



# CITY OF West Linn

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## PLANNING MANAGER DECISION


DATE: May 30, 2017

FILE NO.: WRG-17-03/MIS-17-04

REQUEST: Request for a Flood Management Area (FMA) permit and Willamette and Tualatin River Protection (WRG) permit for a boat dock and ramp at 18336 Nixon Avenue.

PLANNER: Peter Spir, Associate Planner

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 Planning Manager

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**GENERAL INFORMATION**

**OWNER:** Lewis McCoy  
18336 Nixon Avenue  
West Linn, OR 97068

**APPLICANT:** Eric Dye  
1701 Clackamette Drive  
Oregon City, OR 97045

**CONSULTANT:** Rick Givens  
18680 Sunblaze Drive  
Oregon City 97045

**SITE LOCATION:** 18336 Nixon Avenue

**SITE SIZE:** .69 acres

**LEGAL DESCRIPTION:** Assessor's Maps and Tax Lot – 21E-13CD 200

**COMP PLAN DESIGNATION:** Low Density Residential

**ZONING:** R-10, Single-Family Residential Detached

**APPROVAL CRITERIA:** Community Development Code (CDC) Chapters 11, 27, and 28

**120-DAY RULE:** The application declared complete on April 18, 2017. The 120-day period ends on August 4, 2017.

**PUBLIC NOTICE:** Notice was mailed to property owners within 500 feet of the subject property and all Neighborhood Associations on April 25, 2017. A sign was placed on the property on May 3, 2017. The notice was also posted on the City's website on April 25, 2017. Therefore, public notice requirements of CDC Chapter 99 have been met.

## EXECUTIVE SUMMARY

The proposed private boat dock and ramp will be located within the Willamette River Greenway boundary and the 100 year floodplain and floodway of the Willamette River; therefore, Flood Management Area (FMA) and Willamette and Tualatin Protection (WRG) permits are required. The dock will be 10 feet wide by 36 feet long and held in place by two 12-inch steel pilings. The aluminum ramp to the dock will be 75 feet long and secured by one 12-inch steel piling on the bank (see Figures 6A-6C).

The property is zoned R-10 and located in the Robinwood Neighborhood.

The applicable CDC Chapters include:

- Chapter 11, Single-Family Residential Detached R-10
- Chapter 27, Flood Management Areas
- Chapter 28, Willamette and Tualatin River Protection

### **Public comments:**

No public comments have been received.

## DECISION

The Planning Manager (designee) approves this application (WRG-17-03/MIS-17-04), based on: 1) the findings submitted by the applicant, which are incorporated by this reference, and 2) supplementary staff findings included in the Addendum below, and 3) the addition of conditions of approval (COA) below. With these findings, the applicable approval criteria are met. The conditions are as follows:

- 1.) The dock application and design will be certified by a professional civil engineer licensed to practice in the State of Oregon that the dock, ramp and pilings will not increase flood levels during the occurrence of the base flood discharge and will not impact the flood-carrying capacity of the river. The engineer must certify that the dock has structural components capable of resisting hydrostatic or hydrodynamic loads and effects of buoyancy.
- 2.) All elements of the dock and ramp must meet the 7.5 foot side yard setbacks of the R-10 zone.
- 3.) The dock and ramp will be constructed consistent with Figures 6A, 6B and 6C of this decision.
- 4.) The existing dock/float shall be removed prior to installation of the new dock.

- 5.) The applicant shall provide the City with a copy of all required and approved General Authorization permits with the Oregon Department of State Lands (DSL) and Joint Permits with the US Army Corps of Engineers (USACE) for the proposed dock prior to installation.
- 6.) The applicant will provide a certificate of elevation for the height of the pilings.

The provisions of the Community Development Code Chapter 99 have been met.

Peter Spir

Peter Spir, Associate Planner

May 30, 2017

DATE

Appeals to this decision must be filed with the West Linn Planning Department within 14 days of the mailing date listed below. The cost of an appeal is \$400. The appeal must be filed by an individual who has established standing by submitting comments prior to the date identified in the public notice. Appeals will be heard by City Council.

Mailed this 30th day of May, 2017.

Therefore, the 14-day appeal period ends at 4 p.m., on June 13, 2017.

**ADDENDUM  
APPROVAL CRITERIA AND FINDINGS  
WRG-15-04 MIS-15-07**

Staff recommends adoption of the findings for approval contained within the applicant's submittal, with the following additions:

**Chapter 11  
SINGLE-FAMILY RESIDENTIAL DETACHED, R-10**

**11.030 PERMITTED USES**

*The following are uses permitted outright in this zoning district*

1. *Single-family detached residential unit.*
2. *Community recreation.*
3. *Family day care.*
4. *Residential home.*
5. *Utilities, minor.*
6. *Transportation facilities (Type I).*
7. *Manufactured home.*

**11.040 ACCESSORY USES**

*Accessory uses are allowed in this zone as provided by Chapter [34](#) CDC.*

**Staff Finding 1: The applicant proposes to place a boat dock and ramp on the property. Boat docks and ramps may be permitted as an allowed use in the Willamette and Tualatin River Protection boundary so long as they are consistent with the underlying zone plus the provisions of CDC Chapter 28 and 34.**

**Chapter 34**

**ACCESSORY STRUCTURES, ACCESSORY DWELLING UNITS, AND ACCESSORY USES**

**34.020 ACCESSORY USES**

*Accessory uses are permitted uses which are customary and incidental to principal uses permitted in the zone and shall be permitted outright, or by prescribed conditions as identified below, and may be either attached or separated from the principal dwelling. (...)*

**34.050 BOAT HOUSES AND DOCKS**

*Only side yard setback requirements apply to boat houses and docks.*

**Staff Finding 2:** The applicant proposes to locate the ramp and dock on the south or upstream side of the property. All elements of the dock, ramp and pilings are required to meet the 7.5 foot side yard setback. The criterion is met by condition 2 and as shown in Figure 6A.

