

CANCELLED

File #: **S**-85489

Hayden Bay Condominiums, Inc.
Amy Welch
505 N. Tomahawk Island Drive
Portland, OR 97217

07

Application No. 85489
Permit No. S-53956
Certificate No. **CANCELLED**

FEES PAID		
Date	Amount	Receipt No.
3/7/03	400.00	58653
6/16/03	175.00	60614
FEES REFUNDED		
Date	Amount	Check No.

Stream Index, Page No. _____

RELATED FILE AM 86090

Date filed _____

Priority _____

Action suspended until PURGE 3/9/07

Return to applicant _____

Date of approval _____

CONSTRUCTION

Date for beginning 8/14/04

Date for completion _____

Extended to _____

Date for application of water 10/1/07

Extended to _____

PROSECUTION OF WORK

Form "A" filed _____

Form "B" filed _____

Form "C" filed _____

FINAL PROOF

Blank mailed _____

Proof received _____

Date Certificate issued _____

ASSIGNMENTS

Date	To Whom	Address	Volume	Page

REMARKS

3/9/06 CANCELLED in Special order vol 68 pg 146

PURGE 3/9/07

S-85489

File #: **S**-85489
Hayden Bay Condominiums, Inc.
Amy Welch
505 N. Tomahawk Island Drive
Portland, OR 97217

Cancelled DPOV 68 pg 146

DSL
 775 Summer St NE
 Salem OR Suite 100
 97301-1279
 Attn: Tami Hubert
 Property Manager
 Submerged submersible
 Land
 503-378-3805
 X272

To Do:

If permit is issued,
 Send Permit CANCELLATION
 Authorization form
 w/ FO. *KL*

IMPORTANT MESSAGE

FOR Wed 2004
 DATE 1-14 TIME A.M.
 M. DICK Verdsoort
 OF _____
 PHONE (503) - 648 - 6180
AREA CODE NUMBER EXTENSION
 FAX
 MOBILE MAETHE
AREA CODE NUMBER TIME TO CALL

TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input checked="" type="checkbox"/>
CAME TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>
WANTS TO SEE YOU	<input type="checkbox"/>	RUSH	<u>FLU</u>
RETURNED YOUR CALL	<input type="checkbox"/>	WILL FAX TO YOU	<u>64008787</u>

MESSAGE ?
Permit? CONDO
WERTCH
5-85489

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

IN THE MATTER OF THE VOLUNTARY)
CANCELLATION OF PERMIT(S))
BY THE PERMITTEE(S)) ORDER

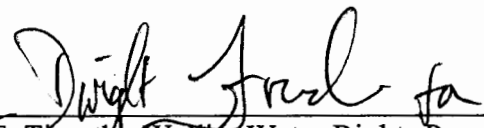
The Permittee authorized the following permit cancellation on April 7, 2005.

PERMIT(S) TO USE SURFACE WATER:

<u>Name</u>	<u>Basin Number</u>	<u>Watermaster District</u>	<u>Application Number</u>	<u>Permit Number</u>
Hayden Bay Condominiums, Inc.	2	20	S-85489	S-53956

NOW, THEREFORE, it is hereby ORDERED that the permit(s) are canceled in accordance with the provisions of ORS 537.260

Dated at Salem, Oregon on March 9, 2006.


Dwight Fredson, Water Rights Program Manager, for
Phillip C. Ward, Director

PLACED IN U.S. MAIL MAR 10 2006
BY OREGON WATER RESOURCES DEPARTMENT

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and ORS 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Special Order Volume 68 Page 146

Oregon Water Resources Department



State of Oregon
Water Resources Department
725 Summer Street NE, Suite A, Salem, OR. 97301-1271
Phone: 503-986-0900
<http://www.wrd.state.or.us>

FAX TRANSMITTAL

To: Dick V.
Date: Wed 1-14-2004
From: Herz

Fax Number: 503 640 8787
Pages: , including cover sheet
Phone: 503-986-0 804

Comments:

cont of permit

DIRECTOR'S OFFICE

TECHNICAL SERVICES

WATER RIGHTS

FOR <u>WED</u>	<u>2004</u>	DATE	<u>1-14</u>	TIME	<u>PM</u>
M	<u>DICK</u>	TO	<u>HERZ</u>		
OF	<u>503</u>	AREA CODE	<u>648</u>	NUMBER	<u>6180</u>
PHONE	<u>503</u>	AREA CODE	<u>648</u>	NUMBER	<u>6180</u>
<input type="checkbox"/> FAX	<u>214</u>	AREA CODE	<u>214</u>	NUMBER	<u>214</u>
<input type="checkbox"/> MOBILE	<u>214</u>	AREA CODE	<u>214</u>	NUMBER	<u>214</u>
TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input checked="" type="checkbox"/>		
CALL TO SEE YOU	<input checked="" type="checkbox"/>	CALL TO SEE YOU	<input checked="" type="checkbox"/>		
MESSAGE	<u>?</u>				
<u>Permit</u>	<u>?</u>				
	<u>5-85489</u>				
SIGNED					

- * Water Rights Information
- * Adjudications
- * Hydroelectric
- * Certificates / Final Proofs
- * Hearings / Contested Cases

Fax: 503-986-0901

FORM 4005
LITHO IN U.S.A.

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-85489

Final Order

Application History

On March 07, 2003, AMY WELCH FOR HAYDEN BAY CONDOMINIUMS INC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on June 3, 2003. The protest period closed July 18, 2003, and no protest was filed.

The proposed use would not impair or be detrimental to the public interest.

Order

Application S-85489 therefore is approved as proposed by the Proposed Final Order, and Permit 53956 is issued as limited by the conditions proposed by the Proposed Final Order.

DATED August 14, 2003


Paul R. Cleary, Director

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review of this order must be filed within the 60 day time period specified by ORS 183.484(2).

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the final order is not subject to judicial review.

This document was prepared by Kerry Lefever. If you have any questions about any of the statements contained in this document I am the most likely the best person to answer your questions. You can reach me at 1-503-378-8455 extension 276.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulun. Her extension number is 239.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 201. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 158 12th ST. NE Salem, OR 97301-4172, Fax: (503)378-2496

STATE OF OREGON

COUNTY OF MULTNOMAH

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

HAYDEN BAY CONDOMINIUMS INC; AMY WELCH
505 N TOMAHAWK ISLAND DR
PORTLAND, OR 97217

(503) 916-3358

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-85489

SOURCE OF WATER: COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN

PURPOSE OR USE: IRRIGATION USE ON 2.96 ACRES

MAXIMUM RATE: 0.037 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: MARCH 07, 2003

POINT OF DIVERSION LOCATION: SE $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 34, T2N, R1E, W.M.; 870 FEET NORTH & 140 FEET WEST FROM S1/4 CORNER, SECTION 34

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 2.4 ACRES

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 0.56 ACRE

SECTION 34

TOWNSHIP 2 NORTH, RANGE 1 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area.

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens and/or fishways are not necessary. The required screens and fishways are to be in place, functional, and approved by ODFW before diversion of any water.

Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

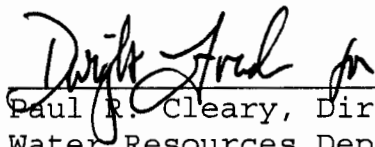
The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Complete application of the water to the use shall be made on or before October 1, 2007. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued August 14, 2003



Paul R. Cleary, Director
Water Resources Department

REAL ESTATE TRANSACTIONS: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

CULTURAL RESOURCES PROTECTION LAWS: Permittees involved in ground-disturbing activities should be aware of federal and state cultural resources protection laws. ORS 358.920 prohibits the excavation, injury, destruction or alteration of an archeological site or object, or removal of archeological objects from public and private lands without an archeological permit issued by the State Historic Preservation Office. 16 USC 470, Section 106, National Historic Preservation Act of 1966 requires a federal agency, prior to any undertaking to take into account the effect of the undertaking that is included on or eligible for inclusion in the National Register. For further information, contact the State Historic Preservation Office at 503-378-4168, extension 232.

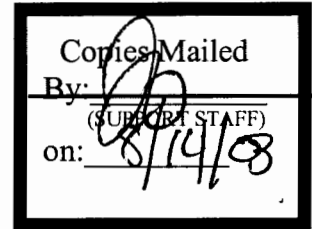
Mailing List for FO Copies

Application # S-85489

Mailing List Print Date: August 1, 2003

Original mailed to(when permit issued, include copy of permit map):

Applicant: AMY WELCH HAYDEN for BAY CONDOMINIUMS INC
505 N TOMAHAWK ISLAND DR
PORTLAND OR 97217



For FO w/Permit - Copies sent to:

1. WRD - File # S-85489
2. WRD - Ken Stahr

For FO w/ Permit - FO and Map Copies sent to (Remember to reduce copy margins):

3. WRD - Data Center
4. WRD - Watermaster District #: 20
5. WRD - Regional Manager: NW Region
6. DSL - Tami Hubert, Property Manager, Submerged and Submersible Land
775 Summer St NE, Suite 100, Salem, OR 97301-1279

For FO w/Permit - Copies to Other Interested Persons (*CWRE, Agent, Well Driller, Commenter, etc.*)

1. _____
2. _____
3. _____

For FO w/Permit - "\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

1. _____
2. _____

CASEWORKER: KL

FO CHECKLIST

FILE # 5-85489
PFO WEEK # 409
FO WEEK # 383

PFO TO FO CONVERSION

REVIEW DATE: 7/10/03
INITIALS: KL
WM District: 20
Region Mgr: NW
ODFW Bio: Dick Caldwell

Y N Has applicant name and/or address changed; or has the file been assigned?

If new: _____

In preparing to create the FO, you should check the following:

1. Y N Were comments received? If so, from whom and when? _____
Respond to significant comments, issues, or disputes related to the proposed use of water (see notes, if any, listed above)

2. On the PFO CC list, verify names and mailing addresses of ALL commentors (regardless of comment date, affected landowners, and those who paid the \$10 fee.

cc: CWRE - Dike Verboort cc: to DSL

3. Y N NA Have affected land owners been notified? If not, refer to #8.
Div of State Lands - dock - not notified

Received DSL ^{assessment} permit
7-24-03

4. Y N NA Has ODFW asked for self certification of screening condition? If yes, include fish screening form.

5. Correct PFO errors (such as POD or POU location (verify from map)

6. Are requested GW conditions included in permit? If no, add condition(s): _____

7. Verify Payment of recording fees (circle the appropriate option)

(1) Issue FO w/permit if fees are paid — Prepare refund request for excess fees, including standing fees if no protest is filed and no modifications are being made to the PFO.

(2) Issue FO w/o permit if fees are lacking.

1st CFS/AF 150
Addnl. _____
TOTAL Q 150

Exam Fee Paid 250
Q fee 150
Subtotal 400
Recording Fee 175
Total 575
Amount Paid 575
Amount due/refund 0

8. Y N Is further processing possible? If not state reason: _____

FO Type: (circle types) DENIAL

FO w/o PERMIT (REASON: Lacks Fees Lacks Easement Lacks Approved Dam Plans and Specifications)

FO & PERMIT (Permit # 53956)

Send authorization to cancel GW Permit _____ to J. Sauter.

Once FO document is completed:

9. _____ Save WordPerfect document in S:\GROUPS\WR\FO\WEEK 383

10. _____ Print final draft of document and submit for peer review. Peer Reviewer: COPY ENGEL

11. Complete routing list

The purpose of this checklist is to be used as a working document by Department staff to aid in the production of the related Initial Review, Proposed Final Order, or Final Order. It is not intended to be a complete record of all factors which were considered to produce the document, nor is it intended to serve any purpose other than that stated above.

The related Initial Review, Proposed Final Order, or Final Order is intended to stand alone as the record of factors considered in its production

RECEIVED

APR 29 2003

WATER RESOURCES DEPT.
SALEM, OREGON

HAYDEN BAY CONDOMINIUMS, INC.
C/O AMY WELCH
505 N. TOMAHAWK ISLAND DRIVE
PORTLAND, OR 97217

WATER RESOURCES DEPARTMENT
158 12th STREET NE
SALEM, OR 97310
ATT: Kerry Lefever

April 23, 2003

RE: File S-85489

Dear Ms. Lefever:

This is in response to the Initial Review for the referenced surface water application, item 4.

I hereby authorize the cancellation of our Application G-14196, Permit G-12812 which defines the use of 0.037 cfs of groundwater for the irrigation of 2.96 acres.

Sincerely,



Amy Welch, Board Member
Hayden Bay Condominiums, Inc.

Vermont, (LURE) 135



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
503-378-3739
FAX 503-378-8130

April 11, 2003

KERRY

AMY WELCH
HAYDEN BAY CONDOMINIUMS INC
505 N TOMAHAWK ISLAND DR
PORTLAND, OR 97217

RECEIVED

APR 29 2003 (503)916-3358
WATER RESOURCES DEPT.
SALEM, OREGON

Reference: File S-85489

Dear Applicant:

THIS IS NOT A PERMIT AND IS SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.

This letter is to inform you of the preliminary analysis of your water use permit application and to describe your options. In determining whether a water use permit application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The proposed use is not prohibited by law or rule.
2. The use of water from COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN for IRRIGATION OF 2.96 ACRES is allowable under OAR 690-519-001, the Willamette Basin Program.
3. Water in the amount of 0.037 CUBIC FOOT PER SECOND for IRRIGATION USE ON 2.96 ACRES is available for further appropriation.
4. There is an existing water right, namely Permit G-12812 (Application G-14196), on the land proposed for use under application S-85489. You state that the groundwater right, Permit G-12812 will be canceled if application S-85217 is approved. If, for some reason, Permit G-12812 is not canceled, the Department proposes to restrict application S-85217 to supplemental use only. This may limit/jeopardize your ability to use water under application S-85217 as described below. (See **ADDITIONAL INFORMATION REQUIRED**)

S-85489

W. RICHARD VERBOORT - CIVIL ENGINEER
PLANNING - DESIGN - INSPECTION
CIVIL - WATER RESOURCES - AGRICULTURE
666 S.E. 36TH AVENUE, HILLSBORO, OR 97123
(503) 648-6180

RECEIVED

APR 29 2003

WATER RESOURCES DEPT.
SALEM, OREGON

OR DEPT. FISH & WILDLIFE
COLUMBIA REGION
17330 SE EVELYN ST
CLACKAMAS, OR 97015

April 23, 2003

Gentlemen:

Hayden Bay Condominums, Inc. recently applied for a surface water application for irrigation for the Condo Association property on Tomahawk Island Drive. The ODWR File number is S-85489.

The Initial Review states that the permit will have a condition requiring the following:

"The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined that screens and/or fishways are not necessary. The required screens and fishways are to be in place, functional, and approved by ODFW before diversion of any water."

Very briefly, the point of diversion will be a small pump, probably 1 horsepower, located on the association dock, in Columbia river waters. The pump suction will extend below the dock. There is no dam or other structures.

If you would like to view the proposed facility in the field please let me know. Otherwise please provide a letter of waiver for the requirement of fishways, with a CC to ODWR referencing the file number.

Also please send a copy of the fish screen requirements for the pump suction, if any. If no fish screening is required the pump suction will be screened with a small commercial screen to keep debris out of the pump and irrigation system.

Please call if you have any questions regarding the project.

Sincerely,



W. Richard Verboort, P.E.
Civil Engineer

K CC: ODWR for project file

IR CHECKLIST

NAME: Hayden Bay Condos Application # S 85489
County Multnomah Basin: Columbia WID: no wab
Township 2N Range 1E Section 34 1/4 1/4 SESW

- 10. Prohibited by ORS 538? If so, do not do an IR; return app & fees to applicant.
- 20. Groundwater Review NA a. PSI A B C D River/Stream Name _____
b. Groundwater Availability A B C
c. Is the well located in a GWLA or CGWA or T1N R3E Sec 20, 21, 28, 29? Y / N (If in an area include map showing POD)
- 25. Use IRMG of 2.96 acres Priority Date(s) 3/7/03
- 30. Allowed under Basin Program Y N Limitations? Y N ODR 690-519-001
- 40. Withdrawn? Y N season allowed _____
- 45. Basin Maps have been checked? Y N River Mile ~105 Columbia River
- 50. SWW Y N (if Y notify state parks) see water avail. info for Columbia - in file N/M #20 - water is available
- 60. Surface Water Availability (80% live flow / 50% storage) NA need Water Avail. report from WAA done
- 65. Conflict? Y N App G-14196 same lands - Applicant states gw right will be
- 70. DIVISION 33 Y N / NA Above Bonn Y / N Below Bonn Y N if sw app goes through cancelled
If Y not allowed April 15-Sept 30 Statewide Y / N If Y add PISPC
- 80. Rate 1/80 Rate: Max 2.96 x 1/80 = 0.037 cfs Requested 16.8 gpm ~ 0.037 cfs
Duty 2 1/2 Season: Normal Mar 1 - Oct 31 Requested Mar 1 - Oct 31
- 90. B.O.R. or Doug Co. project Y N contract # _____
- 100. Condition S (<0.1, <9.2) M (>0.1 or <1.5 CFS, or >9.2 or <100AF) L (>1.5, >100), BOR, GW, etc. Y / N _____
condition 71 and municipal require the LARGE conditions
- 110. Land use approval OK'd needs approval county notified NA Discretionary land use approval obtained
- 120. Watermaster Dist: (1 2 16 18) (20) NWR (3 4 5 21 - NCR) (6 8 9 10 - ER) (11 12 17 - SCR) (13 14 15 19 - SWR)
- 130. Per interactive mapping DOA 1010 Y N 303D Y N CTUIR Y N
- 140. within Oregon Streamflow Restoration Area? Y N / NA
- 150. Letter format: Good/Limited/Bad/BadIRshort/Bad HC Opp
- 160. CWRE representative, etc. to notify? Y N
Dick Verboort, CWRE
ODPW - Dick Caldwell
PEO - Andy Schnedel
ODA - Jim Johnson

PISPC
657

Name: K Leferer Date: 4/4/03 Peer Reviewer: Jerry Gaurin Date: 4/9/03

The purpose of this checklist is to be used as a working document by Department staff to aid in the production of the related Initial Review, Proposed Final Order, or Final Order. It is not intended to be a complete record of all factors which were considered to produce the document, nor is it intended to serve any purpose other than that stated above.

The related Initial Review, Proposed Final Order, or Final Order is intended to stand alone as the record of factors considered in its production.

PFO CHECKLIST

✓ 10. IR Date 4-11-03 Public Notice Date 4-15-03 Comment Rec'd No

✓ 20. Filed after 10/23/99? Y / N (if N A date should be included)

Changes from IR determinations: _____

Agencies and Additional People to Notify: CURE: Dick Verboom
OPPW: Dick Caldwell

Mike McCord, WM #20 - b57 condition - totalizing flouride
- see water availability report
dated 4-7-03

✓ 30. Shortcomings preventing PFO/FO, or permit? Y / N / Should process continue Y / N

✓ 40. Is second groundwater review complete? Y / N necessary? Y / N

✓ 50. IR identifies as on DEQ 303d List? Y / N / NA Comments received? Y / N

Initials: KL Date: 5/21/03

Revised 3/7/02

FEES:	EXAM:	<u>250</u>
	Q	<u>150</u>
	SUBTOTAL	<u>400</u>
	RECORD	<u>175</u>
	TOTAL	<u>575</u>
	PD	<u>400</u>
<input checked="" type="radio"/>	OWE/REFUND	<u>175</u>

Application S-85489
PFO WEEK 409

Peer Reviewer: Amata Huffman Date: 5/21/03

Permit Cancellation Authorization

TO: WATER RESOURCES DIRECTOR
WATER RESOURCES DEPARTMENT
WATER RIGHTS SECTION
158 12TH STREET NE
SALEM, OR 97301-4172

I hereby authorize the cancellation of our water use
Application No. _____, Permit No. _____, which describes
a right to develop the use of up to _____ cfs/gpm/acre-feet
of water from _____ for the purpose of

(Source)

(Use)

Sincerely,

Name (Print or type)

Address

Signature

Date

S:\GROUPS\WR\FORMS\CANAUTHO

5-7-03
Send Permit Authorization
form to applicant
w/FO.
KZ

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

158 12TH ST. N.E.
SALEM, OR 97301-4172
378-8455 / 378-8130 (FAX)

RECEIPT # **60614**

INVOICE # _____

RECEIVED FROM: Hayden Bay Condo.
BY: _____

APPLICATION	585489
PERMIT	
TRANSFER	

CASH: CHECK:# 10954 OTHER: (IDENTIFY) _____

TOTAL REC'D \$ 175.00

0401 TREASURY 0417 WRD MISC CASH ACCT

0407	COPIES		\$
_____	OTHER:	(IDENTIFY) _____	\$
_____	OTHER:	(IDENTIFY) _____	\$

0427 WRD OPERATING ACCT

MISCELLANEOUS			
0407	COPY & TAPE FEES		\$
0410	RESEARCH FEES		\$
0408	MISC REVENUE: (IDENTIFY)	_____	\$
TC162	DEPOSIT LIAB. (IDENTIFY)	_____	\$
0240	EXTENSION OF TIME		\$
WATER RIGHTS:			
0201	SURFACE WATER		\$
0203	GROUND WATER		\$
0205	TRANSFER		\$
WELL CONSTRUCTION			
0218	WELL DRILL CONSTRUCTOR		\$
	LANDOWNER'S PERMIT		\$
_____	OTHER	(IDENTIFY) _____	\$

EXAM FEE		
\$	0202	RECORD FEE
\$	0204	\$ 175.00
\$		\$
EXAM FEE		LICENSE FEE
\$	0219	\$
	0220	\$

0536 TREASURY 0437 WELL CONST. START FEE

0211	WELL CONST START FEE	\$	CARD #	_____
0210	MONITORING WELLS	\$	CARD #	_____
_____	OTHER	(IDENTIFY) _____		

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233	POWER LICENSE FEE (FW/WRD)		\$
0231	HYDRO LICENSE FEE (FW/WRD)		\$
_____	HYDRO APPLICATION		\$

TREASURY OTHER / RDX

FUND _____ TITLE _____
OBJ. CODE _____ VENDOR # _____
DESCRIPTION _____ \$ _____

RECEIPT: **60614**

DATED: 6/16/03 BY: Connie Vance

Property Account	Invoice	Description	Amount
hbc 4114		App.#S-85489, Recording Fees For Permit	175.00
			<hr/>
			175.00

RECEIVED
JUN 16 2003
WATER RESOURCES DEPT
SALEM, OREGON

Hayden Bay Condominium

P.O. Box 6469
Portland, OR 97228
(503) 233-5811

Bank of America
Lloyd Center Office 2111
500 NE Multnomah St
Portland, OR 97232
24-7038/3230

10954

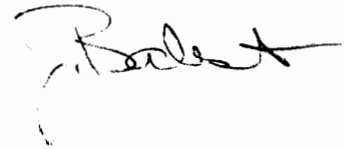
**** ONE HUNDRED SEVENTY FIVE AND 00/100 DOLLARS

TO THE
ORDER OF

06/13/03

\$175.00*****

Oregon Water Resources Department
158 12th St. NE
Salem,, OR 97301



⑈010954⑈ ⑆323070380⑆ 21115⑈10720⑈

RECEIVED
JUN 15 2003
WATER RESOURCES DEPT
SALEM, OREGON

Mailing List for PFO Copies

Application #S-85489

PFO Date May 27, 2003

Original mailed to:

Applicant: HAYDEN BAY CONDOMINIUMS INC; AMY WELCH
505 N TOMAHAWK ISLAND DR
PORTLAND, OR 97217

Copies sent to:

- 1. WRD - File # S-85489
- 2. Water Availability: Ken Stahr

PFO and Map Sheet Copies sent to:

- 3. WRD - Watermaster # 20
- 4. WRD - Regional Manager: NW
- 5. ODFW District Biologist: Dick Caldwell

<p>Copies Mailed By: <u>JRB</u> (SUPPORT STAFF) on: <u>5/28/03</u> (DATE)</p>

Copies sent to Other Interested Persons (*CWRE, Agent, Well Driller, Commenter, etc.*)

- 6. Dick Verboort, CWRE # 135

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

**Oregon Water Resources Department
Water Rights Division**

Water Rights Application
Number S-85489

Prior to issuance of a permit, recording fees in the amount of \$175.00 must be submitted to the Department. In order to increase Department efficiency and expedite the processing of your application, submit \$175.00 prior to the protest deadline of July 11, 2003. Please include your application number on your check made out to the Oregon Water Resources Department. If this fee is not paid prior to July 11, 2003, issuance of a permit will be delayed.

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft permit be issued with conditions.

Application History

On March 07, 2003, AMY WELCH FOR HAYDEN BAY CONDOMINIUMS INC. submitted an application to the Department for the following water use permit:

- Amount of Water: 16.8 GALLONS PER MINUTE, OR 0.037 CUBIC FOOT PER SECOND (CFS)
- Use of Water: IRRIGATION USE ON 2.96 ACRES
- Source of Water: COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN
- Area of Proposed Use: Multnomah County within SECTION 34, TOWNSHIP 2 NORTH, RANGE 1 EAST, W.M.

On April 11, 2003, the Department mailed the applicant notice of its Initial Review, determining that "*The use of 0.037 CUBIC FOOT PER SECOND from COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN for IRRIGATION OF 2.96 ACRES is allowable from March 1 through October 31 of each year.*" The applicant did not notify the Department to stop processing the application within 14 days of that date.

On April 15, 2003, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about both obtaining future notices and a copy of the proposed final order.

No written comments were received within 30 days.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any comments received

Findings of Fact

The Willamette Basin Program allows the use of water for irrigation.

Senior water rights exist on COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN, or on downstream waters.

COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN is not within or above a State Scenic Waterway.

An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumption portion of all relevant rights of record. A copy of this assessment is in the file. This assessment determined that water is available for further appropriation (at an 80 percent exceedance probability) during the full season requested.

The Department finds that the amount of water requested, 0.037 CFS, is an acceptable amount.

In accordance with OAR 690-33-330, an interagency team reviewed this proposed use for potential adverse impacts on sensitive, threatened and endangered fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality, Fish and Wildlife (DFW), and Agriculture. WRD and DFW representatives included both technical and field staff. The interagency team recommended that additional limitations or conditions of use be imposed on this application as follows:

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion.

Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

Conclusions of Law

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12) (i.e. the use of water is human consumption or livestock), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Willamette Basin Plan, or a preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The proposed use complies with the State Agency Agreement for land use.

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
 - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and
 - (B) Specifically how the identified public interest would be impaired or detrimentally affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED May 27, 2003


Dwight French
Water Rights Section Manager

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protest Rights and Standing

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the \$200 protest fee required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a

hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.

- If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.

Requests for Standing

Under the provisions of 537.153(5), persons other than the applicant who support a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing, include a statement that the requester supports the proposed final order, and a statement of how the requester would be harmed if the proposed final order is modified. The fee required at the time of submitting this request is \$50.00. If a hearing is scheduled, an additional fee of \$150.00 must be submitted along with a request for intervention. Forms to request standing are available from the Department.

Your protest or request for standing must be received in the Water Resources Department no later than **July 11, 2003**.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and if

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

This document was prepared by Kerry Lefever. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 1-503-378-8455 extension 276.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulun. Her extension number is 239.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 201. Address all other correspondence to:

Water Rights Section, Oregon Water Resources Department, 158 12th ST. NE Salem, OR 97301
Fax: (503)378-6203

DRAFT

This is not a permit!!!

DRAFT

STATE OF OREGON

COUNTY OF MULTNOMAH

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

HAYDEN BAY CONDOMINIUMS INC; AMY WELCH
505 N TOMAHAWK ISLAND DR
PORTLAND, OR 97217

(503)916-3358

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-85489

SOURCE OF WATER: COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN

PURPOSE OR USE: IRRIGATION USE ON 2.96 ACRES

MAXIMUM RATE: 0.037 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: March 07, 2003

POINT OF DIVERSION LOCATION: SE ¼ SW ¼ SECTION 34, T2N, R1E, W.M.; 870 FEET NORTH & 140 FEET WEST FROM S1/4 CORNER, SECTION 34

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SE ¼ SW ¼ 2.4 ACRES

SW ¼ SE ¼ 0.56 ACRE

SECTION 34

TOWNSHIP 2 NORTH, RANGE 1 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area.

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens and/or fishways are not necessary. The required screens and fishways are to be in place, functional, and approved by ODFW before diversion of any water.

Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Complete application of the water to the use shall be made on or before October 1, 2007. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued _____, 2003

DRAFT - THIS IS NOT A PERMIT

Paul R. Cleary, Director
Water Resources Department

REAL ESTATE TRANSACTIONS: Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

CULTURAL RESOURCES PROTECTION LAWS: Permittees involved in ground-disturbing activities should be aware of federal and state cultural resources protection laws. ORS 358.920 prohibits the excavation, injury, destruction or alteration of an archeological site or object, or removal of archeological objects from public and private lands without an archeological permit issued by the State Historic Preservation Office. 16 USC 470, Section 106, National Historic Preservation Act of 1966 requires a federal agency, prior to any undertaking to take into account the effect of the undertaking that is included on or eligible for inclusion in the National Register. For further information, contact the State Historic Preservation Office at 503-378-4168, extension 232.

ODFW DIVISION 33 APPLICATION REVIEW SHEET Caldwell

Recommendations for Water Right Applications that may affect the Habitat of Sensitive, Threatened or Endangered Fish Species, OAR 690-33-310 through 340.

Date: 4/11/03 21 day Deadline Date: 5/9/03 Application # S-85489

Applicant's Name: AMY WELCH; HAYDEN BAY CONDOMINIUMS INC

1) Will the proposed use occur in an area that may affect the essential habitat of sensitive, threatened, or endangered fish species? [690-33-330(1)]
Upper Columbia Basin, Chinook, steelhead & sockeye - endangered NOAA + review
NO YES Species: Chinook, Chum, steelhead Status: Sensitive, Threatened, Endangered
Coho Salmon - State of Oregon Endangered

IF ANSWER TO QUESTION (1) IS YES, CONTINUE ON THIS PAGE TO QUESTION (2),
IF ANSWER IS NO, FILL OUT PUBLIC INTEREST REVIEW SHEET (PAGE 2)

What stage or value is at risk (circle all that apply): Spawning, Incubation, Rearing, Passage, Habitat Value

2) Will the proposed use result in a LOSS in the essential habitat of THREATENED OR ENDANGERED SPECIES or a NET LOSS in the habitat of a SENSITIVE SPECIES?

NO / YES
A) Standard of NET LOSS applies to sensitive species statewide. [690-33-330(2)(a)]
B) Standard of LOSS applies to T or E species outside the Columbia Basin. [690-33-330(2)(b)]

3) Can conditions be applied to mitigate the impact to the essential habitat of a S, T or E species?
 NO / YES [690-33-330(3)]

Which conditions are recommended?

(Try to select conditions from the Menu of Conditions)

4) If conditions cannot be identified to offset impacts to the essential habitat of S, T or E species, would the proposed use harm the species?

NO / YES [690-33-330(4)]
ADFW agrees with the determination of the WRD.
If YES, please explain: Water usage for irrigation should only be allowed during the months of March through Oct 31.

5) If a permit is approved, what fish screen, bypass or other conditions should be included in the permit?

The permittee shall install, maintain and operate fish screening to prevent fish from entering the proposed diversion.

ODFW Representative: Name: Dick Caldwell Date: 4/25/03

WRD Contact: Caseworker: Kerry Lefever, Water Rights Division

503-378-8455 ext: 276 / Fax: 503-378-6203 / e-mail: Kerry.A.LEFEVER@wrdr.or.state.us

20

WATERMASTER DIVISION 33 APPLICATION WORK SHEET

Recommendations for Water Right Applications that may affect the Habitat of Sensitive, Threatened or Endangered Fish Species, OAR 690-33-310 through 340.

Date: 4/11/03

21 day Deadline Date: 5/9/03

Application # **REC'D APR 12 2003**

Applicant's Name: **AMY WELCH; HAYDEN BAY CONDOMINIUMS INC**

SOURCE OF WATER: GROUNDWATER SURFACE WATER STORAGE

DESCRIPTION OF THE SOURCE: Columbia R.
(A spring, well, sump, exempt pond, unnamed stream, etc.)

1) If from surface water, does the water at the proposed diversion location flow above ground in a defined channel into another water body?
 YES NO SOMETIMES

If sometimes, describe the time period, Between: _____ and _____.

2) Does the source ever go dry in the area of the proposed diversion?

YES NO

FAXED
4-14-03

3) To your knowledge, has the requested source of water been regulated because of insufficient flow to satisfy existing water rights including instream water rights?

YES NO

If YES, please explain: _____

4) Do you agree with the water availability recommended period of use?

YES NO I DON'T KNOW

If NO, why do you disagree with the recommended period of use and what period do you recommend? _____

5) Did you meet with staff from another agency to discuss this application?

YES NO

Who: _____ Agency: _____ Date: _____

6) Is mitigation an option?

YES NO ?

If YES, please explain: _____

Comments: None

Name: Mike McCord Date: 4-14-03 Title: Dist. 20 Water master

WRD Contact: Caseworker: **Kerry Lefever**, Water Rights Division
503-378-8455 ext: 276 / Fax: 503-378-6203 / e-mail: Kerry.A.LEFEVER@wrđ.or.state.us

STATE OF OREGON
WATER RESOURCES DEPARTMENT

FACSIMILE TRANSMITTAL SHEET

TO: Kerry Lefevre

A 585489

DATE: 4/14/03

FROM: Mike Mc Cord, Watermaster District 20
1678 South Beaver Creek Road, Suite L
Oregon City, OR 97045
Phone (503) 722-1410
Fax (503) 722-5926

This transmission contains 2 pages. (including the cover) Please let me know if you did not receive all pages or if any pages are unreadable.

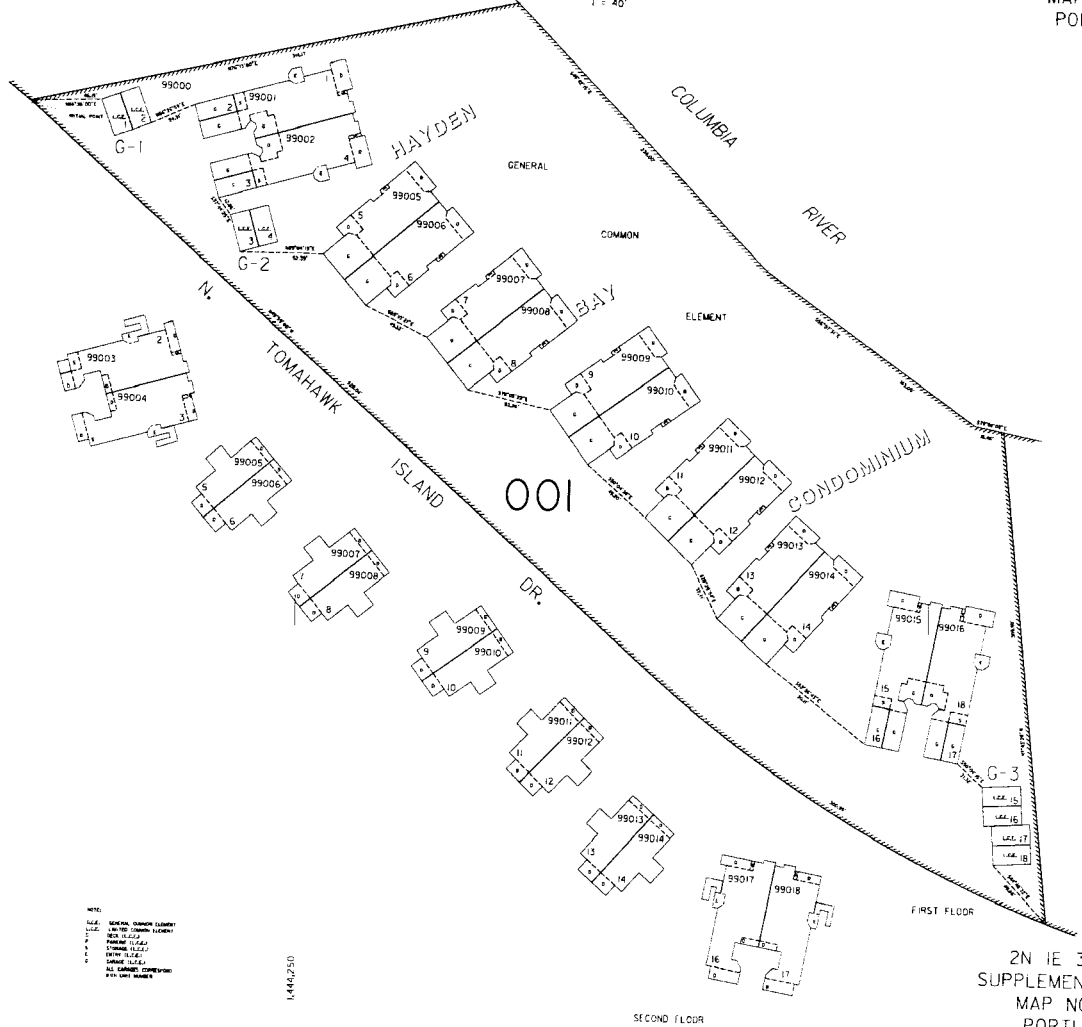
Message: _____



THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY.

SUPPLEMENTAL MAP NO. 6
SE1/4 SW1/4 SEC. 34 T.2N. R.1E. W.M.
MULTNOMAH COUNTY
1" = 40'

2N 1E 34C0
SUPPLEMENTAL
MAP NO. 6
PORTLAND



NOTE:
1. ALL: Assessor's Office
2. ALL: Assessor's Office
3. ALL: Assessor's Office
4. ALL: Assessor's Office
5. ALL: Assessor's Office
6. ALL: Assessor's Office
7. ALL: Assessor's Office
8. ALL: Assessor's Office
9. ALL: Assessor's Office
10. ALL: Assessor's Office
11. ALL: Assessor's Office
12. ALL: Assessor's Office
13. ALL: Assessor's Office
14. ALL: Assessor's Office
15. ALL: Assessor's Office
16. ALL: Assessor's Office
17. ALL: Assessor's Office
18. ALL: Assessor's Office
19. ALL: Assessor's Office
20. ALL: Assessor's Office

1444.250

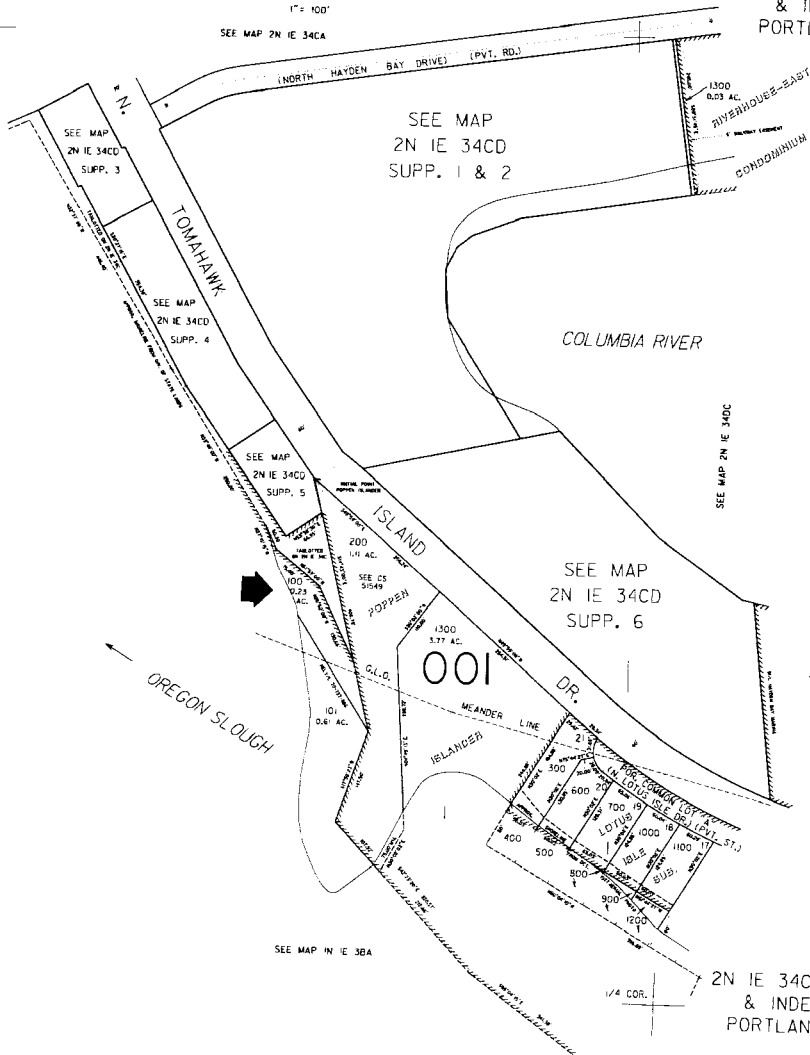
715.000

2N 1E 34C0
SUPPLEMENTAL
MAP NO. 6
PORTLAND

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

SE1/4 SW1/4 SEC. 34 T.2N. R.1E. W.M.
MULTNOMAH COUNTY
1" = 100'

2N 1E 34CD
& INDEX
PORTLAND



SEE MAP 2N 1E 34CA

SEE MAP
2N 1E 34CD
SUPP. 1 & 2

SEE MAP
2N 1E 34CD
SUPP. 3

SEE MAP
2N 1E 34CD
SUPP. 4

SEE MAP
2N 1E 34CD
SUPP. 5

SEE MAP
2N 1E 34CD
SUPP. 6

SEE MAP 1N 1E 34A

SEE MAP 2N 1E 34C

SEE MAP 2N 1E 34DC

1/16 COR.

1/4 COR.

1/4 COR.

