

## NOTICE OF DECISION

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**Case File:** T2-2022-15514

**Permit:** Lot of Record Verification

**Applicants:** David Fazio **Owners:** David & Kristi Fazio

**Location:** **Address:** 16205 NW Lucy Reeder Rd, Portland **Map, Tax Lot:** 3N1W00300  
**Tax Account #** R981310090 **Property ID #** R499895

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

**Overlays:** Significant Environmental Concern for wetlands (SEC-w)

**Proposal Summary:** The applicant is requesting a Lot of Record Verification for the above property. 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:** The subject property known as 3N1W00300 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, May 4, 2022 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 case planner Lisa Estrin at 503-988-0167 or via email at [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@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.

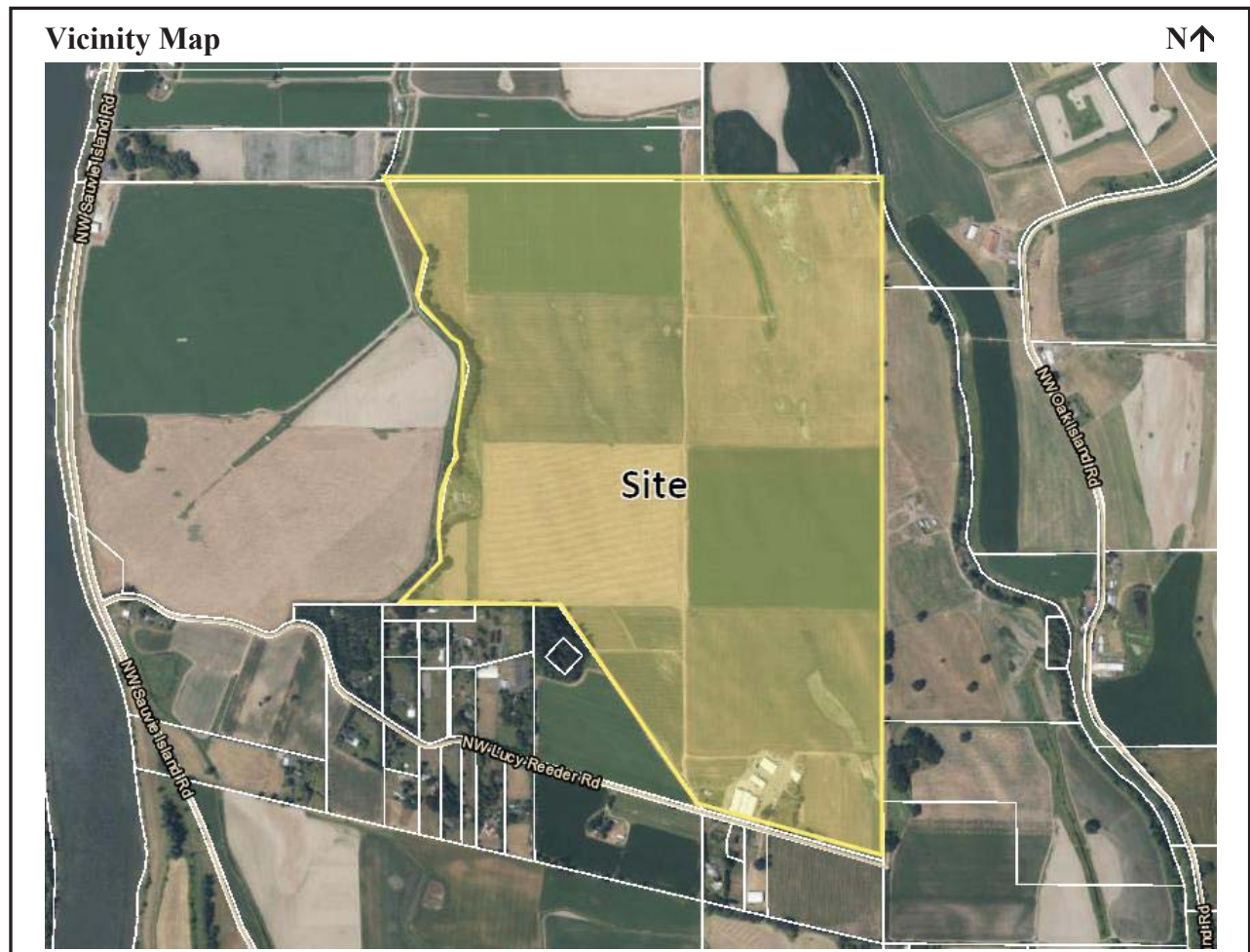
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**Issued by:** \_\_\_\_\_

**By:** Lisa Estrin, Planner

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

**Date:** Wednesday, April 20, 2022



**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 39.3070 Lot of Record – EFU

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 3N1W00300 (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 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 west Multnomah County on Sauvie Island. The property is zoned Exclusive Farm Use and is located outside of Metro’s Urban Growth Boundary (UGB). The subject property is developed with various farm improvements and four houses and one duplex.

