

**BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER**

This Decision consists of Conditions, Findings of Fact and Conclusions

December 3, 1998

Case File: CS 1-98, CU 6-98, WRG 2-98

WHAT: Community Service (CS), Conditional Use (CU) and Willamette River Greenway (WRG) permits to legalize an existing boat moorage in the Multiple Use Agriculture (MUA-20) zone. The proposed development is considered new for the purposes of these applications.

Site Address: 12940, 12900, 12902 NW Marina Way

Legal Description: Tax Lot 51, Section 28, T2N R1W, WM.
Tax Lots 24, 30, and 16, Section 33, T2N R1W, WM.

Tax Accounts: R97128-0510, R97133-0240, R97133-0300, and R97133-0160

Applicant's Representative: Kevin Brady
Fulcrum Consulting
3463 SW Alice
Portland, OR 97219

Property Owner: Michael and Pamela Yerger
4909 Willamette Drive
Vancouver, WA 98661

Site Size: 11.27 acres

Plan Designation: Multiple Use Agriculture

Zoning District: MUA-20

Hearings Officer

Decision: Approval of the proposed Community Service (CS 1-98), Conditional Use (CU 6-98), and Willamette River Greenway (WRG 2-98) permits to bring the illegally existing moorage into legal compliance.

The applicant requests approval for six living units (one home office/garage, five combinations, and eight garages) in the Community Service and the Conditional Use applications. The home office is used for the business of operating the moorage. The WRG application, under the provisions of Section .6360 (B), is to be reviewed concurrently with the CS and CU applications.

If the required information is submitted to the Hearings Officer and determined by the Hearings Officer to satisfy the applicable criteria noted above, the following Conditions of Approval are recommended:

CONDITIONS OF APPROVAL:

1. A Grading and Erosion Control (GEC) Permit will be required for any volume of soil or earth disturbed, stored, disposed of, excavated, moved, or used as fill greater than 50 cubic yards.
2. The applicant must receive Design Review approval prior to the issuance of building or land use permits. The submittal of the Design Review application and any other subsequent administrative decisions related to the legalization of the existing moorage for the subject parcels shall occur within six (6) months of the date of the approval of CS 1-98, WRG 2-98, and CU 6-98 applications by the Hearings Officer. The Design Review application may have additional Conditions of Approval and timelines.
3. Approval of this Conditional Use shall expire two years from the date of this Decision unless "substantial construction" has taken place in accordance with MCC 11.15.7110 (C) or the subject proposal is completed as approved or the Approval Authority establishes a specific expiration date.
4. Approval of the Community Service shall expire two years from the date of issuance of this Decision unless "substantial construction" has taken place with MCC 11.15.7010 (C) or the subject proposal is completed as approved or the Approval Authority establishes a specific expiration date.
5. The applicant shall construct the parking lot and the ingress and egress areas of the site two feet above the 100-year flood boundary so as to be in compliance with the provisions of Section .7520 (B), Waterfront Uses CU.
6. Prior to approval of Design Review, the applicant shall clearly delineate and dimension on the site plan, all areas utilized for proposed accessory uses on the site such as boat and trailer storage, trash and recycling bins, portals etc. Proposed accessory uses will be reviewed through Design Review and limitations set to maintain them as an accessory use to the moorage.
7. Prior to issuance of building permits or any subsequent land use permits, the applicant/property owners shall provide documentation that violations with the City of Portland have been resolved.
8. When ready to have land use or building permits signed-off, the applicant shall contact the Staff Planner, for an appointment to review and sign the plans. The applicant shall

submit five (5) copies of the required building plans. Multnomah County will keep one (1) copy and four (4) copies will be returned to the applicant for processing with the City of Portland.

9. No additional land use action and/ or permit requests shall be accepted, relating to the subject application, until such time as all required fees for the said applications have been paid in full.
10. This approval is based on the submitted material. The existing boat moorage shall be maintained on the site in accordance with the design, size, and location shown and described in the application materials submitted by the applicant in the CS 1-98, WRG 2-98, and CU 6-98 case files. Additional submittals and actions may be required of the applicant as noted in these Conditions of Approval.
11. Any signs on the property shall comply with the provisions in MCC 11.15.7902 - .7982.
12. The property owner shall allow the public access to the river by way of the driveway and the ramp to the moorage.
13. Any 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.
14. Within one year of the date of this Decision, the application shall plant the site as proposed on the revised site plan and narrative submittals dated October 1998.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the applicant.

BACKGROUND

Mr. and Mrs. Yerger own four contiguous parcels on which they operate the Lucky Landing Marina. Tax Lot 51 has a tenancy from the Division of State Lands on which there is a moorage operation. The purpose of these applications is to legalize that moorage which was established without all necessary land use permits. Tax Lot 24 is south of Tax Lot 51. According to the site plan, there is a boat ramp, a large parking area, restroom facilities and a storage shed on Tax Lot 24. Tax Lot 16 is at the southwest corner of Tax Lot 24. Tax Lot 30 is a narrow rectangular parcel along the south edge of Tax Lot 24. These applications do not address the uses on Tax Lots 16, 24 or 30. The site plan includes all of the Yerger's property. However, the applications relate only to uses on Tax Lot 51.

The property owners request approval for the following land use applications: Community Service (CS), Willamette River Greenway (WRG), and Conditional Use (CU). The land use applications are required to legalize the existing moorage. For purposes of reviewing these land use applications, the development is treated as though it were proposed new development.

The current owners (Michael and Pam Yerger) purchased the property in 1991 from the Kennagy/Bruce Company. When the Yergers purchased the property it was being used as a salvage operation and 3 to 4 houseboat moorages. The Yergers have added houseboats and combos and ceased the salvage operation.

The subject property is located northeast of NW Marina Way, between Marina Way and the Multnomah Channel. The property is located just outside the Portland city limits. Tax Lot 51 is an irregular-shaped parcel with approximately 460' of frontage along Multnomah Channel and 240' of frontage along NW Marina Way. The north property line is approximately 358' and the south property line, abutting Tax lot 24 is approximately 514'. The east and west dimensions are not provided on the site plan. According to the record, the west frontage along the Multnomah Channel is approximately 600 feet. Tax Lots 30 and 16 are very small parcels adjacent to Tax Lots 24 and 51.

In addition to this upland area, the Yergers had a State waterway lease for the adjacent submerged and submersible lands from the Division of State Lands of the State of Oregon, Lease ML-9200. The lease commenced December 1, 1986 and expired November 30, 1996. A condition of renewal of the lease is satisfaction of County Land Use Planning policies and procedures. The previous owner of the subject property did not go through the proper permitting procedure, hence these applications. The moorage is located on the submerged and submersible leasehold area. A driveway, parking lot, subsurface disposal system, trash enclosure area and proposed landscaping are located on the uplands area.

A portion of the property is located within areas of 100-year and 500-year floods. The southwest portion of the property is located within a wetland area. The improvements to the site are accessed by a graveled driveway ending in a small parking lot.

The existing moorage consists of a 3' x 75' metal access ramp, a 10' x 20' wood ramp float, wood pilings and wood float walks approximately 8' x 500'. The wooden walkway runs parallel with the shoreline with only two separate perpendicular wood fingers. The development provides moorage for boat garages and 'combos' (combination of living unit and boat garage). The Sauvie Island / Multnomah Channel Rural Area Plan defines "houseboat" as 1) any houseboat, and 2) any boathouse or combo which is used as a residence (occupied 7 or more days per month.) There are a total of 14 structures connected to the wood float dock and pilings (see site plan). Structures numbered 2, 3, 5, 8, and 12 on the site plan are 'combos' for a total of 5 'combos'. Structures numbered 1, 4, 6, 9, 10, 11, 13, 14 are boat garages for a total of 8 boat garages. Structure number 7 is a barge used for both a dwelling for the owner and a home office for operating the moorage business and workshop to repair and maintain boats at the moorage and the moorage itself.¹ Aside from the boat moorages, there are no other commercial types of activity on the site.

¹ There is conflicting evidence in the record concerning the number of living units. A site plan in the record contains and written notations of the use of each structure, as a "combo," a "boathouse" or a houseboat." According to that plan there are four combos and five houseboats, plus a dwelling on the owner's barge. In addition, the record contains an inventory of the site by the Planning Staff on December 9, 1997, which states there were 10 houseboats. Also, the on-site sewage disposal application was for "7 units and one barge." This Decision is based on the applicant's written description of the use of the site, which was used in the staff report and with which no one took issue.

Multnomah County adopted the Sauvie Island/ Multnomah Channel Rural Area Plan (SI/MC RAP) on October 30, 1997. Policy #10 of SI/ MC RAP established a procedure for Multnomah County to determine the status of existing moorage/ marina use. Policy #10 established a July 1, 1997 deadline to legally establish existing moorages to continue the use and level of intensity in existence at the moorage. Although the property owners had a pre-application conference in January 1997, these applications were not filed until May and February 1998 and were not deemed complete until August 31, 1998. The property owners for Lucky Landing Marina did not obtain permits by the July 1, 1997 date.

The subject properties of the Lucky Landing Marina have been in violation of Multnomah County regulations, City of Portland Bureau of Building regulations, Department of Environmental Quality regulations, and the Department of State Lands regulations. Because the marina was in violation of non-County permits it did not qualify to be permitted under the Policy 10 procedures.

Modifications to the existing site improvements include new parking and landscaping, as well as a recently installed sewer drain field and trash enclosure area.

The property was involved in a violation proceeding with the Division of State Lands for illegal fill in the wetlands on Tax Lots 51 and 24. In those proceedings the property owners agreed to a consent order which required them to remove the fill and restore the wetlands to their natural condition. The terms of the consent order have been fulfilled and DSL has closed the violations case.

According to a letter from DSL dated July 7, 1998 the Yerger's waterway lease expired on November 30, 1996. Upon the expiration of the lease, the Yerger's tenancy became a "holdover tenancy" and a month to month tenancy was created. One of the conditions precedent to DSL renewal of the waterway lease is compliance with Multnomah County requirements. The letter is attached as Exhibit #6.

The Yergers were in violation of DEQ regulations for discharging sewage into Multnomah Channel. The property owner has constructed a subsurface sewage system on Tax Lot 51. The City of Portland, which implements the DEQ sanitary program for Multnomah County, stated in a September 8, 1997 letter that the Yergers needed to obtain Land Use Planning approval for the appropriate land use applications before the City could approve the sewage disposal system.

The property owner attended a Pre-Application Meeting with Multnomah County Land Use Planning Staff on January 23, 1997. The property owner applied for Community Service and Willamette River Greenway permits on February 20, 1998. Both applications were deemed incomplete March 9, 1998. The property owner applied for the Conditional Use permit on May 19, 1998. The property owner and applicant submitted additional information and the CS, WRG, and CU were deemed complete on August 31, 1998.

A site plan of Tax Lots 16, 24, 30 and 51 is Exhibit #1 to this Decision. The applicant has requested approval for 14 structures - eight garages, five combinations, and one home office. The applicant states that six living units will be located on Multnomah Channel. Combos or combinations are houseboats plus garages together (hence combined). Multnomah County Code does not have a specific provision for combinations. Therefore, the combinations treated

as houseboats. In addition, the site plan illustrates the existing house, built in 1919, on Tax Lot 16 (R96133-0160).