**CHAPTER 27, FLOOD MANAGEMENT AREAS**

**27.060 Approval Criteria**

*A. Development, excavation, and fill shall be performed in a manner to maintain or increase flood storage and conveyance capacity and not increase design flood elevations.*

**Staff Finding 3:** The proposed dock is buoyant and floats on the surface of the river. Therefore, it will not modify flood storage or conveyance capacity. The only displacement of the floodway is represented by the three 12-inch diameter steel pilings that will be used to hold the structure in place. The applicant is required by condition of approval 1 to provide an Engineer's certification (stamped and signed) that the dock, ramp and pilings will not increase in flood levels during the occurrence of the base flood discharge and will not impact the flood-carrying capacity of the river. The engineer must certify that the dock has structural components capable of resisting hydrostatic or hydrodynamic loads and effects of buoyancy. This criterion is met by condition.

*B. No net fill increase in any floodplain is allowed. All fill placed in a floodplain shall be balanced with an equal amount of soil material removal. Excavation areas shall not exceed fill areas by more than 50 percent of the square footage. Any excavation below the ordinary high water line shall not count toward compensating for fill.*

**Staff Finding 4:** No fill is proposed in this application. The only displacement of the floodway is represented by the three 12-inch diameter steel pilings that will be used to hold the ramp and dock in place in the floodway. This criterion is met.

*C. Excavation to balance a fill shall be located on the same lot or parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation shall be located in the same drainage basin and as close as possible to the fill site, so long as the proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis.*

**Staff Finding 5:** No excavation is proposed with this application.

(...)

*F. Prohibit encroachments, including fill, new construction, substantial improvements, and other development in floodways unless certification by a professional civil engineer licensed to practice in the State of Oregon is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.*

*G. All proposed improvements to the floodplain or floodway which might impact the flood-carrying capacity of the river shall be designed by a professional civil engineer licensed to practice in the State of Oregon.*

**Staff Finding 6: The proposed dock is buoyant and floats on the surface of the river. Therefore, it will not modify flood storage or conveyance capacity. The only displacement of the floodway is represented by the three 12-inch diameter steel pilings that will be used to hold the structure in place. This criterion is met by Condition of Approval 1.**

(...)

*J. The applicant shall provide evidence that all necessary permits have been obtained from those federal, State, or local governmental agencies from which prior approval is required.*

**Staff Finding 7: The applicant has applied for a General Authorization permit with the Oregon Department of State Lands (DSL) and has also filed a Joint Permit with the US Army Corps of Engineers (USACE) for the proposed dock. The applicant is required to provide a copy of that permit as a condition of approval. The criteria is met by condition 6.**

#### ***27.070 Construction Materials and Methods***

*A. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage using methods and practices that minimize flood damage.*

(...)

*F. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.*

**Staff Finding 8: Relating to 27.070(A), the proposed dock is buoyant and floats on the surface of the river. Therefore, it will not modify flood storage or conveyance capacity. The only displacement of the floodway is represented by the three 12-inch diameter steel pilings that will be used to hold the structure in place. Per Condition of Approval 1, the applicant's engineer must certify that the pilings are designed to meet 27.090(B) and that the river's conveyance capacity and design flood elevations will not be affected. This criterion is met by condition.**

(...)

## **27.090 NON-RESIDENTIAL CONSTRUCTION**

*New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall either have the lowest floor, including basement, elevated to at least one foot above the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:*

- A. Be flood-proofed so that below the base flood level the structure is watertight with walls 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 professional civil engineer licensed to practice in the State of Oregon that the design and methods of construction shall prevent seepage, collapse or cracking of basement walls, prevent buckling of basement floors, prevent backup of water from sewer lines, and have all openings located one foot above the base flood elevation. In addition, all protective features must operate automatically without human intervention;*
- D. Non-residential construction that is elevated, but not flood-proofed (i.e., the foundation is not at least one foot above the 100-year flood elevation) shall also comply with the standards set forth in CDC [27.080](#). (Ord. 1522, 2005)*

**Staff Finding 9: The criteria (A) relating to flood proofed walls is not applicable because the dock and ramp have no walls. Part of criteria (B) is applicable: the dock should not be adversely affected by hydrostatic or hydrodynamic forces to the extent that it either breaks up in a flood incident or floats up and over the pilings to pose a hazard to properties and river traffic downstream. Per Condition of Approval 1, the applicant's engineer shall provide a stamped report that the dock, ramp and pilings can withstand those forces. Regarding the need to resist buoyancy, a dock is, by definition, expected to be buoyant and float on the water surface. That part of the criteria is not applicable. Criteria (C) relates to seepage of basement walls and is not applicable. Criteria (D) also does not apply. The criteria is met outright or by COA 1.**

## **Chapter 28**

### **WILLAMETTE AND TUALATIN RIVER PROTECTION**

#### **28.040 EXEMPTIONS/USES PERMITTED OUTRIGHT**

*The following development activities do not require a permit under the provisions of this chapter. (Other permits may still be required.)*

- CC. A new dock subject to the approval criteria of this chapter.*



**Staff Finding No. 10: This is not an approval criteria. The proposed dock is a permitted accessory use and is subject to the approval criteria of Chapter 28.**

### **28.110 APPROVAL CRITERIA**

No application for development on property within the protection area shall be approved unless the decision-making authority finds that the following standards have been met or can be met by conditions of approval. The development shall comply with the following criteria as applicable:

**A. Development: All sites.**

1. Sites shall first be reviewed using the HCA Map to determine if the site is buildable or what portion of the site is buildable. HCAs shall be verified by the Planning Director per CDC [28.070](#) and site visit. Also, "tree canopy only" HCAs shall not constitute a development limitation and may be exempted per CDC [28.070\(A\)](#). The municipal code protection for trees and Chapters 55 and 85 CDC tree protection shall still apply.

2. HCAs shall be avoided to the greatest degree possible and development activity shall instead be directed to the areas designated "Habitat and Impact Areas Not Designated as HCAs," consistent with subsection (A) (3) of this section.

3. If the subject property contains no lands designated "Habitat and Impact Areas Not Designated as HCAs" and development within HCA land is the only option it shall be directed towards the low HCA areas first, then medium HCA areas and then to high HCA as the last choice. The goal is to, at best, avoid or, at least, minimize disturbance of the HCAs. (Water-dependent uses are exempt from this provision.)

