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Nancy Boyd
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RE: COMMENTS FOR THE PUBLIC RECORD REGARDING THE FEIS AND MARINA
STUDY DOCUMENT

HAND DELIVERED

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Preface: I submit these comments as a member of the Jantzen Beach Moorage, Inc. I live on "A" Row, directly in the alignment of the CRC project. Professionally I am a marine consultant specializing exclusively in local, state and federal policy regarding marine development. Additionally, my work has allowed me to serve in this capacity in jurisdictions throughout the states of Oregon and Washington.

Dear Director Boyd:

The marina study compiled by CRC staff does not really address many substantive issues in regard to the displacement of the floating homes in the vicinity nor the project sponsors responsibilities under the Uniform Real Estate Acquisition and Relocation Act of 1971; rather it is more of a "primer" on the permit process "by private developers." The study, specifically does not even attempt to address the legal issues required under the act, or Final Environmental Impact Statement requirements, let alone provide any sort of financial analysis needed for project budgetary planning as required by the Federal Highway Act. Additionally, the study does not address those subject "to temporary displacement," such as D and possibly C rows, as described in the EIS.

Rather than address acquisition and relocation under the act, this study appears to consider relocation only as it pertains to floating homes. In fact the author erroneously refers to the "Uniform Relocation Act" throughout the document. In the case of the Jantzen Beach Moorage, the floating home owners are also members of the homeowners association and as such are entitled to compensation for impact to

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Mr. McCaulley has provided an assessment of the project's Marina Study, conducted to assess the likelihood of a new marina being developed in time to aid in the relocation of displaced floating homes. The main purpose of the Marina Study was to compile information and study issues related to the establishment of new marinas or additional slips by private developers. The project maintains that it is unlikely there would be significant development of additional marinas or floating home slips in the foreseeable future and especially in the 12 to 18 month window when the project is likely to displace the floating homes.

Although Mr. McCaulley has suggested that permitting for a new marina could take place within a single year, the project's estimation also included time for the preparation of the plans and studies required for permit applications, and have estimated that potentially four years would be needed for permitting, feasibility studies, financing, bidding and construction. Mr. McCaulley's critique points out several items he believes are factual errors or errors of interpretation. The project acknowledges Mr. McCaulley's authority on these matters and will make the factual corrections he suggests. However, the basic conclusion remains the same - it is unlikely that a developer would be able to design, develop, permit and construct a marina, even with the support of coordinated agencies, in time to provide slips for displaced floating homes.

The marina study was not intended to address compensation and relocation benefits provided for by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) (Uniform Act).

As stated in the Final Environmental Impact Statement (FEIS), all property owners will be offered Just Compensation for any ownership interests in parcels acquired for the project; and displaced occupants of

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their portion of the DSL leasehold interest and moorage infrastructure, including docks, pilings, common areas and upland.

Interestingly, this report was referred to in the FEIS at Chapter 3.81-82, but not included in FEIS list of study documents as an appendix to the FEIS, nor was the author listed in appendix H, list of preparers. Additionally, the study is not published on the CRC web-site

The stated purpose of the study was:

This memorandum compiles information regarding requirements and issues related to the establishment of new floating home marinas in the Portland area by private developers.

"Marina development is totally a private entrepreneurial effort by individuals or corporations interested in developing a property for profit."

Given this limited assumption, it is not surprising that they conclude in the FEIS Acquisition Section (Chapter 3) that:

"(T)he project is not pursuing(sic) the construction of a new floating home marina."

However, with this said, the report admits that it may not meet legal scrutiny as a result.

This memo does not address the legal issues related to the relocation of floating homes by the Columbia River Crossing project under the Uniform Relocation Act.

This fundamental issue is troublesome in that the purpose of the FEIS and Environmental Justice process, as well as the Uniform Act are clearly required to vet such issues. In short, their role is not to look at this from the standpoint of a "private entrepreneurial effort... for profit;" their role is to fulfill their legal responsibilities and adhere to the regulations in favor of those impacted by this government project, under eminent domain, for valid public purposes.

It is also interesting to note that the alternative site analysis did not include any government owned property or actual study of integration of the displacements into existing moorages. In North Portland Harbor roughly half of the upland property is owned by the Port Of Portland or Metro (considering West Hayden Island and the area along Marine Drive). While I am not suggesting that looking at relocation to these sites is something that the displaced homes or Janzen Beach Moorage would be interested in or would even consider to be desirable; I do believe that the study is incomplete because they were not considered and therefore does not fulfill the requirements for moving forward under the Congressional Acts mention above.

said parcels will be offered all relocation benefits for which they are entitled under the Uniform Act.

Floating homes will be treated as real property unless it is determined there are sufficient replacement sites to which the floating homes can be economically relocated. If a Relocation Study determines that sufficient replacement sites are not available, the floating homes will be purchased at fair market value and the occupants will be provided relocation assistance which may include payments, if necessary, to acquire decent, safe and sanitary replacement housing.

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For example, during the late 1990's, the open space opposite JBMI on the mainland side (across Marine Drive from EXPO) was successfully leased by Metro (a project sponsor) to a private developer for development of a marina indicating that it could be, and certainly should be considered as a potential site. Additionally, the Port of Portland faced similar circumstances when they undertook their runway realignment project; specifically relocation or demolition of floating homes under eminent domain based on federal transportation regulations. This effort resulted in agreeing to build the Islands Moorage rather than opt for demolition. Based on the zoning of Port property on North Portland Harbor, there are no justifiable reasons for not considering relocation of the displaced floating homes to portions of their vacant land, especially as they are just now considering development options for significant areas on West Hayden Island.

For the purposes of this analysis I have followed the author's format. The italicized sections are taken directly from the study.

