



MULTNOMAH COUNTY OREGON

LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190TH Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

http://www.co.multnomah.or.us/dbcs/LUT/land_use

NOTICE OF DECISION

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

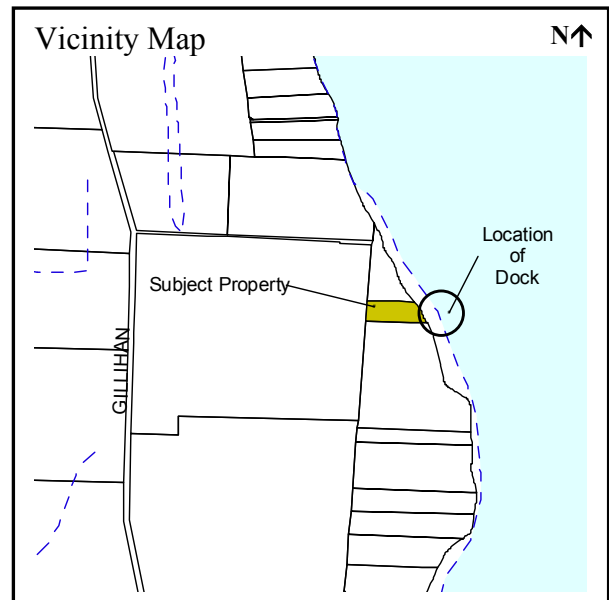
Case File: T2-04-047

Permit: Willamette River Greenway Permit

Location: 19130 NW Gillihan Road
TL 300, Sec 14A, T2N, R1W, W.M.
Tax Account #R97114-0150

Applicant: Leon Cieloha
18400 NW Gillihan Road
Portland, OR 97231

Owner: Paul Switlyk
191300 NW Gillihan Road
Portland, OR 97231



Summary: Request to build a private boat bock at river mile 101.0 in the Willamette River Greenway

Decision: Approved with conditions.

Unless appealed, this decision is effective September 14, at 4:30 PM.

Issued by:

By: _____
Tammy Boren-King, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, August 31, 2004

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 borenk, 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 September 14 at 4:30 pm.

Applicable Approval Criteria:

General Provisions: MCC 34.0005(L)(13) Lot of Record

Multiple Use Agriculture -20 Code Criteria: MCC 34.2820(F) Allowed Uses – Other structures or uses customarily accessory..., MCC 34.2855- Dimensional Requirements, MCC 34.2885- Access

Willamette River Greenway Criteria: MCC 34.5810 Uses – Greenway Permit Required, MCC 34.5815 Definitions, MCC 34.5825 Greenway Permit Application, MCC 34.5830 WRG Permit – Required Findings, MCC 34.5855 Greenway Design Plan, MCC 34.7015 Design Review Exemptions

Comprehensive Plan Policies: Policy 14 Development Limitations, Policy 38 Facilities

Administration and Procedures: Chapter 37

Copies of the referenced Multnomah County Code and Comprehensive Plan sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at http://www.co.multnomah.or.us/dbcs/LUT/land_use.

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 37.0700(B), this land use permit expires on September 14, 2006 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 37.0700. 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.

1. Prior to zoning approval for a building permit, the owner must obtain a permit from the Division of State Lands or a statement from the Division of State Lands that no permit is required from their office for the construction. [MCC 37.0700(A)(1)] This permit or statement from the Division of State Lands must be submitted to Multnomah County Planning with the construction drawings when applying for zoning approval for the building permit.
2. The owner shall not remove any trees designated as protected Riparian vegetation on the eastern portion of the property. Removal of vegetation other than trees in the Riparian area shall be kept to the minimum necessary to install the proposed dock. [MCC 34.5855(J)]

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: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. Staff comments and analysis are identified as **Staff:** and follow Applicant comments identified as **Applicant:** to the applicable criteria. Staff comments include a conclusionary statement in *italic*.

