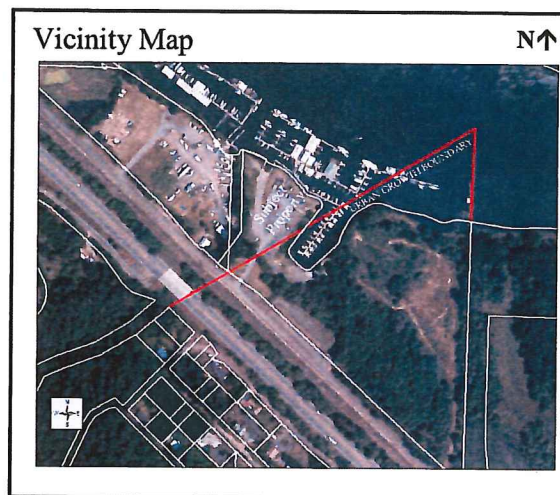


1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF DECISION

This notice concerns a Hearings Officer's Decision, on appeal, of the land use case(s) cited and described below.

Case File: T2-2013-3238
Permit: Administrative Decision by Planning Director
Location: 12800 NW Marina Way
Tax Lot 200 , Section 34
Township 2 North, Range 1 West, W.M.
Tax Account #R971340030
Applicant: Steve Morasch
Owners: Frevach Land Co.
Base Zone: Multiple Use Agriculture-20 (MUA-20)
Overlays: Willamette River Greenway (WRG),
Flood Hazard

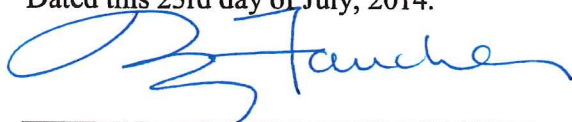


Summary: The applicant has submitted a request for a Planning Director's interpretation of the following two questions for the portion of the subject property that is located outside the Urban Growth Boundary:

- Is Goal 14 exception required under OAR 660-004-0400 to redevelop an existing moorage (marina) including conversion of existing boat slips to houseboats (additional floating homes) under acknowledged provisions of County Code including MCC 34.6755?
- Assuming a Goal 14 exception is required to redevelop a moorage (marina), does the rule reserves rule in OAR 660-027-0070(3) or the County's implementation of rural reserves rule in Policy 6-A(6) of the County's Comprehensive Framework Plan prohibit applications for Goal 14 exceptions to redevelop an existing moorage for additional floating homes?

Decision: Affirmed the Planning Director's determination that a Goal 14 exception is not required for an application to increase the number of floating home at a house boat moorage to the maximum density allowed by MCC 34.6755.

Dated this 23rd day of July, 2014.



Liz Fancher, Hearings Officer

Applicable Approval Criteria: Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): Multnomah County Code (MCC): MCC 34.2830: MUA-20 Conditional Use, MCC 34.6750: Conditional Use Houseboats and Houseboat Moorage, State Wide Planning Goal 14 [(OAR) 660, Division 14] and OAR 660, Division 27: Urban and Rural Reserves

Copies of the referenced Multnomah County Code (MCC) 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>

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

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

1. Project Description:

Hearings Officer: The applicant filed a request for a Planning Director’s interpretation of the following two questions for the portion of the subject property that is located outside the Urban Growth Boundary (Exhibits A.1 and A.2):

- Is a Goal 14 exception required under OAR 660-004-0400 to redevelop an existing moorage (marina) including conversion of existing boat slips to houseboats (additional floating homes) under acknowledged provisions of County code including MCC 34.6755?
- Assuming a Goal 14 exception is required to redevelop a moorage (marina), does the rule reserves rule in OAR 660-027-0070(3) or the County’s implementation of rural reserves rule in Policy 6-A(6) of the County’s Comprehensive Framework Plan prohibit applications for Goal 14 exceptions to redevelop an existing moorage to include additional floating homes?

The Planning Director decided the first question in favor of the applicant’s position and declined to answer the second question. That determination was appealed and a hearing was held on May 30, 2014 to address the merits of the Planning Director’s decision. This decision affirms the Director’s decision based on findings that reflect new information provided by the appellant and others.

2. Property Description & History (if needed):

Hearings Officer: The subject property has an existing marina and moorage (Exhibit B.3). It consists mostly of a marina for mooring boats, however, the Policy 10 inventory indicates there were three floating homes and one combo boat house and dwelling unit.

