

## NOTICE OF DECISION

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**Case Files:** T2-2021-14288 & T2-2021-14761

**Permit:** Lot of Record Verification and Administrative Decision by the Planning Director

**Applicant:** Dale Burkholder **Owners:** Berney Farm LLC

**Location:** Property south of 31430 NE Mershon Rd, Troutdale  
**Map, Tax Lot:** 1N4E32D -00300  
**Tax Account #**R944320230 **Property ID #**R322498

**Base Zone:** Exclusive Farm Use (EFU)

**Overlays:** Significant Environmental Concern - Streams (SEC-s); Geologic Hazard (GH)

**Proposal Summary:** The applicant is requesting a Lot of Record Verification and an Administrative Decision by Planning Director to construct a Heritage Tract Dwelling. 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.

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**Determination:** **Approved with Conditions.** The subject property identified as 1N4E32D -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 November 16, 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 Izze Liu, Staff Planner at 503-988-0213 or at isabella.liu@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.

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**Issued by:**

**By:** Izze Liu, Planner

**For:** Carol Johnson, AICP, Planning Director

**Date:** November 2, 2021



### **Applicable Approval Criteria:**

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

**Multnomah County Code (MCC):** General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.6850 Dark Sky Lighting Standards, MCC 39.2000 Definitions;

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3070 Lot of Record – Exclusive Farm Use (EFU);

Exclusive Farm Use (EFU): MCC 39.4225 Review Uses, MCC 39.4240 Single-Family Dwellings Condition of Approval – Prohibition on Claims Alleging Injury From Farm or Forest Practices, MCC 39.4245 Dimensional Requirements and Development Standards, and MCC 39.4265 Standards for Specified Farm Dwellings, (D) Heritage Tract Dwelling.

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.

## **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

1. Permit Expiration – This land use permit shall expire as follows:

- a. Within four (4) years of the date of the final decision for residential development on land zoned for Exclusive Farm Use outside of an urban growth boundary when construction has not commenced.
  - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
  - ii. For purposes of Condition 1.a.i., notification of commencement of construction will be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to date of commencement. Written notification shall be sent to LUP-submittals and reference the case #T2-2021-14288. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
- b. Within four years of the date of commencement of construction when the structure has not been completed.
  - i. For the purposes of Condition 1.b, completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.
  - ii. For purposes of Condition 1.b.i, the property owner shall provide building permit status in support of completion of exterior surfaces of the structure and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to *LUP-submittals@multco.us* and must reference the case #T2-2021-14288. [MCC 39.1185]

**Note:** The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

2. Prior to land use sign-off for building plan check, the property owners or their representative shall:
- a. The property owners shall acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement has been provided to assist you. The signed document shall be sent to Izze Liu at *isabella.liu@multco.us* [MCC 39.1170(A) & (B)]
  - b. The property owners shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. [MCC 39.4240]

- c. Obtain land use approval for the proposed ground disturbing activities related to the proposed dwelling. They shall demonstrate that the development is exempt from the County's Geologic Hazard regulations or obtain a Geologic Hazard (GH) permit. If they demonstrate that the development is exempt from obtaining a GH Permit, they shall demonstrate compliance with the County's Ground Disturbing Activity and Stormwater regulations of MCC 39.6200 through 39.6235. In addition, they shall demonstrate that the development is exempt from the County's Geologic Hazard regulations. [MCC 39.5070 *et al.* MCC 39.6200 *et al.*]
  - d. Modify the site plan to show the boundaries of the entire parcel and the boundaries of the Significant Environmental Concern for Streams (SEC-s) overlay zone. All work for the dwelling or garage shall be outside of, or demonstrate that it is exempt from obtaining a SEC-s permit. Any physical improvement within the SEC-s overlay that does not qualify for an exemption under MCC 39.5515, shall first obtain a SEC-s permit before its zoning review approval. [MCC 39.5510]
  - e. Provide a Lighting Plan that shows the location of all exterior lighting to be installed as part of the development. The Lighting Plan shall show the location of exterior lighting on the site plan and building elevations. Lighting details shall be provided to demonstrate compliance with the Dark Sky Lighting Standards. [MCC 39.6850, MCC 39.4245(H)]
3. As an on-going condition, the property owners shall:
- a. Maintain the property in compliance with the County's Dark Sky Lighting Standards. All exterior lighting shall comply with MCC 39.6850. [MCC 39.4245(H)]

