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# Marion County

## OREGON

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### MEMORANDUM

**TO:** Marion County Hearings Officer

**FROM:** Marion County Planning Division/Lindsey King

**SUBJECT:** Greenway Permit 22-011

**DATE:** October 21, 2022

The Marion County Planning Division has reviewed the above-referenced application and offers the following comments:

### FACTS:

1. Application of Friends of Historic Butteville (Ben Williams) on behalf of Shaloe Putnam, Julia A. Kraemer, and right-of-way owner Marion County for a floodplain and greenway development permit to install a dock and gangway in identified 100 year floodplain of the Willamette River at Butteville Landing (River Mile 42.9), in the 20,500 block of Butte Street NE, Aurora.
2. The subject property constitutes an existing right-of-way and is designated Rural Residential and correspondingly zoned AR (Acreage Residential). The portion of the property within the Willamette River is in the floodway of the river. Portions of the property outside of the river are in the 500-year flood plain of the Willamette River. The property is also within the Willamette River Greenway. The property is in the rural community of Butteville in the 23700 block of 1<sup>st</sup> Street NE. Surrounding properties in all directions are zoned AR and developed with dwellings. Property to the northeast is zoned CC (Community Commercial) and owned by Oregon State Parks.
3. The applicant is proposing to construct a gangway and dock in the Willamette River for public access to and from the Willamette River.

### COMMENTS:

Marion County Building Inspection commented: No Building Inspection concerns. Building permit is not required according to OSSC 101.2 and ORS 455.020

Marion County Land Development Engineering & Permits commented that “a work-in-R/W Permit will be required for construction activities within Butte Street.

Oregon Department of Fish and Wildlife commented that “activities associated with this project conducted below the Ordinary High Water line should be completed during the in water work

window (6/1-10/31 and 12/1-1/31). The dock should comply with ODFW Dock Guidelines – size, light penetration, and materials ([https://www.dfw.state.or.us/lands/docs/Doc\\_Guidelines.pdf](https://www.dfw.state.or.us/lands/docs/Doc_Guidelines.pdf)).

Other contacted agencies either had no comment or stated no objection to the proposal.

### **STAFF FINDINGS AND ANALYSIS:**

5. The purpose of the Floodplain Overlay Zone is to promote public health, safety, and general welfare to minimize public and private losses due to flood conditions. In order to ensure that the development is reasonably safe from flooding, the County requires the development comply with the criteria and standards listed in Section 17.178.050 and 17.178.060 of the Marion County Code (MCC).
6. Marion County Flood Insurance Rate Map #41047C0050G indicates that the development site is within the floodway of the Willamette River. Based on the Flood Profile, the Base Flood Elevation (BFE) at the development site is approximately 94.2 feet mean sea level.
7. MCC 17.178.050 (C) requires:  
*Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest, acknowledging that the property and the approved development are located in a floodplain.*

Since the development is publicly owned and on property in public right-of-way, the requirement for a declaratory statement it not necessary in this instance.

8. MCC 17.178.050 (D) requires:  
*Prior to obtaining a building permit, commencing development or placing fill in the floodplain the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.*

The provision of this certification can be made a condition of any approval.

9. MCC 17.178.050 (E) exempts property owners from the requirement of providing an elevation certificate for a gangway or dock, since it is a water dependent use that rises and falls with the height of the river.
10. MCC 17.178.060 contains additional standards for development in the floodplain:

#### *C. Nonresidential Development.*

1. *New construction and substantial improvement of any commercial, industrial or other nonresidential structures shall either have the lowest floor, including basement, elevated to two feet above the level of the base flood elevation, and where the base flood elevation is not available, the lowest floor, including basement, shall be elevated to two feet above the highest adjacent natural grade (within five feet) of the building site, or together with attendant utility and sanitary facilities, shall:*
  - a. *Be floodproofed to an elevation of two feet above base flood elevation or, where base flood elevation has not been established, two feet above the highest adjacent grade, so that the structure is watertight with walls substantially impermeable to the passage of water.*
  - b. *Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.*

*c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. This certificate shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed and shall be provided to the Floodplain Administrator.*

*d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsections (A)(5) and (6) of this section.*

*e. Applicants floodproofing nonresidential buildings shall be notified by the zoning administrator that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).*

The provision of these certifications can be made a condition of any approval.