On May 18, 1998, the National Marine Fisheries Service (NMFS) listed Steelhead as a threatened species in the lower Columbia Valley. The Endangered Species Act prohibits "taking" of Steelhead without a permit from NMFS. Destruction or modification of habitat may constitute a "take" under the Endangered Species Act. This application is subject to compliance with the Endangered Species Act because the proposed moorage activities may result in destruction or modification of habitat. Staff recommends the applicant/ property owner contact the National Marine Fisheries Service (NMFS) to ensure this development complies with the applicable elements of the Endangered Species Act.

TESTIMONY AND EVIDENCE PRESENTED

A public hearing was held on October 21, 1998. After the close of the hearing the Hearings Officer left the record open for the submittal of additional evidence by the applicant for 7 days, by opponents for an additional 7 days followed by a 7 day period for the applicant to rebut any opponent evidence, and finally a 7 day period for staff evaluation of additional evidence.

1. Tricia Sears, County planner, summarized the staff report. She presented slides showing the site. She stated that the property owner did not obtain approval for the reconciliation process for existing moorages. She stated that the home office is used for operating the moorage operations. She read applicable code provisions to demonstrate why both a CUP and a CS application are required. If the Hearings Officer finds that the applicable requirements are met, the staff has recommended conditions that the Hearings Officer should impose on any approval. The Hearings Officer asked whether the home office is a "home occupation" and why it doesn't need approval as a home occupation.
2. Kevin Brady, representing the applicant, submitted a letter dated October 14, 1998 responding to the items that the staff report indicated the applicant failed to comply with. (Exhibit D1). The letter responds to subjects the staff found that the applicant did not comply with. The applicant revised the site plan. They created a riparian buffer. They also revised the site plan and set back the parking area to provide 2 additional parking spaces. The hearings officer noted that the applicant had submitted new evidence, therefore the hearing would need to be continued.
3. Jay McCaulley, representing Dan Gulbrandson/A1Moorage, an adjacent property owner testified. Mr. Gulbrandson is concerned that the last houseboat added in the subject moorage in 1995 may be located on or so near Mr. Gulbrandson's leasehold that it creates an encroachment on Mr. Gulbrandson's property. He stated that this structure does not have adequate piling to support it. He also stated concern about the adequacy of utility services, specifically sewer and water. It is his understanding that water service does not extend to Tax Lot 51 and that sanitary services are not used.
4. Stephen Purchase, Assistant Director of Field Operations with the Division of State Lands, wrote a letter dated October 21, 1998 to Tricia Sears. He stated that DSL will work with Mr. Yeager and Mr. Gulbrandson at A-1 Moorage to resolve the encroachment issue after the County has made the land use decision.

5. Kevin Brady responded to Mr. McCaulley concern about a possible encroachment of one of the houseboats into Mr. Gulbrandson's leasehold. Mr. Brady stated that the Yerger's leased area has been surveyed and that all of the moorage improvements are within the Yerger's leased area. He also argued that any issue relating to a possible encroachment onto another person's property interests is not relevant to the land use decisions before the Hearings Officer.
6. During the period that the record was open, Kevin Brady submitted a letter dated October 26, 1998 addressing issues raised in the staff report.

STANDARDS AND CRITERIA, ANALYSIS AND FINDINGS OF FACT

In this section of the Decision, the applicable zoning code criteria are set forth in bold print followed by the hearings officer's findings of fact, analysis and conclusions on each criterion.

I. MULTNOMAH COUNTY ZONING CODE (MCC 11.15) APPROVAL CRITERIA

I. Multiple Use Agriculture (MUA-20)

A. 11.15.2126 Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2128 through .2136.

A. 11.15.2132 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 .7005 through .7041;

(B) The following Conditional Uses pursuant to the provisions of MCC .7105 through .7640:

* * *

(9) Houseboats and Houseboat Moorages.

(D) Type B home occupation as provided for in MCC 11.15.7455.

11.15.2134 Accessory Uses

(A) Signs, pursuant to the provisions of MCC 11.15.7902-.7982

(B) Off-street parking and loading;

(C) Type A home occupations pursuant to the definition and restrictions of MCC 11.15.0010;

Findings and Conclusions. The zoning of the subject parcel is MUA-20. Section .2132 (B)(9) of the MUA-20 Code provisions lists houseboats and houseboat moorages as a Conditional Use. Section .2132 (B) establishes Community Services as permitted uses provided for in Section

.7005 - .7041. In Section .7020 (A)(1), the Community Service Code provisions, "boat moorage, marina, or boathouse moorage" is listed as a use. Section .7505 includes definitions for houseboats and moorages. A houseboat, "shall mean any floating structure designed as a dwelling for occupancy by one family and having only one cooking facility." A houseboat moorage, "shall mean the provision of facilities for two or more houseboats." Thus, the applicant is required to obtain Community Service approval and Conditional Use approval. Both applications require a public hearing with a Hearings Officer acting as the approval authority. The property owner applied for the appropriate land use actions (Community Service, Conditional Use and Willamette River Greenway), but did not apply for a Conditional use for the home-occupation that is being conducted on the site.

A. Home occupation

MCC 11.15.0010 defines Home Occupation:

(A) A type A home occupation is one where the residents use their home as a place of work. Type A home occupations may have up to one non-resident employee or customer on the premises at any one time in addition to the resident participant. No new buildings or modifications to existing structures shall be allowed (constructed after March 14, 1998). No deliveries other than those normally associated with a single family dwelling and between the hours of 7 a.m. - 6 p.m. No outdoor storage or displays shall occur (including vehicle parking associated with the Home Occupation). No signage shall be allowed (including temporary signage and those exempted under MCC 11.15.7912 with the exception of those required under MCC 11.05.500 - .575), and no noise above 50 dba (decibels adjusted) at the property lines shall be permitted. No repair or assembly of any vehicles or motors can occur as part of a type A home occupation. A type A home occupation may not serve as headquarters or dispatch where employees come to the site. A type A home occupation must have direct access to a public road (no easements). Type A home occupations shall be filed on a form provided by the Planning Director. Type A Home Occupations must be in conformance with all other applicable state codes.

(B) Type B home occupation is one where the residents use their home site as a place of work but exceeds the standards of the type A home occupation. Type B home occupations shall be approved as per MCC 11.15.7105 and .7455.

Findings and Conclusions. According to the record, the property owner conducts a home occupation on the barge. The home occupation includes activities to operate the moorage business. Those activities include repair of boats. A type A home occupation may not include the repair of vehicles or motors. A boat is a vehicle. Consequently the owner's home occupation is not a type A home occupation but is a type B home occupation. A type B home occupation requires approval as a conditional use. This application does not include a request a conditional use permit for the home occupation. If these applications are approved, the owner

will need to obtain approval for the home occupation through a conditional use procedure pursuant to MCC 11.15.7105 and MCC 11.15.7455.

A. 11.15.2138 Dimensional Requirements

(A) Except as provided in MCC .2140, .2142, .2144 and .7629, the minimum lot size shall be 20 acres.

Findings and Conclusions. None of the four subject parcels of the application of the Lucky Landing Marina meet the minimum lot size of 20 acres for the MUA-20 zoning designation. The four (4) parcels are on Map 2N, 1W:

R#	Tax Lot #	Section #	# Acres	Address
R97128-0510	Tax Lot 51	Section 28	2.82 acres	12940 NW Marina Way
R97133-0240	Tax Lot 24	Section 28	6.38 acres	12900 NW Marina Way
R97133-0300	Tax Lot 30	Section 33	0.64 acres	12900 NW Marina Way
R97133-0160	Tax Lot 16	Section 33	1.43 acres	12902 NW Marina Way

The parcels are Lots of Record according to Section .2142. Multnomah County Sectional Zoning Maps from September 1977 indicate the parcels were established in their current size and configuration by that date. See discussion below concerning Section .2142.

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

Findings and Conclusions. The site plan attached as Exhibit #1 shows the moorage site. The moorage use occurs outside the boundaries of Tax Lot 51, within a leasehold for submerged and submersible lands. The setback requirements do not apply to these structures. No structures are proposed on the uplands.

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

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

Findings and Conclusions. No structures are proposed on the privately owned land.

A. **11.15.2142 Lot of Record**

- (A) For the purposes of this district, a Lot of Record is a parcel of land for which a deed or other instrument dividing land was recorded with the Department of Administrative Services or was in recordable form prior to October 6, 1977, and which, when established, satisfied all applicable laws.
- (B) A Lot of Record which has less than the area or front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.
- (C) Separate Lots of Record shall be deemed created when a street or zoning district boundary intersects a parcel of land.
- (D) Except as otherwise provided by MCC .2140, .2144, .6256 and .7720, 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.

Findings and Conclusions. As described in discussion of MCC Section .2138 (A), all four parcels are less than the required minimum lot size of the MUA-20 zone. The current size and configuration of the parcels was established prior to October 6, 1977, according to pages 70 and 85 of the Multnomah County Sectional Zoning Maps, dated September 1977. The subject parcels are Lots of Record.

A. **11.15.2146 Off-Street Parking and Loading**

Off-Street parking and loading shall be provided as required by MCC .6100 through .6148.

Findings and Conclusions. If the application is approved, the property owners would be required to submit a Design Review application. Compliance with the OP provisions could be assured through the Design Review process. According to the revised site plan, the parking and loading area is located near the ramp leading to the proposed boat moorage. Six living units are proposed, therefore, 12 parking spaces are proposed. Each space is 9 feet wide by 18 feet deep. The loading area designated at the east end of the parking area allows small trucks ingress and egress to the trash and sewer disposal area, without affecting the access for the required parking spaces. At the north border of the parking area is a 4-foot wide bio-swale that is incorporated into the 20-foot upland buffer. Finally, the parking area will be elevated to 29 feet to meet requirements of MCC .7520.

A. 11.15.2148 Access

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

Findings and Conclusions. The subject properties abut NW Marina Way. This is adequate access. This criterion is met.

I. Community Service

A. 11.15.7005 Purpose

MCC .7005 through .7041 provides for the review and approval of the location and development of special uses which, by reason of their public convenience, necessity, unusual character or effect on the neighborhood, may be appropriate in any district, but not suitable for listing within the other sections of this Chapter.

11.15.7010 General Provisions

(A) Application for approval of a Community Service use shall be made in the manner provided in MCC .8205 through .8280.

Findings and Conclusions. Boat moorages uses are listed community service uses in MCC .7020(A)(1). The applicant submitted the Community Service (CS) application on February 20, 1998. The CS application was deemed complete on August 31, 1998, along with the Conditional Use and Willamette River Greenway applications. MCC .8295 through .8280 contain procedures applicable to community service uses, including a public hearing. The applicant complied with this criterion.

(B) Except as provided in MCC .7022 (F) and (G), the Approval Authority shall hold a public hearing on each application for a Community Service Use, modification thereof, or time extension.

Findings and Conclusions. The application for the Community Service, CS 1-98, for Lucky Landing Marina was filed as required in MCC .7020(A) and is not subject to the exceptions from a public hearing under subsections (F) and (G). The application was reviewed by the Hearings Officer at a public hearing on October 21, 1998. In addition, the applications for the Willamette River Greenway, 2-98, and the Conditional Use, CU 6-98, were reviewed with CS 1-98 at the public hearing. This criterion was met.

