May 20, 2002.
- N. Multnomah Channel Houseboat Inventory 1997/98, section containing procedure and Weilert status.

- O. Pre-Application Conference Notes for PA 19-98, dated November 5, 1998.
- P. Letter from Phil Thompson dated June 7, 2002, and attached letter from Larry Derr, dated June 6, 2002.

### **3. Site and Vicinity Characteristics:**

#### **Applicant:**

##### **EXISTING CONDITIONS**

The property has frontage on St. Helens Rd., which is a four lane expressway also known as US Hwy. 30. A communication from the Oregon Department of Transportation was received recently, indicating that the access to US 30 is permitted.

The contour of the property drops fairly steeply to a railroad right-of-way to the east. The access road crossed the right-of-way at a crossing which bears an official private crossing sign. No record of a crossing permit has been found. However, we are in communication with the ODOT Rail Division to reestablish the crossing permit.

East of the rail crossing the property levels out, sloping gently to the east until it reaches the bank of the Multnomah Channel. Much of this land is below the 100 year flood elevation. However, there is a small knoll with an elevation of 2-3 feet above the surrounding which is above the 100 year flood elevation. This knoll is the proposed location for the siting of the new mobile home.

At the Multnomah channel frontage are developed parking areas, docks and a moorage for four houseboats. Such a moorage is a water-related use under the WRG requirements. One houseboat will be removed to comply with the County's inventory. This application requests approval of the three remaining houseboats under County Policy 10.

**Staff:** Reiterates that the WRG permit application required to approve the moorage under Policy 10 has not been made. The findings in this decision are limited to the action for which application was made, approval of a single family dwelling on the property. Staff therefore only responds to the applicant's statements and evidence of compliance with the WRG approval criteria as they relate to the single family dwelling (mobile home) use.

Staff does not agree with the statement by the applicant that a houseboat moorage is a water-related use pursuant to the WRG. However, this is not determinant of any issues with this application.

The subject property and dwelling site are accessed via US Highway 30 and a crossing over the Portland and Western Railroad. The ODOT letter in Exhibit M requests that the County impose a condition of approval that requires permits to be obtained within 6 months, and that insurance requirements are met. Staff does not have clear authority to impose the condition as worded by ODOT for the dwelling. (In order to gain land use approval for the moorage, any required permits must be in place under Policy 10.) Staff does have authority to impose a requirement for access permits from County rights-of-way, but staff is unable to find where this authority is extended to the state. For this reason, the condition requested by ODOT is not imposed for the dwelling.

### **4. Multnomah County Code Criteria:**

#### **MCC 37.0560 Code compliance and applications:**

**The County shall not approve any application for a permit or other approval, including building permit applications, for any property that is not in full compliance with all applicable provisions of**

**the Multnomah County Land Use Code and /or any permit approvals previously issued by the County. A permit or other approval, including building permit applications, may be authorized if it results in the parcel coming into full compliance with all applicable provisions of the Multnomah County Code.**

**Applicant:** (See applicant's statement under 1. above.)

**Staff:** The property contains two uses, a single family dwelling and an unpermitted moorage, neither of which are in compliance with the Multnomah County Code based on the findings below. Staff finds that compliance with the code for the single family dwelling can be achieved without reliance on another land use decision. However, the unpermitted moorage on the property cannot be brought into compliance without approval of a discretionary Conditional Use permit. Therefore staff finds it is not reasonable to condition approval of the single family dwelling upon future approval of a Conditional Use permit for a moorage, and the application must therefore be denied.

#### Single Family Dwelling Use

There is currently a mobile home on the property in the location shown on the site plan that follows page 4 of the applicant's narrative in Exhibit A. The home was apparently relocated to its current site from one of the locations which are also shown on the site plan. These other homes are also shown on the aerial photo from 1998 contained in Exhibit I. The current mobile home was moved to the new site sometime after the 1998 aerial was taken, however there is no building permit record for the relocated mobile home.

The applicant's response under Framework Plan Policy 37 Utilities indicates that the current mobile home is connected to a private sewer system that is or was owned by Bill K. Casselman. The applicant has not produced, and staff is unable to find a plumbing permit for the connection. The Multnomah County Code has adopted by reference the Oregon State Plumbing Specialty Code, which to the knowledge of staff requires a permit and inspection for waste piping/sewer connections. In addition, the Framework Plan is incorporated into the Multnomah County Code under Title 11 and, as is indicated in the findings under Policy 37, connection of a use to a private sewer system is not provided for. Finally, connection of the dwelling to the sewer system is not allowed pursuant to the provisions of OAR 660-011-060(2)(c) Sewer Service to Rural Lands.

