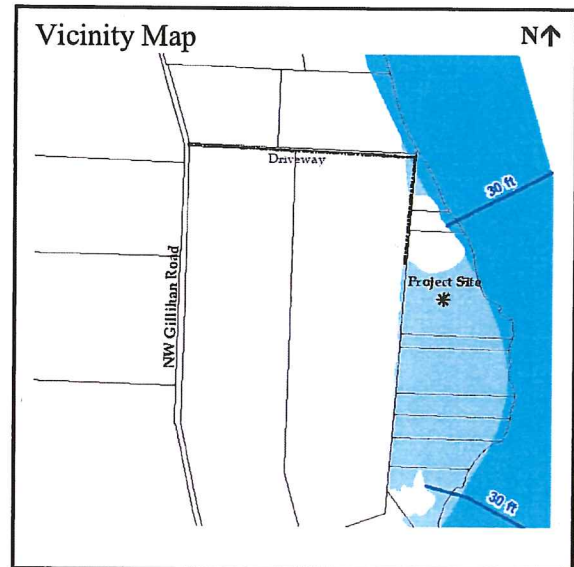


DECISION

This is a Hearings Officer's Decision on the land use case(s) cited and described below.

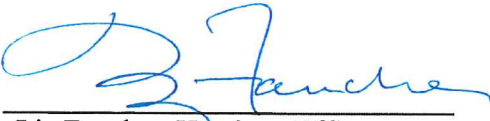
Case File: T2-2013-3156
Permit: Willamette River Greenway
Location: 18900 NW Gillihan Road
Tax Lot 400 , Section 14A
Township 2 North, Range 1 West, W.M.
Tax Account #R971140010
Applicant: Spence Kroll
Green Gables Design and Restoration
Owners: John and Toni Stevens
Base Zone: Multiple Use Agriculture – 20
Overlays: Willamette River Greenway



Summary: The proposed project is to replace an existing dwelling within the Willamette River Greenway overlay zone.

Decision: Denial.

Dated this 18th day of July 2014.

By: 
Liz Fancher, Hearings Officer

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font.

1.00 Project Description:

Hearings Officer: The applicant has applied for a Willamette River Greenway review to replace an existing residence in the Multiple Use Agriculture – 20 zone. The property owners are proposing to demolish the existing dwelling including the foundation and adjacent detached garage and construct the new dwelling above the base flood elevation. The new foundation will be a slab on grade construction. The entire property is subject to the Willamette River Greenway overlay requirements of MCC 34.5800 through MCC 34.5865.

2.00 Property Description & History:

Hearings Officer: The subject property is 16.95 acres in size and is primarily used for residential purposes. The property currently contains one single-family dwelling established in 1963, one farm-help dwelling authorized in 1989 (previously a health hardship dwelling), and a number of outbuildings that are accessory to the single family dwelling.

The farm-help dwelling is used seasonally during the warmer summer months (May – October) by farm help (Exhibit A.16). The Stevens grow produce which they donate to charity (Exhibit A.13 and A.15). While growing produce to donate to charity is not a farm use (not intended to make a profit), the house is still being used for housing help. Whether this use is lawful is not clear. As this issue has not been raised in the decision under appeal, it will not be addressed and resolved by this decision.

In 1985, the prior property owner registered for a 30-ft by 40-ft exempt farm structure with the County. The building was constructed within the FEMA designated 100-year floodplain, though land use reviews on the property from the years 1986, 1997, 2000 represented that the primary dwelling and barn were within Zone B and did not require a Flood Development permit. No further registration or flood development permit was granted for the expansion of the barn to its current size 60-ft by 73-ft. To legalize the additions, the whole structure will need to be flood-proofed and building permits issued. These constructed improvements include the propane tank and electrical room installation authorized in 2000 as the contractor represented that they were outside of the 100-year floodplain. The farm building was supposed to be converted to an accessory building and obtain retroactive building permits in the year 2000 as indicated by the contractor's submittal for the electrical room used for the dwelling.

The existing single family dwelling has had a number of improvements which have not been authorized or obtained the necessary Flood Development permit or building permits. Unauthorized improvements include:

- Construction of carport addition and its conversion to an attached garage. The property owner represented the dwelling and carport were located outside of the floodplain.
- Detached garage located south of the existing dwelling. No flood development or building permits found.
- Placement of concrete slab, propane tank and construction of electrical room within the barn without flood development permit. Representative represented that these improvements were outside of the floodplain, when in fact they are located within the floodplain and are subject to flood code requirements.
- Addition on west side of barn constructed between the years 1990 to 2002. No land use sign-off

or flood development permits authorizing the addition could be provided/found in County records.

