



## **MULTNOMAH COUNTY OREGON**

### **LAND USE AND TRANSPORTATION PROGRAM**

1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

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

[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

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# **NOTICE OF DECISION**

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

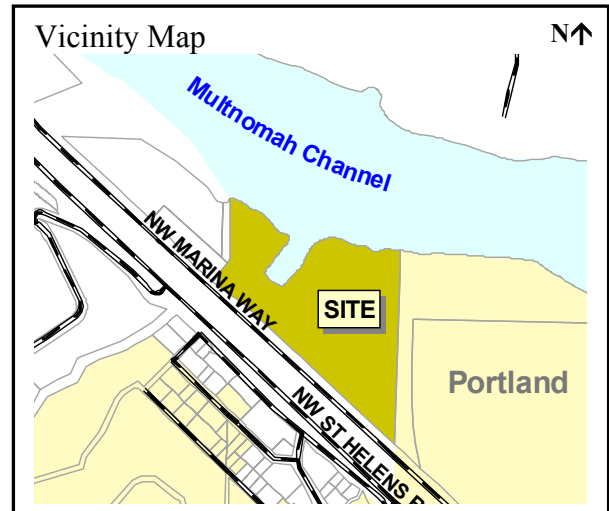
**Case File:** T2-05-022

**Permit:** Six-month extension to permit  
T2-02-086.

**Location:** TL 200, Sec 34, T2N, R1W, W.M.  
Tax Account # R971340030

**Applicant:** Cynthia Lowe  
Parsons, Brinckerhoff  
400 SW Sixth Ave, Suite 802  
Portland, OR 97294

**Owner:** Frevach Land Company  
12800 NW Marina Way  
Portland, OR 97231



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**Summary:** This is a request for a six-month extension to the two year approval granted by a Design Review permit (permit T2-02-086). **The extended expiration date for T2-02-086 is September 25, 2005.**

**Decision:** **Approved, with conditions.**

**Unless appealed, this decision is effective Tuesday, April 5, 2005 at 4:30 PM.**

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Issued by:

By: \_\_\_\_\_

Tammy Boren-King, Planner

For: Karen Schilling - Planning Director

Date: March 22, 2005

**Opportunity to Review the Record:** A copy of the Planning Director's 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 Tammy Boren-King, 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 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 if no appeal is filed. The deadline for filing an appeal is **Tuesday, April 5, 2004 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code Chapter 37, Administration and Procedures; (MCC): **37.0690**, Expiration and Extension of a Type II Decisions in Exception Areas.

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/dbcs/LUT/land\\_use/index.shtml](http://www.co.multnomah.or.us/dbcs/LUT/land_use/index.shtml)

### **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.

### **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. Pursuant to **MCC 37.07000**, **this land use permit expires on September 25, 2005, six months past the expiration date established in T2-02-086** 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.
2. **All conditions set forth in permit T2-02-086 are still in effect for this permit.**

<p><b>Notice to Mortgagee, Lien Holder, Vendor, or Seller:</b> <b>ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.</b></p>
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# **DECISION OF THE PLANNING DIRECTOR**

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## **Findings of Fact**

### **1. Summary of Request**

**Staff:** On March 11, 2003, the Multnomah County Planning Department approved a Design Review request on the subject property to construct a new parking area adjacent to NW Marina Way, south of the marina access; boat trailer/dredge pipe storage south of the lagoon; and an equipment storage area north of the marina access. A copy of this permit (T2-02-086) is included as Exhibit 1. The decision became final on March 25, 2005. An approval becomes void if, within two years of the date of the final decision, the development action is not initiated (**MCC 37.0700(A)(2)**). This standard voids the approval of case T2-02-086 at the close of business on March 25, 2005. The applicant has requested a six month-extension to the expiration of permit T2-02-086 due to hardship discussed in detail within this report.