Staff has been unable to find and the applicant has not produced a building permit for the original home on this property. The October 1977 aerial photograph and the County land use inventory at that time do not show a dwelling on the property (Exhibit I). Permits for placement of new dwellings were required beginning in the late 1950's, therefore there should be a permit record on file. The June 1986 aerial shows three structures, any one or more of which could be dwellings, and the 1986 inventory indicates one dwelling and two other structures (Exhibit I). There are no permits on file for any of these structures.

#### Moorage Use

As is indicated by the applicant on page 4 of Exhibit A under "History," there is no record of an approval for a houseboat moorage on the subject property. The 1977 aerial photo in Exhibit I indicates that there were no houseboats connected to the property at that time. The Multnomah County Code provided for houseboat moorages as a conditional use in Ordinance 148 (1977), and defined houseboat moorage as providing for two houseboats. The 1986 photo shows what appears to be at least one houseboat connected to the property. The third houseboat, the unit belonging to Mr. Dinsmore, was apparently moved to the property between November of 1996 and July of 1997 based on the November 11, 1996 letter from DSL to Mr. Dinsmore, and the Assessor's record in Exhibit N.

## MUA-20 Zone

### 34.2825 Review Uses

**(A) Residential use, consisting of a single-family dwelling constructed off-site, including a mobile or modular home, subject to the following conditions:**

- (1) Construction shall comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**

**Applicant:** The structure is a mobile home approved and so labeled by the state. It was professionally installed by a registered installer in accord with State structural guidelines.

- (2) The building shall be attached to a foundation for which a building permit has been obtained;**

**Applicant:** The structure is currently not attached to a foundation, but supported by footings surrounded by skirting. The city will not issue a permit for a permanent foundation until the County zoning issues are cleared up. Should this application be approved, a building permit for a foundation, will be secured, the foundation installed and the building will be attached to it.

- (3) The dwelling shall have a minimum floor area of 600 square feet;**

**Applicant:** This dwelling exceeds 600 sq ft in area.

**Staff:** The applicant has not submitted a house and foundation plan as of this time. However, the three items of this section can all be met through the Building Permit approval process. A condition of approval should be imposed to ensure that these requirements will be met.

### 34.2855 Dimensional Requirements

**(A) Except as provided in [MCC 34.2860](#), [34.2870](#), [34.2875](#) and [34.4300 through 34.4370](#), the minimum lot size shall be 20 acres.**

**(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.**

**(C) Minimum Yard Dimensions - Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**Staff:** The applicant has submitted the deed for the property, included after page 11 of Exhibit A. Based on this and on the Tax Assessor's maps from 1977, staff finds that the property was in its current size and configuration since before Land Division requirements and prior to the increase in the minimum parcel size to 20 acres, and therefore meets the Lot of Record requirements of MCC 34.2870(A). The site plan located after page 4 of Exhibit A shows that the dwelling location meets the yard dimensions. Staff therefore concludes that the dimensional requirements are met.

## **Willamette River Greenway Approval Criteria**

### **34.5855 Greenway Design Plan**

**The elements of the Greenway Design Plan are:**

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

**Applicant:** The Mobile home is located approximately 500 ft. from the top of the river bank. Adjacent to the river is a good stand of cottonwood trees, which will be retained. Most of the remainder of the land is in rough grass, which will remain after this development. The home sits on a small knoll on the property which is above the 100 year flood plain, as it is required to be. A surveyor's elevation certificate to that effect is included with the application. Some low property further west is below the flood plain level and thus not appropriate for housing. The westerly edge of the property rises steeply up toward the railroad and then again to US Highway 30. This land consists of either railroad or highway fill and is thus not appropriate for the siting of the mobile home. In addition, such a location would be severely impacted by noise and thus not fit for residential use. The location proposed thus provides the maximum practical landscaped area between the Multnomah Channel of the river and the site. The open space is retained in natural landscape as required.

**Staff:** Staff agrees that the proposed (and existing) dwelling site meets this criterion. The applicant has also provided an elevation certificate which demonstrates that the building site is outside of the flood hazard area (see Exhibit A).

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

**Applicant:** No public trail has been developed on the adjacent properties to the north and south, each of which contains a moorage. This is a rural area where a trail is not appropriate unless an organized effort were made to develop continuity across the several private properties in the area. Because of the existence of the moorages, liability issues will likely preclude the construction of such a trail in the near future. No trail is proposed on the subject site.

**Staff:** There are no means to provide public access along the river on this parcel as explained by the applicant. Based on the ODOT letter in Exhibit M, there also is no opportunity at this time to provide public access to the river across the rail right-of-way.