The 16.68-acre subject property is predominately located within the Urban Growth Boundary (UGB) for the City of Portland. About two acres of the property are located outside the UGB (Exhibits B.2 and B4). Multnomah County Land Use Planning has jurisdiction only for the land outside the UGB. The area outside the UGB is zoned Multiple Use Agriculture – 20 (MUA-20).

3. Multiple Use Agriculture – 20 Zone District:

3.1. MUA-20 Rural Residential

MCC 36.2800: The purposes of the Multiple Use Agriculture District are to conserve those agricultural lands not suited to full-time commercial farming for diversified or part-time agriculture uses; to encourage the use of non-agricultural lands for other purposes, such as forestry, outdoor recreation, open space, low density residential development and appropriate Conditional Uses, when these uses are shown to be compatible with the agricultural uses and character of the area, and the applicable County policies.

Hearings Officer: OAR 660-004-0040 provides rules that govern the approval of land use applications in Rural Residential Areas. The rule applies to “lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 “Agricultural Lands,” Goal 4 “Forest Lands,” or both has been taken.

The Oregon Land Conservation and Development Commission (LCDC) acknowledged this rural MUA-20 zone as an exception area to Statewide Planning Goals 3 and 4 (Exhibit B.4). MCC 34.0005 defines a “primary use” as a “permitted use.” It defines a “permitted use” as a use without the need for special administrative review and approval upon satisfaction of the standards and requirements of the code. MCC 34.0005, *Primary Use* and *Permitted Use*. While the term “primary” is a State law term, no party has cited any State law that defines the term. The Hearings Officer did not find any such definition in the OAR Chapter 660-004. The County’s code, also, has been acknowledged as complying with State law and it establishes the uses and character of the MUA-20 zoning district.

In the MUA-20 zone, single-family dwellings are listed as allowed uses; not review uses or conditional uses. They are allowed without special administrative review and approval. MCC 34.2815(C). Rural residential use, therefore, constitute a primary use for which this area is planned, as the term is defined by MCC 34.0005, Definitions because it is a permitted use. This fact, however, is not dispositive as State law requires that the County have zoned the land “primarily for residential uses.” The ordinary meaning of the term “primarily” means “for the most part.” *Merriam-Webster Dictionary On-line*. While the MUA-20 zone continues to allow agricultural and forest use, by allowing residential use as an outright use in a bucolic setting like Sauvie Island, its allowance of single-family homes as a primary use, without review, has virtually guaranteed that the main or primary use of the land will be residential rather than resource. This is reflected in the purpose statement which notes that the agricultural use of these lands is part-time or “diversified.” The Hearings Officer understands this to be a statement that farming will be a hobby or means to achieve tax deferral for residents of a single-family home which will remain the primary use of the property. As the farm use planned for the zone will, most likely, be accompanied by a residential use and the zone allows single-family homes on lots without any farm activity or review, the Hearings Officer finds that the MUA-20 zone is created “primarily for residential uses.” Accordingly, this MUA-20 zone constitutes a “rural residential area” for purposes of OAR 660-004-0040.

Implementation of this MUA-20 zone is guided by the County’s Comprehensive Plan and, more specifically, the Sauvie Island/Multnomah Channel Rural Area Plan (SI/MC) [Ord. 887, October 30, 1997].

3.2. MUA-20 Conditional Uses

MCC 34.2830, Conditional Uses

The following uses may be permitted when found by the approval authority to satisfy the applicable ordinance standards:

(A) Community Service Uses pursuant to the provisions of MCC 34.6000 through 34.6230.

(B) The following Conditional Uses pursuant to the provisions of MCC 34.6300 through 34.6660:

*** * ***

(9) Houseboats and houseboat moorages

Hearings Officer: Houseboats and houseboat moorages are a conditional use in the MUA-20 Zoning District. Boat moorages, marinas and boathouse moorages are a community service use and, therefore, also a conditional use in the MUA-20 Zoning District.

3.3. Houseboats and Houseboat Moorage

MCC 34.6750- The location of a houseboat or the location or alteration of an existing houseboat moorage shall be subject to approval of the approval authority:

- (A) Houseboats** shall mean any floating structure designed as a dwelling for occupancy by one family and having only one cooking facility.
- (B) Houseboat moorage** shall mean the provision of facilities for two or more houseboats.
- (C) Location Requirements:** Houseboats shall be permitted only as designated by the Comprehensive Plan.
- (D) Criteria for Approval:** In approving an application pursuant to this subsection, the approval authority shall find that:
 - (1)** The proposed development is in keeping with the overall land use pattern in the surrounding area;
 - (2)** The development will not adversely impact, or be adversely affected by normal fluvial processes;
 - (3)** All other applicable governmental regulations have, or can be satisfied; and
 - (4)** The proposed development will not generate the untimely extension or expansion of public facilities and services including, but not limited to, schools, roads, police, fire, water and sewer.