4. All development, including exempted activities of CDC [28.040](#), shall have approved erosion control measures per Clackamas County Erosion Prevention and Sediment Control Planning and Design Manual, rev. 2008, in place prior to site disturbance and be subject to the requirements of CDC [32.070](#) and [32.080](#) as deemed applicable by the Planning Director.

6. Table showing development allowed by land classification:

#### **Development Allowed**

Non-HCA ("a")	Yes
Low-Medium HCA ("b" and "c")	Yes, if less than 5,000 sq. ft. of non-HCA land available. Avoid "d."
High HCA ("d")	Yes, but only if less than 5,000 sq. ft. of "a," "b" and "c" land available.
Non-conforming Structures (structures on HCA land)	Yes: vertically, laterally and/or away from river.  Avoid "d" where possible.

(The underlying zone FAR and allowable lot coverage shall also apply.)

**Staff Finding 11:** The shoreline where the ramp will be anchored is in the Medium HCA. However, this criteria does not apply to “new docks” per 28.040 (CC).

*F. Access and property rights.*

1. *Private lands within the protection area shall be recognized and respected.*
2. *Where a legal public access to the river or elsewhere in the protection area exists, that legal public right shall be recognized and respected.*

*(....)*

**Staff Finding 12:** Legal public access is permitted along the shoreline below the Ordinary Low Water Mark (OLWM). The OLWM is inundated for most of the year. The applicant is not proposing any special accommodation of public access along the shoreline. Public access in this area is facilitated by a trail in the undeveloped Calaroga Court ROW that extends to the river and allows people to walk across to a small island near this property. The adopted 2013 Trails Plan does not propose any trail along the riverfront near this property. The criteria is met.

4. Any public or private water-dependent use or facility shall be within established DSL-authorized areas.

**Staff Finding 13:** Per condition of approval 5, the applicant is required to provide all necessary DSL permits which include delineation of the authorized area. The criteria is met by condition.

*I. Docks and other water-dependent structures.*

1. *Once the preference rights area is established by DSL, the property owner identifies where the water-dependent use will be located within the authorized portion of the preference rights area. The water-dependent use should be centered or in the middle of the preference rights/authorized area or meet the side yard setbacks of the underlying zone.*

*Private and public non-commercial docks are permitted where dredging is required so long as all applicable federal and State permits are obtained. Dredging is encouraged if deposits silt up under an existing dock. Dredging is seen as preferable to the construction of longer docks/ramps.*

**Staff Finding 14:** The applicant is required to provide evidence of all necessary DSL permitting having been satisfied (condition of approval 5) which includes the delineation of the preference rights area. Figure 6A shows that the ramp and dock will be 7.5 feet from the side property line which agrees with the minimum side yard setback. The criteria is met by condition of approval 2 and 3.

2. *Both joint and single use docks shall not extend into the water any further than necessary to provide four feet between the ship's keel or fixed propeller/rudder and the bottom of the water at any time during the water's lowest point.*

**Staff Finding 15:** This criteria has been found to be in conflict with National Oceanic and Atmospheric Administration-National Marine Fisheries Service Standard Local Operating Procedures for Endangered Species (SLOPES IV) which requires a minimum depth of 15 feet for over-water structures (docks). The City determined that these federal standards govern this project and pre-empt this specific criteria. The applicant shows a depth of 15 feet. The criteria is met.

3. *In no case except as provided in this section shall a private ramp and private dock extend more than 100 feet from OLW towards the center of the river or slough. In the case of L-shaped docks, the 100 feet shall be measured from the OLW to the furthest part of the private dock closest to the center of the river.*

**Staff Finding 16:** The combined length of the ramp and dock is 100 feet (see Figure 6B) from OHWM. The criteria is met.

4. *Docks on sloughs and similar channels shall not extend more than 30 percent of the distance between two land masses at OHW, such as between the mainland and an island or peninsula, measured in a lineal manner at right angle to the dominant shoreline. In no way shall a dock impede existing public usage or block navigation of a channel.*

**Staff Finding 17:** At OHW, the channel is 330 feet wide. (See Figure 7 page 22.) The combined length of the proposed dock and ramp is 100 feet. This is 30 percent of the width of the channel. The criteria is met. (Conversely, from June to October, the water levels fall to the extent that the small island near this site is connected to the shoreline by a sandy isthmus. (See Figure 2: Aerial; page 15.) This renders the slough impassable and not navigable by boats.)

5. *Boat storage associated with a rail launch facility shall be located above the OHW, either vertically raised above the ordinary high water line or set back behind the OHW. Such boat storage structure will be natural wood colors or similar earth tones. Private railed launch facilities are permitted for individual boat owners. The onshore setback of the storage structure is equal distance on both sides as extended perpendicular to the thread of the stream, or seven and one-half feet, whichever is the greater setback.*

**Staff Finding 17:** No rail launch structure is proposed. The criteria does not apply.

6. *The width of each deck section shall be no more than 12 feet wide.*

**Staff Finding 18:** The deck sections are eight feet wide per the applicant's submittal (Figure 6B page 20). The criteria is met.

7. *For only single-user and joint-user docks, pilings shall not exceed a maximum height of eight feet above the 100-year flood elevation.*

**Staff Finding 19:** The pilings top out at 46 foot elevation while the 100 year flood elevation is 45 feet wide per the applicant's submittal (Figure 6C page 20). The applicant will provide a certificate of elevation for the pilings as condition of approval 6. The criteria is met by condition.

8. *A single user non-commercial dock shall not exceed 400 square feet in deck area. The boat slip is not included in the calculation of this square footage limitation.*

**Staff Finding 20:** The 360 square foot deck area does not exceed 400 square feet per the applicant's submittal (Figure 6B page 20). The criteria is met.

*L. Roads, driveways, utilities, or passive use recreation facilities. Roads, driveways, utilities, public paths, or passive use recreation facilities may be built in those portions of HCAs that include wetlands, riparian areas, and water resource areas when no other practical alternative exists but shall use water-permeable materials unless City engineering standards do not allow that. (...)*

**Staff Finding 21:** As a water dependent use, the placement of the dock and ramp in the HCA is permitted. The criteria is met.