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

**Applicant:** The development of this homesite will be 500 feet from the riverbank, well in excess of the required 50 ft. setback.

**Staff:** Agrees that the development site is away from the river to the greatest possible degree due to the distance and low slope/visibility of the home site from the river.

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

**Applicant:** This land is agricultural by zoning but because of the risk of flooding over most of the property, it is of low value for agricultural use. The Soil Survey of Multnomah County identifies the



soil as Rafton silt loam and Sauvie silt loam, both of which are class VIw soils.

**Staff:** Agrees that the on site soils are rated poor for farming due to wetness. There are no agricultural uses on the property.

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

**Applicant:** No timber will be harvested as a result of this project. All existing trees adjacent to the moorage, which provide vegetative cover and afternoon shade to the water surface, will be retained.

**Staff:** The application does not propose timber harvest, therefore this criterion does not affect the application.

**(F) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflicts with farm uses.**

**Applicant:** No public recreational needs are identified for this property. Private recreation is well served by the landscaping and by a private driving range which has been developed on the property.

**Staff:** Agrees that no recreational needs are associated with this property.

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

**Applicant:** There is no significant habitat on the property, with the exception of the Multnomah Channel, which will not be changed as a result of this application. One existing houseboat will be removed and relocated to another moorage, in order to comply with Policy 10. The existing ramps and walkways will remain, although there will no longer be a need for a walkway to the absent houseboat, and so this will be removed, freeing up some water surface. The streambank habitat will be retained in its current status and density of native materials.

**Staff:** The site plan indicates that the proposed dwelling site is 570' from the river, and is on the east edge of the property adjacent to the railroad. The dwelling will therefore have no effect on fish habitat, and will minimize any impact on wildlife habitat. This criterion is therefore met with the dwelling location as proposed. The information the applicant provides about moorage impacts is not relevant to the application.

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

**Applicant:** This property is in the foreground of the view of the Multnomah Channel from the St. Helens Road Highway. The removal of the previously existing mobile homes, which has already occurred, and their replacement with the new home closer to the highway will actually improve that vista. Moorages are a common sight in that portion of the Multnomah Channel.

**Staff:** The location is lower than St. Helens highway and screened by trees between the railroad right-of-way and the highway. Staff agrees that the dwelling location will improve the visual appearance of the property thereby meeting this criterion.

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

**Applicant:** The Multnomah County Sheriff’s Office stated (5-20-98) that the level of police service available to serve the property is adequate.

The Scappoose Rural Fire Protection District provides fire and EMS services to the area. The Scappoose Fire Department has made visits both by water and by land for identification.

The access road is posted as a private road (no trespassing) and shall continue to be so.

**Staff:** Rail crossing is a potential public safety issue. The owner has not been able to control access to the property in the past, as evidenced by RV’s having been occupied on the site in the past. The unpermitted moorage further limits the owner’s ability to ensure safety at the unprotected RR crossing because there is no apparent control over the floating home owners or their visitors. In addition, there appears to be at least one access right (easement) for the owner of the adjacent property to the south (Casselman) to access his property over the Weilert rail crossing and US 30 access (see Exhibit M ODOT letter). Prior to Building Permit approval, the applicant would need to demonstrate that any safety protection measures needed at the RR crossing have been approved by ODOT.

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

**Applicant:** The following inventory of natural vegetation along the river and stream bank was conducted by Philip Thompson, architect:

**Trees**

Black Cottonwood	<i>Populus tricarpa</i>
Red Alder	<i>Alnus rubra</i>
Oregon Ash	<i>Fraxinus latifolia</i>
Douglas Fir	<i>Pseudotsuga menzeseii</i>
Western red cedar	<i>Thuja plicata</i>

**Shrubs**

Willow	<i>Salk sp.</i>
Wild blackberry	<i>Rubus ursinus</i>
Red osier dogwood	<i>Cornus stolonifera</i> var. <i>occidentalis</i>
Blackcap	<i>Rubus leucodermis</i>
Snowberry	<i>Symphoricarpos albus</i>

**Ground Cover**

Sword fern	<i>Polystichum munitum</i>
Tufted hairgrass	<i>Deschampsia sp.</i>
Western Fescue	<i>Festuca occidentalis</i>
Buttercup	<i>Ranunculus sp.</i>
Rushes	<i>Juncus sp</i>

The existing cover on the River bank will be maintained in its current status and density. This is sufficient to protect the scenic quality of the riverbank and to screen the new mobile home site from view from the riverbank.