- 2. New construction of any commercial, industrial or other nonresidential structures is prohibited in the floodway. An exception to this prohibition may be granted if a floodplain development permit and variance consistent with MCC 17.178.080 are obtained. This prohibition does not apply to functionally dependent uses.*

This prohibition does not apply to uses that are functionally development that is required to be located on or near water, such as a gangway and dock. The criterion is not applicable.

#### *D. Anchoring.*

- 1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.*

The provision of this certification can be made a condition of any approval.

#### *E. Construction Materials and Methods.*

- 1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*
- 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.*

The provision of this certification can be made a condition of any approval.

#### *F. Utilities.*

- 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system as approved by the State Health Division.*
- 2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters in the systems and discharge from the systems into flood waters.*
- 3. On-site waste disposal systems shall be designed and located to avoid impairment to them or contamination from them during flooding consistent with the requirements of the Oregon State Department of Environmental Quality.*
- 4. Electrical, heating, ventilation, plumbing, duct systems, air-conditioning and other equipment and service facilities shall be elevated to one foot above the level of the base flood elevation.*

*Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site. If replaced as part of a substantial improvement the utility equipment and service facilities shall meet all the requirements of this subsection.*

The provision of this certification can be made a condition of any approval.

*H. Storage of Materials and Equipment. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.*

This standard can be made a condition of any approval.

*J. Floodways. Located within areas of floodplain established in MCC 17.178.030 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential the following provisions shall apply in addition to the requirement in subsection (I) of this section:*

*1. Prohibit encroachments, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.*

*2. If subsection (J)(1) of this section is satisfied, all new construction, substantial improvements, and other development shall comply with all applicable flood hazard reduction provisions of this section.*

*3. The area below the lowest floor shall remain open and unenclosed to allow the unrestricted flow of floodwaters beneath the structure.*

The provision of this certification and required analyses can be made a condition of any approval. As described above, the proposal meets the other standards for development in a regulated floodplain. The area beneath the gangway and dock will remain open and unenclosed because the gangway and dock float on the waters of the river.

11. The purpose of the Greenway Management Overlay Zone is to protect the natural, scenic, and recreational qualities of lands along the Willamette River in Marion County. In reviewing a request for a Greenway Development Permit the proposal is reviewed to ensure compliance with certain considerations and criteria, those that apply to this type of request are listed in Section 17.179.050 of the Marion County Code (MCC). The discussion below includes both information provided by the applicant with the application and staff conversations with the applicant about the proposal.

*A. Agricultural lands shall be preserved and maintained for farm use.*

The subject property is in a residential zone and surrounded by residential use and is not being farmed. Agricultural practices would not be impacted. This criterion is met.

*B. Significant fish and wildlife habitats shall be protected.*

The applicant states that the project has received approval from the National Marine Fisheries Service. This criterion appears to be met.

C. *Significant natural and scenic areas, viewpoints and vistas shall be preserved.*

The gangway and dock, and its related structures on land, provide a means for the public to access and experience both the river. This criterion is met.

D. *Areas of ecological, scientific, historical or archeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible.*

The applicant states that a cultural survey and State Historic Preservation Office listing has been complete. This criterion appears to be met.

E. *The quality of the air, water and land resources in and adjacent to the greenway shall be preserved in the development, change of use or intensification of use of land within the greenway management zone.*

The property has been an open area previously and has recently been developed into an accessway for staging paddle craft and to allow for safe river access. There is no evidence that the quality of the air, water and land resources will be affected by this proposal. This criterion is met.

F. *Areas of annual flooding, floodplains and wetlands shall be preserved in their natural state to the maximum possible extent to protect water retention, overflow and other natural functions.*

Portions of the subject property are located within the floodway of the Willamette River. The portions of the land in the floodway are subject to the permit described above and will have minimal impact on flooding because the dock and gangway will float on the river. This criterion is met.

G. *The natural vegetative fringe along the river shall be maintained to the maximum extent that is practical in order to assure scenic quality, protection of wildlife, protection from erosion and screening of uses from the river.*

The subject area has been planted with native species to prevent further erosion and to stabilize the lower landing which is designed to prevent stormwater runoff and erosion. The proposal will have no negative effect on the natural vegetative fringe. This criterion is met.

