

NOTICE OF DECISION

Case File: T2-2021-14680
Permit: Lot of Record Verification
Applicants: Holly Moore **Owners:** Gabrielle Haessler
Location: 14635 NW Germantown Rd. Portland **Map, Tax Lot:** 1N1W08A-00300
Tax Account #R961080390 **Property ID #**R323999
Base Zone: Commercial Forest Use-2 (CFU-2)
Overlays: Significant Environmental Concern Wildlife Habitat (SEC-h), Stream (SEC-s), and Geologic Hazard (GH)
Proposal Summary: The applicant is requesting a Lot of Record Verification for the above property 1N1W08A-00300. A Lot of Record Verification determines that a property was lawfully established in compliance with zoning and land division laws at the time of its creation or reconfiguration and the County's aggregation requirements.

Determination: The subject property known as 1N1W08A-00300 is a Lot of Record in its current configuration.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, December 8, 2021 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available by contacting the case planner. Copies of all documents are available at the rate of \$0.40/per page. For further information, contact Marisol Cervantes, Staff Planner at 503.988.9452 or at *Marisol.Cervantes@multco.us*

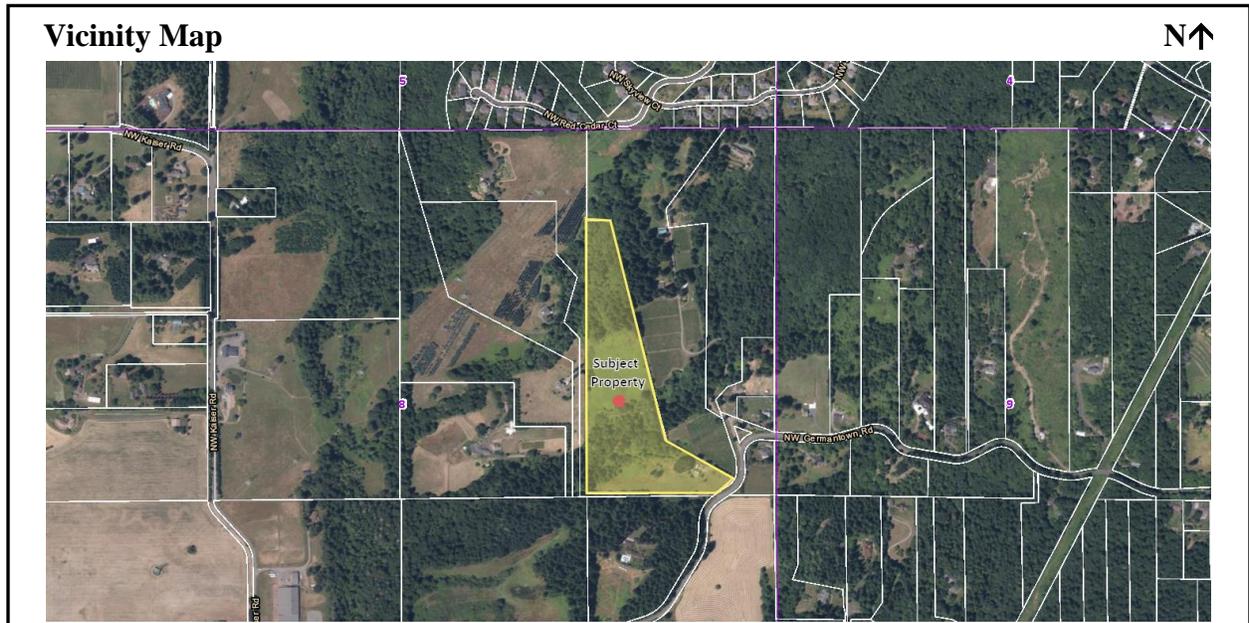
Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by:  Digitally signed by
Marisol Cervantes

By: Marisol Cervantes, Planner

For: Carol Johnson, AICP
Planning Director

Date: Wednesday, November 24, 2021



Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet applicable approval criteria below:

Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3030 Lot of Record – Commercial Forest Use (CFU-2)

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:

Chapter 39 - Zoning Code

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.0 Project Description:

Staff: The applicant requests a Lot of Record Verification for the property identified as 14635 NW Germantown Rd. Portland (subject property). The application does not propose any new development at this time.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot, or unit of land involved in the request. The County then verifies that the creation or reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. In the CFU-2 zone, the County also considers adjacent ownership on February 20, 1990 in determining whether a parcel, lot, or unit of land is a Lot of Record on its own. If the parcel, lot, or unit of land met all applicable zoning laws, applicable land division laws and meets the aggregation requirements, it may be determined to be a Lot of Record.