Hearings Officer: As no development is proposed, the criteria for approval are not applicable to the review of this application.

3.4. Density

MCC 34.6755: The maximum density of houseboats shall not exceed one for each 50 feet of waterfront frontage. The Hearings Officer in approving a houseboat moorage may reduce the density below the maximum allowed upon finding that:

- (A)** Development at the maximum density would place an undue burden on school, fire protection, water, police, road, basic utility or any other applicable service.
- (B)** Development at the maximum density would endanger an ecologically fragile natural resource or scenic area.

MC/SI Rural Area Plan Policy 12: The County zoning code should be consistent with the County assessor and the state regarding the definitions of houseboats, boathouses and combos. For purposes of density calculation, “houseboats” shall be defined as 1) any houseboat, and 2) any boathouse or combo which is used as a residence (occupied 7 or more days per month).

Hearings Officer: Floating home maximum density through a conditional use permit allows a maximum of one floating home for each 50 feet of waterfront frontage. The definition provided by Policy 12, adopted by Ordinance No. 887, applies when calculating allowed maximum density.

4. GOAL 14: OAR 660-004-0040

Application of Goal 14 to Rural Residential Areas OAR 660-004-0040

- (1) The purpose of this rule is to specify how Goal 14 “Urbanization” applies to rural lands in acknowledged exception areas planned for residential uses.**
- (2) (a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 “Agricultural Lands”, Goal 4 “Forest Lands”, or both has been taken. Such lands are referred to in this rule as “rural residential areas.”**
 - (b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before October 4, 2000, the effective date of sections (1) to (8) of this rule.**
 - (c) This rule does not apply to types of land listed in (A) through (H) of this subsection:**
 - (A) Land inside an acknowledged urban growth boundary;**
 - (B) Land inside an acknowledged unincorporated community boundary established pursuant to OAR chapter 660, division 22;**
 - (C) Land in an acknowledged urban reserve area established pursuant to OAR chapter 660, divisions 21 or 27;**
 - (D) Land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;**
 - (E) Resource land, as defined in OAR 660-004-0005(2);**
 - (F) Nonresource land, as defined in OAR 660-004-0005(3);**
 - (G) Marginal land, as defined in former ORS 197.247 (1991 Edition); or**
 - (H) Land planned and zoned primarily for rural industrial, commercial, or public use.**
- (3) (a) This rule took effect on October 4, 2000.**
 - (b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court’s 1986 ruling in 1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County), and before October 4, 2000. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule.**
- (4) The rural residential areas described in subsection (2)(a) of this rule are “rural lands.” Division and development of such lands are subject to Goal 14, which prohibits urban use of rural lands.**
- (5) (a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (7) of this rule.**

- (b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.
- (c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area that was in effect on October 4, 2000, and acknowledged to comply with the statewide planning goals.
- (6) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.
- (7) (a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.
- (b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as "the minimum lot size."
- (c) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect.
- (d) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.
- (e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:
 - (A) The number of new dwelling units to be clustered or developed as a PUD does not exceed 10;
 - (B) The number of new lots or parcels to be created does not exceed 10;
 - (C) None of the new lots or parcels will be smaller than two acres;
 - (D) The development is not to be served by a new community sewer system;
 - (E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community;
 - (F) The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on October 4, 2000 as the minimum lot size for the area;
 - (G) Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there; and

- (H) For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.
- (f) Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.
- (g) In rural residential areas, the establishment of a new “mobile home park” or “manufactured dwelling park” as defined in ORS 446.003(23) and (30) shall be considered an urban use if the density of manufactured dwellings in the park exceeds the density for residential development set by this rule’s requirements for minimum lot and parcel sizes. Such a park may be established only if an exception to Goal 14 is taken.

Hearings Officer: The applicant has requested a Planning Director’s interpretation for the following question:

“Is a Goal 14 exception required under OAR 660-004-0400 to redevelop an existing moorage (marina) including conversion of existing boat slips to houseboats (additional floating homes) under acknowledged provisions of County code, including MCC 34.6755?”

Three rules of law apply to the question presented. First, to the extent that a land use application is subject to the acknowledged provisions of the County’s Comprehensive Plan or land use regulations, the County must render its land use decision on the application in compliance with such acknowledged provisions rather than the statewide planning goals and rules implemented by such provisions. ORS 197.175 (2)(d); *Byrd v Stringer*, 295 Or 311 (1983); *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 46 (1996) (“local land use decisions by jurisdictions with acknowledged plans and regulations are not reviewable for compliance with the statewide goals and rules”)].