1. **Project Description**

Staff: The applicant is proposing to construct a private-use floating dock extending from the mature stand of cottonwoods on the applicant's property into the Columbia River, approximately 92 feet past the ordinary low water line as shown on the applicant's site plan. The dock is proposed at 6 feet in width with steel pilings driven into the river bottom to anchor the floating structure made of roto molded float boxes with composite Trex decking. The property owner has received a permit from the Army Corps of Engineers approving the construction in the river.

2. **Site Characteristics**

Staff: The subject site is on Sauvie Island adjacent to the Columbia River and contains an existing single-family dwelling. The site topography slopes upwards from the river to an elevation of 32 feet at the eastern edge of the home site. The lower portions of the site, including the area proposed for development, are within the 100 year floodplain of the Columbia River. The property is approximately level between the existing home and the west property line. There is a mature stand of cottonwood trees paralleling the Columbia River on the east side of the property. This stand of trees is recognized by Multnomah County as riparian habitat. The remainder of the site is covered with a home, grass lawn, landscaping and ornamental trees. The proposed dock will be placed in approximately the same location as the existing path to the beach which crosses the riparian zone in an area where the trees are spaced approximately 20 feet apart. The applicant is not proposing the removal of any trees or the regrading of any landforms.

Staff has included the applicant's site plan as Exhibit D and photos of the subject site as Exhibits E. These photos show the proposed location of the boat dock in relation to the riparian vegetation.

3. **The County Adhered To The Required Notification Procedures**

§ 37.0530 Summary Of Decision Making Processes.

(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Directors decision shall become final at the close of business on the 14th day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to the Land Use Board of Appeals (LUBA) within 21 days of when the signed Hearings Officer decision is mailed pursuant to 37.0660(D).

Staff: Public notice was mailed out on June 28, 2004. Those that received notice were given 14-days to provide comment. No public comments were received.

Criterion met.

4. **Proof of Ownership**

MCC 37.0550 Initiation Of Action.

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

Staff: Multnomah County Assessment and Taxation lists Paul Switlyk as the owner of the property included in the application. Paul Switlyk has signed the application form authorizing a land use action on the subject site (Exhibit A).

Criterion met.

5. **The subject property is in full compliance.**

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.

Staff: The applicant has submitted both the current deed for the subject property as well as the deed which first created the property in its current configuration. The property meets the definition of Lot of Record. Please see findings under MCC 33.0005(L)(13) (below) and MCC 33.2275 on page 8 of this report for further information on Lot of Record status.

The existing house was constructed under Multnomah County residential building permit 7302080 issued on February 2, 1973. Final inspection of the house was completed on July 6, 1973. Copies of the permit records are included as Exhibit B. Staff conducted a site visit on August 18, 2004 and did not observe any other structure or un-permitted uses.

The property is in full compliance.

Criterion met.

6. **The subject property is a lot of record.**

6.01 **MCC 33.0005 Definitions**

(L)(13) Lot of Record - Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

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

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

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

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

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

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

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

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

Staff: The subject property is one parcel of 2 acres. The applicant has provided both the deed which first created the property in its current configuration and the current deed for the property. These records are included as Exhibit B. The first deed which described the property in its current configuration was recorded on January 7, 1972. The property was designated F-2 at that time. The F-2 zone had a two acre minimum lot size and did not contain any other requirements such as lot width or access provisions at that time. The property has not been reconfigured since it was

created in 1972. No boundaries of an “acknowledged unincorporated community” intersect the subject property.

The subject property meets the definition of “Lot of Record.”

Criterion met.

6.02 **§ 34.2870 Lot of Record (in the MUA-20 zone)**

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

(1) July 10, 1958, SR zone applied;

(2) July 10, 1958, F-2 zone applied;

(3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

(4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;

(5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;

(6) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

Staff: The applicant has submitted the first deed which created the parcel in its current configuration (Exhibit B). The parcel was created in January, 1972 under the provisions of the F-2 zone.

6.03 **(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 34.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

Staff: The subject parcel is 2 acres in size. The F-2 zone in effect in January, 1972 required a 2 acre minimum lot size. The zone had no other dimensional or access requirements for new lots or parcels. The subject parcel is a lot of record and may be occupied by uses allowed in this district even though it does not meet the current access or lot size minimums required in the MUA-20 district.

Criterion met.