- Addition on the north side of barn constructed between the years 1990 to 2002. No land use sign-off or flood development permits authorizing the addition could be provided/found in County records.
- Small storage shed east of barn and outbuilding near the southern end of the property constructed around 1990. No flood development permit found.

These improvements to the dwelling have reached the level of substantial improvement pursuant to the Flood Development regulations and is required to be raised at least one-foot above the base flood elevation for this portion of the Columbia River. Current exempt farm structure regulations do not allow them in the floodplain. Building permits will be needed to convert the exempt farm structure to an accessory building. The property owners have entered into a Voluntary Compliance Agreement to bring the various issues identified above on the property into compliance with the Flood Development code and land use laws pursuant to MCC 37.0560. Whether the farm help dwelling is still a lawful use is unclear but this issue has not been raised and is not resolved by this decision.

3.00 Multiple Use Agriculture - 20 Criteria:

3.01 § 34.2820 ALLOWED USES

(C) Residential use consisting of a single family dwelling constructed on a Lot of Record.

Hearings Officer: The proposal is for a single-family dwelling to replace the existing dwelling currently on the property (Exhibit A.3 & A.19). Based on the materials discussed in Section 3.03, the property is a Lot of Record. *Criterion met.*

3.02 § 34.2855 Dimensional Requirements

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Hearings Officer: The applicant is proposing to construct the replacement dwelling in the same location as the existing dwelling. As the property is 16.95 acres in size, it is feasible to meet the setbacks in a number of locations. The proposed homesite is in compliance with the above (Exhibit A.3). At its closest as depicted on the applicant's site plan, the dwelling is 65 feet from the property line. The applicant's site plan demonstrates compliance with these setback requirements.

3.03 § 34.2870 LOT OF RECORD

(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.

(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.

(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.

(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.

Hearings Officer: The subject property was placed in its current configuration in March 1982 (Exhibit B.2). At the time, the area was zoned F-2 (Agricultural District) which had a minimum lot size of 2 acres. The property was approximately 18.08 acres. Since that time, it appears that the river banks have been altered due to natural cause and reduced the parcel by 1.13 acres in size incrementally. *The property is a Lot of Record.*

3.04 34.2880 OFF-STREET PARKING AND LOADING

Off-Street parking and loading shall be provided as required by MCC 34.4100 through 34.4220.

Hearings Officer: The site plan shows an area that will provide two parking spaces for use by the residents. *Criterion met.*

4.00 Willamette River Greenway Criteria

Background Information –On October 6, 1977 Multnomah County adopted the Willamette River Greenway (WRG) special district to establish Greenway Compatibility Review areas and approval criteria in response to Goal 15. The State acknowledged the Comprehensive Plan and map on October 30, 1980. Along with many other properties, the WRG overlay was applied to this property on that date. Multnomah County included all land mapped by the State of Oregon as being within the WRG in its WRG. Land that had not been mapped as WRG by the State was not included in the Multnomah County WRG.

During the County's last periodic review (mid-1980s to mid-1990s), it was determined that the WRG special district regulations should be expanded to cover certain Water Areas and Wetlands (Exhibit B.4) with new wetland protections instead of applying the Significant Environmental Concern special district to properties already in the WRG overlay zone. For this area of the County, the WRG overlay serves as both the WRG overlay and the environmental overlay for wetlands and water bodies within the vicinity. This decision did not, however, expand the location of the WRG. It did not include any change that would indicate that the County had decided to apply WRG setbacks and other protections to the

Columbia River. The original purpose statement from the 1977 Willamette River Greenway District includes “...to establish Greenway Compatibility Review Areas;...” (Exhibit B.5).

In the initial review of this application, the County and the applicant took the position that the subject property is located on the Columbia River and not on the Willamette River. According to the applicant’s attorney, the County and applicant agreed that the Willamette River begins at a point that is upriver from the location of River Mile 0.0 of the Willamette River. Based on this incorrect understanding of the location of the river, the applicant claimed that the subject property and the proposed home are not “lands along the Willamette River.”(Exhibit H.5).