Second, changes to the County’s comprehensive plan or land use regulations are deemed to be acknowledged when the County has complied with the requirements of ORS 197.610 and 197.615 and the changes were not appealed or were affirmed on appeal. ORS 197.625 (1).

Third, when LCDC amends the statewide planning goals or implementing rules, after a period of one year, the County must apply those changes directly to local land use decisions if its policies and regulations are not consistent with the amendment. The state rules must be applied until such time as a conforming amendment of the County code or plan is acknowledged. *See* ORS 197.250; ORS 197.175 (2)(d); ORS 197.625.

Here, the present concern arises due to LCDC’s changes in 2000 to Statewide Planning Goal 14 and OAR Chapter 660-004 (by adopting OAR 660-004-0040). These changes were made in response to *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447,

(1986). One such change was the adoption of OAR 660-004-0040(7). One of the requirements of OAR 660-004-0040(7) is that “a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area.” OAR 660-004-0040(7)(f). This requirement was adopted in 2000 and has remained essentially the same to date as shown by a review of the administrative rule records of the Department of Land Conservation and Development. The DLCD records also show that the same is true for all parts of OAR 660-004-0040 relevant to addressing the issues presented by this application.

OAR 660-004-0040(7) contains limitations on the density of development allowed in the rural residential areas – expressed in terms of minimum lot sizes. Additionally, the rule requires Goal exceptions are mobile and manufactured home park developments that exceed an equivalent density. OAR 660-004-0040. Goal exceptions are not, however, required for properties that contain facilities that support floating homes moored on the river. The fact that the State believed it necessary to impose a density requirement on properties developed as mobile or manufactured home parks indicates that the State did not view mobile and manufactured homes to be a “permanent single-family dwelling” subject to the one home per parcel restriction of OAR 660-004-0040(7)(f). OAR 660-004-0040(7)(h) also supports the view that floating homes are not “permanent single-family dwellings.” Subsection (7)(h) provides special rights for lots or parcels with multiple permanent single-family homes. It allows land divisions that create new parcels for each permanent single-family home if the home was on the parcel prior to adoption of OAR 660-004-0040. This shows that the State assumes that permanent single-family homes are located on parcels; not floating on the river adjacent to parcels.

Floating homes in marinas are similar to mobile homes. They are in a “park” setting and can be moved. They are not “permanently” affixed to the ground. They float over water and leased land below the river owned by the Department of State Lands. The parcel identified for marina and floating home park use provides a location for accessory and support uses for the floating homes (e.g. parking, septic/sewage treatment/storage, garbage disposal, etc.) but the homes are not located on or above the private, dry land. As a result, the Hearings Officer agrees with the applicant’s position that floating homes are not subject to the one permanent single-family dwelling limit of OAR 660-004-0040(7)(f).

In the text of OAR 660-004-0040, LCDC recognized that some rural residential areas had been reviewed for compliance with Goal 14 and acknowledged as complying with that goal after the *Curry County* decision was issued in 1986. It said that those jurisdictions need not amend their land use regulations to comply OAR 660-004-0040 which implements the *Curry County* decision. According to OAR 660-004-0040(3), no further local amendments are required if conforming amendments were made and acknowledged between the issuance of *Curry County* and October 4, 2000. Laws adopted or amended on or after that date were required to comply with OAR 660-004-0040. When acknowledged, those laws were deemed to comply with Goal 14 as interpreted by OAR 660-004-0040.

The present application most directly implicates the provisions in the Sauvie Island/Multnomah Channel Plan and MCC 34.6755 that establish a floating home maximum density of one floating home for each 50 feet of waterfront frontage. The concern is whether a land use decision relating to a proposal for additional floating homes must be made in compliance with the foregoing local provisions or in compliance with

LCDC's changes to Goal 14 and OAR 660-004-0040. The answer is that, under current law, such decisions must be made in compliance with the County's acknowledged land use regulations for floating homes and marinas. They are not subject to review for compliance with Goal 14.

Comprehensive Plan

Sauvie Island/Multnomah Channel Rural Area Plan

Multnomah County applies rules from the Sauvie Island/Multnomah Channel Rural Area as relevant approval criteria for moorages and marinas. These comprehensive plan regulations were acknowledged after 1986 and before October 2, 2000 and do not need to be amended to comply with OAR 660-004-0040, until amended by the County. OAR 660-004-0040(3)(b).

