

## NOTICE OF DECISION

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**Case File:** T2-2022-15585  
**Permit:** Lot of Record Verification  
**Applicants:** Dean Mackeson **Owners:** Shirley Welton  
**Location:** **Address:** 143 NE Sandy Dell Rd, Troutdale **Map, Tax Lot:** 1N3E36DA-00100  
**Tax Account #**R943360560 **Property ID #**R322162  
**Base Zone:** Commercial Forest Use (CFU)  
**Overlays:** Significant Environmental Concern for wildlife habitat (SEC-h) and water resources (SEC-wr); Geologic Hazard (GH)  
**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 1N3E36DA-00100 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 Monday, September 12, 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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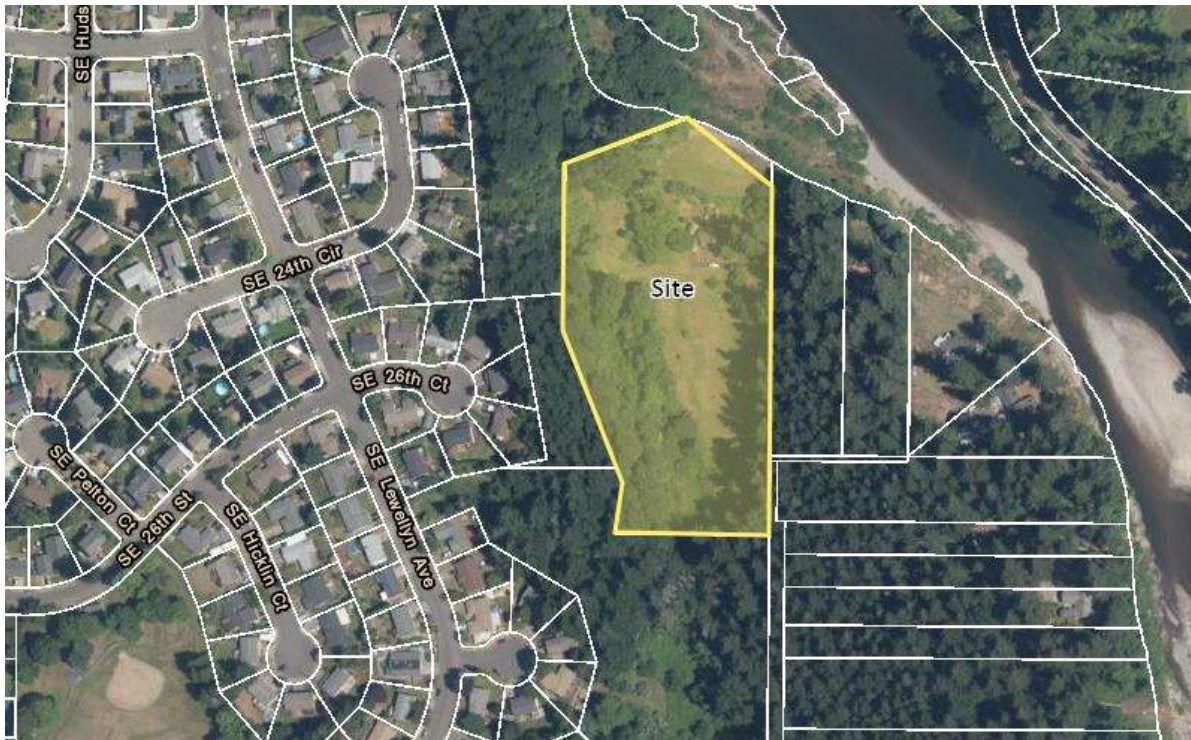
**Issued by:** \_\_\_\_\_

**By:** Lisa Estrin, Senior Planner

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

**Date:** Monday, August 29, 2022

### Vicinity Map



### **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, MCC 39.3005 Lot of Record – Generally, MCC 39.3010 Lot of Record – CFU

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 1N3E36DA-00100 (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 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 the West of Sandy River Rural area. The property is zoned Commercial Forest Use (CFU) and is located outside of Metro’s Urban Growth Boundary (UGB). Assessment & Taxation records indicate the subject property is occupied by single family dwelling with an attached deck, two small sheds and a detached large deck.