ORS 390.310 defines the Willamette River, for purposes of the Greenway Act, as “that portion of the Willamette River, including all channels of the Willamette River, from its confluence with the Columbia River upstream to Dexter Dam and the Coast Fork of the Willamette River upstream to Cottage Grove Dam.” Hence, the focus on the confluence of the rivers. A confluence, by dictionary definition, is “a flowing together; the meeting or junction of two or more streams; also the place of, or a stream formed by, this; as the confluence of the Ohio and Mississippi.” *Webster’s New Universal Unabridged Dictionary*, Deluxe 2nd Edition. When streams or rivers join, as a matter of fact, their waters run together side by side for a while before they mix and become indistinguishable. This fact is evident from the WRG aerial photograph/map labeled 12-2A/Exhibit 1, page 13 of A Proposal for The Willamette River Greenway, Oregon State Parks and Recreation Branch, Department of Transportation, July, 1976. (Exhibit H.5). This aerial photograph shows the lighter-colored Willamette River meeting the darker waters of the Columbia River at a line in an area staff and the applicant viewed as the Columbia River. River Mile 0.0 appears to be located close to this line. This line between the waters of the two rivers and the WRG zone extend north beyond the subject property.

The applicant and hearings officer have submitted USGS and other maps that show River Mile 0.0 of the Willamette River is located north of the location the applicant and staff identified as the confluence of the Willamette River and Columbia River at the land use hearing. River Mile 0.0 is located in what is, visually, the Columbia River.

In post-hearing documents, the applicant submitted maps and materials used by the State of Oregon to develop the State boundaries for the WRG.¹ The applicant claims that the 1974 document, Preliminary Willamette River Greenway prepared by Royston, Hanamoto, Beck & Abey is a “base map” for the WRG zone and that it sets the confluence of the Willamette River at River Mile 0. The Hearings Officer does not agree with the “base map” claim if it is intended to imply, in any way, that this map has any current validity. It is a *preliminary* draft map of the WRG. It does not accurately reflect the boundaries of the WRG as ultimately adopted by the State and Multnomah County and went with additional iterations.

The applicant’s claim that 1974 maps set the confluence of the Willamette River at Mile 0 is a bit of an overstatement. The document uses River Miles to identify the location of WRG properties but it never undertakes the task of “setting” the confluence. The 1974 maps show river miles and key certain areas to river miles. River miles are shown at one point in the river only and, therefore, identify only a single point at the confluence of the rivers.

The 1974 maps identify specific Greenway Areas. The subject property is located in one of these Greenway Areas, Area 23. The 1974 document says that land in this area, including the subject

¹ The Hearings Officer deeply appreciates the detailed information and analysis provided to the record by the applicant’s attorney. This information enabled the Hearings Officer to make a more informed decision and will enable appellate bodies to do the same.

property, is located at River Mile 0 to 1.0. This is not evidence that the subject property is located, as claimed by the applicant, beyond River Mile 0 or in some location other than on or along the Willamette River. The same is true for the 1976 *Proposal for the Willamette River Greenway* document filed by the applicant. It is also a draft but more current and, therefore, more probative of legislative intent in adopting the final map.

Both preliminary ODOT WRG plans used River Mile 0.0 as a marker for the beginning of the Willamette River and for lands identified for protection and acquisition. River Mile 0.0, according to USGS maps, is a point located out in the middle of what appears to be the Columbia River a short distance south and west of the Oregon and Washington border. River Mile 0.0 is shown on USGS maps as being located close to due east of the southern boundary of Belle Vue Point County Park. The subject property is north of and west of this single point shown on USGS maps as River Mile 0.0. The USGS map does not, however, depict more than a single point. The boundaries of the entire confluence of the Willamette River with the Columbia River is not shown or readily known. It is not clear how River Mile 0.0 relates to the rest of the confluence of the Willamette River and land on Sauvie Island, in particular to land identified, without great specificity, as Belle Vue Point. It is the confluence, not River Mile 0.0, according to ORS 390.310 that defines the starting point of the Willamette River Greenway. The applicant appears to assume that one is to draw a line east from River Mile 0.0 to shore and that is the confluence of two bodies of water. This method excludes Belle Vue Park and the entire area north of the park from being located on or along the Willamette River and has been rejected by the Hearings Officer for reasons described below.

Goal 15 and the County's WRG zone to protect land along or on the Willamette River. There is no legislative history that shows that the State or the County intended to protect any other lands. As stated by the applicant's attorney: "ORS 390.310 to 390.368 are expressly limited to the Willamette River, not the Columbia River." (Exhibit H.5, p. 2). The County chose not to expand the protections of WRG to lands other than those identified by the State of Oregon as being located on or along the Willamette River under the authority of the WRG law. It did not, when it added SEC regulations to the WRG zone, include additional lands or lands on the Columbia River. The County's WRG zone, therefore, is likewise limited to lands on or along the Willamette River. The County's zoning regulations, also, are written to apply to and protect the Willamette River only for all of the reasons given by the applicant's attorney (Exhibit H.5, pp. 3-6).