I. THE MARINA DEVELOPMENT PROCESS:

The study author stresses the difficulties of marine development. JBMI can attest to some of the difficulties obtaining permits based on our own construction projects over the recent past.

Marina development is totally a private entrepreneurial effort by individuals or corporations interested in developing a property for profit. There are no known incentives or subsidies for developing a floating home marina. Developer's primary interest is making a profit for their efforts; a profit from the sale or rental of developed slips significant enough to reward the principals in the development for the work and capital investment over a number of years before profits can be realized.

The development process is complicated and subject to protracted delay as the many agencies consider the submitted development plans and environmental material. It is estimated it would take a minimum of four years to advance a project through permitting to completion when it is ready for occupancy.

Having specialized in marine development permitting throughout my professional career, I believe I am in a position to say that the author has not considered many reasons for engaging in such a difficult task in both the public and private sectors; "...totally a private entrepreneurial effort by individuals or corporations interested in developing a property for profit." Several moorages in the Portland area, including Jantzen Beach Moorage Inc. are owned by not-for-profit home owner associations, and further, many marinas in Oregon and Washington are publicly owned.

As described above, the Port of Portland found with their runway realignment project that building a new moorage suited their purposes based on feasibility and they constructed the Islands Moorage. While we do not disagree with the finding that marine development can be difficult and time consuming; as a consultant exclusively permitting

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such projects in many jurisdictions; public marine projects, although subject to the same regulations as a private developer would face have several advantages when undertaking such.

While I can cite cases where private sector projects have taken as long as four years to permit and develop, in my experience this would be rather unusual depending on the jurisdiction. Most projects can be permitted in about one year. It would be highly unusual for a public project to take nearly that long, especially considering the significance and magnitude of the CRC project as the driving force. The author does not provide documentation as to the "estimated" minimum four years to advance a project of this nature. I will detail some of the expected time-lines for permitting in the next section.

In this case, the cause for displacement is based solely on a substantial "public need" of regional, interstate, and national significance that the permitting agencies certainly consider when evaluating an application, especially from a sister agency. Also in this case, the project has garnered the full political and professional support from the local project partners (local jurisdictions), Oregon and Washington States, the respective Departments of Transportation, including in-house professional staff from both agencies, as well as consulting teams from several disciplines, significant funding, and strong, well publicized support from both Governors.

If the scope of the study even considered the public nature of the project and the fact that the CRC project must adhere to the legal issues of eminent domain as a result, the study findings would properly be found to be significantly different than described. Certainly, building a freeway bridge over the Columbia River between Oregon and Washington, through several jurisdictions and layers of agency review, can not be less daunting of an undertaking, as this study implies, than permitting and construction of a moorage for those that will be displaced, or even considering, as required, by state and federal policy, alternative sites and proper analysis.

II. THE PERMITTING PROCESS:

One of the first steps in commencement of the permitting process would be a consultation with DSL and the Corps. DSL and the Corps have a joint permit application process. A pre-application meeting will be arranged with the applicant's consultants and agency technical staff, biologists and others to assist the applicant in determining the plans and reports that will be needed in considering the effects of the project and any limitations and requirements that may be needed for approval. The following are the primary players in the permitting process:

At statehood in 1859, the federal government gave Oregon the ownership of submerged and submersible land underlying navigable waterways... The State Land Board is charged with managing this land on behalf of all Oregonians. The Department of State Lands (DSL), the Land

Board's administrative arm, is responsible for the day-to-day management of these publicly owned resources.

Application for DSL leases: Any new use of submerged lands under DSL jurisdiction requires a lease. The DSL's application requires an application form accompanied by detailed maps and plans for the proposed facility. DSL staff distributes the application and the plans to a mailing list which includes nearby owners, municipal jurisdictions, and resource agencies. DSL staff receives comments on the proposed project and refers any objections it deems substantive to the applicant for resolution. It is up to the applicant to resolve issues raised in the comment period. If the applicant is unable to resolve issues deemed substantive by DSL, it may not be approved.

In addition to the recipients listed above several private individuals and organizations are included on DSL's mailing list, specifically tribes and environmental groups who routinely weigh-in on project proposals. DSL weighs the nature of the comments, as well as who is making the comments prior to moving forward with their decision to issue a lease or not. For example, comments from the Oregon Department of Fish and Wildlife tend to carry more weight than comments from certain organizations that appear to oppose every project as a matter of routine. DSL exercises significant discretion when considering each comment. While they indeed may not issue a lease based on a comment, they are typically not obligated to resolve or condition approval in every case, nor is the applicant.

The proceeds from the Waterway Leasing Program inure to the Common School Trust Fund for distribution to school districts throughout the state. With this in mind, DSL weighs the principles of "sound management" of the natural resources of the State, as well as their contribution to schools when making their decision as to issuance or not. Given these circumstance, leases are generally issued unless the project plan is found to be significantly flawed or detrimental to our environmental policies. Most planning consultants in the public and private sectors are well versed in what will work and what will not work when designing a project for DSL scrutiny. In short is relatively rare for DSL to simply deny a lease authorization as implied.

Once an application is deemed complete, usually within 30 days, the DSL puts the application out for the 30 day comment period. DSL at that time can issue a lease or provide conditions for approval or deny the application. Typically a lease is issued in 4 to 6 months.

Leasing Procedures: All moorages, marinas and docks in this area are subject to DSL administrative rules and must be leased from DSL. DSL will not approve a lease until it is satisfied that all applicable rules and permits have been issued. A commercial marina may select one of three ways of determining their annual rent:

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Interestingly, not all moorage projects require a DSL lease as stated and quite specifically in the North Portland Harbor area. At the time of statehood, the "Oregon Slough" as it was known then did not go all the way through in many water conditions. An act of Congress in 1912 authorized the Corps of Engineers to dredge a commercial channel so the entire length of Hayden Island could be utilized for marine transportation. Therefore, much of the east end of the Hayden Island channel bed is fee title property, not subject to DSL lease; rather it is owned by the riparian owners along the shoreline and along Bridgeton Road.

