



MULTNOMAH COUNTY
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/landuse>

NOTICE OF DECISION

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

Case File: T2-08-010

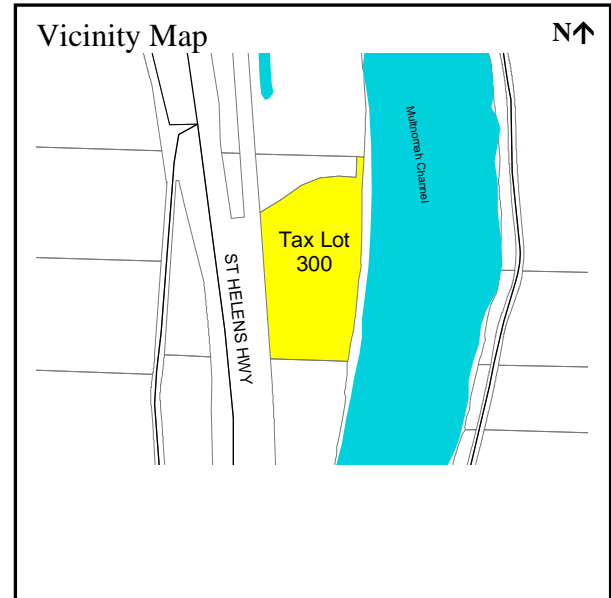
Permit: Willamette River Greenway Permit

Location: 25200 NW St. Helens Hwy.
3N2W36A Tax Lot 300
R982360330

Owners: McCuddy Family LLC & Michael
McCuddy

Applicant: Phillip Batton

Base Zone: MUA-20



Summary: Application for Willamette River Greenway Permit (WRG) to construct an elevated steel platform for the purpose of installing a new electrical switch-box 2-feet above the 100-year flood plain elevation.

Decision: Approved with Conditions.

Unless appealed, this decision is effective Monday, June 27, 2008, at 4:30 PM.

Issued by:

By: _____
Kevin C. Cook, Planner

For: Karen Schilling- Planning Director

Date: Monday, June 13, 2008

Instrument # for Recording: 2005069873

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 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 Kevin Cook, Staff Planner at 503-988-3043 ext. 26782.

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 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 Monday, June 27, 2008, at 4:30 PM.

Applicable Approval Criteria: Multnomah County Code (MCC): 34.5810 (Uses – Greenway Permit Required); 34.5825 (Greenway Permit Application); 34.5830 (WRG Permit – Required Findings); 34.5835 (Decision by Planning Director); 34.5855 (Greenway Design Plan); 34.2855 (Dimensional Requirements – MUA-20 zone) 34.2825(K) (structures or uses customarily accessory or incidental to any use permitted or approved in the MUA-20 district); MCC Chapter 37 (Administration and Procedures).

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/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. **This land use permit expires two (2) 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 or 37.0700, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

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. The proposed platform shall be painted a dark, earth-tone, color. The applicant shall submit a color sample to office staff prior to the issuance of a building permit.
2. Natural and proposed vegetation in the vicinity of the proposed platform shall be maintained as shown on the submitted site plan (Exhibit A.9).
3. Final approval of T1-08-005 (Flood Development Permit) shall be obtained prior to the issuance of a building permit for the proposed platform.
4. The property owner shall plant a minimum of four additional native trees between the proposed platform location and the Channel. The trees shall be suitable to the climate and soil conditions found at the site and shall be a minimum of 2" caliper.
5. As long as the electrical platform remains, the vegetative screening indicated in Exhibit A.9 as well as the four additional trees indicated in Condition 5 above shall be maintained and, if necessary, replaced with new vegetative screening.
6. The property owners shall record a copy of the Notice of Decision cover sheet and conditions of approval (pages 1-3) with the Multnomah County Recorder prior to building permit signoff. A copy of the recorded document shall be submitted to the Land Use Planning Office prior to the building permit sign-off (MCC 37.0670).
7. This land use permit expires two (2) 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 or 37.0700, as applicable. A request for permit extension may be required to be granted prior to the expiration date of the permit.

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.
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Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. The applicants statements are identified below as ‘**Applicant:**’. Staff comments and analysis are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

Proposal:

The applicant needs to upgrade the existing electrical service on the property. In order to comply with FEMA regulations, the new service must be located at an elevation 2 feet above the 100-year floodplain elevation. To accomplish this, the applicant has proposed the construction of a 22-foot high platform to be set in a 8’ by 8’ concrete base. Access to the switchbox will by a fixed ladder at the base of the mono-pole. The ladder will be enclosed within a metal cage and locked when not in use.

The property is located within the Willamette River Greenway overlay district. The proposal requires the issuance of a Willamette River Greenway (WRG) permit. MCC 34.5810 indicates that any change in use or intensification of use requires a WRG permit; in this case, the addition of a new platform for the electrical service upgrade qualifies as an intensification of use as defined in MCC 34.5815(E):

(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 in-creases in gravel operations shall not be considered an intensification of use.