### **Ownership Authorization**

**Staff:** Proof of record ownership of the tract and the representative's authorization must be demonstrated to process any land use application (**MCC 37.0590(A) & (C)**). A signature provided by Cynthia Lowe, representative for Fred's Marina, is provided on the General application form presented as Exhibit 2. This signature provides adequate authorization for the County to process this request.

### **Vicinity and Property Description**

**Staff:** The subject property is referred to as Fred's Marina. The property address is 12800 NW Marina Way. It is located just outside of the corporate limits of the City of Portland between NW Marina Way and the Multnomah Channel, within a ½ mile of the intersection of NW Marina Way and Highway 30. The perimeter of the upland areas is illustrated on a topographic survey prepared for the property owner by David Evans and Associates, Inc., revised September 27, 2002. A copy of this survey is included in Exhibit 1.

Existing development at Fred's Marina includes a gravel parking area, boat launch, marina, and houseboat moorage approved in 1977 as a Community Service Use with land use permit #CS 14-77. The parking area and boat launch are located at the north end of the property. In-water improvements (i.e. docks, pilings, boat slips, etc.) are immediately to the east, generally paralleling the shoreline in a northwest to southeast alignment. A dock for smaller boats wraps around the south side of the parking area, into what appears to be a constructed lagoon. Each of these marina improvements is illustrated on an aerial photograph of the property taken in August of 2002, a copy of which is included in Exhibit 1.

A disposal site for dredge spoils is located in the southern portion of the property. This area has a separate access onto NW Marina Way, at the far southwest corner of the site, and is visible on the 2002 aerial photograph. On-site disposal of dredge material was approved by the County in 1997 with Willamette River Greenway permit #WRG 7-97 and Grading and Erosion Control Permit #20-97.

#### **4. Extension of a Type II Decision on Exception Land**

##### **MCC 37.0070 Expiration and Extension of Type II or Type II Decisions In Exception Areas and Lands Within the UGB.**

#### **4.1 (A) All Type II and Type III approvals automatically become void if any of the following events occur:**

**(1) If, within two years of the date of the final decision, all necessary building permit(s) have not been issued, if required; or**

**(2) If, within two years of the date of the final decision, the development action or activity approved in the decision is not initiated or, in situations involving only the creation of lots or property line adjustments, the final survey or plat has not been approved by the Planning Director and recorded.**

**Applicant:** Community Service Design Review permit T2-02-086, which addresses the land use designations to allow boat trailer and equipment storage around the lagoon; overflow parking along NW Marina Way; and equipment storage around the entrance, was issued on March 25, 2003 by Multnomah County. DR T2-02-086 expires on March 25, 2005 (two years from date of approval), and Fred 's Marina will not be able to complete the work before the expiration.

Section 9 of the permit requires that "The Court settlement lists required permits and work that must happen for the property to comply with the County code. Once the applicant and County agree that the terms of the agreement have been satisfied construction and use of the parking area can proceed. " Condition of approval #4 specifies that "For purposes of this condition, compliance with County Code means agreement between the property owner and County that the terms of the Court settlement have been satisfied. " The requirement for Fred's Marina to perform the compliance-related work specified in Section 9 was not included in condition of approval #4; however, the intent of Section 9 was to require Fred 's Marina to remove overfill from the parking lot before developing the overflow parking area.

GEC permit T 1-01-058 and Floodplain Development permit T1-02-032, which address the parking areas' overfill and the removal of excess overfill, were issued on January 24, 2003 by Multnomah County. GEC T1-01-058 was set to expire on January 24, 2005, but Multnomah County has extended the permits until September 25, 2005. The necessary federal permit though has not been issued at this time due to circumstances beyond the control of Fred's Marina.