*M. Structures. All buildings and structures in HCAs and riparian areas, including all exterior mechanical equipment, should be screened, colored, or surfaced so as to blend with the riparian environment. Surfaces shall be non-polished/reflective or at least expected to lose their luster within a year. In addition to the specific standards and criteria applicable to water-dependent uses (docks), all other provisions of this chapter shall apply to water dependent uses, and any structure shall be no larger than necessary to accommodate the use.*

**Staff Finding 22:** The dock, ramp and 12-inch steel pilings are water dependent structures and cannot be screened from the river. However, they are the minimum size for the proposed use. Surfaces and materials will be non-polished and non-reflective. (Typically, the pilings are rust colored which blends well with the riparian backdrop.) The criteria is met.

*P. Lighting. Lighting shall not be focused or oriented onto the surface of the river except as required by the Coast Guard. Lighting elsewhere in the protection area shall be the minimum necessary and shall not create off-site glare or be omni-directional. Screens and covers will be required.*

**Staff Finding 23:** No lighting is proposed. The criteria is met.

R. Views. Significant views of the Willamette and Tualatin Rivers shall be protected as much as possible as seen from the following public viewpoints: Mary S. Young Park, Willamette Park, Cedar Oak Park, Burnside Park, Maddox Park, Cedar Island, the Oregon City Bridge, Willamette Park, and Fields Bridge Park.

Where options exist in the placement of ramps and docks, the applicant shall select the least visually intrusive location as seen from a public viewpoint. However, if no options exist, then the ramp, pilings and dock shall be allowed at the originally proposed location.

**Staff Finding 24:** The nearest public viewpoint or park is Cedaroak Park/boat ramp which is 1,200 feet to the south and not within line of sight of this property. Therefore the criteria is met.

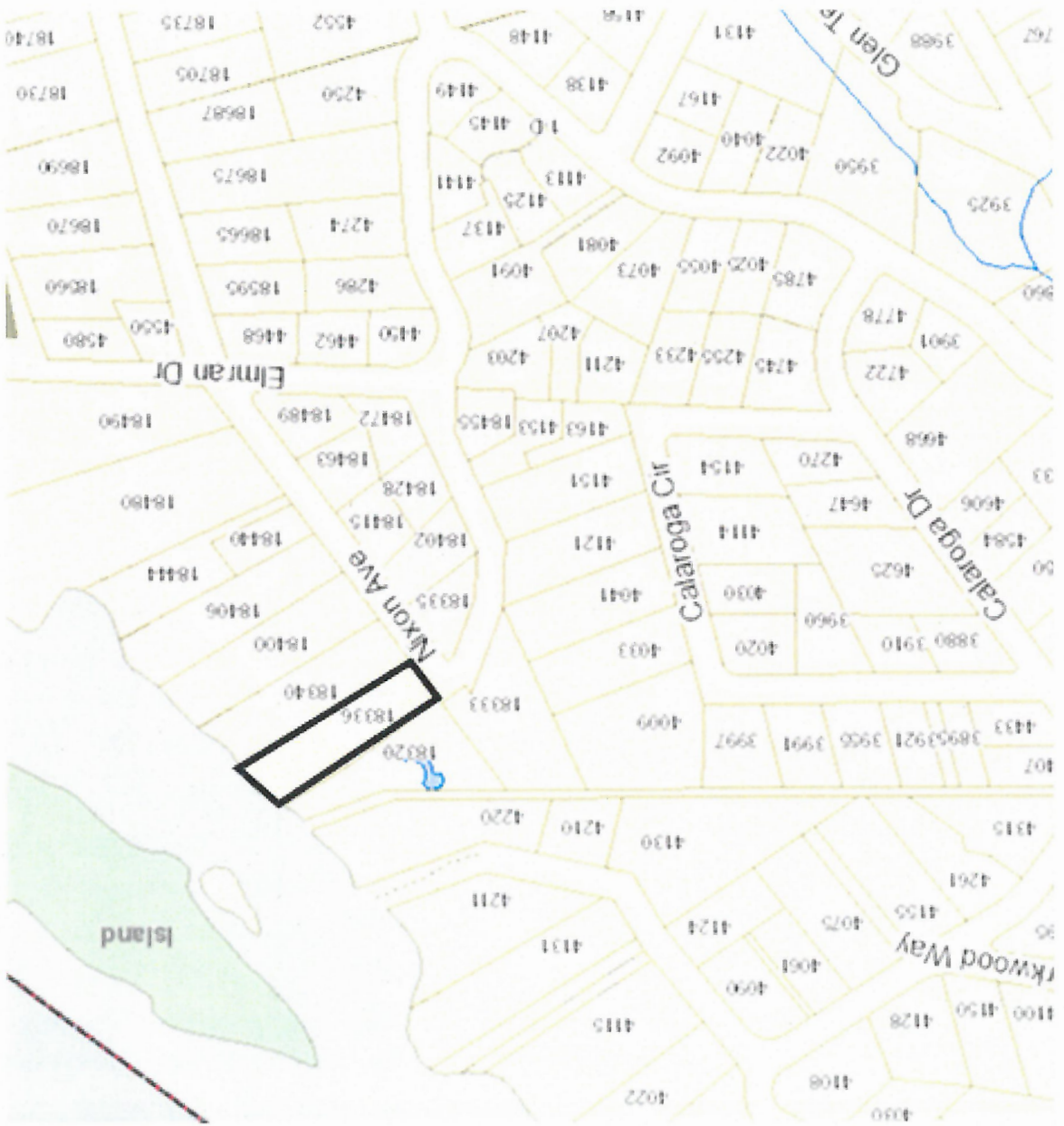
T. Changing the landscape/grading.

1. Existing predominant topographical features of the bank line and escarpment shall be preserved and maintained except for disturbance necessary for the construction or establishment of a water related or water dependent use. Measures necessary to reduce potential bank and escarpment erosion, landslides, or flood hazard conditions shall also be taken.

Any construction to stabilize or protect the bank with rip rap, gabions, etc., shall only be allowed where there is clear evidence of erosion or similar hazard and shall be the minimum needed to stop that erosion or to avoid a specific and identifiable hazard. A geotechnical engineer's stamped report shall accompany the application with evidence to support the proposal.

