

Public Hearing  
re:  
Friends of  
Historic  
Butteville's  
Floodplain/  
Greenway  
Application No.  
23-010



Butteville as photographed in August 1938 by Alsberg, a WPA writer

# Roadmap

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- Five Preliminary Issues
  - Record on appeal
  - Burden of proof & facial deficiencies
  - Ownership of the property
  - FOHB's prior "restoration work"
- Marion County's Comprehensive Land Use Plan
- Floodplain Criteria (MCC 17.178)
- Greenway Criteria (MCC 17.179)
- Private Property Issues

# Record on Appeal

16 Aug. 2023	<ul style="list-style-type: none"><li>• Letter of Opposition, dated August 16, 2023<ul style="list-style-type: none"><li>• Declaration of Shaloe Putnam, including 21 exhibits (13 videos)</li><li>• Declaration of Julia Kraemer, including 23 exhibits (7 videos)</li><li>• Declaration of Erica Tatoian, including 38 exhibits</li></ul></li></ul>
31 Aug. 2023	<ul style="list-style-type: none"><li>• Letter of Opposition, dated August 31, 2023<ul style="list-style-type: none"><li>• Second Declaration of Erica Tatoian, including 5 exhibits</li></ul></li></ul>
31 Aug. 2023	<ul style="list-style-type: none"><li>• Supplemental Letter, dated August 31, 2023<ul style="list-style-type: none"><li>• Sheriff Dispatch Reports</li></ul></li></ul>
21 Nov. 2023	<ul style="list-style-type: none"><li>• Appeal to Board of Commissioners, dated November 21, 2023<ul style="list-style-type: none"><li>• Friends of Historic Butteville's Response to Plaintiffs' Requests for Admissions</li><li>• Marion County's Response to Plaintiff's Requests for Admissions</li></ul></li></ul>
27 Feb. 2024	<ul style="list-style-type: none"><li>• Supplemental Letter, dated February 27, 2024</li></ul>

# FOHB's Burden

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- The applicant in a land use proceeding has the burden to make certain that the record is adequate to support an affirmative decision, which includes demonstrating that they satisfy all applicable approval criteria.
- Marion County cannot not shift the burden to opponents.
- The County's decision must be "supported by substantial evidence in the whole record."

# FOHB's Application is Facially Deficient

## FOHB's Application is Incomplete

No "copy of the officially recorded title transfer instrument (deed, warranty deed, or contract) that shows the legal description for the parent parcel" included

Not signed by Marion County or any officers of Marion County, 17.119.025(A)(5)

Lacks documentary evidence to support self-serving statements

PRINTED NAME AND SIGNATURE of each APPLICANT of the subject property.