(C) The approval of a Community Service Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless:

- (1) The project is completed as approved, or
- (2) The Approval Authority establishes an expiration date in excess of the two year period, or
- (3) The Planning Director determines that substantial construction or development has taken place. That determination shall be processed as follows:
 - (a) Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.
 - (b) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:
 - (i) Final Design Review approval has been granted under MCC .7845 on the total project; and
 - (ii) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025(A) or .9027(A).
 - (c) Notice of the Planning Director decision shall be mailed to all parties as defined in MCC .8225.
 - (d) The decision of the Planning Director shall become final at the close of business on the tenth day following mailed notice unless a party files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of MCC .8290 and .8295.

Findings and Conclusions. This Code provision is procedural, it is not an approval criterion. The staff proposed a condition to be imposed if the application were approved to inform the applicant that approval would expire in two years.

- (D) A Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority. Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing.

Findings and Conclusions. This Code provision is procedural, it is not an approval criterion. If the application were approved, a condition could be imposed limiting the uses approved and to assure that all the Code and other legal requirements are met.

- (E) In granting approval of a Community Service Use, the approval authority may attach limitations or conditions to the development, operation or maintenance of such use including but not limited to setbacks, screening and landscaping, off-street parking and loading, access, performance bonds, noise or illumination controls, structure height and location limits, construction standards, periods of operation and expiration dates of approval.**

Findings and Conclusions. This Code provision is procedural, it is not an approval criterion. It authorizes the Hearings Officer to impose conditions on an approval.

- (F) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC .7805 through .7865.**

Findings and Conclusions. If the decision is approved, a Design Review application would be required for this land use application. The staff proposed a condition of approval to establish a time line for the applicant to submit a Design Review application.

- (G) A Community Service approval shall not be construed as an amendment of the Zoning Map, although the same may be depicted thereon by appropriate color designation, symbol or short title identification.**

Findings and Conclusions. This Code provision is procedural, it is not an approval criterion. If the CS application were approved, Multnomah County staff would make the appropriate designations would be made on land use maps. This criterion does not apply to this decision to deny the application.

A. 11.15.7015 Approval Criteria

In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria . . .

- (A) Is consistent with the character of the area;**

Findings and Conclusions. The Lucky Landing Marina is located on Multnomah Channel and is accessed by NW Marina way. The improvements on the site consists a floating moorage having a 3' x 75' metal access ramp, a 10' x 20' wood ramp float, wood pilings and wood float walks approximately 8' x 500'. In addition, there are 14 structures attached to the float walks and pilings that are used for combos and boat garages. This boat moorage is capable only of side-ties for smaller outboard fishing boats and houseboats.

Exhibit #2 is the Multnomah Channel Southern Portion map from the Sauvie Island / Multnomah Channel Rural Area Plan. To the south of the subject properties is Fred's Marina and to the north is A-1 Moorage. This map shows that Lucky Landing Marina is one of numerous

moorages located on the Multnomah Channel. Due to the waterfront location, zoning and accessibility, marinas and moorage are the primary land uses in the area. Other dominant land uses in the area include a wood chip facility to the south of the property. The upland areas are used principally for parking. Residential development in the surrounding area is limited to several houses located across Highway 30 on a bluff overlooking the river and Multnomah Channel. The moorage is proposed for location in an area designated by Multnomah County's Comprehensive Plan Policy 26 as appropriate for houseboats. The existing improvement on the subject property compliments the existing moorage and launch uses of the neighboring area, reinforcing the marine-oriented character of the area. The proposed use of the site as a moorage is consistent with the character of the area. The application meets the criteria.

(B) Will not adversely affect natural resources;

Findings and Conclusions. The subject parcels of the Lucky Landing Marina are identified as part of the Willamette River Greenway. By definition, this is a significant natural resource. Tax Lot 51 of the site includes a wetland that is recognized by the DSL as a wetland. The site includes parcels identified on the riparian area/ corridors of the *Significant Wetlands* maps, but does not include a wetland designated on Multnomah County *Significant Wetlands* maps. As part of the Goal 5 Inventory, Multnomah County hired a consultant in 1988 to identify riparian and wetland areas in Multnomah County. According to the Proposed Local Review Order and Supplemental Findings (February 1989), "Riparian areas adjacent to the wetlands and water areas were also evaluated and mapped as part of the inventory because of the inter-relationship they have for wildlife habitat." A map, attached as Exhibit #10 (four pages), shows fifteen Significant Wetland Areas. Multnomah Channel is #5 on the list. Aerial photographs, recorded by section, were used to identify Significant Wetlands and riparian corridors on individual parcels. A map, attached as Exhibit #11, illustrates the parcel specific boundaries of the riparian corridor on the subject parcels of Lucky Landing Marina. The Multnomah Channel and the wetland on the site provide habitat for fish and wildlife. The natural resources of the site are important and extreme care should be taken to minimize any impacts to these resources. The applicant has not identified the impacts of the proposed development to the riparian corridor.

In October 1995, the property owners entered a Consent Agreement with DSL to "resolve the fill violation by removing the material and reestablishing the original contours and by planting native vegetation to restore the wetlands" (January 26, 1998 letter from Jerry Hedrick to Kevin Brady). Exhibit #4 shows the Wetland Restoration plan and Exhibit #5 shows the River Bank Restoration plan. According to Exhibit D1, the applicant has restored the wetland according to the wetland and riverbank restoration plans. The natural contours were re-established, manmade debris and non-native vegetation was removed and native vegetation was planted. The restoration was completed last summer and was done according to the plans approved by Jerry Hedrick of DSL. Jerry Hedrick visited the site and wrote a letter indicating that the applicant has complied with the conditions of the applicant's consent agreement with DSL (Exhibit #3). The violation case has been closed.

The expired submerged lands lease on the site, according to DSL correspondence, cannot be renewed until the property owner completes the approval process for land use applications at Multnomah County. Exhibit #6 is a July 1998 letter from Jerry Hedrick to the property owners regarding the renewal of the lease with DSL.

After the staff report the applicant revised the site plan. The driveway and parking lot have been relocated away from the riparian area and upland buffer to minimize any impacts created by that

part of the development. The driveway area was also reduced in size to further protect upland areas of the site. No uses are proposed for the upland area except for the vehicle areas and underground sewer system. The applicant proposes to grade the parking area so that it drains away from the river and the wetland. In addition a oil/water separator system is proposed to be installed in the parking area.

According to Exhibit D1, the sewer situation has been resolved through the construction of an on-site subsurface sewage disposal system. The City of Portland cannot grant final approval of the system until the land use applications are approved. The sewer system can handle up to 15 housing units, though only 6 are proposed. The system is self-contained and designed and constructed under industry standards. The applicant states that no wastewater will be discharged from the boats, moorage or any other development on the site.

The applicant has demonstrated that any adverse effects of the development on natural resources will be mitigated.

(C) Will not conflict with farm or forest uses in the area;

Findings and Conclusions. The subject properties of the Lucky Landing Marina are not currently used for farm or forest practices. The nearest agricultural uses are on Sauvie Island, separated from the subject property by the Multnomah Channel. A pattern of marine uses has long been established in this segment of MUA-zoned land. In addition, MUA-20 zoned lands that are suitable for commercial forest uses are separated from the subject property by railroad tracks and US Highway 30. It is not likely that the continued use of the site as a moorage will conflict with farm or forest practices on surrounding parcels. The application meets the criteria.

(D) Will not require public services other than those existing or programmed for the area;

Findings and Conclusions. The improvements on the site utilize existing public services including electrical, communication and water. The applicant has provided completed Service Provider forms. A drywell is proposed in the parking lot area to accommodate water run-off. The existing use is connected to a subsurface sewage disposal system that will be approved after a Community Service Use and Willamette River Greenway are approved. Because adequate electrical, communication, water and sewage disposal is currently existing, public service extensions are not required.

(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

Findings and Conclusions. The subject parcel is not identified as a parcel on Multnomah County's Wildlife Habitat Map within the Sensitive Big Game Wintering Areas. This criterion does not apply.

(F) Will not create hazardous conditions; and

Findings and Conclusions. The site is located within the 100-year and 500-year floodplain areas. Soil maps at Multnomah County identify that the majority of the subject parcels contain Sauvie silt loam. The Soil Survey of Multnomah County, Oregon states that the main limitations for urban development for Sauvie silt loam (44) "are frequent flooding and a seasonal high

water table." The site also contains Urban land, 0 to 3 percent slope (50A). According to the Soil Survey, the parcels "are subject to flooding." Flood hazard provisions in the code have been addressed and met (see MCC .6315.)

The site has not been identified as being subject to erosion or other potential natural hazard conditions. No hazardous materials have been used at this site and none are proposed. The new sewer system meets industry and DEQ standards. The improvements to the site are subject to applicable local and state building code and development standards and applicable state and federal environmental and safety regulations.

The use of the site as a houseboat moorage and marina is not likely to create hazardous conditions.

(G) Will satisfy the applicable policies of the Comprehensive Plan.

Findings and Conclusions. The Comprehensive Plan Policies are addressed separately in this Decision. This criterion is met.

(H) Will satisfy such other applicable approval criteria as are stated in this Section.

Findings and Conclusions. All applicable approval criteria have been considered and the Hearings Officer has found that the either are met or can be met through conditions of approval.

A. 11.15.7020 Uses

(A) Except as otherwise provided in MCC 11.15.2008 through .2012 and MCC 11.15.2048 through .2050, the following Community Service Uses and those of a similar nature, may be permitted in any district when approved at a public hearing by the approval authority.

(1) Boat moorage, marina or boathouse moorage.

Findings and Conclusions. This section requires a boat moorage to obtain Community Service Use approval through a public hearing process. The applicant requested approval for the existing marina to become a legal existing marina through the application process for Community Service Use (CS) as well as Conditional Use (CU) and Willamette River Greenway (WRG) permits. The existing moorage has not been legally authorized, therefore the moorage is reviewed as a new development for the purposes of the CS, CU, and WRG applications.

(B) Approval of a Community Service Use shall be deemed to authorize associated public utilities, including energy and communication facilities.

Findings and Conclusions. This subsection of the Community Service section of the Code is not an approval criterion. It provides that if a community service use is approved, associated public utilities are authorized.

A. 11.15.7025 Restrictions

A building or use approved under MCC .7020 through .7030 shall meet the following requirements:

(A) Minimum yards in . . . MUA-20, . . . Districts:

- (1) Front yards shall be 30 feet.**
- (2) Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.**
- (3) Rear yards shall be as required in the district.**

Findings and Conclusions. The dimensional standards of the site have been evaluated under Section .2138. Because the moorage use is not on a lot, the dimensional standards are not applicable.

(E) Off-street parking and loading shall be provided as required in MCC .6100 through .6148.

Findings and Conclusions. Parking standards are addressed above under subsection .2146. According to the revised site plan, the parking and loading area is located near the ramp leading to the proposed boat moorage. Six living units are proposed, therefore, 12 parking spaces are proposed. Each space is 9 feet wide by 18 feet deep. The loading area designated at the east end of the parking area allows small trucks ingress and egress to the trash and sewer disposal area, without affecting the access for the required parking spaces. At the north border of the parking area is a 4-foot wide bio-swale that is incorporated into the 20-foot upland buffer. Finally, the parking area will be elevated to 29 feet to meet requirements of MCC .7520.