Ordinance No. 887 was adopted on October 30, 1997 (Ord. 887), *after* issuance of the *Curry County* decision. This ordinance amended the County's Framework Plan to to create a process for Multnomah County to use to determine the status of existing moorages and marinas and to authorize the County to create special plan areas for moorages. It also adopted the Sauvie Island/Multnomah Channel plan which is a comprehensive plan for Sauvie Island that supplements the Framework Plan. The SI/MC plan recognizes the fact that the Framework Plan Policy 26 allows houseboats in an area identified by that Plan. It also states that land zoned MUA-20 allows houseboat moorages to be approved as conditional uses and marinas as community services uses. It also says that the Waterfront Use Zoning Criteria determines the density allowed in houseboat moorages (one per 50' of waterfront frontage), unless reduced for environmental reasons and provides a definition for houseboats to use in applying the density rules. The Plan contains policies that direct the County to amend its Framework Plan Policy 26 regarding marinas as accomplished by Ordinance No. 887. No appeal of Ord. 887 is pending and no further appeal of that ordinance is available. As a result, the SI/MC is acknowledged. ORS 197.625(1).

The Sauvie Island/Multnomah Channel plan requires that when moorages permitted under the plan "subsequently seek a modification or alteration of their inventoried use, they must meet all applicable zoning codes in effect at that time." The relevant zoning ordinance is discussed, below.

Comprehensive Framework Plan

The Planning Director's decision did not address the relevant plan provisions of the Comprehensive Framework Plan. Policy 10 contains lot size requirements for conditional uses in the MUA-20 zone but these are written to apply to the County when amending the MUA-20 zone, rather than as policies that apply during the review of a development application. Policy 26 contains criteria for locating or expanding a houseboat moorage. If these provisions were acknowledged on or after the day in 1986 that the *Curry County* case was decided, they may be applied to the review of the expansion of a moorage without consideration of the provisions of OAR 660-004-0040 or Goal 14. This conclusion is based on the analysis of post-Curry County and pre-OAR 660-004-0040 law, above, and on an analysis of the effect of acknowledgment for laws adopted on or after October 4, 2000, below.

In the event that Policy 26 was not acknowledged after the issuance of the *Curry County* decision, the question is whether this fact would trigger a requirement that the applicant obtain approval of a goal exception to expand the moorage/marina. The answer is no. Policy 26 contains two relevant sections. One section imposes criteria that apply to the siting or expansion of houseboat moorages. These criteria apply only when the underlying zoning ordinance allows the development. Its effect is to limit sites where development is allowed – not to authorize the use or a density of development that may trigger the need for approval of an exception to Goal 14. Another section designates areas suitable for houseboats and says that houseboats and moorages are limited to existing site and levels of development. The SI/MC Rural Area Plan adopted by Ord. 887 says that Policy 26 should be rewritten so that moorages and marinas will only be permitted in the area where houseboats are currently permitted by Policy 26 and in specified locations. The Framework Plan was rewritten to include these provisions which restricted development otherwise allowed by the County's zoning ordinance. As this is a limitation of the applicability of uses allowed by the MUA-20 zone, a lack of acknowledgment in the relevant time periods discussed above would not result in a need to seek approval of a goal exception to expand a houseboat moorage/marina.

Zoning Ordinance

The MUA-20 zone and zoning ordinance applicable to lands on Sauvie Island, including MCC 34.6755, was last amended, on October 31, 2002 (Ord. 997) *after* the adoption of OAR 660-004-0040. This 2002 ordinance readopted laws that had been previously adopted by the County. These laws were readopted to cure issues about the sufficiency of the notice used by the County when the laws were adopted. Notice of this law was not sent to DLCD as required by ORS 197.610 so it did not obtain acknowledgment. ORS 197.625.

Ordinance No. 953, however, was one of the laws readopted by Ordinance No. 997. Ordinance No. 953 was adopted after October 4, 2000, the effective date of OAR 660-004-0040. Ordinance No. 953 reorganized and codified all County land use laws. It created new chapters, included separate zoning areas for each planning area of the County, and made other amendments to those laws as indicated by Section 1 of the ordinance. Notice of adoption of Ordinance No. 953 was sent to DLCD as required and this law was acknowledged as required by ORS 197.625 as a post-acknowledgment plan amendment. This means that Ordinance No. 953 and the County's zoning regulations for the MUA-20 zone and Sauvie Island apply to any application to modify the moorage/marina on the part of the subject property that is located in Multnomah County. Goal 14 is not directly applicable to the review of an application for developments allowed by that ordinance. ORS 197.625(1).