The Greenway was required, by law, to include all land within 150 feet of the ordinary low water line of each side of the Willamette River and "such other lands along the Willamette River" considered necessary for development of the Greenway. ORS 390.318(1). Goal 15 requires that the State-adopted boundaries of the WRG be shown on the County's comprehensive plan map. Unlike Eugene and Clackamas County, Multnomah County's map of the WRG matches and does not extend the WRG zone to properties in other locations.² This means that the subject property and the one property north of the subject property, both located within the WRG boundary set by the State of Oregon, must have been legislatively determined to have been within 150 feet of the Willamette River or "along the Willamette River" to merit inclusion in the WRG boundary to have merited inclusion in the WRG zone. This conclusion is consistent with the applicant's legal position that the County's WRG zone and ORS 390.310 to 390.368 which it implements "are expressly limited to the Willamette River, not the Columbia River" and that Goal 15 "is unambiguous and limits its open space and river setback

² In *Willamette Oaks, LLC v. City of Eugene*, ___ Or LUBA ___ (5/23/13, LUBA No. 2012-091) LUBA held that man-made ponds and a slough whose waters drain into the Willamette River that had been mapped WRG were not a part of the Willamette River based on an interpretation of the intent of the city in adopting a WRG map that was a "departure" from the DOT (State of Oregon) boundaries. The departure, by law, would have been one that protect more land as a part of the Greenway than called for the DOT map – land that is not, as required for land on the State map, necessarily located adjacent to or along the Willamette River.

provisions to the Willamette River, not the Columbia River.” (Exhibit H.5).

The Willamette River is a tributary of the Columbia River. The subject property is inventoried in the preliminary WRG map and planning documents used to develop the WRG map (filed in this case by the applicant) as being on the Main Stem of the Willamette River in an area of land located near River Mile 0.0 of the Willamette River. See, *A Proposal for the Willamette River Greenway*, Oregon State Parks and Recreation Branch, Department of Transportation, July 1976, page 12-1 (Exhibit I.2). This area is described as “[s]ubmersible land adjacent to public land at the confluence of the Willamette and Columbia Rivers.” It is noted that “the land marks the mouth of the Willamette River known as Belle Vue Point.” Belle Vue Point Park is located to the south of this “land that marks the mouth of the Willamette River” that, according to the *Proposal* “is known as Belle Vue Point. Belle Vue Point Park is located one narrow property south of the subject property and comprises most of the area north of Belle Vue Park mapped WRG and referred to as Belle Vue Point.

From the maps included in record it is not completely clear where Belle Vue Point is located. What matters, however, is that the creators of the WRG zone boundaries, in the *Proposal*, understood the point to be one “marking the mouth of the Willamette River” and to be located north of the Belle Vue Point Park. As a result, the line between River Mile 0.0 is not drawn due east to the southern boundary of Belle Vue Point Park as proposed by the applicant.

The applicant claims that all resources along the Willamette River are described from Mile 0. The Hearings Officer agrees. The applicant then claims that the WRG area that includes the subject property is an area extending past Mile 0 on the Willamette River as ‘land which could provide legal and physical access from the uplands to the [Willamette] river bank.’” (Exhibit I.2, p.1). Nothing in the *Proposal*, however, supports this claim. No area is described as “extending past” River Mile 0. The lands in the area of the subject property are not described as adjoining the Columbia River. Instead, they are inventoried at Mile 0 on the Main Stem of the Willamette River. The *Proposal* shows that this area, that includes the subject property, was private property identified for purchase to provide access from uplands to the river bank of the Willamette River as opposed to purchase for other river uses. This area is described on page 12-1 of the *Proposal* as being located at points along the shoreline keyed to river miles – not at a point due east of River Mile 0.0 as mapped by the USGS on the south boundary of Belle Vue Park. The Sauvie Island dike is identified as being located at River Mile 0.8 (running to River Mile 3.0). When a distance of .8 mile is scaled along land between River Mile 0.8 (Sauvie Island dike), River Mile 0.0 on land is located at the north end of the subject property near or just north of the existing home.³ This fact indicates that the State drafters of the WRG boundaries and maps viewed the river adjacent to the subject property as being on the Willamette River at or about River Mile 0.0. Given this intention and the fact that the location of a confluence is not a fixed point and, from its waters, appears to end at a point north of the subject property, the Hearings Officer finds that the subject property is located on the Willamette River for purposes of applying the WRG zone regulations.