BENJAMIN D. WILLIAMS

*Benjamin D. Williams*

Print Name

Signature

Print Name

Signature

Print Name

Signature

Print Name

Signature

DATED this 1st day of July, 2023



# Marion County does not own the right of way

## Admitted by Marion County in litigation:

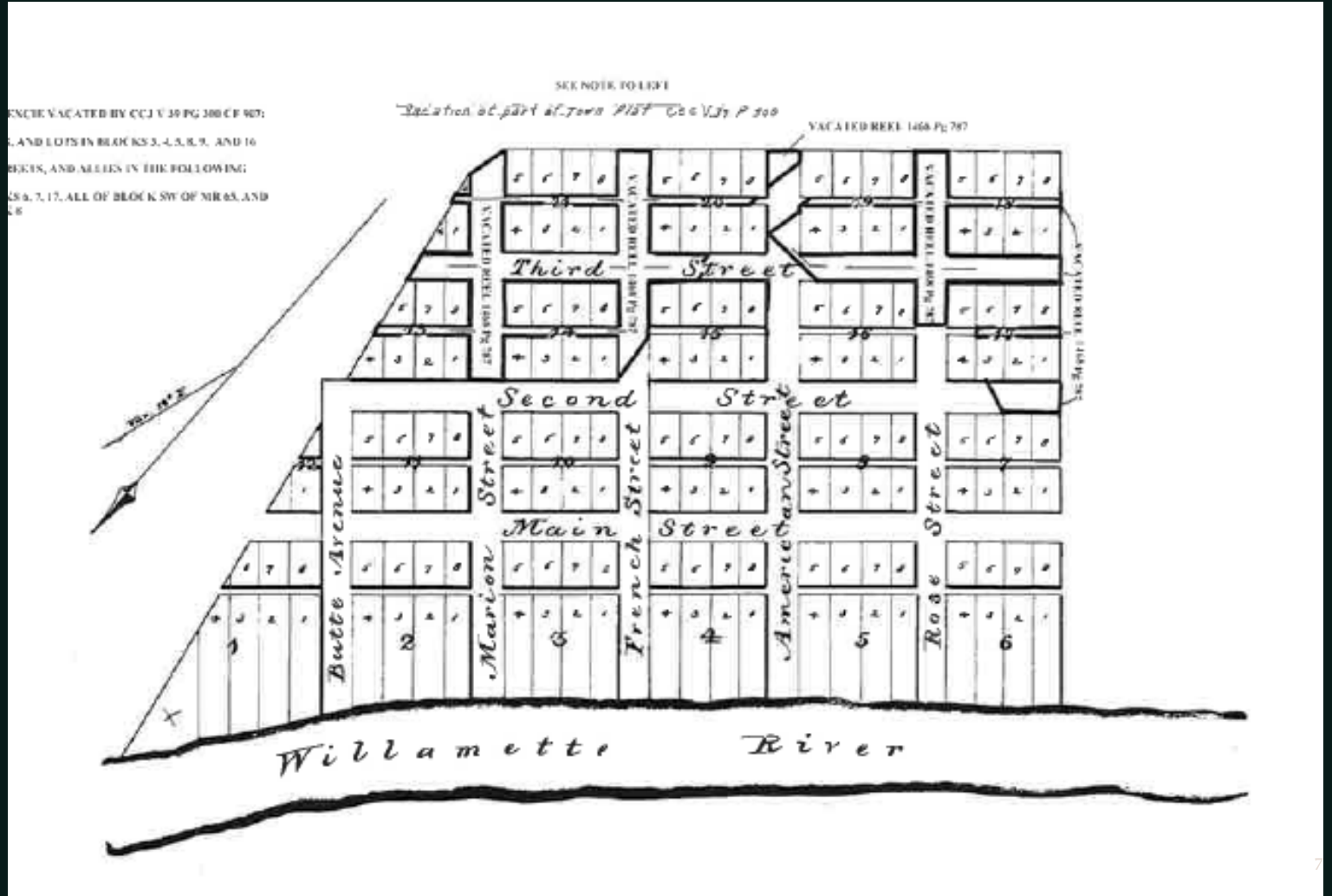
- Ms. Putnam, Ms. Kraemer, and Ms. Maysels are the fee title owners to the Disputed Property.
- Fee ownership of the plaintiffs' properties extend to the center line of the Disputed Property.
- “The county does not own the right of way unless the county owns the fee interest in the land over which the right of way exists” and that the “fee title owner of property not only owns the land, but everything below, on, or in reasonable airspace above the land, including trees or other natural growth.”
- Marion County has never compensated the fee title owners or their predecessors for the public's use of the property.



# The St. Alexcie plat does not confer a right to the County to develop the Disputed Property

“A property developer’s dedication of a street right of way to the County does not confer a right to the County to develop a recreation area within the right-of-way unless expressly provided in the dedication instrument.”