**Staff:** Agrees. The subject property is listed in the County's inventory as subject to the continuous riparian corridor requirement. The current vegetated areas maintain continuous corridors as shown on the inventory.

**(K) Extraction of known aggregate deposits may be permitted, pursuant to the provisions of MCC 34.6300 through 34.6535, when economically feasible and when conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.**

**Applicant:** No aggregate extraction is proposed.

**Staff:** Not applicable.

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

**Applicant:** The area experienced flooding in 1966, but is not subject to annual flooding. There are no wetlands identified on the property. The pasture land, which is in the area of the 100 year flood plain will be kept mowed through the summer. This will control any Himalayan blackberry *Rubus discolor* or other noxious weeds which may invade the natural area of the flood plain grassland.

The location of the proposed mobile home will be in an area where the elevation is above the 100 year flood plain. The finish floor level of the mobile home will be a minimum of 1 1/2' feet above the 100 year flood elevation.

The floating homes are tied to the river surface, raising and lowering with the natural rhythm of the river. The parking lots are affected by the 100 year flood plain, but this is an acceptable situation as a parking lot for a moorage is a river-related use.

**Staff:** Agrees that the proposed dwelling location does not impact flood areas or wetlands. The Elevation Certificate (Exhibit A) indicates that the lowest grade adjacent to the dwelling is 29.7 ft, which is 3.7 feet above the Base Flood Elevation. The information regarding floating homes is not applicable to this application.

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

**Applicant:** There is no significant wetland area on site.

**Staff:** Agrees.

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

**Applicant:** There are no significant ecological, scientific or archeological areas on this site.

**Staff:** Agrees.

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

**Applicant:** The erosive impact of any flood waters is decreased by the docks of the marina. This also protects the river bank from erosion due to the wakes of commercial and pleasure water craft.

**Staff:** This response is not relevant to the placement of the manufactured dwelling. Staff observed that very little soil disturbance was necessary to place the manufactured dwelling. Any additional disturbance necessary to install a foundation could be adequately controlled by sediment fencing. This criterion can be met by a condition of approval which requires the applicant to obtain a Grading and Erosion Control Permit if the scope of the disturbance necessary to complete installation of the manufactured dwelling requires it. In the event a permit is not required, this criterion can be met when the applicant employs the Best Management Practices in the Grading and Erosion Control Handbook.

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

**Applicant:** Resources will be preserved in their existing state.

**Staff:** The single family dwelling use has minimal potential to impact water or land resources, and no potential impact on air quality. Water resources will be preserved by adequate waste disposal and stormwater control as required under Policy 37 Utilities. The dwelling utilizes minimal land area. This criterion is met by the proposed development plan, and through the Building Permit approval process for waste disposal.

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

**Applicant:** The mobile home building will be setback approximately 500 feet from the top of the riverbank, approximately **350 ft.** greater than the required setback. The moorage is a water-dependent use specifically exempted by this policy.

**Staff:** Staff agrees that the proposed dwelling location meets this criterion. The moorage response is not relevant to the application.

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

**Applicant:** Policy 10 provides that the moorage, as shown to have existed prior to July 1, 1997, is specifically exempted from design review under this provision.

**Staff:** The applicant's response is not relevant to this application. Dwellings are exempt from Design Review pursuant to MCC 34.7015 Exceptions.

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

**Applicant:** The applicable policies of the Comprehensive Plan are discussed below:

**Staff:** See the findings associated with the applicable policies below. The property is not in compliance with Policy 10, however compliance with this policy would not be required except for the houseboat moorage. The dwelling application is also not in compliance with policy 37, Utilities because it must be connected to an on-site waste disposal system. The applicant has demonstrated that this policy can be met by submittal of a determination that the property is suitable for such a system (Exhibit A).

## **5. Comprehensive Plan Policies:**

**Applicant:** The building is a residential use in an area zoned MUA. The use is allowed in accord with the Comprehensive Plan and the zoning with that area. The moorage use, if shown to be in accord with Policy 10, is an accepted use on the property.

**Staff:** Agrees that single family dwellings are allowed in the MUA-20 zone district. For areas designated WRG, the policies of the Framework Plan also apply.

Policy 10 is not directly applicable to the decision about whether a single family dwelling is allowed on the subject property. As indicated in the findings under MCC 37.0560 Code Compliance above, it bears on this application only because the property contains another use, the unpermitted moorage. In order for the moorage use to be lawful, and for code compliance to be in effect, compliance with the provisions of the Policy 10, or original (Conditional Use) approval of the moorage use is necessary. The applicant has not met either of these requirements for the moorage.