6.04 **(C) Except as otherwise provided by MCC 34.2860, 34.2875, and 34.4300 through 34.4360, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.**

Staff: The subject proposal will not involve the sale or conveyance of land.

Criterion met.

6.05 **(D) The following shall not be deemed to be a Lot of Record:**

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;
- (2) An area of land created by the foreclosure of a security interest.
- (3) An area of land created by court decree

Staff: The subject parcel was created by deed in 1972. It was not described solely for assessment and taxation purposes. It was described in order to convey ownership. The parcel was not created due to a foreclosure or as a *Mortgage Lot*. The deed records do not indicate the subject parcel was created by court decree.

Criterion met.

7. **The Proposed Use is Allowed in the MAU-20 Zoning District**

§ 34.2815 Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC 33.2220 through 33.2240 when found to comply with MCC 33.2245 through 33.2310.

* * *

§ 34.2820 Allowed Uses

(F) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district.

Applicant: The new private boat dock will be used to keep my 25' boat in the water moored at my dock. At the present time I anchor my boat out in the river 175' from shore and use a small boat to get to my 25' boat. When my new dock is in place I can walk out to my 25' boat without getting my feet wet. I use my boat for cruising and fishing the rivers (Columbia and Willamette) with my daughters when they are available.

My neighbors to the south have private boat docks and my neighbor to the north, Mr. Skoro, just got his permit. My main purpose for a boat dock is to keep my 25' boat moored at my dock so I can use my boat for enjoyment, relaxation, and pleasure when I get home from work and on weekends.

Staff: The applicant is proposing the installation of a private use boat dock on the subject property. The primary use of the parcel is residential. Residences are allowed in the MUA-20 district under MCC 34.2820(C). A private use boat dock can be considered both customarily accessory and incidental to the use of this property for residential purposes.

The applicant has submitted information regarding the locations of private use docks on 5 properties on Gillihan Road near the subject site. A map showing each of these properties is included as Exhibit G. Four of the five properties are in the MUA-20 zone. The MUA-20 zoning designation is based on the upland use of the property not the property's water dependent uses. While there are not many existing examples of private use boat docks in the MUA-20 district the applicant has identified 5 residential properties near his home which also have direct access to the

water and either contain existing docks or have recently received permits from Multnomah County to construct a personal use dock. Boat docks are not a customary use for upland parcels, but they are often found on parcels with direct access to the water near the subject site. The information submitted by the applicant shows it is customary for parcels in this area with direct access to the water to have a private use boat dock as an accessory use.

The word “incidental” is not defined in MCC 34.0005 (Definitions) or in the other five MCC Chapters which constitute the County’s zoning code. The Merriam-Webster Dictionary of Law, 1996 edition defines incidental as “subordinate or secondary in importance or position”. The proposed personal use dock will be secondary in importance to the existing dwelling on site. As such, the proposed dock will be incidental to as well as being accessory to the residential use of the site.

Criterion met.

8. **The Proposed Development Meets The MUA-20 Dimensional Requirements**

§ 34.2855 **Dimensional Requirements**

- 8.01 **(A) Except as provided in MCC 34.2860, 34.2870, 34.2875 and 34.4300 through 34.4360, the minimum lot size for new parcels or lots shall be 20 acres.**

Staff: No new lots or parcels will be created through the subject application. The criterion does not apply.

Criterion met.

- 8.02 **(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.**

Staff: The subject lot does not have frontage on a public street. The criterion does not apply.

Criterion met.

- 8.03 **(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 subject proposal is to build a dock. A portion of this dock will be in the waters of the state, not on the subject parcel. Only the portion of the dock from the ordinary high water line westward will be located on the subject parcel. This is the portion of the dock that must comply with the dimensional standards of this section.

The applicant has provided a scaled elevation view of the proposed dock. According to this elevation view, the portion of the dock above the ordinary high water line will be

approximately 18 inches above grade. MCC 34.0050(Y)(1) requires yards to be “unobstructed from 30 inches above the ground upward.” The proposed dock is less than 30 inches in height and is therefore not subject to the minimum yard requirements of this section.

Criterion met.