– Admitted by Marion County, RFA No. 9





# FOHB obtained no permits for its 2017 “restoration” work



REQUEST FOR ADMISSION NO. 19: Admit that FOHB did not apply for or obtain a right-of-way permit in connection with its 2017 “restoration work,” which included the removal of timber, “cut and fill, placement of boulder walls to stabilize the slopes, installation of property line fencing, [and] a 10 ft. wide concrete trail,” among other things.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 20: Admit that FOHB did not apply for or obtain a floodplain development permit in connection with its 2017 “restoration work,” which included the removal of timber, “cut and fill, placement of boulder walls to stabilize the slopes, installation of property line fencing, [and] a 10 ft. wide concrete trail,” among other things.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 21: Admit that FOHB did not apply for or obtain a Willamette River Greenway Development permit in connection with its 2017 “restoration work,” which included the removal of timber, “cut and fill, placement of boulder walls to stabilize the slopes, installation of property line fencing, [and] a 10 ft. wide concrete trail,” among other things.

RESPONSE: Admit.



# Marion County's Comprehensive Land Use Plan

Expectations for the future use of land in Marion County are defined so that property commitments can be made with a degree of confidence and reliance on land use controls. This assists anyone involved with land in the County in making decisions that will be in the best interests of themselves and the public.



## THE DISPUTED PROPERTY

Not identified as:

- An existing public recreation site, access point, or site for future recreational needs.
- a “public land with scenic and natural areas” or a “historical site in rural Marion County.”



# On the merits, FOHB's Application should be denied

MCC 17.178 (floodplain)

1

Marion County is not the owner of the Property

Putnam, Kraemer, and Maysels are the undisputed fee title owners.

2

No exception in MCC 17.178.050(C) for purported ROWs

3

MCC 17.178.050(G) has not been mentioned or evaluated by FOHB, Marion County, or the Hearings Officer

4

FOHB's proposal to comply with MCC 17.178.060(J) is not permitted by its DSL permit