Sauvie Island Rural Area Plan Policy 10 was adopted as part of the Multnomah County Framework Plan October 30, 1997. The policy sets out a procedure and requires certain proofs under subsections 3. and 4., that existing moorages needed to meet in order to qualify as existing uses. If an existing moorage met those requirements, and if a WRG permit for the moorage was approved, then it would be a lawful use under Policy 10.

The attached Exhibit N contains the procedure for implementing Policy 10, and the status report for the subject property. The status report as of June 24, 1998, indicates that the moorage did not meet Policy 10 requirements because the sewer service was not approved prior to July 1, 1977. The applicant submitted a Pre-Application request in July of 1998, and staff determined that there were additional areas of non-compliance with Policy 10 as indicated in Exhibit O. The conclusion of staff after the pre-application conference was that the moorage is unable to obtain approval pursuant to Policy 10, and that a Conditional Use application is the only alternative open to attempt to legalize the use. After review of this information almost four years later, staff continues to believe that the moorage did not qualify with Policy 10, and will be unable to do so.

### **Sauvie Island/Multnomah Channel Rural Area Plan**

**POLICY 10: For the purposes of establishing a procedure for which Multnomah County will determine the status of existing moorage/marina use, the Multnomah County Comprehensive Framework Plan Policy 26 should be amended and rewritten to include the following:**

- 1. That moorages and marinas will only be permitted within the boundaries identified by Policy 26.**

2. That the area occupied by Happy Rock Moorage, Sauvie Island Moorage, Parker Moorage, and Mayfair Moorage be included within the area where houseboats are currently permitted under Policy 26.
3. That the moorages within policy 26 and the existing Happy Rock, Sauvie Island, Parker and Mayfair moorages sites are to be treated as permitted (permitting continuation of the use and level of intensity in existence as of the Multnomah County Moorage Report Listing of Floathouses and Watercraft as of July 1, 1997 produced by the Department of Assessment and Taxation and reconciled through supplemental information provided by the moorage owner) if:
  1. Proof that permits, where applicable, from the Division of State Lands, Army Corps of Engineers, Department of Environmental Quality, the State Health Department and the appropriate fire authority were obtained prior to July 1, 1997. Proof that permits from the Public Utility Commission, the Oregon Department of Transportation, County Right of Way, where applicable, have been applied for prior to December 1, 1997. Those permits that were not issued prior to July 1, 1997 shall be approved by either the Public Utility Commission, the Oregon Department of Transportation or the County Right of Way prior to the County issuance of a Willamette River Greenway Permit under this policy. All permits must have been issued for the same density and the same use requested in the Policy #10 process. If there are discrepancies in the Army Corps of Engineers or Division of State Land Permits between what the permit was issued for and the density/use the moorage owner is having reviewed by the County as part of this process, the moorage owner shall provide current documentation from the agency that the proposed use/density is still consistent with the agency's requirements. The proof must then be given to the County Division of Transportation and Land Use Planning for review; and
  2. Multnomah County approves a Willamette River Greenway permit for the moorage.
4. That an inventory of each moorage identified in Section 3 above is to be undertaken within 120 days of the effective date of the adoption of the Sauvie Island Multnomah Channel Rural Area Plan amending Policy 26. This inventory may be performed by the County, or prepared by each moorage and verified by the County. Through this inventory, the County will:
  1. Determine the level of existing development to be considered as a permitted use (number of existing dwelling units as determined using the Multnomah County Moorage Report Listing of Floathouses and Watercraft as of July 1, 1997 and reconciled through supplemental information provided by the moorage owner); and
  2. Receive proof that the non-County permits have been obtained.

Once a conclusion has been reached on the number of units/structures through a reconciliation process between the Transportation and Land Use Planning Division and the moorage owner, the moorage owner may then apply for a Willamette River Greenway Permit. If these three things are done and verified by the County, and the Willamette River Greenway permit is approved by Multnomah County, then the permitted use would be accepted.

5. That if any moorage is subsequently in violation of any non-County permit, of County zoning codes enacted after the effective date of amended Policy 26 and implementing

measures, then that moorage must meet all applicable zoning codes in effect at that time, which would include the provisions of the Special Planning Area once the zoning code revisions have been made and are in effect.

6. That if those moorages that are deemed permitted subsequently seek a modification of alteration of their inventoried use, they must meet all applicable zoning codes in effect at that time. Alteration or modification does not include a reduction in the number of structures/dwellings within a moorage.
7. All moorages applying for a Willamette River Greenway Permit required pursuant to Policy #10, shall be exempted from the Design Review Process and criteria.
8. That this action does not set a precedent for acceptance of any unauthorized land use in the jurisdiction of Multnomah County. That this action by the board is done in the context of the adoption and speedy, practical implementation of the Sauvie Island/Multnomah Channel Rural Area Plan.