Area "D" described later in the CRC study as "*the most likely site on the river for development of a new marina*" is one of these properties not subject to DSL lease.

There are also categorical exemptions pursuant to DSL Waterway Leasing Administrative Rules such as private wharves and certain government facilities.

As mentioned above, the reviewing agencies including DSL, naturally tend to consider projects presented to them by another government agency with some degree of deference; in addition ODOT has full time professional staff assigned to liaise exclusively with DSL on ODOT projects (I applied for the position at the time it was first offered). Based on my experience, I could not anticipate a situation where DSL would deny authorization to ODOT for construction of a floating home moorage to replace those displaced by the CRC project. Further DSL reports directly to the Land Board, made up by the Governor, Secretary of State and State Treasurer; all of whom have announced publicly, strong support for the CRC project. I can not imagine a scenario where DSL staff would consider "bucking" the Land Board by denying a lease to the CRC should the project determine that a replacement moorage was an alternative to displacement.... It would probably be approved in record time.

B. Corps of Engineers: *The DSL application is a joint application with the Corps, which is responsible for permitting construction and dredging in public waterways, such as the Columbia River. It is the Corps' responsibility to:*

evaluate permit applications for proposed activities in waters of the United States (including wetlands) throughout Oregon, under the authorities of the Marine Protection, Research and Sanctuaries Act, Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

In evaluating an application, the Corps requests a biological opinion (BO) from the National Marine Fisheries Service (NMFS). The BO contains an assessment of the potential impact of the construction and operation of an in-water facility to fish species and to critical fish habitat. If it is determined that the project impacts are acceptable, the BO will contain terms and conditions that are deemed necessary to minimize the potential harm to protected species. These conditions can include restrictions on in-water work, specific construction techniques and construction materials. NMFS requires that the

Corps include these restrictions in their permits and that the project be monitored to assure the permittee complies.

A review of NMFS biological opinions (BO) over the last nine years for the Columbia and Willamette River systems, for Oregon and Washington shows there have not been any opinions issued on floating home marinas. So it is difficult to judge current agency opinion. However, BO's for other in-water installations, such as boat docks, highlight agency concern regarding over-water shading. Below are excerpts from a relatively recent BO.

Light plays an important role in defense from predation. Prey species are better able to see predators under high light intensity, thus providing the prey species with an advantage...

An effect of over-water structures is the creation of a light/dark interface that allows ambush predators to remain in a darkened area (barely visible to prey) and watch for prey to swim by against a bright background (high visibility). Prey species moving around the structure are unable to see predators in the dark area under the structure and are more susceptible to predation. The incorporation of grating into all of the docks allows for more light penetration and diffuses the light/dark interface. This will minimize the susceptibility of juvenile salmonids to piscivorous predation resulting from this project.

Shading is a permanent effect that could not be readily mitigated for a floating home marina. A minimum size floating home marina of about 40 homes would create about an acre of shade. Unlike other overwater features, it would not be possible to add transparent or translucent features to a house that would alleviate shading. Floating docks can utilize metal grating and boat houses can have translucent roof panels and doors to transmit light, but floating homes do not have the same opportunities. There is no certainty how NMFS would consider the issue, and whether there could be acceptable mitigation. Conversations with marina developers indicate the shading issue is known to developers and creates investment uncertainty, a significant issue.

Over the past few years the Corps of Engineers review process has probably become the most time consuming aspect of permitting, to a large degree because of the required consultation with Nation Marine Fisheries.

Contrary to the author's assertion however, and contradicted by his own foot notes and comments, several biological opinions have been conducted for floating home moorages in the past 9 years; some very recently and some in the immediate area of North Portland Harbor. For example, his foot note on page 3 of the report.

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5 NMFS Biological Opinion for Hayden Island Marina. 2004.
https://pcts.nmfs.noaa.gov/pls/pctspub/sxn7.pcts_upload.download?p_file=F31284/200300787_Hayden_Island_final_1-23-2004.pdf. Page 10-11. Retrieved 1/31/2011.

The Rocky Point Marina expansion approved earlier this year and mentioned on page 5 of the report, required consultation and a biological opinion, as did the reconstruction of the Jantzen Beach Moorage, to name a few. Even modest modifications to existing structures can cause a need for such consultations; as such, these considerations are a routine component of every marine project.

With this said however, NMFS has several avenues to pursue regarding mitigation and minimizing impacts, typically included in the conditions of approval. Light penetration is only one consideration of many that we integrate into every project proposal. Mitigation also comes in many appropriate forms depending on the nature of the impact.

Acceptable forms of mitigation used in circumstances such as described when an impact can not be avoided is on-sit or off-sit habitat creation and enhancement, payment in-lieu of mitigation, as well as other conditions of approval NMFS deems appropriate.

Shading is a permanent effect that could not be readily mitigated for a floating home marina... There is no certainty how NMFS would consider the issue, and whether there could be acceptable mitigation.

While every project consultation is analyzed on its own merits, NMFS is quite knowledgeable in minimizing impacts and has made no secret of what they expect and methods to limit impacts to acceptable levels. They have published dozens of BO's, as well as study and guidance documents providing industry professionals with appropriate methods for project design and engineering to minimize, mitigate or avoid adverse impacts. The author is simply wrong when he says "(t)here is no certainty how NMFS would consider the issue, and whether there could be acceptable mitigation."