715,000

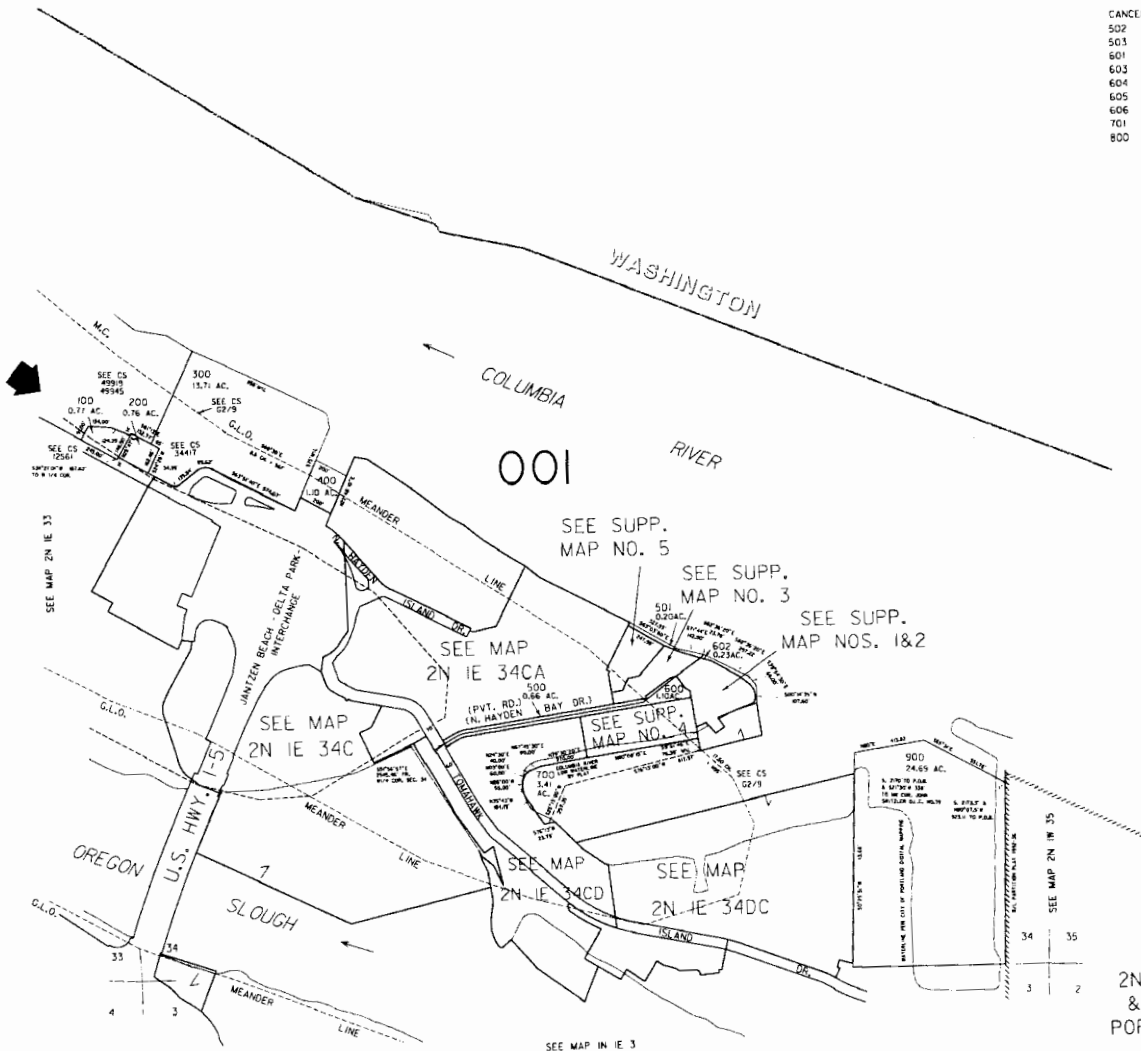
2N 1E 34CD
& INDEX
PORTLAND

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

SECTION 34 T.2N. R.1E. W.M.
MULTNOMAH COUNTY
1" = 400'

2N 1E 34
& INDEX
PORTLAND

CANCELLED NO.
502
503
601
603
604
605
606
701
800



2N 1E 34
& INDEX
PORTLAND



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
503-378-3739
FAX 503-378-8130

April 11, 2003

AMY WELCH
HAYDEN BAY CONDOMINIUMS INC
505 N TOMAHAWK ISLAND DR
PORTLAND, OR 97217

(503)916-3358

Reference: File S-85489

Dear Applicant:

**THIS IS NOT A PERMIT AND IS
SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.**

This letter is to inform you of the preliminary analysis of your water use permit application and to describe your options. In determining whether a water use permit application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The proposed use is not prohibited by law or rule.
2. The use of water from COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN for IRRIGATION OF 2.96 ACRES **is allowable** under OAR 690-519-001, the Willamette Basin Program.
3. Water in the amount of 0.037 CUBIC FOOT PER SECOND for IRRIGATION USE ON 2.96 ACRES **is available** for further appropriation.
4. There is an existing water right, namely Permit G-12812 (Application G-14196), on the land proposed for use under application S-85489. You state that the groundwater right, Permit G-12812 will be canceled if application S-85217 is approved. If, for some reason, Permit G-12812 is not canceled, the Department proposes to restrict application S-85217 to supplemental use only. This may limit/jeopardize your ability to use water under application S-85217 as described below. **(See ADDITIONAL INFORMATION REQUIRED)**

Summary of Initial Determinations

The use of 0.037 CUBIC FOOT PER SECOND from COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN for IRRIGATION OF 2.96 ACRES is allowable from March 1 through October 31 of each year.

Additional Information Required:

There is an existing right, Application G-14196, Permit G-12812, covering some the land proposed for irrigation under application S-85489. The Department must receive a completed form authorizing cancellation of the existing right, a completed affidavit of diminution of the existing right, or other means of dealing with the conflict with the existing permit and the use proposed under this application. **If one of the items requested above is not submitted prior to issuance of the Final Order and permit, if one is issued, the land in question will be made supplemental to the existing right, which will limit and/or jeopardize that portion of the right as follows:**

- If the existing certificate is found to have been forfeited the use supplemental to such certificate may also be canceled.
- You may only use the supplemental right after the primary right becomes unavailable. The primary right must be exhausted first.
- The season of use for the supplemental irrigation will be limited to that of the primary right.
- If the primary right is transferred to a new location the supplemental must also be transferred.

Please submit this information no later than Thursday, May 15, 2003. If you are unable to submit any of the requested information by this date, you may request a "Time Out from Processing" for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If a time out is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

Please reference the application number when sending any correspondence regarding the conclusions of this initial review. Comments received within the comment period will be evaluated at the next phase of the process.

To Proceed With Your Application:

If you choose to proceed with your application, you do not have to notify the Department. Your application will automatically be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a proposed final order.

Withdrawal Refunds:

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$50 processing charge per application.) To accomplish this you must notify the Department in writing by **Friday, April 25, 2003**. For your convenience you may use the enclosed "STOP PROCESSING" form.

If A Permit Is Issued It Will Likely Include The Following Conditions:

1. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.
 - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.
2. If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area.
3. The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

4. The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens and/or fishways are not necessary. The required screens and fishways are to be in place, functional, and approved by ODFW before diversion of any water.
5. Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.
6. The priority date for this application is March 07, 2003.

If you have any questions:

Questions about the status of your application, processing timelines, or your upcoming Proposed Final Order should be directed to our Water Right Information Group at 503-378-8455 extension 201. Feel free to call me at 503-378-8455 extension 276 if you have any questions regarding the contents of this letter. Please have your application number available if you call. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 158 12th ST. NE Salem, OR 97301-4172, Fax: 503-378-6203.

Sincerely,



Kerry Lefever
Senior Water Rights Technician

enclosures: Flow Chart of Water Right Process
Stop Processing Form

S-85489
wab 2-no wab
pou 2-no wab
gw

APPLICATION FACT SHEET

Mail to: *Applicant, Watermaster, District Biologist (ODFW)*
If necessary, also mail to : *Regional Water quality manager (DEQ), and DOA*

Application File Number: S-85489

Applicant: AMY WELCH FOR HAYDEN BAY CONDOMINIUMS INC.

County: Multnomah

Watermaster: 20

Priority Date: March 07, 2003

Source: COLUMBIA R, A TRIBUTARY OF PACIFIC OCEAN

Use: IRRIGATION USE ON 2.96 ACRES

Quantity: 0.037 CUBIC FOOT PER SECOND

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 26 COLUMBIA R & MISC WWM

Point of Diversion Location: SESW SECTION 34, T2N, R1E, W.M.; 870 FEET NORTH & 140 FEET WEST FROM S1/4 CORNER, SECTION 34

Place of Use: SESW 2.4 ACRES IRRIGATION SWSE 0.56 ACRES IRRIGATION, SECTION 34, TOWNSHIP 2 NORTH, RANGE 1 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, April 25, 2003

PUBLIC NOTICE DATE: Tuesday, April 15, 2003

30 DAY COMMENT DEADLINE DATE: Thursday, May 15, 2003

OREGON WATER RESOURCES DEPARTMENT



State of Oregon
Water Resources Department
158 12th ST NE, Salem, OR 97301
(503) 378-8455
www.wrd.state.or.us

FAXED
4/4/03
KZ

FAX TRANSMITTAL

TO: MIKE McCORD, WM #20 FAX NUMBER: DIRECT
DATE: 4/4/03 PAGES: 11, INCLUDING COVER SHEET
FROM: KERRY LEFEVER PHONE: (503) 378-8455 EXT. 276
COMMENTS: Application S-85489 Hayden Bay Condor

Water Availability Report

DIRECTOR'S OFFICE

- Water Resources Commission
- Legislation and Rules
- Public Information

FIELD & TECHNICAL SERVICES

- Hydrographics
- Ground Water
- Information Services
- GIS/Mapping

FAX: (503) 378-2496

ADMINISTRATIVE SERVICES

- Fiscal / Accounting
- Human Resources / Personnel
- Water Development Loan Fund
- Support Services

FIELD & TECHNICAL SERVICES

- Dam Safety
- Enforcement
- Regional Liaisons
- Transfers

FAX: (503) 378-8130

WATER RIGHTS

- Water Rights Information
- Adjudications
- Hydroelectric
- Certifications / Final Proofs
- Hearings / Contested Cases

NORTHWEST REGION

- District 16 Watermaster

FAX: (503) 378-6203

This page to be completed by the local Watermaster.

SURFACE WATER AVAILABILITY REPORT

Name of Applicant HAUDEN BAY CONDOS Application Number S-85489

1. To your knowledge, has the stream or basin that is the source for this application ever been regulated for prior rights?

Yes _____ No _____

If yes, please explain.

2. Has the stream or basin that is the source for this application ever been regulated for minimum streamflows?

Yes _____ No _____

If yes, please explain.

3. Do you observe this stream system during regular field work?

Yes _____ No _____

If yes, what are your observations for the stream?

4. Based on your observations, would there be water available in the quantity and at times needed to supply the development proposed by this application?

Yes _____ No _____ Don't know _____

What would you recommend for conditions on a permit that may be issued approving this application?

5. What other recommendations, if any, would you like to make?

Signature _____ WM District # _____ Date _____

Reduced 64%
11X17 → 8X11

SECTION 34, T.2N., R.1E., W.M.

N
SCALE: 1" = 200'
MAP BASE:
ASSESSORS MAP

33 34
4 3



WATER RIGHT APPLICATION MAP
APP #S-85409

RECEIVED

MAR 07 2003

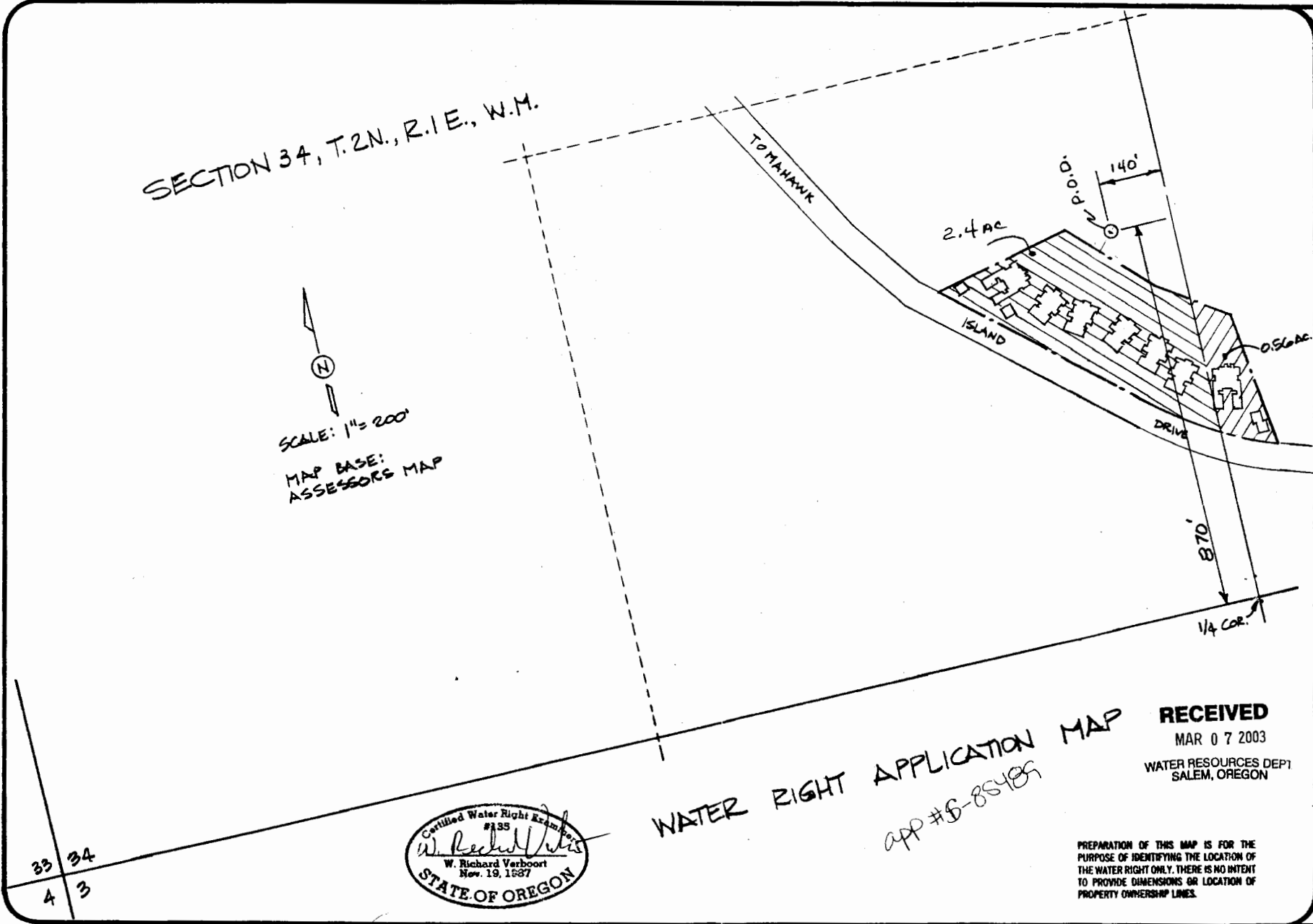
WATER RESOURCES DEPT
SALEM, OREGON

PREPARATION OF THIS MAP IS FOR THE
PURPOSE OF IDENTIFYING THE LOCATION OF
THE WATER RIGHT ONLY. THERE IS NO INTENT
TO PROVIDE DIMENSIONS OR LOCATION OF
PROPERTY OWNERSHIP LINES.

HAYDEN BAY CONDOMINIUMS, INC.
505 N TOMAHAWK ISLAND DR
PORTLAND, OR 97217

by date
designed WRY 2-20-03
drawn WRY 2-20-03
checked WRY 2-20-03
drawing no. 03-09-02
sheet no. 1/1

VERBOORT ENGINEERING
AGRICULTURE-CIVIL-WATER RESOURCES
HILLSBORO, OREGON



W. RICHARD VERBOORT - CIVIL ENGINEER
PLANNING - DESIGN - INSPECTION
CIVIL - WATER RESOURCES - AGRICULTURE
666 S.E. 36TH AVENUE, HILLSBORO, OR 97123
(503) 648-6180

WATER RESOURCES DEPARTMENT
158 12th STREET NE
SALEM, OR 97301-4172
ATT: Jerry Sauter

February 25, 2003

RE: File G-14196
Permit G-12812

Dear Mr. Sauter:

This is a follow up to your 2-12-03 letter to Hayden Bay Condominiums, Inc. regarding the referenced groundwater application and permit.

The Condominium Association is applying for a surface water application from the Columbia river for the same lands as noted in the groundwater application. They recently constructed new docking facilities with power, and plan to pump directly from the river rather than from a well.

Although a well has not been constructed, the concrete pump vault for the well is in place, ie a "start of construction".

The Association would like you to put a time out on the groundwater application until they are sure the surface water application will be approved. After that time the groundwater application should be cancelled.

Please call if there are any questions regarding the above information.

If you need to contact the Association please use the following address:

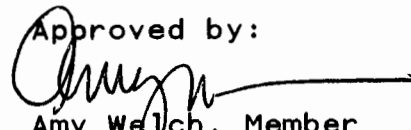
HAYDEN BAY CONDOMINIUMS, INC
C/O AMY WELCH
505 N. TOMAHAWK ISLAND DRIVE
PORTLAND, OR 97217

Thank you for your assistance with this project.

Prepared by:


W. Richard Verboort, P.E.
Civil Engineer

Approved by:


Amy Welch, Member
Hayden Bay Condominiums Inc

app # S-05485

RECEIVED

MAR 07 2003

WATER RESOURCES DEPT.
SALEM, OREGON



State of Oregon
Water Resources Department
 158 12th Street NE, Salem, OR 97310
 (503)378-8455 • (800)624-3199
 www.wrd.state.or.us

Application for a Permit to Use Surface Water

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a." Please read and refer to the instructions when completing your application. Thank you.

1. APPLICANT INFORMATION

A. Individuals

Applicant: _____
First Last

Co-applicant: _____
First Last

Mailing address: _____

City State Zip

Phone: _____
Home Work Other

*Fax: _____ *E-Mail address: _____

B. Organizations

(Corporations, associations, firms, partnerships, joint stock companies, cooperatives, public and municipal corporations)

Name of organization: Hayden Bay Condominiums, Inc.

Name and title of person applying: Amy Welch

Mailing address of organization: 505 N. Tomahawk Island Drive
Portland OR 97217
City State Zip

Phone: 503-916-3358 503-285-4007
Day Evening

*Fax: _____ *E-Mail address: _____

*Optional information

RECEIVED

MAR 07 2003

For Department Use		
App. No. <u>5-85489</u>	Permit No. _____	Date _____

WATER RESOURCES DEPT.
 SALEM, OREGON

2. SOURCE AND PROPERTY OWNERSHIP

A. The Proposed Source of Water

Provide the commonly used name of the water body from which water will be diverted, and the name of the stream or lake it flows into. If unnamed, say so:

Source 1: Columbia River Tributary to: Pacific Ocean
Source 2: _____ Tributary to: _____
Source 3: _____ Tributary to: _____
Source 4: _____ Tributary to: _____

B. Property Ownership

Do you own all the land where you propose to divert, transport, and use water?

- Yes (*Skip to section 3 "Water Use."*)
 No Please check the appropriate box below.
 I have a recorded easement or written authorization permitting access.
 I do not currently have written authorization or an easement permitting access.

List the names and mailing addresses of all affected landowners.*

See Remarks

**If more than 25 landowners are involved, a list is not required. See instructions.*

3. WATER USE

Please read the instruction booklet for more details on "type of use" definitions, how to express the amount of water you need and how to identify the water source you propose to use. You must fill out a supplemental form for some uses as they require specific information for that type of use.

A. Type(s) of Use(s)

See list of beneficial uses in the instructions.

- If your proposed use is **domestic**, indicate the number of households to be supplied with water: _____
- If your proposed use is **Irrigation**, please attach Form **I** Irrigation
- If your proposed use is **mining**, attach Form **R**
- If your proposed use is **municipal or quasi-municipal**, attach Form **M**
- If your proposed use is **commercial/industrial**, attach Form **Q**

B. Amount of Water

Provide the amount of water you propose to use from each source, for each use, in cubic feet-per-second (cfs) or gallons-per-minute (gpm). If the proposed use is from storage, provide the amount in acre-feet (af):

(1 cfs equals 448.8 gpm. 1 acre-foot equals 325,851 gallons or 43,560 cubic feet)

Source	Use	Amount	
Columbia River	Irrigation	16.8	<input type="checkbox"/> cfs <input checked="" type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af

C. Period of Use

Indicate the time of year you propose to use the water: March 1 - October 31
(For seasonal uses like irrigation give dates when water use would begin and end, e.g. March 1–October 31.)

D. Acreage

If you will be applying water to land, indicate the total number of acres where water will be applied or used: 2.96 Acres
(This number should be consistent with your application map.)

4. WATER MANAGEMENT

A. Diversion

What method will you use to divert water from the source?

- Pump (give horsepower and pump type) 3HP Electric Centrifugal
- Head-gate (give dimensions) _____
- Other means (describe) _____

B. Monitoring

How will you monitor your diversion to be sure you are within the limits of your water right (allowed rate and duty) and you are not wasting water?

- Weir
- Meter
- Periodic Sampling
- Other (describe) _____

RECEIVED

MAR 07 2003

WATER RESOURCES DEPT.
SALEM, OREGON

APP# 585485

C. Transport

How will you transport water to your place of use?

SEE REMARKS

- Ditch or canal (give average width and depth)

Width _____ Depth _____

Is the ditch or canal to be lined? Yes No

- Pipe (give diameter and total length) Small Diameter buried PVC Pipe system is in

Diameter _____ Length _____

- Other (describe) _____

D. Application/Distribution Method

What equipment will you use to apply water to your place of use? _____

Irrigation or land application method (check all that apply):

- Flood High-pressure sprinkler Low pressure sprinkler
- Drip Water cannons Center pivot system
- Hand lines Wheel lines
- Siphon tubes or gated pipe with furrows
- Other, describe Landscape type sprinklers

Distribution method

- Direct pipe from source In-line storage (tank or pond) Open canal

E. Conservation

What methods will you use to conserve water? Why did you choose this distribution or application method? Have you considered other methods to transport, apply, distribute or use water? For example, if you are using sprinkler irrigation rather than drip irrigation, explain.

Existing system is best adapted to landscape use.

5. RESOURCE PROTECTION

Protection Practices

In granting permission to use water from a stream or lake, the state encourages, and in some instances requires, careful control of activities that may affect the waterway or streamside area. See the instruction guide for a list of possible permit requirements from other agencies. Please indicate any of the practices you plan to undertake to protect water resources.

8. MAP REQUIREMENTS

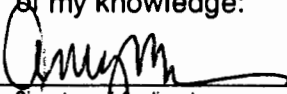
The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section, and quarter/quarter section of the proposed points of diversion and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.

9. SIGNATURE

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit to me, I may have to stop using water to allow senior water right holders to get water they are entitled to, and

I swear that all information provided in this application is true and correct to the best of my knowledge:

 _____ Signature of Applicant Board Member	3-1-03 _____ Date
Hayden Bay Condominiums, Inc. _____ Signature of Co-applicant	3-1-03 _____ Date

Before you submit your application be sure you have:

- Answered each question completely.
- Included a legible map which includes township, range, section, quarter/quarter and tax lot number.
- Included a Land Use Information Form or receipt stub signed by a local official.
- Included the legal description of all the property involved with this application. You may supply a copy of the deed, land sales contract, or title insurance policy, to meet this requirement.
- Included a check payable to the Oregon Water Resources Department for the appropriate amount.

APP# 5-85489

Diversion will be screened to prevent uptake of fish and other aquatic life.
Describe planned actions: A screen will be installed on the pump
suction.

Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas. Describe planned actions: N/A Pump to be installed on a
floating dock.

Operating equipment in a water body will be managed and timed to prevent damage to aquatic life. Describe: N/A

Water quality will be protected by preventing erosion and run-off of waste or chemical products. Describe: N/A

Other: N/A

6. PROJECT SCHEDULE

Indicate the anticipated dates that the following construction tasks should begin. If construction has already begun, or is completed, please indicate that date.

Proposed date construction will begin May 2003

Proposed date construction will be completed October 2003

Proposed date beneficial water use will begin As soon as permit is issued

7. REMARKS

If you would like to clarify any information you have provided in the application, please do so here and reference the specific application question you are addressing.

B. A permit from the Division of State Lands for the dock is
attached.

C. The irrigation system is in and is currently hooked to city
water. City water will be disconnected and the system hooked
up to the river pump.

RECEIVED

MAR 07 2003

**WATER RESOURCES DEPT.
SALEM, OREGON**



FORM I
FOR IRRIGATION WATER USE

1. Please indicate whether you are requesting a primary or supplemental irrigation water right.

Primary Supplemental

If supplemental, please indicate the number of acres that will be irrigated for each type of use.

Primary: 2.96 Acres

Secondary: _____ Acres

List the permit or certificate number of the primary water right: No. _____

2. Please list the anticipated crops you will grow and whether you will be irrigating them for a full or partial season:

- 1. Landscape Full season Partial season (from: _____ to _____)
- 2. _____ Full season Partial season (from: _____ to _____)
- 3. _____ Full season Partial season (from: _____ to _____)
- 4. _____ Full season Partial season (from: _____ to _____)

3. Indicate the maximum total number of acre-feet you expect to use in an irrigation season:

6 acre-feet

(1 acre-foot equals 12 inches of water spread over 1 acre, or 43,560 cubic feet, or 325,851 gallons.)

4. How will you schedule your applications of water? Will you be applying water in the evenings, twice a week, daily?

- Daily during daytime hours Daily during nighttime hours
- Two or three times weekly during daytime Two or three times weekly during nighttime
- Weekly, during daytime hours Weekly, during nighttime hours

Other, explain: _____

RECEIVED

MAR 07 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Last revision: October 31, 1998

APP # 585485

Mailing List for IR Copies

Application #S-85489

IR Date: April 11, 2003

Original mailed to:

Applicant: AMY WELCH
HAYDEN BAY CONDOMINIUMS INC
505 N TOMAHAWK ISLAND DR
PORTLAND, OR 97217

Copies sent to:

- 1. WRD - File # S-85489
- 2. WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

- 3. WRD - Regional Manager: NWR

<p>Copies Mailed By: <u>JTB</u> (SUPPORT STAFF) on: <u>4/11/03</u> (DATE)</p>

Note to Support: staple Division 33 Review Forms to front of copy packet for the following:

- 1) Watermaster 2) ODFW 3) DEQ (if indicated below)

Mail Copies of IR, Map, Fact Sheet to the following:

- 4. WRD - Watermaster # District 20 + **Watermaster Form**
- 5. ODFW District Biologist: Dick Caldwell + **ODFW Form 2 (L. Col./Statewide)**
- 6. DEQ: Andy Schaedel + **DEQ Form**
- 7. DOA (N.Salem/Keizer): Jim Johnson

Copies sent to Other Interested Persons (*CWRE, Agent, Well Driller, Commenter, etc.*)

- 8. Dick Verboort, CWRE #135

9. _____

ID# KL

COPY#IT:IR

REMINDER: Copy all IR's for uses in the geographic Umatilla Basin to Confederated Tribes of the Umatilla Indian Reservation, PO Box 638, 73239 Confederated Way, Pendleton, OR 97801.

REMINDER: Copy all IR's for uses in the Klamath Basin to DEQ and ODFW contacts, regardless of whether they are subject to Division 33. (If they are not subject to Division 33, do not include Division 33 forms.)

Permit Cancellation Authorization

TO: WATER RESOURCES DIRECTOR
WATER RESOURCES DEPARTMENT
WATER RIGHTS SECTION
158 12TH STREET NE
SALEM, OR 97301-4172

I hereby authorize the cancellation of our water use
Application No. _____, Permit No. _____, which describes
a right to develop the use of up to _____ cfs/gpm/acre-feet
of water from _____ for the purpose of
(Source)

(Use)

Sincerely,

Name (Print or type)

Address

Signature

Date

WATER AVAILABILITY
FOR

COLUMBIA + SNAKE R. AVERAGE MONTHLY DISCHARGES AND CHANGES IN STORAGE IN CFS

FOR THE 25-YEAR BASE PERIOD, WATER-YEARS 1961-85, INCLUSIVE

THE ATTACHED TABLE CONTAINS AVERAGE DISCHARGES AND CHANGES IN STORAGE FOR SELECTED GAGING STATIONS AND RESERVOIRS IN THE PACIFIC NORTHWEST FOR A 25-YEAR PERIOD, WATER YEARS 1961-85, INCLUSIVE. THE AVERAGES ARE BASED ON OBSERVED RECORDS EXCEPT FOR THOSE STATIONS MARKED (ADJ), WHICH ARE ADJUSTED FOR UPSTREAM STORAGE AND DIVERSIONS AS INDICATED BY FOOTNOTES (COLUMN F), AND EXPLAINED ON THE FINAL PAGE. AVERAGE CHANGES IN STORAGE FOR RESERVOIRS BUILT AFTER OCTOBER 1960 ARE BASED ON ACTUAL MONTHLY CHANGES THAT WERE DIVIDED BY THE YEARS OF RECORD. FOR DUNCAN AND ARROW LAKES, NATURAL STORAGE PRIOR TO DAM CONSTRUCTION WAS INCLUDED TO COMPLETE THE 25-YEAR AVERAGE. FOR RESERVOIRS WITH LESS THAN 25 YEARS OF RECORD, THE DATE STORAGE BEGAN IS SHOWN BY FOOTNOTES. THE STATIONS ARE IN DOWNSTREAM ORDER, IDENTIFIED BY USGS NUMBERS. THE EIGHT-DIGIT STATION NUMBERS WERE ASSIGNED FOR THIS PROJECT AND ARE NOT OFFICIAL IDENTIFIERS.

A 25-YEAR BASE PERIOD WAS CHOSEN BY THE COLUMBIA RIVER WATER MANAGEMENT GROUP FOR COMPARISON OF HISTORICAL AVERAGES WITH CURRENT HYDROMETEOROLOGICAL CONDITIONS. IT IS ANTICIPATED THAT THIS BASE PERIOD WILL BE UPDATED IN FIVE YEARS TO A 30-YEAR BASE FOR THE PERIOD 1961-90.

THE AVERAGES CONTAINED HEREIN ARE BASED ON RECORDS FROM REPORTS AND FILES OF THE U.S. GEOLOGICAL SURVEY, WATER SURVEY OF CANADA, U.S. BUREAU OF RECLAMATION, OR RECORDS FURNISHED BY ORGANIZATIONS AS INDICATED BY THE FOOTNOTES.

COLUMBIA RIVER WATER MANAGEMENT GROUP
DEPLETION TASK FORCE
JANUARY 1987

ADJ = ADJUSTED FOR STORAGE E

AVERAGE DISCHARGE OR CHANGE IN STORAGE IN CFS

F STA NO	STATION NAME	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
*13351000	PALOUSE R AT HOOPER, WASH	69	139	471	1110	1742	1648	1264	624	250	76	32	42
*13353000	SNAKE R BL ICE HARBOR DAM, WASH	27378	31971	38506	44426	50714	58560	76421	113070	120665	46660	23358	25778
95*13353000	SNAKE R BL ICE HARBOR DAM (ADJ)	26992	30337	35650	40002	47911	56452	80177	123489	127139	46270	22767	23252
*14010000	SF WALLA WALLA R NR MILTON, OREG	112	138	180	206	209	216	268	305	208	126	113	110
*14018500	WALLA WALLA R NR TOUCHET, WASH	71	277	889	1257	1338	1228	1082	674	276	46	21	42
96*14019201	MCHARY DAM OUTFLOW	137952	117370	133768	150471	164129	174557	197585	285400	356193	223501	140740	109400
97*14019201	MCHARY DAM OUTFLOW (ADJ)	82525	84386	89359	91844	108742	127525	207070	421394	508568	266038	139770	95931
*14020000	UMATILLA R AB MCHM C NR GIBBON, CR	58	122	258	317	352	380	504	439	197	65	50	50
*14021000	UMATILLA R AT PENDLETON, OREG	71	213	619	804	900	1012	1222	862	314	74	44	50
*14022500	MCKAY C NR PILOT ROCK, OREG	5	36	137	215	210	253	266	117	35	4	1	2
*14032000	BUTTER C NR PINE CITY, OREG	4	10	31	56	61	77	78	51	17	4	2	2
*14033500	UMATILLA R NR UMATILLA, OREG	79	228	636	918	1066	1109	1116	546	101	14	11	25
*14037500	STRAMBRY C AB SL C NR PR CTY, OR	3	4	4	4	4	4	7	32	59	26	8	4
*14042500	CAHAS C NR UKIAH, OREG	8	26	63	100	114	181	303	209	70	14	6	6
*14044000	NF JOHN DAY R AT RITTER, OREG	47	81	144	212	274	471	710	767	423	95	37	37
*14046000	NF JOHN DAY R AT MONUMENT, OREG	179	378	923	1315	1645	2408	3468	3846	1986	466	157	146
*14046500	JOHN DAY R AT SERVICE CREEK, OREG	367	694	1495	2130	2687	3730	5040	5250	2810	681	214	227
*14048000	JOHN DAY R AT McDONALD FERRY, OREG	365	725	1698	2409	3136	4121	5355	5513	3068	772	226	224
98*14048005	LK UMATILLA AT JOHN DAY DAM, OREG	-1900	-345	-443	140	529	-38	1383	-490	2297	738	277	185
*14050000	DESCHUTES R BL SNW C NR LAPINE, CR	182	150	132	116	106	100	102	127	156	178	226	218
99*14053000	CR PRAIRIE RES NR LAPINE, OR-INFL	253	231	212	169	148	133	141	230	290	262	293	284
38*14053500	CRANE PRAIRIE RES NR LAPINE, OREG	41	126	104	49	39	30	-14	-66	-96	-107		
38*14056000	WICKIUP RES NR LAPINE, OREG	354	496	414	346	304	289	13	-373	-528	-651		
38*14059500	CRESCENT LK NR CRESCENT, OREG	35	64	72	51	39	28	27	43	-9	-127		
*14060000	CRESCENT C NR CRESCENT, OREG	16	10	12	16	16	16	14	53	112	171		
100*14060000	CRESCENT C NR CRESCENT (ADJ)	51	74	85	67	55	44	42	96	103	44		
*14063000	L DESCHUTES R NR LAPINE, OREG	87	123	188	198	219	220	273	373	349	258		
100*14063000	L DESCHUTES R NR LAPINE (ADJ)	122	187	260	249	258	247	301	416	340	131		
*14064500	DESCHUTES R AT BNHM FLS NR BND, OR	1069	741	844	904	931	935	1284	1908	2214	2345		
101*14072500	COL SOUTHERN CA NR TUMALO, OREG	8	4	1	0	1	2	8	78	115	92		
*14073001	TUMALO C+COL SUTHRN CA NR BEND, OR	67	75	81	75	79	71	80	158	233	142		
*14075000	SQUAW C NR SISTERS, OREG	63	77	90	84	80	65	68	128	226	184		
38*14080400	PRINEVILLE RES NR PRINEVILLE, OREG	-113	-1	45	45	158	416	318	-27	-134	-216	-226	-189
*14080500	CROOKED R NR PRINEVILLE, OREG	162	150	288	391	514	591	839	610	265	239	229	200
102*14080500	CROOKED R NR PRINEVILLE (ADJ)	53	150	333	436	673	1007	1158	584	131	23	3	11
38*14085100	OCHOCHO RES NR PRINEVILLE, OREG	-9	9	48	60	81	84	85	-5	-61	-125	-96	-45
103*14085100	FIVE RES IN DESCHUTES BASIN, OREG	314	694	683	550	620	846	429	-428	-829	-1226	-948	-491
104*14092100	LK BILLY CHINDOK NR METOLIUS, OR	24	-17	-82	-123	258	94	93	80	37	32	28	-6
*14101500	WHITE R BL TYGH VALLEY, OREG	141	249	537	695	730	610	601	640	419	185	129	122
*14103000	DESCHUTES R AT MOODY NR BIGGS, OR	4704	5491	6800	7437	7475	7192	6745	6010	5388	4673	4441	4484

AVERAGE DISCHARGE OR CHANGE IN STORAGE IN CFS

F STA NO	STATION NAME	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
*14191000	WILLAMETTE R AT SALEM, OREG	13859	31114	52192	49059	37209	30175	23562	19088	13219	7479	7208	9819
119*14191000	WILLAMETTE R AT SALEM (ADJ)	7181	27586	51486	50440	42664	36008	29233	22338	13737	6142	3854	4255
*14209000	OAK GROVE FK AB PWRPLANT INTAKE, OR	397	496	589	615	593	572	558	613	471	335	312	343
*14209500	CLACKAMAS R AB THREE LYNX C, OREG	1059	2298	3415	3268	2986	2562	2540	2698	1784	950	768	804
*14210000	CLACKAMAS R AT ESTACADA, OREG	1373	3283	4986	4795	4235	3581	3515	3641	2354	1204	911	973
120*14211720	WILLAMETTE RIVER AT PORTLAND, OREG	16660	42572	76055	74437	59071	47886	36488	27777	17972	9667	8414	11301
119*14211720	WILLAMETTE RIVER AT PORTLAND (ADJ)	9982	39044	75349	75817	64527	53719	42158	31026	18491	8330	5060	5738
*14217600	SWIFT RES NR COUGAR, WASH	-637	-446	-524	-281	-156	-393	887	1240	380	97	10	-199
*14218500	YALE RES NR YALE, WASH	-265	130	55	-129	21	-6	268	180	197	-8	-4	-479
*14220000	LK MERWIN AT ARIEL, WASH	6	-104	-29	-34	-20	138	39	140	53	40	-27	-126
*14220000	SHIFT, YALE AND MERWIN RES, WASH	-896	-421	-498	-444	-155	-261	1195	1559	630	130	-21	-805
*14220500	LEWIS R AT ARIEL, WASH	3183	7007	9451	8746	7721	6469	4719	4269	3533	1910	1304	2179
121*14220500	LEWIS R AT ARIEL (ADJ)	2287	6586	8953	8302	7566	6209	5914	5828	4163	2040	1283	1374
95*14234800	RIFFE LAKE NR MOSSYROCK, WASH	-1828	-1766	-1004	-658	-107	-307	1820	4284	2154	-585	-502	-782
122*14237800	MAYFIELD RES NR SILVER CREEK, WASH	13	15	-19	12	-7	30	40	39	-4	21	-2	-48
*14238000	COHLITZ R BL MAYFIELD DAM, WASH	3846	7626	10896	9978	8547	6840	5902	6188	7184	4599	2605	2564
123*14238000	COHLITZ R BL MAYFIELD DAM (ADJ)	2615	6439	10196	9542	8468	6658	7251	9311	8731	4198	2241	1955
*14243000	COHLITZ R AT CASTLE ROCK, WASH	5045	11276	16871	16010	13636	10972	9353	8915	9179	5730	3327	3334
123*14243000	COHLITZ R AT CASTLE ROCK (ADJ)	3814	10089	16171	15573	13557	10790	10702	12037	10726	5328	2963	2725
105*14280000	COLUMBIA R AT THE MOUTH	148764	210480	288152	300140	293318	283760	283128	347528	412680	263908	165084	138564
*124*14280000	COLUMBIA R AT THE MOUTH (ADJ)	113241	172126	241538	242107	243512	242092	301822	491100	569405	305367	160576	118250
*14301000	NEHALEM R NR FOSS, OREG	772	3913	6638	6629	5276	4522	2612	1201	612	273	151	236
*14301500	WILSON R NR TILLAMOOK, OREG	508	1895	2719	2589	2120	1772	1101	596	339	170	109	165
*14305500	SILETZ R AT SILETZ, OREG	540	2430	3548	3327	2670	2276	1414	768	484	223	140	194
*14306500	ALSEA R NR TIDEWATER, OREG	304	1874	3681	3575	3004	2600	1509	777	401	190	118	132
*14313000	LEMOLO LK NR TOKETEE FALLS, OREG	-63	-23	-7	-19	-5	-8	36	89	11	5	2	-19
*14313501	N UMPQUA NR T FLS & LEMOLO 1 PC, OR	445	432	452	455	429	440	408	484	559	419	370	381
125*14313501	N UMPQUA NR T FLS & LEMOLO 1 (ADJ)	345	372	407	397	391	397	412	526	518	387	340	328
*14321000	UMPQUA R NR ELKTON, OREG	1852	8625	16850	16709	13763	12749	9470	6293	3318	1611	1179	1214
*14359000	ROGUE R AT RAYGOLD, OREG	1522	2763	4993	4985	4229	4282	4015	3731	2691	1867	1665	1523
126*14359000	ROGUE R AT RAYGOLD, OREG (ADJ)	1463	2759	5113	5127	4624	4542	4144	3818	2661	1581	1331	1337

261,000
267,000

AVERAGE DISCHARGE OR CHANGE IN STORAGE IN CFS

F STA NO	STATION NAME	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
105*14103000	DESCHUTES AT MOODY NR BIGGS (ADJ)	4724	5467	6731	7329	7703	7275	6826	6080	5420	4701	4466	4479
*14105700	COLUMBIA R AT THE DALLES, OREG	113777	123017	142317	160253	174880	186542	208764	296371	364667	227567	143765	113016
*106*14105700	COLUMBIA R AT THE DALLES (ADJ)	87059	89799	97607	101721	119852	139483	219244	432012	518696	270634	142995	99679
*14113000	KLICKITAT R NR PITT, WASH	780	982	1590	2148	2480	2361	2211	2463	2086	1222	871	786
*14118500	WF HOOD R NR DEE, OREG	249	632	935	950	853	685	697	662	452	250	180	175
107*14120000	HOOD R AT TCKR BRDG NR HOOD R, OR	481	1110	1683	1723	1650	1316	1287	1230	900	534	380	370
*14123500	WHITE SALMON R NR UNDERHOOD, WASH	634	846	1276	1526	1691	1602	1484	1505	1287	892	700	637
*14137000	SANDY R NR MARHOT, OREG	592	1534	2363	2358	1979	1616	1750	1772	1222	656	449	433
*108*14144700	COLUMBIA R AT VANCOUVER, WASH	118488	134848	162136	179692	194054	202728	221640	304892	374964	237660	149081	117744
*106*14144700	COL R AT VANCOUVER, WASH (ADJ)	91770	101630	117426	121160	139026	155670	232120	440533	528993	280728	148311	104408
109*14145100	HILLS C LK NR OAKRIDGE, OREG	-767	-426	-77	221	721	828	633	433	144	-101	-478	-838
*14147500	NF MF WILLAMETTE R NR OAKRIDGE, OR	253	849	1482	1386	1231	1087	1105	1030	647	294	187	174
*14148000	MF WILLAMETTE R BL NF NR OKRDOGE, OR	1808	3475	5210	4634	3505	2970	3100	3291	2504	1336	1320	1631
110*14148000	MF BL NF NR OAKRIDGE, OR (ADJ)	1072	3067	5136	4846	4197	3764	3707	3707	2643	1235	842	794
*14149000	LOOKOUT POINT LK NR LOWELL, OREG	-1489	-1034	-161	197	1002	1030	1321	892	208	-231	-564	-1108
111*14150900	FALL C LK NR LOWELL, OREG	-528	-166	-16	192	532	504	399	198	0	-200	-331	-519
*14152000	MF WILLAMETTE R AT JASPER, OREG	4080	6418	8290	6990	4301	3508	3021	3236	2846	1945	2296	3364
*14153000	COTTAGE GROVE LK NR CTTGE GRVE, OR	-132	12	-5	25	104	138	117	63	-3	-30	-90	-192
*14154500	ROW R AB PITCHER C NR DORENA, OREG	151	840	1325	1239	1017	973	828	555	250	75	42	55
*14155000	DORENA LK NR COTTAGE GROVE, OREG	-303	81	-58	96	170	335	266	151	-18	-102	-261	-328
*14157500	CF WILLAMETTE R NR GOSHEN, OREG	755	2044	3753	3357	2601	2206	1613	963	519	266	413	630
*14159000	MCKENZIE R AT MCKENZIE BRIDGE, OR	1158	1659	2280	2209	2141	1953	1967	2109	1785	1434	1239	1146
112*14159400	COUGAR LK NR RAINBOW, OREG	-649	-391	-0	166	465	525	624	407	64	-84	-398	-610
*14159500	SF MCKENZIE R NP RAINBOW, OREG	867	1219	1453	1192	810	597	573	828	699	411	574	744
113*14162100	BLUE R LK NR BLUE R, OREG	-132	-34	-84	99	377	347	333	143	-5	-307	-486	-199
*14162500	MCKENZIE R NR VIDA, OREG	2769	4697	6684	6096	5159	4479	4294	4557	3650	2652	2601	2500
*14168000	FERN RIDGE LK NR ELMIRA, OREG	-795	-295	57	178	366	571	236	40	-26	-92	-99	-122
114*14168000	FIVE RES IN U WILLAMETTE BASIN, OR	-1721	-351	-75	520	1322	1684	1165	510	-50	-593	-1045	-1193
*14170000	LONG TOM R AT MONROE, OREG	849	1009	1993	2034	1411	918	557	250	81	38	43	112
*14174000	WILLAMETTE R AT ALBANY, OREG	9030	17821	30873	29118	22191	18090	14110	11351	8355	5324	5473	6827
115*14174000	WILLAMETTE R AT ALBANY, OREG (ADJ)	4508	15677	30551	30186	25618	22066	17773	13532	8705	4329	3039	3155
*14180500	DETROIT LK NR DETROIT, OREG	-1344	-940	-155	191	1130	1041	1274	549	136	-156	-511	-1149
*14181500	N SANTIAM R AT NIAGARA, OREG	2421	3708	4245	3539	2299	1792	1637	2434	1894	1203	1259	1912
116*14181500	N SANTIAM R AT NIAGARA, OREG (ADJ)	1077	2769	4090	3729	3429	2832	2911	2983	2030	1047	748	762
*14183000	N SANTIAM R AT MEHAMA, OREG	2827	5304	6668	5729	4133	3350	3010	3576	2553	1423	1376	2071
117*14186100	GREEN PETER LK NR FOSTER, OREG	-816	-474	-324	151	1093	1005	933	492	36	-248	-538	-971
*14187500	S SANTIAM R AT WATERLOO, OREG	1894	4722	6757	5853	4263	3529	3139	2573	1570	717	695	1160
*14189000	SANTIAM R AT JEFFERSON, OREG	4777	11500	17071	15255	11288	9215	7724	7027	4386	1901	1664	2972
118*14189000	SANTIAM R AT JEFFERSON, OREG (ADJ)	2620	10117	16688	15567	13316	11071	9732	8095	4555	1558	744	1081
*14190500	LUCKIAMUTE R NR SUVER, OREG	132	998	2281	2271	1809	1501	844	407	192	70	36	51

This page to be completed by the local Watermaster.