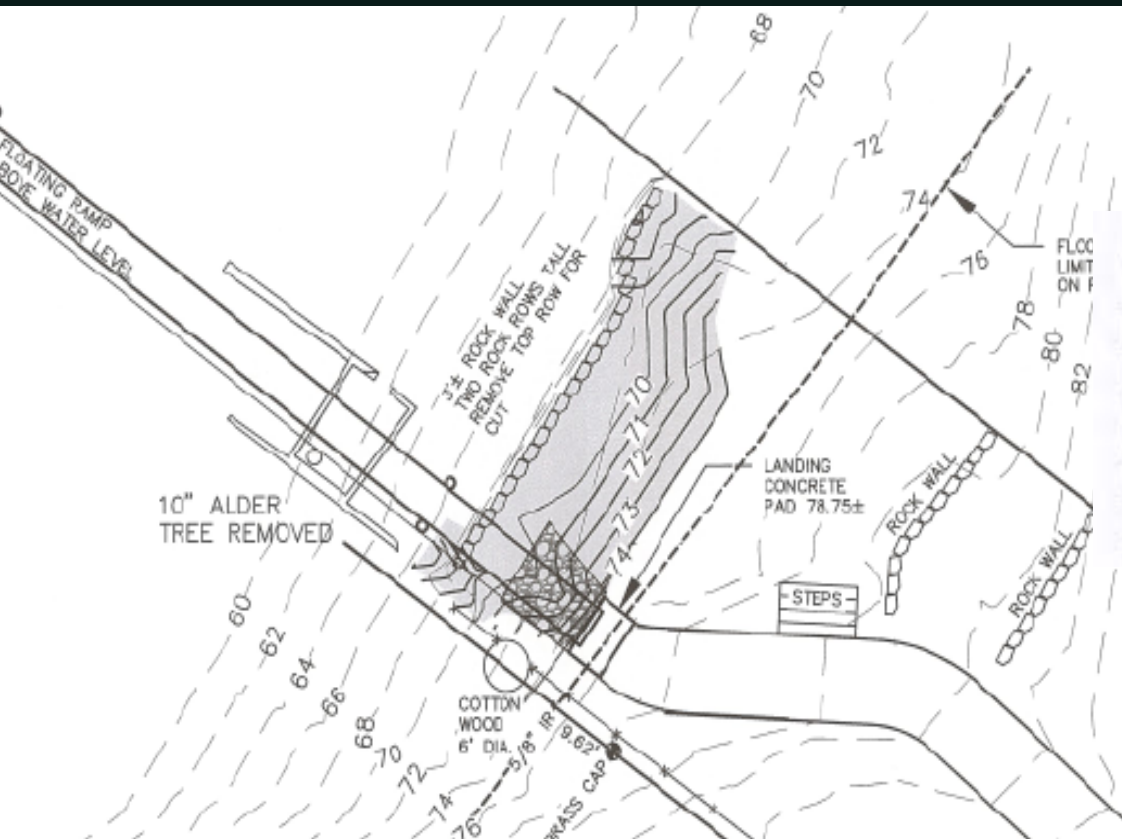
5

Hearings Officer concluded that six of the seven criteria were satisfied only because they could be made a condition of approval

# MCC 17.178.060(J)

improvements “shall not result in any increase in flood levels within the community”

FOHB’s proposal to satisfy this criterion is unpermitted by its DSL removal/fill permit



G. Total Removal Volumes and Dimensions			
Removal Impacts to Waters	Length (ft.)	Area (sq. ft or ac.)	Volume (c.y.)
Total Removal to Wetlands			
Total Removal Below Ordinary High Water			
Total Removal Below <u>Highest Measured Tide</u>			
Total Removal Below <u>High Tide Line</u>			
Total Removal Below <u>Mean High Water Tidal Elevation</u>			
H. Fill Volumes and Dimensions (if more than 7 impact sites, include a summary table as an attachment)			

Left: Sheet 1 to Boatright Engineering Exhibits

Above: FOHB’s Removal/Fill Permit Application w/ DSL and U.S. Army Corps of Engineers (Tatoian Declaration, Ex. 16 p. 10)



# Willamette River Greenway Policies



## P O L I C I E S

- “It is not necessary to acquire all of the land along the river for public use. The majority of these lands should remain in private ownership.”
- “Recreational needs at various levels should be provided for with minimal adverse impact upon adjacent private land.”
- “Private access to the river should be provided on a limited basis in rural areas. Most of the river access points should be in urban areas and public parks.”
- “All public access and recreational facilities should be located and designed to minimize trespass and vandalism on adjacent property.”



## MCC 17.179.050(B)

Significant fish and wildlife habitats shall be protected.



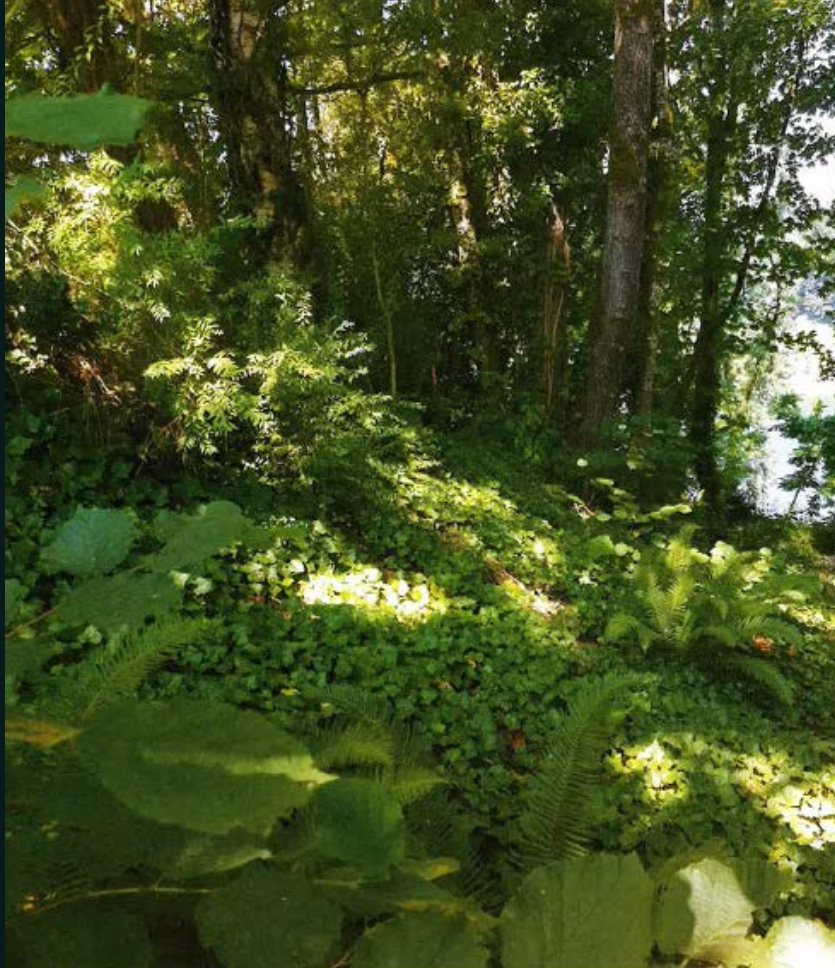
- The NOAA email FOHB relies on does not support a conclusion that this criterion is or can be met.
- ODFW provides its own dock guidelines for the Willamette River, intended to minimize potential impacts to fish, wildlife, and habitat resources. This project does not meet those guidelines.