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

Staff: The subject lot does not have frontage on a public street. The criterion does not apply.

Criterion met.

- 8.05 **(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

Staff: The proposed dock will not exceed the height requirement of the MUA-20 district. As shown on the applicant’s plans, the dock will be 18 inches tall.

Criterion met.

9. **The Subject Site Has Appropriate Access**

§ 34.2885 Access

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

Staff: The subject parcel was created by deed in 1973 under a zoning code that had no access requirements for new lots or parcels. The subject parcel is currently accessed by a paved private road for which the owner has an access easement which was originally recorded in 1961. The easement provides for a 20.02 foot wide access road running north to County Road 1441. County Road 1441 intersects with NW Gillihan Road to the west. The code currently requires a minimum width of 20 feet for a private road serving three or more houses. The existing 20.02 foot easement for private access is adequate.

Criterion met.

10. **The Proposal Meets the Willamette River Greenway Development Standards**

10.01 **§ 34.5810 Uses - Greenway Permit Required**

All uses permitted under the provisions of the underlying district are permitted on lands designated WRG; provided, however, that any development, change of use or intensification of use, except as provided in MCC 33.5820, shall be subject to a Greenway Permit issued under the provisions of MCC 34.5830.

Staff: The use is allowed in the MUA-20 district pursuant to MCC 34.2820(F). As discussed in finding 10.3, the proposal does constitute development under the definition of development contained in this section. The subject request must be reviewed for compliance with MCC 34.5830.

Criterion met.

10.02 § 34.5815 Definitions

Please note staff has included only the applicable criteria of this section.

For the purposes of this district, the following terms and their derivations shall have the following meanings. Definitions (A) through (E) are derived from paragraph a. of the *Order Adopting Preliminary Willamette River Greenway Plan of the Oregon Land Conservation and Development Commission*, dated December 6, 1975.

- 10.02.01 **(A) *Change of use* - means making a different use of the land or water than that which existed on December 6, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of existing buildings or structures and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated. Change of use shall not include the completion of a structure for which a valid permit has been issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building. Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for purposes of this order.**

Staff: The existing residence was permitted in 1974 under a Multnomah County Building Permit. While a final inspection did not happen until 1983, there is a record of some inspections from 1974 and 1975. While the inspection records are incomplete, it is clear that a final plumbing inspection was requested as early as July 7, 1975. A final plumbing inspection would include inspection of the connection between the house and the septic system and all fixtures to be installed in the house including toilets, sinks, bath tubs, showers, hot water heaters, the dishwasher, and any other permanent water connections. Inspection records indicate no one was present on site and the inspector was unable to gain access to the house. While the records are not completely clear, such a request indicates that substantial construction was undertaken by July 7, 1975.

These inspection records indicate the parcel was being used for residential purposes prior to December 6, 1975. Copies of the permit and inspection records are included as Exhibit B. The parcel is still being used for residential purposes. The proposed boat dock is accessory to the residential use of the property. It is not, however, a structure or facility usual and necessary for the use and enjoyment of existing improvements. Under the above definition, the proposed dock is a change of use.

- 10.02.02 **(B) *Development* - means the act, process or result of developing.**

(Footnote: The definitions of *develop* and *development* should be read in harmony with the definitions of *intensification* and *change of use* since it is not the intention of the Commission to include in the definitions of *develop* and *development* any of the items excluded specifically from the meanings of *intensification* or *change of use*.)

(C) *Develop* - means to bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights of access.

Staff: The proposal includes the construction of a structure. This qualifies as development under the above definition.

* * * *

10.02.03 (E) *Intensification* - means any additions which increase or expand the area or amount of an existing use, or the level of activity. Remodeling of the exterior of a structure not excluded below is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a structure for which a valid permit has been issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or protection of property are not an intensification of use. Residential use of land within the Greenway includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modification of existing structures, or construction or placement of such subsidiary structures or facilities adjacent to the residence as are usual and necessary to such use and enjoyment shall not be considered an intensification for the purposes of this order. Seasonal increases in gravel operations shall not be considered an intensification of use.