If the Conditional Service Use were approved the parking standards could be met by the imposition of a condition of approval to obtain a Design Review approval which includes meeting the parking standards. The applicant has shown the proposed parking on the site plan showing that the standards could be met.

(F) Signs for Community Service Uses located in districts in MCC .2002 - .2966 pursuant to the provisions of MCC .7902 - .7982.

Findings and Conclusions. If the Community Service Use were approved, compliance with the sign standards could be assured by imposition of a condition of approval. There is nothing inherent in the site to indicate that it is not feasible to meet these standards.

(G) Other restrictions or limitations of use or development not required under this subsection shall be provided in the district.

Findings and Conclusions. All restrictions or limitations of the proposed use and development required in other subsections in the Code have been considered in this Decision to assure that they will be provided.

I. Conditional Use

A. **11.15.7105 Purposes**

Conditional uses as specified in a district or described herein, because of their public convenience, necessity, unique nature, or their effect on the Comprehensive Plan, may be permitted as specified in the district or described herein, provided that any such conditional use would not be detrimental to the adjoining properties or to the purpose and intent of the Comprehensive Plan.

11.15.7110 General Provisions

(A) Application for approval of a Conditional Use shall be made in the manner provided in MCC .8205 through .8280.

Findings and Conclusions. Houseboat Moorages are specified in the conditional use section (MCC .7505) as waterfront uses that require a conditional use permit. The applicant submitted an application for the Waterfront Conditional Use on May 19, 1998. The application for the Conditional Use, CU 6-98, was reviewed concurrently with CS 1-98 and WRG 2-98, at the public hearing on October 21, 1998. The Hearings Officer is the Approval Authority. The purposes section requires that any condition use will not be detrimental to the adjoining properties. There is no evidence in the record that the proposed use would be detrimental to adjoining properties. In addition the purposes section requires that a conditional use will not be detrimental to the intent of the Comprehensive Plan. The Comprehensive Plan provisions are addressed separately in this Decision and found to be met.

(B) The Approval Authority shall hold a public hearing on each application for a Conditional Use, modification thereof, time extension or reinstatement of a revoked permit.

Findings and Conclusions. The application for the Conditional Use, CU 6-98, was reviewed concurrently with CS 1-98 and WRG 2-98, at a public hearing on October 21, 1998. The Hearings Officer is the Approval Authority. This provision has been complied with.

(C) Except as provided in MCC .7330, the approval of a Conditional Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless:

- (1) The project is completed as approved, or**
- (2) The Approval Authority establishes an expiration date in excess of the two year period, or**
- (3) The Planning Director determines that substantial construction or development has taken place. That determination shall be processed as follows:**

- (a) Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.
- (b) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:
 - (i) Final Design Review approval has been granted under MCC .7845 on the total project; and
 - (ii) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025(A) or .9027(A).
- (c) Notice of the Planning Director decision shall be mailed to all parties as defined in MCC .8225.
- (d) The decision of the Planning Director shall become final at the close of business on the tenth day following mailed notice unless a party files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of MCC .8290 and .8295.

Findings and Conclusions. This Code provision is procedural, it is not an approval criterion. The staff proposed a condition to be imposed if the conditional use were approved to inform the applicant that approval would expire in two years.

- (D) A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the Approval Authority. Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing.
- (E) The findings and conclusions made by the approval authority and the conditions, modifications or restrictions of approval, if any, shall specifically address the relationships between the proposal and the approval criteria listed in MCC .7120 and in the district provisions.

A. 11.15.7115 Conditions and Restrictions

Except as provided for Mineral Extraction and Processing activities approved under MCC .7305 through .7325 and .7332 through .7335, the approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a

definite time limit, a specific limitation of use, landscaping requirements, off-street parking, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

A. 11.15.7120 Conditional Use Approval Criteria

(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

- (1) Is consistent with the character of the area;**
- (2) Will not adversely affect natural resources;**
- (3) Will not conflict with farm or forest uses in the area:**
 - (a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and**
 - (b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**
- (4) Will not require public services other than those existing or programmed for the area;**
- (5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**
- (6) Will not create hazardous conditions; and**
- (7) Will satisfy the applicable policies of the Comprehensive Plan.**

Findings and Conclusions. These conditional use approval criteria duplicate the approval criteria for a community service use. Those criteria have been addressed under the Community Service Approval Criteria in Section .7015.

A. 11.15.7125 Design Review

Uses authorized under this section shall be subject to design review approval under MCC .7805 through .7865.

Findings and Conclusions. A Design Review application is required to be submitted, subsequent to completion of the land use approval process for the Conditional Use, Community Service, and Willamette River Greenway applications. The staff proposed a Condition of Approval to be imposed if the conditional use were approved. In addition, the Off-Street Parking and Loading (OP) provisions are applicable to the proposed development. Section .7805 (A)(5) discusses pedestrian and vehicular circulation and parking for a site. Requirements for this are found in the OP provisions. Section 11.15.6102 states, "In the event of a new building or an addition to an existing building, or any change or use in the use of an existing, building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section." The use of the site as a moorage is being reviewed as a new land use application because it has not previously been lawfully established. As described above in the background section of this Decision the property owner did not meet the provisions of the reconciliation process outlined in Policy #10 of SI/MC RAP. The Lucky Landing Marina is subject to all applicable Code provisions. Section .2146 of the MUA-20 provisions, Section .7025 (E) of the Community Service provisions, and Section .7120 (B) of the Waterfront Uses provisions require compliance with Section .6100 through .6148 of the Code (the OP Section). The OP provisions will be reviewed under the DR application. As previously noted, the applicant indicated the proposed parking plan. The applicant has shown that it is feasible to meet the parking requirements.

A. 11.15.7130 Conditional Use Permit

A conditional use permit shall be obtained for each conditional use approved, before development of the use. The permit shall specify any conditions and restrictions imposed by the approval authority or Board of County Commissioners, in addition to those specifically set forth in this Chapter.

Findings and Conclusions. The applicant has applied for a conditional use permit for the moorage. The application did not request approval for a conditional use permit for the home occupation.

A. Home occupations CU

11.15.7460 Purposes

The purposes of the type B home occupation section are to address the need for home based business that are small scale businesses (not more than 5 employees) and that fit in with the characteristic of the neighborhood or the area. The regulations are designed to:

- (A) Protect the individual characteristics of areas in unincorporated Multnomah County and maintain the quality of life for all residents of the communities.**
- (B) Join in an effort to reduce vehicle miles traveled, traffic congestion and air pollution in the State of Oregon.**

11.15.7465 Criteria for Approval

The approval authority shall find that the following standards are met:

- (A) The standards found in MCC 11.15.7120.
- (B) The home occupation does not employ more than 5 employees.
- (C) The site has on-site parking as per MCC 11.15.6100 to accommodate the total number of employees and customers.
- (D) No deliveries other than those normally associated with a single family dwelling and between the hours of 7 a.m. - 6 p.m.
- (E) No outdoor storage or display.
- (F) No signage (including temporary signage and those exempted under MCC 11.15.7912) with the exception of those required under MCC 11.05.500 - .575.
- (G) No noise above 50 dba at the property lines.
- (H) No repair or assembly of any vehicles or motors.
- (I) The application has been noticed to and reviewed by the Small Business Section of the Department of Environmental Quality.
- (J) Each approval issued by a hearings officer shall be specific for the particular home occupation and reference the number of employees allowed, the hours of operation, frequency and type of deliveries, the type of business and any other specific information for the particular application.

Findings and Conclusions. The application indicates that one of the existing uses at the moorage is a home occupation. The application did not apply for a conditional use for the home occupation. The existing home occupation use is unauthorized. Continuation of the home occupation will require a conditional use application.

A. Waterfront Uses CU

11.15.7505 Houseboats and Houseboat Moorage

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.

Findings and Conclusions. The proposed houseboat moorage, Lucky Landing Marina, has more than two houseboats. The subject moorage includes five combinations, eight boat garages and one home office/ barge repair shop as described by the applicant. As described earlier in the Staff portion of the Findings section, a combination consists of a houseboat plus a boathouse. Multnomah County Code does not have specific provisions for combinations, thus, the combinations are treated in this Decision as houseboats.

(C) Location Requirements: Houseboats shall be permitted only as designated by the Comprehensive Plan.

Findings and Conclusions. The Comprehensive Plan includes the Sauvie Island/ Multnomah Channel Rural Area Plan (SI/MC RAP). The Rural Area Plan establishes Policy #10 and the implementation of regulations regarding existing and proposed moorages. Policy 26 of the Comprehensive Plan designates areas suitable for houseboats. One of those areas is the west side of Multnomah Channel "from the City of Portland corporate limits north to ½ mile north of the Sauvie Island Bridge." The subject properties are located within this area. The applicant's subject marina is located in accordance with the sites designated for moorages under 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;

Findings and Conclusions. The existing improvement on the site is a floating moorage consisting of a 3' x 75' metal access ramp, a 10' x 20' wood ramp float, wood pilings and wood float walks approximately 8' x 500'. In addition, there are 14 structures attached to the float walks and pilings that are used for combos and boat garages. This boat moorage is capable only of side-ties for smaller outboard fishing boats and houseboats.

Exhibit #2 shows the Multnomah Channel Southern Portion map from SI/ MC RAP. The Lucky Landing Marina is one of numerous moorage/ marina sites along Multnomah Channel. Due to the waterfront location, zoning and accessibility, marinas and moorage are the primary land uses in the area. Other dominant land uses in the area include wood chip export facilities. The upland areas are used principally for parking. Residential development in the area is limited to several houses located across Highway 30 on a bluff overlooking the river and the Multnomah Channel. The use of the site as a moorage is in keeping with the development of the surrounding area.

(2) The development will not adversely impact, or be adversely affected by normal fluvial processes;

Findings and Conclusions. "Fluvial" means a river or stream. Thus, the requirement is that the development will not be adversely affected by normal processes of the river nor adversely affect such processes. Such processes would include, but not be limited to, tidal effects, flooding and

siltation. All development at this site is either floating on the surface of the river channel or is setback from the bank of the channel. The only development that would affect fluvial processes are the pilings used to anchor the boats and walkways. The pilings are 1 foot in diameter, therefore, the pilings are not large enough to impact normal fluvial processes. Even where pilings are tied together at the top, the bases are separated by 4-6 feet, thereby allowing natural deposit and erosion of river material and the natural ebb and flow of water.

The site is likely to be strongly influenced by fluvial processes. The site is identified as being within the 100- and 500-year floodplain areas. The applicant has addressed Flood Hazard Code provisions and has submitted an Elevation Certificate as required by the Code and by the Federal Emergency Management Agency (FEMA). See Section .6315 for discussion of Flood Hazard Code provisions.

(3) All other applicable governmental regulations have, or can be satisfied; and

Findings and Conclusions. The applicant has been working with all applicable government agencies: City of Portland, Division of State Lands, US Army Corps of Engineers, Department of Environmental Quality, and Multnomah County. The applicant has received some letters of compliance from some agencies. The applicant will receive letters of compliance from the remaining applicable agencies after these land use reviews through Multnomah County have been approved, therefore, all applicable regulations will be met.

(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.

Findings and Conclusions. The existing development is already served by public facilities and services including, schools, roads, police, fire, water and a yet-to-be approved subsurface on-site sewage disposal system. Approval of the existing and modified development will not generate the untimely extension or expansion of public facilities and services.