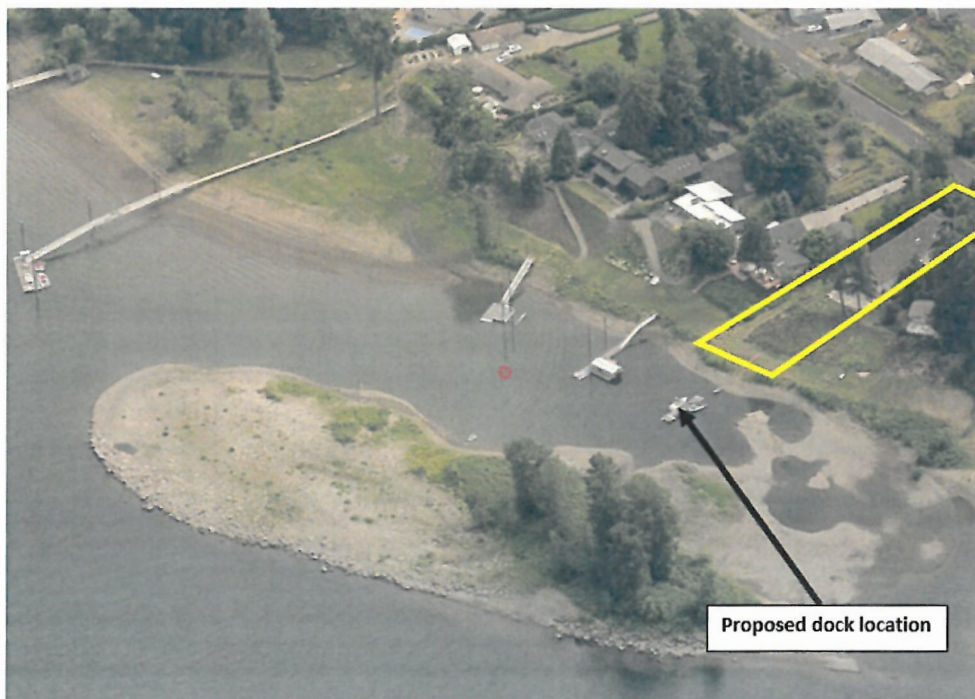
2. The applicant shall establish to the satisfaction of the approval authority that steps have been taken to minimize the impact of the proposal on the riparian environment (areas between the top of the bank and the low water mark of the river including lower terrace, beach and river edge).

**Staff Finding 25:** Shoreline vegetation is limited and comprises low level brush and grasses. The ramp will be anchored at the 21 foot elevation, below that vegetative area. The shoreline above the proposed dock already has rip rap. No additional rip rap or shoreline stabilization is proposed in this application. The criteria is met.