Staff: The proposed dock will be located in a previously undeveloped area of the site. This is an addition which increases the area and amount of an existing use. The proposed dock is intensification under the above definition.

10.02.04 (F) *Water-dependent use* – means a use which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for waterborne transportation or recreation. *Water-dependent use* also includes development, which by its nature, can be built only on, in, or over a water body (including a river). Bridges supported by piers or pillars are *water-dependent uses*.

Staff: The proposed use is a boat dock. Boat docks require access to the water, can only be built over and in the water, and are used to park waterborne transportation (boats). The proposed development is a water-dependent use.

10.03 § 34.5830 WRG Permit - Required Findings

A decision on a Greenway Permit application shall be based upon findings of compatibility with the elements of the Greenway Design plan listed in MCC 34.5855.

Staff: This decision is based upon findings of compatibility with the elements of the Greenway Design plan. Please see findings under section 10.04 of this report.

Criterion met.

10.04 **§ 34.5855 Greenway Design Plan**

The elements of the Greenway Design Plan are:

10.04.01 **(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 new dock will rest on the sand beach that extends 40'-0" to the low watermark. The upper part of the dock will go between existing cottonwood trees. The cottonwood trees are common to the area and the existing trees are at least 30 years old. No trees will be removed and no fill required. The existing landscape will not be altered by the new dock.

Staff: The proposed use is a water-dependent use. It must be located on the river. No landscaping or open space can be provided between the River and a dock floating on the River. The applicant will not remove any of the existing cottonwood trees that serve as the riparian vegetation between his home and the river.

Criterion met.

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

Applicant: The existing sand beach offers access to the public when the water is low. During higher water levels the water rises around the existing cottonwood trees and covers all the sand beach for public access. During the summer when the water is low public access along the beach front will not be affected by the dock.

Staff: The proposed dock will be six feet wide and will extend across the public access area between the ordinary low water line and the ordinary high water line. The dock will have a height above grade of approximately 18 inches when resting on the ground. This height will increase when the water level raises and the dock floats. Members of the public will need to step up onto the dock in order to cross it. With a height above grade of approximately 18 inches, most members of the public will be able to cross the dock. The applicant is not proposing a railing or other vertical obstruction that would prevent a member of the public from crossing the dock between the ordinary low water line and the ordinary high water line. Reasonable public access to the river will be maintained.

Criterion met.

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

Applicant: The new dock needs to float in the Columbia River as shown on the plans. (See plans) There is no natural inlet on the property.

Staff: The use is a water-dependent use that cannot be directed away from the river.

Criterion met.

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

Applicant: The 2 acre plot has a house with garage and is landscaped. The plot has no room for farming.

Staff: The subject parcel has been used for residential purposes for almost 30 years. While the zoning is agricultural the land itself is not now in farm use according to the applicant's statement. Staff verified this statement with the County's 2002 aerial photos and a site visit conducted on August 18, 2004.

Criterion met.

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

Applicant: The cottonwood trees grow along the river frontage are natural to the area. They will not be cut or moved for the new boat dock. The Greenway will be maintained with no changes.

Staff: The applicant is not proposing the harvesting of any timber.

Criterion met.

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

Applicant: The recreational needs will not change with the new boat dock. Access by boat for the public is the only access to the property. The road off of Gillihan Road is a private road, so boat access by river is the only access for the public. The new boat dock will not alter the public from using the sandy beach when the water is low.

Staff: The proposed use is a private boat dock. This dock will be used primarily for personal use recreation. The applicant currently has a boat which he keeps anchored in the river near the location where the dock is proposed. The dock will not intensify the use of the subject parcel, which already contains a single family residence.

The following information on neighboring properties was collected from the County's 2002 aerial photos and a site visit performed by staff on August 18, 2004. No farm uses are present on the subject parcel. The parcels to the north and south of the subject parcel do not contain farm uses. They are both used as residential lots. The parcel to the west of the subject lot

contains active farm uses. The farm uses are separated from the proposed dock by over 400 feet of land and a dwelling. This is sufficient separation to minimize any potential conflicts.

Criterion met.