A. 11.15.7510 Density

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.

Findings and Conclusions. The subject parcels of the Lucky Landing Marina, as described by the applicant, includes five combinations, eight boat garages, and one home office/ barge repair shop. In addition, there is an existing house on Tax Lot 24. The house on Tax Lot 24 is not included in this application. There are a total of 6 living units, including the existing farm house. The site plan, attached as Exhibit #1 (a reduced copy) illustrates that the amount of waterfront frontage is approximately 600 feet. Based on the allowance of one unit per 50 feet, the allowed

density would be 12 units, therefore, the development proposal meets the maximum frontage requirement.

The applicant has provided the appropriate, completed, Service Provider forms regarding utilities, fire and police services, and water, all indicating the services are adequate.

(B) Development at the maximum density would endanger an ecologically fragile natural resource or scenic area.

Findings and Conclusions. The applicant owner does not propose to develop at the maximum density of 12 houseboats. One of the subject parcels of Lucky Landing Marina, Tax Lot 51, includes a wetland. Although the property had a Department of State Lands violation, that violation case has been rectified and closed. No development is proposed in the wetland area.

The entire site is designated as part of the Willamette River Greenway. Thus, it is an important natural resource and scenic area. The site contains riparian corridors as identified on Multnomah County maps (aerial photos described in Section .6376). See also MCC .7015 (B) and findings and conclusions under the Willamette River Greenway Code provisions below.

A. 11.15.7520 Parking

(A) Two automobile spaces shall be provided for each houseboat.

Findings and Conclusions. The original site plan (Exhibit #1), shows 10 parking spaces in the parking area. Six living units (houseboats) are present, thus 12 parking spaces are required for the parking lot. After the staff report, the applicant revised the site plan. The revised site plan provides for 12 parking spaces. The parking area has been designed to accommodate truck loading for the purposes of sewer and trash collection. The parking area has been reduced in size and relocated to enhance protection of the riparian area and to improve the scenic qualities of the river. According to the revised site plan, the parking and loading area is located near the ramp leading to the proposed boat moorage. Each parking space is 9 feet wide by 18 feet deep. The loading area designated at the east end of the parking area allows small trucks ingress and egress to the trash and sewer disposal area, without affecting the access for the required parking spaces. At the north border of the parking area is a 4-foot wide bio-swale that is incorporated into the 20-foot upland buffer. Finally, the site will be graded so that the elevation of the parking area will be 29 feet (2 feet above the base flood elevation of 27 feet) to meet requirements of MCC .7520.

If these applications were approved, the applicant would be required to apply for Design Review. Parking requirements as outlined in Section .6100 through .6148, the Off-Street Parking and Loading (OP) section will be applicable to the project. Section .2146 of the MUA-20 provisions and Section .7025 of the Community Service section both require compliance with the Off-Street Parking and Loading requirements. The applicant demonstrated that it is feasible to meet the parking requirements. The driveway and parking area will be further reviewed during Design Review. The application can meet this criterion.

(B) The parking area and all ingress and egress thereto shall be constructed two feet above the elevation of the 100 year flood boundary, and under the provision of MCC .6100 through .6148.

Findings and Conclusions. The applicant submitted the FEMA Floodplain Elevation Certificate. The Elevation Certificate states the base flood elevation of the site is at 27 feet NGVD and parking lot area is at 28.4 feet NGVD; the "elevation of lowest grade immediately adjacent to the building." The driveway from NW Marina Way accessing the parking lot is at a similar elevation. The revised site plan shows the parking lot to be constructed 2 feet above the 100-year flood boundary. The site plan meets the requirement for elevation of the existing parking area at 2 feet above the 100-year flood boundary. The proposed project, to legalize the existing moorage, is required to meet the Design Review requirements and is subject to the provisions of the Off-Street Parking and Loading requirements. At the time of the Design Review submittal, the applicant shall provide plans and narrative documentation illustrating compliance with this requirement to build the parking area and the ingress and egress areas two feet above the 100-year flood boundary elevation. Condition of Approval #5 establishes this requirement. Condition of Approval #2 requires the applicant to submit for Design Review. Section .6315 (I) provides a means for exemption to the Development Standards of the Flood Hazard provisions upon submittal of an acceptable elevation survey. As previously stated, the applicant provided this survey. The survey exempts the project from certain standards when the "subject land is at least one foot above the base flood level." See also Flood Hazard requirements. The Code does not provide for exemptions to the requirements of Section .7520 (B).

The applicant can meet this criterion.

A. 11.15.7525 Other Requirements

- (A) All ramps, walkways and moorage spaces shall be designed, constructed and maintained to provide maximum safety in all weather conditions.**
- (B) Lighting adequate to provide for the safety of residents and visitors shall be provided throughout a houseboat moorage.**
- (C) Siting and design of all pickup and delivery facilities shall insure maximum convenience with minimum adverse visual impacts.**

Findings and Conclusions. According to the applicant's letters dated September 14, 1998 and October 26, 1998 all ramps and walkways within the moorage have been treated with sand-surfaced tape. This provides traction for pedestrians under all weather conditions. In addition, the ramps and walkway also have railings. Lighting for the moorage area is provided by two overhead lights at the base of the ramp, as well as another lamp providing light to the parking area and walkway connecting the parking area with the top of the ramp. Finally, the parking area has been designed to accommodate truck loading for the purposes of sewer and trash collection. The loading area designated at the east end of the parking area allows small trucks ingress and egress to the trash and sewer disposal area, without affecting the access for the required parking spaces. In addition, the trash area will be screened with natural vegetation in order to minimize adverse visual impacts. These features can be further reviewed in Design Review.

I. Willamette River Greenway

A. 11.15.6350 Purposes

The purposes of the Willamette River Greenway subdistrict are to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River; to implement the County's responsibilities under ORS 390.310 to 390.368; to establish Greenway Compatibility Review Areas; and to establish criteria, standards and procedures for the intensification of uses, change of uses, or the development of lands within the Greenway.

11.15.6352 Area Affected

MCC .6350 through .6374 shall apply to those lands designated WRG on the Multnomah County Zoning Map.

11.15.6354 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 .6358, shall be subject to a Greenway Permit issued under the provisions of MCC .6362.

Findings and Conclusions. The subject parcels of the Lucky Landing Marina are designated as part of the Willamette River Greenway. The applications were filed to legalize an existing moorage. The site is zoned MUA-20. The MUA-20 zoning district permits moorage uses. The proposal is subject to the Willamette Greenway provisions of MCC .6362. This provision is not a mandatory approval criteria, it is a procedural requirement that a Willamette Greenway permit must be obtained.

A. 11.15.6360 Greenway Permit Application

An application for a Greenway Permit shall address the elements of the Greenway Design Plan and shall be filed as follows:

- (A) For a Permitted Use or a Use Under Prescribed Conditions, in the manner provided in MCC .8210(B);**
- (B) For a Conditional Use as specified either in the underlying district or in MCC .7105 through .7640, or for a Community Service Use as specified in MCC .7005 through .7030, or for a change of zone classification, or for any other action as specified in MCC .8205, the Greenway Permit Application shall be combined with the required application for the proposed action and filed in the manner provided in subsections MCC .8210 and .8215.**

Findings and Conclusions. A moorage is a Conditional Use in the MUA-20 zone, as described by Section .2132 (B). In addition, Section .7020 (A)(1) lists "boat moorage, marina, or boathouse moorage" as a Community Service. The applicant representative has submitted the

required land use applications for the Community Service, CS 1-98, the Conditional Use, CU 6-98, and the Willamette River Greenway, WRG 2-98. A Design Review application and potentially a GEC application will be required for this project subsequent to approval of these applications.

A. 11.15.6362 WRG Permit - Required Findings

A decision on a Greenway Permit application shall be based upon findings of compatibility with the elements of the Greenway Design plan listed in MCC .6372.

11.15.6368 Scope of Approval

Approval of a Greenway Permit shall be deemed to authorize associated public utilities, including energy and communication facilities.

11.15.6370 Appeals

(A) A decision by the Planning Director on a Greenway Permit application may be appealed to the Hearings Officer in the manner provided in MCC .8290 and .8295.

(B) A decision by the Hearings Officer on a Greenway Permit application may be appealed to the Board of County Commissioners in the manner provided in MCC .8260.

11.15.6372 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.

Findings and Conclusions. Following the staff report, the applicant revised the site plan. The revised site plan shows that all areas between the edge of the water and the top of the bank will be planted with native grasses and that native shrubs will be planted at 30-foot intervals. In addition, all manmade debris and non-native species are proposed to be removed. Adjacent to the top of the bank, away from the water, an upland buffer 20-feet wide is proposed. This buffer is to be planted with native grasses and native trees planted at 30 foot intervals. The revised site plan relocates the driveway and parking lot away from the riparian area and upland buffer to minimize any impacts created by that part of the development

The applicant has demonstrated that the maximum amount of landscaped area, scenic and aesthetic enhancement, open space or vegetation will be provided between the upland use and the river. The application meets the criterion.

- (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.**

Findings and Conclusions. The applicant stated that:

“There is no approved public access along Multnomah Channel in the vicinity of the subject property. However, the existing use does not prohibit or restrict access to the river. There is access to the river and the boat moorage by way of a graveled driveway.

“Reasonable public access to the river has been and will continue to be provided.”

This criterion requires that reasonable public access to and along the river shall be provided to the greatest possible degree. The criterion emphasizes the need for providing public access in urban and urbanizable areas, however the criterion applies to all Willamette Greenway applications whether urban or not. The applicant has made no effort to demonstrate how reasonable public access to and along the river will be provided to the greatest possible degree. The applicant simply states that reasonable public access to the river has been and will continue to be provided. The Code requires that public access shall be provided by appropriate legal means. The applicant has not addressed the legal means through which public access will be provided. A condition of approval has been imposed which requires that the property owner shall allow public access to the river by way of the driveway and ramp to the moorage.

- (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.**

Findings and Conclusions. The site is adjacent to and within the waters of Multnomah Channel. Under the Comprehensive Plan Policies of Multnomah County, including Policy 26 and the Sauvie Island/Multnomah Channel Rural Area Plan (SI/ MC RAP), the subject properties are an appropriate location for a moorage. The site contains water dependent uses and upland uses including access, a parking lot and a subsurface sewage disposal system. The water dependent use cannot be directed away from the river. The applicant has revised the site plan to direct development of upland uses away from the river to the greatest possible degree. For example, the proposed parking lot has been located further away from the the border between land and water. The applicant has addressed how the River Bank Restoration plan (Exhibit #5) has been implemented. The site contains riparian corridors as designated on the Significant Wetlands maps that should be protected in addition to the wetland protection requirements designated by DSL. Exhibit #11 illustrates the location of the riparian corridor on the subject parcels. The application meets the criterion.

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

Findings and Conclusions. Neither the subject property nor adjacent parcels are used for farm or agricultural purposes. The nearest agricultural uses are on Sauvie Island, separated from the subject property by the Multnomah Channel. Therefore, agricultural lands will not be impacted by this proposal. The Comprehensive Plan provides that this stretch of the Multnomah Channel may be used for moorages.