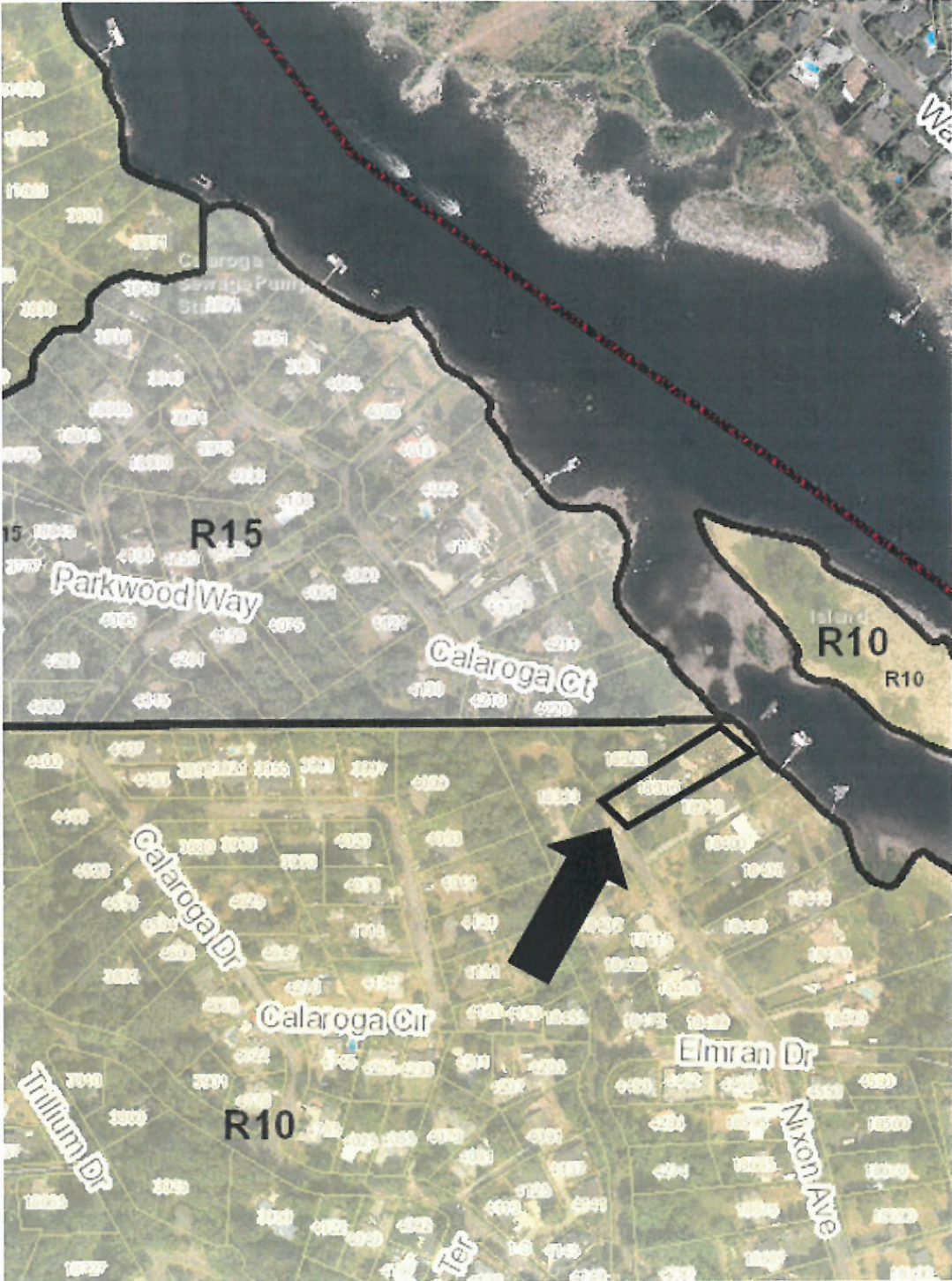


**FIGURE 1: LOCATION**

**FIGURE 2: AERIAL**

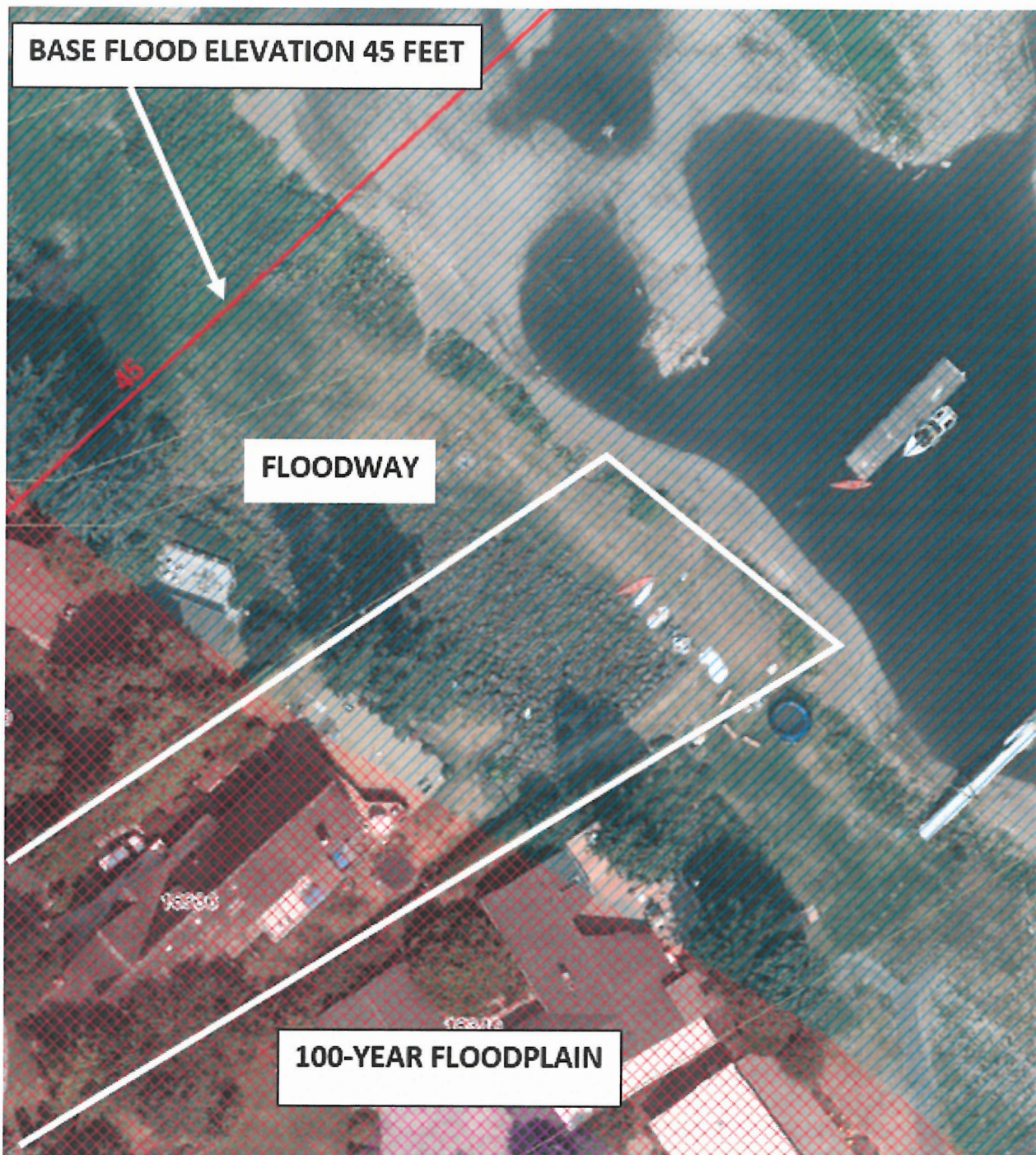


**FIGURE 3: ZONING**





**FIGURE 4: FLOOD INFORMATION**



**FIGURE 5: WILLAMETTE