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

Applicant: The new boat dock built by Ken's flotation meets all the codes for flotation. The boat dock will not restrict the fish or wildlife along the river.

Staff: Neither the Sauvie Island/Multnomah Channel Rural Area Plan nor Chapter 34 of the Multnomah County Code provide specific protections for fish and wildlife habitat on this site other than the riparian vegetation discussed under finding 10.04.10. This riparian vegetation will not be disturbed as part of the subject development.

Criterion met.

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

Applicant: The viewpoints are preserved because the boat dock floats low on the river. The views by the neighbors will not be affected. The neighbor to the south is over 400' from my new boat dock.

Staff: No specific viewpoints or vistas have been given specific protection by the Sauvie Island/Multnomah Channel Rural Area Plan nor Chapter 34 of the Multnomah County Code. The proposed dock is intended to minimize impacts on the visibility of the shore by floating directly on the water and moving when the water level changes. Even when the water level is low, the dock will retain a low profile rather than standing out above the water line. The only vertical members will be the pilings required to anchor the floating dock. No lights are proposed on the dock nor is the applicant requesting electrical service to the dock. Additionally, the applicant has stated that all of the mature trees lining the beach will be retained. These efforts combine to make the dock have a limited visual impact on the shoreline.

Criterion met.

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

Applicant: The private boat dock will have a sign saying "private dock." This is for keeping the public from using this dock for their use. Most people respect other people's property.

Staff: The applicant has limited options for restricting access to the proposed dock since it crosses land which the public has legal access to. The posting of a sign stating that the dock is private will satisfy this criterion.

Criterion met.

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

Applicant: The natural vegetation along the river will not be altered because it is all natural already. If any plants or grass were planted in the sand, the waves would wash them down river when the river rises. This sandy beach stays the same each year.

Staff: As shown on the applicant's site plan, the proposed dock is planned for an area between existing cottonwood trees. Photos of the proposed dock location are included in Exhibit E. The applicant shall not be allowed to remove any of the existing trees in the riparian area. Some under story vegetation will be removed or disturbed in order to install the proposed dock. The removal of vegetation other than trees shall be kept to the minimum necessary to install the proposed dock.

Criterion met with conditions.

- 10.04.11 **(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: The sandy beach behind my house has no large rocks or boulders. The existing sandy beach is almost the same for the last 40 years. When the river raises in the winter the cottonwood trees protect the area.

Staff: No extraction of aggregate deposits is proposed.

Criterion met.

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

Applicant: The last flood of 1996 covered 1/3 of the property (see plans) and did not reach my house. The high water lasted 2-weeks and then returned to normal. The new boat dock will rise with the water level and stay in place with the steel pilings.

Staff: The subject proposal is in the 100-year floodplain. A separate flood development permit has been applied for (T1-04-015). The development has been required to meet all floodplain development criteria established in MCC 29.600 through case T1-04-015. Staff consulted the *Multnomah County Wetlands Inventory Map* prepared by the Oregon Department of State Lands and the United States Fish and Wildlife Service dated 9-13-1993 as well as the Multnomah County significant wetlands maps on aerial photographs of a scale of 1" = 200' made a part of the supporting documentation of the Comprehensive Framework Plan. Neither of these publications indicates the presence of wetlands on the subject property.

Criterion met.

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

Applicant: The only wetlands on the property is the Columbia River. It raises with the rain or snow melt.

Staff: The subject parcel does not contain wetlands designated as significant on the aerial photographs of a scale of 1" = 200' made a part of the supporting documentation of the Comprehensive Framework Plan. The standards of MCC 34.5865 do not apply.

Criterion met.

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

Applicant: The area where the new dock is located has no ecological, scientific, historical or archaeological significance. The whole 2 acres has no historical significance.

Staff: The Sauvie Island/Multnomah Channel rural area plan has not designated the subject site as containing any ecological, scientific or historical areas. Archeological data available to Multnomah County planning staff do not indicate the presence of any archaeological sites on the subject property.

Criterion met.

10.04.16 **(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: At the present time there are no problems with erosion at the beach frontage. The sand beach remains the same for the last 30-40 years. If any erosion should happen the appropriate items would be replace that in keeping with the character of the greenway.