Decision by Planning Director

Consequently, because the County's provisions establishing floating home maximum densities in its zoning code and comprehensive plan are acknowledged, the Planning Director found that a Goal 14 Exception is not required for approval of an increase in the number of floating homes at a moorage/marina if it complies with the County's comprehensive plan and zoning regulations. That determination was appealed and is affirmed by the Hearings Officer in this decision. The issues raised to challenge the Director's determination are summarized (*italics*) and addressed (plain text) below:

- (1) *Ordinance 997 simply repealed and readopted an existing law. It should not be considered to have been acknowledged for its content.*

Response: For other reasons, the Hearings Officer has determined that Ordinance No. 997 was not acknowledged. Ordinance No. 953, however, was acknowledged and was adopted after the effective date of OAR 660-004-0040.

Ordinance No. 953 created separate zoning ordinances for most rural areas in the County, including Sauvie Island and the Multnomah Channel Rural Area. This ordinance was adopted after the effective date of OAR 660-004-0040 and is acknowledged as being in compliance with the administrative rule and its density regulations. This ordinance did more than simply readopt an existing law. It involved a restructuring of the code and amendments to county ordinances. The ordinance indicates that the code was revised and amended. It was, when it was adopted, subject to appeal. When it was not timely appealed, it was acknowledged. Substantive changes to the applicable administrative rules that implement the goals in rural residential areas have not been made since 2000. As a result, Multnomah County is not currently under an obligation to update its zoning laws (MUA-10 zone) to conform to administrative rules or to apply the rule directly to a land use application seeking approval of development of a floating home marina or moorage allowed by the County's acknowledged land use regulations.

- (2) *A Goal 11 exception would be required for the expansion of a moorage/floating residence park because they would require water and sewer services that would serve an urban use.* Squier, May 30, 2014, p. 1

This issue is not presented by the question posed by the applicant. It, also, is not necessary to resolve this issue to answer the question presented by the applicant.

- (3) *A Goal 14 exception is required based on the text of Goal 14 and the Curry County decision.* Squier, May 30, 2014, pp. 1-4.

The effect of acknowledgment is to preclude a review of the acknowledged local land use law for compliance with Goal 14 until the local law is amended or Goal 14 is amended in a way that requires a change in the County's law. It also precludes review for compliance with administrative rules that implement Goal 14 unless and until amended by LCDC.

- (4) *Multnomah County has not aligned the provisions for moorages on Multnomah Channel with the principles of Curry County. The current MUA-20 zone is identical to the MUA-20 zone in effect in 1982.* Squier, May 30, 2014, p 4.

The MUA-20 zone was codified and readopted after October 2, 2000 and the ordinances that readopted the zone have been acknowledged. The fact that the terms of a part of the ordinance, the MUA-20 zone, have not changed is not material. Any party, including LCDC or DLCD, could have challenged any of those provisions as violating Goal 14 when they were readopted because the County decided to readopt rather than amend the rules. ORS 197.625 applies both to amendments and the adoption and, by logical extension, re-adoption of land use laws

(5) *In 1993, LCDC declined to acknowledge issues regarding compliance with the Curry County decision based on “extenuating circumstances that requires the Director to take additional time to complete the review.” Squier, Ex. AWS 6, May 30, 2014.*

LCDC’s decision Order of Postponement in 1993 deferred making a decision of compliance of the County’s land use laws with the *Curry County* decision. This fact does not, however, render the subsequent acknowledgement of those laws through the post-acknowledgment plan amendment process in 2000 ineffective.

(6) *Ordinance No. 887 did not focus on code provisions for conditional uses in the MUA-20 zone and did not change the moorage standards, including provisions regarding density. Unamended provisions of law should not be viewed as an acknowledged amendment for purposes of reviewing applications involving moorages and marinas. Squier, May 30, 2014, pp. 4-5.*

Ms. Squier does not explain which County laws were not amended by Ordinance No. 887 and should not be viewed as having been adopted after issuance of the *Curry County* decision. Ordinance No. 887 did two significant things: it amended the County’s Framework Plan (comprehensive plan) to create a moorage inventory process that provides a path for moorages-marinas to become lawfully established rather than grandfathered or illegal uses and to authorize the County to create special plan area designations for expansions or alterations new and altered moorages-marinas. It also adopted the entire Sauvie Island/Multnomah Channel Rural Area Plan. That Plan, contrary to Ms. Squier’s assertion, addresses moorage density, creates a policy that recommends that the County restrict areas available for new and expanded houseboat moorages and provides a definition for use in applying the houseboat density rules, including the density rule of the MUA-20 zoning district.