### **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.3. Staff receive one public comment during the 14-day comment period.

- 3.1 Oscar & Karen Olvera** provided a written comment on April 29, 2022 stating that they believe the property should remain zoned CFU and not be rezoned by the application (Exhibit D.1)

**Staff:** The subject application is for a Lot of Record Verification. It will not rezone the property from CFU.

### **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.**

\* \* \*

**Staff:** 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.)**

**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 CFU 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 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 various deed(s) (Exhibit A.3 through A.9) to support the Lot of Record request. A Contract with a legal description describing the subject property was signed on July

9, 1968 and recorded on July 10, 1968 (Exhibit A.8). The legal description contained in this Contract matches the current configuration of the subject property as described in a 2021 Warranty Deed (Exhibit A.3). In 1968, the subject property was zoned F-2 per historical County zoning maps (Exhibit B.5 & B.6).

The F-2 zone had a minimum lot size of 2 acres (Exhibit B.7). The F-2 zone at the time did not include requirements for road frontage, minimum front lot line length, or lot width (Exhibit B.8).

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

In 1968, the process to create or divide a parcel 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 1968 recorded Contract (Exhibit A.8), 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 1968.*

**5.2 MCC 39.3010- LOT OF RECORD – COMMERCIAL FOREST USE (CFU).**

**(A) In addition to the standards in MCC 39.3005, for purposes of the CFU 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.**

**\* \* \***

**Staff:** The subject property is 5.65 acres. Planning staff reviewed historic tax records to determine the ownership of adjacent properties in the CFU zone as of February 20, 1990. Planning staff did not identify any adjacent properties that were held under the same ownership as the subject property on that date. As such, the subject property is not aggregated with other CFU zoned properties in the area.



**(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) May 16, 2002, Lot of Record section amended, Ord. 982.**

**(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 has less than the minimum lot size for new parcels or lots in the CFU zone and does not front onto a public street. The subject property 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. *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 property is 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
- 'D' Comments Received

All exhibits are available for review in Case File T2-2022-15585 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	3/14/2022
A.2	2	Property Research Report for 1N3E36DA-00100	3/14/2022
A.3	3	Warranty Deed recorded August 16, 2021 as Instrument no. 2021-124913	3/14/2022

A.4	1	Quitclaim Deed recorded May 13, 1986 in Book 1905, Page 2529	3/14/2022
A.5	1	Deed Creating an Estate by the Entirety recorded September 2, 1980 in Book 1466, Page 334	3/14/2022
A.6	2	Warranty Deed recorded May 13, 1977 in Book 1178, Pages 1154 & 1153	3/14/2022
A.7	1	Assignment of Real Estate Contract by Vendor-Seller recorded October 28, 1968 in Book 647, Page 569	3/14/2022
A.8	2	Contract recorded July 10, 1968 in Book 629, Page 313 - 314	3/14/2022
A.9	1	Bargain and Sale Deed recorded October 28, 1968 in Book 647, Page 568	4/14/2022
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N3E36DA-00100 (Alt Acct#R9443360560 / R322162)	3/14/2022
B.2	3	Parcel Record Card for R943360560	8/18/2022
B.3	1	Survey 52937	8/18/2022
B.4	1	Current Tax Map for 1N3E36DA	8/18/2022
B.5	1	1962 Zoning Map	8/18/2022
B.6	1	10.5.1977 Zoning Map	8/18/2022
B.7	2	1968 Zoning District Sizes	8/18/2022
B.8	1	1968 F-2 Zoning District	8/18/2022
<b>‘C’</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	3	Incomplete Letter	4/12/2022
C.2	1	Applicant’s acceptance of 180-day clock	4/14/2022
C.3	1	Complete Letter (day 1: 4.22.2022)	4/22/2022
C.4	4	Opportunity to Comment	4/27/2022
C.5	7	Administrative Decision	08/29/2022
<b>‘D’</b>	<b>#</b>	<b>Comments Received</b>	<b>Date</b>
D.1	1	Olvera Comment	4/29/2022