Staff: The only ground disturbing activity the applicant is proposing is the drilling of holes for piers. These holes will immediately be filled with the piers for the dock. There is very little potential for erosion from the proposed development.

Criterion met.

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

Applicant: The location of the new dock on the Columbia River (WRG) will not change the quality of the air, water, and land resources in the Willamette River Greenway.

Staff: The proposed boat dock will not generate any dust or other measurable air pollutants. The dock will not contain any plumbing facilities or any sanitary sewer connections. The dock is not intended for use by a houseboat or a boat used as a primary residence. No effluent will be generated as a result of the proposed dock.

Criterion met.

- 10.04.18 **(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 set back of 150' for a building does not apply to a boat dock. The boat dock is a floating structure that extends in the Columbia River (see plans) for its use.

Staff: The proposed use is a water dependent use as defined in MCC 34.5815(F). The applicant will not be required to maintain a 150 foot setback from the ordinary low water line.

- 10.04.19 **(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: In conclusion, for a Willamette River Greenway for a new private boat dock at 19130 N.W. Gillihan Rd. The placement of the new boat dock will not disturb the existing landscape, cottonwood trees, sand beach, wildlife or the natural vegetation. The preservation of the area will be maintained. There are several existing boat docks in the area.

Staff: As discussed under section 10.02 of this report, the proposed dock meets the definitions of development, change of use, and intensification of use of land. The proposed dock is subject to the design review standards which are consistent with the elements of the Greenway Design Plan and has been reviewed for consistency with those elements. The proposed boat dock will be consistent with the Greenway Design Plan when the conditions of approval are met. This section requires all development to be reviewed under the design review provisions of MCC 34.7000 through MCC 34.7070. These standards are reviewed under section 11 of this report.

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

Staff: See the findings under each of the applicable comprehensive plan policies under section 12 of this report.

- 11. The proposed development meets the design review standards which are consistent with the elements of the Greenway Design Plan.**

Please note staff has only addressed the applicable criteria of MCC 34.7000 through MCC 34.7070.

- 11.01 § 34.7015 **Exceptions**

The provisions of MCC 34.7000 through 34.7065 shall not be applied to the following:

(A) Single Family Residences

(B) Type B Home Occupations that require the addition of less than 400 square feet of ground coverage to the structure.

Staff: The proposed development is an accessory use which is incidental to the single family residence on site. Single family residences are exempt from the design review standards. The subject development is not required to be reviewed under the design review standards of this section.

12. **The Proposal Meets The Comprehensive Framework Plan Policies**

Please note staff has only addressed the applicable policies of the Comprehensive Framework Plan that have not already been addressed through the code standards discussed previously in this report.

12.01 **Policy 14- Development Limitation**

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.**

Staff: The portion of the subject property being used for this development is within the 100 year floodplain. The proposed use is a water dependent use and cannot be constructed in a manner that does not cross the 100 year flood plain. The applicant has applied for a separate floodplain development permit to address the standards established in MCC Chapter 29 for floodplain development. These standards are intended to ensure that the design and construction techniques employed for this project can mitigate any public harm or associated public cost and mitigate any adverse effects to surrounding persons or properties. Please see casefile T1-04-015 for further information on how the proposed use meets the flood plain development standards of MCC Chapter 29.

Policy met.

12.02 **Policy 38-**

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

Fire Protection

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

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

Staff: The applicant has provided a Fire District Review form signed by the chief of Fire District 30J. This document is included as Exhibit F.

Policy met.

Conclusion

Based on the findings and other information provided above, this application for a Significant Environmental Concern for Wildlife Habitat Permit and a Hillside Development Permit satisfies, with appropriate conditions, the applicable Comprehensive Framework Plan policies and Multnomah County Zoning Code requirements.

Exhibits

- A. Signed Application Form**
- B. Copies of permit cards and inspection records for existing dwelling**
- C. Copies of deed records**
- D. Site Plan**
- E. Photos of the proposed dock location and surrounding riparian vegetation**
- F. Fire Department Review**
- G. Properties Identified by the applicant as containing boat docks**