2.0 Property Description & History:

Staff: The subject property is located in unincorporated west Multnomah County in the area known as the West Hills. The property is zoned Commercial Forest Use -2 (CFU-2) and is located outside of Metro’s Urban Growth Boundary (UGB). The subject property is developed with a 1972 single-family dwelling and two accessory buildings.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in C.4. Staff did not receive any public comments during the 14-day comment period.

4.0 Code Compliance and Applications Criteria:

4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

As noted in Section 1.0 above, this application is a request for a Lot of Record Verification, which does not require the County to approve development, a land division, a property line adjustment, or a building permit. *Therefore, this standard is not applicable.*

5.0 Lot of Record Criteria:

5.1 MCC 39.3005 - LOT OF RECORD – GENERALLY.

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

- 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
- 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**
- 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or**
- 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
- 5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**
- 2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

Staff: To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the Commercial Forest Use-2 (CFU-2) zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The Lot of Record standards set forth in the CFU-2 district establish additional requirements unique to the district, which are evaluated in Sections 5.2 through 5.4 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided a Real Estate Sales Contract (Exhibit A.7) to support the Lot of Record request. The Sales Contract provided was recorded on August 1, 1978 and contains a legal description matching the current configuration of the subject property (Exhibit A.4 & Exhibit B.2). In 1978, the subject property was zoned Multiple Use Agricultural-20 (MUA-20) per historical County zoning maps (Exhibit B.3).

The MUA-20 zone had a minimum lot size of 20 acres and a minimum front lot line length of 50 ft. (Exhibit B.4). The subject property is 20.00 acres and abuts NW Germantown Rd. The 1995 Warranty Deed (Exhibit A.4) and most current 2005 deed (Exhibit B.2) for the subject property contains a legal description that matches the recorded 1978 Sales Contract's legal description (Exhibit A.7).

The subject property complied with all applicable zoning laws at the time of its creation or reconfiguration.

Up to October 19, 1978, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the Real Estate Sales Contract recorded on August 1, 1978 (Exhibit A.7), the applicable land division laws were satisfied.

Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1978.

5.2 MCC 39.3030 – COMMERCIAL FOREST USE-2 (CFU-2)

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

3. Three examples of how parcels and lots shall be aggregated are shown in MCC 39.3070 Figure 1 with the solid thick line outlining individual Lots of Record:

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot Size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

Staff: According to the County’s historic tax records, Albert R. & Marilyn J. Kluser owned the subject property on February 20, 1990. The listed owners did not own any or part of any of the adjacent or contiguous parcels, therefore, the subject property is not subject to aggregation (Exhibit B.6).

5.3 (B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;**
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;**
- (5) February 20, 1990, lot of record definition amended, Ord. 643;**
- (6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;**
- (7) August 8, 1998, CFU-2 zone applied, Ord. 916 (reenacted by Ord. 997);**
- (8) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;**

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4135, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Section (B) is for information purposes. The subject property meets the MUA-20 minimum lot size, minimum front lot line length and is adjacent to NW Germantown. The subject property may be occupied by any allowed, review or conditional use when in compliance with the other requirements of this district provided it remains a Lot of Record.
Criteria met.

5.4 (D) The following shall not be deemed a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest;**
- (3) A Mortgage Lot.**
- (4) An area of land created by court decree.**

Staff: As discussed above under section 5.1, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject tract is not an area of land created by the foreclosure of security interest, it is not a mortgage lot or created by court decree. *Criteria met.*

Based on the findings in 5.1 – 5.4, the subject property is a single Lot of Record.

6.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits

All exhibits are available for review in Case File T2-2021-14680 by contacting the case planner.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application form	05.20.2021
A.2	2	Parcel Record Card	05.20.2021
A.3	1	Special Warranty Deed recorded on February 21, 1979 in Book 1332, Page 925	05.20.2021
A.4	2	Warranty Deed recorded on September 28, 1995, recording number #95-118688	05.20.2021
A.5	1	1979 Tax Records	05.20.2021
A.6	2	Warranty Deed recorded on December 30, 1960 in Book 2042, Pages 485-486	06.22.2021
A.7	2	Real Estate Contract recorded on August 1, 1978	06.22.2021
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1W08A-00300(Alt Acct# R961080390)	05.20.2021
B.2	1	Deed of Reconveyance recorded on October 11, 2005, recording #2005-195035	11.09.2021

B.3	1	1977 zoning map Ordinance 149	11.09.2021
B.4	6	1977 Ordinance 148 zoning code MUA-20	11.09.2021
B.5	1	Recorded Survey August 3, 1978, #42398	11.09.2021
B.6	1	1989 and 1990 Property Ownership	11.09.2021
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete letter	06.17.2021
C.2	1	Applicant's acceptance of 180 day clock	08.21.2021
C.3	1	Complete letter (day 1)	08.13.2021
C.4	3	Opportunity to Comment and mailing list	08.27.2021
C.5	9	Administrative Decision and mailing list	11.24.2021