The fact that the area at River Mile 0.0 of the Main Stem of the Willamette River that includes the subject property is intended to provide access to the river bank could be read, as it has been by the applicant, as implying that the area is not on or along the Willamette River. The Hearings Officer does not, however, import such a meaning into the text of the *Proposal* because other areas given the same classification for acquisition (Class 3) on page 12-1 of the *Proposal* are all lands which could provide access from uplands to river banks are riverfront properties that are located on the Willamette River or Multnomah Channel of the Willamette River.

³ When River Mile 0.8 is measured in the river out into the Columbia, it extends beyond River Mile 0.0 as shown on the USGS map. This indicates that the point on land, at least for purposes of WRG mapping by the State of Oregon, is not due west of the point in the middle of the river.

It is theoretically possible that a property could be located with one side on the Willamette River and one side on the Columbia River. Both the subject property and the entire area of private lands identified in the *Proposal*, however, do have two river frontage areas – just one side of four sides of each area adjoins a river. As a result, the river must be either the Columbia River or the Willamette River. Given the history and laws regulating creation of the WRG map, the most logical conclusion is that the subject property and its area were mapped in the WRG because they were considered to be adjacent to the Willamette River.

The applicant's attorney has cited two legal cases that are claimed to support the applicant's argument that if waters are included in the WRG zone but are not the Willamette River that they are not subject to WRG zone setbacks. In both cases, waters in a lake and a slough and manmade ponds that followed into the Willamette River were mapped in the WRG zone but the river setbacks were not applied because the legislative history did not show that the waters were protected because they were (a) believed to be the Willamette River; or (b) believed to be channels of the Willamette River. In this case, where the intent was to include these areas as being on or along the Willamette River, a different conclusion is warranted.

4.01 MCC 34.5805 AREA AFFECTED

MCC 34.5800 through 34.5865 shall apply to those lands designated WRG on the Multnomah County Zoning Map.

MCC 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.

MCC 34.5820 EXCEPTIONS

A Greenway Permit shall not be required for the following:

(K) Uses legally existing on October 6, 1977, the effective date of Ordinance 148; provided, however, that any change or intensification of such use shall require a Greenway Permit.

MCC 34.5815 DEFINITIONS

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.

(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.

Hearings Officer: The existing dwelling was constructed on the property in 1963. The applicant is proposing to replace the existing dwelling and non-permitted additions with a new single family dwelling. Recent improvements to the dwelling have occurred without obtaining necessary land use or flood development permits. An existing carport constructed in 1997 was converted to an attached garage. In addition, a detached garage was constructed south of the dwelling. Substantial improvements were completed to the structure without obtaining a Flood Development permit as prior property owners represented the dwelling and related structures on the site were outside of the 100-year floodplain. With the completion of substantial improvement to the dwelling, the structure must be raised to comply with the County's Flood Development code (MCC 29.600 through MCC 29.611). The property owners have decided to demolish the existing structure along with its foundation and raise the grade, install a slab on grade foundation and construct a new dwelling.

A replacement of an existing dwelling with a new dwelling is considered intensification under the definition contained in MCC 34.5815(E) (see above). The replacement dwelling will substantially increase the visual bulk of the dwelling over that of the lawfully established improvements as the legal structure will be larger than the dwelling from the 1980s and the grade will be raised so that the new dwelling is one-foot above the base flood elevations. A replacement dwelling is not a modification of an existing structure. The concept of maintenance and repair centers on retaining an existing structure except when it is necessary to selectively modify or to return a structure to its lawfully established condition. A replacement dwelling is an intensification of the existing lawful use and is subject to the requirements of the Willamette River Greenway permit.

4.02 § 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.

Hearings Officer: The term "the river" means the Willamette River. The river adjacent to the area proposed for redevelopment by the applicant is, for purposes of this review, the Willamette River.

The applicant is proposing to demolish the existing dwelling and foundation and construct a new dwelling. The area for the proposed replacement dwelling will be filled within the floodplain so that the house will sit one-foot above the base flood elevation. The setback for the proposed replacement dwelling ranges from 50 to 95 feet from the east property line which is adjacent to the Columbia River (Exhibit A.3.e), 460 feet from western property line, approximately 240 feet from the northern property line and 590 feet from the southern property line. The applicant is proposing to plant ten, 3" red alder trees, nine, 2" pacific willows, areas of the shrub *Carex obnupta* (slough sledge – max. 4-feet high) and areas of sword fern. The landscape plan is lacking in evergreen trees and shrubs to diffuse the visibility of the dwelling during early spring, late fall and winter. The applicant is proposing to add extensive improvements (sidewalks, improved patio, walls) that are not landscaping between the use and the river. The applicant has not, based on this plan, met its burden of proving that these enhancements and the proposed landscaping will provide the maximum possible landscaped area between the home and the river.