**Note:** Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off by land use planning, the applicant shall compete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, "Prior to land use sign-off for building plan check..." Be ready to demonstrate compliance with the conditions.
2. Contact Right-of-Way Permits at [row.permits@multco.us](mailto:row.permits@multco.us), or schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/>, or call 503-988-3582 for an appointment to review your plans, obtain your access permit, and satisfy any other requirements. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation via e-mail [septic@portlandoregon.gov](mailto:septic@portlandoregon.gov) or by phone at 503-823-6892 for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.
4. Building plans and related condition of approval documents shall be sent digitally to LUP-submittals along with the Request for Building Permit Plan Check form. If paper plans will be used, please contact Izze Liu, Planner, at [isabella.liu@multco.us](mailto:isabella.liu@multco.us), for an appointment to drop off the building plans and for review of the conditions of approval. Please ensure that any items required under, "Prior to land use sign-off for building plan check..." are ready for land use planning review. Land Use Planning must sign off on the plans before you can go to the Sanitation Division.

The above must be completed before the applicant can obtain building permits from the City of Gresham. If paper plans will be used, three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

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## **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 1N4E32D - 00300 (subject property) and an Administrative Decision by Planning Director to construct a Heritage Tract Dwelling.

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 EFU 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 east Multnomah County in the area known as East of Sandy River. The property is zoned Exclusive Farm Use and is located outside of Metro’s Urban Growth Boundary (UGB). The subject property is currently vacant.

### **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.5. Staff did not receive any public comments during the 14-day comment period.

### **4.0 Code Compliance and Applications Criteria:**

#### **4.1 MCC 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.

For purposes of the current application, staff is not aware of any open compliance cases on the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *This criterion is met.*

## **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 (B) of this section and meet the Lot of Record standards set forth in the EFU 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 EFU district establish additional requirements unique to the district, which are evaluated in Section 5.2 of this decision. The findings below analyzes whether the Lot of Record provisions in section (B) have been met.

According to the most recent Bargain and Sale Deed from 2012, the subject property was once part of a larger parent parcel identified as the West Half of the Southeast Quarter of Section 32 (Exhibit A.45).

*Figure 1*



The applicant provided a 1966 Warranty Deed (Exhibit A.44) and a 1972 Warranty Deed (Exhibit A.42) to support the Lot of Record request. As shown in Figure 2 below, the 1966 Warranty Deed contains a legal description describing the property identified as 1N4E32D -00400 (Tax Lot 400).



**Figure 2**



As shown in Figure 3 below, the 1972 Warranty Deed contains a legal description describing the property identified as 1N4E32D -00500 (Tax Lot 500).

**Figure 3**



In 1966 and 1972, 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 both Warranty Deeds, the applicable land division laws were satisfied for the lawful creation of Tax Lots 400 and 500. After the creation of Tax lot 500, the subject property was left as a remainder parcel. *Based upon the above, the subject property satisfied all applicable land division laws when it was created or reconfigured.*

In 1972, the subject property was zoned F2 per historical County zoning maps (Exhibit B.2). The F-2 zone had a minimum lot size of 2 acres. There was no requirement for road frontage or minimum front lot line length or lot width. The subject property is 13.6 acres and abuts NE Mershon Road (a public road).

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

## **5.2 MCC 39.3070 Lot of Record – Exclusive Farm Use (EFU)**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the EFU 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 Figure 1 below 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, RC, SRC, 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) Exception to the standards of (A)(2) above:

(a) 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, the subject property was not under the same ownership as any of the adjacent or contiguous parcels on February 20, 1990; therefore, the subject property is not subject to aggregation.