SURFACE WATER AVAILABILITY REPORT

Name of Applicant HAYDEN BAY CONDOS Application Number S-85489

1. To your knowledge, has the stream or basin that is the source for this application ever been regulated for prior rights?

Yes _____ No

If yes, please explain.

2. Has the stream or basin that is the source for this application ever been regulated for minimum streamflows?

Yes _____ No

If yes, please explain.

3. Do you observe this stream system during regular field work?

Yes No _____

If yes, what are your observations for the stream?

cat is a big river.

4. Based on your observations, would there be water available in the quantity and at times needed to supply the development proposed by this application?

Yes No Don't know _____

What would you recommend for conditions on a permit that may be issued approving this application?

0-57

5. What other recommendations, if any, would you like to make?

Signature Michael L. ConQ WM District # 20 Date 4-7-03

OREGON WATER RESOURCES DEPARTMENT
ADMINISTRATIVE RULES
CHAPTER 690
DIVISION 519
COLUMBIA RIVER BASIN PROGRAM

Classifications

690-519-001

(1) The maximum economic development of this state and the attainment of the highest and best use of the waters of the Columbia River from the Oregon-Washington border near river mile 309 to the confluence with the Pacific Ocean and the attainment of an integrated and coordinated program for the benefit of the state will be furthered through utilization of the aforementioned waters only for instream use for power development, navigation, recreation, wildlife and fish life, and the waters of the Columbia River are hereby so classified with the following exception:

The maximum economic development of this state, the attainment of the highest and best use of 30 million acre-feet annually of natural flows of the Columbia River, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, mining, industrial, agricultural use, irrigation, recreation, power development, pollution abatement, wildlife and fish life uses, and the 30 million acre-feet annually of natural flows of the Columbia River are hereby so classified and reserved for exclusive use within the State of Oregon.

(2) Applications for the use of water for any purposes contrary to classifications specified in the basin program shall not be accepted or granted except as provided by law. The Director shall notify the Board and other interested individuals or agencies of the intent to accept an application for use in conflict with the adopted program in accordance with ORS 536.380 if the proposed use will not have a significant impact on any other water use as provided in OAR 690-519-001 through 690-519-006.

(3) The planning, construction and operation of any structures or works for the utilization of water in accordance with the aforementioned classifications are to conform with the applicable provisions of ORS 536.310, including, but not restricted to, the recommendation of the multiple purpose concept.

Power Operations

690-519-002

(1) It is of the highest priority and in the public interest that mainstem federal project operators shall provide instream flows in the Columbia River sufficient to support fish life, navigation and recreational uses, and that federal project operators shall incorporate such flow levels as a firm requirement in all power system planning and operation agreements and procedures.

(2) Hydropower peaking operations which do not cause excessive reservoir fluctuations to interfere with beneficial uses of water are declared to be in the public interest. To minimize adverse impacts on other beneficial water uses, federal project operators shall not exceed project limits on reservoir rates of change.

Out-of-State Appropriations

690-519-003

To support present and proposed resource development in Oregon no out-of-state appropriations of water shall be made or granted by any agency or public corporation of the state for the waters of the Columbia River or its tributaries.

Resource Management

690-519-004

(1) A combination of additional storage development, wise use of available ground water supplies and implementation of cost effective conservation measures is required to satisfy future water demands in the Columbia Basin and should be fostered and encouraged.

(2) It is in the public interest to have one organization responsible for the coordination of the various resource management agencies to effectively manage the Columbia River for the maximum beneficial use and control of the water resources.

Water Quality

690-519-005

Rights to the use of water for industrial or municipal purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with recreational, fish life, or other beneficial uses of water.

Existing Rights

690-519-006

This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.

Analysis for Application: S85489

Location: 2N-1E-34-SWSE

Uses: IR 0.56 P

Basins Records Found: 0

WaterMaster Districts Records Found: 0

WAB Records Found: 0

County

COUNTY	FIPS
Multnomah	41051

Records Found: 1

Groundwater Restricted Records Found: 0

Divison 33 Area

DIV33
In a Div33 area

Records Found: 1

Rule 4D

RULE4D
In a Rule4D Area

Records Found: 1

303D Streams Records Found: 0

303D Lakes Records Found: 0

Location: 2N-1E-34-SESW**Uses:** IR 2.4 P**Basins Records Found: 0****WaterMaster Districts Records Found: 0****WAB Records Found: 0****County**

COUNTY	FIPS
Multnomah	41051

Records Found: 1**Groundwater Restricted Records Found: 0****Divison 33 Area**

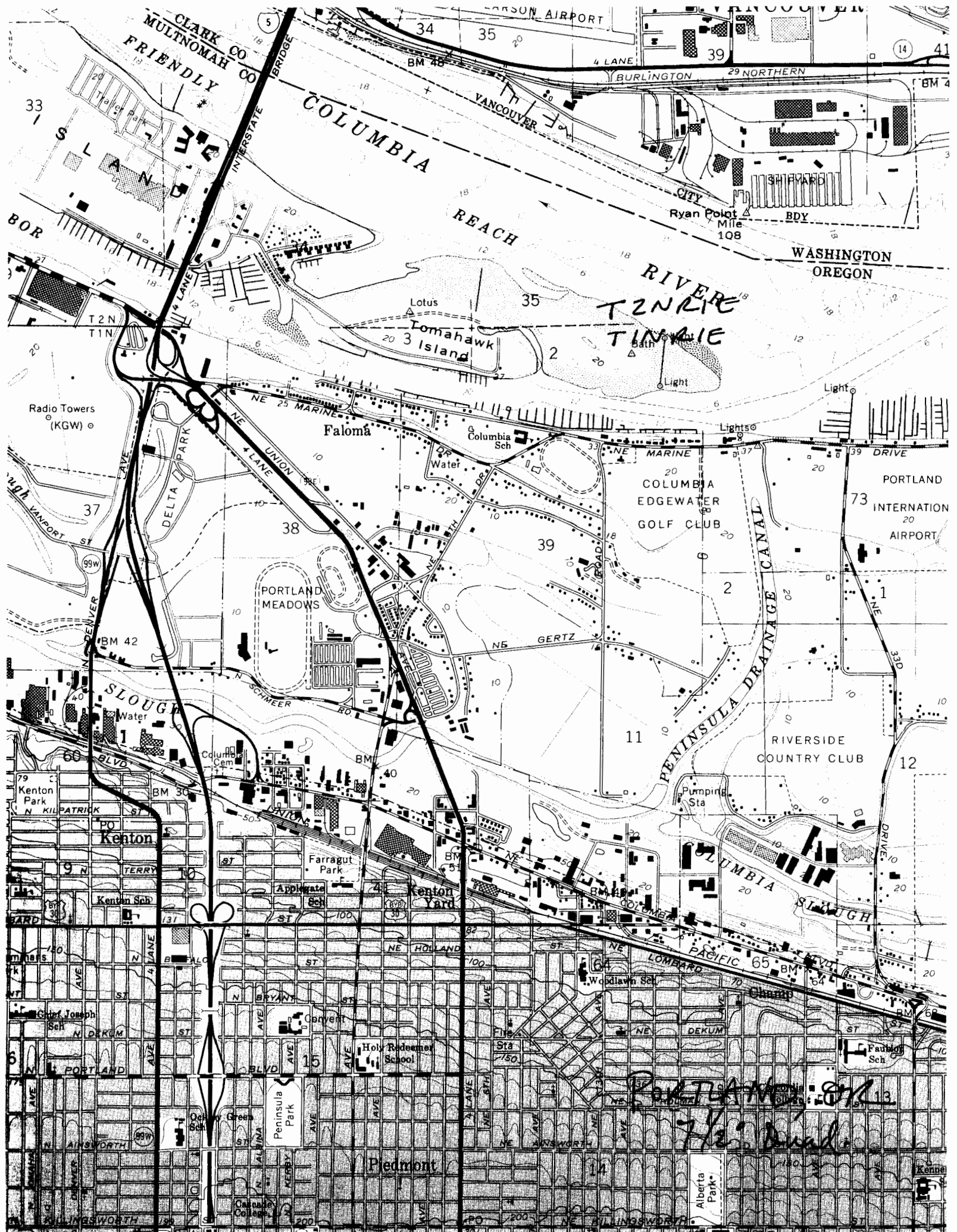
DIV33
In a Div33 area

Records Found: 1**Rule 4D**

RULE4D
In a Rule4D Area

Records Found: 1**303D Streams Records Found: 0****303D Lakes Records Found: 0**

o



CLARK CO
MULTNOMAH CO
FRIENDLY

COLUMBIA
RIVER

REACH

TOMAHAWK
ISLAND

FALOMA

PORTLAND
MEADOWS

KENTON

PENINSULA
PARK

Piedmont

PORTLAND BR
Hillside

RIVERSIDE
COUNTRY CLUB

PENINSULA DRAINAGE CANAL

COLUMBIA
SLOUGH

PACIFIC 65 BLVD

PORTLAND
INTERNATIONAL
AIRPORT

WASHINGTON
OREGON

CITY

Ryan Point
Mile 108

SHIPYARD

BDY

Lotus
Tomahawk
Island

Light

Light

Lights

Radio Towers
(KGW)

DELTA PARK

SLOUGH

Kenton Park
N KILPATRICK ST

Kenton Sch

Farragut Park

Applegate Sch

Kenton Yard

Holy Redeemer School

Fire Sta 150

W. Woodlawn Sch

Peninsula Park

Alberta Park

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

Vermon Sch

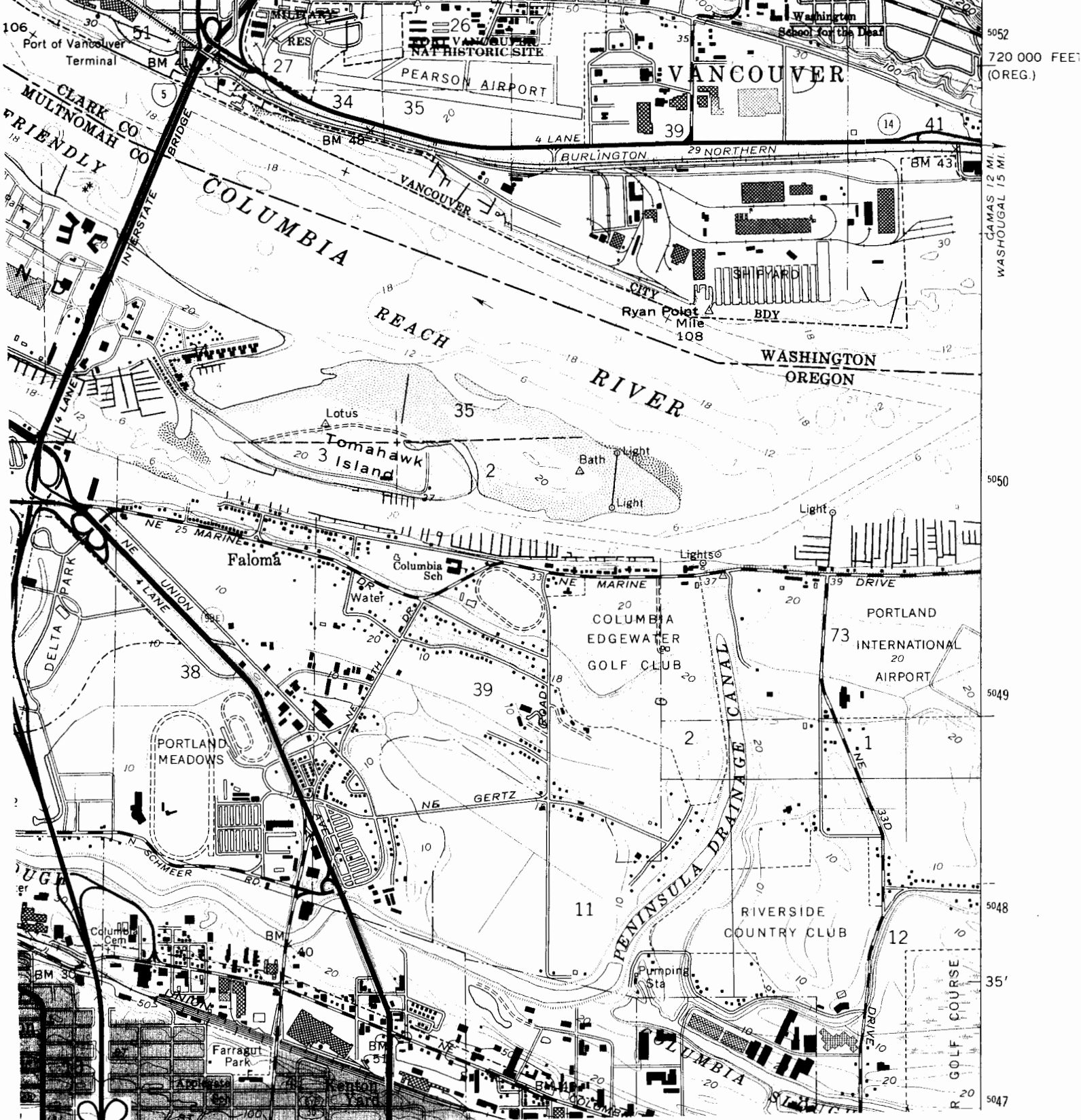
Vermon Sch

Vermon Sch

PORTLAND QUADRANGLE
 OREGON-WASHINGTON
 7.5 MINUTE SERIES (TOPOGRAPHIC)
 SW/4 PORTLAND 15' QUADRANGLE

1475 11 NE
 ORCHART

925 KELSO 40 MI. SALMON CREEK 6.1 MI. 40' 1 450 000 FEET (OREG.) VANCOUVER (P.O.) 2 MI. R. I. E. 122° 37' 30" 45° 37' 30"



5052
 720 000 FEET
 (OREG.)

CAMAS 12 MI.
 WASHOUGAL 15 MI.

5050

5049

5048

35'

5047

Platcard Report

Township 2N Range 1E Section 34



App# Priority	Permit/ Certificate	Claim/ Decree	Status dlc/lot	NE				NW				SW				SE				Govt Lot	DLC	
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
12/08/1941	-	GR1593					IM				IM	IM	IM	IM	IM		IM					
12/26/1943	-	GR1594					IM				IM	IM	IM	IM	IM		IM					
G5966 12/29/1972	G5658 67340		CN lot: 3											CM CN			CM CN					
12/29/1972			CN lot: 4											CM CN	CM CN							
G5967 12/29/1972	G5659 67341		lot: 3										CM			CM						
12/29/1972			lot: 4											CM	CM							
G7578 11/12/1976	G8755 -														MU							
G8595 12/29/1977	G7954 67342																QM	QM	QM			
G10906 03/25/1983	G10124 -														MU							
G11306 08/17/1984	G10455 -														MU							
G11354 03/01/1985	G10479 -														MU							
G14196 11/07/1995	G12812 -																2.4 IR			0.56 IR		

*same lands
Applicant proposes to cancel the GW Permit
if S-85489 is approved.*

Page: 1 [2](#) [Next](#) [Last](#)

[Return to Platcard Query Screen](#)

Paul R. Cleary, Director

Oregon Water Resources Department • 158 12th ST. NE • Salem, OR 97310 • Phone: (503)378-8455 • Fax: (503)378-2496

Run Time: 7 seconds

Platcard Report

Township 2N Range 1E Section 34

	App# Priority	Permit/ Certificate	Claim/ Decree	Status dlc/lot	NE				NW				SW				SE				Govt Lot	DLC
					NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
NCR ①	S73489 07/20/1993	S51741 -	}													0.43 IR						
NCR ①	S73490 07/20/1993	S51742 -														0.18 IR			0.18 IR			
NCR ①	S73491 07/20/1993	S51743 -																	0.59 IR			
NCR ①	S73492 07/20/1993	S51744 -																	0.29 IR			
NCR ①	S73493 07/20/1993	S51745 -																	0.36 IR			
NCR ①	S73495 07/20/1993	S51747 -																	0.61 IR			
NCR ①	S73497 07/20/1993	S51749 -																	0.3 IR			
NCR ①	S73498 07/20/1993	S51750 -																	0.21 IR			
①	S85489 03/07/2003	-	} SUBJECT FILE														2.4 IR					

Page: [First](#) [Previous](#) [1](#) [2](#)

[Return to Platcard Query Screen](#)

Paul R. Cleary, Director

Oregon Water Resources Department • 158 12th ST. NE • Salem, OR 97310 • Phone: (503)378-8455 • Fax: (503)378-2496

Run Time: 6 seconds



State of Oregon
Water Resources Department
 158 12th Street NE, Salem, OR 97310
 (503)378-8455 • (800)624-3199
 www.wrd.state.or.us

Application for a Permit to Use Surface Water

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a." Please read and refer to the instructions when completing your application. Thank you.

1. APPLICANT INFORMATION

A. Individuals

Applicant: _____
First Last

Co-applicant: _____
First Last

Mailing address: _____

City State Zip

Phone: _____
Home Work Other

*Fax: _____ *E-Mail address: _____

B. Organizations

(Corporations, associations, firms, partnerships, joint stock companies, cooperatives, public and municipal corporations)

Name of organization: Hayden Bay Condominiums, Inc.

Name and title of person applying: Amy Welch

Mailing address of organization: 505 N. Tomahawk Island Drive
Portland OR 97217
City State Zip

Phone: 503-916-3358 503-285-4007
Day Evening

*Fax: _____ *E-Mail address: _____

*Optional information

RECEIVED

MAR 07 2003

For Department Use		
App. No. <u>S-85489</u>	Permit No. _____	Date _____

WATER RESOURCES DEPT.
 SALEM, OREGON

2. SOURCE AND PROPERTY OWNERSHIP

A. The Proposed Source of Water

Provide the commonly used name of the water body from which water will be diverted, and the name of the stream or lake it flows into. If unnamed, say so:

Source 1: Columbia River Tributary to: Pacific Ocean

Source 2: _____ Tributary to: _____

Source 3: _____ Tributary to: _____

Source 4: _____ Tributary to: _____

B. Property Ownership

Do you own all the land where you propose to divert, transport, and use water?

- Yes (Skip to section 3 "Water Use.")
- No Please check the appropriate box below.
 - I have a recorded easement or written authorization permitting access.
 - I do not currently have written authorization or an easement permitting access.

List the names and mailing addresses of all affected landowners.*

See Remarks

**If more than 25 landowners are involved, a list is not required. See instructions.*

3. WATER USE

Please read the instruction booklet for more details on "type of use" definitions, how to express the amount of water you need and how to identify the water source you propose to use. You must fill out a supplemental form for some uses as they require specific information for that type of use.

A. Type(s) of Use(s)

See list of beneficial uses in the instructions.

- If your proposed use is **domestic**, indicate the number of households to be supplied with water: _____
- If your proposed use is **Irrigation**, please attach Form I Irrigation
- If your proposed use is **mining**, attach Form R
- If your proposed use is **municipal or quasi-municipal**, attach Form M
- If your proposed use is **commercial/industrial**, attach Form Q

B. Amount of Water

Provide the amount of water you propose to use from each source, for each use, in cubic feet-per-second (cfs) or gallons-per-minute (gpm). If the proposed use is from storage, provide the amount in acre-feet (af):

(1 cfs equals 448.8 gpm. 1 acre-foot equals 325,851 gallons or 43,560 cubic feet)

Source	Use	Amount	
Columbia River	Irrigation	16.8	<input type="checkbox"/> cfs <input checked="" type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af

C. Period of Use

Indicate the time of year you propose to use the water: March 1 - October 31
(For seasonal uses like irrigation give dates when water use would begin and end, e.g. March 1–October 31.)

D. Acreage

If you will be applying water to land, indicate the total number of acres where water will be applied or used: 2.96 Acres
(This number should be consistent with your application map.)

4. WATER MANAGEMENT

A. Diversion

What method will you use to divert water from the source?

- Pump (give horsepower and pump type) 3HP Electric Centrifugal
- Head-gate (give dimensions) _____
- Other means (describe) _____

B. Monitoring

How will you monitor your diversion to be sure you are within the limits of your water right (allowed rate and duty) and you are not wasting water?

- Weir
- Meter
- Periodic Sampling
- Other (describe) _____

RECEIVED

MAR 07 2003

WATER RESOURCES DEPT.
SALEM, OREGON

app # 585485

C. Transport

How will you transport water to your place of use?

SEE REMARKS

Ditch or canal (give average width and depth)

Width _____ Depth _____

Is the ditch or canal to be lined? Yes No

Pipe (give diameter and total length) Small Diameter buried PVC Pipe system is in

Diameter _____ Length _____

Other (describe) _____

D. Application/Distribution Method

What equipment will you use to apply water to your place of use? _____

Irrigation or land application method (check all that apply):

- Flood
- Drip
- Hand lines
- Siphon tubes or gated pipe with furrows
- Other, describe Landscape type sprinklers
- High-pressure sprinkler
- Water cannons
- Wheel lines
- Low pressure sprinkler
- Center pivot system

Distribution method

- Direct pipe from source
- In-line storage (tank or pond)
- Open canal

E. Conservation

What methods will you use to conserve water? Why did you choose this distribution or application method? Have you considered other methods to transport, apply, distribute or use water? For example, if you are using sprinkler irrigation rather than drip irrigation, explain.

Existing system is best adapted to landscape use.

5. RESOURCE PROTECTION

Protection Practices

In granting permission to use water from a stream or lake, the state encourages, and in some instances requires, careful control of activities that may affect the waterway or streamside area. See the instruction guide for a list of possible permit requirements from other agencies. Please indicate any of the practices you plan to undertake to protect water resources.

Diversion will be screened to prevent uptake of fish and other aquatic life.
Describe planned actions: A screen will be installed on the pump
suction.

Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas. Describe planned actions: N/A Pump to be installed on a
floating dock.

Operating equipment in a water body will be managed and timed to prevent damage to aquatic life. Describe: N/A

Water quality will be protected by preventing erosion and run-off of waste or chemical products. Describe: N/A

Other: N/A

6. PROJECT SCHEDULE

Indicate the anticipated dates that the following construction tasks should begin. If construction has already begun, or is completed, please indicate that date.

Proposed date construction will begin May 2003

Proposed date construction will be completed October 2003

Proposed date beneficial water use will begin As soon as permit is issued

7. REMARKS

If you would like to clarify any information you have provided in the application, please do so here and reference the specific application question you are addressing.

B. A permit from the Division of State Lands for the dock is
attached.

C. The irrigation system is in and is currently hooked to city
water. City water will be disconnected and the system hooked
up to the river pump.

RECEIVED

MAR 07 2003

**WATER RESOURCES DEPT.
SALEM, OREGON**

8. MAP REQUIREMENTS

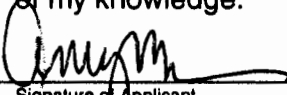
The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section, and quarter/quarter section of the proposed points of diversion and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.

9. SIGNATURE

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit to me, I may have to stop using water to allow senior water right holders to get water they are entitled to, and

I swear that all information provided in this application is true and correct to the best of my knowledge:

 _____ Signature of Applicant Board Member	3-1-03 _____ Date
Hayden Bay Condominiums, Inc. _____ Signature of Co-applicant	3-1-03 _____ Date

Before you submit your application be sure you have:

- Answered each question completely.
- Included a legible map which includes township, range, section, quarter/quarter and tax lot number.
- Included a Land Use Information Form or receipt stub signed by a local official.
- Included the legal description of all the property involved with this application. You may supply a copy of the deed, land sales contract, or title insurance policy, to meet this requirement.
- Included a check payable to the Oregon Water Resources Department for the appropriate amount.

APP # 5-85487



FORM I

FOR IRRIGATION WATER USE

1. Please indicate whether you are requesting a primary or supplemental irrigation water right.

Primary Supplemental

If supplemental, please indicate the number of acres that will be irrigated for each type of use.

Primary: 2.96 Acres

Secondary: _____ Acres

List the permit or certificate number of the primary water right: No. _____

2. Please list the anticipated crops you will grow and whether you will be irrigating them for a full or partial season:

- 1. Landscape Full season Partial season (from: _____ to _____)
- 2. _____ Full season Partial season (from: _____ to _____)
- 3. _____ Full season Partial season (from: _____ to _____)
- 4. _____ Full season Partial season (from: _____ to _____)

3. Indicate the maximum total number of acre-feet you expect to use in an irrigation season:

6 acre-feet

(1 acre-foot equals 12 inches of water spread over 1 acre, or 43,560 cubic feet, or 325,851 gallons.)

4. How will you schedule your applications of water? Will you be applying water in the evenings, twice a week, daily?

- Daily during daytime hours Daily during nighttime hours
- Two or three times weekly during daytime Two or three times weekly during nighttime
- Weekly, during daytime hours Weekly, during nighttime hours
- Other, explain: _____

RECEIVED

MAR 07 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Last revision October 31, 1998

APP # 585485

W. RICHARD VERBOORT - CIVIL ENGINEER
PLANNING - DESIGN - INSPECTION
CIVIL - WATER RESOURCES - AGRICULTURE
666 S.E. 36TH AVENUE, HILLSBORO, OR 97123
(503) 648-6180

WATER RESOURCES DEPARTMENT
158 12th STREET NE
SALEM, OR 97301-4172
ATT: Jerry Sauter

February 25, 2003

RE: File G-14196
Permit G-12812

Dear Mr. Sauter:

This is a follow up to your 2-12-03 letter to Hayden Bay Condominiums, Inc. regarding the referenced groundwater application and permit.

The Condominium Association is applying for a surface water application from the Columbia river for the same lands as noted in the groundwater application. They recently constructed new docking facilities with power, and plan to pump directly from the river rather than from a well.

Although a well has not been constructed, the concrete pump vault for the well is in place, ie a "start of construction".

The Association would like you to put a time out on the groundwater application until they are sure the surface water application will be approved. After that time the groundwater application should be cancelled.

Please call if there are any questions regarding the above information.

If you need to contact the Association please use the following address:

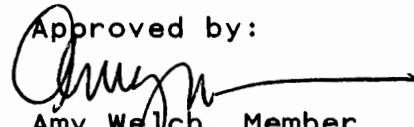
HAYDEN BAY CONDOMINIUMS, INC
C/O AMY WELCH
505 N. TOMAHAWK ISLAND DRIVE
PORTLAND, OR 97217

Thank you for your assistance with this project.

Prepared by:


W. Richard Verboort, P.E.
Civil Engineer

Approved by:


Amy Welch, Member
Hayden Bay Condominiums Inc

app # S-05405

RECEIVED

MAR 07 2003

WATER RESOURCES DEPT.
SALEM, OREGON

NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdictions where your water right will be used and developed. The planning official may chose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you

NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for a water right. The Water Resources Department (WRD) requires its applicants to obtain land use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan.

Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land use form and return it to WRD. If no land use information is received from you within that 30 day period, WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan.

Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact WRD's Land Use Coordinator at (503) 378-3739, ext. 241.

app # S-85489

RECEIVED
MAR 07 2003
WATER RESOURCES DEPT.
SALEM, OREGON



Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130



Oregon Water Resources Department Land Use Information Form

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the water use application. DO NOT fill out this form if water is to be diverted, conveyed, or used only on federal lands.

To Be Completed By Applicant

The following section includes information about proposed water use. This section must be completed by the individual or group that is filing an application for a water right with the Water Resources Department.

A. Applicant

Name: Hayden Bay Condominiums, Inc.

Address: 505 N. Tomahawk Island Drive

City: Portland State: OR Zip: 97217 Day Phone: 503-916-3358

B. Land and Location

Please provide information as requested below for all tax lots on or through which water will be diverted, conveyed, or used. Check "diverted" if water is diverted (taken) from its source on tax lot, "conveyed" if water is conveyed (transported) on tax lot, and "used" if water will be put to beneficial use on tax lot. More than one box may be checked. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot I.D.	Plan Designation (e.g. Rural Residential/RR-5)	Water to be: (check all that apply)		
Sec. 34	2N 2E	<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used
		<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used
		<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used

List counties and cities where water is proposed to be diverted, conveyed, or used. City of Portland, Multnomah County

C. Description of Water Use

Indicate what the water will be used for. Include the beneficial use (found in the instruction booklet for your water right application) and use the space below to describe the key characteristics of the project.

Beneficial Use(s): Irrigation

Briefly describe: Irrigation of Landscaping on condominium property.

D. Source

Indicate the source for the proposed water use:

Reservoir/Pond Ground Water Surface Water Columbia River
(source)

E. Quantity

Indicate the estimated quantity of water the use will require:

16.8 CFS GPM Acre-Feet

RECEIVED
 MAR 07 2003
 WATER RESOURCES DEPT.
 SALEM, OREGON

Receipt for Request for Land Use Information

State of Oregon
 Water Resources Department
 Commerce Bldg.
 158 12th St. NE
 Salem, OR 97310-0210
 (503)378-8455

For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within the city limits. In this case, only the city planning agency must complete this form. Please request additional forms as needed or feel free to copy.

A. Allowed Use

Check the appropriate box below and provide requested information.

- Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s); _____ . Go to section B "Approval" below
- Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below.

Type of Land Use Approval Needed (e.g. plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Check the item that applies: Land Use Approval:	
		<input checked="" type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
Environmental Review 00-00636 EN	PLC 33.430	<input checked="" type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued

Note: Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus accompanying findings is sufficient.)

B. Approval

Please provide printed name and written signature.

Name: Emily Hughes Date: 3.6.03
 Title: Planner Phone: 823-7526
 Signature: Emily Hughes

C. Additional Comments

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet.

All conditions of approval must be met from LUP 00-00636 EN

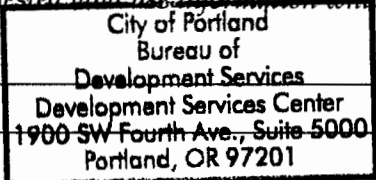
Note: If this form cannot be completed while the applicant waits, sign and detach the receipt stub as instructed below. You will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD will presume the land use associated with the proposed water right is compatible with local comprehensive plans. (See attached letter.)

Receipt for Request for Land Use Information

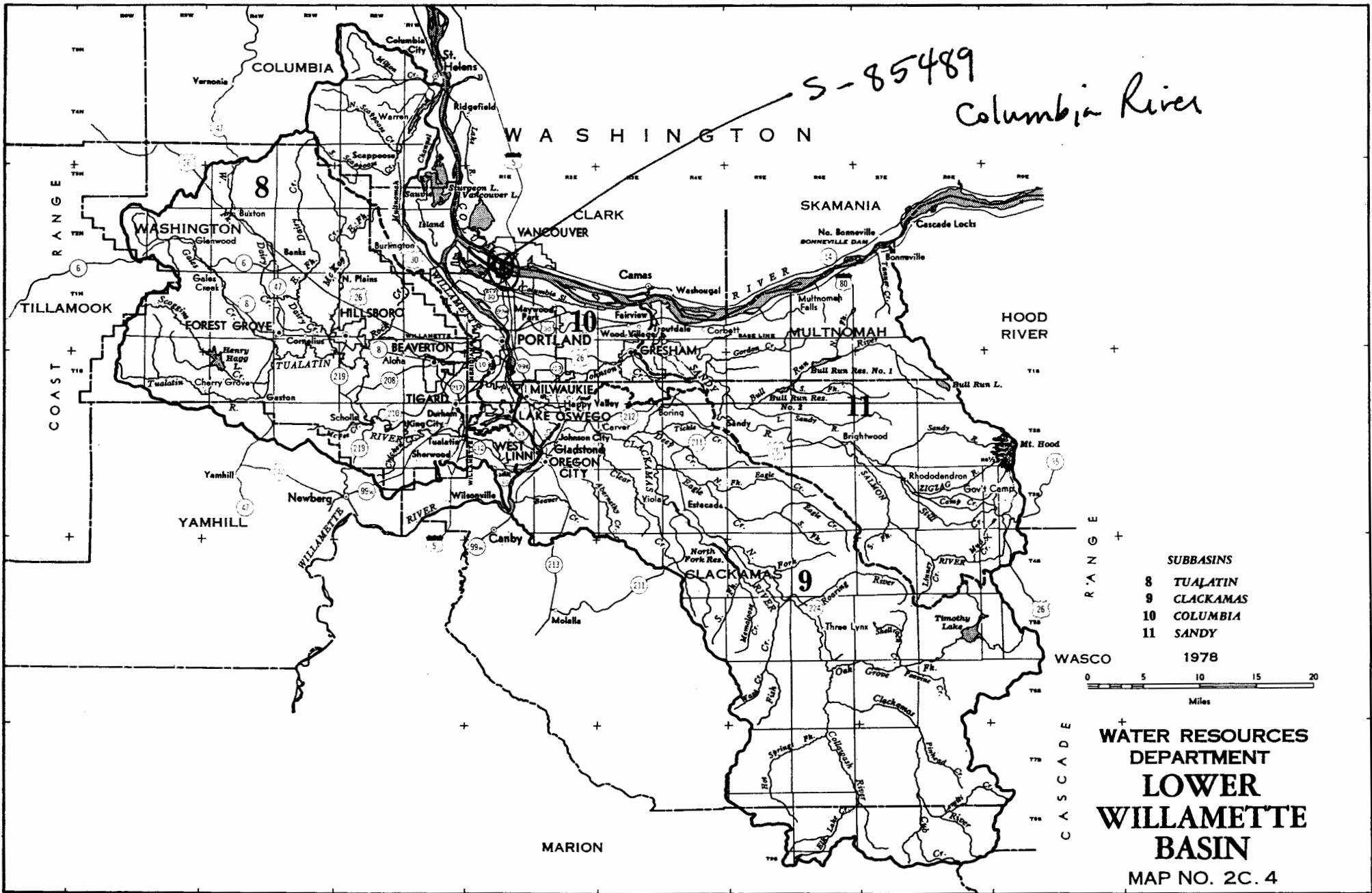
Name of water right applicant: Hayden Bay Condominiums

This receipt must be signed by a local government representative and returned to the applicant at the time they present this form. This receipt must be included in the application for a water right permit if the local government cannot provide the requested land use information while the applicant waits.

City or County: _____
 Staff contact: _____ Phone: _____



Signature: _____ Date: _____



This map has been prepared by WRD to assist you in the review of this application. The dot in the center of the bullseye is a close approximation of the proposed diversion.

235
20
3

Recorded in the County of Multnomah, Oregon
C. Swick, Deputy Clerk
258.00
99167492 2:51pm 09/01/99
009 886728 03 18 000206
A49 47 0.00 235.00 3.00 20.00 0.00

After Recording, Return To:

Sandra L. Kohn
Stoll Stoll Berne Lokting & Shlachter P.C.
209 SW Oak Street, Suite 500
Portland, OR 97204

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Easement") is entered into this 23rd day of August, 1999 by and between THE ASSOCIATION OF UNIT OWNERS OF HAYDEN BAY CONDOMINIUM, an Oregon nonprofit corporation ("Hayden"), and WINMAR OF JANTZEN BEACH, INC., an Oregon corporation ("Winmar").

RECITALS:

A. Before execution hereof (i) Winmar entered into a lease agreement with the State of Oregon, acting through its Division of State Lands (the "State"), providing for Winmar to lease certain submerged land with respect to which Winmar holds a riparian preference right ("Lease ML-10112"), and (ii) Hayden entered into a lease agreement with the State providing for Hayden to lease certain submerged land with respect to which Hayden holds a riparian preference right ("Lease ML-9215"). A copy of Lease ML-9215 is attached hereto as Exhibit A, and the property described therein shall be referred to in this Easement as the "Hayden 9215 Property." A copy of Lease ML-10112 is attached hereto as Exhibit B, and the property described therein shall be referred to in this Easement as the "Winmar 10112 Property." The location of the Hayden 9215 Property and the Winmar 10112 Property is approximately depicted on the diagram attached hereto as Exhibit C. The Hayden 9215 Property is referred to on Exhibit C as "LE

FATCO NO. 855024-TO

7-22-03
Carrie - let me know if
you need anything else -
Amy Welch 585937
amywelch@hotmail.com

RECEIVED
JUL 24 2003
WATER RESOURCES DEPT.
SALEM, OREGON

5869-010

47

9215" and the Winmar 10112 Property is referred to on Exhibit C as "LE 10112."

B. Winmar holds title in fee simple to, and maintains a recreational boat moorage floating dock facility on, certain submerged land in Hayden Bay that is adjacent to the property covered by Lease ML-9215 (the "Winmar HB Submerged Property"), as shown on Exhibit C. The legal description of the Winmar HB Submerged Property is set forth on the attached Exhibit D. The recreational boat moorage floating dock facility maintained by Winmar on the Winmar HB Submerged Property (the "Winmar Dock") encroaches upon a portion of the Hayden 9215 Property.

C. Hayden wishes to build a boat moorage facility on the Hayden 9215 Property and the Winmar 10112 Property. Contemporaneously with execution of this Easement, Winmar and Hayden will enter into an Assignment of Lease Agreement (the "Lease Assignment"), whereby Winmar will assign its lessee's interest in Lease ML-10112 to Hayden.

D. Hayden wishes to grant Winmar, and Winmar wishes to accept, easements over and upon portions of the Hayden 9215 Property, on the following terms and conditions.