Staff finds that the proposal is an intensification because the structure will be a 22 feet tall structure where none existed before and will be serving a marina, which is a use that exceeds simple residential uses; *therefore, the Willamette River Greenway permit is required.*

1.00 ***Administration and Procedures***

1.01 **Type II Case Procedures**

MCC 37.0530(B): ...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...

Staff: The application was submitted February 21, 2008 and was deemed complete on April 21, 2008. An “Opportunity to Comment” notice was mailed on April 24, 2008 to all property

owners within 750 feet of the subject property in compliance with MCC 37.0530. No comments were received. *Procedures Met.*

1.02 **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: Assessment & Taxation records show that the property is currently owned by McCuddy Family LLC and Michael McCuddy. Phillip H. Batton, Harbor Master for McCuddy's Big Oak Marina signed the General Application Form (Exhibit A-1). *This criterion has been met.*

1.03 **MCC 37.0560 Code Compliance And Applications.**

Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, 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) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: There are no known land-use violations on the property.

2.00 ***Willamette River Greenway Permit***

2.01 **MCC 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 platform location is to be located north of the marina's existing landscaped viewing area. This area will continue to be enhance over the next few months."*

Staff: The platform is proposed to be located approximately 60 feet west of the Multnomah

Channel. The applicant has submitted a landscape plan that indicates screening between the proposed structure and the shoreline. Staff believes that the addition of at least 3 more trees is warranted in order to more fully screen the platform (see Condition 4). *As conditioned, these criteria are met.*

- 2.02 **(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 marina and property is privately owned, gangways, docks and ramps provide safe access to and from the river.”*

Staff: The property is privately owned land located well outside of any urban growth boundary. The proposal is not for a commercial or public use, rather it is intended to support the existing use as a privately owned marina; therefore, the proposal does not generate the need to require public easements on the property. *Criterion met.*

- 2.03 **(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: *“No development is taking place. This is the installation of a switchbox for the upgrade of electrical. It was an oversight in the electrical permit process that it could no longer be located on the marina docks. We would have addressed this issue had the oversight no have occurred.”*

Staff: The proposed platform will be located a full 60 feet from the edge of Multnomah Channel. The applicant has indicated that given current electrical infrastructure, the proposed location is more logical than potential sites farther from the Channel because the site is constrained by existing parking and pond farther east. The proposed location is located to the greatest extent away from the Channel as practicable. *The criterion is met.*

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

Applicant: *“Not applicable, McCuddy’s Big Oak Marina is the middle of three marinas on this stretch of the channel. There is no agricultural land at this location. Other than the electrical upgrade, no modification is being made to the existing land.”*

Staff: The subject property is not employing agricultural practices; nor are adjacent properties. The proposal will not adversely affect existing agricultural practices on nearby Sauvie Island. *Criterion met.*

- 2.05 **(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: *“Not applicable, no timber exist, or is being removed.”*

Staff: The proposal does not include the harvesting of timber. *The criterion does not apply.*

- 2.06 **(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: *“McCuddy’s Big Oak Marina is the middle of three marinas on this stretch of the Channel. There is no agricultural land at this location. While the marina and property is privately owned we do provide gangways, docks and ramps for safe access and usage of the river by our tenants.”*

Applicant: *“McCuddy’s Big Oak Marina is the middle of three marinas on this stretch of the Channel. There is no agricultural land at this location. While the marina and property is privately owned we do provide gangways, docks and ramps for safe access and usage of the river by our tenants.”*

Staff: The property is privately owned and provides access to the Channel for the enjoyment of tenants and their guests. *The criterion is met.*

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

Applicant: *“Fish and wildlife habitats are protected by our waste and recycling deposit center, our tenancy rules, security and management.”*

Staff: The proposed platform is not expected to pose significant impacts on existing habitats. *The criterion is met.*

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

Applicant: *“The view of the river, the marina property and river will not be impeded by this project. The platform will locate behind existing natural screening.”*

Staff: The proposal will not affect significant view points provided that the platform, as seen from the Channel, with the addition of at least four additional screen trees (condition 5) will be sufficiently screened by vegetation and will be painted a dark, earth-tone, color per condition 1.

2.09 **(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 marina is posted, protected by a security gate, has onsite residence and the Harbormaster or maintenance personnel generally is in the marina.”*

Staff: Staff agrees with the applicant’s assessment as presented above. *The criterion is met.*

2.10 **(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 along the river, and continuous riparian corridors.**

Applicant: *“The maintenance and protection, without interfering with the natural process, of the river and wetlands is of prime concern to the marina.”*

Staff: The natural vegetation will be enhanced through the addition of at least four native trees (see condition 5).