**(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, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;
- (3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties. Ord. 236 & 238;
- (5) February 20, 1990, lot of record definition amended, Ord. 643;
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;

**(7) 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 39.4260 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 has less than the minimum lot size for new parcels or lots in this zone and is subject to (C) above. It 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. *These criteria are met.*

**(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 a security interest, a mortgage lot or created by court decree. *Criteria met.*

*Based on the findings in 5.1 & 5.2, the subject property is a single Lot of Record.*

## **6.0 Exclusive Farm Use Zone Criteria:**

### **6.1 MCC 39.4225 Review Uses**

\* \* \*

**(E) Notwithstanding the same ownership grouping requirements of the Lot of Record Part, a single family heritage tract dwelling may be allowed on land not identified as high-value farmland subject to the standards in MCC 39.4265 (D).**

**Staff:** The applicant is proposing to establish a Heritage Tract Dwelling on a legal Lot of Record. The applicant provided a Soil Assessment prepared for the subject site by soil scientist Andy Gallagher (Exhibit A.11). The report found that the soils on the site were misidentified by the Natural Resources Conservation Service soil map. The soil scientist found the site consisted of 3.67 acres Mershon silt loam (27C, 12 to 20 percent slopes, Capability Class 3e), 1.60 acres Mershon silt loam (27D, 20 to 30 percent slopes, Capability Class 4e), and 8.33 acres Haplumbrepts (20F, 30 to 60 percent slopes, Capability Class 7e). None of these soils were identified as High-Value Soils for Multnomah County (Exhibit B.5) The Oregon Department of Agriculture reviewed the report and found it sound and scientifically based as required by Oregon Revised Statute 215.710(5)(b)(B) and that it does meet the requirements of "Acceptable Soils Reports" in Oregon Administrative Rule 603-80-0040 (Exhibit A.13). The soil study demonstrates that the subject property is comprised of non-high value soils; therefore, the subject property is not identified as high-value farmland. The standards of MCC 39.4265(D) are addressed below. *This criterion is met.*

### **6.2 MCC 39.4240 Single Family Dwellings Condition of Approval – Prohibition on Claims Alleging Injury from Farm or Forest Practices**

**As a condition of approval of a single family dwelling, the landowner for the dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or**

**cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.**

**Staff:** *As conditioned, this criterion is met.*

### **6.3 MCC 39.4245 Dimensional Requirements and Development Standards**

#### **(C) Minimum Yard Dimensions – Feet**

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

#### **Maximum Structure Height – 35 feet**

**Staff:** The subject property is irregular in shape. Based on the County's definitions of lot line (front)<sup>1</sup>, lot line (rear)<sup>2</sup>, and lot line (side)<sup>3</sup> in Chapter 39 of the Multnomah County Code, the northwestern property boundary abutting NE Mershon Road is the front lot line, the eastern property boundary is the rear lot line, and all other property boundaries are considered the side lot lines.

Based on the submitted site plan, the proposed dwelling will be located approximately 32 feet from the northern side lot line and a significant distance from all other property boundaries exceeding the minimum yard requirements (Exhibit A.18 & A.23). The proposed dwelling will be approximately 28 feet in height (Exhibit A.20). *These criteria are met.*

**(1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall.**

**Staff:** The applicant is not proposing a fence or retaining wall as part of this development. *This criterion does not apply.*

**(2) An Accessory Structure may encroach up to 40 percent into any required Yard subject to the following:**

**(a) The Yard being modified is not contiguous to a road.**

**(b) The Accessory Structure does not exceed five feet in height or exceed a footprint of ten square feet, and**

**(c) The applicant demonstrates the proposal complies with the fire code as administered by the applicable fire service agency.**

**(3) A Variance is required for any Accessory Structure that encroaches more than 40 percent into any required Yard.**

**Staff:** The applicant is not proposing an accessory structure. *These criteria are not applicable.*

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<sup>1</sup> Lot Line (Front) – In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot. A minimum front lot line length is a dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards. [MCC 39.2000]

<sup>2</sup> Lot Line (Rear) – The line dividing one lot from another and on the opposite side of the lot from the front lot line; and in the case of an irregular or triangular shaped lot, a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.

<sup>3</sup> Lot Line (Side) – Any lot line not a front or rear lot line.