- (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.**

Findings and Conclusions. The subject property has not been identified as having timber through the Comprehensive Planning process or the pre-application phase of this application, nor is the site suitable for timber production. The subject parcel is not used for harvesting timber. The requirement that the natural scenic qualities be restored applies only to lands inside the urban growth boundary. This site is located outside the regional Urban Growth Boundary. Therefore, the restoration of scenic qualities part of this criterion does not apply here. This criterion could be met by imposing a condition of approval that "any 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."

- (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.**

Findings and Conclusions. The existing site improvements are utilized primarily by fishing boats and houseboats. The nearest farm uses are on Sauvie Island across Multnomah Channel. The use of the site supports private waterfront recreation. There is no evidence in the record that the use of the site conflicts with farm uses across the Multnomah Channel. Comprehensive Plan Policy #24 states that the maximum number of units allowed for houseboats is one per fifty feet of waterfront. The applicant does not propose to exceed this requirement. Further evaluation of this requirement can be found under Comprehensive Plan Policy #24 and Section .7510 of Waterfront Uses CU. This criterion is met.

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

Findings and Conclusions. The Multnomah Channel and the wetlands on the property provide habitat for fish and wildlife. Because there is no development in the wetlands, this proposal does not impact or intrude on the fish or wildlife habitats in the wetlands.

The applicant has revised the site plan to include planting of native grasses and shrubs between the edge of the water and the top of the bank. These plants will protect wildlife habitat. Approval of the sewage disposal system construction on site pursuant to DEQ standards will protect fish habitats. The Staff recommends the applicant contact the National Marine Fisheries Service (NMFS) regarding compliance with applicable elements of the Endangered Species Act.

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

Findings and Conclusions. The subject parcels are designated as part of the Willamette River Greenway, such areas are valued for the natural and scenic qualities of the properties adjacent to the Willamette River. In addition, Comprehensive Plan Policy #15 establishes the "County's policy is to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities along the Willamette River."

After the staff report the applicant revised the site plan. The revised site plan shows that all areas between the edge of the water and the top of the bank will be planted with native grasses and native shrubs which will be planted at 30 foot intervals. In addition the applicant stated that all they will remove all manmade debris and non-native species. A 20-foot wide buffer is shown on the revised site plan adjacent to the top of the bank away from the water. This buffer is proposed to be planted with native grasses and native trees planted at 30 foot intervals. This proposed landscaping will preserve and improve the scenic quality of the river.

According to a letter dated October 14, 1998 (Exhibit D1), the wetland area of the site was restored according to the wetland and riverbank restoration plans (Exhibits 4 and 5). The natural contours were re-established and non-native species and manmade debris were removed. Native planting was planted according to the plant palette listed in the plan. The implementation, including the planting, was done this summer and was done according to the plans approved by Jerry Hedrick of the Division of State Lands. Jerry Hedrick visited the site to inspect the area, and subsequently wrote a letter indicating the applicant has complied with the conditions of the consent agreement. See Exhibit 3.

- (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.**

Findings and Conclusions. The applicant has requested the land use applications to legalize an existing moorage that was not legally established. The applicant has provided a completed copy of the Police Services form (dated 12/20/96). The proposed alterations to the existing moorage will not alter the level of safety provided by the Multnomah County Sheriff's office. The level of service provided by the Sheriff's office is the maximum the County has determined necessary within its budgetary constraints. The owner and residents are on the subject property on a daily basis. Their presence enhances site security, especially from vandalism and trespass. There is a safe and efficient access to the subject property both by water and by land. Therefore public safety and protection of public and private property are provided to the maximum extent possible.

- (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.**

Findings and Conclusions. After the staff report the applicant revised the site plan. The revised site plan shows that all areas between the edge of the water and the top of the bank will be planted with native grasses and that native shrubs will be planted at 30-foot intervals. In addition, the applicant proposes to remove all manmade debris and non-native species. The site plan proposes to create a 20-foot wide upland buffer adjacent to the top of the bank away from the water. This buffer is proposed to be planted with native grasses and native trees at 30-foot intervals. This revised site plan will enhance the natural vegetation along the river and enhance the scenic quality of the site from the river, will protect the bank from erosion, will screen the uplands improvements from the river and help maintain a continuous riparian corridor.

According to Exhibit D1, the wetland area of the site was restored last summer according to the wetland and riverbank restoration plans (Exhibits 4 and 5). The natural contours were re-

established, non-native species and manmade debris were removed and native vegetation was planted according to the plant palette listed in the plan. The wetlands restoration was found by DSL to comply with the conditions of the applicant's consent agreement with DSL. See Exhibit 3.

The application can comply with this criterion through compliance with a condition of approval requiring the applicant to make the proposed improvements.

- (K) Extraction of known aggregate deposits may be permitted, pursuant to the provisions of MCC .7105 through .7640, 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.**

Findings and Conclusions. The site has not been identified as having known aggregate deposits either through the Comprehensive Planning process or the pre-application phase of this application. The application does not involve the extraction of aggregate deposits. Therefore, this criterion is not applicable to these applications.

- (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.**

Findings and Conclusions. A portion of the subject property is located within areas of 100 year and 500 year floods. In addition to the flood plain area, a portion of the subject property along the southeast property line is a wetland area. This wetland is not designated as a Significant Wetland on Multnomah County maps. There will be no expansion of the existing improvement into the wetland area. Because the existing wetland will be retained in its natural state, water retention and overflow functions of the wetland will remain consistent, in compliance with this element. The site plan contains no buildings that would affect the water retention, overflow or natural functions. The applicant proposes to pave the parking area with grass-crete which allows water to percolate through the surface.

- (M) Significant wetland areas shall be protected as provided in MCC .6376.**

Findings and Conclusions. A portion of the subject property along the southeast property line is a wetland area. Under Multnomah County's Goal 5 Inventory, the site was designated as an area with riparian corridors but not as a Significant Wetland. The applicant is not required to address Section .6376.

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

Findings and Conclusions. The site contains a riparian corridor designation and is part of the Willamette River Greenway and a wetland protected by DSL requirements. The applicant has provided a Wetland Restoration plan, attached as Exhibit #4, and a River Bank Restoration

plan, attached as Exhibit #5. According to Exhibit D these plans were implemented last summer with respect to the wetland area.

After the staff report the applicant revised the site plan. The revised site plan shows that all areas between the edge of the water and the top of the bank will be planted with native grasses and that native shrubs will be planted at 30-foot intervals. In addition, the applicant proposes to remove all manmade debris and non-native species. The site plan proposes to create a 20-foot wide upland buffer adjacent to the top of the bank away from the water. This buffer is proposed to be planted with native grasses and native trees at 30-foot intervals. The proposed planting of native vegetation within the riparian area and upland buffer will provide for enhanced habitat conditions for wildlife.

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

Findings and Conclusions. If these applications were approved, the property owner would be required to apply for Design Review. During Design Review the proposed parking would be evaluated for the site. If any site activities create a disturbance of greater than 50 cubic yards of earth materials, the applicant is required to obtain a Grading and Erosion (GEC) permit. This criterion can be met.

- (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.**

Findings and Conclusions. The moorage development has already occurred. Existing improvement to the subject has been and will continue to be subject to applicable local and state building code and development standards and applicable state and federal environmental regulations. The existing use does not nor will not create any adverse environmental impact, including but not limited to air, land or water degradation, noise, glare, vibration or other impacts which may impact the surrounding and adjacent uses.

Proposed modifications to the improvements include alterations to the parking lot. If the application is approved, the applicant would be required to obtain Design Review approval and if more than 50 cubic yards of material are disturbed, a Grading and Erosion(GEC) permit is required. These procedures protect the quality of the air, water and land resources in and adjacent to the Greenway.

- (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.**

Findings and Conclusions. The building setback line is not applicable for the houseboats on Multnomah Channel because these are exempted structures in conjunction with a water dependent use. There are no other structures on Tax Lot 51 that require this building setback of 150 feet from the ordinary low waterline of the Willamette River.

- (R) Any development, change of use or intensification of use of land classified WRG, shall be subject to design review, pursuant to MCC .7805 through .7865, to the extent that such design review is consistent with the elements of the Greenway Design Plan.

Findings and Conclusions. The property owner and applicant are aware that the use in this application is subject to design review if these applications are approved. This subsection is a procedural standard, it is not a mandatory approval criterion.

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

Findings and Conclusions. Compliance with applicable policies of the Comprehensive Plan are addressed below.

- A. 11.15.6374 Notice to Department of Transportation

The Planning Director shall mail to the State Department of Transportation a copy of any application for a Greenway Permit within ten days of the filing , under MCC .6364(B) or .8255, as appropriate.

- A. 11.15.6376 Significant Wetlands

Significant wetlands consist of those areas designated as Significant on aerial photographs of a scale of 1"=200' made a part of the supporting documentation of the Comprehensive Framework Plan. Any proposed activity or use requiring a WRG permit which would impact those wetlands shall be subject to the following:

Findings and Conclusions. The subject parcels do not contain a wetland that has been designated by Multnomah County as Significant Wetland on the maps described in this section.

- A. Flood Hazard

- 11.15.6303 Area Affected

The provisions of MCC .6301 - .6323 shall apply to all areas within the 100-year flood boundary as identified on the Flood Boundary and Floodway Maps and the Flood Insurance Rate Maps as published by the Federal Emergency Management Agency (FEMA). . .

- A. 11.15.6305 Uses

In areas subject to the provisions of this Section, all uses permitted under the provisions of the underlying district may be permitted, subject to the additional requirements and limitations of MCC .6301-6323.

- A. 11.15.6307 Permits

- (A) **No structure or manufactured home shall be erected, located, altered, improved or enlarged and no other new development including but not limited to grading, mining, excavation and filling shall occur on lands within the 100-year flood boundary unless a Floodplain Development Permit specifically authorizing the proposal has been obtained from Multnomah County.**

* * *

A. 11.15.6315 Development Standards

The following standards shall apply to all new construction, substantial improvement or other development in areas within the 100-year flood boundary:

* * *

- (G) **All new and replacement water and sewer systems, including on-site waste disposal systems, shall be designed to:**
 - (1) **Minimize infiltration of floodwaters into the system;**
 - (2) **Minimize discharge from systems into floodwaters;**
 - (3) **Avoid impairment or contamination during flooding.**

Findings and Conclusions. These applications seek to obtain development permits in the Floodplain for the illegally established moorage. The Hearings Officer has found that the uses may be established in the MUA-20 zoning district. The applicant has installed a new sewer system. The City of Portland implements the Department of Environmental Quality sanitary sewer regulations for Multnomah County. The City of Portland has tentatively approved by the sanitary sewer system which is self-contained and periodically maintained and cleaned. The system was designed to withstand and continue to function under flooding conditions and to minimize infiltration and discharge during flooding. The property owner has not received sanitary system approval because the property owner has not received land use approval from Multnomah County.

- (I) **Land may be exempted from the requirements of MCC .6315 upon review and approval by the Director of an acceptable elevation survey, certified by a State of Oregon Registered Professional Engineer or Land Surveyor, which demonstrates that the subject land is at least one foot above the base flood level.**

Findings and Conclusions. The applicant submitted an Elevation Certificate that stated the base flood elevation of the site is at 27 feet NGVD. The "elevation of the lowest grade immediately adjacent to the building is 28.4 feet NGVD." The certificate is acceptable and exempts the project from the Development Standards of the Flood Hazard section.