Further, in my experience NMFS also considers existing structures differently than new construction and reconstruction, again depending on the nature of the impact. For example, a recent client wanted to install a new dock in a location that did not have a dock; he purchased an existing concrete dock section that could not effectively be retro-fitted with light penetrating panels for installation at the new site (specifically in an area deemed to be essential habitat, an even higher hurdle, unlike this portion of the Columbia River and North Portland Harbor). NMFS found that because it was an existing structure, and that there would be no net increase in surface area or shading, the impact was "de minimis" and no further mitigations was required.

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In this particular case (CRC), the displaced floating homes and moorage infrastructure already exist. Whether relocated, rebuilt or reconfigured, the net surface area impacted would not change appreciably, if at all. While consultation and BI-OP would still be required; a new, relocated or reconfigured moorage is without a doubt more feasible than indicated by the study.

These considerations are at the very heart of the FEIS and NEPA process. CRC project staff are certainly well aware of these issues and nuances in-that the bridge project faces exactly the same considerations, however on a much larger scale and significantly greater impact. As such, I believe the FEIS fails to meet the minimum threshold for moving forward toward acceptance based on the Uniform Real Estate Acquisition and Relocation Act.

III. ZONING

Zoning is an important factor in determining the feasibility of a potential floating home marina development. There are four jurisdictions on the Columbia which determine allowable land use: the City of Portland, Multnomah County, the City of Gresham, and the City of Fairview. The City of Portland has jurisdiction upstream from the mouth of the Willamette River, past Hayden Island to about 185th Drive.

Upstream from that point there is approx. one mile of Columbia River frontage in the City limits of Gresham. The next 1.5 miles is in the City of Fairview, and the final stretch, to a point near the Sandy River, lies within Multnomah County. The Columbia River downstream from the mouth of the Willamette, as well as the Multnomah Channel, are in Multnomah County jurisdiction.

A. City of Portland:

All of the North Portland Harbor and most of the existing marinas are within the City limits. Except for a few small areas, Portland's zoning along the Columbia River frontage is industrial and commercial. The commercial zone is along Hayden Island, on the north side of North Portland Harbor. The industrial zone extends along the south bank of the Columbia from the mouth of the Willamette upstream to the city limits, approximately at 185th Drive. In addition, there are three overlay zones that restrict uses along the Columbia River, a conservation overlay and two airport related overlays. Those portions of the riverfront that are in public ownership are zoned for open space.

Several of these statements are in error. The northwestern half of North Portland Harbor is not within the City of Portland city limits, the entire western half of Hayden Island is within the jurisdiction of Multnomah County and zoned MUA-20, not industrial or commercial or open space as stated. MUA-20 zoning specifically lists floating home moorages as a conditional use. On Portland maps the Port of Portland property is listed as residential-farming.

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Significantly, none of the North Portland Harbor riverfront property "in public ownership" is zoned for open space except one very small park west of I-5 on Hayden Island (Lotus Isle), adjacent to a house boat moorage. In fact, the park is the riparian upland lot. Further, the park's shoreline walkway bisects the entrance to the moorage from the upland parking area for the moorage.

Floating Structures in the Zoning Code: The City of Portland Zoning Code, Chapter 33.236, Floating Structures, addresses the requirements for floating homes and marinas. "This chapter adapts the existing upland regulations for use with floating structures." This chapter specifies that "All uses in floating structures must be an allowed use on the upland lot they are attached to and must comply with all use regulations applying to the upland lot." Also, a houseboat moorage is considered a multi-dwelling use, so a houseboat moorage would only be allowed where multi-family is permitted.

Summary of Applicable Zoning Codes:

CGhcx. This general commercial code allows houseboat moorages as a permitted use.

IG. This industrial general zone also allows multi-dwelling uses, which includes houseboat moorages.

The study is a bit misleading in that the zoning regulations in the area in question are not limited to multi-dwelling use zones only. Plainly put; floating home moorages are allowed in all of the zones in question. While "house boat moorages" are indeed considered a multi-dwelling use, they are also designated as a commercial uses and allowed in the IG2 zone as well.

c = Environmental Conservation zone. For proposed developments that do not meet all standards for this zone, an environmental review is required and a mitigation plan must be submitted which shows that "all significant detrimental impacts on resources and functional values will be compensated for." The mitigation plan must also demonstrate there is a public need for the proposed use or development.

Almost by definition; the cause for displacement of the floating homes is based solely on a substantial "public need" of regional, interstate, and national significance. As one of the local partner jurisdictions, the City of Portland understands the significance of this project and that public need.

With this said the "c" zone review is not an impediment to development of a floating home moorage, rather it is a guideline used throughout the design and engineering process to assure compliance and responsible development. All considerations of the code section can be met and/or "all significant detrimental impacts on resources and functional values will be compensated for."

h = Aircraft Landing zone. This zone limits construction height to avoid conflicts with the nearby Portland Airport. However, floating homes are well below the effects of any height restriction and would not be affected by this zone.

This is not an issue.

x = PDX Noise zone. The x overlay designates the PDX Noise zone. It designates areas where new residential construction is prohibited due to high noise levels and other areas that permit residential construction but require additional noise insulation in new and reconstructed residences. The Ldn 65 dBA noise contour (decibels), as shown in the 1990 Portland International Airport Noise Abatement Plan Update is the boundary for the PDX Noise zone. All land within that noise contour, including lands within a higher contour, is in the PDX Noise zone. All new structures must be constructed with sound insulation or other means to achieve a day/night average interior noise level of 45 dBA. New residential uses are prohibited within the Ldn 68 or higher noise contour.

The noise zone overlay is not an issue that would preclude floating home development in the immediate area of North Portland Harbor or alternative sites being considered. The Ldn 68 contour prohibition areas do not overlap any of the potential site alternatives. All of the alternative sites being considered can be mitigated for noise by utilizing proper construction methods and materials.

This is a non-issue in regard to permitting.