4.03 (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.

Hearings Officer: Neither the applicant nor property owners have proposed an easement for public access from Gillihan Road to the river. Sauvie Island is a rural setting and no public trails have been planned for the area. *Criterion met.*

4.04 (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.

Hearings Officer: The subject parcel is located in the MUA-20 zone; a rural zone. The MUA-20 zone allows one single family dwelling per Lot of Record. While a second dwelling currently exists on the property for the housing of farm help, the house to be replaced is the primary dwelling for the property. As discussed above under Section 4.01, the proposed replacement dwelling is not tied to the current dwelling location as the existing dwelling will be demolished completely and a new foundation constructed to comply with the County's Flood Development code due to "substantial improvement" that occurred to the structure before this application was made.

The applicant's proposed location for the dwelling ranges from 50 to 80 feet from the east property line which is adjacent to the Willamette River. The applicant proposes to add improvements between the footprint of the existing home and the river. The applicant claims that the home location is directed away from the river because it is a long distance from what it considers to be the Willamette River. It has not made a case that it is directed away from the river that adjoins its property that the WRG drafters viewed as being located at the confluence of the Willamette River.

The proposed replacement dwelling will involve all new building materials and foundation. The construction of a new dwelling triggers the WRG permit process and code requirements. A new foundation slab on grade will be poured for the replacement dwelling. This new construction allows the replacement dwelling to be placed, on the subject property, in a location where it will be directed away from the river "to the greatest possible degree."

County staff demonstrated that it is possible for the dwelling to be moved to the northwest portion of the property outside of the 100-year floodplain but it will still be within the WRG zone. From this point forward, the Hearings Officer will refer to this alternative location for the dwelling as the "*Alternative #1.*"

Alternative #1 would place the dwelling a minimum of 220 feet from the eastern property line (Columbia River), 35 feet from the northern property line, 126 feet from the western property line (110 feet from the easement road located along the western property line), and approximately 745 feet from the southern property line. Planning staff has created an exhibit showing the location of Alternative #1 (Exhibit B.2). Alternative #1 would allow the dwelling to meet the setbacks, be placed in an area of significant evergreen vegetation for screening and would allow the proposed seepage beds as part of the on-site sewage disposal system as shown on Exhibit A.3.e. to be used. The septic tank for the dwelling could then be installed outside of the floodplain. The applicant's grading plan detail (Exhibit A.3.c) shows that three trees (7.5", 12" and 12" circumference) would need to be removed in order to construct the replacement dwelling at the existing house location. While the proposed new location would require the removal of approximately five, 5 to 8-inch circumference trees, the house would be located where approximately 26 trees exist. Alternative #1 best meets the above WRG criterion. As a result, the Hearings Officer finds that the proposed location of the home does not comply with

this approval criterion.

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

Hearings Officer: Agricultural lands are lands protected by Goal 3. The subject property is located in an exception area and is not protected by Goal 3. It, therefore, is not agricultural land and this criterion does not apply.

4.06 (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.

Hearings Officer: No harvesting of timber is proposed. This criterion is not applicable.

4.07 (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.

Hearings Officer: The current property owners have constructed a boat dock for their private recreational purposes. No public recreation is proposed or planned for the property. *Criterion met.*

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

Hearings Officer: The adjoining river is home to a number of endangered fish species. In addition, its banks provide habitat, food and a travel corridor for mammals and amphibians in the area. The southern portion of the adjoining river bank on the property is chiefly lined with willows or other riparian vegetation. The northern portion of the riverbank along the property has been armored as approved in WRG 8-97. In front of the armored area, it was to be planted with willow sticks to provide riparian vegetation. At present, it does not appear that the willows have taken root to protect fish and wildlife habitats, as required by WRG 8-97. If approved, a condition of approval to comply with WRG 8-97 would have been imposed.

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

Hearings Officer: The applicant claims that no significant natural and scenic area and viewpoints and vistas exist that merit preservation. The Planning Director's decision did not identify any such areas indicating that this criterion can be met.

4.10 (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.

Hearings Officer: The subject property is private property. The applicant has not proposed any specific security measures. It is unclear whether this criterion is met.

4.11 (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.

Hearings Officer: The northern portion of the riverbank along the property has been armored as approved in WRG 8-97. In front of the armored area, it was to be planted with willow sticks to provide riparian vegetation. At present, it does not appear that the willows have taken root or may need to have replacement sticks planted.

4.12 (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.