A. 11.15.6317 Floodway Requirements

In areas identified as floodway on the Flood Boundary and Floodway Maps, the following restrictions, in addition to the requirements of MCC .6315, shall apply:

No development shall be permitted that would result in any measurable increase in base flood levels. Encroachment is prohibited, including fill, new construction, substantial improvement and other development, unless a detailed step backwater analysis, certified by a Registered Professional Engineer, is provided which demonstrates that the proposed encroachment will cause no measurable increase in flood levels (water surface elevations) during a base flood discharge.

Findings and Conclusions. Community Panel #410179-0135 of the Floodway Boundary and Floodway Maps illustrates the location of the subject parcels in relationship to the floodway boundary. The subject parcels are not identified in the floodway on the Flood Boundary and Floodway Maps. The applicant is requesting land use approvals for Lucky Landing Marina to become a legally existing marina. The applicant is not required to submit a backwater analysis for the WRG, CU, and CS applications.

II. MULTNOMAH COUNTY COMPREHENSIVE PLAN POLICIES

Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision are addressed as follows:

- 1. Policy No. 2, Off-Site Effects: The County's policy is to apply conditions to its approval of land use actions where it is necessary to:**
 - A. Protect the public from the potentially deleterious effects of the proposed use; or**
 - B. Fulfill the need for public service demands created by the proposed use.**

Findings and Conclusions. The existing use on the site, which these applications seek to legalize, is a floating moorage consisting of a 3' x 75' metal access ramp, a 10' x 20' wood ramp float, wood pilings and wood float walks approximately 8' x 500'. In addition, there are 14 structures attached to the float walks and pilings that are used for combos and boat garages. This boat moorage is capable only of side-ties for smaller outboard fishing boats and houseboats. There are no manufacturing, boat lift or repair capabilities or the use of hazardous materials in large volumes. The existing use does not require modification of existing public facilities and services to the site.

The existing use has been operating on this site for a number of years. Because the existing improvement is for a boat moorage and 6 living units, a sewer system has been installed. The sewer system violation with the City of Portland Bureau of Buildings would be resolved if the land use applications are approved. No potentially unexpected harmful effects from this existing use on neighboring properties or on natural resources has been identified other than the sanitary sewerage and potential erosion if more than 50 cubic yards of earth material are

disturbed. The public services necessary to serve the development have already been extended. If the applications were approved conditions could be imposed to assure that these potentially deleterious effects are dealt with.

2. **Policy No. 10, Multiple Use Agricultural Land: The County's policy is to designate and maintain as multiple use agriculture, land areas which are:**
 - A. **Generally agriculture in nature, with soils, slope and other physical factors indicative of past or present small scale farm use;**
 - B. **Parcelized to a degree where the average lot size, separate ownerships, and non-farm uses are not conducive to commercial agricultural use;**
 - C. **Provided with a higher level of services than a commercial agricultural area has; or**
 - D. **In agricultural or micro-climates which reduce the growing season or affect plant growth in a detrimental manner (flooding, frost etc.).**

The County's policy, in recognition of the necessity to protect adjacent exclusive farm use area's, is to restrict multiple use agricultural uses to those compatible with exclusive farm uses.

Findings and Conclusions. The subject property is designated Multiple Agricultural Use (MUA-20). Due to its waterfront location, the primary uses in the immediate area are for marinas and moorage. The Comprehensive Plan has identified this area as suitable for moorage uses. This Plan Policy is directed at long range comprehensive planning and is not an approval criteria applicable to quasi-judicial land use decisions.

3. **Policy No. 13, Air, Water and Noise Quality: Multnomah County, ... Supports efforts to improve air and water quality and to reduce noise levels. ... Furthermore, it is the County's policy . . . to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to Air Quality, Water Quality, and Noise Levels. If the proposal is a noise-sensitive use and is located in a noise-impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan:**
 1. **Building placement on the site in an area having minimal noise level disruptions.**
 2. **Landscaping or other techniques to lessen noise generation to levels compatible with surrounding land uses.**
 3. **Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.**

Findings and Conclusions. The existing development on the subject property, which the applicant seeks to legalize, consists of a boat moorage, mostly capable only side-ties for smaller outboard fishing boats and houseboat spaces. The site improvements are not

noise-sensitive uses nor is the site in a noise-impacted area. There are no residential uses or other noise sensitive uses within the immediate vicinity. The site is within an area which is affected by river traffic and noise and by air quality impacts generated by the adjacent railroad and truck traffic on Highway 30.

Since the existing improvement on the subject property has been and will continue to be subject to applicable local and state building code and development standards and applicable state and federal environmental regulations, all standards have been and will continue to be met with regard to air quality, water quality and noise level.

5. Policy No. 14, Development Limitations. 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%;

Findings and Conclusions. The subject property is generally flat and at street grade with the abutting street. The site is not on the Multnomah County Slope Hazard Map. The slope of the site does not exceed 20% according to the soil type map at Multnomah County and the Soil Survey of Multnomah County, Oregon.

B. Severe soil erosion potential;

Findings and Conclusions. Erosion is not identified as a problem of the soil type Urban land, 3 to 15 percent slopes, according to the Soil Survey of Multnomah County, Oregon. The Survey states that Sauvie silt loam that the "hazard of erosion from overflow is high." The only proposed improvements on the uplands is the parking lot. The proposed uplands development has been directed away from the portion of the site having the severest potential for erosion, the bank.

C. Land within the 100 year flood plain;

Findings and Conclusions. The subject property is within the 100-year and 500-year floodplain. The application is subject to the Flood Hazard provisions of Section .6301. The applicant submitted an Elevation Certificate for residential and non-residential structures on August 19, 1998. Sauvie silt loam is identified by the Soil Survey as "subject to frequent flooding from December to June." In addition, "The main limitations for urban development are frequent flooding and a seasonal high water table" according to the Soil Survey. The only proposed improvements on the uplands is the parking lot. The proposed uplands development has been directed away from the portion of the site having the severest potential for flooding, the bank. While the subject property is within 100 year flood plains, the design and construction of the floating docks mitigates any potential adverse effects [Policy C].

D. A high seasonal water table within 0-24 inches of the surface for more than 3 or more weeks of the year;

Findings and Conclusions. Sauvie silt loam has a water table within a depth of 12 inches from May to June according to the Soil Survey. The water table for Urban land, 0 to 3 percent slopes is not identified by the Soil Survey. The only proposed improvements on the uplands is the parking lot.

E. A fragipan less than 30 inches from the surface; and

Findings and Conclusions. The Soil Survey does not identify a fragipan for Urban land, 0 to 3 percent slopes or Sauvie silt loam.

F. Lands subject to slumping, earth slides or movement.

Findings and Conclusions. The Soil Survey does not specify slumping, earth slides, or movement as a problem for the Urban land, 0 to 3 percent slopes or the Sauvie Silt loam.

6. Policy No. 22, Energy Conservation: The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. The County shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:

- A. The development of energy-efficient land uses and practices;**
- B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreation centers;**
- C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;**
- D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.**
- E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.**

Findings and Conclusions. Subsections A through D are directed at urban developments. This site is outside the regional urban growth boundary and these policies do not apply. Subsection E relates to the development and use of renewable energy resources. That policy does not apply because no development or use of renewable energy resources is proposed. The existing improvements, which the applicant seeks to legalize in these applications, are currently connected to electrical service. The existing use has minimal impact on energy resource consumption.

10. Policy No. 24, Housing Location:

The County's policy is to accommodate the location of a broad range of housing types in accordance with:

A. The applicable policies in this plan;

B. The locational criteria applicable to project scale and standards.

Definition and Standards:

Population and Scale:	Description:	Approximate
Residential Project:	A project which will	Population
	have a minimum impact	Increase:
	on the surrounding	Minor: Less than 50
	area and on the support	people.
	system.	

* * *

Maximum Number of Units Allowed by Housing Type:

* * *

Houseboats 1 each 50 feet of waterfront

* * *

Findings and Conclusions. The applicant stated that the property would provide housing for no more than 40 people at any given time. The applicant does not state how he calculated 40 people as the number of people residing in the moorage at any given time. However, there are six living units in the application. At the average population of 2.7 persons per household, the project would be expected to provide housing for 16.2 persons. Therefore, the population increase of this property is undoubtedly less than 50 people. Consequently, the project qualifies as a Minor Residential Project.

In the applicant's project description, the applicant stated that five combinations, eight boat garages, and one home office/ barge exist on the site, which the applicant seeks to legalize with these applications. In addition there is an existing farm house on Tax Lot 24 which is not subject to these applications. A total of 6 living units are proposed. There is approximately 600 feet of waterfront frontage. Based on the allowance of one unit per 50 feet, the allowed density would be 12 units, therefore, the development proposal meets the density requirement established in Policy 24.

Minor Residential Project Locational Criteria:

A. Access:

- (1) Site access will not cause dangerous intersections or traffic congestion, considering the roadway capacity, existing and project traffic counts, speed limits, and number of turning movements.**
- (2) There is direct access from the project to a public street.**

Findings and Conclusions. In Exhibit D1 the applicant states that the traffic generation from the site is about 12 vehicle trips per day. The applicant does not provide details on how the number of trips per day to the site was calculated. He does state that most of the tenants are there only part of the year, while others simply store boats there for extended periods of time. The

average dwelling generates approximately 10 trips per day. The 6 dwellings proposed would be expected to generate a total of 60 trips per day. There is no evidence in the record that the access will cause dangerous intersections or traffic congestion.

The subject parcel has direct, existing, access to NW Marina Way. The applicant does not propose to alter this access in any way.

B. Site characteristics:

- (1) The site is of a size and shape which can reasonably accommodate the proposed and future allowable uses in a manner which emphasizes user convenience and energy conservation.**
- (2) The unique natural features, if any, can be incorporated into the design of the facilities or arrangement of land uses.**
- (3) The land intended for development has an average site topography of less than 20% grade, or it can be demonstrated that through engineering techniques, all limitations to development and the provision of services can be mitigated.**

Findings and Conclusions. The applicant is applying for land use approval for the Community Service, Conditional Use, and Willamette River Greenway applications to become a legally existing moorage and the development is considered new for purposes of this Decision. The development is subject to all applicable Code provisions and Comprehensive Plan Policies. The applicant does not request to alter the existing size and scope of the moorage. The use activity is located primarily on the water, though the land portion of the site is adequate to accommodate parking and an on-site sewer system. The site can and does reasonably accommodate the proposed uses.

The site is relatively flat except for the bank of the channel. The site contains a wetland and significant riparian corridors, and is adjacent to and within the waters of Multnomah Channel. These unique natural features have been incorporated into the design of the development.

The slope of the site is less than 20% grade.

C. Impact of the Proposed Change on Adjacent Lands:

- (1) The scale is compatible with the surrounding uses.**
- (2) It will reinforce orderly and timely development and delivery of urban services.**
- (3) Privacy of adjacent residential developments can be protected.**
- (4) The project can be integrated into the existing community.**

Findings and Conclusions. The scale of the proposal is very similar to moorages within the vicinity and is also compatible in terms of function and form. Services are available to the site.

The privacy of the adjacent parcels is not threatened by the moorage. As has been noted previously, the applicant is requesting approval for an existing development, which is already integrated into the community, to become a legally existing moorage.