# MCC 17.179.050(C) & 17.179.050(G)

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

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.



BEFORE FOHB



AFTER FOHB



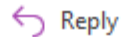
# MCC 17.179.050(D)

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

## RE: Public Records Request



HAVEL Chris \* OPRD <Chris.HAVEL@opr.oregon.gov>  
To Erica R. Tatoian



Reply




Reply All



Forward



Tue 9/5/2023 10:20 AM

 Follow up. Completed on Wednesday, September 6, 2023.  
You replied to this message on 9/6/2023 1:32 PM.  
If there are problems with how this message is displayed, click here to view it in a web browser.

**External Sender** - From: (HAVEL Chris \* OPRD <Chris.HAVEL@opr.oregon.gov>)  
This message came from outside your organization.

[Learn More](#)

Well, this took a weird turn. Upon closer inspection, the archeologist reports those summary reports don't actually address resources in the boundary of the subject parcel. There is a summary report that deals with an **adjacent** parcel. Do you want it?

The only document we have that concerns the property you identified is one of those technical reports, the kind that can't be released without revealing the location of a protected archaeological resource.

Sorry for the delay getting to this point. Let me know how you'd like to proceed.



## MCC 17.179.050(I)

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





# MCC 17.179.050(L) , (M), (O)

1. Any public recreational use or facility shall not substantially interfere with the established uses on adjoining property.
2. Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practical
3. Public access to and along the river shall 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.







# Who is financially responsible for this development?

Both Marion County & FOHB disclaim liability

8 REQUEST FOR ADMISSION NO. 15: Admit that Marion County claims it is not liable for  
9 physical harm suffered by members of the public while using the Disputed Property.  
10 RESPONSE: Admit.  
11 REQUEST FOR ADMISSION NO. 16: Admit that Marion County claims no responsibility for  
12 maintaining the Disputed Property.  
RESPONSE: Admit.

25 **REQUEST FOR ADMISSION NO. 15:** Admit that FOHB claims it is not liable for physical  
26 harm suffered by members of the public while using the Disputed Property.  
1 **ANSWER:**  
2 In addition to the General Objections noted above, FOHB objects to this request on the  
3 grounds that it calls for a legal conclusion. Subject to these objections, FOHB admits it is not liable  
4 for physical harm it did not cause.



# Numerous water parks within a 7-mile radius

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1. Champoeg State Park – 3 miles south: dock open for year-round use, parking, restrooms, and lifejacket loaner station
2. French Prairie Day Use Area – 2 miles north: free-access park with public access to the river and restrooms
3. Boones Ferry Landing/Marina – 4 miles north: boat ramp, parking, restrooms