2.11 **(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: *“Not Applicable, no aggregate or soil is to be removed, and the platform foundation is to be hand dug.”*

Staff: Extraction of aggregate is not proposed. *The criterion is not applicable.*

- 2.12 **(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: *“This project will have no affect to our pond or wet areas by this project.”*

Staff: Flood plain impact is being reviewed under a separate permit application (file T1-08-005). The application for a Flood Development Permit (FD) shall be approved prior to construction of the proposed platform (condition 3). The platform will need to be flood proofed per MCC 29.606(C)(1)(a). The applicant has submitted plans indicating that the structure will be flood-proofed to at least one foot above the base-flood elevation. *With the appropriate conditions, the criterion is met.*

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

Applicant: *“To insure all water and wetlands are protected we will cover and protect any exposed soil and use absorbent materials as a barrier to eliminated any chance of runoff. This project will have no affect to our runoff ponds or wet areas by this project”*

Staff: The project is not expected to adversely affect nearby wetlands. *The criterion is met.*

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

Applicant: *“Not Applicable, to our knowledge there are no ecological, scientific, historical or archaeological sites at this location.”*

Staff: There are no known ecological, scientific, historical or archaeological sites in the immediate vicinity of the project. *The criterion is met.*

- 2.15 **(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: *“To insure all water and wetlands are protected we will cover and protect any exposed soil and an absorbent materials as a barrier to eliminated any chance of runoff. This project will have no affect to our runoff ponds or wet areas.”*

Staff: Earth disturbing activities will be very minimal, as the site will be hand-dug in preparation for the concrete base. *The criterion is met.*

- 2.16 **(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: *“Not Applicable, nothing will occur at the site that will affect the quality of air, water or other items listed in paragraph “P”.*

Staff: The proposed platform is not expected to affect air, water, or land resources. *The*

criterion is met.

- 2.17 **(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: *“I do not believe this is applicable as this is not a dwelling.”*

Staff: The proposed platform is in support of water related uses; moorages and docks. *The criterion is met.*

- 2.18 **(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: *“The construction of the platform is not a change of use. The necessity of it’s location is dictated by the electrical permit requirements issued by the city of Portland and possibly FEMA. The old switchbox was located in the marina on the dock.”*

Staff: The application meets the Design Review Criteria set forth in Section 34.7050.

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

Staff: The project will have a minimal impact on existing and future uses in the area and will minimally impact the natural environment. *The criterion is met.*

3.00 ***Applicable Design Review Criteria***

- 3.01 **MCC 34.7050(A)(2) Safety and Privacy – The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private places.**

Staff: The proposed platform will ensure the continued use of the property as a private marina, providing reliable electric service to the property, which is essential to maintaining a secure facility. The platform will be secure from unauthorized access by providing a locking metal cage that will encase the attached ladder when not in use. *The criterion is met.*

- 3.02 **(4) Preservation of Natural Landscape – The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.**

Staff: The applicant’s landscape plan indicates that existing vegetation will be preserved and will be further enhanced by the addition of native trees. No change to existing grades is proposed. *Criterion met.*

- 3.03 **(5) Pedestrian and Vehicular circulation and Parking - The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.**

Staff: Pedestrian and vehicle facilities currently serving the marina will remain intact. There are no proposed changes to these facilities. *The criterion is met.*

- 3.04 **(6) Drainage – Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.**

Staff: The proposal is not expected to adversely affect on-site drainage patterns. The proposed platform will create 64 square feet of impervious surface which is well below the 500 square feet requirement for a storm-water certificate. *The criterion is met.*

- 3.05 **(7) Buffering and Screening – Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.**

Staff: The applicant has submitted a landscape plan that demonstrates both buffering and screening. The applicant's site plan (Exhibit A.9) indicates a good level of screening and buffering; however, additional screening is appropriate between the site of the proposed platform and the Channel as is conditioned in Condition 5. *The criterion is met.*

- 3.06 **(8) Utilities – All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.**

Staff: The criterion generally refers to public utility infrastructure; the proposal is for a privately owned switch box that, while served by a public utility, is not part of the public utility infrastructure. *Therefore, the criterion is not applicable in this case.*

4.00 ***MUA-20***

MCC 34.2855 – Dimensional Standards:

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Staff: The platform is proposed more than 60 feet from the nearest property line and the overall height of the structure will be 22 feet to the highest point. *The criterion is met.*

5.00 ***Conclusion***

Based on the findings and other information provided above, the subject property meets the criteria for a Willamette River Greenway permit set forth in MCC 34.35855. This approval is subject to the conditions of approval established in this report.

6.00 ***Exhibits***

Exhibit #	Description of Exhibit
‘A’	Applicant’s Exhibits
A.1	General Application Form
A.2	Project Description
A.3	Structural Calculations
A.4	Flood Proofing Certificate
A.5	Firm Panel Map
A.6	Site Plan
A.7	Aerial Photographs
A.8	Pre-File Notes
A.9	Detailed Site Plan
A.10	Elevation View
A.11	Narrative
A.12	Fire District Access Review Form
A.13	Fire District “Non-Residential” Review Form
A.14	Landscape Plan
‘B’	Staff Exhibits
B.1	Assessment and Taxation Property information (Tax Lot 400)
‘C’	Procedural Exhibits
C.1	Letter Indicating Complete Application
C.2	Opportunity to Comment Notice