RIVER GREENWAY HABITAT CONSERVATION AREA (HCA) DESIGNATIONS**

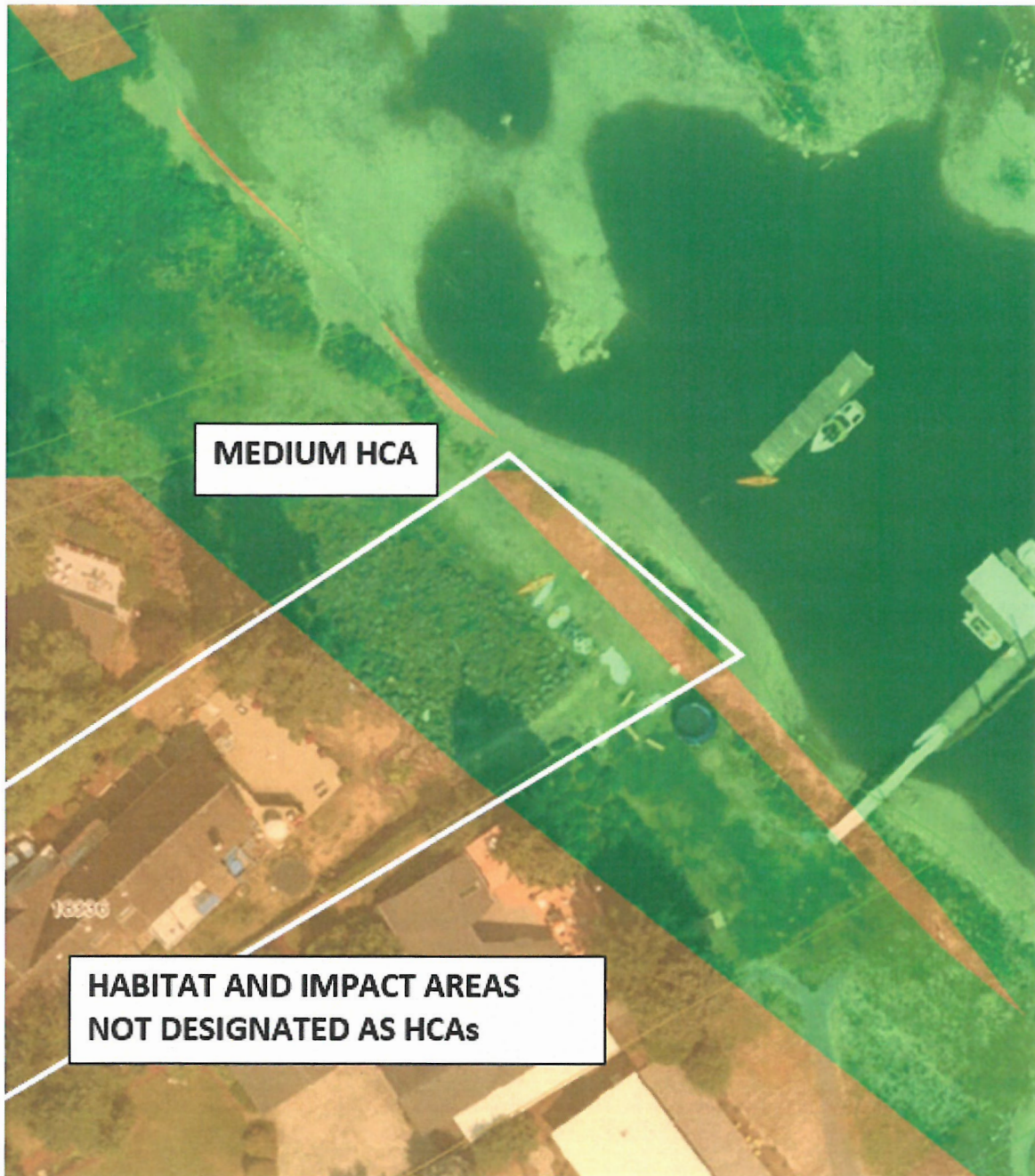


FIGURE 6A: APPROVED PLAN

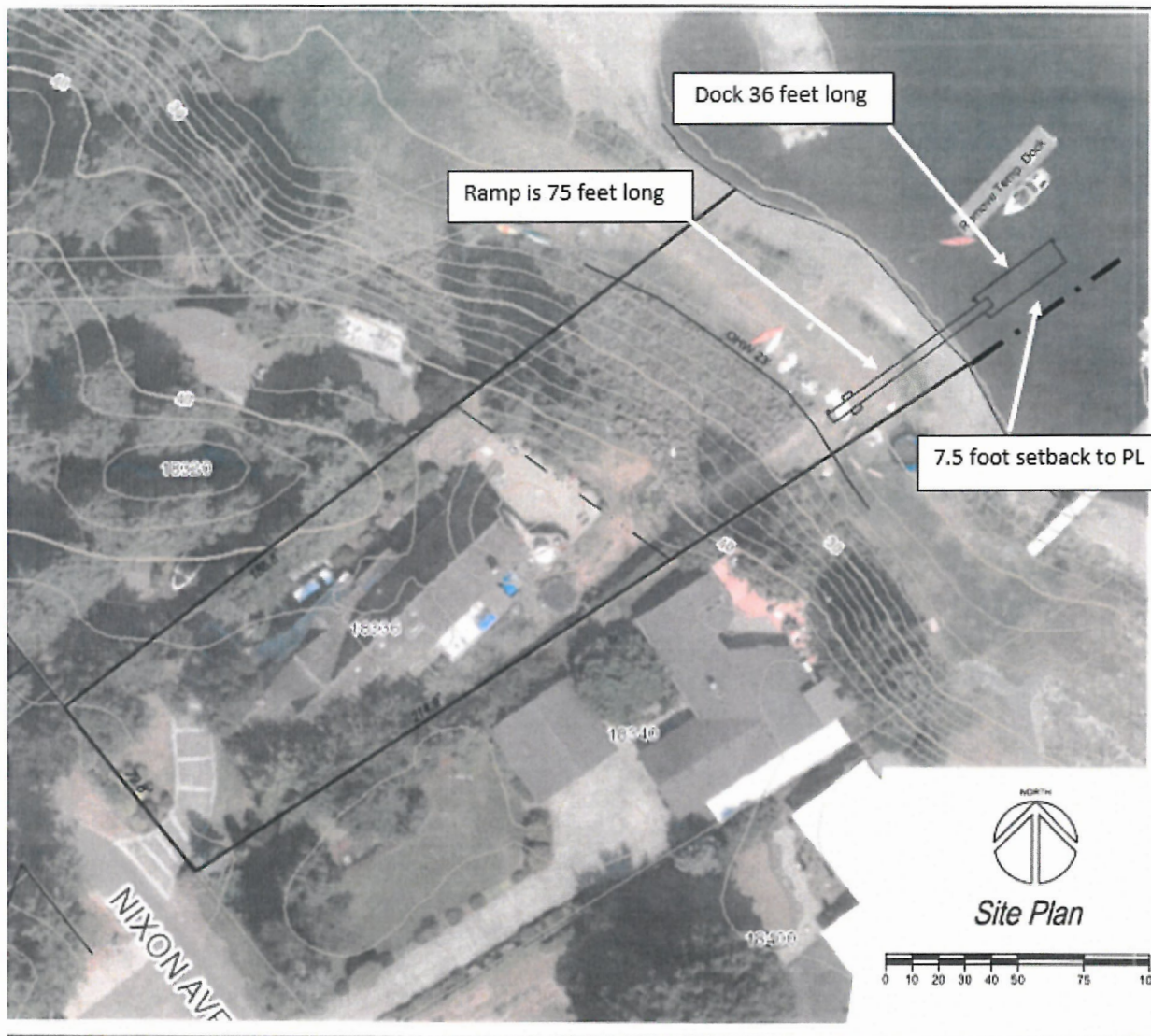
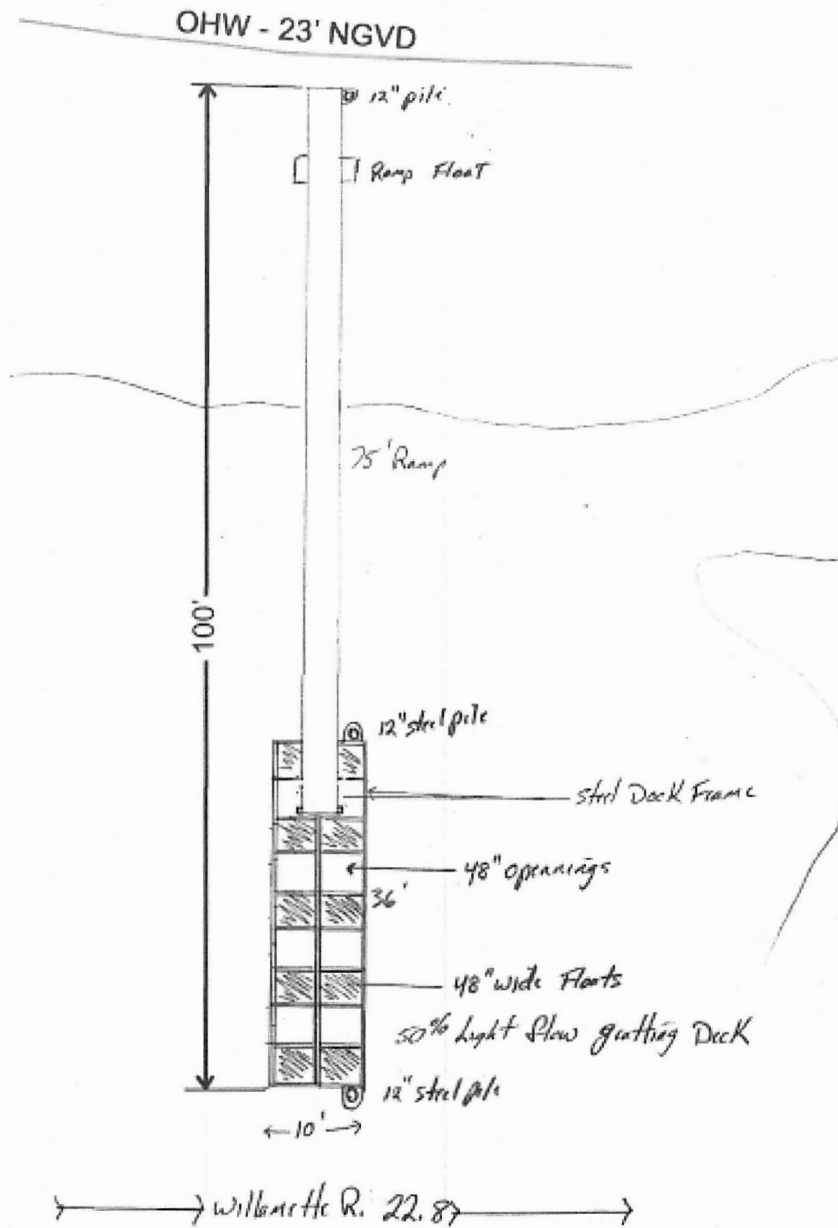