**Applicant:** Policy 10 requires that several permits and approvals from other State Agencies be demonstrated to have been extant at or prior to July 1, 1977. The loss of Mr. Weilert's records has made this information impossible to obtain. The following are discussions of our attempts to secure new approvals for the subject permits. In many cases, other agency approvals cannot be granted without receiving notice from the County that no zoning violations exist on the property. Our experience has shown that the first approval must come from the County, conditioned if necessary on the future completion of the applications which we have on file with other state agencies.

The attached letter from Jerry Hedrick of the Division of State Lands dated November 1, 1996 acknowledges a submerged lands lease in favor of Mr. Weilert in existence at that date. The letter was in response to an inquiry by a current tenant, Norman Dinsmore, about moving his home to the moorage after receiving on August 23, 1996 a denial of a lease in his previous location. Mr. Hedrick noted that the Weilert lease extended only 50' from the low water line and would have to be extended to 150'/. However, Mr. Hedrick stated that such a change would be merely a "housekeeping routine". The April 12, 1999 letter from Mr. Hedrick acknowledges receipt of the application for the minor change and by April 28 letter, Mr. Dinsmore transmitted the required fee.

**Staff:** The paragraph above relates to the requirement in Policy 10, 3. 1) that "permits" from the Division of State Lands were obtained prior to July 1, 1997. For purposes of Policy 10, the term "permits" is understood to mean approval or compliance with the requirements of the agency having jurisdiction. Staff notes that the August 23, 1996 letter (Exhibit A) from the Division of State Lands states that Mr. Dinsmore did not have land use approval where he was moored at that time, and that he needed to move to an approved moorage. The letter dated November 7, 1996 states that the lease for the Weilert property would need to be extended to accommodate addition of Mr. Dinsmore's houseboat, and that he would need planning approval. Mr. Dinsmore moved his home to the subject (Weilert) property without land use approval, and without extending the lease. The April 1999 letter shows that the lease was not extended as required by July 1, 1997 under Policy 10.

**Applicant:** On July 23, 1999 the Corps of Engineers granted approval to replace 3-4 pilings in the moorage under nationwide permit provisions allowing such activities in existing facilities. That is evidence that the Corps recognizes the moorage as a permitted facility. The request to move the walkway was deferred until the County provides its own recognition of the moorage through the present process.

**Staff:** With regard to the Corps of Engineers approval in the paragraph above, the response staff gave in the pre-application notes (Exhibit O) continues to be unresolved. The permit/approval status of the piling in place on July 1, 1997 is not verified.

**Applicant:** Mr. Casselman's letter and the DEQ approval dated Aug 25, 1988 refers to a permit issued in response to application No. 99765, dated Feb 1, 1995. This constitutes proof that State Health Department approval was in existence at the time. Although there is no indication that Mr. Casselman would ever withdraw his approval for the hookup of Mr. Weilert and the moorage to the Casselman sewer plant, the possibility exists and so we have contacted the city and received septic tank feasibility as detailed in Mr. Ebeling's letter enclosed. You will note that Mr. Ebeling also encloses the information that the DEQ has approved the connection of the project to the sewage treatment plant.

**Staff:** The October 1, 1997 letter/agreement between Bill K. Casselman, and Messers Knox, Dinsmore, Hawk, and James McGriff, who are apparently floating home owners, suggests that the floating homes were not connected to sewer until after October 1, 1997, which is the date of the permission from the sewer system operator to connect. The conclusion that follows is that as of July 1, 1997, the floating homes were not connected to sewer. The August 23, 1996 letter (Exhibit A) from the Division of State Lands indicates a discharge permit from the Department of Environmental Quality would have been required to direct sewage into the river. Further, as indicated in Exhibit O, staff has been unable to find any permits for the sewer lines from the homes to the Casselman sewer, or for the connection to the sewer, and permits for all of this piping were required. The moorage was not in compliance with DEQ requirements on July 1, 1997 as required under Policy 10, 3. 1).

**Applicant:** No letter from the Scappoose Fire Rural Fire Protection authority is applicable, The district provides County forms when requested, and copies of such forms are attached. Mr. Dinsmore asked for approval of his houseboat on the moorage and received agreement, subject to County approval in 1998. A later form is enclosed, referring to the new location of the mobile home which for Mr. Weilert.