### **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 (Exhibited in C.4). Three neighbors contacted staff regarding the application to learn more about the Lot of Record Verification process. Staff did not receive any written comments on the subject application.

### **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 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 Sections 5.2 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided three deeds (Exhibit A.2 through A.4) to support the Lot of Record request. The earliest deed provided by the applicant was recorded in 1991 (Exhibit A.2) and contains a legal description matching the current configuration of the subject property (Exhibit



B.6) which was recorded in 2016. In 1991, the subject property was zoned Exclusive Farm Use (EFU) per historical County zoning maps (Exhibit B.7 through B.10).

In 1991, the EFU zone had a minimum lot size of 76 acres on Sauvie Island (Exhibit B.11), a minimum front lot line length of 50 feet, and was required to abut a public street or have other access determined to be safe and convenient for pedestrians and for passengers and emergency vehicles.

The subject property is 377.54 acres, abuts NW Lucy Reeder Road (a public road), and has a front lot line length of at least 983.84 feet (Exhibit B.3). The current deed for the subject property (Exhibit B.6) contains a legal description that matches the recorded 1991 legal description (Exhibit A.2).

*The subject property complied with all applicable zoning laws in 1991 and presently.*

The County's Assessment and Taxation records (Exhibit B.4) provides evidence that the subject property was placed in its current configuration in 1929. The County did not commence zoning until 1955. The subject property was created by deed prior to 1978 and met the applicable land division laws at the time of its creation..

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

## **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:** The subject property is 377.54 acres. Planning staff reviewed Assessment & Taxation data for the subject property and surrounding properties under 19 acres in size. No contiguous parcels under 19 acres in size were owned on February 20, 1990 by the subject property’s owners (Exhibit B.12). As such, the subject property is not aggregated with any other contiguous parcel to be a Lot of Record.

**(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 exceeds the minimum lot size of 80 acres in the EFU zone and meets the 50-ft minimum front lot line length more than 900 feet of frontage and is adjacent to NW Lucy Reeder Road. It is a Lot of Record and can 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.*

**(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 tracts are not an area of land created by the foreclosure of a security interest 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 Exhibits**

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

All exhibits are available for review in Case File T2-2022-15514 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	02/08/22
A.2	1	Warranty Deed dated November 14, 1991 in Book 2477, Page 1395-1396	02/08/22
A.3	3	Deed Creating Estate by the Entirety dated April 20, 1992 Recorded in Book 2810 Page 3735 - 3737	02/08/22
A.4	2	Bargain & Sale Deed dated December 30, 1993	02/08/22
‘B’	#	Staff Exhibits	Date
B.1	2	Assessment & Taxation Property Information for 3N1W-00300 (R981310090/R499895)	02/08/22
B.2	1	Tax Map 3N1W	03/08/22
B.3	1	Tax Map 3N1W Detail #3	03/08/22
B.4	5	Parcel Record Card for R981310090	03/08/22
B.5	5	Land Sale Contract recorded February 15, 2007 at 2007-028881	03/08/22
B.6	3	Bargain & Sale Deed recorded April 7, 2016 at 2016-041850	03/08/22
B.7	1	3N1W31 Zoning Map (1980)	04/06/22
B.8	1	2N1W06 Zoning Map (1980)	04/06/22
B.9	1	2N1W05 Zoning Map (1980)	04/06/22
B.10	1	2N1W05 & 06 Zoning Map (1999)	04/06/22



B.11		EFU Zoning Regulations (1990)	04/06/22
B.12	1	1989 & 1990 Property Ownership Adjacent Parcels under 19 Acres	
'C'	#	Administration & Procedures	Date
C.1	2	Incomplete Letter	03/08/22
C.2	1	Applicant's acceptance of 180 day clock	03/08/22
C.3	1	Complete letter (day 1)	03/09/22
C.4	3	Opportunity to Comment and mailing list	03/11/22
C.5	9	Administrative Decision and mailing list	