(7) *The MUA-20 zone is not a rural residential zone so the grant of acknowledgment status in the OAR 660-004-0040(3)(b) is not effective and a Goal exception is required. Squier, 5/30/14, p. 6.*

The role of OAR 660-004-0040(3)(b) is not to acknowledge laws. Rather, it is to protect acknowledged laws from the impact of OAR 660-004-0040. If the zone is not a rural residential zone, OAR 660-004-0040 does not apply and the density limits set by that rule are irrelevant. The County’s applicable land use laws are all acknowledged and no exception is required for development allowed by those laws unless an LCDC rule or State statute imposes such a requirement.

(8) *ORS 197.646(3) requires direct application of Goal 14 since no change occurred to allow for the “shield” that would result from acknowledgment. Squier, 5/30/14, p. 6.*

The laws in question changed or were readopted. They are “shielded” by acknowledgment.

(9) *DLCD staff have offered their opinion that exceptions are required and Multnomah County required an exception from Goals 11 and 14 in a prior, similar marina case. Squier, 5/30/14, pp. 6-7. DLCD also claimed, in the Rocky Pointe Marina case, that an exception to Goal 14 was required because the boats are moored on one parcel and support facilities are located on another. Squier, 5/30/14, Ex. AWS 10.*

Neither the opinion nor the prior County case are land use laws that guide the Hearings Officer in answering the question posed by the applicant. Neither act as binding legal precedent. The Board of Commissioners determination that a goal exception to Goal 14 was necessary is an interpretation of State law and is not due deference on appeal. As a result, the Hearings Officer must decide this application based on a correct interpretation of that law and is not bound by the Board's decision.

The fact that, in a moorage, houseboats are located on one parcel and served by sewage facilities on another may require approval of an exception to Goal 11 to accompany an application to expand an existing moorage/marina. It is not clear, however, why this fact would require approval of an exception to Goal 14. As this argument has not been adequately developed and the Hearings Officer is unable to identify any language in Goal 14 that would support such a legal position, it is denied.

(10) The redevelopment of the property would be a conversion of the property to a new, urban density use that requires approval of a goal exception. Squier, 5/30/14, p. 7.

If the redevelopment proposed is allowed by acknowledged land use laws adopted or amended after the *Curry County* decision, it does not require approval of a goal exception to Goal 14.

(11) The County's Ordinance No. 997 was not a "self-initiated" change to comply with Goal 14 so ORS 197.646 continues to apply after Ordinance No. 997 was acknowledged. Foster, June 2, 2014, p. 2.

Ordinance No. 997 is not acknowledged. Ordinance No. 953, however, is acknowledged and Ordinance No. 997 corrected a notice issue related to the County's adoption of that law.

Ordinance No. 953 was acknowledged under the authority of ORS 197.625 as complying with the goals and goal rules. After acknowledgment, the goals and goal rules do not apply unless the conditions specified in ORS 197.646, changes in the law under which Ordinance No. 953 was acknowledged, have occurred. OAR 660-004-0040 has not changed, in a material way, since Ordinance No. 953 was acknowledged.

(12) Ordinance No. 887 was not repealed and readopted by Ordinance No. 997. It was not acknowledged after OAR 660-004-0040 was adopted. It was never reviewed for compliance with Goal 14 and acknowledged because LCDC deferred that issue in 1993. Foster, June 2, 2014, p. 3.

Ordinance No. 887 is effectively "acknowledged" as complying with OAR 660-004-0040 by the terms of the administrative rule, as discussed above. OAR 660-004-0040(3)(b). Ordinance No. 887 was adopted after LCDC deferred its consideration of the rural reserves and *Curry County* case. It was adopted as a post acknowledgment plan amendment under ORS 197.625; not as an amendment adopted to comply with a periodic review order. When adopted, Ordinance No. 887 was subject to appeal by LCDC or others to determine whether it complied with Goal 14. No such appeal was filed so the law, therefore, is acknowledged as complying with Goal 14.

(13) An exception to Goal 14 is required for anything more than one houseboat on a parcel over 2 acres or to allow a single houseboat on a parcel less than two acres.
Squier, June 2, 2014, p. 5.

The two-acre minimum lot size applies to the creation of new parcels. It does not apply to existing parcels that are legally created. It, also, is not a density limitation on the density of development of land that is not being divided with code-allowed uses. If a density limitation/goal exception requirement had been intended for marinas, one like that created for manufactured home parks would have been included in OAR 660-004-0040.

5. Rural Reserves 660-027-0070

OAR 660-027-0070(3) Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves, except as specified in sections (4) through (6) of this rule.