**(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

**Staff:** As required in Table 2 of MCC 29.571, the rural standard for local streets is a 50-foot right-of-way width. According to the road survey (RD0740), the width of NE Mershon Road is 60 feet. The existing right-of-way is sufficient to serve the area. No increase to the Minimum Front Yard standard is required. *This criterion is not applicable.*

**(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

**Staff:** The proposed dwelling is approximately 28 feet in height and will not exceed the height requirement.

**(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the Lot of Record.**

**Staff:** The proposed dwelling will require an on-site sewage disposal system. The applicant provided a Septic Evaluation Report conducted by the septic sanitarian at the City of Portland (Exhibit A.7). The sanitarian has approved the site for a standard septic tank within a specific area. Corbett Water District will provide property with water (Exhibit A.6). *This criterion is met.*

**(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.**

**Staff:** The applicant also provided a Stormwater Certificate Report completed by Kelli A. Grover, a registered professional engineer with Firwood Design Group (Exhibit A.10). The report states that the construction of an infiltration stormwater facility, which includes an infiltration soakage trench, will handle the runoff from the proposed driveway. The dwelling will utilize gutters with downspout extensions to direct the water away from the house and sheet flow over the terrain towards the southern property line which matches the existing site pattern. The proposed facilities will fully infiltrate runoff for the 10 year 24-hour storm event. With these stormwater systems, the report states that the peak flows from new impervious surfaces will be less than the site’s existing conditions and will not result in a negative impact to the adjacent property. *This criterion is met.*

**(G) Agricultural structures and equine facilities such as barns, stables, silos, farm equipment sheds, greenhouses or similar structures that do not exceed the maximum height requirement may have a reduced minimum rear yard of less than 30 feet, to a minimum of 10 feet, if:**

\* \* \*

**Staff:** The applicant is not proposing to construct an agricultural structure or equine facility. *These criteria are not applicable.*

**(H) All exterior lighting shall comply with MCC 39.6850.**

**Staff:** *As conditioned, this criterion is met.*

## 6.4 MCC 39.4265 Standards For Specified Farm Dwellings

\* \* \*

**(D) Heritage Tract Dwelling: Notwithstanding the same ownership grouping requirements of the Lot of Record section, a single family heritage tract dwelling may be allowed on land not identified as high-value farmland when:**

**(1) The lot or parcel on which the dwelling will be sited meets the following requirements:**

**(a) A deed or other instrument creating the lot or parcel was recorded with the Department of General Services, or was in recordable form prior to January 1, 1985; and**

**(b) The lot or parcel satisfies all applicable laws when the lot or parcel was created; and**

**Staff:** As stated in the finding for the Lot of Record Determination, the subject property satisfied all applicable zoning and land division laws when it was created as a remainder parcel in 1972. In 1972, the subject property was zoned F2 per historical County zoning maps (Exhibit B.2). The F-2 zone had a minimum lot size of 2 acres. There was no requirement for road frontage or minimum front lot line length or lot width at this time. *These criteria are met.*

**(c) The lot or parcel was acquired and owned continuously by the present owner:**

**1. Since prior to January 1, 1985; or**

**2. By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985; and**

**Staff:** The present owner of the subject property is Berney Farm, LLC., which consists of the following members: Sarah Johnson, Christine Berney, Edward Berney, Michael Goertz, Barbara Goertz, and Karen Berney (Exhibit A.4).

The configuration of the subject property has not been altered since 1972. The subject property was deeded by Edward A. Berney and Lou Ella Berney to other members of the Berney family as outlined below:

1. Warranty Deed recorded in 1988 (Book 2163, Page 2000)
  - a. Edward A. Berney and Lou Ella Berney conveyed the subject property to Edward A. Berney, Lou Ella Berney, and Barbara Goertz (Exhibit A.30)
  - b. According to the applicant, Barbara Goertz is the daughter of Edward A. Berney and Lou Ella Berney (Exhibit A.47)
2. Warranty Deed recorded in 1998 (98-225823)
  - a. Edward A. Berney and Lou Ella Berney conveyed the subject property to Edward A. Berney, Lou Ella Berney, Trustees or Successors in trust under Berney Living Trust dated March 27, 1975 (Exhibit A.31)
3. Bargain and Sale Deed recorded in 2008 (2008-030147)
  - a. Barbara M. Goertz, Trustee of the Berney Living Trust dated March 27, 1975, conveyed the property to Barbara M. Goertz, Edward A. Berney Jr., and the Estate of James E. Berney (Exhibit A.32)
4. Personal Representative's Deed recorded in 2008 (2008-077292)