B. Multnomah County Zoning:

Along the Multnomah Channel there are areas of undeveloped waterfront with abundant upland area. However, it may be difficult to create additional marinas in these areas based on zoning. The north bank of the Multnomah Channel, Sauvie Island, is zoned exclusive farm use (EFU) which does not allow non-agricultural development. New or expanded marinas would not be allowed. The south bank is zoned for multiple use agriculture (MUA-20). This zoning is intended to allow agricultural lands not suited for commercial farming to be put to compatible uses such as low density residential, forestry, and other uses compatible with the natural resource base. Houseboats and houseboat moorages are a conditional use in this zone.

During the mid and late 1990's, representing the Waterfront Owners and Operators Organization, I actively participated in the Sauvie Island/Multnomah Channel Rural Area Plan rule promulgation, the ordinance was adopted in 1997.

The Multnomah County Comprehensive Plan Framework (Policy 26- Sauvie Island/Multnomah Channel Rural Area Plan) actually designates the MUA 20 zone as

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the appropriate zoning area for floating homes and moorages within this plan and specifically includes the following areas as the appropriate sites for such.

Following is the actual verbiage of Multnomah Policy 26:

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.
 - c. Area occupied by Happy Rock Moorage, Sauvie Island Moorage, Parker Moorage, and Mayfair Moorage.
(Added by Policy 10, No. 2, "Sauvie Island/Multnomah Channel Rural Area Plan," Adopted October 30, 1997, Ordinance No. 887).
2. Oregon Slough.
 - a. the south shore of Tomahawk Island.
 - b. any other areas identified as suitable for houseboats by the Hayden Island Plan.
3. Columbia River (near 185th Avenue).
 - a. From the northwest corner, George B. Pullen D.L.C., To the northeast corner, Pullen D.L.C.

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.

Please note: The Official name of the North Portland Harbor is "the Oregon Slough." Although the City of Portland had already annexed the eastern half of Hayden Island, the western half is still in the jurisdiction Multnomah County planning and zoned MUA 20; appropriate for house boat development. The south shore of Tomahawk Island is the location of one of the sites mentioned in this study; the property in question is in fee title (not subject to DSL lease) and properly zoned for a floating home moorage. Similarly, the Hayden Island plan allows moorages in all other zones bordering the North Portland Harbor.

All of the Multnomah Channel is subject to the Willamette River Greenway (WRG) overlay. This overlay is designed to protect the natural qualities of the waterway. It does not directly prohibit developments such as marinas. However, the WRG overlay emphasizes preservation of vegetation, wetlands, and flood plains in their natural state which could make development of upland improvements, e.g. parking or septic, to support a new marina difficult.

The author's concerns regarding the WRG overlay are overstated in-that flood plain improvements, including parking and septic are routine design and engineering features that are necessary considerations for every marine development project.

Additionally, all of the Multnomah Channel is rurally zoned and outside the urban growth boundary (see Multnomah County Base Zoning Designations - West Hills and Sauvie Island Rural Plan Areas). Construction of a new marina outside the UGB would require an exception to its urban growth boundary and is subject to review by the State Department of Land Conservation and Development.

Simply put; marina development is not precluded by the Urban Growth Boundary as this study states. The Multnomah County Comp plan and Chapter 34 ordinance have already been scrutinized and accepted by DSCL; they remain in force. Goal exceptions are not required under these circumstances.

In order to deal with the many floating home marinas along the Multnomah Channel, the County inventoried the marinas to determine the number of floating homes, boat houses, boat slips and other uses for each marina. The inventory was conducted in mid-1995 and was subsequently adopted by the County to establish the number of grandfathered units allowed for each existing marina. A recent Multnomah County staff report on a request to add 23 floating home slips to the existing Rocky Pointe Marina recommended to deny additional floating home moorages beyond those previously grandfathered.

The underlined portion of the study document is simply not true.

During the period the regulations were being promulgated, my testimony lead directly to the inventory described above as well as inventories by DSL on a statewide basis. The inventory was actually conducted in 1997 and 1998.

The author simply misinterprets the purpose and significance of the inventory. While the inventory was used to "grandfather" certain moorages as non-conforming uses; these were developments and structures, many of which had bee built with incomplete permitting or constructed before moorages were regulated the way they are now; the underlying purpose was simply to get a baseline for future development limitations and moorage expansions. As an example; the City of Portland was the first

jurisdiction in the state to create a "Floating Structure Code" (Title 28-implemented November 1991), prior to this, normal building codes did not apply.

Also part of the County rule changes was creation of a "Special Plan Area" to allowing existing moorages and new moorages with appropriate zoning a method to increase density beyond the standard density of 1 floating home for every 50 feet of water frontage; not to preclude expansion. Interestingly, although the "SPA" enabling legislation passed into law, the Multnomah County Planning Department, has not established rules for implementation. This is simply a density issue, not a preclusion for expansion.

In regard to the Rocky Point Marina expansion; while staff recommended denial of the SPA, they did recommend houseboat expansion to the standard density:

Staff recommends the Planning Commission **deny** the request to establish a Special Plan Area because, as outlined in this report, the applicant has failed to establish that the project conforms to the approval criteria outlined in Policy 15 of the County's Sauvie Island/Multnomah Channel Rural Area Plan, nor have they shown that there is a public need, which is required in order for a zone change to be approved (MCC 37.0705(B)(2)). If the Planning Commission accepts the staff recommendation, the applicant would potentially be able to expand the houseboat moorage at a density of not more than 1 unit for every 50 feet of frontage provided they obtain the required land use permits. This would allow up to 23 new floating homes.

This expansion was approved by the Planning Commission as well as the County Board of Commissioners in 2010.