AGREEMENT:

NOW, THEREFORE, IT IS AGREED:

1. **Grant of Access Easement; Purposes.** Hayden hereby grants to Winmar and its successors and assigns and their guests and business invitees (including, but not limited to members, tenants and their family members and guests, delivery persons, service persons, employees, and agents) a non-exclusive right to cross over such portions of the Hayden 9215 Property as is reasonably necessary or desirable to obtain access to and egress from the Winmar Dock.

2 - EASEMENT AGREEMENT

OIDMA\GRPWISE\SSBLS_Domain PO_PDX Clients\3.1451.3

RECEIVED

5869-010

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

2. **Grant of Encroachment Easement; Purposes.** Hayden hereby grants to Winmar and its successors and assigns the right to enter upon the Hayden 9215 Property for purposes of constructing, installing, inspecting, operating, maintaining, altering, removing, redeveloping, replacing, and repairing that portion of the Winmar Dock that is on the Hayden 9215 Property, provided that such Winmar Dock remains in substantially its current location and retains substantially its current design. Such easement shall include the right to dredge on the Hayden 9215 Property to the extent needed to retain access to and egress from the Winmar Dock.

3. **Hayden Dock.** Hayden may construct, maintain and operate a moorage facility on the Hayden 9215 Property (the "Hayden Dock"), provided that the Hayden Dock is at least Forty (40) feet from the Winmar Dock's current location. Hayden shall have the right to moor boats to the east side of the Hayden Dock, provided that such boats extend no further than Fifteen (15) feet from the Hayden Dock.

4. **Maintenance Responsibility and Costs.** Winmar, at its sole cost, shall maintain and repair the Winmar Dock in a neat and safe condition and in a workmanlike manner and shall keep all portions of the Hayden 9215 Property that it alone uses for ingress and egress to its facility free of obstructions, except for obstructions caused by Hayden. The parties shall cooperate in keeping areas of the Hayden 9215 Property that are used by both parties clear of obstructions and shall share any costs incurred in removing such obstructions in proportion to their respective uses of the cleared area, except that Hayden and Winmar each shall be solely responsible for any costs incurred in removing obstructions caused by it. Winmar shall not be liable for costs incurred in removing obstructions from any portion of the Hayden 9215 Property that Winmar does not use for ingress and egress.

3 - EASEMENT AGREEMENT

ODM\GRPWISE\SSBLS_Domain PO_PDX.Clients\1451.3

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

5669-010

5. **Dispute Resolution.** If Winmar or Hayden fails to meet an obligation arising hereunder, the other party may seek a declaratory judgment from the Circuit Court of the State of Oregon for Multnomah County to the effect that such a failure has occurred. If such a declaration is obtained, the party that has failed to meet an obligation arising hereunder shall perform such obligation and shall pay the entire cost thereof, plus reasonable attorneys' fees and costs incurred by the other party in the declaratory judgment proceeding, including any appeal thereof or review therefrom.

6. **Lease Shall Remain in Place; Easements and Rights Run with Land.** Subject to Section 8 below, Hayden shall not amend, terminate, or assign, or transfer its interest in, Lease ML-9215 without Winmar's prior written consent, which shall not be unreasonably withheld. The obligations created hereunder shall run with the Hayden 9215 Property, and the rights created hereunder shall run with the Winmar 10112 Property and the Winmar HB Submerged Property, and shall inure to the benefit of and be binding upon the parties and their assigns and successors in interest to the Hayden 9215 Property, the Winmar 10112 Property, and the Winmar HB Submerged Property until this Easement terminates, as provided for in Section 8 below. The parties acknowledge that this Easement is granted subject to the terms of Lease ML-9215.

7. **Voluntary Termination of Lease.** Notwithstanding the first sentence of the foregoing Section 6, Hayden may voluntarily terminate Lease ML-9215 if Hayden reasonably determines that applicable regulatory or other governmental requirements have made or will make it impossible or economically unfeasible for Hayden to construct and operate the Hayden Dock, provided that Hayden has given Winmar not less than thirty (30) days prior written notice of Hayden's intent to so terminate Lease ML-9215. In the event of Hayden's voluntary

4 - EASEMENT AGREEMENT

ODMA.GRPWISE\SSIBLS - Domain PO_PDX Clients\J 1451 3

RECEIVED

5869-010

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

termination of Lease ML-9215, then, unless the parties agree otherwise in writing, this Easement and the Lease Assignment shall each expire, as of the date of such voluntary termination by Hayden, and Winmar shall have the immediate right (but not the obligation) to voluntarily terminate Lease ML-10112, as provided in Section 8 below.

8. **Expiration.** This Easement shall expire upon termination or expiration of Lease ML-10112 or Lease ML-9215, whichever is earlier, unless the parties agree otherwise in writing. If both such Leases are renewed and/or are in full force and effect, this Easement shall remain in full force and effect until such renewals expire or either Lease otherwise is no longer in full force and effect. In the event of Hayden's voluntary termination of Lease ML-9215, then, unless the parties agree otherwise in writing, both this Easement and the Lease Assignment shall terminate as of the date of such voluntary termination by Hayden, and Winmar shall have the immediate right (but not the obligation) to voluntarily terminate Lease ML-10112.

9. **Representations and Covenants.** Hayden represents that Lease ML-9215 is in full force and effect and that Hayden is in good standing thereunder as of the date hereof. Hayden covenants that it shall make all payments to be paid under Lease ML-9215, as and when due, shall perform its other obligations under Lease ML-9215 in a timely manner, and shall not, by act or omission, cause a default to occur under Lease ML-9215. Hayden represents that, as of date hereof, there is no mortgage, deed of trust, or other instrument (an "Encumbrance") encumbering the Hayden 9215 Property. Hayden covenants that, if an Encumbrance is placed on the Hayden 9215 Property at any time that this Easement is in effect, Hayden shall pay to the mortgagee, beneficiary or other secured party under such Encumbrance, as and when due, all sums required to be paid pursuant to the terms of such Encumbrance, shall perform all of its

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

other obligations under such Encumbrance in a timely manner, and shall not cause a default to occur with respect to such Encumbrance. Hayden covenants to mail a copy of any notice that it receives from the State concerning any default under Lease ML-9215 or any Encumbrance on the Hayden 9215 Property to Winmar at the following address or such other address as Winmar may direct, in writing, from time to time:

Winmar of Jantzen Beach, Inc.
c/o Safeco Properties
PO Box 21545
Seattle, Washington 98111-3545

10. **Reciprocal Indemnities.** Winmar shall forever indemnify and hold Hayden harmless from any and all losses, damages, fines, expenses, charges, claims, actions, or other liabilities arising out of Winmar's use of or conduct with respect to the Hayden 9215 Property. Hayden shall forever indemnify and hold Winmar harmless from any and all losses, damages, fines, expenses, claims, charges, actions, or other liabilities arising out of any breach by Hayden of its obligations under this Easement or Lease ML-9215 or by any default by Hayden on any Encumbrance, except to the extent that such breach or default is caused by Winmar's acts or omissions.

If Hayden defaults in the performance of any obligation under Lease ML-9215, Winmar may perform the same for the account of Hayden, and Hayden shall reimburse Winmar for all costs reasonably incurred by it in such performance forthwith upon demand, together with interest at the lesser of the maximum interest rate permitted by applicable law or twelve percent (12%) per annum from the date on which such expense is incurred by Winmar until the date on which the entire amount, including principal and interest, is paid. If Hayden defaults on any Encumbrance and such default continues for Thirty (30) or more days after Hayden receives

6 - EASEMENT AGREEMENT

ODMA\GRPWISE\SSBLS_Domain_PO_PDX Clients\3.1451.3

5869-010

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

written notice thereof from Winmar, then Winmar may cure such default for the account of Hayden, and Hayden shall reimburse Winmar for all costs reasonably incurred by it in curing such default, forthwith upon demand, together with interest at the lesser of the maximum interest rate permitted by applicable law or twelve percent (12%) per annum from the date on which such expense is incurred by Winmar until the date on which the entire amount, including principal and interest, is paid; provided, however, that if the nature of Hayden's default is such that more than Thirty (30) days are reasonably required for its cure, then Hayden shall not be deemed to be in default if it commences such cure within said period and thereafter diligently prosecutes such cure to completion.

11. **Consideration.** The mutual obligations contained in this Easement and in the Lease Assignment constitute the consideration for this Easement.

12. **Counterparts.** This Easement may be executed in one or more counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of this Easement that has attached to it separate signature pages, which altogether contain the signatures of all parties, shall for all purposes be deemed a fully executed instrument.

7 - EASEMENT AGREEMENT

ODMA\GRPWISESSBLS_Domain_PO_PDX.Clients\1451.3

5869-010

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

IN WITNESS WHEREOF, the parties have executed this Easement, effective as of the date first written above.

HAYDEN:

THE ASSOCIATION OF UNIT OWNERS OF HAYDEN BAY CONDOMINIUM, an Oregon nonprofit corporation

By: *Amym*
Name: Amym m. weich
Title: Board member

WINMAR:

WINMAR OF JANTZEN BEACH, INC., an Oregon corporation

By: *Eddie L. Henderson*
Name: Eddie L. Henderson
Title: President

By: *Thomas A. Berkowitz*
Name: Thomas A. Berkowitz
Title: Secretary

(Acknowledgments on Following Page)

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON)
) ss.
County of Multnomah)

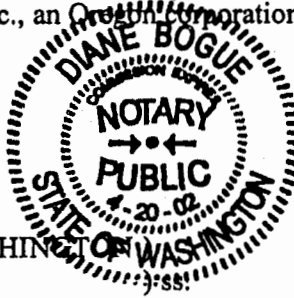
The foregoing instrument was acknowledged before me this 24 day of June, 1999 by Amy m. Welch, as Board Member on behalf of The Association of Unit Owners of Hayden Bay Condominium, an Oregon nonprofit corporation.

Karen J. Wich
Notary Public for Oregon
My commission expires: 5-13-03



STATE OF WASHINGTON)
) ss.
County of King)

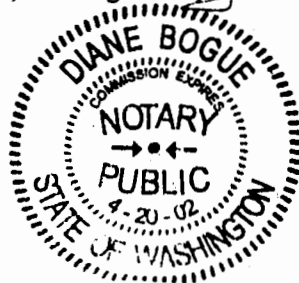
The foregoing instrument was acknowledged before me this 23rd day of August, 1999 by Eddie L. Hendrickson, as President on behalf of Winmar of Jantzen Beach, Inc., an Oregon corporation.



Diane Bogue
Notary Public for Washington
My commission expires: April 20, 2002

STATE OF WASHINGTON)
) ss.
County of King)

The foregoing instrument was acknowledged before me this 23rd day of August, 1999 by Thomas A. Burkewitz, as Secretary on behalf of Winmar of Jantzen Beach, Inc., an Oregon corporation.



Diane Bogue
Notary Public for Washington
My commission expires: April 20, 2002

9 - EASEMENT AGREEMENT

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

CONSENT OF STATE

The State hereby consents to this Easement and expressly consents to the usage of the Hayden 9215 Property by Winmar for commercial marina moorage purposes notwithstanding the terms of Lease ML-9215. The State further agrees to provide Winmar with written notice of any failure by Hayden to cure a default under Lease ML-9215 and/or any notice to terminate such lease, and to accept a cure of such default by Winmar during the same length of time after such notice as such lease provides to Hayden for curing defaults.

STATE OF OREGON, acting by and through the Division of State Lands

By: Stephen Purchase

Name: Stephen J Purchase

Title: Assistant Plant Director

Date: 8/31/99

STATE OF OREGON)
) ss.
County of Marion)

The foregoing instrument was acknowledged before me this 31 day of August 1999 by Stephen J Purchase, as Assistant Director on behalf of the State of Oregon, acting by and through the Division of State Lands.

Shannon K Relaford

Notary Public for Oregon
My commission expires:



RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

EXHIBIT A

LEASE ML-9215

[See attached page.]

RECEIVED

5869-010

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

**STATE OF OREGON
DIVISION OF STATE LANDS
SUBMERGED AND SUBMERSIBLE LAND LEASE**

ML-9215

1. PARTIES

The parties to this Lease are the STATE OF OREGON, acting by and through the Division of State Lands, ("STATE") and The Association of Unit Owners of The Hayden Bay Condominium, ("LESSEE").

2. LEASED PREMISES

STATE, for the consideration and upon the terms and conditions herein mentioned, does hereby lease to the LESSEE the following property:

All state-owned submerged and submersible lands in Hayden Bay a Tributary of the Columbia River in Section 34, Township 2 North, Range 1 East, Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

Beginning at a point on the intersection of the North line of Hayden Bay Condominium plat (Multnomah County Assessor's Map Number 34-2N-1E) and the line of Ordinary High Water on the east cove of Hayden Bay and left bank of the Columbia River;

thence riverward along a line bearing North 76° East a distance of 192 feet;

thence South 56° West a distance of 75 feet;

thence shoreward South 37° East a distance of 150 feet to the line of Ordinary High Water;

thence downstream and Northeasterly along said line of Ordinary High Water a distance of 200 feet, more or less, to a point of beginning, containing 0.51 acres, more or less, and as shown in attached sketch labeled "Exhibit A".

hereinafter referred to as the "Leased Premises."

3. PURPOSE

LESSEE shall have exclusive possession of the Leased Premises for the sole purpose of non-commercial marina moorage and for no other purpose without prior written consent of STATE. This instrument does not guarantee that any particular use may be made of the Leased Premises. LESSEE should check with appropriate city or county planning department to verify approved uses.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

4. TERM OF LEASE

The LESSEE, subject to compliance with the terms and provisions of this Lease, shall have and hold the Leased Premises for the purposes stated above from April 1, 1999, through March 31, 2019.

5. LEASE PAYMENT

The lease payment to be paid by LESSEE to STATE shall be \$572.00 per year or the amount set by redetermination at any time after the first anniversary date of the Lease. Receipt of the first year's lease payment is hereby acknowledged. "Redetermination" means a rent increase made pursuant to paragraph 6 of this Lease. Lease payments shall be payable annually and shall be due on the 1st day of April in advance. Payments shall be sent to the Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310-1337. STATE shall give LESSEE 30 days advance notice of the due date and amount of the lease payment due.

6. LEASE PAYMENT INCREASES

Lease payment increases shall be made in accordance with the lease provisions of the Oregon Administrative Rules applying to state-owned submerged and submersible lands which are in effect at the time of redetermination. Lease payment increases may be appealed by the LESSEE. LESSEE must file its appeal in writing within 14 days of the notice of increase. The notice of appeal is to be sent to the attention of the Director, Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310-1337 and must include market data or other information to support the request for review. Upon filing of an appeal, the STATE will schedule an informal hearing before the Director or designee. Neither party to a redetermination appeal is entitled to recover attorney's fees.

7. ACCESS TO PROPERTY AND RECORDS

STATE shall have access to the Leased Premises at all reasonable times for the purpose of ensuring compliance with the terms and conditions of this Lease. STATE shall have the right to examine pertinent records of LESSEE for the purpose of ensuring compliance with the Lease and for the purpose of redetermining the lease payment rate.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 2 of 14
Hayden Bay

8. DELIVERY OF PREMISES

Delivery of the Leased Premises will occur upon the date of execution of this Lease. STATE will not provide a survey or pay any costs of a survey to determine boundaries. It is the LESSEE's responsibility to make an accurate determination of the boundaries. The legal description provided by STATE is drawn from an assessor's map and other data deemed to be reliable. If LESSEE elects not to have a survey performed and a discrepancy or boundary overlap later becomes evident, STATE, at its discretion, may provide a corrected description of the Leased Premises.

9. RESERVATIONS

The interest of LESSEE under this Lease shall at all times be subject to STATE's right to grant rights-of-way in and over said property or a portion of the property for other purposes, including, but not limited to, railroads, telegraph and telephone lines, pipelines, irrigation or other water canals and ditches, and to STATE's right to lease all or part of the property for the exploration, discovery, development and production of oil, gas, or minerals of any nature whatsoever, provided the right-of-way or lease does not unreasonably interfere with the purpose of this Lease.

10. CONDITIONS OF THE PROPERTY

LESSEE certifies that it has inspected the Leased Premises and is fully informed as to their condition. LESSEE agrees to accept the Leased Premises as is and with all faults. LESSEE acknowledges that no representations or warranties of any kind have been made by STATE.

11. COMPLIANCE WITH LAW

LESSEE shall comply with all applicable federal, state, and local statutes, ordinances, rules and regulations in its use of the Leased Premises. This Lease does not give LESSEE permission to conduct any use on the Leased Premises which is not in conformance with applicable land use requirements, and it is the LESSEE's responsibility to determine and comply with those and all other requirements.

LESSEE shall use the Leased Premises only in a manner, or for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 3 of 14
Hayden Bay

12. TAXES, LIENS, ASSESSMENTS, CHARGES

LESSEE shall pay before they become delinquent all taxes, assessments, penalties, fines, charges, rates or liens of any nature whatsoever that may be levied, assessed, charged, imposed or claimed on or against the Leased Premises or any improvements or fixtures thereon or appurtenances thereto. If LESSEE fails to pay any taxes, assessments, penalties, fines, charges, rates or liens, within ten (10) days after notice that such sums are due, STATE may pay such sums. Any such sums paid by STATE shall be reimbursed on demand with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE until paid.

13. PREVENTION OF WASTE, DAMAGE AND INJURY

LESSEE shall exercise reasonable diligence in its operation on and from said Leased Premises; shall carry on all operations hereunder in a good and workmanlike manner having due regard for public safety and the prevention of waste and for the restoration and conservation of said Leased Premises for future use, and shall take all reasonable steps to avoid damage to soil, timber, fish and fish habitat, wildlife and wildlife habitat and water quality of both ground water and surface water; shall make all reasonable efforts to minimize interference with existing navigational and recreational activities and scenic values; shall substantially restore the Leased Premises to its original condition and shall do all things reasonably necessary to minimize erosion.

14. EXCLUSIVITY

Subject to the provision of Section 9 (Reservations), the rights and privileges granted under this Lease are exclusive, except that LESSEE shall not unreasonably interfere with the public's right of navigation, commerce, fishing and recreation in the open water areas of the Leased Premises.

15. PUBLIC SAFETY

Subject to the provision of Section 14 (Exclusivity), the LESSEE may restrict entry to any portion of the Leased Premises as may be necessary to protect persons and property from harm arising from or in connection with the LESSEE's activities upon the Leased Premises.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 4 of 14
Hayden Bay

16. ASSIGNMENT OR SUBLEASE

With respect to any assignment, mortgage, or sublease, the following provisions shall apply:

16.1 RESTRICTIONS: Except as provided for in subsection 16.2, LESSEE's interest in the Leased Premises or any part thereof shall not be assigned, mortgaged or subleased, nor shall any right of use of said Leased Premises be conferred on any third person by another means without the prior consent of STATE. Said consent shall not be unreasonably withheld or delayed. This provision shall apply also to all transfers by operation of law. Except as provided in Subsection 16.2, any assignment, or attempted assignment, subletting, or attempted subletting, or grant of right of use, or attempted grant of right of use without such consent, shall be absolutely null and void and shall, at the option of STATE, terminate all rights of the LESSEE under or by virtue of this Lease. STATE may, in its discretion, consent to an assignment or sublease provided the following conditions are satisfied:

- 16.1.1 A fee of \$125 is prepaid to cover administrative costs, and
- 16.1.2 LESSEE has satisfied all conditions of the Lease precedent to assignment or sublease, and
- 16.1.3 LESSEE and its assignee have completed a standard assignment form or new lease form as required by STATE, and have assured the STATE that the assignee or sublessee has the capability to perform on the Lease, and
- 16.1.4 STATE determines that such assignment or sublease is in the best interest of the STATE.

16.2 PERMITTED ASSIGNMENTS: The following assignments, mortgages and security interests, and subleases of the LESSEE's interest in the Leased Premises shall be allowed without further STATE approval:

- 16.2.1 Subleases and subsubleases of portions of the LESSEE's interest in the Leased Premises, in the ordinary course of LESSEE's business or portions thereof for uses of the Leased Premises approved under this Lease.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 5 of 14
Hayden Bay

16.2.2 Any mortgage(s), trust deed(s) or other encumbrance(s) which LESSEE may cause to attach to LESSEE's interest in the Leased Premises (1) in connection with the acquisition or refinancing(s) of the acquisition of the improvements in, on or about the Leased Premises and (2) in connection with financing and refinancing (a) development, construction, reconstruction, maintenance or repair of improvements on the Leased Premises and (b) operations on or about the Leased Premises. Within ten (10) days of any transfer pursuant to this subsection 16.2.2, LESSEE shall provide STATE the name and business address of any entity obtaining a security interest pursuant to this subsection 16.2.2.

16.2.3 Transfers to any entity or entities which controls, is controlled by, or is under common control with LESSEE.

17. ALTERATIONS AND IMPROVEMENTS

LESSEE shall obtain the written consent of STATE prior to making any alterations to the Leased Premises or improvements upon the Leased Premises.

18. DEFAULT

18.1 DEFAULT NOTICE AND CURE BY LESSEE: A default by the LESSEE shall occur if any of the following shall occur and if said default shall continue and not be remedied within sixty (60) days after STATE shall have given notice specifying the breach (within ten (10) days for delinquency or failure to pay rent.)

18.1.1 Delinquency or failure to pay rent in the amounts and at the time specified in the Lease.

18.1.2 Failure of LESSEE to comply with any term or condition imposed by the STATE in the Lease.

18.1.3 Failure of LESSEE to use the Leased Premises for the purposes authorized under the terms of the Lease.

18.1.4 LESSEE maintaining a nuisance on the Leased Premises.

RECEIVED

JUL 24 2003

ML-9215
Page 6 of 14
Hayden Bay

WATER RESOURCES DEPT.
SALEM, OREGON

18.1.5 Insolvency of LESSEE; an assignment by LESSEE for the benefit of creditors; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and the failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days.

18.1.6 Failure by LESSEE to remove any lien or encumbrances placed upon the Leased Premises other than a lien or encumbrance on LESSEE's interest permitted by Section 16 of this Lease.

18.2 MORTGAGEE PROTECTION PROVISION: Whenever the STATE shall deliver any notice or demand to the LESSEE with respect to any breach or default by the LESSEE in its obligations or covenants under this Lease, the STATE shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Lease at the last address of such holder shown in the records of the STATE. After any default in or breach of the Lease by the LESSEE or its successor in interest, each holder of any mortgage permitted under the Lease shall (insofar as the rights of the STATE are concerned) have the right after the failure of the LESSEE to cure or remedy said default or breach, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the land covered by its mortgage) within sixty (60) days and to add the cost thereof to the mortgage debt and the lien of its mortgage. The mortgage holder's exercise of its option to cure or remedy any default by LESSEE shall not constitute grounds for termination of this Lease by STATE. In the event the holder of any mortgage which LESSEE has caused to attach to LESSEE's interest in the Leased Premises forecloses on the leasehold estate then STATE shall enter into a new lease with that lienholder on the same terms and conditions as this Lease.

19. LATE PAYMENT PENALTY

If STATE has not received the full amount of the lease payment due within ten (10) calendar days from the due date, STATE may impose a late payment penalty on the LESSEE in the amount not to exceed five percent (5%) of the overdue

RECEIVED

JUL 24 2003

ML-9215
Page 7 of 14
Hayden Bay

WATER RESOURCES DEPT.
SALEM, OREGON

payment. The late fee penalty may only be charged once on any payment due. Alternatively, at the STATE's option, a late payment penalty may be charged which is the interest due at the maximum legal rate pursuant to ORS 82.010 on the late payment from the date due until paid.

20. TERMINATION

20.1 TERMINATION UPON LESSEE'S DEFAULT: In the event of a default by LESSEE, the Lease may be terminated at the option of STATE by thirty (30) days advance notice in writing to LESSEE. In the event the Lease is terminated by either party, all remedies afforded under this Lease in Section 24 herein shall survive such termination. LESSEE shall have thirty (30) days after date of termination to remove all fixtures and property from the Leased Premises. Failure to remove such items within the thirty (30) day period will constitute abandonment by the LESSEE and, subject to the rights of any secured parties having a security interest in such fixtures and property, the STATE shall take title to the property after the expiration of thirty (30) days, in which event STATE may reenter, take possession of the Leased Premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages directly resulting from such reasonable force.

20.2 STATE'S OPTIONS TO MITIGATE: Following reentry, STATE may relet the Leased Premises and in that connection make any suitable alteration to the Leased Premises or change the character or use of the Premises but STATE shall not be required to relet for any use or purpose (1) which is different from that specified in the Lease or (2) which STATE may reasonably consider injurious to the Premises or (3) to any LESSEE which STATE may reasonably consider objectionable. STATE may relet all or part of the Leased Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions.

20.3 DAMAGES RECOVERABLE UPON TERMINATION: In the event of termination on default, as provided by Section 18 of this Lease, STATE shall be entitled to recover the following amounts as damages:

20.3.1 The loss of reasonable rental value from the date of default until a new lease has been, or with the exercise of reasonable efforts could have been, secured.

RECEIVED

JUL 24 2003

ML-9215
Page 8 of 14
Hayden Bay

WATER RESOURCES DEPT.
SALEM, OREGON.

20.3.2 The reasonable cost of reentry and reletting, including the reasonable and necessary costs of any clean-up, refurbishing, removal of LESSEE's property and fixtures, or any other necessary expense directly resulting from LESSEE's failure to quit the Leased Premises upon termination and to leave them in the required conditions, including reasonable attorneys fees, court costs, and advertising costs.

20.3.3 Any excess of the value of the rent and all of LESSEE's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

20.4 TERMINATION UPON MUTUAL CONSENT: This Lease may also be terminated by mutual written consent of LESSEE and STATE.

21. DELIVERY OF PREMISES: SURRENDER

In the event the Lease is terminated, or upon expiration, LESSEE shall have thirty (30) days within which to vacate the Leased Premises and shall surrender the Leased Premises in substantially the original condition as of the date of this Lease. STATE may require LESSEE to restore the Leased Premises to the original condition as of the date of this Lease or STATE may itself restore the Leased Premises and recover its reasonable and necessary restoration costs from LESSEE.

22. FIXTURES AND PERSONAL PROPERTY

All fixtures and personal property placed upon the Leased Premises during the term shall, upon expiration or termination of the Lease, become the property of STATE if not removed by LESSEE within thirty (30) days as provided in Subsection 20.1 and if not subject to the rights of any secured party having a security interest in such fixtures or personal property. LESSEE shall repair any physical damage resulting from such removal. If LESSEE fails to remove such fixtures, this shall constitute an abandonment of the property, and STATE may retain the property and all rights of LESSEE with respect to it shall cease. In the event of such abandonment, STATE may remove such fixtures and personal property and repair any physical damage resulting from such removal and charge the reasonable and necessary costs of removal and repair to LESSEE with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 9 of 14
Hayden Bay

23. HOLDOVER

If LESSEE does not vacate the Leased Premises at the time required, upon expiration or termination of this Lease, STATE shall have the option to treat LESSEE as a tenant from month to month, subject to all of the provisions of this Lease, except the provisions for term. Failure of LESSEE to remove fixtures, equipment and/or other property which LESSEE is required to remove under this Lease, in the manner provided for in Sections 20 and 22, shall constitute a failure to vacate to which this paragraph shall apply if the property not removed will substantially interfere with occupancy of the Leased Premises by another lessee or with occupancy by STATE for any purpose including preparation for a new lessee.

If a month to month tenancy results from a holdover by LESSEE under the above paragraph, the tenancy shall be terminable at the end of any monthly lease payment period on written notice from STATE given not less than ten (10) days prior to the termination date which shall be specified in the notice. LESSEE waives any notice which would otherwise be provided by law with respect to a month to month tenancy.

24. STATE'S RIGHT TO CURE DEFAULTS

If LESSEE fails to perform any obligation under this Lease, STATE shall have the option to do so after thirty (30) days' written notice to LESSEE unless otherwise specified in this Lease. All of STATE's reasonable and necessary expenditures to correct the default shall be reimbursed by LESSEE on demand with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE until paid.

In the event any violation or breach of the provisions of this Lease is causing damage to the Leased Premises or the LESSEE is utilizing the Leased Premises in a manner not permitted by the provisions of this Lease, or in any case damages are occurring to the Leased Premises, STATE may immediately enter upon the Leased Premises and take such action as necessary to cease such damages or use. LESSEE shall be liable to STATE for all reasonable and necessary costs incurred in correcting such violations.

25. RIGHT TO SUE MORE THAN ONCE

STATE may sue periodically to recover damages for the period corresponding to the remainder of the lease term and no action for damages shall bar later action for damages subsequently accruing.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 10 of 14
Hayden Bay

26. REMEDIES CUMULATIVE

The remedies contained in this Lease shall be in addition to and shall not exclude any other remedy available at law or in equity, and exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.

27. HAZARDOUS WASTE

LESSEE shall refrain from storing on, or discharging from or onto, the Lease Premises any hazardous wastes or toxic substances as defined in 42 USC § 9601-9657, except as otherwise permitted by law.

28. INDEMNIFICATION

LESSEE agrees to indemnify, defend and hold STATE, its officers, employees, and its agents harmless from any and all damages, claims, actions, costs and expenses arising in whole or in part out of acts or omissions related to this Lease. STATE shall have no liability to LESSEE for any loss or damage caused by third parties or by any condition of the Leased Premises.

29. INSURANCE COVERAGES

29.1 WORKERS' COMPENSATION: The LESSEE, its SUBLESSEES, if any, and all employers providing work, labor or materials under this Lease are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers.

29.2 COMMERCIAL GENERAL LIABILITY: LESSEE shall obtain, at LESSEE's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this Lease and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000, when applicable.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 11 of 14
Hayden Bay

- 29.3 **ADDITIONAL INSURED:** The liability insurance coverages, except Professional Liability if included, required for performance of the Lease shall include the State of Oregon, the Division of State Lands and their sections, officers and employees as additional insureds but only with respect to the LESSEE's activities to be performed under this Lease.
- 29.4 **NOTICE OF CANCELLATION OR CHANGE:** There shall be no cancellation, material change, potential exhaustion or aggregate limits or intent not to renew insurance coverage(s) without 30 days' written notice from the LESSEE or its insurer(s) to the Division of State Lands. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to the State of Oregon, its Division of State Lands and their sections, officers and employees.
- 29.5 **CERTIFICATE(S) OF INSURANCE:** As evidence of the insurance coverages required by this Lease, the LESSEE shall furnish certificate(s) of insurance to the Division of State Lands prior to its issuance of a Lease. The certificate(s) will specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease shall be obtained from acceptable insurance companies or entities. The LESSEE shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

30. **ATTORNEY FEES**

If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action.

31. **MODIFICATION**

This agreement may be changed, altered or amended only by mutual written consent of the parties.

32. **MERGER**

This Lease constitutes the entire agreement between the parties, and no oral statement, representation or agreement not herein expressed shall be binding upon any party.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 12 of 14
Hayden Bay

33. NON WAIVER

Waiver by either party of strict performance of any term of this Lease on any occasion shall not be construed as a waiver nor prejudice either party's right to require strict performance of the same provision in the future or of any other provision.

34. PARTNERSHIP

STATE is not a partner nor a joint venturer with LESSEE in connection with the business carried on under this Lease and shall have no obligation with respect to LESSEE's a debts or other liabilities.

35. SEWAGE DISPOSAL AND MARINE SANITATION DEVICES

If LESSEE operates a commercial marina LESSEE shall comply with the State of Oregon Department of Environmental Quality and State Marine Board Guidelines for Sewage Collection and Disposal for On-Water Boat and Floating Structures.

36. NOTICES

Any notices required or permitted under this Lease shall be in writing and deemed given three (3) days after deposited, postage prepaid, in the United States mail as regular mail and directed to the address provided below or to such other address as may be specified from time to time by either of the parties in writing.

For STATE:

DIVISION OF STATE LANDS
775 Summer Street NE
Salem, OR 97310

For LESSEE:

Amy M Welch
Name (Print)

505 N. Tomahawk Is
Current Mailing Address

Portland OR 97217
City State Zip

RECEIVED

JUL 24 2003

ML-9215
Page 13 of 14
Hayden Bay

37. EXHIBITS

All exhibits hereto are expressly incorporated herein by reference and made a part hereof. IN WITNESS WHEREOF the parties have executed this Lease.

LESSEE

4-7-99
Date

Amy M Welch Amy M Welch
Signature for Hayden Bay Condos.
542-60-5145
Amy M Welch

STATE OF Oregon)
County of Multnomah) ss

The foregoing instrument was acknowledged before me this 7 day of April, 1999 by _____ (officer or agent of corporation), the _____ (title of officer or agent) of _____ Corporation, a _____ (state or place of incorporation) corporation, on behalf of the corporation.



Karen J. Wich
Notary Signature

My Commission Expires 2-24-99

STATE OF OREGON, DIVISION OF
STATE LANDS

4-12-99
Date

Stephen Puhara
Authorized Signature

JAH:aw
fo:\Attachment\awest\ML\ML-9215.doc

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 14 of 14
Hayden Bay

Riverhouse
Condominium
Plat

WATER RESOURCES DEPT.
SALEM, OREGON

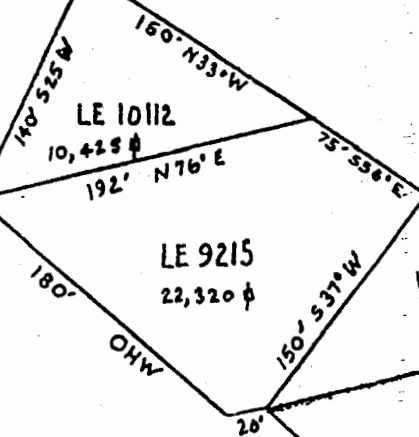
JUL 24 2003

RECEIVED

Winmar
Submerged
Land

State-owned
Submerged
Land

Hayden
Bay



LE 10112
10,428 ft

LE 9215
22,320 ft

Beginning Point

180°
OHW

A-dock

Winmar
Submerged
Land

N. Tomahawk Island Drive



1" = 100'

Hayden Bay
Condominium
Plat

Lease Request from Darrell L. Dunigan
Chairman Hayden Bay Condominiums
Home Owners Association

Sketch of Lease Areas
LE 9215 / LE 10112
0.51 Acres / 0.24 Acres

MULTNOMAH COUNTY
Section 34 T2N R1E W.M.

Drawn by:
J. Hedrick
Sept. 18, 1998

A. Higgins

EXHIBIT B

LEASE ML-10112

[See attached page.]

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

When Recorded Return To:

Sandra L. Kohn
Stoll Stoll Berne
Lokting & Shlachter P.C.
209 SW Oak St., Suite 500
Portland, OR 97204

STATE OF OREGON
DIVISION OF STATE LANDS
SUBMERGED AND SUBMERSIBLE LAND LEASE

ML-10112

The Oregon State Land Board and the Division of State Lands (STATE) hereby lease to the person(s) herein named (LESSEE), the following described lands on the terms and conditions stated herein, to wit:

NAME of LESSEE:

Winmar of Jantzen Beach, Inc.

ADDRESS:

c/o Sandra Kohn
209 SW Oak Street
Portland OR 97204

Legal classification of LESSEE is a Oregon corporation,

Land situated in Multnomah County more fully described as follows:

All state-owned submerged and submersible lands in Hayden Bay a Tributary of the Columbia River in Section 34, Township 2 North, Range 1 East, Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

Beginning at a point on the intersection of the South line of the Riverhouse Condominium plat (Multnomah County Assessor's Map Number 34-2N-1E) and the line of Ordinary High Water on the East cove of Hayden Bay and left bank of the Columbia River;

thence riverward along a line bearing North 76° East a distance of 192 feet;

thence North 57° West a distance of 150 feet;

thence shoreward South 25° West a distance of 140 feet to the line of Ordinary High Water and the point of beginning, containing 0.24 acres, more or less, and as shown in attached Exhibit "A".

Total number of acres: 0.24 more or less.

Hereinafter referred to as "leasehold".

SECTION 1 - LEASE TERM AND RENEWAL

- 1.1 **Term:** This Lease shall continue for a period of 15 years commencing on August 1, 1999 the month and date of which shall be known as the LEASE ANNIVERSARY DATE, and expiring on July 31, 2014, the month and date of which shall be known as the LEASE EXPIRATION DATE.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT. **ML-10112**
SALEM, OREGON **Page 1 of 14**

- 1.2 **Renewal:** LESSEE shall have an option to renew this Lease for an additional period of 15 years after the original and each renewal lease term provided that LESSEE has submitted a completed lease renewal application form to the STATE not less than one hundred and eighty (180) days prior to LEASE EXPIRATION DATE. Upon receipt of such application, this Lease shall be renewed by the STATE unless:
- 1.2.1 The STATE determines, in its sole discretion, that the LESSEE has not complied with the terms of this Lease, the applicable statutes and Oregon Administrative Rules; or
 - 1.2.2 The LESSEE is no longer the preference right holder as defined by applicable state law, or
 - 1.2.3 The STATE determines that the renewal of this Lease for all or portions of the leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010.
- 1.3 STATE shall provide LESSEE two (2) years advance written notice of its intent to not renew this Lease for all or portions of the leasehold pursuant to the provisions of this Section. In the event that the STATE determines not to renew this Lease, but less than two (2) years remain in the Lease term, the STATE shall utilize the holdover provisions (Section 7.11) of this Lease to complete the two (2) year notice period and to allow the LESSEE sufficient time to vacate the authorized area and to relocate any sublessees in an orderly fashion.

SECTION 2 - AUTHORIZED USES

- 2.1 **Purpose:** This Lease shall grant the LESSEE the right to use the above described land for the specific purpose(s) described below in accordance with these LEASE TERMS and CONDITIONS, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

NON-COMMERCIAL MARINA AND MOORAGE.

SECTION 3 - ANNUAL LEASE RENTAL PAYMENT CALCULATION AND ADJUSTMENTS

- 3.1 **Annual Lease Rental Payment:** The Lease rental payment to be paid by LESSEE to STATE shall be \$250.00 for the first year of the Lease as provided in Section 3.1.1 based on the minimum rent as shown below. Receipt of the first year's Lease rental payment is hereby acknowledged.
- 3.1.1 The initial annual Lease rent payment shall be calculated as follows:

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 2 of 14

	Use Class	Area (square ft.)	Rate Choice	Annual Rent
a)	Non-Commercial marina and moorage	0.24 acres	Minimum Rate	\$250.00
TOTAL				\$250.00

- 3.2 Annual Lease Rental Payment Adjustment: The annual lease rental payment shall be adjusted annually in accordance with the provisions of the Oregon Administrative Rule in effect at the time. The second years rent shall be \$258.00. The third years rent shall be \$265.00.

SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE

- 4.1 Modification of Leasehold Area or Use: LESSEE may request that the STATE expand or reduce the size, or change the use of the leasehold using a form provided by the STATE. However, no such change shall occur unless authorized in writing by the STATE.

4.1.1 The STATE may amend this Lease to reduce the leasehold area as requested if the portion of the leasehold is not in use, or does not contain any leasable structures. Structures and improvements within the vacated leasehold area shall be treated as in Section 9.3. If the modification results in a reduction of rental(s) due hereunder, such reduction shall become effective commencing on the first (1st) full year after the later of: (1) the date of the change of area or use, or (2) the date of the issuance of the STATE's written approval.

4.1.2 Requests to change an authorized use, or increase the leasehold shall be processed and reviewed in the same manner as a new lease application.

SECTION 5 - RESERVATIONS AND RESTRICTIONS

- 5.1 Compliance: The STATE shall have access to the leasehold at all reasonable times for the purpose of evaluating and ensuring compliance with the terms and conditions of this Lease. The State shall have the right to examine pertinent records of LESSEE for the purpose of ensuring compliance with the Lease.

- 5.2 Reservations: The STATE reserves:

5.2.1 The right to lease and dispose of all coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes together with the right to explore, mine, develop, produce and remove such minerals and other deposits with the right of ingress and egress thereto, and to terminate this Lease as to all or any portion of the leasehold when required for these purposes with

RECEIVED

JUL 24 2003

ML-10112
Page 3 of 14

one hundred twenty (120) days prior written notice to LESSEE or as otherwise provided in law.

5.2.2 The right to enter in and upon the leasehold at any time for purposes of inspection or management.

5.2.3 The right at any time to grant easements across the premises for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, with right of ingress and egress thereto. The STATE shall include in any such grant of easement a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with LESSEE's use(s) authorized in this Lease.

5.2.4 All rights not expressly granted to LESSEE are reserved by the STATE.

5.3 Public Access and Recreational Use Reservation: All state-owned submerged and submersible land shall remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by the STATE to public entry pursuant to the provisions of applicable Oregon Administrative Rules. LESSEE may request the STATE to close the leasehold to public entry or restrict recreational use by the public on all or portions of the leasehold to protect persons or property from harm arising from or in connection with the LESSEE's activities.

This reservation shall not grant the public any right to use or occupy LESSEE-owned property or structures authorized under this lease without LESSEE's permission.

5.4 Restriction on Use: In connection with use of the leasehold, the LESSEE shall:

5.4.1 Comply with all applicable local, state and federal laws and regulations affecting the leasehold and the use thereof, including local comprehensive land use planning and zoning ordinances, and correct at the LESSEE's own expense any failure of compliance created through the LESSEE's fault or by reason of the LESSEE's use;

5.4.2 Dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the leasehold. If LESSEE allows debris, garbage or other refuse to accumulate within the leasehold, the STATE shall have the right to remove the debris, garbage and other refuse, and collect the cost of such removal from LESSEE;

5.4.3 Not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the leasehold except

RECEIVED

JUL 24 2003

ML-10112

Page 4 of 14

with written permission of the STATE. The LESSEE shall promptly report to the STATE the cutting or removal of vegetation by other persons;

- 5.4.4 Conduct all operations within the leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or growth of noxious weeds;
 - 5.4.5 Maintain all buildings, docks, pilings, floats, gangways, similar structures, and other improvements located within the leasehold in a good state of repair; and .
 - 5.4.6 Not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.
- 5.5 Waste Water Disposal: In addition to any other applicable laws and regulations, LESSEE shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and disposal for on water boat and floating structures.
- 5.6 Hazardous Materials: LESSEE shall use, place, store or release, or allow to be used, placed, stored or released, any material that may pose a danger to the public, wildlife, or its habitat, including, but not limited to, hazardous wastes, pesticides, or toxic substances only in strict compliance with all laws and manufacturer's instructions and shall take all necessary precautions to protect the leasehold and its soil and vegetation. LESSEE shall keep and maintain accurate and complete records of the amount of such materials stored and/or used on the leasehold and shall immediately notify STATE of any potential risk to the leasehold, adjacent lands, waters, structures or property.