- a. Edward A. Berney Jr., the duly appointed, qualified, and acting Personal Representative of the Estate of James E. Berney (deceased) conveyed the subject property to Christine Elizabeth Berney, Trustee of the Margery Black Berney Disclaimer Trust (Exhibit A.33)
5. Warranty Deed recorded in 2008 (2008-122213)
  - a. Barbara M. Goertz conveyed the subject property to Michael C. Goertz and Barbara M. Goertz, Trustees of the Michael C. Goertz and Barbara M. Goertz Trust (Exhibit A.34)
6. Warranty Deed recorded in 2009 (2009-128192)
  - a. Michael C. Goertz and Barbara M. Goertz, Trustees of the Michael C. Goertz and Barbara M. Goertz Trust conveyed the subject property to Berney Farm, LLC (Exhibit A.35)
7. Quit Claim Deed recorded in 2009 (2009-154620)
  - a. Edward A. Berney Jr. conveyed the subject property to Berney Farm, LLC (Exhibit A.36)
8. Bargain and Sale Deed recorded in 2009 (2009-155469)
  - a. Christine Elizabeth Berney, Trustee of the Margery Black Berney Disclaimer Trust, conveyed the subject property to Christine Elizabeth Berney and Sarah Catherine Johnson (Exhibit A.37)
9. Bargain and Sale Deed recorded in 2012 (2012-026486)
  - a. Christine Elizabeth Berney and Sarah Catherine Johnson conveyed the subject property to Berney Farm, LLC (Exhibit A.38)

The subject property has remained in the Berney Family since their original ownership in 1932. It has been transferred via intestate succession to the present owners of Berney Farm, LLC. *Criterion met.*

**(2) The tract on which the dwelling will be sited does not include a dwelling; and**

**Staff:** The subject tract is comprised of one parcel and is undeveloped. Berney Farm, LLC does not own any contiguous lots or parcels. *This criterion is met.*

**(3) The proposed dwelling is not prohibited by, and will comply with, the requirements of the Comprehensive Plan, land use regulations, and other provisions of law; and**

**Staff:** The Comprehensive Plan allows limited residential uses on lands designated as Exclusive Farm Use. The applicant is proposing to establish a Heritage Tract Dwelling which is a Review Use listed under the Exclusive Farm Use Zone. A Heritage Tract Dwelling must be located on non-high value farmland, cannot exceed the service capabilities of the area, and cannot materially alter the stability of the overall land use pattern in the area. In addition, the landowner for the dwelling must record a restrictive covenant that prohibits claims alleging injury from farm or forest practices. These regulations were reviewed as part of this land use process, therefore, staff finds that the proposed dwelling will comply with the requirements of the Comprehensive Plan, land use regulations, and other provisions of law. *This criterion is met.*

**(4) The lot or parcel on which the dwelling will be sited does not lie within an area designated by the Comprehensive Plan as a Big Game habitat area; and**

**Staff:** According to the county's wildlife habitat area map, the subject property does not appear to be located within an area designated by the Comprehensive Plan as a big game habitat area (Exhibit B.4). *This criterion is met.*

**(5) The lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single parcel when the dwelling is allowed; and**



**Staff:** The subject property is not part of a larger tract. No adjacent properties are under the same ownership. *This criterion is not applicable.*

**(6) The County Assessor shall be notified when the permit is approved.**

**Staff:** *As conditioned, this criterion is met.*

**(7) Approval of the dwelling would not:**

**(a) Exceed the facilities and service capabilities of the area; and**

**Staff:** To demonstrate that the proposed dwelling will not exceed the facilities and service capabilities of the area, the applicant provided a Certification of Water Service approved by the Corbett Water District (Exhibit A.6), a Septic Review Certification approved by the Multnomah County sanitarian (Exhibit A.21), and an approved Transportation Planning Review (Exhibit A.22). *This criterion is met.*

**(b) Materially alter the stability of the overall land use pattern of the area; and**

**(c) Create conditions or circumstances that are found to be contrary to the purpose or intent of the Comprehensive Plan or this Chapter.**

**Staff:** The subject property is surrounded by properties located in the Exclusive Farm Use Zone as well as the Gorge General Residential Zone in the National Scenic Area. The surrounding uses are a mix of residential and farm uses. The development of another dwelling on non-high value soils will not materially alter the stability of the overall land use pattern given the existing residential uses in the area. In addition, the proposed use is consistent with the Comprehensive Plan and the landowner for the dwelling must record a restrictive covenant that prohibits claims alleging injury from farm or forest practices. *These criteria are met.*

## **7.0 Exhibits**

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits with a “\*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case Files T2-2021-14288 and T2-2021-14761 by contacting the case planner Izze Liu via email at [isabella.liu@multco.us](mailto:isabella.liu@multco.us).