12. Policy No. 26, Houseboats: The County, in order to provide a broad range of housing opportunities for its citizens, recognizes houseboats as a housing option. Therefore, it is the County's policy to provide for the location of houseboats in a manner which accords with:

A. The applicable policies in this plan, including policies 2 (Off-Site Effects), 13 (Air, Water, Noise), 15 Significant Environmental Concern, 16 (Natural Resource), 24 (Housing Location), 37 (Utilities), and 38 (Facilities).

Findings and Conclusions. The applicant has provided narrative addressing the above noted Comprehensive Plan Policies. Compliance with each of these policies is addressed separately within this Decision.

B. Any other applicable federal, state, or local policies that regulate waterway area development.

Findings and Conclusions. The applicant was in violation of DEQ requirements for sewage disposal discharge implemented by the City of Portland Bureau of Buildings. The property owner has constructed an on-site sewage disposal system on Tax Lot 51. The Bureau of Buildings requires Multnomah County and use approval of all applicable applications before granting approval for the sewage system. The applicant's waterway lease from the Department of State Lands (DSL) has expired. DSL requires that the property owners receive approval from Multnomah County for all applicable land use applications before DSL grants renewal of the expired lease. The applicant has applied for the Conditional Use, Community Service, and Willamette River Greenway permits for the moorage. The applicant has not applied for a Conditional User permit for the home office. If the applications were approved the applicant would be required to apply for Design Review. Also, should more than 50 cubic yards of earth material be disturbed on the site, a Grading and Erosion Control (GEC) permit shall be submitted. If the application were approved, all other applicable federal, state and local policies that regulate waterway development could be complied with.

C. The following criteria for locating or expanding a houseboat moorage:

1. The mean low water line exceeds five feet;

Findings and Conclusions. The mean low water line is 20-feet. Consequently C.1. is met.

2. The moorage area should be protected from siltation problems which might require costly dredging to achieve the proper water depth;

Findings and Conclusions. According to Exhibit D1, no siltation or significant erosion problems have ever been associated with this site. The moorage is designed to allow natural flow of silt with normal river currents. No situation will be created that will allow unnatural deposit of river silt. Therefore criterion C.2. is met.

3. **The moorage is adequately protected from the adverse effects of wind, wave action, icy conditions, and other hazards.**

Findings and Conclusions. According to Exhibit D1, the moorage is anchored to land through pylons that are strategically located around the perimeter of the moorage. The moorage is attached to the pylons through the use of pile hoops. During emergency flooding this system can be augmented with the use of cables and anchors and/or tug boats.

4. **Adequate land area exists to accommodate parking and any accessory building requirements;**

Findings and Conclusions. According to Exhibit D1, the site is nearly 3 acres in area. The only proposed development occurring on the land is the parking lot and driveway, which occupy about 3,000 square feet. Therefore, there is adequate land to accommodate the proposal. This criterion is met.

5. **The proper maintenance and operation of dikes, as determined by the Army Corps of Engineers is not adversely affected by the moorage;**

Findings and Conclusions. According to Exhibit D1, the Corps of Engineers does not consider any part of this site to contain a dike, Therefore, this criterion is not applicable.

6. **The upland area adjacent to the moorage does not have unique recreational, ecological, or wildlife habitat value; and**

Findings and Conclusions. According to Exhibit D1, a portion of the upland area has unique values. This portion of the upland is the wetland area that is being enhanced and protected, as indicated in the wetland restoration plan (Exhibit 4). Since the area will be protected, this criterion will be met.

7. **The upland area adjacent to the moorage is not zoned for exclusive agricultural use.**

Findings and Conclusions. The upland area adjacent to the moorage is zoned Multiple Use Agriculture, therefore, C.7. criterion is met.

The following areas are designated as suitable for houseboats:

1. **Multnomah Channel (West Side).**
 - (A) **From Rocky Point Moorage, or from an area 1650 feet north of the southern boundary of Section 36, T3N, R2W, known as Rocky Point, north to the Columbia County boundary.**
 - (B) **From the City of Portland corporate limits north to 1/2 mile north of the Sauvie Island Bridge.**

Houseboats and moorages existing outside these areas shall be limited to existing sites and levels of development.

No houseboats shall be located on the Columbia River east of the Sandy River, or in violation of Federal Aviation Administration Clear Zone standards, or in violation of any other applicable Federal, State, or local standards.

Findings and Conclusions. The subject property is in an area designated as suitable for houseboats [Policy C, Multnomah Channel West Side 1 (B)].

- 13. Policy No. 33b, Marine Transportation System: The County's policy is to identify, evaluate and encourage the development of sufficient needed port and marine facilities, provisions will be made to:**
- A. Inventory the acreage available for marine terminal facilities and determine if more land is needed, in accordance with County Framework Policy 6.**
 - B. Explore the concept of a joint public/ private partnership, including cooperation with other governmental agencies, to finance infrastructure in accordance with County Framework Policy 4. However, it is the primary responsibility of the property owner/ developer to provide the infrastructure necessary to support development.**
 - C. Encourage improvements to public and private elements of the Portland area harbor which support regional economic development and diversity, in accordance with County Framework Policy 5.**

Findings and Conclusions. Policy 33b is primarily concerned with commercial port operations. In addition this policy is directed at the County's responsibility for planning for development of port and marine facilities. It is not an approval criteria applicable to quasi-judicial land use decisions.

- 14. Policy No. 37, Utilities: The County's policy is to require a finding prior to approval of a legislative hearing or quasi-judicial action that:**

WATER DISPOSAL SYSTEM:

- A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or**
- B. The proposed use can 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. There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**

- D. There is an adequate private water system, and a public sewer with adequate capacity.**

Findings and Conclusions. The existing improvements on the site are served by the Burlington Water District. The water district's main line is in Highway 30. The moorage's water line is served from a meter in NW Marine Way next to the house on Tax Lot 16. The water line runs across Tax Lots 16 and 24 to the river and then along the river and dock. The improvements are connected to a subsurface sewage disposal system. The Certification of On-Site Sewage Disposal has been submitted by the applicant. In addition, the Land Feasibility Study (LFS 162-95) dated October 27, 1995 states that it is suitable for the use of a standard septic tank/drainfield disposal system. On September 8, 1997, a letter was sent to the property owners regarding a violation of OAR 340-71-130; a complaint had been received that sewage was dumped into the water. Permit #015664 was issued by the City of Portland to construct a subsurface sewage system. A letter dated July 17, 1997 was submitted by the sanitarian. Portland has stipulated that the violation cannot be fully resolved until the property owner receives approval for the appropriate land use applications with Multnomah County. The subsurface sewage disposal system could be approved pursuant to DEQ requirements if the land use were approved. The application complies with Policy B.

DRAINAGE:

- E. There is adequate capacity in the storm water system to handle the increased run-off; or**
- F. The water run-off can be handled on the site or adequate provisions can be made; and**
- G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjacent lands.**

Findings and Conclusions. Storm water run-off from the site flows into the Multnomah Channel of the Columbia River. The only development on land that is proposed is the vehicle area (parking lot and driveway) and subsurface sewage disposal system. The applicant proposes to grass-crete the parking. The applicant proposes to install an oil/water separator to protect water quality in the channel and wetlands. The applicant proposes to grade the driveway so that drainage will occur away from the wetlands area. The septic tank is a sealed, self-contained unit that will be maintained on a regular basis. The drainage policies can be met.

ENERGY AND COMMUNICATIONS:

- H. There is an adequate energy supply to handle levels projected by the plan; and**
- I. Communications facilities are available.**

Findings and Conclusions. Electrical and communications facilities are currently provided to the site. No new connections are required. The application complies with the energy and communications policies.

15. Policy No. 38, Facilities: The County's Policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

- A. The appropriate School District has had an opportunity to review and comment on the proposal.**

Findings and Conclusions. The Portland School District (Sauvie Island) has had an opportunity to comment on this proposal. The applicant has provided a signed (12/19/96) School District Service Provider form. The application meets the criteria.

- 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.**

Findings and Conclusions. The area is within the Burlington Water District which provides fire service under contract by the Portland Fire Bureau. The Portland Fire Bureau (St. John's District) has had an opportunity to review and comment on this proposal. The applicant has submitted a signed (1/14/97) Service Provider form. Written comment from the Fire District includes, "The nearest fire hydrant is over 1000 feet away. Portland provides contract fire service to this area." The application meets the criteria.

- D. The proposal can receive adequate local police protection with the standards of the jurisdiction providing police protection.**

Findings and Conclusions. The Multnomah County Sheriff's Department has had an opportunity to review and comment on this proposal. The applicant has submitted a signed (12/20/96) Police Service Provider form. The application meets the criteria.

16. Policy No. 40, Development Requirements: The County's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

- A. Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.**
- B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**
- C. Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

Findings and Conclusions. There has been no identified need for pedestrian and bicycle path connections from this area to parks, recreation areas or community facilities. There is no bicycle corridor crossing the site designated on the capital improvements program and map. The development is residential and the living units are single family. Landscaped areas with benches are not required. If the applications were approved the applicant would be required to

apply for Design Review. The design review process could determine whether it would be appropriate to include a facility for bicycle parking. Policy 40 can be met.

CONCLUSION

The applications either comply or can be made to comply through conditions of approval, with all applicable criteria. The Hearings Officer hereby approves CS 1-98, CU-98, and WRG 2-98, subject to the conditions contained in this decision.

IT IS SO ORDERED, THIS 3rd DAY OF DECEMBER, 1998

Deniece B. Won, Land Use Hearings Officer

Appeal to the Board of County Commissioners

The Hearings Officer decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An Appeal requires a completed "Notice of Review" form and a fee of \$500.00 plus a \$3.50 - per - minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the Multnomah County Land Use Planning Office at 2115 SE Morrison Street in Portland, or you may call 503-248-3043 for additional instructions.

List of Exhibits

List A: Staff/ Applicant Exhibits:

1. Applicant site plan.
2. Sauvie Island/ Multnomah Channel Rural Area Plan (SI /MC RAP) Map (page 8).
3. April 30, 1998 Letter from Jerry Hedrick, DSL, to property owners.
4. Wetland Restoration Plan, dated September 20, 1995.
5. River Bank Restoration Plan, dated September 20, 1998.
6. July 1998 Letter from Jerry Hedrick, DSL, to property owners.
7. 1990 Letter from DSL, regarding waterway lease, to property owners.
8. September 9, 1997 Letter from Mike Ebeling, City of Portland, to property owners.
9. September 19, 1997 Letter from Anne Cox, DEQ, to property owners.
10. Significant Wetlands documentation from Multnomah County's Goal 5 Inventory.
11. Goal 5 Significant Wetlands Map illustrating the riparian corridors of the subject parcels.

List B: Notification Information:

1. "Complete application" Letter, 2 pages
2. Notice of Hearing, 4 pages

List C: Multnomah County Documents

1. Staff Report - October 12, 1998

List D: Documents Submitted at October 21, 1998 Public Hearing or during open record period:

1. October 14, 1998 letter from Kevin Brady to the Hearings Officer
2. October 21, 1998 letter from Jay McCaulley to Trisha Sears
3. October 21, 1998 letter from Sephen Purchase, DSL, to Trisha Sears and an attached letter from Jay McCaulley to Steve Purchase
4. October 26, 1998 letter from Kevin Brady to the Hearings Officer