SECTION 6 - REQUIREMENTS

- 6.1 Assignment and Sublease: Except as noted in Section 6.2, the LESSEE may not assign or sublease nor enter into any third party agreement without first obtaining the prior written consent of the STATE pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be received by the STATE, in writing at least thirty (30) calendar days prior to the effective date of sublease or assignment. The STATE shall make a good faith effort to complete its review of such applications within thirty (30) days. If the application is incomplete, or if the STATE requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications shall be extended. The STATE reserves the right to condition its consent as it deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest shall be required to comply with all of LESSEE's obligations under this Lease, and the applicable Oregon Administrative Rules. LESSEE shall remain liable for the performance of the obligations under this Lease unless the STATE's written consent expressly releases LESSEE from further liability hereunder. For the purposes of this section, if LESSEE is a corporation or partnership, the transfer of any corporate

RECEIVED

JUL 24 2003

ML-10112

Page 5 of 14

WATER RESOURCES DEPT.
SALEM, OREGON

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

stock or partnership interest (including by operation of law) shall be deemed an assignment subject to the provisions of this Section if the result of said transfer shall be the change of management control or controlling interest of LESSEE.

6.1.1 LESSEE may not grant a mortgage or security interest in this Lease without prior written consent of the STATE which shall not be unreasonably withheld. Any subsequent assignment by the creditor or civil recovery shall require the prior written approval of the STATE.

6.2 Permitted Assignments and Subleases: Notwithstanding the provisions of Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of the LESSEE's interest in the Leased Premises shall be allowed without further STATE approval:

- 6.2.1 Subleases of portions of the LESSEE's interest in the leasehold area, in the ordinary course of LESSEE's business for the purposes approved under this Lease as specified in Section 2.1.
- 6.2.2 Subleases of the entire leasehold for a term that is less than one year for the purpose specified in Section 2.1.
- 6.2.3 The transfer or ownership of the Lease caused by the death of the LESSEE shall be considered an assignment requiring the STATE's approval. However, a transfer of ownership to a spouse or immediate family member is an assignment that does not require the STATE's prior approval.

6.3 Condition of Premises and Improvements: The leasehold area has been inspected and is accepted in its present condition, and LESSEE takes the leasehold and improvements, if any, AS IS. The STATE has made no oral representations concerning the condition of the leasehold, nor its fitness or suitability for any purpose.

6.4 Liability: LESSEE agrees to defend and hold STATE harmless from any and all claims suffered or alleged to be suffered within the leasehold or arising out of the LESSEE's operations on the premises. Further, LESSEE shall be responsible for the payment of any fines or penalties charged against the leasehold as a result of LESSEE's action in not complying with laws or regulations affecting the leasehold.

6.5 Assessments: LESSEE shall pay all taxes and/or assessments that may be legally charged on public lands or related improvements which are levied against the property subject to this Lease, whether or not such taxes and/or assessments have been levied against the leasehold or STATE by the assessing agency.

6.6 Bond: The STATE reserves the right to require the LESSEE to furnish to the STATE a surety bond or an equivalent cash deposit or certificate of deposit which names the State of Oregon as co-owner to ensure that the LESSEE will perform in accordance with all terms and conditions of the Lease.

SECTION 7 - MISCELLANEOUS

- 7.1 **No Partnership:** The STATE is not a partner nor in a joint venture with LESSEE in connection with the business carried on under this Lease and shall have no obligation with respect to LESSEE's debts or other liabilities.
- 7.2 **Non-Waiver:** Waiver by either party of strict performance or any provisions of this Lease shall not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 7.3 **Binding Interest:** This Lease shall be binding upon and inure to the benefit of the parties, and the respective heirs, administrators, successors, and assigns of the parties hereto.
- 7.4 **Notices:** Any official STATE notice required under this Lease shall be sent by certified mail and shall expressly be deemed to be delivered after the certified letter is mailed to the address given by the LESSEE in the signature block of this Lease or as shown on the most recent written notice of record with this Lease. LESSEE shall provide the STATE with a written notice of any change of address, change in corporation/partnership/ownership, or change in person(s) authorized to represent the LESSEE. The STATE shall provide written acknowledgment of such LESSEE written notices and retain copies of both the LESSEE notice(s) and STATE acknowledgment(s) with this Lease. LESSEE's failure to receive such written acknowledgment within thirty (30) days of the date LESSEE sent the original notice shall be constructive notice to LESSEE that: (1) the STATE has not properly received the notice, and (2) that such attempted notice shall be of no force and effect until such time as the notice is actually received and acknowledged by STATE.
- 7.5 **Liens:** In the event liens or other charges are placed on the leasehold premises, including land or improvements, arising out of LESSEE's actions directly or indirectly, the LESSEE shall immediately cause such liens to be discharged. The STATE may terminate this Lease if LESSEE fails to discharge such liens or charges or provide the STATE with a sufficient bond covering the full amount of the lien after ten (10) days notice to do so by the STATE. LESSEE shall pay and indemnify the STATE for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether such costs, damages or charges are incurred prior or subsequent to any termination of this Lease.
- 7.6 **Default:** The following shall be events of default:
- 7.6.1 Failure of the LESSEE to pay any rent, tax, reimbursement or other charge or payment due hereunder within twenty (20) days of the date such payment is due. For the purposes of this subsection, if the due date for such payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, such payment

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 7 of 14

shall be due on the date set forth in the notice from the STATE to the LESSEE informing the LESSEE of its obligation to pay such charge or payment.

7.6.2 Failure of LESSEE to comply with applicable laws, Oregon Administrative Rules or any non-payment related terms or conditions or obligations of the Lease within thirty (30) days after written notice by the STATE specifying the nature of the deficiency. Upon timely request from the LESSEE, the STATE may in its good faith discretion permit the deadline for curing such non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the thirty (30) day period, (2) the interests of the STATE will not be harmed by an extension, (3) such default was not due to the willful acts or gross negligence of the LESSEE, and (4) the STATE and the LESSEE are able to mutually agree upon a written plan and timeline for remediation.

7.6.3 Insolvency of LESSEE; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days. If LESSEE consists of two (2) or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within ten (10) days after an event of default occurs the remaining individuals produce evidence satisfactory to STATE that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned in compliance with Section 6.1 of this Lease, the events of default so specified in this subsection shall apply only with respect to the one then exercising the rights of LESSEE under the Lease.

7.6.4 Notwithstanding the above, if the STATE in good faith believes that a material default has occurred which may imperil the STATE's rights in the land or its fiduciary duties under law, the STATE may declare an immediate default without any right of LESSEE to cure the deficiency.

7.7 Termination Upon Default: In the event of a default by LESSEE, the STATE shall have the right to terminate this Lease if it has given LESSEE notice of the default and of the STATE's intent to terminate this Lease if the default is not completely cured by the deadline contained in the notice and if the listed default has not been cured by the stated deadline. The deadline contained in the notice must be at least twenty (20) calendar days from the date the notice is sent by certified mail, or if earlier, the date LESSEE actually receives said notice. The STATE shall be entitled to recover from LESSEE all costs arising out of the re-

RECEIVED

JUL 24 2003

ML-10112

Page 8 of 14

WATER RESOURCES DEPT.
SALEM, OREGON

entry and all costs of re-letting the premises. The STATE shall be entitled to recover the amount of unpaid rent required to be paid under the Lease from the date of default until a new Lease has been, or with the exercise of reasonable efforts could have been, secured, if the STATE was determined to re-let the leasehold. All improvements located thereon shall be disposed of as provided by Section 9.3 of this Lease. If the LESSEE owns a floating home and has placed such home on the property pursuant to the provisions of Section 2.1 of this Lease, the lease termination provisions of ORS 90.630 shall apply to the extent that they are inconsistent with the provisions of this Lease.

7.8 STATE's Right to Cure Defaults:

7.8.1 If the LESSEE fails to perform any obligation under this Lease, the STATE shall have the option to perform the obligation of the Lease after thirty (30) days written notice to the LESSEE. All of the STATE's expenditures to carry out the obligation shall be reimbursed by the LESSEE on demand with interest at the rate of one percent (1%) per month accrued from the date of expenditure by the STATE.

7.8.2 In the event any violation or breach of the provision of this Lease is causing damage to the leasehold or the LESSEE is utilizing the leasehold in a manner not permitted by the provision of this Lease, or in any case damages are occurring to the leasehold, the STATE may immediately enter upon the leasehold and take such action as necessary to cease such damages or use. In the event the damage or use is occurring by reason of a violation or breach of the provisions of this Lease, the LESSEE shall be liable for all costs incurred by the STATE by reasons of such violations. The STATE, at its option, may send notice to the LESSEE of such violations and LESSEE shall immediately cease such use or violation and correct such violation.

7.9 Termination Upon Mutual Consent: This Lease may also be terminated by mutual written consent of LESSEE and STATE.

7.10 Weed Control: The LESSEE shall control noxious weeds including aquatic weeds, plant pests and diseases within the leasehold as directed by the local county weed control district, the Oregon Department of Agriculture and/or any other governmental authority which may now or in the future have authority with regard to the prevention and/or control of noxious weeds, plant pests and/or diseases, or as may be authorized or directed by the STATE.

7.11 Holdover: If LESSEE does not vacate the leasehold at the time required at expiration or upon termination of a Lease, STATE shall have the option to treat LESSEE as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and rental. The STATE shall have the option to unilaterally establish a new rental for the month-to-month tenancy, with said rental payable in advance. If a month-to-month tenancy

RECEIVED

JUL 24 2003

ML-10112
Page 9 of 14

WATER RESOURCES DEPT.
SALEM, OREGON

results from holdover by LESSEE under this paragraph, the tenancy shall be terminable at the end of any monthly rental period upon written notice from STATE given not less than thirty (30) days prior to the termination date which shall be specified in the notice.

- 7.12 Governing Law: This Lease and all matters related to the rights and responsibilities hereunder are governed by and subject to the laws of the State of Oregon and the administrative rules of the Division of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties hereunder, and such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease.
- 7.13 Binding on Successors: This Lease shall be binding on and shall inure to the benefit of the successors and assigns of the parties hereto, but nothing in this section shall be construed as a consent by STATE to any disposition or transfer of the Lease or any interest herein by LESSEE except as otherwise expressly provided in this Lease.
- 7.14 Nondiscrimination: The leasehold shall be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 7.15 Right To Sue More Than Once: STATE may sue periodically to recover damages for the period corresponding to the remainder of the lease term and no action for damages shall bar later actions for damages subsequently accruing.
- 7.16 Remedies Cumulative: The remedies contained in this Lease shall be in addition to, and shall not exclude any other remedy available at law or in equity, and exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.
- 7.17 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings.
- 7.18 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 7.19 Compliance With Applicable Law: The STATE's performance under this Contract is conditioned on the LESSEE's compliance with the provision of ORS

RECEIVED

JUL 24 2003

ML-10112
Page 10 of 14

WATER RESOURCES DEPT.
SALEM, OREGON

279.312, 279.314, 279.316, 279.320 and 279.555, which are incorporated by reference herein.

- 7.20 Late Charges and Interest: It is understood by both parties that late payments by the LESSEE of rent and other charges due hereunder will cause the STATE to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. As such, the parties agree that, notwithstanding other remedies permitted hereunder, if the LESSEE has not made full payment of amounts due within twenty (20) days of the date such payment is due, LESSEE shall pay an additional charge equal to five percent (5%) of the amount of the late rent or other charge. In addition, all amounts due and owing under this agreement, including late charges, shall bear interest at the lower of: (1) the highest interest rate allowable by law, or (2) twelve percent (12%) per year.

SECTION 8 - INSURANCE

- 8.1 Commercial General Liability: LESSEE shall obtain at LESSEE's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage with an insurance company acceptable to the STATE. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this Lease and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000.00, or the equivalent. Each annual aggregate limit shall not be less than \$1,000,000.00, when applicable.
- 8.2 Revisions/Amendments/New Requirements: The amounts and types of insurance (including those specified in Section 8) and the party responsible for procuring the insurance shall be established and reviewed when circumstances warrant. The requirements may be revised or amended by the STATE periodically at the STATE's sole discretion after STATE:
- (a) consults with its insurance advisor;
 - (b) consults with LESSEE;
 - (c) considers the commercial reasonableness of any requirements, amendments or revisions; and
 - (d) considers the STATE's need for adequate insurance protection and the STATE's fiduciary obligations.

Within thirty (30) days notice to LESSEE of the STATE'S revision or amendment of the insurance requirements, LESSEE shall provide the STATE with satisfactory evidence that the LESSEE has obtained new insurance coverage which conforms with the revised/amended insurance requirements. If mutually agreed in writing, LESSEE may have additional time to obtain such insurance.

- 8.3 Named Insured Parties: The liability insurance coverages required for performance of the Lease shall include the State of Oregon, the Division of State

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 11 of 14

Lands and their sections, officers and employees as additional insured but only with respect to the LESSEE's activities to be performed under this Lease.

- 8.4 Certificate(s) of Insurance: As evidence of the insurance coverages required by this Lease, the LESSEE shall furnish certificate(s) of insurance to the STATE prior to the issuance of this Lease, and not less often than annually thereafter and as reasonably requested by STATE. The certificate(s) will specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease shall be obtained from acceptable insurance companies or entities. The LESSEE shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

SECTION 9 - IMPROVEMENTS

- 9.1 Authorized Improvements or Structures: No improvement that exceeds fifteen thousand dollars (\$15,000) in cost or value may be constructed or placed upon the leasehold unless the LESSEE shall have first obtained the prior written authorization of the STATE. Approval for improvements consistent with the purposes of this Lease shall not be unreasonably withheld or delayed. All improvements must be consistent with the authorized use(s) of this Lease as stated in Section 2.1.
- 9.2 Unauthorized Improvements or Structures: Unauthorized improvements shall, at the election of the STATE, either be removed from the leasehold by LESSEE (or if STATE so elects, by the STATE at LESSEE's cost and expense), or remain within the leasehold.
- 9.3 Removal of Structures and Improvements: Any LESSEE-owned structure or improvement must be removed within ninety (90) days of the termination of the Lease or modification of the lease as in Section 4.1.1 unless otherwise agreed by the parties as in the case of a structure exempt from authorization under OAR 141-082-0030(4). LESSEE shall be responsible for any damage done to the leasehold as a result of the removal of the structure improvements. Any structure or improvements remaining on the leasehold after the ninety (90) day period may at the option of the STATE become the property of STATE, unless otherwise agreed by the parties.

SECTION 10 - ADDITIONAL CONDITIONS AND STIPULATIONS

None.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 12 of 14

SECTION 11 ENTIRE AGREEMENT

11.1 **ENTIRE AGREEMENT:** THIS LEASE, TOGETHER WITH THE ATTACHED EXHIBITS AND ATTACHMENTS, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS LEASE SHALL BIND EITHER PARTY UNLESS IN WRITING. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN, AND SHALL BE VALID AND BINDING ONLY IF IT IS SIGNED BY EACH PARTY. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS LEASE. LESSEE, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT LESSEE HAS READ THIS LEASE, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THIS LEASE SUPERSEDES ALL PRIOR OR EXISTING LEASE OR RENTAL AGREEMENTS BETWEEN THE PARTIES.

The LESSEE expressly agrees to all covenants herein and binds him/herself for the payment of the rental herein before specified.

DIVISION OF STATE LANDS

Stephen R. [Signature]
Authorized Signature

8/30/99
Date

Division of State Lands
775 Summer Street NE
Salem, OR 97310-1337

Note: If the LESSEE is a corporation, the signer warrants that s/he has the authority to sign the lease on behalf of the corporation by resolution of its Board of Directors, or through delegation of authority to the signer.

LESSEE

WINMAR OF JANTZEN BACH, INC.

By: Eddie L. [Signature]
Signature/Title President
(Note requirement below)

By: Thomas D. [Signature] 8-23-99
Date Secretary

P.O. Box 21545

Seattle, WA 98111-3545

Mailing Address

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112

Page 13 of 14

CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

I, the undersigned, hereby swear or affirm under penalty of perjury that to the best of my knowledge, I am not in violation of any Oregon Tax Laws.

For the purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4) which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Self-Employment Tax, Lane Transit District Employer Payroll Tax, Tri-County Metropolitan Transit District of Oregon ("Tri-Met") Employer Payroll Tax, and Tri-Met Self-Employment Tax).

Signature: Eddie L. Hendrickson

Date: August 23, 1999

Printed Name: Eddie L. Hendrickson

Title: resident

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 14 of 14

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

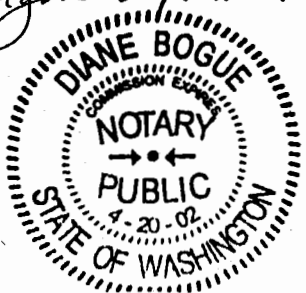
The foregoing instrument was acknowledged before me this 23rd day of August, 1999, by Richard L. Hendrikson, as President on behalf of Winmar of Guntzen Beach, Inc., an Oregon corporation.



Diane Bogue
Notary Public for WASHINGTON
My commission expires:

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

The foregoing instrument was acknowledged before me this 23rd day of August, 1999, by James A. Barkant, as Secretary on behalf of the Oregon Division of State Lands, Winmar of Guntzen Beach, Inc., an Oregon corporation.



Diane Bogue
Notary Public for WASHINGTON
My commission expires: April 20, 2002

RECEIVED
JUL 24 2003
WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF Oregon)
) ss:
COUNTY OF Multnomah)

The foregoing instrument was acknowledged before me this 30th day of August, 1993 by Stephen Kuebler as Assistant Director on behalf of the Oregon Division of State Lands.

Shannon K. Relaford

Notary Public for 8/3/03
My commission expires:



RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Riverhouse
Condominium
Plat

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Winmar
Submerged
Land

State-owned
Submerged
Land

Hayden
Bay

LE 10112
10,425 sq ft

LE 9215
22,320 sq ft

Beginning Point

N. Tomahawk Island Drive

Hayden Bay
Condominium
Plat

A-dock

Winmar
Submerged
Land



1" = 100'

Lease Request from Darrell L. Dunigan
Chairman Hayden Bay Condominiums
Home Owners Association

Sketch of Lease Areas
LE 9215 & LE 10112
0.51 Acres 0.24 Acres

MULTNOMAH COUNTY
Section 34 T2N R1E W.M.

Drawn by:
J. Hedrick
Sept. 18, 1998

EXHIBIT C

DIAGRAM OF PROPERTIES

[See attached page.]

RECEIVED

5869-010

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

EXHIBIT D

LEGAL DESCRIPTION OF WINMAR HB SUBMERGED PROPERTY

TRACT 3:

A parcel of land in Section 34, Township 2 North, Range 1 East, of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northeasterly corner of Block 3, HAYDEN BAY MARINA, as recorded in Plat Book 1207, at pages 49 and 50, recorded May 16, 1977, Multnomah County Records; thence along the Northeasterly line of said Block 3, South 45°42'15" East 176.71 feet to the true point of beginning of the herein described parcel; thence leaving said line North 76°13'00" East, 1612.60 feet; thence South 9°47'16" East, 242.51 feet to the most Northeasterly corner of Tract "A", of said Plat; thence along the Northerly boundary line of said HAYDEN BAY MARIAN Plat on the following courses: South 80°12'44" West, 325.62 feet; thence South 73°33'42" West, 297.59 feet; thence South 66°42'47" West 171.90 feet; thence South 76°57'35" West, 77.00 feet; thence South 6°43'02" West, 85.00 feet; thence South 13°02'25" East, 120.30 feet; thence South 76°57'35" West, 63.74 feet; thence leaving said plat line North 00°00'49" East, 121.82 feet; thence North 80°03'37" West, 5.00 feet to a point on the Northerly line of said plat; thence continuing along said plat line North 15°53'05" West, 77.77 feet; thence North 80°03'37" West, 90.00 feet; thence South 82°16'32" West, 396.00 feet; thence North 79°58'02" West 43.16 feet; thence North 56°07'31" West, 163.00 feet; thence North 45°42'15" West, 53.29 feet to the true point of beginning.

TOGETHER WITH an easement for purposes of pedestrian access and utilities, said easement being over, under and across a portion of Tract "A", Common Property in HAYDEN BAY MARINA, a plat of record, recorded May 16, 1977 in Plat Book 1207, pages 49 and 50, said easement rights existing by reason of the following provision on said Plat: "A blanket easement over all of Tract A, Common Property, is granted to Hayden Island, Inc., for unlimited access and the construction and maintenance of utilities."

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

NO. 4304 P. 2/21

Riverhouse
Condominium
Plat

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Winmar RH
Submerged
Land

State-owned
Submerged
Land

Hayden
Bay

LE 10112

10,425 sq ft

192' N76°E

LE 9215

23,320 sq ft

Beginning Point

140' S25°E

160' N33°E

75' S90°W

180' O/W

150' S37°E

A-dock

Winmar HB
Submerged
Land

Hayden Bay
Condominium
Plat

N. Tomahawk Island Drive



Scale bar
1" = 100'

Exhibit 'A'

Lease Request from Darrell L. Dunigan
Chairman Hayden Bay Condominiums
Home Owners Association

Sketch of Lease Areas
LE 9215 / LE 10112
0.51 Acres / 0.24 Acres

MULTNOMAH COUNTY
Section 34 T2N R1E W.M.

Drawn by:
J. Hedrick
Sept. 08, 1998

After Recording, Return To:

The Association of Unit Owners of
Hayden Bay Condominiums
505 N. Tomahawk Island Drive
Portland, OR 97217

Recorded in the County of Multnomah, Oregon
C. Swick, Deputy Clerk
173.00
99167491 2:51pm 09/01/99
009 566727 03 18 000206
012 30 0.00 150.00 3.00 20.00 0.00

ASSIGNMENT OF LEASE AGREEMENT

FATCO NO. 855624-70

DATE: August 23, 1999
BETWEEN: WINMAR OF JANTZEN BEACH, INC.,
an Oregon corporation ("Winmar")
AND: THE ASSOCIATION OF UNIT OWNERS OF
HAYDEN BAY CONDCMINIUM,
an Oregon nonprofit corporation ("Hayden")

RECITALS:

A. Winmar and the State of Oregon, acting through its Division of State Lands (the "State"), are parties to that certain lease agreement no. ML-10112 dated as of August 1, 1999 between Winmar as lessee and the State as lessor ("Lease ML-10112"), a copy of which is attached hereto as Exhibit A, pertaining to certain submerged land (the "Premises"), as more particularly described in Lease ML-10112. Winmar has a riparian preference right to lease the Premises by virtue of Winmar's fee ownership of certain submerged land that is adjacent to the Premises and adjacent to the property commonly known as the Riverhouse property (the "Winmar RH Submerged Property"). The legal description of the Winmar RH Submerged Property is set forth on the attached Exhibit B. The location of the Premises and the Winmar RH Submerged Property is approximately depicted on the diagram attached hereto as Exhibit C. The Premises is referred to on Exhibit C as "LE 10112."

1 - ASSIGNMENT OF LEASE AGREEMENT - LEASE ML-10112

ODMAGRPWISFRVSSBLS_Domain_PO_PDX Client3 1625 2

5869-010

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

30

B. Winmar wishes to assign its rights as lessee under Lease ML-10112 to Hayden, and Hayden wishes to assume Winmar's obligations as lessee under Lease ML-10112, on the terms and conditions set forth in this Assignment of Lease Agreement (this "Assignment").

AGREEMENT:

NOW, THEREFORE, IT IS AGREED:

1. Assignment and Assumption.

a. **Assignment.** Winmar hereby assigns to Hayden all of Winmar's rights, title, and interest as lessee in, under, and to Lease ML-10112, effective as of the date of this Assignment (the "Effective Date").

b. **Assumption.** Hayden hereby accepts the foregoing assignment, and assumes and agrees to perform all obligations of Winmar as lessee under Lease ML-10112, in strict accordance with the terms of Lease ML-10112, from and after the Effective Date.

2. Indemnification.

a. **Indemnity by Winmar.** Winmar hereby agrees to indemnify, defend, protect, and hold harmless Hayden from and against any and all losses, liabilities, claims, costs, and expenses (including reasonable attorneys' fees) arising out of or in any way related to Winmar's failure to perform its obligations under Lease ML-10112 or this Assignment or arising out of use of the Premises by Winmar or its agents, employees, contractors, customers, or invitees before the Effective Date.

b. **Indemnity by Hayden.** Hayden hereby agrees to indemnify, defend, protect, and hold harmless Winmar from and against any and all losses, liabilities, claims, costs, and expenses (including reasonable attorneys' fees) arising out of or in any way related to

2 - ASSIGNMENT OF LEASE AGREEMENT - LEASE ML-10112

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Hayden's failure to perform its obligations under Lease ML-10112 or this Assignment or arising out of use of the Premises by Hayden or its agents, employees, contractors, customers, or invitees from and after the Effective Date.

3. **Status of Lease; Condition of Premises; Property Removal.**

a. **Status of Lease.** Winmar represents and warrants that Lease ML-10112 is in full force and effect in accordance with its terms, that Lease ML-10112 has not been amended or modified except as stated in this Assignment, that Winmar is not in default of Lease ML-10112, and that all rental has been paid under Lease ML-10112 for the period through the date of this Assignment.

b. **As Is Condition.** Hayden hereby accepts the Premises in its "AS IS" condition at the Effective Date. Winmar shall not be obligated to make any alterations or improvements to the Premises whatsoever.

c. **Property Removal.** Winmar hereby agrees not to remove any improvements, alterations, fixtures, or equipment from the Premises during the term of this Assignment.

4. **Consent of State; Release of Winmar.** The effectiveness of this Assignment is conditioned on the State first executing the consent provision on the last page of this Assignment. The parties acknowledge that the State's consent to this Assignment shall not be construed as a waiver by the State of the State's right to withhold consent to any subsequent assignment, sublease, or other transfer of Lease ML-10112 or any interest in the Premises. The parties acknowledge that Winmar shall not be liable under Lease ML-10112 to pay or perform any obligations to be paid and performed by the lessee under Lease ML-10112 that arise after the

3 - ASSIGNMENT OF LEASE AGREEMENT - LEASE ML-10112

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Effective Date.

5. **Term; Renewals.** Subject to Section 6 below, this Assignment shall remain in full force and effect for so long as Lease ML-10112 is in full force and effect, and from and after the Effective Date, Hayden shall have all rights of the lessee under Lease ML-10112. However, Winmar has and shall retain its riparian preference right with respect to the Premises and, as the holder of such right, Winmar shall have the right and ability to renew Lease ML-10112 upon its expiration. Winmar shall provide Hayden with six (6) months written notice of the expiration of Lease ML-10112 and of the terms and conditions on which the State is willing to renew Lease ML-10112. Upon Hayden's written request, Winmar shall enter into a renewal of Lease ML-10112 on the terms and conditions provided to Hayden, and shall assign Winmar's interest in the renewed Lease ML-10112 to Hayden pursuant to an assignment agreement that is substantially in the form of this Assignment. If Hayden does not request renewal of Lease ML-10112, Winmar shall not be obligated to renew Lease ML-10112. Hayden shall not be obligated to assume Winmar's interest in any renewal of Lease ML-10112 unless Hayden requested such renewal.

6. **Easement Agreement; Termination of Assignment.** Winmar and Hayden are parties to that certain Easement Agreement of even date herewith (the "Easement"), pursuant to which, among other things (i) Hayden has granted Winmar certain easements with respect to certain submerged land being leased by Hayden from the State under lease agreement no. ML-9215 between Hayden as lessee and the State as lessor ("Lease ML-9215"), and (ii) Hayden has the right to voluntarily terminate Lease ML-9215 under certain terms and conditions, as more particularly set forth in Section 7 of the Easement. The parties hereby agree that, upon termination of the Easement pursuant to Section 8 of the Easement, this Assignment shall

4 - ASSIGNMENT OF LEASE AGREEMENT - LEASE ML-10112

ODMA\GRPWISE\SSBLS Domain PO_PDX Client\3 1625 2

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

5869-010

terminate as of the date of such termination of the Easement, unless the parties agree otherwise in writing. In addition, in the event of Hayden's voluntary termination of Lease ML-9215, then, unless the parties agree otherwise in writing, this Assignment shall terminate, as of the date of such voluntary termination by Hayden, and Winmar shall have the immediate right (but not the obligation) to voluntarily terminate Lease ML-10112.

7. **Miscellaneous.**

a. **Effect of Assignment.** This Assignment does not amend Lease ML-10112. Lease ML-10112 is unmodified and is in full force and effect.

b. **Integration.** This Assignment contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements between or among them with respect thereto.

c. **Brokers.** Winmar and Hayden each represent and warrant to the other and to the State that it has used no real estate broker or finder in connection with this Assignment. Winmar and Hayden agree to defend, indemnify, and hold harmless each other and the State from and against any claim for a brokerage commission or a fee asserted by any party in connection with any contacts with such indemnifying party.

d. **Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret, enforce, or rescind any provision of this Assignment or with respect to any dispute relating to this Assignment, the prevailing party shall be entitled to recover from the losing party its attorneys' fees, paralegal fees, accountant fees, and other expert fees, and all other fees, costs, and expenses actually

RECEIVED 669-010

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount of fees shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

e. **Notices.** From and after the Effective Date, the lessee's address for all notices under Lease ML-10112 shall be:

The Association of Unit Owners of
Hayden Bay Condominium
507 N. Tomahawk Island Drive
Portland, Oregon 97217

f. **Further Instruments.** Each party agrees to execute such further instruments as may be reasonably required to consummate the transactions contemplated by this Assignment, as long as the terms thereof are fully consistent with the terms of this Assignment.

g. **Recording.** The parties shall cause this Assignment or a Memorandum hereof to be recorded in the Deed Records of Multnomah County, Oregon.

h. **Binding Effect.** This Assignment is binding on and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

i. **Counterparts.** This Assignment may be executed in one or more counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of this Assignment that has attached to it separate signature pages, which altogether contain the signatures of all parties, shall for all purposes be deemed a fully executed instrument.

6 - ASSIGNMENT OF LEASE AGREEMENT - LEASE ML-10112

ODMA\GRPWISE\SSDLS_Domain PO_PDX Clients\1023 2

RECEIVED 5869-010

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

WINMAR:

WINMAR OF JANTZEN BEACH, INC., an Oregon corporation

By: Eddie L. Hendriksen
Name: Eddie L. Hendriksen
Title: President

By: Thomas A. Berkowitz
Name: Thomas A. Berkowitz
Title: Secretary

HAYDEN:

THE ASSOCIATION OF UNIT OWNERS OF HAYDEN BAY CONDOMINIUM, an Oregon nonprofit corporation

By: Amy M. Welch AmyM
Name: AmyM
Title: Board Member

(Acknowledgments on Following Page)

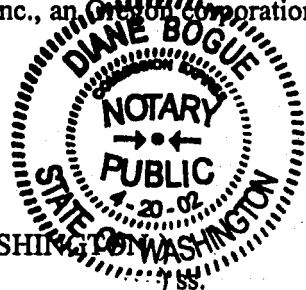
RECEIVED⁰¹⁰

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF WASHINGTON)
) ss.
County of King)

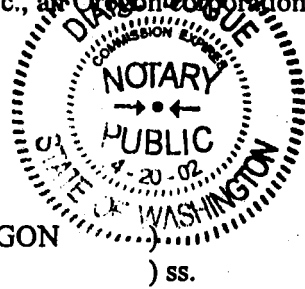
The foregoing instrument was acknowledged before me this 23rd day of August, 1999 by Eddie L. Henderson, as President on behalf of Winmar of Jantzen Beach, Inc., an Oregon corporation.



Diane Bogue
Notary Public for Washington
My commission expires: April 20, 2002

STATE OF WASHINGTON)
) ss.
County of King)

The foregoing instrument was acknowledged before me this 23rd day of August, 1999 by Donald A. Henderson, as Secretary on behalf of Winmar of Jantzen Beach, Inc., an Oregon corporation.

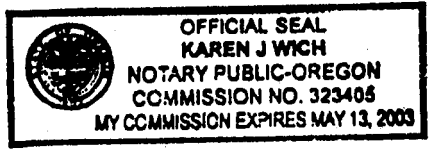


Diane Bogue
Notary Public for Washington
My commission expires: April 20, 2002

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this 24 day of June, 1999 by Amy Welch, as Board Member on behalf of The Association of Unit Owners of Hayden Bay Condominium, an Oregon nonprofit corporation.

Karen J Wich
Notary Public for Oregon
My commission expires: 5-13-03



8 - ASSIGNMENT OF LEASE AGREEMENT - LEASE ML-10112

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

CONSENT OF STATE

The State hereby consents to the assignment of Lease ML-10112 in accordance with, and subject to, the terms, conditions, and covenants of the foregoing Assignment. The State acknowledges that Winmar shall not be liable under Lease ML-10112 to pay or perform any obligations to be paid and performed by the lessee under Lease ML-10112 that arise after the Effective Date.

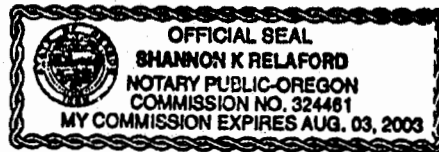
STATE OF OREGON, acting by and through the Division of State Lands

By: Stephen J Purchase
Name: Stephen J Purchase
Title: Assistant Director
Date: 8/30/99

STATE OF OREGON)
County of Marion) ss.

The foregoing instrument was acknowledged before me this 30th day of August, 1999 by Stephen J Purchase, as Assistant Director on behalf of the State of Oregon, acting by and through the Division of State Lands.

Shannon K Relaford
Notary Public for Oregon
My commission expires: 8/3/03



RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

EXHIBIT A

LEASE ML-10112

[See attached page.]

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

EXHIBIT A

LEASE ML-10112

[See attached page.]

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

When Recorded Return To:

Sandra L. Kohn
Stoll Stoll Berne
Lokting & Shlachter P.C.
209 SW Oak St., Suite 500
Portland, OR 97204

**STATE OF OREGON
DIVISION OF STATE LANDS
SUBMERGED AND SUBMERSIBLE LAND LEASE**

ML-10112

The Oregon State Land Board and the Division of State Lands (STATE) hereby lease to the person(s) herein named (LESSEE), the following described lands on the terms and conditions stated herein, to wit:

NAME of LESSEE:

Winmar of Jantzen Beach, Inc.

ADDRESS:

c/o Sandra Kohn
209 SW Oak Street
Portland OR 97204

Legal classification of LESSEE is a Oregon corporation,

Land situated in Multnomah County more fully described as follows:

All state-owned submerged and submersible lands in Hayden Bay a Tributary of the Columbia River in Section 34, Township 2 North, Range 1 East, Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

Beginning at a point on the intersection of the South line of the Riverhouse Condominium plat (Multnomah County Assessor's Map Number 34-2N-1E) and the line of Ordinary High Water on the East cove of Hayden Bay and left bank of the Columbia River;

thence riverward along a line bearing North 76° East a distance of 192 feet;

thence North 57° West a distance of 150 feet;

thence shoreward South 25° West a distance of 140 feet to the line of Ordinary High Water and the point of beginning, containing 0.24 acres, more or less, and as shown in attached Exhibit "A".

Total number of acres: 0.24 more or less.

Hereinafter referred to as "leasehold".

SECTION 1 - LEASE TERM AND RENEWAL

- 1.1 Term: This Lease shall continue for a period of 15 years commencing on August 1, 1999 the month and date of which shall be known as the LEASE ANNIVERSARY DATE, and expiring on July 31, 2014, the month and date of which shall be known as the LEASE EXPIRATION DATE.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 1 of 14

- 1.2 **Renewal:** LESSEE shall have an option to renew this Lease for an additional period of 15 years after the original and each renewal lease term provided that LESSEE has submitted a completed lease renewal application form to the STATE not less than one hundred and eighty (180) days prior to LEASE EXPIRATION DATE. Upon receipt of such application, this Lease shall be renewed by the STATE unless:
- 1.2.1 The STATE determines, in its sole discretion, that the LESSEE has not complied with the terms of this Lease, the applicable statutes and Oregon Administrative Rules; or
 - 1.2.2 The LESSEE is no longer the preference right holder as defined by applicable state law, or
 - 1.2.3 The STATE determines that the renewal of this Lease for all or portions of the leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010.
- 1.3 STATE shall provide LESSEE two (2) years advance written notice of its intent to not renew this Lease for all or portions of the leasehold pursuant to the provisions of this Section. In the event that the STATE determines not to renew this Lease, but less than two (2) years remain in the Lease term, the STATE shall utilize the holdover provisions (Section 7.11) of this Lease to complete the two (2) year notice period and to allow the LESSEE sufficient time to vacate the authorized area and to relocate any sublessees in an orderly fashion.

SECTION 2 - AUTHORIZED USES

- 2.1 **Purpose:** This Lease shall grant the LESSEE the right to use the above described land for the specific purpose(s) described below in accordance with these LEASE TERMS and CONDITIONS, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

NON-COMMERCIAL MARINA AND MOORAGE.

SECTION 3 - ANNUAL LEASE RENTAL PAYMENT CALCULATION AND ADJUSTMENTS

- 3.1 **Annual Lease Rental Payment:** The Lease rental payment to be paid by LESSEE to STATE shall be \$250.00 for the first year of the Lease as provided in Section 3.1.1 based on the minimum rent as shown below. Receipt of the first year's Lease rental payment is hereby acknowledged.
- 3.1.1 The initial annual Lease rent payment shall be calculated as follows:

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 2 of 14

Use Class	Area (square ft.)	Rate Choice	Annual Rent
a) Non-Commercial marina and moorage	0.24 acres	Minimum Rate	\$250.00
TOTAL			\$250.00

- 3.2 Annual Lease Rental Payment Adjustment: The annual lease rental payment shall be adjusted annually in accordance with the provisions of the Oregon Administrative Rule in effect at the time. The second years rent shall be \$258.00. The third years rent shall be \$265.00.

SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE

- 4.1 Modification of Leasehold Area or Use: LESSEE may request that the STATE expand or reduce the size, or change the use of the leasehold using a form provided by the STATE. However, no such change shall occur unless authorized in writing by the STATE.

4.1.1 The STATE may amend this Lease to reduce the leasehold area as requested if the portion of the leasehold is not in use, or does not contain any leasable structures. Structures and improvements within the vacated leasehold area shall be treated as in Section 9.3. If the modification results in a reduction of rental(s) due hereunder, such reduction shall become effective commencing on the first (1st) full year after the later of: (1) the date of the change of area or use, or (2) the date of the issuance of the STATE's written approval.

4.1.2 Requests to change an authorized use, or increase the leasehold shall be processed and reviewed in the same manner as a new lease application.

SECTION 5 - RESERVATIONS AND RESTRICTIONS

- 5.1 Compliance: The STATE shall have access to the leasehold at all reasonable times for the purpose of evaluating and ensuring compliance with the terms and conditions of this Lease. The State shall have the right to examine pertinent records of LESSEE for the purpose of ensuring compliance with the Lease.

- 5.2 Reservations: The STATE reserves:

5.2.1 The right to lease and dispose of all coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes together with the right to explore, mine, develop, produce and remove such minerals and other deposits with the right of ingress and egress thereto, and to terminate this Lease as to all or any portion of the leasehold when required for these purposes with

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 3 of 14

one hundred twenty (120) days prior written notice to LESSEE or as otherwise provided in law.

5.2.2 The right to enter in and upon the leasehold at any time for purposes of inspection or management.

5.2.3 The right at any time to grant easements across the premises for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, with right of ingress and egress thereto. The STATE shall include in any such grant of easement a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with LESSEE's use(s) authorized in this Lease.

5.2.4 All rights not expressly granted to LESSEE are reserved by the STATE.

5.3 Public Access and Recreational Use Reservation: All state-owned submerged and submersible land shall remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by the STATE to public entry pursuant to the provisions of applicable Oregon Administrative Rules. LESSEE may request the STATE to close the leasehold to public entry or restrict recreational use by the public on all or portions of the leasehold to protect persons or property from harm arising from or in connection with the LESSEE's activities.

This reservation shall not grant the public any right to use or occupy LESSEE-owned property or structures authorized under this lease without LESSEE's permission.

5.4 Restriction on Use: In connection with use of the leasehold, the LESSEE shall:

5.4.1 Comply with all applicable local, state and federal laws and regulations affecting the leasehold and the use thereof, including local comprehensive land use planning and zoning ordinances, and correct at the LESSEE's own expense any failure of compliance created through the LESSEE's fault or by reason of the LESSEE's use;

5.4.2 Dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the leasehold. If LESSEE allows debris, garbage or other refuse to accumulate within the leasehold, the STATE shall have the right to remove the debris, garbage and other refuse, and collect the cost of such removal from LESSEE;

5.4.3 Not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the leasehold except

RECEIVED

JUL 24 2003

ML-10112

Page 4 of 14

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

with written permission of the STATE. The LESSEE shall promptly report to the STATE the cutting or removal of vegetation by other persons;

- 5.4.4 Conduct all operations within the leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or growth of noxious weeds;
 - 5.4.5 Maintain all buildings, docks, pilings, floats, gangways, similar structures, and other improvements located within the leasehold in a good state of repair; and .
 - 5.4.6 Not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.
- 5.5 Waste Water Disposal: In addition to any other applicable laws and regulations, LESSEE shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and disposal for on water boat and floating structures.
- 5.6 Hazardous Materials: LESSEE shall use, place, store or release, or allow to be used, placed, stored or released, any material that may pose a danger to the public, wildlife, or its habitat, including, but not limited to, hazardous wastes, pesticides, or toxic substances only in strict compliance with all laws and manufacturer's instructions and shall take all necessary precautions to protect the leasehold and its soil and vegetation. LESSEE shall keep and maintain accurate and complete records of the amount of such materials stored and/or used on the leasehold and shall immediately notify STATE of any potential risk to the leasehold, adjacent lands, waters, structures or property.