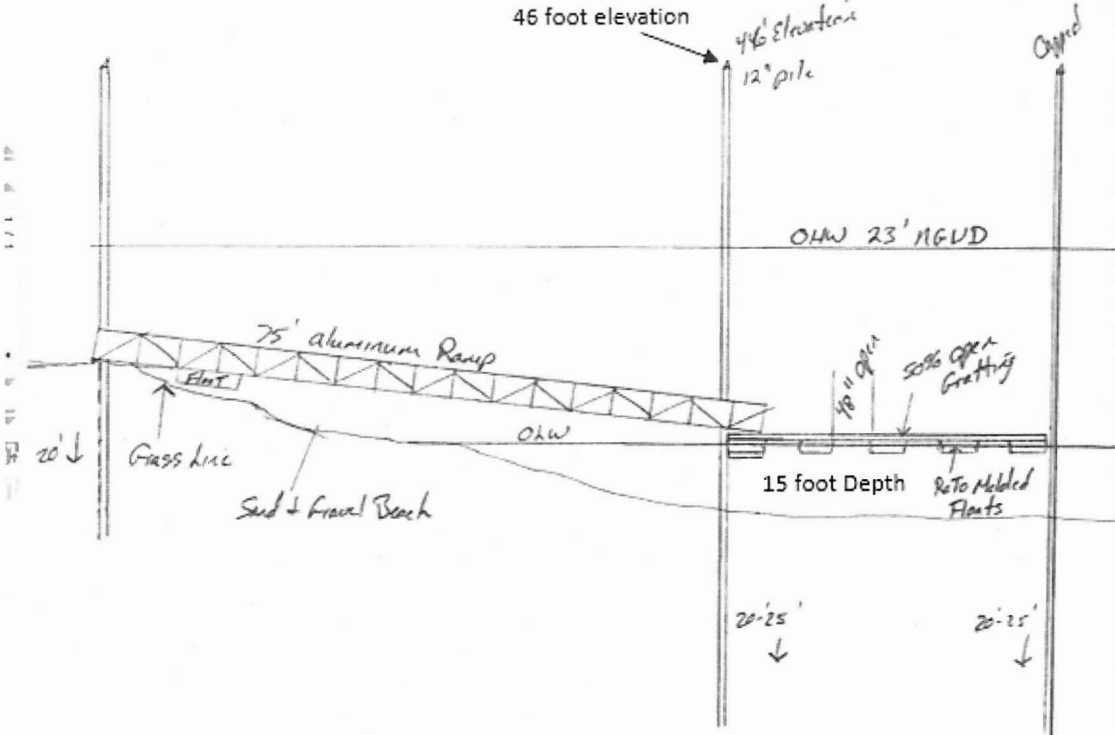
FIGURE 6B: APPROVED PLAN



Plan View  
Scale: 1/16" = 1'



FIGURE 6C: APPROVED PLAN



Cross Section  
Scale: 1/16" = 1'  
0 4 8 12 16 32

**FIGURE 7: RIVER WIDTH AT OHW**