Hearings Officer: Multnomah County adopted rural reserves under Ordinances 1161 and 1165. The applicant's second question for the Planning Director is based on the assumption that "a Goal 14 exception is required" and implicates provisions in OAR 660-027-0070 that limit the authority to take certain exceptions to the statewide planning goals. The Planning Director and Hearings Officer have found that a Goal 14 exception is not required under the circumstances presented in the application. As a result, this issue is moot.

6. Conclusion

Based on the findings and other information provided, the applicant has carried the burden necessary for the Administrative Decision by Planning Director that a Goal 14 Exception is not required for approval of an increase in the number of floating homes at a moorage in compliance with the County's zoning regulations. The Planning Director's decision is affirmed.

This decision is based on the law in effect at the time this application was decided. The legal conclusions reached in this decision are based on those laws only. Subsequent changes to the law may reopen the question or, conclusively require approval of a goal exception for the dense residential development allowed in houseboat moorages under the County's current, acknowledged land use laws. Although discussed, this decision does not address and resolve the issue whether a Goal 11 exception is required for an expansion of a moorage/marina.

7. Exhibits

- "A" Applicant's Exhibits
- "B" Staff Exhibits
- "C" Letter of Comment
- "D" Procedural
- "E" Appeal

“H” Public Hearing

“I” Post-Hearing

“J” Rebuttal

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	12/23/13
A.2	6	Narrative	12/23/13
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information	4/9/14
B.2	1	A&T Tax Map with Property Highlighted	4/9/14
B.3	1	2012 Aerial Photo for Subject Property	NA
B.4	1	2012 Aerial Photo of Subject Property with UGB Shown	NA
B.5	4	Notice of Adoption SI/MC Plan	NA
‘C’	#	Comments	Date
C.1	4	Letter dated 13 February, 2014 by Anne Squier	2/13/14
‘D’	#	Procedural	Date
D.1	2	Complete Application Letter	1/22/14
D.2	4	Opportunity to Comment Notice	1/30/14
D.3	10	Notice of Decision	4/14/14
D.4	4	Notice of Public Hearing	5/8/14
‘E’	#	Appeal	Date
E.1	2	Notice of Appeal submitted by Anne W. Squier	4/28/14
‘H’	#	Submitted at Public Hearing	Date
H.1	22	Narrative and exhibits submitted by Christopher H. Foster	5/30/14
H.2	12	Narrative with Oregon Statewide Planning Goals and Guidelines attached submitted by Anne W. Squier	5/30/14
H.3	121	Exhibits labeled AWS 1 through AWS 11 submitted by Anne W. Squier	5/30/14
H.4	1	Sign-in listed for the Public Hearing	5/30/14
‘I’	#	Post Hearing Submittal	Date
I.1	55	Ordinance No. 887	6/5/14
I.2	1	Notice of Proposed Amendment to DLCD for Ordinance No. 887	6/5/14
I.3	1	Notice of Adoption to DLCD for Ordinance No. 887	6/5/14
I.4	2	Planning Commission Public Notice for Ordinance No. 887	6/5/14

I.5	4	Ordinance No. 953	6/5/14
I.6	1	Notice of Proposed Amendment to DLCD for Ordinance No. 953	6/5/14
I.7	2	Notice of Adoption to DLCD for Ordinance No. 953	6/5/14
I.8	9	Staff Report to Multnomah County Board of Commissioners for Ordinance No. 953	6/5/14
I.9	6	Ordinance No. 997	6/5/14
I.10	1	Staff memorandum to Hearings Officer detailing the previous nine exhibits	6/5/14
I.11	13	Email dated June 6, 2014 from Christopher Foster with attached narrative and exhibit	6/6/14
I.12	14	Email dated June 6, 2014 from Steve Morasch with attached narrative and exhibits	6/6/14
I.13	1	Email dated June 9, 2014 from Anne Squier	6/9/14
I.14	21	Exhibits attached to June 9, 2014 from Anne Squier including a CD	6/9/14
'J'	#	Post Hearing Rebuttals	Date
J.1	1	Email dated June 11, 2014 from Steve Morasch with CD exhibit (audio files from the September 2, 2010 LCDC hearing)	6/11/14
J.2	5	Email dated June 11, 2014 from Anne Squier with attached rebuttal and exhibit	6/11/14
J.3	6	Email dated June 12, 2014 from Steve Morasch with attached exhibit	6/12/14
J.4	2	Email dated June 13, 2014 from Christopher Foster with attached rebuttal	6/13/14