SECTION 6 - REQUIREMENTS

- 6.1 Assignment and Sublease: Except as noted in Section 6.2, the LESSEE may not assign or sublease nor enter into any third party agreement without first obtaining the prior written consent of the STATE pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be received by the STATE, in writing at least thirty (30) calendar days prior to the effective date of sublease or assignment. The STATE shall make a good faith effort to complete its review of such applications within thirty (30) days. If the application is incomplete, or if the STATE requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications shall be extended. The STATE reserves the right to condition its consent as it deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest shall be required to comply with all of LESSEE's obligations under this Lease, and the applicable Oregon Administrative Rules. LESSEE shall remain liable for the performance of the obligations under this Lease unless the STATE's written consent expressly releases LESSEE from further liability hereunder. For the purposes of this section, if LESSEE is a corporation or partnership, the transfer of any corporate

stock or partnership interest (including by operation of law) shall be deemed an assignment subject to the provisions of this Section if the result of said transfer shall be the change of management control or controlling interest of LESSEE.

6.1.1 LESSEE may not grant a mortgage or security interest in this Lease without prior written consent of the STATE which shall not be unreasonably withheld. Any subsequent assignment by the creditor or civil recovery shall require the prior written approval of the STATE.

6.2 Permitted Assignments and Subleases: Notwithstanding the provisions of Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of the LESSEE's interest in the Leased Premises shall be allowed without further STATE approval:

6.2.1 Subleases of portions of the LESSEE's interest in the leasehold area, in the ordinary course of LESSEE's business for the purposes approved under this Lease as specified in Section 2.1.

6.2.2 Subleases of the entire leasehold for a term that is less than one year for the purpose specified in Section 2.1.

6.2.3 The transfer or ownership of the Lease caused by the death of the LESSEE shall be considered an assignment requiring the STATE's approval. However, a transfer of ownership to a spouse or immediate family member is an assignment that does not require the STATE's prior approval.

6.3 Condition of Premises and Improvements: The leasehold area has been inspected and is accepted in its present condition, and LESSEE takes the leasehold and improvements, if any, AS IS. The STATE has made no oral representations concerning the condition of the leasehold, nor its fitness or suitability for any purpose.

6.4 Liability: LESSEE agrees to defend and hold STATE harmless from any and all claims suffered or alleged to be suffered within the leasehold or arising out of the LESSEE's operations on the premises. Further, LESSEE shall be responsible for the payment of any fines or penalties charged against the leasehold as a result of LESSEE's action in not complying with laws or regulations affecting the leasehold.

6.5 Assessments: LESSEE shall pay all taxes and/or assessments that may be legally charged on public lands or related improvements which are levied against the property subject to this Lease, whether or not such taxes and/or assessments have been levied against the leasehold or STATE by the assessing agency.

6.6 Bond: The STATE reserves the right to require the LESSEE to furnish to the STATE a surety bond or an equivalent cash deposit or certificate of deposit which names the State of Oregon as co-owner to ensure that the LESSEE will perform in accordance with all terms and conditions of the Lease.

RECEIVED

JUL 24 2003

ML-10112

Page 6 of 14

SECTION 7 - MISCELLANEOUS

- 7.1 **No Partnership:** The STATE is not a partner nor in a joint venture with LESSEE in connection with the business carried on under this Lease and shall have no obligation with respect to LESSEE's debts or other liabilities.
- 7.2 **Non-Waiver:** Waiver by either party of strict performance or any provisions of this Lease shall not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 7.3 **Binding Interest:** This Lease shall be binding upon and inure to the benefit of the parties, and the respective heirs, administrators, successors, and assigns of the parties hereto.
- 7.4 **Notices:** Any official STATE notice required under this Lease shall be sent by certified mail and shall expressly be deemed to be delivered after the certified letter is mailed to the address given by the LESSEE in the signature block of this Lease or as shown on the most recent written notice of record with this Lease. LESSEE shall provide the STATE with a written notice of any change of address, change in corporation/partnership/ownership, or change in person(s) authorized to represent the LESSEE. The STATE shall provide written acknowledgment of such LESSEE written notices and retain copies of both the LESSEE notice(s) and STATE acknowledgment(s) with this Lease. LESSEE's failure to receive such written acknowledgment within thirty (30) days of the date LESSEE sent the original notice shall be constructive notice to LESSEE that: (1) the STATE has not properly received the notice, and (2) that such attempted notice shall be of no force and effect until such time as the notice is actually received and acknowledged by STATE.
- 7.5 **Liens:** In the event liens or other charges are placed on the leasehold premises, including land or improvements, arising out of LESSEE's actions directly or indirectly, the LESSEE shall immediately cause such liens to be discharged. The STATE may terminate this Lease if LESSEE fails to discharge such liens or charges or provide the STATE with a sufficient bond covering the full amount of the lien after ten (10) days notice to do so by the STATE. LESSEE shall pay and indemnify the STATE for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether such costs, damages or charges are incurred prior or subsequent to any termination of this Lease.
- 7.6 **Default:** The following shall be events of default:
- 7.6.1 Failure of the LESSEE to pay any rent, tax, reimbursement or other charge or payment due hereunder within twenty (20) days of the date such payment is due. For the purposes of this subsection, if the due date for such payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, such payment

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 7 of 14.

shall be due on the date set forth in the notice from the STATE to the LESSEE informing the LESSEE of its obligation to pay such charge or payment.

7.6.2 Failure of LESSEE to comply with applicable laws, Oregon Administrative Rules or any non-payment related terms or conditions or obligations of the Lease within thirty (30) days after written notice by the STATE specifying the nature of the deficiency. Upon timely request from the LESSEE, the STATE may in its good faith discretion permit the deadline for curing such non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the thirty (30) day period, (2) the interests of the STATE will not be harmed by an extension, (3) such default was not due to the willful acts or gross negligence of the LESSEE, and (4) the STATE and the LESSEE are able to mutually agree upon a written plan and timeline for remediation.

7.6.3 Insolvency of LESSEE; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days. If LESSEE consists of two (2) or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within ten (10) days after an event of default occurs the remaining individuals produce evidence satisfactory to STATE that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned in compliance with Section 6.1 of this Lease, the events of default so specified in this subsection shall apply only with respect to the one then exercising the rights of LESSEE under the Lease.

7.6.4 Notwithstanding the above, if the STATE in good faith believes that a material default has occurred which may imperil the STATE's rights in the land or its fiduciary duties under law, the STATE may declare an immediate default without any right of LESSEE to cure the deficiency.

7.7 **Termination Upon Default:** In the event of a default by LESSEE, the STATE shall have the right to terminate this Lease if it has given LESSEE notice of the default and of the STATE's intent to terminate this Lease if the default is not completely cured by the deadline contained in the notice and if the listed default has not been cured by the stated deadline. The deadline contained in the notice must be at least twenty (20) calendar days from the date the notice is sent by certified mail, or if earlier, the date LESSEE actually receives said notice. The STATE shall be entitled to recover from LESSEE all costs arising out of the re-

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 8 of 14

entry and all costs of re-letting the premises. The STATE shall be entitled to recover the amount of unpaid rent required to be paid under the Lease from the date of default until a new Lease has been, or with the exercise of reasonable efforts could have been, secured, if the STATE was determined to re-let the leasehold. All improvements located thereon shall be disposed of as provided by Section 9.3 of this Lease. If the LESSEE owns a floating home and has placed such home on the property pursuant to the provisions of Section 2.1 of this Lease, the lease termination provisions of ORS 90.630 shall apply to the extent that they are inconsistent with the provisions of this Lease.

7.8 STATE's Right to Cure Defaults:

7.8.1 If the LESSEE fails to perform any obligation under this Lease, the STATE shall have the option to perform the obligation of the Lease after thirty (30) days written notice to the LESSEE. All of the STATE's expenditures to carry out the obligation shall be reimbursed by the LESSEE on demand with interest at the rate of one percent (1%) per month accrued from the date of expenditure by the STATE.

7.8.2 In the event any violation or breach of the provision of this Lease is causing damage to the leasehold or the LESSEE is utilizing the leasehold in a manner not permitted by the provision of this Lease, or in any case damages are occurring to the leasehold, the STATE may immediately enter upon the leasehold and take such action as necessary to cease such damages or use. In the event the damage or use is occurring by reason of a violation or breach of the provisions of this Lease, the LESSEE shall be liable for all costs incurred by the STATE by reasons of such violations. The STATE, at its option, may send notice to the LESSEE of such violations and LESSEE shall immediately cease such use or violation and correct such violation.

7.9 Termination Upon Mutual Consent: This Lease may also be terminated by mutual written consent of LESSEE and STATE.

7.10 Weed Control: The LESSEE shall control noxious weeds including aquatic weeds, plant pests and diseases within the leasehold as directed by the local county weed control district, the Oregon Department of Agriculture and/or any other governmental authority which may now or in the future have authority with regard to the prevention and/or control of noxious weeds, plant pests and/or diseases, or as may be authorized or directed by the STATE.

7.11 Holdover: If LESSEE does not vacate the leasehold at the time required at expiration or upon termination of a Lease, STATE shall have the option to treat LESSEE as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and rental. The STATE shall have the option to unilaterally establish a new rental for the month-to-month tenancy, with said rental payable in advance. If a month-to-month tenancy

RECEIVED

JUL 24 2003

ML-10112

Page 9 of 14

WATER RESOURCES DEPT.
SALEM, OREGON

results from holdover by LESSEE under this paragraph, the tenancy shall be terminable at the end of any monthly rental period upon written notice from STATE given not less than thirty (30) days prior to the termination date which shall be specified in the notice.

- 7.12 Governing Law: This Lease and all matters related to the rights and responsibilities hereunder are governed by and subject to the laws of the State of Oregon and the administrative rules of the Division of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties hereunder, and such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease.
- 7.13 Binding on Successors: This Lease shall be binding on and shall inure to the benefit of the successors and assigns of the parties hereto, but nothing in this section shall be construed as a consent by STATE to any disposition or transfer of the Lease or any interest herein by LESSEE except as otherwise expressly provided in this Lease.
- 7.14 Nondiscrimination: The leasehold shall be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 7.15 Right To Sue More Than Once: STATE may sue periodically to recover damages for the period corresponding to the remainder of the lease term and no action for damages shall bar later actions for damages subsequently accruing.
- 7.16 Remedies Cumulative: The remedies contained in this Lease shall be in addition to, and shall not exclude any other remedy available at law or in equity, and exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.
- 7.17 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings.
- 7.18 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 7.19 Compliance With Applicable Law: The STATE's performance under this Contract is conditioned on the LESSEE's compliance with the provision of ORS

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 10 of 14

279.312, 279.314, 279.316, 279.320 and 279.555, which are incorporated by reference herein.

- 7.20 **Late Charges and Interest:** It is understood by both parties that late payments by the LESSEE of rent and other charges due hereunder will cause the STATE to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. As such, the parties agree that, notwithstanding other remedies permitted hereunder, if the LESSEE has not made full payment of amounts due within twenty (20) days of the date such payment is due, LESSEE shall pay an additional charge equal to five percent (5%) of the amount of the late rent or other charge. In addition, all amounts due and owing under this agreement, including late charges, shall bear interest at the lower of: (1) the highest interest rate allowable by law, or (2) twelve percent (12%) per year.

SECTION 8 - INSURANCE

- 8.1 **Commercial General Liability:** LESSEE shall obtain at LESSEE's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage with an insurance company acceptable to the STATE. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this Lease and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000.00, or the equivalent. Each annual aggregate limit shall not be less than \$1,000,000.00, when applicable.
- 8.2 **Revisions/Amendments/New Requirements:** The amounts and types of insurance (including those specified in Section 8) and the party responsible for procuring the insurance shall be established and reviewed when circumstances warrant. The requirements may be revised or amended by the STATE periodically at the STATE's sole discretion after STATE:
- (a) consults with its insurance advisor;
 - (b) consults with LESSEE;
 - (c) considers the commercial reasonableness of any requirements, amendments or revisions; and
 - (d) considers the STATE's need for adequate insurance protection and the STATE's fiduciary obligations.

Within thirty (30) days notice to LESSEE of the STATE'S revision or amendment of the insurance requirements, LESSEE shall provide the STATE with satisfactory evidence that the LESSEE has obtained new insurance coverage which conforms with the revised/amended insurance requirements. If mutually agreed in writing, LESSEE may have additional time to obtain such insurance.

- 8.3 **Named Insured Parties:** The liability insurance coverages required for performance of the Lease shall include the State of Oregon, the Division of State

RECEIVED

JUL 24 2003

ML-10112

Page 11 of 14

WATER RESOURCES DEPT.
SALEM, OREGON

Lands and their sections, officers and employees as additional Insured but only with respect to the LESSEE's activities to be performed under this Lease.

- 8.4 Certificate(s) of Insurance: As evidence of the insurance coverages required by this Lease, the LESSEE shall furnish certificate(s) of insurance to the STATE prior to the issuance of this Lease, and not less often than annually thereafter and as reasonably requested by STATE. The certificate(s) will specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease shall be obtained from acceptable insurance companies or entities. The LESSEE shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

SECTION 9 - IMPROVEMENTS

- 9.1 Authorized Improvements or Structures: No improvement that exceeds fifteen thousand dollars (\$15,000) in cost or value may be constructed or placed upon the leasehold unless the LESSEE shall have first obtained the prior written authorization of the STATE. Approval for improvements consistent with the purposes of this Lease shall not be unreasonably withheld or delayed. All improvements must be consistent with the authorized use(s) of this Lease as stated in Section 2.1.
- 9.2 Unauthorized Improvements or Structures: Unauthorized improvements shall, at the election of the STATE, either be removed from the leasehold by LESSEE (or if STATE so elects, by the STATE at LESSEE's cost and expense), or remain within the leasehold.
- 9.3 Removal of Structures and Improvements: Any LESSEE-owned structure or improvement must be removed within ninety (90) days of the termination of the Lease or modification of the lease as in Section 4.1.1 unless otherwise agreed by the parties as in the case of a structure exempt from authorization under OAR 141-082-0030(4). LESSEE shall be responsible for any damage done to the leasehold as a result of the removal of the structure improvements. Any structure or improvements remaining on the leasehold after the ninety (90) day period may at the option of the STATE become the property of STATE, unless otherwise agreed by the parties.

SECTION 10 - ADDITIONAL CONDITIONS AND STIPULATIONS

None.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

SECTION 11 ENTIRE AGREEMENT

11.1 ENTIRE AGREEMENT: THIS LEASE, TOGETHER WITH THE ATTACHED EXHIBITS AND ATTACHMENTS, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS LEASE SHALL BIND EITHER PARTY UNLESS IN WRITING. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN, AND SHALL BE VALID AND BINDING ONLY IF IT IS SIGNED BY EACH PARTY. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS LEASE. LESSEE, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT LESSEE HAS READ THIS LEASE, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THIS LEASE SUPERSEDES ALL PRIOR OR EXISTING LEASE OR RENTAL AGREEMENTS BETWEEN THE PARTIES.

The LESSEE expressly agrees to all covenants herein and binds him/herself for the payment of the rental herein before specified.

DIVISION OF STATE LANDS

Stephen Rublee
Authorized Signature

8/30/99
Date

Division of State Lands
775 Summer Street NE
Salem, OR 97310-1337

Note: If the LESSEE is a corporation, the signer warrants that s/he has the authority to sign the lease on behalf of the corporation by resolution of its Board of Directors, or through delegation of authority to the signer.

LESSEE

WINMAR OF JANTZEN BEACH, INC.

By: Eddie L. Henderson
Signature/Title President
(Note requirement below)

By: Thomas D. Burkhardt
Date Secretary

P.O. Box 21545

Seattle, WA 98111-3545

Mailing Address

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT. ML-10112
SALEM, OREGON
Page 13 of 14

CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

I, the undersigned, hereby swear or affirm under penalty of perjury that to the best of my knowledge, I am not in violation of any Oregon Tax Laws.

For the purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4) which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Self-Employment Tax, Lane Transit District Employer Payroll Tax, Tri-County Metropolitan Transit District of Oregon ("Tri-Met") Employer Payroll Tax, and Tri-Met Self-Employment Tax).

Signature: Eddie L. Henderson

Date: August 23, 1999

Printed Name: Eddie L. Henderson

Title: President

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112

Page 14 of 14

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

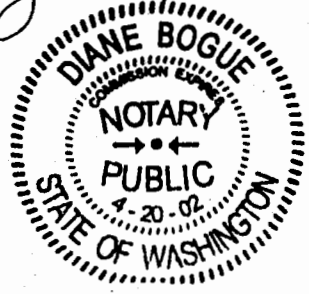
The foregoing instrument was acknowledged before me this 23rd day of August, 1999, by Richard L. Hendrickson, as President on behalf of Winmar of Porton Beach, Inc., an Oregon corporation.



Diane Bogue
Notary Public for WASHINGTON
My commission expires:

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

The foregoing instrument was acknowledged before me this 23rd day of August, 1999, by James A. Barkat, as Secretary on behalf of the Oregon Division of State Lands, Winmar of Porton Beach, Inc., an Oregon corporation.



Diane Bogue
Notary Public for WASHINGTON
My commission expires: April 20, 2002

RECEIVED
JUL 24 2003
WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF Oregon)
) ss:
COUNTY OF Marian)

The foregoing instrument was acknowledged before me this 30th day of August, 1998 by Stephen K. Kuebler as Assistant Director on behalf of the Oregon Division of State Lands.

Shannon K. Relaford

Notary Public for 8/3/03
My commission expires:



RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Riverhouse
Condominium
Plat

Winmar
Submerged
Land

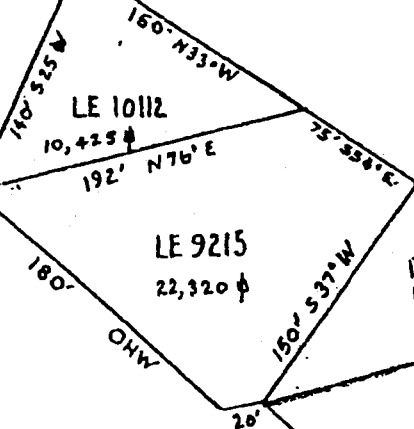
State-owned
Submerged
Land

Hayden
Bay

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT
SALEM, OREGON



Beginning Point

LE 9215
22,320 ϕ

LE 10112
10,425 ϕ

A-dock

Winmar
Submerged
Land

Hayden Bay
Condominium
Plat

N. Tomahawk Island Drive



1" = 100'

Lease Request from Darrell L. Dunigan
Chairman Hayden Bay Condominiums
Home Owners Association

Sketch of Lease Areas
LE 9215 ϕ LE 10112
0.51 Acres 0.24 Acres

MULTNOMAH COUNTY
Section 34 T2N R1E W.M.

Drawn by:
J. Hedrick
Sept. 18, 1998

EXHIBIT B

LEGAL DESCRIPTION OF WINMAR RH SUBMERGED PROPERTY

TRACT 6 - RIVERHOUSE MARINA:

A parcel of land in Hayden Bay located in the South one-half of Section 34, Township 2 North, Range 1 East, of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at a 2 inch iron pipe (initial point) at the Southwest corner of the plat of RIVERHOUSE CONDOMINIUM; thence along the Southerly line of said Condominium, North 76° 13'00" East, 251.49 feet to a point on the low water line of the Columbia River and the Southeasterly corner of said Plat of RIVERHOUSE CONDOMINIUM and the true point of beginning of the herein described parcel; thence along the Easterly and Southerly line of said Condominium on the following courses and distances: North 35° 43'00" West, 184.19 feet; thence North 28° 00'00" West, 55.00 feet; thence North 3° 00'00" East, 60.00 feet; thence North 24° 30'00" East, 40.00 feet; thence North 50° 30'00" East, 30.00 feet; thence North 67° 45'00" East, 80.00 feet; thence North 79° 30'00" East, 270.00 feet; thence along the Southerly line of the Plat of RIVERHOUSE-EAST CONDOMINIUM, North 80° 08'15" East 240.00 feet; thence leaving said Southerly line South 54° 51'45" East, 70.71 feet; thence North 80° 08'15" East, 100.00 feet; thence North 35° 08'15" East, 70.71 feet to a point on the Southerly line of the RIVERHOUSE-EAST CONDOMINIUM Plat; thence North 80° 08'15" East, 235.00 feet to the Southeasterly corner of said Plat; thence leaving said Plat, South 9° 51'45" East, 76.39 feet, more or less, to the North line of that parcel as described Parcel "A" in Book 1192, page 1340, dated July 13, 1977, Multnomah County Deed Records; thence along the Northerly line of said Parcel "A", South 76° 13'00" West 817.97 feet; thence South 25° 13'00" West, 257.35 feet; thence South 76° 13'00" West, 23.79 feet to the true point of beginning.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

EXHIBIT C

DIAGRAM OF PROPERTIES

[See attached page.]

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

17/17 P. 21/21

Riverhouse
Condominium
Plat

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Winmar RH
Submerged
Land

State-owned
Submerged
Land

Hayden
Bay

LE 10112

10,428 sq

LE 9215

22,320 sq

Beginning Point

A-dock

Winmar HB
Submerged
Land

Exhibit A



1" = 100'

N. Tomahawk Island Drive

Lease Request from Darrell L. Dumigan
Chairman Hayden Bay Condominiums
Home Owners Association

Sketch of Lease Areas
LE 9215 / LE 10112
0.51 Acres / 0.24 Acres

MULTNOMAH COUNTY
Section 34 T2N R1E W.M.

Drawn by:
J. Hedrick
Sept. 18, 1995

0901 0000 0573

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

**STATE OF OREGON
DIVISION OF STATE LANDS
SUBMERGED AND SUBMERSIBLE LAND LEASE**

ML-9215

1. PARTIES

The parties to this Lease are the STATE OF OREGON, acting by and through the Division of State Lands, ("STATE") and The Association of Unit Owners of The Hayden Bay Condominium, ("LESSEE").

2. LEASED PREMISES

STATE, for the consideration and upon the terms and conditions herein mentioned, does hereby lease to the LESSEE the following property:

All state-owned submerged and submersible lands in Hayden Bay a Tributary of the Columbia River in Section 34, Township 2 North, Range 1 East, Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

Beginning at a point on the intersection of the North line of Hayden Bay Condominium plat (Multnomah County Assessor's Map Number 34-2N-1E) and the line of Ordinary High Water on the east cove of Hayden Bay and left bank of the Columbia River;

thence riverward along a line bearing North 76° East a distance of 192 feet;

thence South 56° West a distance of 75 feet;

thence shoreward South 37° East a distance of 150 feet to the line of Ordinary High Water;

thence downstream and Northeasterly along said line of Ordinary High Water a distance of 200 feet, more or less, to a point of beginning, containing 0.51 acres, more or less, and as shown in attached sketch labeled "Exhibit A".

hereinafter referred to as the "Leased Premises."

3. PURPOSE

LESSEE shall have exclusive possession of the Leased Premises for the sole purpose of non-commercial marina moorage and for no other purpose without prior written consent of STATE. This instrument does not guarantee that any particular use may be made of the Leased Premises. LESSEE should check with appropriate city or county planning department to verify approved uses.

0901 0000 0577

4. TERM OF LEASE

The LESSEE, subject to compliance with the terms and provisions of this Lease, shall have and hold the Leased Premises for the purposes stated above from April 1, 1999, through March 31, 2019.

5. LEASE PAYMENT

The lease payment to be paid by LESSEE to STATE shall be \$572.00 per year or the amount set by redetermination at any time after the first anniversary date of the Lease. Receipt of the first year's lease payment is hereby acknowledged. "Redetermination" means a rent increase made pursuant to paragraph 6 of this Lease. Lease payments shall be payable annually and shall be due on the 1st day of April in advance. Payments shall be sent to the Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310-1337. STATE shall give LESSEE 30 days advance notice of the due date and amount of the lease payment due.

6. LEASE PAYMENT INCREASES

Lease payment increases shall be made in accordance with the lease provisions of the Oregon Administrative Rules applying to state-owned submerged and submersible lands which are in effect at the time of redetermination. Lease payment increases may be appealed by the LESSEE. LESSEE must file its appeal in writing within 14 days of the notice of increase. The notice of appeal is to be sent to the attention of the Director, Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310-1337 and must include market data or other information to support the request for review. Upon filing of an appeal, the STATE will schedule an informal hearing before the Director or designee. Neither party to a redetermination appeal is entitled to recover attorney's fees.

7. ACCESS TO PROPERTY AND RECORDS

STATE shall have access to the Leased Premises at all reasonable times for the purpose of ensuring compliance with the terms and conditions of this Lease. STATE shall have the right to examine pertinent records of LESSEE for the purpose of ensuring compliance with the Lease and for the purpose of redetermining the lease payment rate.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 2 of 14
Hayden Bay

0901 0000 0545

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

8. DELIVERY OF PREMISES

Delivery of the Leased Premises will occur upon the date of execution of this Lease. STATE will not provide a survey or pay any costs of a survey to determine boundaries. It is the LESSEE's responsibility to make an accurate determination of the boundaries. The legal description provided by STATE is drawn from an assessor's map and other data deemed to be reliable. If LESSEE elects not to have a survey performed and a discrepancy or boundary overlap later becomes evident, STATE, at its discretion, may provide a corrected description of the Leased Premises.

9. RESERVATIONS

The interest of LESSEE under this Lease shall at all times be subject to STATE's right to grant rights-of-way in and over said property or a portion of the property for other purposes, including, but not limited to, railroads, telegraph and telephone lines, pipelines, irrigation or other water canals and ditches, and to STATE's right to lease all or part of the property for the exploration, discovery, development and production of oil, gas, or minerals of any nature whatsoever, provided the right-of-way or lease does not unreasonably interfere with the purpose of this Lease.

10. CONDITIONS OF THE PROPERTY

LESSEE certifies that it has inspected the Leased Premises and is fully informed as to their condition. LESSEE agrees to accept the Leased Premises as is and with all faults. LESSEE acknowledges that no representations or warranties of any kind have been made by STATE.

11. COMPLIANCE WITH LAW

LESSEE shall comply with all applicable federal, state, and local statutes, ordinances, rules and regulations in its use of the Leased Premises. This Lease does not give LESSEE permission to conduct any use on the Leased Premises which is not in conformance with applicable land use requirements, and it is the LESSEE's responsibility to determine and comply with those and all other requirements.

LESSEE shall use the Leased Premises only in a manner, or for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

12. TAXES, LIENS, ASSESSMENTS, CHARGES

LESSEE shall pay before they become delinquent all taxes, assessments, penalties, fines, charges, rates or liens of any nature whatsoever that may be levied, assessed, charged, imposed or claimed on or against the Leased Premises or any improvements or fixtures thereon or appurtenances thereto. If LESSEE fails to pay any taxes, assessments, penalties, fines, charges, rates or liens, within ten (10) days after notice that such sums are due, STATE may pay such sums. Any such sums paid by STATE shall be reimbursed on demand with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE until paid.

13. PREVENTION OF WASTE, DAMAGE AND INJURY

LESSEE shall exercise reasonable diligence in its operation on and from said Leased Premises; shall carry on all operations hereunder in a good and workmanlike manner having due regard for public safety and the prevention of waste and for the restoration and conservation of said Leased Premises for future use, and shall take all reasonable steps to avoid damage to soil, timber, fish and fish habitat, wildlife and wildlife habitat and water quality of both ground water and surface water; shall make all reasonable efforts to minimize interference with existing navigational and recreational activities and scenic values; shall substantially restore the Leased Premises to its original condition and shall do all things reasonably necessary to minimize erosion.

14. EXCLUSIVITY

Subject to the provision of Section 9 (Reservations), the rights and privileges granted under this Lease are exclusive, except that LESSEE shall not unreasonably interfere with the public's right of navigation, commerce, fishing and recreation in the open water areas of the Leased Premises.

15. PUBLIC SAFETY

Subject to the provision of Section 14 (Exclusivity), the LESSEE may restrict entry to any portion of the Leased Premises as may be necessary to protect persons and property from harm arising from or in connection with the LESSEE's activities upon the Leased Premises.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 4 of 14
Hayden Bay

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

16. ASSIGNMENT OR SUBLEASE

With respect to any assignment, mortgage, or sublease, the following provisions shall apply:

16.1 RESTRICTIONS: Except as provided for in subsection 16.2, LESSEE's interest in the Leased Premises or any part thereof shall not be assigned, mortgaged or subleased, nor shall any right of use of said Leased Premises be conferred on any third person by another means without the prior consent of STATE. Said consent shall not be unreasonably withheld or delayed. This provision shall apply also to all transfers by operation of law. Except as provided in Subsection 16.2, any assignment, or attempted assignment, subletting, or attempted subletting, or grant of right of use, or attempted grant of right of use without such consent, shall be absolutely null and void and shall, at the option of STATE, terminate all rights of the LESSEE under or by virtue of this Lease. STATE may, in its discretion, consent to an assignment or sublease provided the following conditions are satisfied:

- 16.1.1 A fee of \$125 is prepaid to cover administrative costs, and
- 16.1.2 LESSEE has satisfied all conditions of the Lease precedent to assignment or sublease, and
- 16.1.3 LESSEE and its assignee have completed a standard assignment form or new lease form as required by STATE, and have assured the STATE that the assignee or sublessee has the capability to perform on the Lease, and
- 16.1.4 STATE determines that such assignment or sublease is in the best interest of the STATE.

16.2 PERMITTED ASSIGNMENTS: The following assignments, mortgages and security interests, and subleases of the LESSEE's interest in the Leased Premises shall be allowed without further STATE approval:

16.2.1 Subleases and subsubleases of portions of the LESSEE's interest in the Leased Premises, in the ordinary course of LESSEE's business or portions thereof for uses of the Leased Premises approved under this Lease.

16.2.2 Any mortgage(s), trust deed(s) or other encumbrance(s) which LESSEE may cause to attach to LESSEE's interest in the Leased Premises (1) in connection with the acquisition or refinancing(s) of the acquisition of the improvements in, on or about the Leased Premises and (2) in connection with financing and refinancing (a) development, construction, reconstruction, maintenance or repair of improvements on the Leased Premises and (b) operations on or about the Leased Premises. Within ten (10) days of any transfer pursuant to this subsection 16.2.2, LESSEE shall provide STATE the name and business address of any entity obtaining a security interest pursuant to this subsection 16.2.2.

16.2.3 Transfers to any entity or entities which controls, is controlled by, or is under common control with LESSEE.

17. ALTERATIONS AND IMPROVEMENTS

LESSEE shall obtain the written consent of STATE prior to making any alterations to the Leased Premises or improvements upon the Leased Premises.

18. DEFAULT

18.1 DEFAULT NOTICE AND CURE BY LESSEE: A default by the LESSEE shall occur if any of the following shall occur and if said default shall continue and not be remedied within sixty (60) days after STATE shall have given notice specifying the breach (within ten (10) days for delinquency or failure to pay rent.)

18.1.1 Delinquency or failure to pay rent in the amounts and at the time specified in the Lease.

18.1.2 Failure of LESSEE to comply with any term or condition imposed by the STATE in the Lease.

18.1.3 Failure of LESSEE to use the Leased Premises for the purposes authorized under the terms of the Lease.

18.1.4 LESSEE maintaining a nuisance on the Leased Premises.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 6 of 14
Hayden Bay

090 1 0000 0577

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT
SALEM, OREGON

18.1.5 **Insolvency of LESSEE; an assignment by LESSEE for the benefit of creditors; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and the failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days.**

18.1.6 **Failure by LESSEE to remove any lien or encumbrances placed upon the Leased Premises other than a lien or encumbrance on LESSEE's interest permitted by Section 16 of this Lease.**

18.2 **MORTGAGEE PROTECTION PROVISION: Whenever the STATE shall deliver any notice or demand to the LESSEE with respect to any breach or default by the LESSEE in its obligations or covenants under this Lease, the STATE shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Lease at the last address of such holder shown in the records of the STATE. After any default in or breach of the Lease by the LESSEE or its successor in interest, each holder of any mortgage permitted under the Lease shall (insofar as the rights of the STATE are concerned) have the right after the failure of the LESSEE to cure or remedy said default or breach, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the land covered by its mortgage) within sixty (60) days and to add the cost thereof to the mortgage debt and the lien of its mortgage. The mortgage holder's exercise of its option to cure or remedy any default by LESSEE shall not constitute grounds for termination of this Lease by STATE. In the event the holder of any mortgage which LESSEE has caused to attach to LESSEE's interest in the Leased Premises forecloses on the leasehold estate then STATE shall enter into a new lease with that lienholder on the same terms and conditions as this Lease.**

19. **LATE PAYMENT PENALTY**

If STATE has not received the full amount of the lease payment due within ten (10) calendar days from the due date, STATE may impose a late payment penalty on the LESSEE in the amount not to exceed five percent (5%) of the overdue

payment. The late fee penalty may only be charged once on any payment due. Alternatively, at the STATE's option, a late payment penalty may be charged which is the interest due at the maximum legal rate pursuant to ORS 82.010 on the late payment from the date due until paid.

20. TERMINATION

20.1 TERMINATION UPON LESSEE'S DEFAULT: In the event of a default by LESSEE, the Lease may be terminated at the option of STATE by thirty (30) days advance notice in writing to LESSEE. In the event the Lease is terminated by either party, all remedies afforded under this Lease in Section 24 herein shall survive such termination. LESSEE shall have thirty (30) days after date of termination to remove all fixtures and property from the Leased Premises. Failure to remove such items within the thirty (30) day period will constitute abandonment by the LESSEE and, subject to the rights of any secured parties having a security interest in such fixtures and property, the STATE shall take title to the property after the expiration of thirty (30) days, in which event STATE may reenter, take possession of the Leased Premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages directly resulting from such reasonable force.

20.2 STATE'S OPTIONS TO MITIGATE: Following reentry, STATE may relet the Leased Premises and in that connection make any suitable alteration to the Leased Premises or change the character or use of the Premises but STATE shall not be required to relet for any use or purpose (1) which is different from that specified in the Lease or (2) which STATE may reasonably consider injurious to the Premises or (3) to any LESSEE which STATE may reasonably consider objectionable. STATE may relet all or part of the Leased Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions.

20.3 DAMAGES RECOVERABLE UPON TERMINATION: In the event of termination on default, as provided by Section 18 of this Lease, STATE shall be entitled to recover the following amounts as damages:

20.3.1 The loss of reasonable rental value from the date of default until a new lease has been, or with the exercise of reasonable efforts could have been, secured.

RECEIVED

JUL 24 2003

ML-9215
Page 8 of 14
Hayden Bay

WATER RESOURCES DEPT.
SALEM, OREGON

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

20.3.2 The reasonable cost of reentry and reletting, including the reasonable and necessary costs of any clean-up, refurbishing, removal of LESSEE's property and fixtures, or any other necessary expense directly resulting from LESSEE's failure to quit the Leased Premises upon termination and to leave them in the required conditions, including reasonable attorneys fees, court costs, and advertising costs.

20.3.3 Any excess of the value of the rent and all of LESSEE's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

20.4 TERMINATION UPON MUTUAL CONSENT: This Lease may also be terminated by mutual written consent of LESSEE and STATE.

21. DELIVERY OF PREMISES: SURRENDER

In the event the Lease is terminated, or upon expiration, LESSEE shall have thirty (30) days within which to vacate the Leased Premises and shall surrender the Leased Premises in substantially the original condition as of the date of this Lease. STATE may require LESSEE to restore the Leased Premises to the original condition as of the date of this Lease or STATE may itself restore the Leased Premises and recover its reasonable and necessary restoration costs from LESSEE.

22. FIXTURES AND PERSONAL PROPERTY

All fixtures and personal property placed upon the Leased Premises during the term shall, upon expiration or termination of the Lease, become the property of STATE if not removed by LESSEE within thirty (30) days as provided in Subsection 20.1 and if not subject to the rights of any secured party having a security interest in such fixtures or personal property. LESSEE shall repair any physical damage resulting from such removal. If LESSEE fails to remove such fixtures, this shall constitute an abandonment of the property, and STATE may retain the property and all rights of LESSEE with respect to it shall cease. In the event of such abandonment, STATE may remove such fixtures and personal property and repair any physical damage resulting from such removal and charge the reasonable and necessary costs of removal and repair to LESSEE with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE.

23. HOLDOVER

If LESSEE does not vacate the Leased Premises at the time required, upon expiration or termination of this Lease, STATE shall have the option to treat LESSEE as a tenant from month to month, subject to all of the provisions of this Lease, except the provisions for term. Failure of LESSEE to remove fixtures, equipment and/or other property which LESSEE is required to remove under this Lease, in the manner provided for in Sections 20 and 22, shall constitute a failure to vacate to which this paragraph shall apply if the property not removed will substantially interfere with occupancy of the Leased Premises by another lessee or with occupancy by STATE for any purpose including preparation for a new lessee.

If a month to month tenancy results from a holdover by LESSEE under the above paragraph, the tenancy shall be terminable at the end of any monthly lease payment period on written notice from STATE given not less than ten (10) days prior to the termination date which shall be specified in the notice. LESSEE waives any notice which would otherwise be provided by law with respect to a month to month tenancy.

24. STATE'S RIGHT TO CURE DEFAULTS

If LESSEE fails to perform any obligation under this Lease, STATE shall have the option to do so after thirty (30) days' written notice to LESSEE unless otherwise specified in this Lease. All of STATE's reasonable and necessary expenditures to correct the default shall be reimbursed by LESSEE on demand with interest at the maximum legal rate pursuant to ORS 82.010 from the date of expenditure by STATE until paid.

In the event any violation or breach of the provisions of this Lease is causing damage to the Leased Premises or the LESSEE is utilizing the Leased Premises in a manner not permitted by the provisions of this Lease, or in any case damages are occurring to the Leased Premises, STATE may immediately enter upon the Leased Premises and take such action as necessary to cease such damages or use. LESSEE shall be liable to STATE for all reasonable and necessary costs incurred in correcting such violations.

25. RIGHT TO SUE MORE THAN ONCE

STATE may sue periodically to recover damages for the period corresponding to the remainder of the lease term and no action for damages shall bar later action for damages subsequently accruing.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 10 of 14
Hayden Bay

0901 0000 0553

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

26. REMEDIES CUMULATIVE

The remedies contained in this Lease shall be in addition to and shall not exclude any other remedy available at law or in equity, and exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.

27. HAZARDOUS WASTE

LESSEE shall refrain from storing on, or discharging from or onto, the Lease Premises any hazardous wastes or toxic substances as defined in 42 USC § 9601-9657, except as otherwise permitted by law.

28. INDEMNIFICATION

LESSEE agrees to indemnify, defend and hold STATE, its officers, employees, and its agents harmless from any and all damages, claims, actions, costs and expenses arising in whole or in part out of acts or omissions related to this Lease. STATE shall have no liability to LESSEE for any loss or damage caused by third parties or by any condition of the Leased Premises.

29. INSURANCE COVERAGES

29.1 WORKERS' COMPENSATION: The LESSEE, its SUBLESSEES, if any, and all employers providing work, labor or materials under this Lease are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers.

29.2 COMMERCIAL GENERAL LIABILITY: LESSEE shall obtain, at LESSEE's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this Lease and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000, when applicable.

- 29.3 **ADDITIONAL INSURED:** The liability insurance coverages, except Professional Liability if included, required for performance of the Lease shall include the State of Oregon, the Division of State Lands and their sections, officers and employees as additional insureds but only with respect to the LESSEE's activities to be performed under this Lease.
- 29.4 **NOTICE OF CANCELLATION OR CHANGE:** There shall be no cancellation, material change, potential exhaustion or aggregate limits or intent not to renew insurance coverage(s) without 30 days' written notice from the LESSEE or its insurer(s) to the Division of State Lands. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to the State of Oregon, its Division of State Lands and their sections, officers and employees.
- 29.5 **CERTIFICATE(S) OF INSURANCE:** As evidence of the insurance coverages required by this Lease, the LESSEE shall furnish certificate(s) of insurance to the Division of State Lands prior to its issuance of a Lease. The certificate(s) will specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease shall be obtained from acceptable insurance companies or entities. The LESSEE shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

30. **ATTORNEY FEES**

If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action.

31. **MODIFICATION**

This agreement may be changed, altered or amended only by mutual written consent of the parties.

32. **MERGER**

This Lease constitutes the entire agreement between the parties, and no oral statement, representation or agreement not herein expressed shall be binding upon any party.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-9215
Page 12 of 14
Hayden Bay

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

33. NON WAIVER

Waiver by either party of strict performance of any term of this Lease on any occasion shall not be construed as a waiver nor prejudice either party's right to require strict performance of the same provision in the future or of any other provision.

34. PARTNERSHIP

STATE is not a partner nor a joint venturer with LESSEE in connection with the business carried on under this Lease and shall have no obligation with respect to LESSEE's a debts or other liabilities.

35. SEWAGE DISPOSAL AND MARINE SANITATION DEVICES

If LESSEE operates a commercial marina LESSEE shall comply with the State of Oregon Department of Environmental Quality and State Marine Board Guidelines for Sewage Collection and Disposal for On-Water Boat and Floating Structures.

36. NOTICES

Any notices required or permitted under this Lease shall be in writing and deemed given three (3) days after deposited, postage prepaid, in the United States mail as regular mail and directed to the address provided below or to such other address as may be specified from time to time by either of the parties in writing.

For STATE:

DIVISION OF STATE LANDS
775 Summer Street NE
Salem, OR 97310

For LESSEE:

Amy M Welch
Name (Print)

505 N. Tomahawk Is
Current Mailing Address

Portland OR 97217
City State Zip

37. EXHIBITS

All exhibits hereto are expressly incorporated herein by reference and made a part hereof. IN WITNESS WHEREOF the parties have executed this Lease.