**Staff:** The status of fire approval of the moorage is unclear.

**Applicant:** The above represent the \*best proof available that Permits for the moorage had been obtained prior to July 1, 1977, as required by Policy 10. The other permits identified in Policy 10 may be approved as a part of the Greenway Permit process, and are discussed below.

Access to US 30, which is a State Highway under the jurisdiction of ODOT, was constructed by the State as a part of the realignment of St. Helens Road, and thus is in accord with State standards. The property accessed Highway 30 long before the relocation and at a time that formal access permits were not required, and has continued to do so ever since. Mr. Dinsmore's letters of application to the various agencies by December 1, 1977 are attached.

The old Burlington Northern Railroad is now owned by the State and assigned to the ODOT rail section. Their requirements for a new permit include provision of a \$1 million insurance policy coverage for liability. As a private individual living in a mobile home, Mr. Weilert was only able to qualify for a policy with a liability limit of a half million, and thus our efforts to secure a permit were thwarted. Recently, we have learned that the Portland and Western Railway has now negotiated an umbrella policy with the required limits, and we are taking steps to be included in that policy. Meanwhile, Kathy Schamp of ODOT has found evidence of old crossing permits which pre-date Mr. Weilert's ownership. One permit dated 1961 was issued to Elmer Hawk and William Ramsey, who operated a landfill on the property during the 1960's. A later permit was issued in 1970 to Helen



Richards, who had been the original owner of the property and also the property directly across the street. Mrs. Richards had the property on the market after the Hawk landfill was closed, and was apparently assuring that all necessary permits were in place. She then sold the property to Keith T. and Beverly Boos, who later sold to Mr. Weilert. We were able to find the old permit sign which had been posted at the crossing during nearly all the years of Mr. Weilert's ownership. Recently, the permit had fallen off the posting and been buried in the weeds. We expect that this will be considered as proof that permits had been granted prior to July 1, 1997.

Our previous requests have been for permits for a moorage with the four houseboats which currently exist on the property. These were made in contemplation of a new WRG permit application for the moorage. Now, however *we have revised our application downward to the three houseboats* referred to in the County's survey which was performed pursuant to Policy 10, §4. One of the units will be removed from the moorage if approval for only three is granted under Policy 10. We trust that any intergovernmental approvals which we have previously requested for a greater number would also include approval for a lesser. Since none of the State Agencies will act without County approval, our revised permits will necessarily be for the number of units approved by the County.

**Staff:** The applicant submitted additional testimony regarding ODOT permitting issues on June 7, 2002 (see Exhibit P). The letter from the applicant states that the ODOT letter (Exhibit M) technically should not be considered because it was submitted after the “deadline” for receipt of comments. Staff disagrees that the 14 day comment period provided in MCC 37.0530(B) does not allow staff to consider information submitted after that time. The code states that the Planning Director accepts comments for 14 days and then renders a decision. It does not indicate that information submitted after that time cannot be considered in the decision.

The ODOT letter is about permits that could be approved after July 1, 1997 under the provisions of Policy 10 3. 1). The letter indicates that no permit application for the access to US 30 or for the rail crossing was received prior to December 1, 1997. The ODOT letter acknowledges receipt of the letter dated November 28, 1997 from Mr. Dinsmore, and indicates that more than one permit application was necessary. Staff has no basis to disagree with ODOT's assessment of the November 28, 1997 letter, or the permit requirements in effect at that time. Staff also notes that the November letter is not clear as to what uses are on the property, whether they are being represented to have been there since 1964, or whether the letter is on behalf of Mr. Dinsmore and his floating home, or for all of the floating homes and Mr. Weilert's dwelling and the other dwellings and RV's that were apparently on the property at the time. The letter is more correctly characterized as a request for information about what applications were required rather than a permit application.

### **POLICY 13: AIR, WATER AND NOISE QUALITY**

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

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

**Applicant:** The proposed use replaces the current use, and adds only a minor increment to air and runoff concerns, and does not propose any additional noise impact. Two vehicles will park at this portion of the property. An RV space is provided. There will be no fireplace. Thus no increase in particulate emissions is expected.

Storm water from roof drains will be directed to percolate into the soil. No new activities are proposed which would impact the adjacent Multnomah Channel.

The parking lot adjacent to the moorage has existed for some time. It is gravel, sloping away from the river slightly so that runoff is not directed toward the river but percolates into the landscape. No evidence of streamside erosion caused by unnatural runoff was observed. The parking area is proposed to remain unchanged if approved under this permit.

The mobile homes are connected to sewer, protecting the river from pollution. The sewerage is pumped to a sewage treatment plant. DEQ permits for this operation are attached hereto. Also attached is a septic tank feasibility approval for four houseboats and the mobile home.