H. *The commercial harvesting of timber shall be done in a manner which will ensure that wildlife habitat and the natural scenic qualities of the Greenway will be maintained or will be restored. Only partial harvesting shall be permitted beyond the vegetative fringes. Limitations on the extent or type of harvest shall be those necessary to satisfy the appropriate use management consideration and criteria in this section.*

No harvest of timber is proposed. This criterion is not applicable.

I. *The proposed development, change or intensification of use is compatible with existing uses on the site and the surrounding area.*

The proposed use of the land will not change or intensify the use of the property. Previously, it had been the site of a dock and is currently a river access area. This provides river access to both nearby residents and those coming to the area to recreate. This criterion is met.

- J. Areas considered for development, change or intensification of use which have erosion potential shall be protected from loss by appropriate means which are compatible with the provisions of the greenway management zone.*

The applicant states that erosion protection was approved by the National Marine Fisheries Service as part of the joint Army Corp of Engineers and Division of State Lands permit. The new bank above the OHW was planted with native species for bank stabilization and erosion control. The removal area will be replanted with native vegetation as well. This criterion appears to be met.

- K. Extraction of aggregate deposits shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization stream flow, visual quality, noise and safety and to guarantee necessary reclamation.*

The subject property is not in a mineral/aggregate overlay zone. This criterion does not apply.

- L. Any public recreational use or facility shall not substantially interfere with the established uses on adjoining property.*

According to the applicant, the proposal will re-establish safe access to the river by developing the area into a public access way. The portion of land is an existing Public Right of Way and by design is intended to be a passageway for the public both to and from the river. The proposal will be adequately spaced from other residential docks, which are consistent with the development pattern of the neighborhood. The dock spacing will allow for adequate maneuvering of boats and other watercrafts from the various neighboring docks. This project is intended to improve the ongoing use of the right-of-way for low impact recreational uses on the Willamette River. This criterion is met.

- M. Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practical.*

According to the applicant, the proposal will re-establish safe access to the river by developing the area into a public access corridor. There is adequate signage for hours of use (6 am – 10 pm) and no overnight parking. Marion County Sherriff's Office regularly patrols the area. The installation of guardrails across the bottom of the landing will assure and prevent any access to adjoining properties. This criterion is met.

- N. A minimum building setback line of 30 feet from the ordinary high water line of the Willamette River will be specified that will minimize adverse impacts upon the scenic qualities of lands along the river except for buildings and structures in conjunction with a water-related or a water-dependent use.*

The structures proposed for development, the gangway and dock, both are water-related and water-dependent uses. This criterion does not apply.

- O. Public access to and along the river be considered in conjunction with subdivision, commercial and industrial development and public lands acquisition where appropriate. This access should be located and designed to minimize trespass and other adverse affects on adjoining property.*

According to the applicant, the proposal will re-establish safe access to the river by developing the area into a public space. This criterion is met.

- P. The development shall be directed away from the river to the greatest possible extent.*

The dock and gangway improvement are water dependent uses and must be located within the Willamette River. The remainder and existing restoration project has been designed to facilitate safe and easy access to the river. The proposal complies with this criterion.

*Q. The development, change or intensification of use shall provide the maximum possible landscaped area, open space or vegetation between the activity and the river.*

The subject property has been re-landscaped with native species. This criterion is met.

*R. Private docks, wharfs, and covered storage shall be limited to one per property ownership, shall not extend more than ten feet above water level, and shall be limited to 300 square feet of gross area. Walkways to the dock wharf or covered storage shall be not more than five feet wide.*

Since the dock is public, this criterion above does not apply.

### **CONCLUSION:**

12. Staff recommends ***approval*** of the proposal. Should the hearings officer grant the applicant's request for the conditional use to construct a dock and gangway on the Willamette River, the Planning Division recommends the following conditions be applied:

- a) The applicant shall obtain all permits required by the Marion County Building Inspection Division.
- b) Prior to issuance of building permits for or beginning work on the gangway, dock and related structures and supports, a registered civil engineer shall certify the following standard of Marion County Code is met: MCC 17.178.050(D).
- c) Prior to issuance of building permits for or beginning work on the gangway, dock and related structures and supports, a registered civil engineer shall certify the following standards of Marion County Code are met: MCC 17.178.060(C), (D)(1), (E), (F) and (J).
- d) Materials that are buoyant, flammable, obnoxious, toxic, or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.
- e) The natural native vegetation and habitat on the subject property within the riparian area and greenway shall be maintained to the maximum extent.