LESSEE

4-7-99
Date

Amy m welch
Signature for Hayden Bay Condos.
542-60-5145
Amy m welch

STATE OF Oregon)
County of Multnomah) ss

The foregoing instrument was acknowledged before me this 7 day of April, 1999 by _____ (officer or agent of corporation), the _____ (title of officer or agent) of _____ Corporation, a _____ (state or place of incorporation) corporation, on behalf of the corporation.



Karen J. Wich
Notary Signature

My Commission Expires 2-24-99

STATE OF OREGON, DIVISION OF
STATE LANDS

4-13-99
Date

Stephen Furber
Authorized Signature

JAH:aw
E:\Attachment\awest\ML\ML-9215.doc

RECEIVED
JUL 24 2003
WATER RESOURCES DEPT.
SALEM, OREGON
ML-9215
Page 14 of 14
Hayden Bay

Riverhouse
Condominium
Plat

WATER RESOURCES DEPT.
SALEM, OREGON

JUL 24 2003

RECEIVED

Winmar
Submerged
Land

State-owned
Submerged
Land

Hayden
Bay

LE 10112
10,415 sq ft

LE 9215
22,320 sq ft

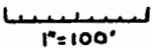
Beginning Point

A-dock

Winmar
Submerged
Land

Hayden Bay
Condominium
Plat

N. Tomahawk Island Drive



Lease Request from Darrell L. Dunigan
Chairman Hayden Bay Condominiums
Home Owners Association

Sketch of Lease Areas
LE 9215 / LE 10112
0.51 Acres / 0.24 Acres

MULTNOMAH COUNTY
Section 34 T2N R1E W.M.

Drawn by:
J. Hedrick
Sept. 18, 1998

A, F, 1919x8

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

When Recorded Return To:

Sandra L. Kohn
Stoll Stoll Berne
Lokting & Shlachter P.C.
209 SW Oak St., Suite 500
Portland, OR 97204

STATE OF OREGON
DIVISION OF STATE LANDS
SUBMERGED AND SUBMERSIBLE LAND LEASE

ML-10112

The Oregon State Land Board and the Division of State Lands (STATE) hereby lease to the person(s) herein named (LESSEE), the following described lands on the terms and conditions stated herein, to wit:

NAME of LESSEE:
Winmar of Jantzen Beach, Inc.

ADDRESS:
c/o Sandra Kohn
209 SW Oak Street
Portland OR 97204

Legal classification of LESSEE is a Oregon corporation,

Land situated in Multnomah County more fully described as follows:

All state-owned submerged and submersible lands in Hayden Bay a Tributary of the Columbia River in Section 34, Township 2 North, Range 1 East, Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

Beginning at a point on the intersection of the South line of the Riverhouse Condominium plat (Multnomah County Assessor's Map Number 34-2N-1E) and the line of Ordinary High Water on the East cove of Hayden Bay and left bank of the Columbia River;

thence riverward along a line bearing North 76° East a distance of 192 feet;

thence North 57° West a distance of 150 feet;

thence shoreward South 25° West a distance of 140 feet to the line of Ordinary High Water and the point of beginning, containing 0.24 acres, more or less, and as shown in attached Exhibit "A".

Total number of acres: 0.24 more or less.

Hereinafter referred to as "leasehold".

Recorded in the County of Multnomah, Oregon
C. Swick, Deputy Clerk

108.00

99167490 2:51pm 09/01/99

009 566726 03 18 000206
A67 17 0.00 85.00 3.00 20.00 0.00

SECTION 1 - LEASE TERM AND RENEWAL

1.1 Term: This Lease shall continue for a period of 15 years commencing on August 1, 1999 the month and date of which shall be known as the LEASE ANNIVERSARY DATE, and expiring on July 31, 2014, the month and date of which shall be known as the LEASE EXPIRATION DATE.

FATCO NO. 855624-70

17

When Recorded Return To:

Sandra L. Kohn
Stoll Stoll Berne
Lokting & Shlachter P.C.
209 SW Oak St., Suite 500
Portland, OR 97204

STATE OF OREGON
DIVISION OF STATE LANDS
SUBMERGED AND SUBMERSIBLE LAND LEASE

ML-10112

The Oregon State Land Board and the Division of State Lands (STATE) hereby lease to the person(s) herein named (LESSEE), the following described lands on the terms and conditions stated herein, to wit:

NAME of LESSEE:
Winmar of Jantzen Beach, Inc.

ADDRESS:
c/o Sandra Kohn
209 SW Oak Street
Portland OR 97204

Legal classification of LESSEE is a Oregon corporation,

Land situated in Multnomah County more fully described as follows:

All state-owned submerged and submersible lands in Hayden Bay a Tributary of the Columbia River in Section 34, Township 2 North, Range 1 East, Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

Beginning at a point on the intersection of the South line of the Riverhouse Condominium plat (Multnomah County Assessor's Map Number 34-2N-1E) and the line of Ordinary High Water on the East cove of Hayden Bay and left bank of the Columbia River;

thence riverward along a line bearing North 76° East a distance of 192 feet;

thence North 57° West a distance of 150 feet;

thence shoreward South 25° West a distance of 140 feet to the line of Ordinary High Water and the point of beginning, containing 0.24 acres, more or less, and as shown in attached Exhibit "A".

Total number of acres: 0.24 more or less.

Hereinafter referred to as "leasehold".

SECTION 1 - LEASE TERM AND RENEWAL

- 1.1 Term: This Lease shall continue for a period of 15 years commencing on August 1, 1999 the month and date of which shall be known as the LEASE ANNIVERSARY DATE, and expiring on July 31, 2014, the month and date of which shall be known as the LEASE EXPIRATION DATE.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 1 of 14

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

1.2 Renewal: LESSEE shall have an option to renew this Lease for an additional period of 15 years after the original and each renewal lease term provided that LESSEE has submitted a completed lease renewal application form to the STATE not less than one hundred and eighty (180) days prior to LEASE EXPIRATION DATE. Upon receipt of such application, this Lease shall be renewed by the STATE unless:

- 1.2.1 The STATE determines, in its sole discretion, that the LESSEE has not complied with the terms of this Lease, the applicable statutes and Oregon Administrative Rules; or
- 1.2.2 The LESSEE is no longer the preference right holder as defined by applicable state law, or
- 1.2.3 The STATE determines that the renewal of this Lease for all or portions of the leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010.

1.3 STATE shall provide LESSEE two (2) years advance written notice of its intent to not renew this Lease for all or portions of the leasehold pursuant to the provisions of this Section. In the event that the STATE determines not to renew this Lease, but less than two (2) years remain in the Lease term, the STATE shall utilize the holdover provisions (Section 7.11) of this Lease to complete the two (2) year notice period and to allow the LESSEE sufficient time to vacate the authorized area and to relocate any sublessees in an orderly fashion.

SECTION 2 - AUTHORIZED USES

2.1 Purpose: This Lease shall grant the LESSEE the right to use the above described land for the specific purpose(s) described below in accordance with these LEASE TERMS and CONDITIONS, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

NON-COMMERCIAL MARINA AND MOORAGE.

SECTION 3 - ANNUAL LEASE RENTAL PAYMENT CALCULATION AND ADJUSTMENTS

3.1 Annual Lease Rental Payment: The Lease rental payment to be paid by LESSEE to STATE shall be \$250.00 for the first year of the Lease as provided in Section 3.1.1 based on the minimum rent as shown below. Receipt of the first year's Lease rental payment is hereby acknowledged.

3.1.1 The initial annual Lease rent payment shall be calculated as follows:

Use Class	Area (square ft.)	Rate Choice	Annual Rent
a) Non-Commercial marina and moorage	0.24 acres	Minimum Rate	\$250.00
TOTAL			\$250.00

3.2 Annual Lease Rental Payment Adjustment: The annual lease rental payment shall be adjusted annually in accordance with the provisions of the Oregon Administrative Rule in effect at the time. The second years rent shall be \$258.00. The third years rent shall be \$265.00.

SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE

4.1 Modification of Leasehold Area or Use: LESSEE may request that the STATE expand or reduce the size, or change the use of the leasehold using a form provided by the STATE. However, no such change shall occur unless authorized in writing by the STATE.

4.1.1 The STATE may amend this Lease to reduce the leasehold area as requested if the portion of the leasehold is not in use, or does not contain any leasable structures. Structures and improvements within the vacated leasehold area shall be treated as in Section 9.3. If the modification results in a reduction of rental(s) due hereunder, such reduction shall become effective commencing on the first (1st) full year after the later of: (1) the date of the change of area or use, or (2) the date of the issuance of the STATE's written approval.

4.1.2 Requests to change an authorized use, or increase the leasehold shall be processed and reviewed in the same manner as a new lease application.

SECTION 5 - RESERVATIONS AND RESTRICTIONS

5.1 Compliance: The STATE shall have access to the leasehold at all reasonable times for the purpose of evaluating and ensuring compliance with the terms and conditions of this Lease. The State shall have the right to examine pertinent records of LESSEE for the purpose of ensuring compliance with the Lease.

5.2 Reservations: The STATE reserves:

5.2.1 The right to lease and dispose of all coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes together with the right to explore, mine, develop, produce and remove such minerals and other deposits with the right of ingress and egress thereto, and to terminate this Lease as to all or any portion of the leasehold when required for these purposes with

RECEIVED

JUL 24 2003

ML-10112
Page 3 of 14

one hundred twenty (120) days prior written notice to LESSEE or as otherwise provided in law.

5.2.2 The right to enter in and upon the leasehold at any time for purposes of inspection or management.

5.2.3 The right at any time to grant easements across the premises for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, with right of ingress and egress thereto. The STATE shall include in any such grant of easement a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with LESSEE's use(s) authorized in this Lease.

5.2.4 All rights not expressly granted to LESSEE are reserved by the STATE.

5.3 Public Access and Recreational Use Reservation: All state-owned submerged and submersible land shall remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by the STATE to public entry pursuant to the provisions of applicable Oregon Administrative Rules. LESSEE may request the STATE to close the leasehold to public entry or restrict recreational use by the public on all or portions of the leasehold to protect persons or property from harm arising from or in connection with the LESSEE's activities.

This reservation shall not grant the public any right to use or occupy LESSEE-owned property or structures authorized under this lease without LESSEE's permission.

5.4 Restriction on Use: In connection with use of the leasehold, the LESSEE shall:

5.4.1 Comply with all applicable local, state and federal laws and regulations affecting the leasehold and the use thereof, including local comprehensive land use planning and zoning ordinances, and correct at the LESSEE's own expense any failure of compliance created through the LESSEE's fault or by reason of the LESSEE's use;

5.4.2 Dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the leasehold. If LESSEE allows debris, garbage or other refuse to accumulate within the leasehold, the STATE shall have the right to remove the debris, garbage and other refuse, and collect the cost of such removal from LESSEE;

5.4.3 Not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the leasehold except

RECEIVED

JUL 24 2003

ML-10112
Page 4 of 14

with written permission of the STATE. The LESSEE shall promptly report to the STATE the cutting or removal of vegetation by other persons;

- 5.4.4 Conduct all operations within the leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or growth of noxious weeds;
- 5.4.5 Maintain all buildings, docks, pilings, floats, gangways, similar structures, and other improvements located within the leasehold in a good state of repair; and .
- 5.4.6 Not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.

5.5 Waste Water Disposal: In addition to any other applicable laws and regulations, LESSEE shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and disposal for on water boat and floating structures.

5.6 Hazardous Materials: LESSEE shall use, place, store or release, or allow to be used, placed, stored or released, any material that may pose a danger to the public, wildlife, or its habitat, including, but not limited to, hazardous wastes, pesticides, or toxic substances only in strict compliance with all laws and manufacturer's instructions and shall take all necessary precautions to protect the leasehold and its soil and vegetation. LESSEE shall keep and maintain accurate and complete records of the amount of such materials stored and/or used on the leasehold and shall immediately notify STATE of any potential risk to the leasehold, adjacent lands, waters, structures or property.

SECTION 6 - REQUIREMENTS

6.1 Assignment and Sublease: Except as noted in Section 6.2, the LESSEE may not assign or sublease nor enter into any third party agreement without first obtaining the prior written consent of the STATE pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be received by the STATE, in writing at least thirty (30) calendar days prior to the effective date of sublease or assignment. The STATE shall make a good faith effort to complete its review of such applications within thirty (30) days. If the application is incomplete, or if the STATE requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications shall be extended. The STATE reserves the right to condition its consent as it deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest shall be required to comply with all of LESSEE's obligations under this Lease, and the applicable Oregon Administrative Rules. LESSEE shall remain liable for the performance of the obligations under this Lease unless the STATE's written consent expressly releases LESSEE from further liability hereunder. For the purposes of this section, if LESSEE is a corporation or partnership, the transfer of any corporate

RECEIVED

JUL 24 2003

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

stock or partnership interest (including by operation of law) shall be deemed an assignment subject to the provisions of this Section if the result of said transfer shall be the change of management control or controlling interest of LESSEE.

6.1.1 LESSEE may not grant a mortgage or security interest in this Lease without prior written consent of the STATE which shall not be unreasonably withheld. Any subsequent assignment by the creditor or civil recovery shall require the prior written approval of the STATE.

6.2 Permitted Assignments and Subleases: Notwithstanding the provisions of Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of the LESSEE's interest in the Leased Premises shall be allowed without further STATE approval:

6.2.1 Subleases of portions of the LESSEE's interest in the leasehold area, in the ordinary course of LESSEE's business for the purposes approved under this Lease as specified in Section 2.1.

6.2.2 Subleases of the entire leasehold for a term that is less than one year for the purpose specified in Section 2.1.

6.2.3 The transfer or ownership of the Lease caused by the death of the LESSEE shall be considered an assignment requiring the STATE's approval. However, a transfer of ownership to a spouse or immediate family member is an assignment that does not require the STATE's prior approval.

6.3 Condition of Premises and Improvements: The leasehold area has been inspected and is accepted in its present condition, and LESSEE takes the leasehold and improvements, if any, AS IS. The STATE has made no oral representations concerning the condition of the leasehold, nor its fitness or suitability for any purpose.

6.4 Liability: LESSEE agrees to defend and hold STATE harmless from any and all claims suffered or alleged to be suffered within the leasehold or arising out of the LESSEE's operations on the premises. Further, LESSEE shall be responsible for the payment of any fines or penalties charged against the leasehold as a result of LESSEE's action in not complying with laws or regulations affecting the leasehold.

6.5 Assessments: LESSEE shall pay all taxes and/or assessments that may be legally charged on public lands or related improvements which are levied against the property subject to this Lease, whether or not such taxes and/or assessments have been levied against the leasehold or STATE by the assessing agency.

6.6 Bond: The STATE reserves the right to require the LESSEE to furnish to the STATE a surety bond or an equivalent cash deposit or certificate of deposit which names the State of Oregon as co-owner to ensure that the LESSEE will perform in accordance with all terms and conditions of the Lease.

SECTION 7 - MISCELLANEOUS

- 7.1 **No Partnership:** The STATE is not a partner nor in a joint venture with LESSEE in connection with the business carried on under this Lease and shall have no obligation with respect to LESSEE's debts or other liabilities.
- 7.2 **Non-Waiver:** Waiver by either party of strict performance or any provisions of this Lease shall not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 7.3 **Binding Interest:** This Lease shall be binding upon and inure to the benefit of the parties, and the respective heirs, administrators, successors, and assigns of the parties hereto.
- 7.4 **Notices:** Any official STATE notice required under this Lease shall be sent by certified mail and shall expressly be deemed to be delivered after the certified letter is mailed to the address given by the LESSEE in the signature block of this Lease or as shown on the most recent written notice of record with this Lease. LESSEE shall provide the STATE with a written notice of any change of address, change in corporation/partnership/ownership, or change in person(s) authorized to represent the LESSEE. The STATE shall provide written acknowledgment of such LESSEE written notices and retain copies of both the LESSEE notice(s) and STATE acknowledgment(s) with this Lease. LESSEE's failure to receive such written acknowledgment within thirty (30) days of the date LESSEE sent the original notice shall be constructive notice to LESSEE that: (1) the STATE has not properly received the notice, and (2) that such attempted notice shall be of no force and effect until such time as the notice is actually received and acknowledged by STATE.
- 7.5 **Liens:** In the event liens or other charges are placed on the leasehold premises, including land or improvements, arising out of LESSEE's actions directly or indirectly, the LESSEE shall immediately cause such liens to be discharged. The STATE may terminate this Lease if LESSEE fails to discharge such liens or charges or provide the STATE with a sufficient bond covering the full amount of the lien after ten (10) days notice to do so by the STATE. LESSEE shall pay and indemnify the STATE for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether such costs, damages or charges are incurred prior or subsequent to any termination of this Lease.
- 7.6 **Default:** The following shall be events of default:
 - 7.6.1 Failure of the LESSEE to pay any rent, tax, reimbursement or other charge or payment due hereunder within twenty (20) days of the date such payment is due. For the purposes of this subsection, if the due date for such payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, such payment

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

shall be due on the date set forth in the notice from the STATE to the LESSEE informing the LESSEE of its obligation to pay such charge or payment.

7.6.2 Failure of LESSEE to comply with applicable laws, Oregon Administrative Rules or any non-payment related terms or conditions or obligations of the Lease within thirty (30) days after written notice by the STATE specifying the nature of the deficiency. Upon timely request from the LESSEE, the STATE may in its good faith discretion permit the deadline for curing such non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the thirty (30) day period, (2) the interests of the STATE will not be harmed by an extension, (3) such default was not due to the willful acts or gross negligence of the LESSEE, and (4) the STATE and the LESSEE are able to mutually agree upon a written plan and timeline for remediation.

7.6.3 Insolvency of LESSEE; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days. If LESSEE consists of two (2) or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within ten (10) days after an event of default occurs the remaining individuals produce evidence satisfactory to STATE that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned in compliance with Section 6.1 of this Lease, the events of default so specified in this subsection shall apply only with respect to the one then exercising the rights of LESSEE under the Lease.

7.6.4 Notwithstanding the above, if the STATE in good faith believes that a material default has occurred which may imperil the STATE's rights in the land or its fiduciary duties under law, the STATE may declare an immediate default without any right of LESSEE to cure the deficiency.

7.7 Termination Upon Default: In the event of a default by LESSEE, the STATE shall have the right to terminate this Lease if it has given LESSEE notice of the default and of the STATE's intent to terminate this Lease if the default is not completely cured by the deadline contained in the notice and if the listed default has not been cured by the stated deadline. The deadline contained in the notice must be at least twenty (20) calendar days from the date the notice is sent by certified mail, or if earlier, the date LESSEE actually receives said notice. The STATE shall be entitled to recover from LESSEE all costs arising out of the re-

RECEIVED

JUL 24 2003

ML-10112
Page 8 of 14

entry and all costs of re-letting the premises. The STATE shall be entitled to recover the amount of unpaid rent required to be paid under the Lease from the date of default until a new Lease has been, or with the exercise of reasonable efforts could have been, secured, if the STATE was determined to re-let the leasehold. All improvements located thereon shall be disposed of as provided by Section 9.3 of this Lease. If the LESSEE owns a floating home and has placed such home on the property pursuant to the provisions of Section 2.1 of this Lease, the lease termination provisions of ORS 90.630 shall apply to the extent that they are inconsistent with the provisions of this Lease.

7.8 STATE's Right to Cure Defaults:

7.8.1 If the LESSEE fails to perform any obligation under this Lease, the STATE shall have the option to perform the obligation of the Lease after thirty (30) days written notice to the LESSEE. All of the STATE's expenditures to carry out the obligation shall be reimbursed by the LESSEE on demand with interest at the rate of one percent (1%) per month accrued from the date of expenditure by the STATE.

7.8.2 In the event any violation or breach of the provision of this Lease is causing damage to the leasehold or the LESSEE is utilizing the leasehold in a manner not permitted by the provision of this Lease, or in any case damages are occurring to the leasehold, the STATE may immediately enter upon the leasehold and take such action as necessary to cease such damages or use. In the event the damage or use is occurring by reason of a violation or breach of the provisions of this Lease, the LESSEE shall be liable for all costs incurred by the STATE by reasons of such violations. The STATE, at its option, may send notice to the LESSEE of such violations and LESSEE shall immediately cease such use or violation and correct such violation.

7.9 Termination Upon Mutual Consent: This Lease may also be terminated by mutual written consent of LESSEE and STATE.

7.10 Weed Control: The LESSEE shall control noxious weeds including aquatic weeds, plant pests and diseases within the leasehold as directed by the local county weed control district, the Oregon Department of Agriculture and/or any other governmental authority which may now or in the future have authority with regard to the prevention and/or control of noxious weeds, plant pests and/or diseases, or as may be authorized or directed by the STATE.

7.11 Holdover: If LESSEE does not vacate the leasehold at the time required at expiration or upon termination of a Lease, STATE shall have the option to treat LESSEE as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and rental. The STATE shall have the option to unilaterally establish a new rental for the month-to-month tenancy, with said rental payable in advance. If a month-to-month tenancy

RECEIVED

JUL 24 2003

ML-10112
Page 9 of 14

results from holdover by LESSEE under this paragraph, the tenancy shall be terminable at the end of any monthly rental period upon written notice from STATE given not less than thirty (30) days prior to the termination date which shall be specified in the notice.

- 7.12 Governing Law: This Lease and all matters related to the rights and responsibilities hereunder are governed by and subject to the laws of the State of Oregon and the administrative rules of the Division of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties hereunder, and such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease.
- 7.13 Binding on Successors: This Lease shall be binding on and shall inure to the benefit of the successors and assigns of the parties hereto, but nothing in this section shall be construed as a consent by STATE to any disposition or transfer of the Lease or any interest herein by LESSEE except as otherwise expressly provided in this Lease.
- 7.14 Nondiscrimination: The leasehold shall be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 7.15 Right To Sue More Than Once: STATE may sue periodically to recover damages for the period corresponding to the remainder of the lease term and no action for damages shall bar later actions for damages subsequently accruing.
- 7.16 Remedies Cumulative: The remedies contained in this Lease shall be in addition to, and shall not exclude any other remedy available at law or in equity, and exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.
- 7.17 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings.
- 7.18 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 7.19 Compliance With Applicable Law: The STATE's performance under this Contract is conditioned on the LESSEE's compliance with the provision of ORS

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT
SALEM, OREGONML-10112
Page 10 of 14

279.312, 279.314, 279.316, 279.320 and 279.555, which are incorporated by reference herein.

- 7.20 Late Charges and Interest: It is understood by both parties that late payments by the LESSEE of rent and other charges due hereunder will cause the STATE to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. As such, the parties agree that, notwithstanding other remedies permitted hereunder, if the LESSEE has not made full payment of amounts due within twenty (20) days of the date such payment is due, LESSEE shall pay an additional charge equal to five percent (5%) of the amount of the late rent or other charge. In addition, all amounts due and owing under this agreement, including late charges, shall bear interest at the lower of: (1) the highest interest rate allowable by law, or (2) twelve percent (12%) per year.

SECTION 8 - INSURANCE

- 8.1 Commercial General Liability: LESSEE shall obtain at LESSEE's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage with an insurance company acceptable to the STATE. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this Lease and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000.00, or the equivalent. Each annual aggregate limit shall not be less than \$1,000,000.00, when applicable.
- 8.2 Revisions/Amendments/New Requirements: The amounts and types of insurance (including those specified in Section 8) and the party responsible for procuring the insurance shall be established and reviewed when circumstances warrant. The requirements may be revised or amended by the STATE periodically at the STATE's sole discretion after STATE:
- (a) consults with its insurance advisor;
 - (b) consults with LESSEE;
 - (c) considers the commercial reasonableness of any requirements, amendments or revisions; and
 - (d) considers the STATE's need for adequate insurance protection and the STATE's fiduciary obligations.

Within thirty (30) days notice to LESSEE of the STATE'S revision or amendment of the insurance requirements, LESSEE shall provide the STATE with satisfactory evidence that the LESSEE has obtained new insurance coverage which conforms with the revised/amended insurance requirements. If mutually agreed in writing, LESSEE may have additional time to obtain such insurance.

- 8.3 Named Insured Parties: The liability insurance coverages required for performance of the Lease shall include the State of Oregon, the Division of State

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

ML-10112
Page 11 of 14

Lands and their sections, officers and employees as additional insured but only with respect to the LESSEE's activities to be performed under this Lease.

- 8.4 Certificate(s) of Insurance: As evidence of the insurance coverages required by this Lease, the LESSEE shall furnish certificate(s) of insurance to the STATE prior to the issuance of this Lease, and not less often than annually thereafter and as reasonably requested by STATE. The certificate(s) will specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease shall be obtained from acceptable insurance companies or entities. The LESSEE shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

SECTION 9 - IMPROVEMENTS

- 9.1 Authorized Improvements or Structures: No improvement that exceeds fifteen thousand dollars (\$15,000) in cost or value may be constructed or placed upon the leasehold unless the LESSEE shall have first obtained the prior written authorization of the STATE. Approval for improvements consistent with the purposes of this Lease shall not be unreasonably withheld or delayed. All improvements must be consistent with the authorized use(s) of this Lease as stated in Section 2.1.
- 9.2 Unauthorized Improvements or Structures: Unauthorized improvements shall, at the election of the STATE, either be removed from the leasehold by LESSEE (or if STATE so elects, by the STATE at LESSEE's cost and expense), or remain within the leasehold.
- 9.3 Removal of Structures and Improvements: Any LESSEE-owned structure or improvement must be removed within ninety (90) days of the termination of the Lease or modification of the lease as in Section 4.1.1 unless otherwise agreed by the parties as in the case of a structure exempt from authorization under OAR 141-082-0030(4). LESSEE shall be responsible for any damage done to the leasehold as a result of the removal of the structure improvements. Any structure or improvements remaining on the leasehold after the ninety (90) day period may at the option of the STATE become the property of STATE, unless otherwise agreed by the parties.

SECTION 10 - ADDITIONAL CONDITIONS AND STIPULATIONS

None.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

SECTION 11 ENTIRE AGREEMENT

11.1 ENTIRE AGREEMENT: THIS LEASE, TOGETHER WITH THE ATTACHED EXHIBITS AND ATTACHMENTS, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS LEASE SHALL BIND EITHER PARTY UNLESS IN WRITING. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN, AND SHALL BE VALID AND BINDING ONLY IF IT IS SIGNED BY EACH PARTY. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS LEASE. LESSEE, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT LESSEE HAS READ THIS LEASE, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THIS LEASE SUPERSEDES ALL PRIOR OR EXISTING LEASE OR RENTAL AGREEMENTS BETWEEN THE PARTIES.

The LESSEE expressly agrees to all covenants herein and binds him/herself for the payment of the rental herein before specified.

DIVISION OF STATE LANDS

Stephen Reinhold
Authorized Signature

8/30/99
Date

Division of State Lands
775 Summer Street NE
Salem, OR 97310-1337

LESSEE

WINMAR OF JANTZEN BEACH, INC.

By: Eddie L. Sanderson
Signature/Title President
(Note requirement below)

By: Thomas A. Barkum 8-23-99
Date Secretary

P.O. Box 21545

Seattle WA 98111-3545
Mailing Address

Note: If the LESSEE is a corporation, the signer warrants that s/he has the authority to sign the lease on behalf of the corporation by resolution of its Board of Directors, or through delegation of authority to the signer.

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

I, the undersigned, hereby swear or affirm under penalty of perjury that to the best of my knowledge, I am not in violation of any Oregon Tax Laws.

For the purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4) which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Self-Employment Tax, Lane Transit District Employer Payroll Tax, Tri-County Metropolitan Transit District of Oregon ("Tri-Met") Employer Payroll Tax, and Tri-Met Self-Employment Tax).

Signature: Eddie L. Henderson

Date: August 23, 1999

Printed Name: Eddie L. Henderson

Title: President

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

0901 0000 0573

STATE OF WASHINGTON)
COUNTY OF KING) ss:

The foregoing instrument was acknowledged before me this 23rd day of August, 1999, by Philip L. Hendriksen, as President on behalf of Winmar Fairway Beach, Inc., an Oregon corporation.



Diane Bogue
Notary Public for WASHINGTON
My commission expires:

STATE OF WASHINGTON)
COUNTY OF KING) ss:

The foregoing instrument was acknowledged before me this 23rd day of August, 1999, by Thomas A. Barback, as Secretary on behalf of the Oregon Division of State Lands, Winmar of Guntzen Beach, Inc., an Oregon corporation.



Diane Bogue
Notary Public for WASHINGTON
My commission expires: April 20, 2002

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF Oregon)
) ss:
COUNTY OF Multnomah)

The foregoing instrument was acknowledged before me this 20th day of August, 1993 by Stephen K. Knecht as Assistant Director on behalf of the Oregon Division of State Lands.

Shannon K. Relaford

Notary Public for 8/3/03
My commission expires:



RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

090100000575

Riverhouse
Condominium
Plat

RECEIVED

JUL 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

Winmar
Submerged
Land

State-owned
Submerged
Land

Hayden
Bay

Beginning Point

LE 10112
10,425 sq ft

LE 9215
22,320 sq ft

Hayden Bay
Condominium
Plat

N. Tomahawk Island Drive



1" = 100'

A-deck

Winmar
Submerged
Land

Lease Request from Darrell L. Dunigan
Chairman Hayden Bay Condominiums
Home Owners Association

Sketch of Lease Areas
LE 9215 / LE 10112
0.51 Acres / 0.24 Acres

MULTNOMAH COUNTY
Section 34 T2N R1E W.M.

Drawn by:
J. Hedrick
Sept. 18, 1998



Office of Planning
and
Development Review
Land Use Review Division

1900 SW Fourth Ave., Suite 5000
Portland, Oregon 97201
Telephone: (503) 823-7300
TDD: (503) 823-6868
FAX: (503) 823-5630
www.ci.portland.or.us

NOTICE OF A TYPE II DECISION
ON A PROPOSAL IN YOUR NEIGHBORHOOD

Date: November 15, 2000
To: Interested Person
From: Jessica Wilcox, Land Use Review
(503) 823-7848

The Office of Planning and Development Review has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LUR 00-00636 EN

I. GENERAL INFORMATION

Applicant: Hayden Bay Condominiums, Owner Phone: 503-916-3358
Amy Welch, Contact
505 N. Tomahawk Island Drive
Portland, OR 97217

Representative: KPFF Consulting Engineers Phone: 503-227-3251
Scott Brian
111 SW 5th Avenue, Suite 2500
Portland, OR 97204

Other Owners: Division of State Lands
775 Summer Street NE
Salem, OR 97310

Site Address: 505 N Tomahawk Island Drive
Legal Description: Hayden Bay Condominium, Lot 10
Tax Account No.: R368200320
State ID No.: 2N1E34CD6 99010
Quarter Section: 1830
Neighborhood: Hayden Island Neighborhood Network (HINOON), contact Connie Hunt at 503-283-4049
Business District: Columbia Corridor Association, contact the Executive Director at 503-287-8686
District Coalition: North Portland Neighborhood Office, contact Tom Griffin-Valade at 503-823-4524
Zoning: R3 c,x (Low Density Multi-dwelling Residential zone with "c" Environmental Conservation and "x" Portland International Airport Noise Impact overlay zones)
Case Type: EN (Environmental Review)
Procedure: Type II Procedure

RECEIVED

MAR 07 2003

WATER RESOURCES DEPT.
SALEM, OREGON

This application was determined to be complete on October 18, 2000.

PROPOSAL

The applicant proposes to construct a private 19-boat marina on property located at 505 N. Tomahawk Island Drive (Exhibit B). The marina will be constructed within Hayden Bay, which is on the south side of the Columbia River at river kilometer 22.4 (river mile 14). The purpose of the marina will be to provide boat moorage and access to residents of the associated condominiums. The Division of State

APP# 5-85407



CITY OF PORTLAND
OFFICE OF PLANNING AND DEVELOPMENT REVIEW
1900 SW Fourth Avenue, Suite 5000
Portland, OR 97201

P524

Land Use Review Notice Enclosed

Case # 00-00636 EN

B299/R1500
PLANNING AND ZONING

Lands (DSL) requires submerged and submersible land leases for any development within state waterways. As a result, the applicant obtained a lease (ML-9215) to construct this marina.

The proposed development will consist of a 10- by 10-foot concrete abutment, six-foot wide by 70-foot long gangway, which will span from an existing waterside asphalt walkway to a 20-by 20-foot landing platform, and continue onto approximately 330 feet of floating docks consisting of eight finger floats running perpendicular to the main dock (Exhibit C.1). Seven steel piles 18 inches in diameter will be used on shore and 11 piles 20 inches in diameter will be placed in the bay to support the marina (Exhibit C.3). A two-foot wide grating strip will be installed in the middle of the main dock to allow sunlight and water to pass freely to the water below. All construction activities located on land will disturb approximately 300 square feet of bank. The total in-water disturbance will be approximately 40 square feet. To limit impacts to the site, a barge mounted vibratory hammer, to be selected by the contractor, will be used to drive piles. This equipment will be brought to the site via the Columbia River. To mitigate for impacts, the applicant will plant approximately 1,050 square feet of the bank with native willow stakes (Exhibits C.2 and C.3).

The proposal requires an Environmental Review because development will occur within the Environmental Conservation Overlay zone and does not meet certain development standards found in Section 33.430.140-170.

APPROVAL CRITERIA CITATION

In order to be approved, this proposal must comply with the criteria of Title 33.

The applicable criteria are found in Section 33.430.250 E, Other Development in the Environmental Conservation Zone.

II. ANALYSIS

Site and Vicinity: The proposed marina will be located on Hayden Bay, immediately northeast of Hayden Bay Condominiums. The site is located in a bay connected to the Columbia River and currently consists of seven separate marinas. The existing shoreline steeply slopes to the water at a grade of approximately 2:1. The banks consist of grasses, large cobbles mixed with coarse sand, and some angular rip-rap. Additionally, a few cottonwood saplings and non-native trees (arborvitae, juniper) are located on the banks.

Surrounding areas are currently developed with multi-dwelling residences, walkways and landscaped areas, including a paved pedestrian path running along the top of the bank.

Zoning: This site is designated R3 c, x, Residential 3,000 with Environmental Conservation and Portland International Airport Noise Impact Overlay zones.

The R3 base zone is a low density multi-dwelling zone. It allows approximately 14.5 dwelling units per acre. Density may be as high as 21 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one and two story buildings and a relatively low building coverage. The major type of new development will be townhouses and small multi-dwelling residences.

Environmental zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. The environmental regulations also carry out Comprehensive Plan policies and objectives. The proposal is located entirely within the Environmental Conservation Overlay zone. The Environmental Conservation designation is intended to conserve important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development. This zone is designated with the letter "c" on the official zoning maps. The entire site is located within the Environmental Conservation Overlay zone.

The Portland International Airport Noise Impact overlay zone reduces the impact of aircraft noise on development within the noise impact area surrounding the Portland International Airport. The zone achieves this by limiting residential densities and by requiring noise insulation, noise disclosure statements, and noise easement. This zone is designated with the letter "x" on the official zoning maps. No residential structures are proposed.

Environmental Resources Summary: Application of the environmental zone is based in detailed studies that have been carried out within eight separate areas of the City. The City's policy objectives for these study areas are described in these reports. Each study report identifies the resources and

WATER RESOURCES DEPT

MAR 07 2003

RECEIVED

describes the functional values of the resource sites. Functional values are the benefits provided by resources. The values for each resource site are described in the inventory section of these reports.

The project site is located within the *Columbia River Industrial/Environmental Mapping Inventory Site* Number 71. This area is highly disturbed, due to previous development. Open recreational activities in the area include launching ramps, beaches, and bicycle paths. Dominant uses at the site include commercial and industrial activities including moorages, and residential development. The site received a wildlife habitat inventory score of 18 out of 100. Regardless of this low rating, the proximity of the site proposed for development to other high-quality natural areas results in a complex of diverse resource character and function that is able to support a broad variety of vegetation and animal life.

Resources and functional values found at this site include flood storage capacity for flood control, water quality, wildlife and fish habitat, and recreational and scenic values.

Land Use History: City records indicate that there were two prior land use reviews for this site.

- Case DR 78-9-18 - no documentation was found.
- Case M 20-76, approved a land division that created Hayden Bay Condominiums, Hayden Bay Marina, Lotus Isle Subdivision, and Poppen Islander.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed October 20, 2000. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Fire Bureau

The Site Development Section of Office of Planning and Development Review submitted the following comments (Refer to Exhibit C.4 for further information):

- A construction management plan must be reviewed during this land use review;
- A building permit will be required for this proposal, which includes erosion control, grading, and compliance with elements of the decision; and
- A geotechnical report addressing the design of the pilings will be required.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on October 20, 2000. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.430.250 Approval Criteria for Environmental Review An environmental review application will be approved if the review body finds that the applicant has shown that all of the applicable approval criteria are met. When environmental review is required because a proposal does not meet one or more of the development standards of Section 33.430.140 through .170, then the approval criteria will only be applied to the aspect of the proposal that does not meet the development standard or standards.

E. Other development in the Environmental Conservation zone or within the Transition Area only. In Environmental Conservation zones or for development within the Transition Area only, the applicant's impact evaluation must demonstrate that all of the following are met:

- 1. Proposed development minimizes the loss of resources and functional values, consistent with allowing those uses generally permitted or allowed in the base zone without a land use review;**

Findings: The R3 zone allows for residential uses, including townhouses, small multi-dwelling residences, and some institutional uses with a conditional use. A commercial marina is considered a Commercial Outdoor Recreation Use; this use is prohibited in this base zone. As a result, the marina shall only be used for residents of the Hayden Bay Condominiums, and is only allowed as an accessory use to the primary residential use (the condominiums). Renting moorages to people other than the condominium residents is prohibited.

The applicant will minimize resources and functional values at the site by implementing erosion control and spill prevention plans, using vibration pile driving, installing grating in the middle of

the gangways, capping pilings, and replanting the banks. Please refer to Criterion C.2, below, for further discussion.

This criterion can be met with a condition requiring a covenant that the marina will only serve the condominium residents.

2. Proposed development locations, designs, and construction methods are less detrimental to identified resources and functional values than other practicable and significantly different alternatives;

Findings: This criterion requires that the applicant demonstrate that alternatives were considered during the design process. In order for this request to be approved, this report must conclude that there are no practicable alternatives that would be less detrimental to the identified resources and functional values. "Practicable" is defined in the Portland Zoning Code as:

"Capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."

"Functional Values" have been defined in the Portland Zoning Code as: The benefits provided by resources. The functional value may be physical, aesthetic, scenic, educational, or some other nonphysical function, or a combination of these. Most natural resources have many functional values. The identified resources and functional values have been summarized in the Environmental Resources section of this report, above. The resources identified include: flood storage capacity for flood control, water quality, wildlife and fish habitat, and recreational and scenic values.

Location, design, and construction methods are discussed separately below.

Location: Only a small portion of bay was afforded for the proposed marina (Exhibit B). Due to this limited area and uniform nature of the site, all configurations considered would have equivalent impacts. The concrete abutments will be placed near the shore in order to reduce the span of the gangway and reduce the amount of pilings or piers needed (Exhibit C.3).

Design: The following five design alternatives were examined for the proposed project:

1. A standard solid decking over the entire float surface which is easier to construct and creates a stronger floating structure.
2. A covered marina.
3. Treated wood pilings.
4. A fixed pier to reduce the span of the gangway.
5. A floating main walkway with grated centers to allow the passage of light and metal pilings.

Alternative 1 would reduce the amount of natural light under the marina structure and would impact fish habitat. Alternative 2 would essentially prohibit any lighting from reaching the water. Alternative 3 would provide the potential for leaching impacts from the chemically treated wood, an impact to water quality and fish habitat. Alternative 4 would increase impacts to the bank and would increase shading. Therefore, alternatives one through four were not chosen due to environmental concerns and increased impacts to resources and functional values at the site. As a result, alternative five was chosen because the dock would reduce shading of the water, steel pilings would not leech contaminants into the water, and a floating pier would reduce impacts to the bank. On-bank disturbance will be limited to approximately 300 square feet and in-water disturbance will be limited to approximately 40 square feet.

Construction Methods: All in-stream work will be completed between November 1 and February 15. Pilings will be constructed by a vibratory hammer via a barge to limit impacts to the bank and to minimize shock and noise impacts to salmonids. In fact, the entire marina will be constructed via the barge, excluding the concrete base for the gangway. Access to the bank will be via N. Tomahawk Island Drive, as shown on the Construction Management/Mitigation Plan (Exhibit C.2). The project will be constructed in the following manner to limit impacts to resources and functional values at the site:

RECEIVED

MAR 07 2003

WATER RESOURCES DEPT.
SALEM, OREGON

	Action	Time
On-bank work	A backhoe will be used to excavate forms, as shown on Exhibit 3. All spoils will be removed from the site with no interim storage. No equipment will be stored on site. Erosion control will be installed.	One day
	Build concrete forms.	One day
	Pour concrete. A truck will park on N. Tomahawk Island Drive and concrete will be carried in a wheelbarrow to the site.	One day
In-water work	Drive 18 piles using a vibratory hammer. All equipment and material will be stored on the barge.	3 ½ months

The applicant has located the proposal in a location so as to limit the length of the gangway and limit the need for additional pilings or piers (Exhibit C.1). The design of the marina limits impacts to resources and functional values at the site by using grated walkways, steel pilings and piers, and creating a floating dock. The applicant has submitted a construction management plan that minimizes the potential for erosion and impacts to salmonids in the vicinity. As a result, the criterion can be met.

3. There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed;

Findings: Environmental resources at the site are described in the *Columbia River Industrial/Environmental Mapping Inventory* Site Number 71 and are noted in the Environmental Resources Section of this report, above. Specifically, resources and functional values found at this site include: flood storage capacity for flood control, water quality, wildlife and fish habitat, and recreational and scenic values.