Hearings Officer: No mining has been proposed as part of this project. *Criterion met.*

- 4.13 (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.**

Hearings Officer: The proposed setback for the dwelling ranges from 50 to 95 feet from the east property line which is adjacent to the river (Exhibit A.3.e), 460 feet from western property line, approximately 240 feet from the northern property line and 590 feet from the southern property line. As proposed, the dwelling location will remain within the 100-year floodplain of the river. The applicant has proposed to take the fill material from their agricultural fields in the southwest portion of the property approximately 360 feet back from top of bank to raise the homesite. The applicant proposes a "balanced cut and fill" approach and claims this complies with this code section. This approach does not, however, demonstrate compliance with the requirement to preserve flood plains "in their natural state to the maximum possible extent." The applicant is enlarging the footprint of the home to include lands that are now undeveloped. The applicant is proposing significant new improvements between the existing home footprint and the river which have not been shown to maintain this area in its natural state to the maximum possible extent. Even if these improvements, as claimed by the applicant, have no negative impact on water retention, overflow and natural functions the area between the house and the river has not been retained in its natural state.

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

Hearings Officer: The subject property does not contain any County designated "Significant Wetlands". *Criterion is not applicable.*

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

Hearings Officer: The northern portion of the riverbank along the property has been armored as approved in WRG 8-97. In front of the armored area, it was to be planted with willow sticks to provide riparian vegetation and help to restore this area of ecological significance. At present, it does not appear that the willows have taken root.

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

Hearings Officer: The applicant has submitted grading plans for the proposed home location. The home has not been approved in the proposed location so it is unclear whether another home location will comply with this criterion. In addition, County staff determined that the property is not in compliance with erosion control measures required by prior permits. At a minimum, an approval would need to be conditioned on compliance with the erosion control measures of WRG 8-97 and GEC 34-97.

- 4.17 (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.**

Hearings Officer: The proposed use is a single-family dwelling. It should not contribute significantly to dust or smoke in the area. The sewage created by the dwelling will be handled by an on-site sewage disposal system (Exhibit A.7). The amount of land used for the dwelling will approximately 1-2 acres and will leave approximately 14 acres for agricultural practices.

- 4.18 (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.

Hearings Officer: The proposed home has not been shown to be located more than 150 feet from the ordinary low waterline of the Willamette River. *Criterion is not met.*

- 4.19 (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.

Hearings Officer: Pursuant to MCC 34.7015(A), a single family dwelling is exempt from Design Review.

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

Hearings Officer: Please see the supporting finds under Sections 5.01, 5.02 and 5.03 below.

5.00 Comprehensive Plan Policies

- 5.01 Policy 14 - 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.

Hearings Officer: The property is chiefly composed on Pilchuck sand which has 0-3% slopes. The soils are excessively drained. Significant portions of the property have 100-year floodplain on it. The northwestern portion of the property is outside of the floodplain (Exhibit A.3.e). As the Hearings Officer has found that the proposed home site has not been shown to be sited in compliance with the 150' setback, it is not necessary to determine whether a noncompliant home location that is located within the 100 year flood plain has established that an exception is merited due to the use of balanced cut and fill.

5.02 Policy 37 - POLICY 37

Water and Disposal System

- A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or
- B. Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or
- C. Shall have an adequate private water system, and the Oregon Department of

Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or

D. Shall have an adequate private water system and a public sewer with adequate capacity.

Drainage

E. Shall have adequate capacity in the storm water system to handle the run-off; or

F. The water run-off shall be handled on the site or adequate provisions shall be made; and

G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes, or alter the drainage on adjoining lands.

Energy and Communications

H. There shall be an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and

I. Communications facilities are available.

Hearings Officer: The proposed dwelling will be served by an on-site private well (Exhibit A.9). The environmental health specialist has indicated that the proposed new on-site sewage disposal system will adequately serve the replacement dwelling (Exhibit A.7). Ztec Engineer, John Middleton has determined that an on-site storm water drainage control system is required (Exhibit A.11). The system will involve the use of soakage trenches to handle the stormwater discharge. The site is currently served by electric and communication companies. *Policy met.*

5.03 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 comment on the proposal.

Hearings Officer: The subject property is located within the Sauvie Island Fire Department's boundaries. The Fire Chief reviewed the proposed development and determined that access to the site is currently in compliance with the Oregon Fire Code standards as implemented by their fire service agency. The Fire Chief also reviewed the proposed dwelling size and found that it is over 3,600 square feet and that the fire-flow and flow duration from the on-site well is inadequate to serve the proposed non-commercial structure. The Fire Chief has required that fire sprinklers be installed prior to occupancy of the structure – a condition that would need to be met if the home were approved.