**Staff:** Permit T2-02-086 allowed the construction of an overflow parking area subject to conditions. The County had previously engaged in lengthy negotiations with the property owner related to various violations of the zoning code including the placement of excess fill. In order to resolve these violations, the property owner entered into a Settlement Agreement with Multnomah County (Exhibit 4). This Settlement Agreement required the removal of excess overfill from the subject property prior to the initiation of further development actions. The removal of the excess overfill requires approval of the County, the Oregon Department of State Lands (DSL), and the United States Army Corps of Engineers (USACE). While permits have been secured from the County and DSL, the applicant has not been able to secure a permit from the USACE to remove the overfill. Since the overfill must be removed before the construction of the overflow parking area can begin, the applicant has not been able to begin work on the

overflow parking area. The applicant has stated the work will not be completed before the expiration date of March 25, 2005.

- 4.2 (C) The Planning Director may extend, prior to its expiration, any approved decision for a period of six months up to an aggregate period of one year; provided, however, that there has been substantial implementation of the permit. Any request for an extension shall be reviewed and decided upon by the Planning Director as a Type II decision.**

**Staff:** The subject application has been processed as a Type II decision in accordance with the procedures established in MCC 37.0530(B). The approval of the extension request has been granted before the expiration date of the original permit. The issue of “substantial completion” is discussed in findings 4.3 through 4.6 below.

*Criteria met.*

- 4.3 (D) Substantial implementation of a permit shall require at a minimum, for each six month extension, demonstrable evidence in a written application showing:**

- 4.3.1 (1) The permit holder has applied for all necessary additional approvals or permits required as a condition of the land use or limited land use permit;**

**Applicant:** The state and federal permit applications were submitted to the Oregon Department of State Lands (DSL) and the U. S. Army Corps of Engineers (USACE) on April 25, 2003. After responding to DSL's requests for additional information and public comments, the DSL issued their permit on August 22, 2003.

Despite repeated requests for communication on the permit's status, the USACE did not return calls until the situation was brought to the attention of the USACE Permit Section Chief. The USACE permit coordinator then requested additional information on July 2, 2004. The additional information was provided to the USACE on the same day. After July 2, 2004, no further communication was forthcoming from the USACE despite repeated requests for updates on the permit status. In late October to early November 2004, the situation was again escalated to the attention of the USACE Permit Section Chief. The USACE permit coordinator has been replaced at this time; however, the significant delay in the USACE permit process has kept Fred's Marina from completing the removal work within the permit conditions and applicable regulations.

As previously discussed, the USACE has not issued their permit authorizing removal of the parking lot overfill; however, discussions with the new USACE permit coordinator indicates that the permit should be issued during Spring 2005.

**Staff:** Before the applicant can begin construction of the overflow parking area, the overfill must be removed from the property pursuant to the Settlement Agreement referenced in Condition 4 of case T2-02-086. This removal of overfill requires permits from the County, DSL, and the USACE. The applicant has applied for and received approval for the County permit in cases T1-01-058 and T1-02-032. The applicant applied for the required DSL and USACE permits in a timely manner and was successful in securing the required state DSL permits. The applicant has not been able to secure the necessary USACE permits due to circumstances outside of the applicant's control. The applicant has made repeated attempts to secure a permit from the appropriate federal agencies but has met numerous delays. The applicant's attempts to secure the necessary permits from the United States Army Corps of Engineers (USACE) is verified in a letter dated March 1, 2005 from Donald Borda, Acting Chief of the Regulatory

Branch of the Portland District of the USACE. A copy of this letter is included as Exhibit 3.

The letter from Mr. Borda indicates that the applicant did apply for multiple permits to authorize the removal of the overfill as required by the Settlement Agreement and Condition 4 of T2-2-086. One permit for grading and vegetating approximately 250 feet of the south-facing bank of Miller Creek at its confluence with Multnomah Channel was authorized by the USACE on February 5, 2004. Another permit to stabilizing about 85 lineal feet of the north bank of Miller Creek and protect an existing culvert was authorized by the USACE on November 12, 2004. The letter from Mr. Borda also states that the applicant applied for the authorization to remove overfill materials on May 28, 2003. This is the permit the applicant has been unsuccessful in securing. Paragraph one on page 2 of Mr. Borda's letter states, "Although file information is sketchy, it appears there has been confusion within our office regarding the nature of the material used to fill this site and, therefore, the need to conduct sediment testing."