Potential impacts due to construction of the marina include temporary reductions in water quality, increased sedimentation and erosion, decreased fish and wildlife habitat, and the reduction of scenic resources. The applicant proposes to limit impacts to resources and functional values at the site by limiting disturbance areas on the bank necessary to install a 10-by 10-foot concrete abutment and locating the abutment under an existing paved walkway. Additionally, the proposed gangway will be accessed via the existing walkway, therefore, no pedestrian traffic will impact the bank. Willow stakes will be installed along the bank as shown on the Construction Management/Mitigation Plan (Exhibit C.2) to provide a measure of water quality treatment, increase fish and wildlife habitat, and increase scenic values at the site.

To limit impacts associated with the installation of piles, the applicant proposes to use vibration pile driving to minimize shock and noise impacts to salmonids, create an Erosion Control Plan (ECP) to minimize discharge of pollutants during construction, and cap pilings to discourage perching of potential salmonid predators such as seagulls. Please refer to Criterion E.2 above, for further discussion of the proposal and how it reduces impacts to the site (i.e. grating the walkways to allow light to pass through, etc.).

The applicant has provided a Construction Management/Mitigation Plan (Exhibit C.2) exhibiting access/egress of the site, proposed plantings, and limits of disturbance; however did not exhibit silt fencing and how to ensure that areas left to be undisturbed will remain protected. As a result, a condition shall be required for the applicant to install erosion control and place protective construction fencing around on-land limits of disturbance, as shown on Exhibit C.2. With this condition, the criterion can be met.

4. The mitigation plan demonstrates that all significant detrimental impacts on resources and functional values will be compensated for;

Findings: Approximately 300 square feet of the bank will be disturbed due to construction of the concrete base for the gangway. Additionally, in-water disturbance will be approximately 40 square feet for driving piles. All disturbance will occur within the Environmental Conservation Overlay zone. No native trees or shrubs will be removed because the bank primarily consists of rock, gravel, and a few non-native shrubs, trees, and very few cottonwood saplings. Therefore, impacts to the banks will be minimal. Temporary impacts to fish habitat, resulting from in-

water construction, (i.e. temporary turbidity) cannot be directly mitigated; however, impacts can be reduced. This can be accomplished by completing all in-water work within the work period approved by Oregon Department of Fish and Wildlife (ODFW), which is November 1 to February 15.

The applicant proposes to mitigate for these minimal impacts through the planting of live stakes (three species), planted at a density of two to four stakes per square yard in a five-foot wide strip along the length of the bank (total of approximately 1,050-square feet) (Exhibits C.2 and C.3). The live cuttings will consist of Scouler willow (*Salix scouleriana*), red-osier dogwood (*Cornus sericea ssp. sericea*), and Douglas spirea (*Spirea douglasii*). Detailed specifications for installing live stakes are found in Chapter 18 of the United States Department of Agriculture Engineering Field Handbook (entitled Soil Bioengineering for Upland Slope Protection and Erosion Reduction, October 1992).

The Construction Management/Mitigation Plan (Exhibit C.3) will increase plant cover and diversity, helping enhance wildlife and fish habitat, water quality, and scenic values. Therefore, with these plantings, significant detrimental impacts on resources and functional values can be compensated. In order to establish survival of these plantings, the applicant has provided a Monitoring/Maintenance Plan (Exhibit C.4).

With the Construction Management/Mitigation Plan (Exhibit C.2), this criterion is met.

5. Mitigation will occur within the same watershed as the proposed use or development and within the Portland city limits except when the purpose of the mitigation could be better provided elsewhere; and

Findings: The proposed mitigation will be carried out on the site. This criterion is met.

6. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.

Findings: The applicant is the designated representative of the Hayden Bay Condominiums Home Owners Association, which owns the site. This criterion is met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment review prior to the approval of a building or zoning permit.

III. CONCLUSIONS

The applicant proposes to construct a 19-boat marina for the exclusive use of Hayden Bay Condominium residents. Development will create minimal impacts to riparian vegetation, wildlife and fish habitat, water quality, and flood storage capacity. The applicant proposes to minimize these impacts using environmentally sensitive equipment and implementing a construction management plan that includes Best Management Practices (BMPs). To mitigate for these minimal impacts, the applicant will plant a portion of the bank with native species.

As discussed above, the relevant approval criteria can be met, subject to several conditions of approval. These conditions relate to native plantings, erosion control, and construction management.

IV. ADMINISTRATIVE DECISION

Approval of an Environmental Review for the construction of a private 19-boat marina in the Environmental Conservation Overlay zone in substantial conformance with Exhibits C.1 through C.4, as modified, signed, and dated per the City of Portland Office of Planning and Development Review on

RECEIVED
MAR 07 2003
WATER RESOURCES DEPT.
SALEM, OREGON

November 14, 2000. Approval is subject to the following conditions:

As part of any permit application submittal, the following development-related conditions must be included within each set of permit drawings. The sheet on which this information appears must be titled "ZONING COMPLIANCE PAGE- Case File #LUR 00-00289 EN." All requirements must be graphically represented on a site plan, construction management plan, or landscape plan and must be labeled "REQUIRED."

- A.** Prior to issuance of any permits for this proposal, the owner shall execute a covenant with the City as described under Section 33.700.060 (Covenants with the City) and it shall be reviewed by the City Attorney, approved by OPDR, and recorded. The covenant shall require that the marina be for the exclusive use of Hayden Bay Condominium residents.
- B. Prior to any ground disturbing activities at the site,** the applicant shall obtain the required permits from OPDR. These permits shall include the following:
- B1. A Site Development Permit** for the installation of Erosion Control and Mitigation Plantings shall be required.
1. All sheets within the Site Development Permit plan set shall include the following written conditions:
 - Live stakes (three species), shall be planted at a density of 2 to 4 stakes per square yard. The location of these plantings shall be as shown on Exhibits C.2 and C.3. The total number of stakes shall not be less than 232. Stakes shall consist of Scouler willow (*Salix scouleriana*), red-osier dogwood (*Cornus sericea ssp. sericea*), and Douglas spirea (*Spiraea douglasii*).
 - A 90 percent survival rate after the first year and at September 1, 2004 (final monitoring date), will be required to achieve compliance with the planting plan. This survival rate equates to the following results, based on the initial planting density:
 - 2 stakes per square yard (232) = 209
 - 3 stakes per square yard (348) = 313
 - 4 stakes per square yard (464) = 417
 - Silt fencing and protective construction fencing must be installed prior to any ground disturbing activities and the location shall conform with Exhibit C.2.
 - Construction access for on-bank work shall be limited to the location shown on Exhibit C.2.
 - Mitigation plantings shall be installed six months after issuance of the Site Development Permit. If this six month period falls outside of the planting season, the applicant may have until September 30th of that same year to plant.
 2. Construction fencing, installed for the purpose of limiting construction activities to a specified area, shall conform with Section 33.248.068.
 3. The Site Development permit shall not be finalized until mitigation plantings are completed and inspected.
- B2. All other permits :**
1. Copies of the LUR 00-00289 EN Exhibits C.1 through C.4, approved through this review, shall be submitted as part of all plans submitted for permits (building, grading, development, erosion, etc.). These plans shall be the same size and scale as those submitted for the permit, shall be incorporated into the plan set, shall include all written conditions, disturbance limits, mitigation plans, etc., and shall include the following statement, **"No field changes without additional review and approval by OPDR, Planning and Zoning Staff."**
- C.** A written annual monitoring report prepared by a professional biologist or a certified landscape architect (for three years) in conformance with the Monitoring and Maintenance Plan (Exhibit C.4) shall be submitted to the Land Use Review Division of the Office of Planning and Development Review (1900 SW Fourth Avenue, Suite 5000, Portland, OR, 97201- Attention: **Environmental Planner: LUR 00-00289 EN**). These reports shall be submitted no later than May 1, 2003 (first report), May 1, 2004 (second report), and May 1, 2005 (third report).

- D. On **June 1, 2005**, the applicant must apply for a Site Development Permit for the purpose of inspecting the required mitigation plantings. The plans shall include:
- The planting schedule and planting plan approved under this review;
 - The schedule must show the calculated 90 percent survival rate of native plants (refer to Condition B1.1);
 - A planting plan showing the location of surviving plants; and,
 - The system used to provide for field plant identification.

The planting plan submitted for this condition shall be in substantial conformance with Exhibits C.2 and C.3. Any plant substitutions must have been pre-approved by OPDR (attach letter(s) allowing substitution to submitted plans). ***This permit shall not be finalized until the site exhibits 90 percent survival of the native plants installed as required by this review.***

- E. Within two weeks of the final day of the appeal period of this decision, the applicant will do the following:

- Record this decision with the City Auditor; and
- Apply for a Site Development Permit for installation of mitigation plantings.

- F. Failure to comply with any of these conditions shall void this land use approval.

RECEIVED
MAR 07 2003
WATER RESOURCES DEPT.
SALEM, OREGON

Staff Planner: Jessica Wilcox

Decision rendered by: Susan Feldman on November 14, 2000

Decision filed November 15, 2000

Decision mailed November 15

This application was determined to be complete on October 18, 2000

Note: Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Office of Planning and Development Review has independently reviewed the information submitted by the applicant and has included this information only where the Office of Planning and Development Review has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Office of Planning and Development Review with input from other City and public agencies.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM November 29, 2000** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fourth floor of OPDR. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Neighborhood associations and low-income individuals may qualify for a waiver of the appeal fee. Assistance in filing the appeal and information on fee waivers is available from OPDR in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing your appeal; please allow 3 working days for fee waiver approval. Fee waivers for neighborhood associations require a vote of the authorized body of your association. Please see the appeal form for additional information.

The file and all evidence on this case is available for your review by appointment only. Please contact the receptionist at 823-7300 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.ci.portland.or.us.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Salem, Oregon 97310 [Telephone: (503) 373-1265] for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision. If this decision is not appealed, it will be final on **November 30, 2000**. It cannot be recorded before that date, but it must be recorded before the approved use is permitted, any building or development permits are issued, or any changes to the Comprehensive Plan Map or Zoning Map are made. The applicant, builder, or a representative can record the decision by going in person to the City Auditor's office in City Hall, 1221 SW Fourth Avenue, Room 140; Portland, Oregon. The Auditor will charge a fee and will record this decision with the County Recorder. For more information about recording a decision, contact the City Auditor at (503) 823-4082.

Expiration of this approval. This decision expires three years from the date the final decision is rendered unless:

- A building permit has been issued, or
- The approved activity has begun, or
- In situations involving only the creation of lots, the land division has been recorded.

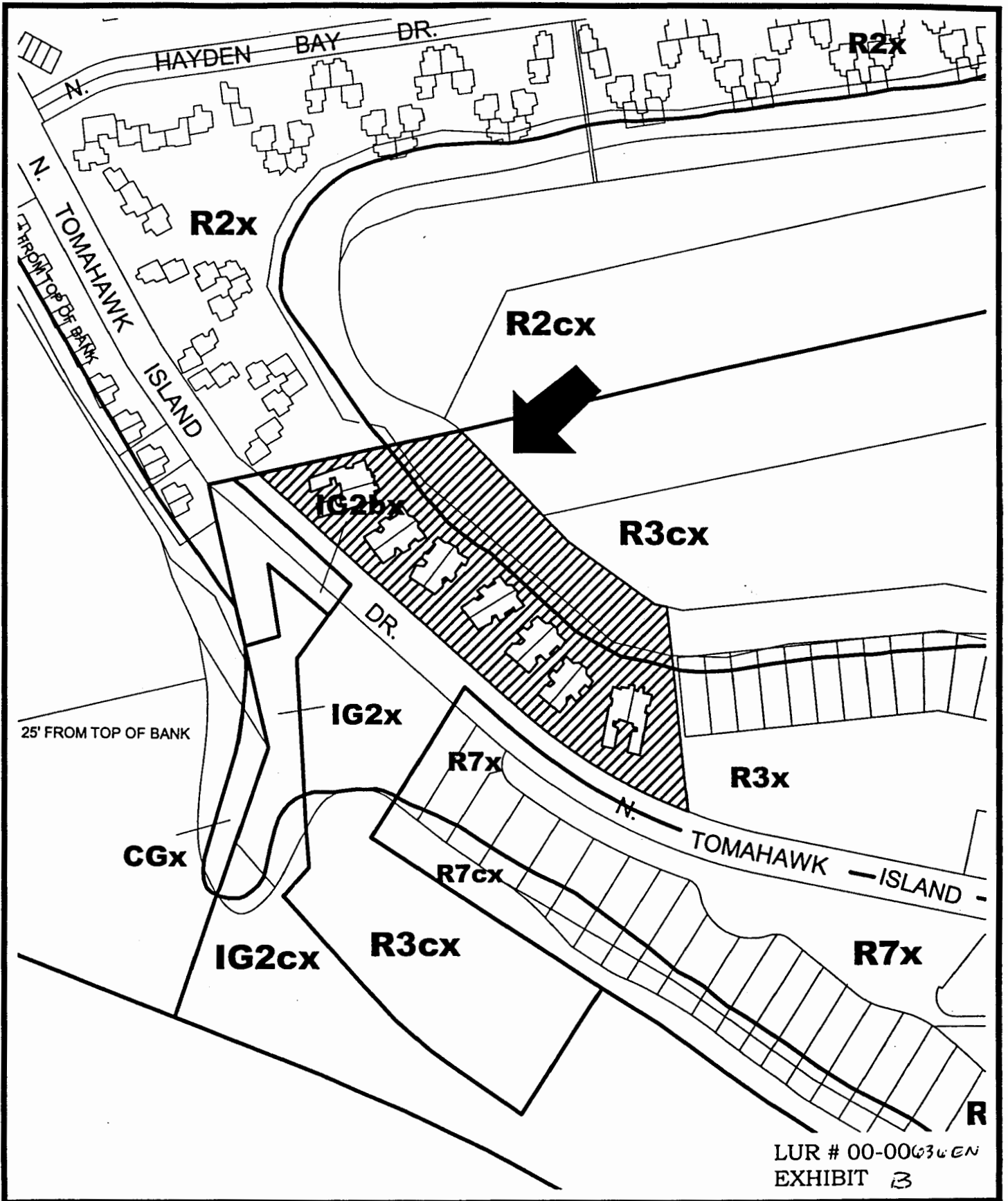
Applying for your permits. A building permit, occupancy permit, or development permit must be obtained before carrying out this project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed here.
- All applicable development standards, unless specifically exempted as part of this land use review.
- All requirements of the building code.
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the city.

EXHIBITS - NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Narrative and information
 - 2. Additional information submitted, October 16, 2000
 - 3. Biological Assessment
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Construction Management/Mitigation Plan (attached)
 - 3. Profile Plan (attached)
 - 4. Monitoring/Maintenance Plan
- D. Notification information:
 - 1. Mailed notice
 - 2. Mailing list
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Fire Bureau
 - 4. Site Development Review Section of OPDR
- F. Correspondence
 - 1. None
- G. Other
 - 1. Original LUR Application
 - 2. Site History Research

The Office of Planning and Development Review is committed to providing equal access to information and hearings. If you need special accommodations, please call 823-7300 (TTY 823-6868).



ZONING

 Site

RECEIVED

MAR 07 2003

WATER RESOURCES DEPT.
SALEM, OREGON

File No. LUR 00-00636 EN

1/4 Section 1830, 1829

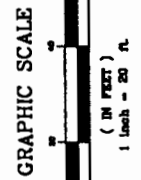
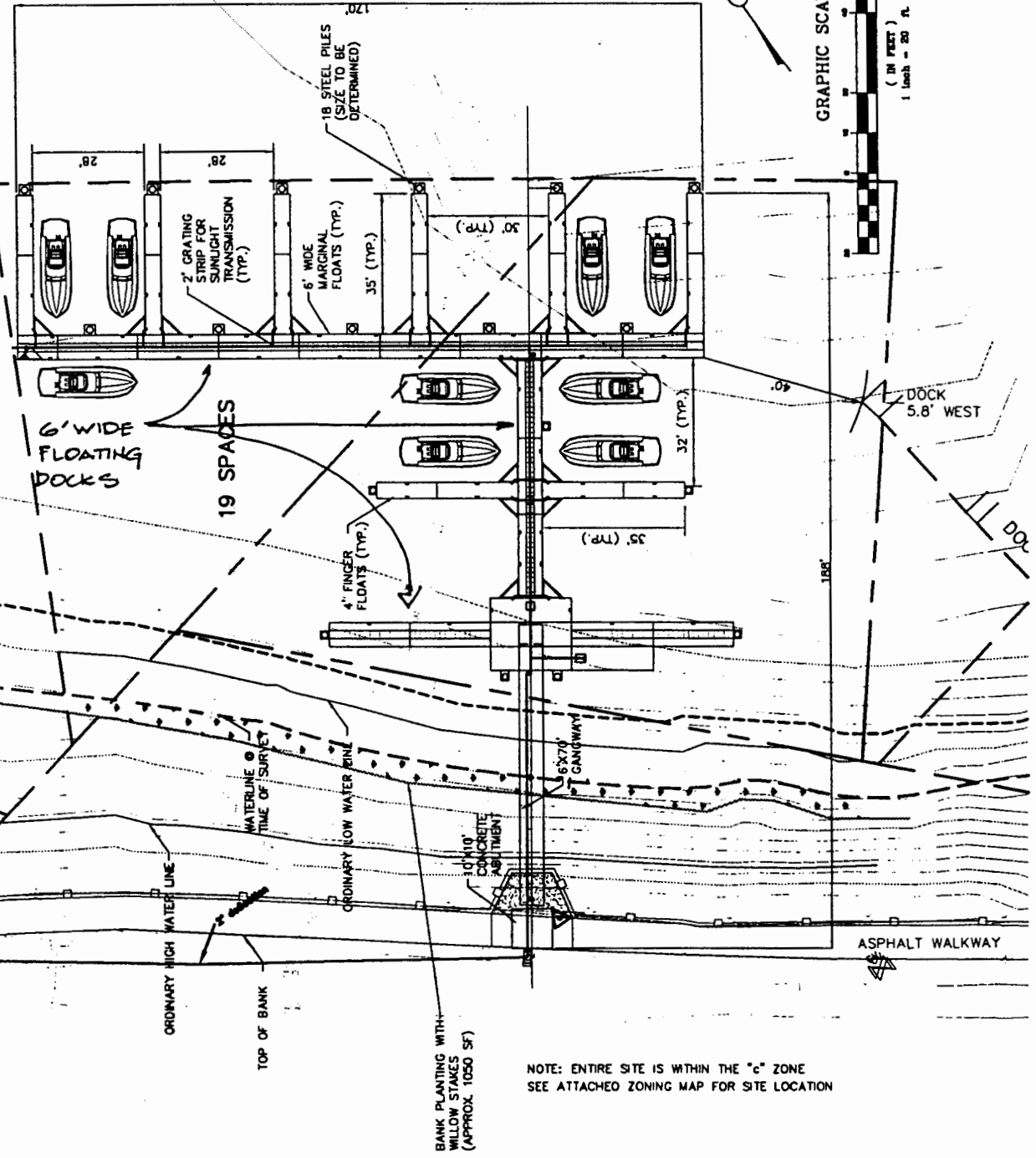
Scale 1 inch = 200 feet

State-Id 2N1E34CD6 99000

Exhibit B (Oct 18, 2000)



Approved
City of Portland
Office of Planning and Development Review
 Permit # 00-00036 EN
 Planner J. Mulikob
 Date 11.14.00
 *Approval for Environmental Review only.
 Not a building permit.
 Additional zoning requirements...



NOTE: ENTIRE SITE IS WITHIN THE "c" ZONE
 SEE ATTACHED ZONING MAP FOR SITE LOCATION

REFERENCE SHEET NO.

kpff
 Consulting Engineers
 111 S.W. Fifth Avenue
 Suite 2500
 Portland, Oregon 97204
 503-227-3251

TITLE: **PROPOSED MARINA LAYOUT**

DATE: **9/21/00**

HAYDEN BAY MARINA

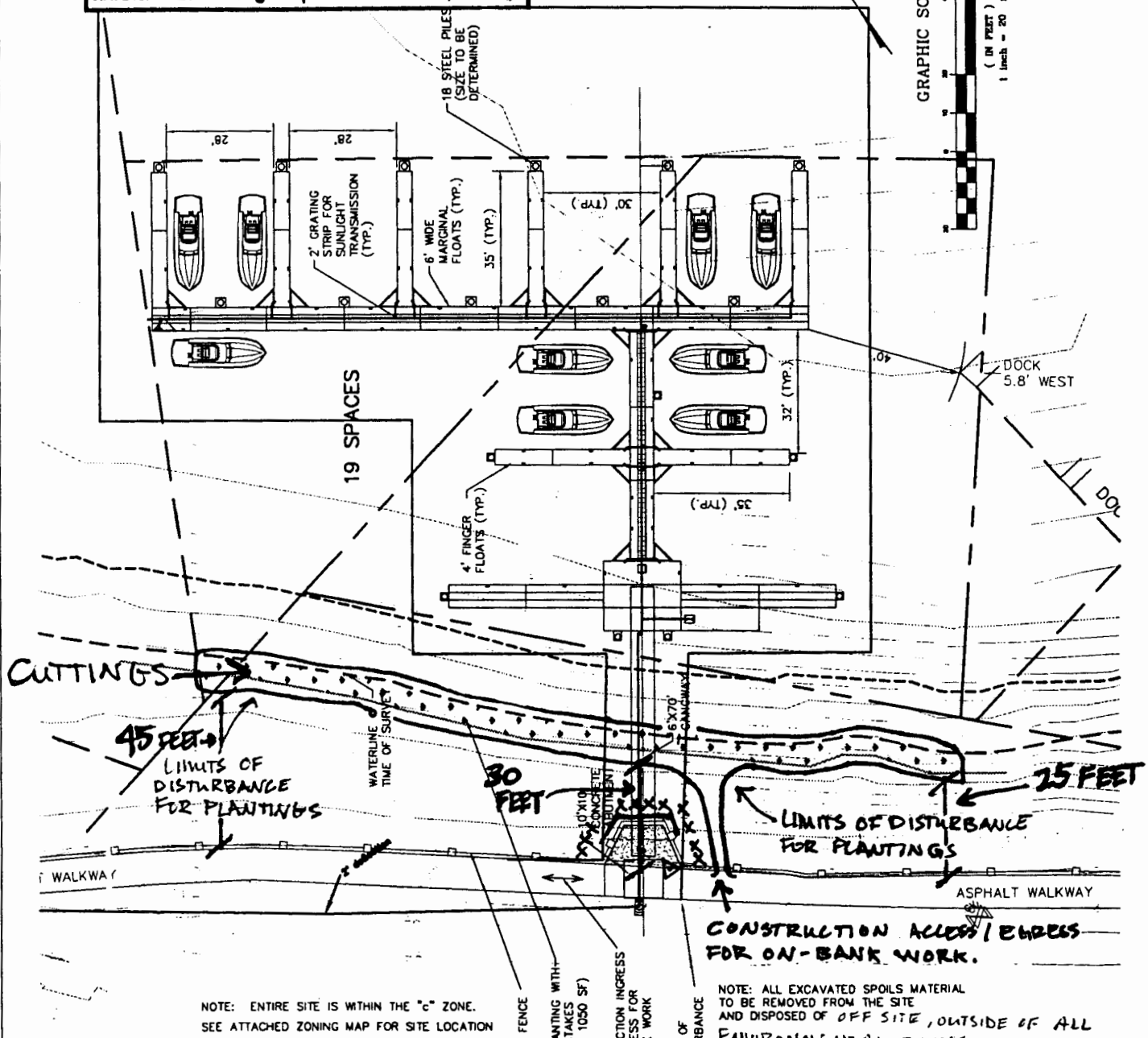
LUR # 00-00036 EN
 EXHIBIT C.1

Approved
City of Portland
Office of Planning and Development Review
 Permit # 00-00636 EN
 Planner [Signature]
 Date 11-14-00
 *Approval for Environmental Review only.
 Not a building permit.
 Additional zoning requirements m... ty.

RECEIVED

MAR 07 2003

WATER RESOURCES DEPT.
SALEM, OREGON



SILT FENCING (must be placed within 5 feet of rip-rap)

PROTECTIVE CONSTRUCTION FENCING

XX X

SILT FENCE

BANK PLANTING WITH WILLOW STAKES (APPROX. 1050 SF)

CONSTRUCTION INGRESS AND EGRESS FOR ON-BANK WORK

LIMITS OF DISTURBANCE

NOTE: ALL EXCAVATED SPOILS MATERIAL TO BE REMOVED FROM THE SITE AND DISPOSED OF OFF SITE, OUTSIDE OF ALL ENVIRONMENTAL ZONES.

REFERENCE SHEET NO.

DATE: 10/13/00

kpff
 Consulting Engineers
 111 S.W. Fifth Avenue
 Suite 2500
 Portland, Oregon 97204
 503-227-3251

TITLE: **CONSTRUCTION MANAGEMENT/MITIGATION PLAN**

HAYDEN BAY MARINA

LUR # 00-00636 EN
 EXHIBIT C.2



Consulting Engineers
111 S.W. Fifth Avenue
Suite 2500
Portland, Oregon 97204
503-227-3251

TITLE:

PROFILE

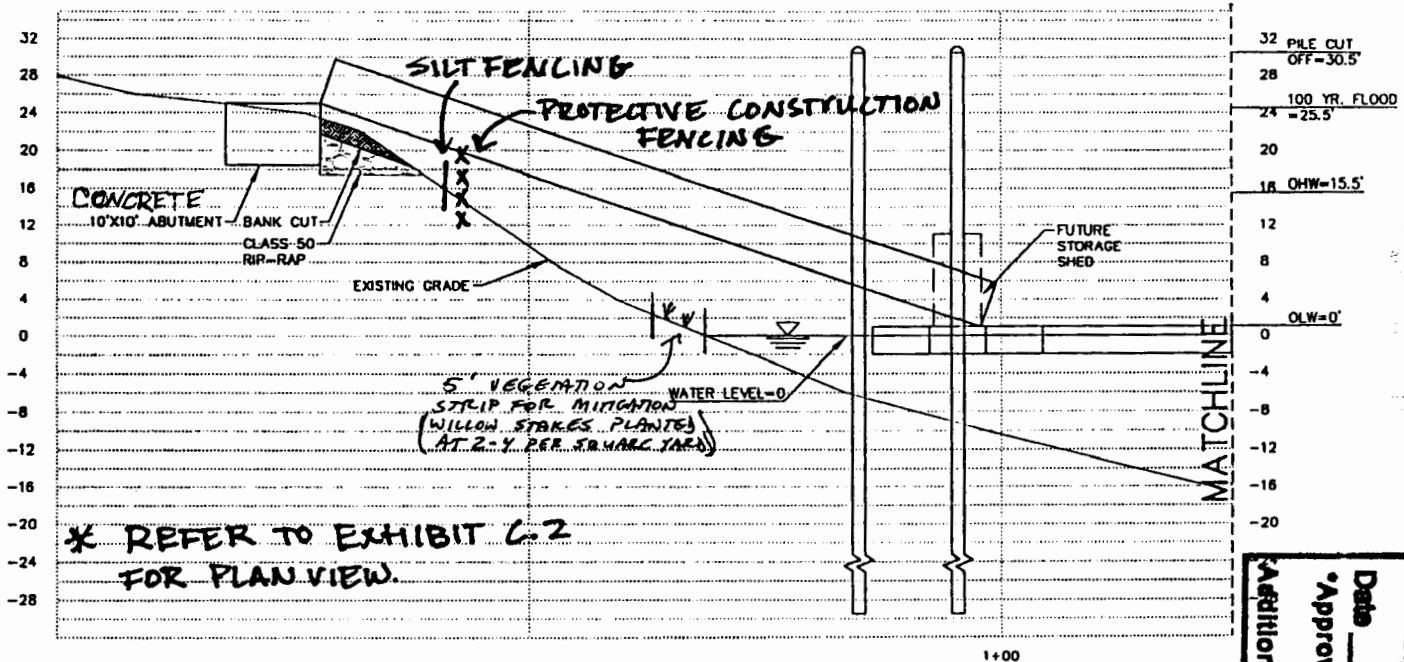
HAYDEN BAY MARINA
SCALE: H: 1"=20', V: 1"=4'

REFERENCE SHEET NO.

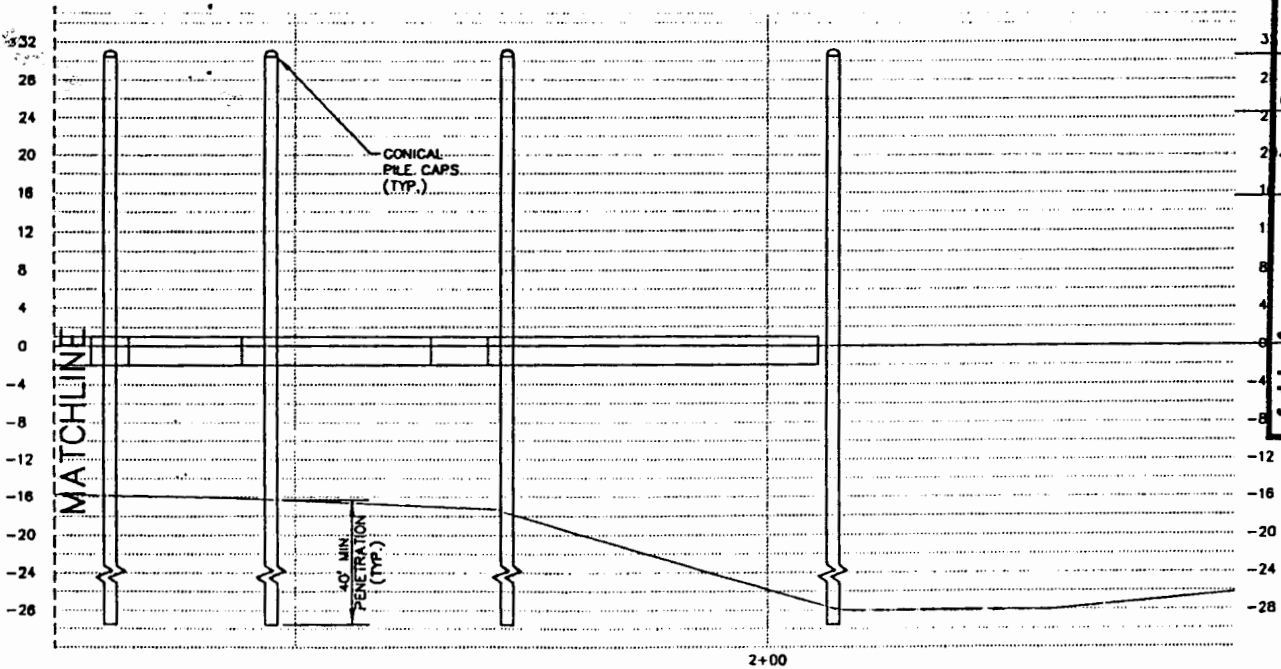
DATE:

8/18/00

LUR # 00-00632 EN
EXHIBIT C.3



* REFER TO EXHIBIT C.2
FOR PLAN VIEW.



*** Approved ***
City of Portland
Office of Planning and Development Review

Permit # CO-00632 EN

Planner J. S. [Signature]

Date 8/11/00

*** Approval for Environmental Review only.
Not a building permit.
Additional zoning requirements may apply.**

OK The water management section has been completed? If, the water system has not been designed, the applicant may estimate this information.

OK Resource protection system completed on Surface Water application?

OK Are the dates of construction indicated? If, the system already is completed, the applicant should indicate existing.

OK Is the application signed in ink by the applicant? If the application is in the name of an Organization, or corporation, the authorized agent must sign the application.

OK Is a copy of the deed, land sales contract or title insurance policy included? We cannot accept a copy of the tax bill.

OK A completed Land-Use Form or receipt signed by the appropriate planning department officials enclosed? *Does the use on land-use form match the proposed use on the application?*

OK Does the map meet map requirements of OAR 60-310-050?

- | | |
|--|--|
| OK Town, Range, Sec, 1/4 1/4's and Tax Lot # | OK Scale of the Map |
| OK Reference corner on map | OK North Directional Symbol |
| OK 1/4 1/4's clearly identified | OK POD clearly identified |
| OK POU clearly identified | OK Location Coordinates for each POD |
| OK Location of House, if Domestic | OK Number of acres per 1/4 1/4, if Irrigation |
| OK Location of Bldg, if Com./Indus. | OK Location of Stock Tanks, if Livestock |
| OK Muni / Quasi-Muni Service Boundaries | OK Other |
| OK fees enclosed? | Base Fee <u>\$250.00</u> |
| Total Paid <u>\$400.00</u> | plus <u>\$150.00</u> |
| | plus \$ |
| Total Amount of
Water Requested: .037 CFS | |

Total Exam Fee \$400.00

Total Exam Fee <u>\$400.00</u>	Recording Fee <u>\$175.00 TO BE RECEIVED</u>
---------------------------------------	---

Completeness Check by: HERB MOSGAR

Date: 3/7/03

Standard Application "Completeness" Checklist

Application: S-85489

Priority Date: 3/7/03

Use(s): IRRIGATION

2.96 ACRES

Rate: .037 CFS

County: MULTNOMAH

Township: 2 N

Range: 1 E

Section: 34

POD 1/4 1/4: SE/SW

POU 1/4 1/4: SE/SW & SW/SE

Minimum Requirements (OAR 60-310-040)

OK Applicant/Organization Name, Mailing Address', and Telephone Numbers. If applicant is other than a private landowner, Organizations section must be completed.

OK Source *and* tributary listed

OK Property ownership indicated? If applicant does not own all the land, is the affected landowners name and mailing address listed? (Including: Lands, not owned by applicant, upon which the source is located ...or... any Lands, not owned by applicant, which are crossed by the diversion works.) NOTE: An easement or agreement DOES NOT need to be submitted at this time, but will be required before a permit will be issued.

OK If a groundwater application...is the groundwater development section completed?

OK Proposed Use of the water.... Is each proposed use identified?

OK Has the appropriate "Supplemental Form" for each proposed use been completed?

OK Form I (Irrigation)

NA Form M (Municipal or Quasi-Municipal)

NA Form R (Mining)

NA Form Q (Commercial or Industrial)

NA Spring Description Sheet (if source is a Spring)

OK Amount of water from each source listed in GPM, CFS or AF?

OK Acreage being proposed, if applicable.

OK Season being requested by applicant.

Property Account	Invoice	Description	Amount
hbc 4114		Examination Fee For Permit To Appropriate	400.00
			<hr/> 400.00

RECEIVED
MAR 07 2003
WATER RESOURCES DEPT
SALEM, OREGON

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **58652**

158 12TH ST. N.E.
SALEM, OR 97301-4172
378-8455 / 378-8130 (FAX)

INVOICE # _____

RECEIVED FROM: Hayden Bay Condo.

APPLICATION	<u>585489</u>
PERMIT	
TRANSFER	

BY: _____

CASH: CHECK:# 10895 OTHER: (IDENTIFY) _____

TOTAL REC'D \$ 400.00

0401 TREASURY 0417 WRD MISC CASH ACCT

0407	COPIES		\$
_____	OTHER:	(IDENTIFY) _____	\$
_____	OTHER:	(IDENTIFY) _____	\$

0427 WRD OPERATING ACCT

MISCELLANEOUS

0407	COPY & TAPE FEES		\$
0410	RESEARCH FEES		\$
0408	MISC REVENUE: (IDENTIFY)	_____	\$
TC162	DEPOSIT LIAB. (IDENTIFY)	_____	\$
0240	EXTENSION OF TIME		\$

WATER RIGHTS:

0201	SURFACE WATER		\$
0203	GROUND WATER		\$
0205	TRANSFER		\$

EXAM FEE
\$ <u>400.00</u>
\$
\$

RECORD FEE
\$
\$

WELL CONSTRUCTION

0218	WELL DRILL CONSTRUCTOR		\$
	LANDOWNER'S PERMIT		\$
_____	OTHER	(IDENTIFY) _____	\$

EXAM FEE
\$

LICENSE FEE
\$
\$

0536 TREASURY 0437 WELL CONST. START FEE

0211	WELL CONST START FEE	\$	CARD #	
0210	MONITORING WELLS	\$	CARD #	
_____	OTHER	(IDENTIFY) _____		

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233	POWER LICENSE FEE (FW/WRD)		\$
0231	HYDRO LICENSE FEE (FW/WRD)		\$
_____	HYDRO APPLICATION		\$

TREASURY OTHER / RDX

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION _____ \$ _____

RECEIPT: **58652**

DATED: 3/7/03 BY: Connie Vance

WELCH
505 N TOMAHAWK IS DR
PORTLAND OR 97217

PORTLAND, OR
8 MAR
PM
2003

PORTLAND, OR
8 MAR
PM
2003

Printed Matter

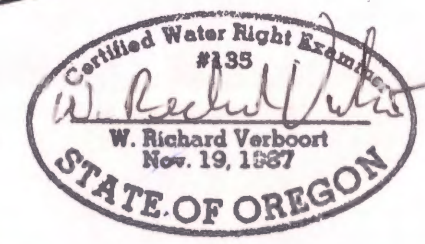
Dept. of water Resources
water Rights Div
158 12th St. NE
Salem, OR 97301

SECTION 34, T.2N., R.1E., W.M.

SCALE: 1" = 200'
MAP BASE:
ASSESSORS MAP



33 34
4 3

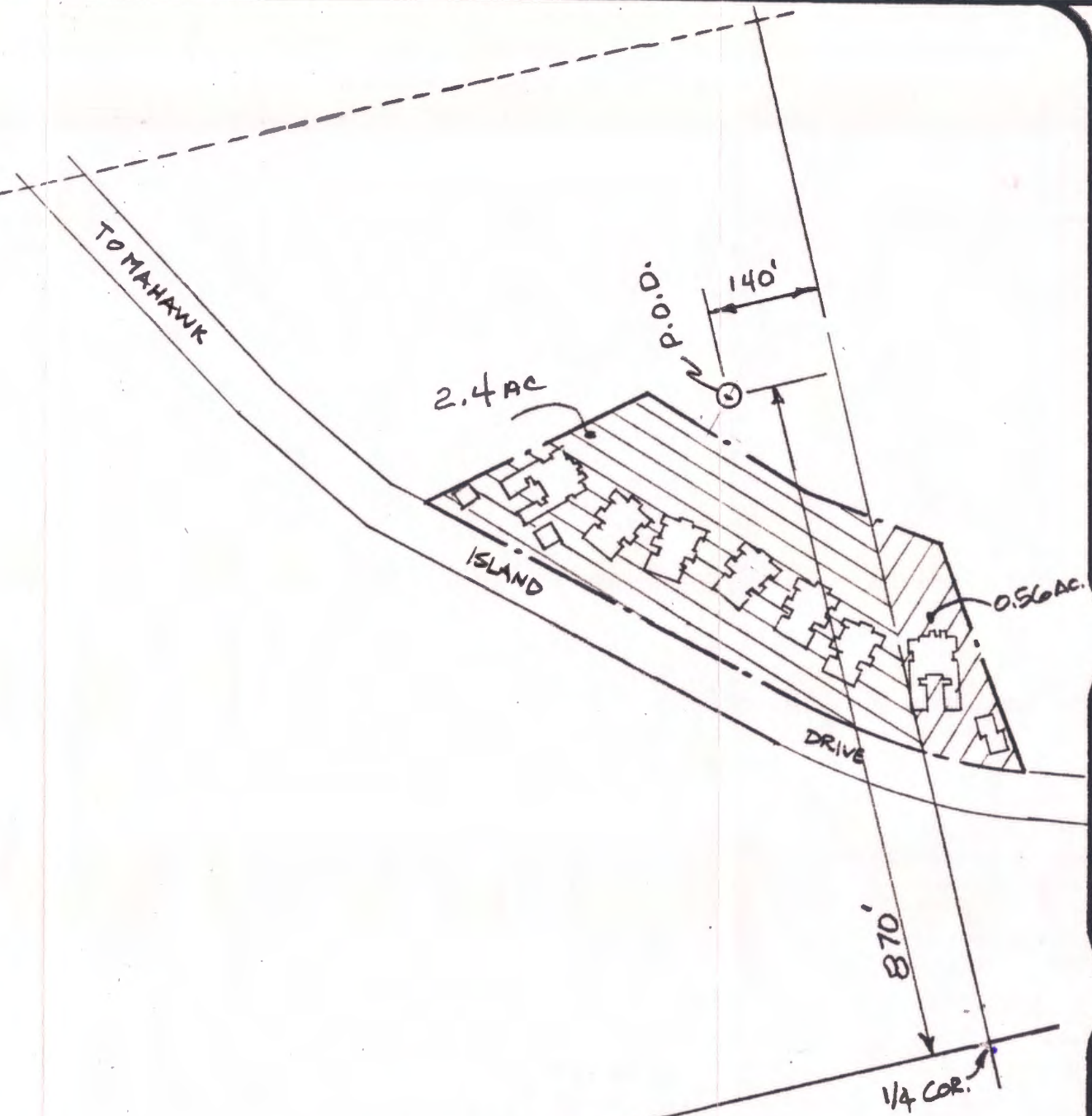


WATER RIGHT APPLICATION MAP

app # S-85408
Permit # 5-53956

RECEIVED
MAR 07 2003
WATER RESOURCES DEPT.
SALEM, OREGON

PREPARATION OF THIS MAP IS FOR THE
PURPOSE OF IDENTIFYING THE LOCATION OF
THE WATER RIGHT ONLY. THERE IS NO INTENT
TO PROVIDE DIMENSIONS OR LOCATION OF
PROPERTY OWNERSHIP LINES.



HAYDEN BAY CONDOMINIUMS, INC.
505 N TOMAHAWK ISLAND DR
PORTLAND, OR 97217

by date
designed WRY 2-20-03
drawn _____
checked WRY 2-20-03
drawing no. 03-B-02
sheet no. 1/1

VERBOORT ENGINEERING
AGRICULTURE • CIVIL • WATER RESOURCES
HILLSBORO, OREGON