This section of the study document is particularly troublesome in that the study not only draws an erroneous conclusion, based on misinterpretation of the regulations and purpose of the inventory; it is blatantly untrue.

IV. AVAILABILITY OF FLOATING HOME SLIPS

An important consideration in the need for additional floating home marinas is the availability of vacant slips. The following numbers are based on a count from Google Earth aerial photos. The photos are recent, one to three years old, and represent a good estimate of the availability of vacant slips.

- *There are approximately 12 potentially available vacant slips in the North Portland Harbor out of approximately 610 floating homes, which is a vacancy of only 2%. These slips may not all available on the real estate market. Some may be held for future development.*
- *There are approximately 25 vacant slips in Gresham area marinas, McGuire Pt. to Big Eddy.*
- *There are approximately 12 vacant slips in Multnomah channel marinas up to Scappoose.*

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This section of the study does not adequately address the availability of slips by any standard. Supposed vacant areas do not equate to "available slips" and applying a ratio of vacancies base on non-empirical data carries no weight or value. Using Google Earth does not adequately depict the actual use or availability of a site and certainly can not consider issues such as proximity to the federally established ship channel, zoning densities, zoning restrictions, etc. It must be rejected in its entirety.

Based on my experience and knowledge, I do not believe there are currently 12 available slips in the North Portland Harbor. If there are, I would certainly like to know where they are.

V. SITE AVAILABILITY FOR NEW FLOATING HOME MARINAS

The initial focus for this memo was in the vicinity of the North Portland Harbor, however, because of the shortage of sites in this area, the search was extended upstream to Troutdale, and downstream to the Multnomah Channel at Sauvie Island.

North Portland Harbor West of I-5

West of I-5, there is little opportunity for additional marina development. The area between the railroad bridge and Brown's Marina has very little upland area and is mostly owned by the Port of Portland. On the Hayden Island side, between the railroad bridge and West Hayden Marina there is a potential site, area A. The upland area is already developed with a commercial use, however, it might be feasible to redevelop a portion of the parcel to provide upland facilities for floating home marina use.

I do not believe the Port of Portland property can or should be excluded by a study of potential sites; either on a willing seller basis or by eminent domain. As one of the proponents and most significant benefactors of the CRC project in regard to increased transportation capabilities it could be in their best interest. With this said however, the study is remiss in that the question was not asked nor were the possibilities explored or even considered.

The site mentioned is a small but potential site on a willing seller basis or by eminent domain. West Hayden Island Moorage was previously purchased, permitted and constructed on a portion of this site.

Another potential site is the area between the RR bridge and Class Harbor Marina, which is privately owned, area B. It is zoned industrial and marinas are an allowed use. It appears to have adequate upland area. One problem is that it is directly downstream from the swing span of the railroad bridge, so river traffic would be very close to the marina. There is no information showing a restriction on development at this site, but such use might be restricted for safety purposes. There is also a small parcel between Class Harbor and Suttle Road marina that might be filled in with eight to ten homes.

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These may be potential sites, however the upland sites would require additional study to ascertain if indeed the areas can provide adequate ingress and egress (Marine Drive is a commercial route of significance to the state with limitations on driveway inclusions) and parking. The portion adjacent to the railroad bridge is probably too close to the federally established commercial ship channel (that includes a 75 foot buffer) to be considered.

The rest of the river frontage west of the RR bridge on Hayden Island, and downstream from Suttle Road Marina is owned by the Port of Portland and is unavailable for marina development.

Addressed above.

North Portland Harbor East of I-5

Area C is approximately 1,400 feet of shoreline, along the south bank of the North Portland Harbor between Pier 99 Marina and Blue Frog Landing. Zoned general commercial, this area allows floating home marinas and is within the urban growth boundary. It could be a prime location for future marina expansion. However, the upland areas are being developed for interchange commercial uses. Two of the upland properties have been recently developed with motels. The center parcel may be developed in a similar fashion. If this parcel is developed there will be no upland area to support a new marina.

It is my understanding that the owner of this parcel is considering a moorage in anticipation of the CRC project. However, there are significant difficulties developing this site for a floating home moorage. The vacant upland between Pier 99 and Blue Frog Landing, although in fee title, is the flood control dike with specific limits on development and use. Further, the upland areas on both ends of the undeveloped dike may not support the necessary parking and would probably be precluded by the City of Portland regulations that require floating homes to be within 500 feet of the parking area for fire safety and other considerations.

Another open area that might accommodate additional floating homes would be across the channel from Blue Frog Marina. However, all the adjacent upland has already been developed with homes and a public park. There is no room for parking or other facilities necessary for a new marina. As with area C, a floating home marina is not feasible without adequate upland area.

This area is not a potential site. In addition to the reasons cited; it is the location of the original trolley bridge to Hayden Island, it is extremely shallow (above water level in most conditions due to additional silting), its proximity to the park and no available riparian property rights.

East End of North Portland Harbor

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Area D is on Hayden Island east of existing moorages. It has appropriate zoning, readily available utility connections and is within the UGB. This is the most likely site on the river for development of a new marina. It is owned by Columbia Crossings, and has been planned for marina expansion for a long time.

This site is a very likely alternative site. During the early and mid-1990's I was involved in the early planning and permitting of this site. While the permitting was successful, for business reasons un-related to feasibility the project was abandoned. The bed of the channel is in fee title, no DSL lease would be required. And because it was previously permitted it can be presumed that it could be permitable again.

This site can and should be considered on a willing seller or eminent domain basis.

Area E, the south side of channel, east of Portland Yacht Club, is a row of single family residences that could be redeveloped to marina use. The zoning is single family residential, so a marina would be a conditional use. However, homes would need to be demolished. Adequate upland and utilities would be available. Perhaps a ¼ mile of river front could be developed. Beyond that, development would be prohibited by the airport noise overlay.