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Cover Page	01.28.2021
A.2	1	Application Form	01.28.2021
A.3	3	Applicant Authorization	01.28.2021
A.4	4	Berney Farm LLC Members	01.28.2021
A.5	2	Pre-Filing Meeting Waiver	01.28.2021
A.6	1	Certification of Water Service	01.28.2021
A.7	6	Septic Evaluation Correspondence	01.28.2021
A.8	4	Fire Service Agency Review	01.28.2021

A.9	2	Stormwater Drainage Control Certificate	01.28.2021
A.10	7	Stormwater Certificate Report	01.28.2021
A.11	10	Soil Assessment	01.28.2021
A.12	11	Storm Calculations	01.28.2021
A.13	11	Oregon Dept. of Agriculture Correspondence	01.28.2021
A.14	10	Preliminary Title Report	01.28.2021
A.15	3	Property Line Adjustment Decision T2-2014-3699	01.28.2021
A.16	7	2019 Pre-Filing Meeting Notes	01.28.2021
A.17	9	2016 Pre-Filing Meeting Notes	01.28.2021
A.18	1	Site Plan	01.28.2021
A.19	1	Floor Plan	01.28.2021
A.20	4	Elevation Drawings	01.28.2021
A.21	10	Septic Review Certification	05.10.2021
A.22	7	Transportation Planning Review	05.10.2021
A.23	1	Revised Site Plan	05.10.2021
A.24	28	Supplemental Materials	05.10.2021
A.25	3	Warranty Deed BK 1495 PG 872 (1981)	10.20.2021
A.26	6	Sale Contract BK 1817 PG 2521 (1985)	10.20.2021
A.27	4	Deed in Lieu of Foreclosure BK 1911 PG 943 (1986)	10.15.2021
A.28	2	Bargain and Sale Deed BK 1911 PG 947 (1986)	10.15.2021
A.29	1	Warranty Deed BK 2135 PG 1430 (1988)	10.15.2021
A.30	1	Warranty Deed BK 2163 PG 2000 (1988)	10.15.2021
A.31	1	Warranty Deed 98225823 (1998)	10.15.2021
A.32	3	Bargain and Sale Deed 2008-030147	10.15.2021
A.33	2	Personal Representative's Deed 2008-077292	10.15.2021
A.34	1	Warranty Deed 2008-122213	10.15.2021
A.35	1	Warranty Deed 2009-128192	10.15.2021
A.36	5	Quit Claim Deed 2009-154620	10.15.2021
A.37	2	Bargain and Sale Deed 2009-155469	10.15.2021
A.38	2	Bargain and Sale Deed 2012-026486	10.15.2021
A.39	1	Lot of Record Application Form	06.14.2021

A.40	1	Lot of Record Narrative	06.14.2021
A.41	1	1965 Survey	06.14.2021
A.42	1	Warranty Deed Book 897 Page 941	06.14.2021
A.43	3	Warranty Deed Book 1495 Page 872	06.14.2021
A.44	3	Warranty Deed Book 516 Page 559	06.14.2021
A.45	8	Title Report	06.14.2021
A.46	3	1972 Promissory Note	06.14.2021
A.47	2	Family History	10.15.2021
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1N4E32D -00300	01.28.2021
B.2	1	Historic Zoning Map	01.28.2021
B.3	2	F-2 Zoning Regulations from Zoning Ordinance 100 as amended May 21, 1968 (Districts)	01.28.2021
B.4	1	Wildlife Habitat Map	01.28.2021
B.5	4	LCDC High Value Soils List for Multnomah County	10.28.21
<b>‘C’</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	3	Incomplete Letter	02.25.2021
C.2	1	Applicant Response Letter	02.26.2021
C.3	1	T2-2021-14288 Complete Letter	07.14.2021
C.4	1	T2-2021-14761 Complete Letter	07.14.2021
C.5	9	Opportunity to Comment	08.12.2021
C.6	18	Administrative Decision	11.02.2021