6.00 Conclusion

Based on the findings and other information provided above, the applicant has not carried the burden necessary for the Willamette River Greenway permit for the proposed location of the replacement dwelling. As a result, this application is denied.

The Hearings Officer has not approved the applicant's home in the Alternative #1 location as it is clear that the applicant does not wish to rebuild the home in that location and it is unclear what design and related development might be constructed in that location and how it might be oriented.

7.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2013-3156 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	11.07.2013
A.2	1	Project Narrative	11.07.2013
A.3	8	Drawings – Cover Sheet A1.0 a. Topography – Sheet TP b. Grading Plan – Sheet C1 c. Grading Plan Detail – Sheet C2 d. Storm Drain Plan – Sheet C3 e. Proposed Site Plan – Sheet A1.1 f. Floor Plan – Sheet A2.0 g. Elevations – Sheet A3.0	11.07.2013
A.4	13	Preliminary Title Report dated January 24, 2003	11.07.2013
A.5	3	Current Property Deed recorded on December 19, 2002	11.07.2013
A.6	1	Original Deed recorded in Book 2095, Page 668 in 1961	11.07.2013
A.7	2	Certification of Onsite Sewage Disposal	11.07.2013
A.8	2	Fire District Review	11.07.2013
A.9	3	Certification of Water Service	11.07.2013
A.10	1	Drainage District Review	11.07.2013
A.11	3	Stormwater Certificate	11.07.2013
A.12	14	Willamette River Greenway Worksheet	11.07.2013
A.13	3	Supplemental Information Narrative	1.29.2014
A.14	2	Email from Christe White on Green Gables Letterhead dated February 04, 2013 – Item B	1.29.2014
A.15	1	Claimed Deduction on Income Tax Return for Steven’s Grown Produce	1.29.2014
A.16	1	Agreement for Use of Farm Help Housing	1.29.2014
A.17	1	Memo regarding Voluntary Compliance Agreement	1.29.2014
A.18	1	Riverside Landscape Plan – Item A	1.29.2014

A.19	1	Site Plan – Item C	1.29.2014
A.20	1	Floor Plan for Barn	4.02.2014
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 2N1W14A – 00400	11.07.2013
B.2	1	Alternative Location #1	4.15.2014
B.3	12	WRG 8-97 and GEC 34-97 and related plans	4.14.2014
B.4	3	Information from Period Review	4.14.2014
B.5	6	1977 Willamette River Greenway code language	4.14.2014
B.6	1	1962 Assessment and Taxation Map Showing Sauvie Island and adjacent Islands	4.14.2014
B.7	1	1978 Assessment and Taxation Map	4.14.2014
B.8	9	Electrical Room & Propane Tank Approval dated 11.20.00	4.18.2014
B.9	8	Carport Addition to Single Family Residence dated 04.02.97	4.18.2014
B.10	8	1986 Remodel of Single Family Residence dated 06.11.86	4.18.2014
‘C’	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	12.05.2013
C.2	1	Applicant’s Acceptance of 180 Day Clock	1.22.2014
n/a	0	Application Complete (Day 1)	1.29.2014
C.3	4	Opportunity to Comment	3.13.2014
C.4	17	Administrative Decision	4.18.2014
‘H’	#	Hearings Exhibits	Date
H.1	1	Aerial photograph of confluence of Willamette River and Columbia River showing WRG zoning	5.30.2014
H.2	1	Aerial photograph of confluence of Willamette River and Columbia River showing flood plain	5.30.2014
H.3	58	Hearing Brief of Planning Director	5.30.2014
H.4	1	Letter from Christopher H. Foster to Hearings Officer	5.30.2014
H.5	20	Letter from Christe C. White to Hearings Officer with exhibits	5.30.2014
H.6	1	Selected text of MCC 34.5855 submitted by Christe C. White	5.30.2014
H.7	1	Selected text of Goal 15 submitted by Christe C. White	5.30.2014
H.8	1	Sign In Sheet	5.30.2014
‘I’	#	Post-Hearing Submittals	Date
I.1	9	E-mails, photographs and maps submitted by Hearings Officer	6.1.2014

I.2	16 plus exhibits	Letter from Christe C. White to Hearings Officer Liz Fancher dated 6/13/14 with exhibit	6.13.2014
I.3	15	Post-Hearing Brief of Planning Director	6.13.2014
I.4	10	Applicant's Final Legal Argument	6.26.2014
I.5	3 plus exhibits	Supplement to Applicant's Final Legal Argument	6.27.2014