This would be one of the least developable potential moorage sites mentioned in the study for the reasons given as well as practical considerations because of its exposure to wind and wave conditions.

VI. REDEVELOPMENT AND IN-FILL OF EXISTING MARINAS:

Of all the area reviewed, only these six sites were identified as having a likelihood of development. If there is a demand for additional spaces, new sites could also be created through either the expansion of an existing marina or the conversion of an existing boat marina to floating homes. However, both of these options likely present almost as many challenges as establishing a new marina.

The conversion of a boat marina to floating homes has a number of hurdles. Boat marinas have different designs, dolphin spacing, and utilities than what is needed for boat moorages. Such a retrofit would be expensive and require most of the regulatory permits necessary for a new marina; DSL review for change in use; Corps of Engineers for in-water construction; NMFS for in-water construction and use change; and, zoning and building permits. Investigation and permitting for conversion could take nearly as long as a new marina and eventual approval may not be any more certain.

For myriad reasons mentioned above and throughout my response these conclusion are not supported by the evidence. Expanding or reconfiguring an existing moorage is significantly easier and less time consuming than new construction in every jurisdiction.

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In fairness to the author, he simply lacks the specific expertise in this extremely narrow field and complex technical arena; marine development, to make such statements, especially when considering the public nature and significant public need represented by the CRC project.

Remarkably, the statement *If there is a demand for additional spaces* is particularly revealing. Foremost, while there has clearly been a pent-up demand for slips throughout the area, the bridge project itself is creating additional demand.

A good example is the Rocky Pointe marina on the Multnomah Channel. It is in the process of review for an in-fill of twenty three floating home slips as well as additional boat slips. The County Staff recommendation is to approve the expansion of boat slips but to deny additional floating home moorages beyond those previously grandfathered. This demonstrates it may be unlikely to obtain additional floating home slips in the Multnomah Channel beyond the number grandfathered in the mid-1995 survey.

Not only is this not true as demonstrated above; they did obtain the permits for expansion, and as a matter of public record was approved prior to the completion of this study.

The greatest problem with conversion is that economics may not support converting pleasure boat slips to floating homes slips. Marina operators indicate that boat slip rentals are possibly more profitable than floating home moorages, especially in the current market. There is still a reasonably good demand for large boat slips.

This statement is not supported on any factual basis, nor is it supported by any sort of marketing study. While there has been a relatively steady flow of floating home sales, even during the downturn in the economy; absent as much discretionary income, the boat business has been rather decimated in many areas geographically and by boat class; typical of the historic economic trends. Larger boats have always seemed to fare better in hard economic times.

One exception to the "flow" of sales for floating homes in the immediate vicinity; the CRC project seems to have cast a dark cloud over purchasing floating homes within the impact area, many of which have been on the market for quite some time.

With this said however, this has no relevance to the FEIS or the CRC project.

VII. INVESTOR EXPECTATION

Discussions with real estate professionals indicate that there is a general feeling in the development community that it is virtually impossible to develop a new marina through the process of environmental and building code requirements. An effort of four years or more, plus an investment of hundreds

of thousands of dollars for development plans and environmental studies may be necessary before knowing whether a project is viable. This uncertainty makes it difficult to obtain financial backing for such a speculative venture.

Again the relevance of “investor expectation” in this very public project and process is suspect at best, and does not fulfill the basic process questions of NEPA, the FEIS, Environmental Justice Act, Federal Highway Act nor the Uniform Real Estate Acquisition and Relocation Act of 1971.

As demonstrated throughout my analysis of this study it is simply not “virtually impossible” to develop a new marina in the private sector and certainly not true for the public sector either, especially given the significance of the CRC project.

I must submit that the study may have interviewed the wrong professionals; real estate professionals are typically not as well versed in the intricacies of marine development as those involved directly in permitting such complex projects.

The ultimate proof of the difficulty of developing a floating home marina is recent market activity. There have been no new marinas constructed in the past decade, on either the Willamette or Columbia rivers in Oregon. The last new marina was McGuire Point, which was completed approximately twelve years ago.

The Columbia Ridge marina still has unsold slips after seven years. Most floating home developments are recreational properties and many are owned as second or weekend homes. Since no new marinas were started in the overheated real estate market prior to 2009, it seems unlikely that there would be activity by private investors in the current market for the foreseeable future. Recreational properties have been the hardest hit in the current real estate market.

Columbia Ridge indeed has unsold slips; rather than for the conclusions and assumptions offered by this study, an underlying reason for this is that the developer appears to have over-priced the slips and has some rather difficult criteria for occupancy.

While I do not disagree with the author that marine development is not difficult; the “ultimate proof ... There have been no new marinas constructed in the past decade, on either the Willamette or Columbia rivers in Oregon.” remains unsubstantiated and is simply not true.

In addition to the recent and current projects mentioned above, Pier 99 and Rocky Pointe, and Reflection Bay (the previously permitted project on Hayden Island owned by Columbia Crossing (Area D); Mr. Casselman (who previously permitted and built 3 moorages on Multnomah Channel) has expressed interest in constructing a new moorage on his last remaining vacant property on the channel, specifically in response

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to the CRC project; Mr. Hamer (developer of Riversbend Moorage on Multnomah Channel) has express interest in expanding his existing moorage.

And finally, a project I am working on has recently submitted applications for development and expansion of a moorage on Multnomah Channel.

VIII. CONCLUSION:

It is very unlikely there will be a new private floating home marina development in the foreseeable future. Zoning and permitting requirements restrict prospective available sites and make it difficult to determine if a new marina would be allowed on any potentially developable sites. Proof of this conclusion is that no new marinas were constructed during the peak of the real estate market a few years ago, so it is very unlikely one would be started in the current market. In-fills and marina conversions could provide additional slips in the North Portland Harbor area, but such development could be time consuming and expensive and may not be permitted by regulatory agencies.