The applicant has applied for all necessary additional approvals to implement the project.

*Criterion met.*

**4.3.2 (2) Further commencement of the development authorized by the permit could not practicably have occurred for reasons beyond the reasonable control of the permit holder (MCC 37.0700(D)(2));**

**Applicant:** As described above, Fred 's Marina has submitted permit applications to Multnomah County, DSL and the USACE for removal of the parking lot overfill. While the DSL and Multnomah County permits have been issued for the parking lot overfill, the USACE permit remains outstanding. The USACE is submitting a letter to Multnomah County to summarize the permit application progression for Fred 's Marina (attached). Once the USACE permit has been issued and the parking lot overfill removed, Fred 's Marina plans to develop the overflow parking lot

**Staff:** Pursuant to the Settlement Agreement, the overfill must be removed from the property before construction of the overflow parking area authorized in T2-02-086 can begin. The applicant attempted to achieve authorization from the USACE to remove the overfill in a timely manner. The Design Review was approved on 3-25-2003 and the USACE has verified receipt of the application to the USACE on 5-28-2003, approximately two months after land use approval was secured. In the remaining 22 months, the applicant has attempted to secure a permit from the USACE, but has been unsuccessful. Further commencement of the development can not occur until the USACE permit is secured for removal of the overfill. The applicant has been unsuccessful in securing an authorization from the USACE despite good faith attempts to work through the USACE process for authorization. The lack of cooperation from the USACE is not a factor over which the applicant can reasonably be expected to exercise control. Further commencement of the development authorized by T2-02-086 could not practicably occur due to reasons beyond the reasonable control of the permit holder.

*Criterion met.*

**4.3.3 (3) The request for an extension is not sought for purposes of avoiding any responsibility imposed by this code or the permit or any condition thereunder; and**

**Applicant:** Fred's Marina is not requesting the extension to avoid any responsibility imposed by the code or the permit conditions. The marina has expended significant resources to attain compliance with Multnomah County and has every intention of completing the work authorized by the permit conditions.

**Staff:** The subject request is sought for the purpose of fulfilling responsibilities imposed by this code not for the purpose of avoiding those responsibilities.

*Criterion met.*

**4.3.4 (4) There have been no changes in circumstances or the law likely to necessitate significant modifications to the approval.**

**Staff:** No modifications to the approval have been requested, with the exception of the expiration date. Changes to County ordinance prohibiting this request today have not occurred. This criterion is met.

**4.4 (E) New application required. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.**

**Staff:** The authorization in T2-02-086 has not expired as of the date of this decision. Since no new uses are proposed, a new application identical in scope to permit T2-02-086 is not required. The extension request only needs to address the approval criteria discussed within this decision.

*Criterion met.*

## **5. Comments**

Upon receipt of a complete application, notice of the application and an invitation to comment was mailed to the applicant, recognized neighborhood associations and property owners within 750-feet of the subject tract (**MCC 37.0530(B)**). Written comments were not received from any party noticed pursuant to the provisions of **MCC 37.0530(B)**. A copy of the notice and the mailing list are included in the file.

## **Conclusion**

Considering the findings and other information provided herein, this application, as conditioned, satisfies applicable Multnomah County Zoning Ordinance requirements. A 6-month extension to case T2-02-086 is granted.

## **Exhibits**

All materials submitted by the applicant, prepared by County staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record of this application. Exhibits referenced herein are enclosed, and a brief description of each is listed below:

### **List of Exhibits**

1. Copy of Decision T2-02-086
2. Signed Application Form
3. Letter from Donald Borda, Acting Chief of the Regulatory Branch of the Portland District of the United States Army Corps of Engineers, Dated March 1, 2005.
4. Copy of Settlement Agreement