The use is not a noise generator, and no impact on the surrounding properties is predicted. In this case, not even the temporary and unavoidable noise of construction will occur, as the density of the development on the site will actually be lowered by the removal of one floating home from the moorage.

**Staff:** The proposed single family dwelling is not a noise-sensitive use that is located in a noise impact area, and is not a noise generator, therefore this policy does not apply.

## **POLICY 14: DEVELOPMENT LIMITATIONS**

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

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

**Applicant:** The County's policy is to direct development away from areas with development limitations.

There are no slopes exceeding 20%, except for the riverbank itself.

There is no severe erosion potential.

Some of the lot is within the 100 year flood plain, but the building site is above it, and the finish floor of the house is more than 1 foot above the 100 year flood level. The houseboats are a river-dependent

use.

There is no high seasonal water table

The land is not subject to slumping, earth slides or movement.

**Staff:** The subject property contains areas east of the dwelling site that are within the 100 year flood plain. The applicant has submitted an Elevation Certificate which demonstrates that the dwelling will be located outside of that area, therefore this policy is satisfied.

## **POLICY 37: UTILITIES**

- A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or *[Amended 1999, Ord. 933 § III]*
- B. Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or *[Amended 1999, Ord. 933 § III]*
- C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or *[Amended 1999, Ord. 933 § III]*
- D. Shall have an adequate private water system and a public sewer with adequate capacity. *[Amended 1999, Ord. 933 § III]*

**Applicant:** A special sewer district for Casselman's Cove, approved by DEQ, provides sewer service. There is also adequate area on the property for installation of a septic tank, should one become necessary. A septic tank feasibility study is attached. The property is connected to Cassleman's cove water. There is a well on the property which dispenses potable water, if needed.

**Staff:** The provisions of Policy 37 for waste disposal do not provide for connection of uses to a private sewer system. Staff is not aware that the Casselman system is a special service (sewer) district, which would be a “public” service provider. The applicant has obtained a septic feasibility approval and will be able to develop that system and to connect the dwelling to it. Connection of the dwelling to a septic system supports a finding of adequate sewer. The dwelling can be connected to the private water system if it meets state requirements, or if connected to the well.

## **Drainage**

- E. Shall have adequate capacity in the storm water system to handle the run-off; or *[Amended 1999, Ord. 933 § III]*
- F. The water run-off shall be handled on the site or adequate provisions shall be made; and *[Amended 1999, Ord. 933 § III]*
- G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes, or alter the drainage on adjoining lands. *[Amended 1999, Ord. 933 § III]*

**Applicant:** Roof drainage will be allowed to percolate into the soil. Any surface runoff from the landscaped portion of the property will go to the Multnomah Channel. The small amounts of such runoff will not adversely affect the water quality of the river. Runoff from the moorage surfaces feeds

directly into the river, but this is water which would fall upon the river surface anyway. Docks and roofs are keep free of debris to limit any pollution.

**Staff:** The provision in E. above is not applicable to this application as there is no storm system in the area. Agrees that allowing the runoff from the dwelling to be released onto the surface will meet the provisions of F. and G. The moorage is not being considered as part of this application.

### **Energy and Communications**

H. There shall be an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and *[Amended 1999, Ord. 933 § III]*

I. Communications facilities are available.

**Applicant:** There is an adequate energy supply with PGE serving the property. Communications facilities are provided by US West.

**Staff:** Agrees

### **POLICY 38: FACILITIES**

It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure: *[Amended 1999, Ord. 933 § III]*

**Applicant:** Applicants have completed all portions of GENERAL APPLICATION FORM Page 2 and has provided all letters which were required by staff.

### **School**

A. The appropriate school district has had an opportunity to review and comment on the proposal.

**Applicant:** The children who live at the property currently attend the Scappoose School District. There will be no additional students as a result of this renovation.

### **Fire Protection**

B. There is adequate water pressure and flow for fire fighting purposes; and

C. The appropriate fire district has had an opportunity to review and comment on the proposal.

**Applicant:** The property is currently served by The Scappoose Rural Fire Protection District. No additional resources of the Fire District will be required.

### **Police Protection**

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

**Applicant:** Police services are provided by\_Multnomah County Sheriff, which considers the current level of protection in accordance with the standards of the jurisdiction.

**Staff:** The only element of Policy 28 that has significance for this application is the Fire Protection section. The applicant submitted a Fire District Review form for the dwelling, and another form for a 4 houseboat moorage in Exhibit A. A letter from the fire district requesting address posting is included as Exhibit K. Staff finds that the form and letter meet the requirements of B. and C. above.