This conclusion is mistaken, remains unsubstantiated and is simply not true, and in fact there are other areas within the City of Portland that could feasibly be developed for floating home moorages.

Pursuant to the FEIS at 3.81-82:

North Portland Harbor, Portland, Oregon

The LPA would require the displacement of floating homes in the North Portland Harbor. Information regarding floating home availability in the North Portland Harbor is not provided in the reports that informed the above discussion, although some information can be gleaned from the Regional Multiple Listing Service (RMLS) searchable database. A search of the active listings in April 2011 showed approximately 109 housing units listed for sale in Hayden Island, North Portland Harbor, and North Portland. Of that number, 40 were floating homes, 38 were condos, and 31 were conventional homes. The above numbers do not include private listings.

In the course of conversations with potentially affected property owners, CRC staff received inquiries about the potential for constructing a new marina to accommodate displaced floating homes. To better understand new marina permitting and construction, the project conducted research on the development of marinas. This research found that there are some likely challenges to developing a new floating home marina, including: permitting through local jurisdictions and environmental resource agencies, acquisition of property, and eventual sale or lease of marina slips (CRC 2011). The project is not pursuing the construction of a new floating home marina.

Although floating homes and floating home moorages are a rather unique form of housing choices creating a significant difficulty comparing them to normal terrestrial based housing choices (or those who choose live on dirt as I like to say), as well as

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limits to the Uniform Real Estate Acquisition and Relocation Act requiring geographic, economic and socially equivalent housing. Simply dismissing this uniqueness is not adequate under the act, nor is simply finding "that the replacement units are decent, safe, and sanitary, and in areas that are at least as desirable as the individual's current neighborhood."

Neither is simply checking the *Multiple Listing Service (RMLS) searchable database*. A search of the active listings in April 2011 showed approximately 109 housing units listed for sale in Hayden Island, North Portland Harbor, and North Portland. Of that number, 40 were floating homes, 38 were condos, and 31 were conventional homes

North Portland is not an adequate comparison geographically, socially or economically when considering the housing diversity on Hayden Island and North Portland Harbor.

In discussion with CRC staff, they seem to focus on relocation and yet dismiss the notion of any responsibility for seeking some rather obvious alternatives, including a replacement or expanded moorage. They have not addressed those that would be "temporarily" displaced at all. Relying on the Oregon tax code that considers floating homes "personal" rather than "real property" is simply not enough. In Oregon, floating homes and manufactured homes are considered the same a conventional homes.

310.622 Manufactured structures eligible as homesteads under tax laws of state.

A manufactured structure assessed under the ad valorem tax laws of this state shall be eligible to be a homestead for the purposes of all tax laws of this state giving a right or privilege to a homestead. For those manufactured structures assessed as real property, the manufactured structure homestead includes land and improvements to the same extent that a homestead would be recognized if the manufactured structure were a conventional home. [1971 c.529 §11; 1977 c.884 §16]

(Floating Homes)

310.623 Floating home eligible as homestead. A floating home, as defined in ORS 830.700, assessed under the property tax laws of this state shall be eligible to be a homestead for the purposes of all tax laws of this state giving a right or privilege to a homestead. [1977 c.615 §6]

The marina the study referred to above in the FEIS; beyond the inadequacies of the study itself; the FEIS does not adequately address the legal questions raised nor does it not fulfill the basic process questions of NEPA, the FEIS, Environmental Justice Act, Federal Highway Act nor the Uniform Real Estate Acquisition and Relocation Act of 1971.

As demonstrated throughout my analysis of this study it is simply not "virtually impossible" to develop a new marina in the private sector and certainly not true for the public sector either, especially given the significance of the CRC project.

Also as state in Chapter 5 of the FEIS:

In preparation for the FEIS analysis, project staff conducted a survey of owners and tenants of residential properties potentially displaced by the LPA. This survey determined the characteristics of the households displaced and how each residence is used. The development and distribution of this survey required coordination with property owners, as well as floating home moorage management and boards. The process by which surveys were developed and distributed, as well as the follow-up activities that were undertaken to encourage a high rate of return, are described in detail in the Environmental Justice Technical Report.

Although CRC staff has indeed worked with those of us who will be displaced by this vital interstate link; the questionnaire failed to ask probably the most important question to those of us in the way.

How many of you would like to remain on the water?

If the scope of the marina study even considered the public nature of the project and the fact that the CRC project must adhere to the legal issues of eminent domain as a result, the study findings would properly be found to be significantly different than described. Certainly, building a freeway bridge over the Columbia River between Oregon and Washington, through several jurisdictions and layers of agency review, can not be less daunting of an undertaking, as this study implies, than permitting and construction of a moorage for those that will be displaced, or even considering, as required, by state and federal policy, alternative sites and proper analysis.

Out of deference to the author of the marina study, marine development is highly specialized and quite complex; a right of way coordinator can not be expected to know the myriad intricacies of my field of expertise. In the same token, I would probably be just as lost if I were to attempt to challenge him in his field of expertise.

This however, given the clear limitations based on the assumptions and limitations of the study (for example *"Marina development is totally a private entrepreneurial effort by individuals or corporations interested in developing a property for profit."*) must call into question if the scope of work and contract for the study pre-ordained the conclusion.

And;


As stated in the report:

This memo does not address the legal issues related to the relocation of floating homes by the Columbia River Crossing project under the Uniform Relocation Act.

P-105-001 | If the study didn't, the FEIS must.

As such the FEIS fails to meet the minimum standards required for moving ahead with approval or acceptance until these issues are resolved and adequate study and standards are followed.

Respectfully,


J. McCaulley