

NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-2017-6853

Permit: Significant Environmental Concern for Wildlife Habitat, Forest Development Standards, and Hillside Development and Grading Permits

Location: 34911 SE Homan Road
Tax Lot 1400, Section 15B, Township 1 South, Range 4 East, W.M.
Tax Account #R994150180

Applicants: Cecil and Kimberly Delacruz

Owners: Cecil and Kimberly Delacruz

Base Zone: Commercial Forest Use (CFU)

Overlays: Significant Environmental Concern - General (SEC-g)
Significant Environmental Concern for Wildlife Habitat (SEC-h)
Significant Environmental Concern for Water Resources (SEC-wr)
Significant Environmental Concern for Scenic Waterway (SEC-sw)
Hillside Development and Erosion Control (HD)

Summary: The applicant is requesting a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit, a Hillside Development and Erosion Control (HD) permit, and a Forest Development Standards Review to construct a replacement single-family dwelling.

Decision: Approved with Conditions

Unless appealed, this decision is effective Wednesday, August 30, 2017 at 4:00 PM.

Issued by:

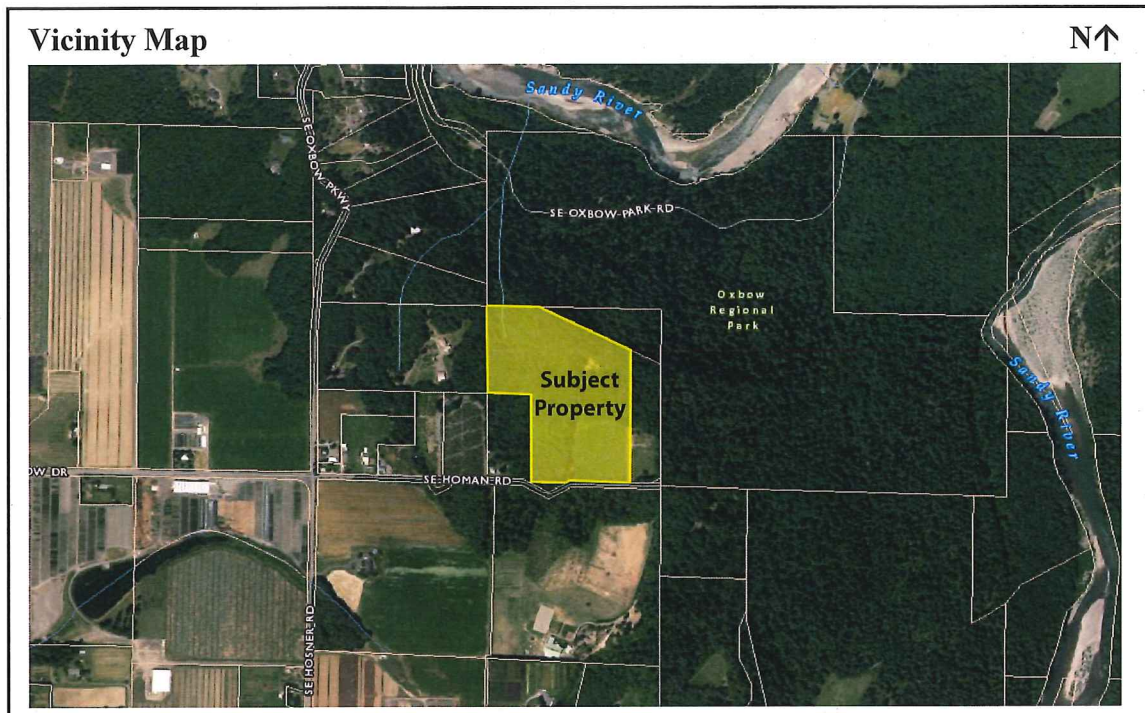
By:


Rithy Khut, Planner

For: Michael Cerbone, AICP
Planning Director

Date: Wednesday, August 16, 2017

Instrument Number for Recording Purposes: #2015044104



Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Rithy Khut, Staff Planner at 503-988-0176 or rithy.khut@multco.us.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, August 30, 2017 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 37.0560 Code Compliance and Applications, MCC 36.0005 Definitions

Commercial Forest Use CFU: MCC 36.2020 Allowed Uses, MCC 36.2050 Building Height Requirements, MCC 36.2056 Forest Practices Setbacks and Fire Safety Zones, MCC 36.2061 Development Standards for Dwellings and Structures, MCC 36.2073 Access, MCC 36.2075 Lot of Record, MCC 36.2095 Sewage, Storm Water Systems and Grading Requirements, MCC 36.2107 Single Family Dwellings Condition of Approval – Prohibition on Claims Alleging Injury from Farm or Forest Practices

Significant Environmental Concern, SEC: MCC 36.4550 General Requirements for Approval in Areas Designated as SEC-wr or SEC-h, MCC 36.4560 Criteria for Approval of SEC-h Permit – Wildlife Habitat

Hillside Development and Erosion Control: MCC 36.5515 Application Information Required, MCC 36.5520 Grading and Erosion Control Standards

Copies of the referenced Multnomah County Code (MCC) can be obtained by visiting our website at <https://www.multco.us/landuse/>. Copies of the referenced Multnomah County Road Rules (MCRR) sections can be obtained by visiting our website at <https://multco.us/transportation-planning/> or by contacting our office at (503) 988-3043.

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.

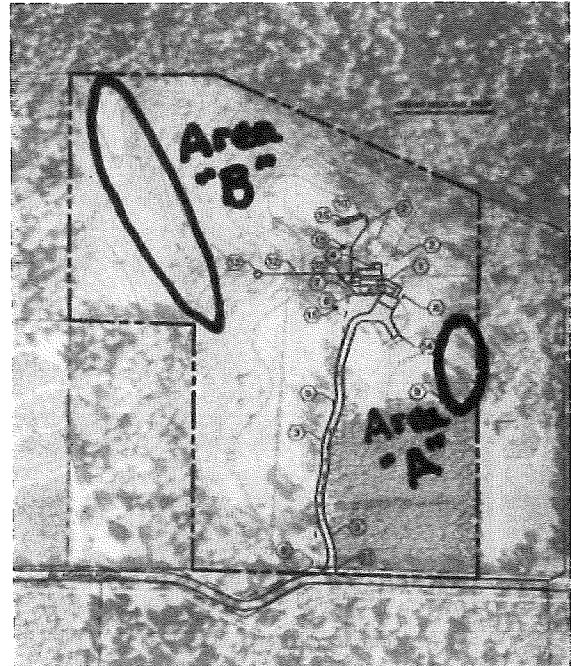
1. This land use permit expires when construction has not commenced within four (4) years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. Alternatively, this land use permit expires when the structure has not been completed within four (4) years of the date of commencement of construction. 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. [MCC 37.0690(C)]
 - a. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.
2. 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.
3. Prior to Land Use Planning sign-off for a building permit, the property owners or their representative shall:
 - a. Record pages 1 through 7 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 37.0670]
 - b. Record and provide proof that a document has been signed and recorded in the deed records for the County that binds 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 36.2107]
4. At the time of building permit sign-off, the property owner or their representative shall:
 - a. Submit a Grading and Erosion Control site plan that clearly shows area of disturbance, ground topography (contours), roads and driveways, existing structures, trees with eight-inch or greater caliper or an outline of wooded areas, watercourses and include the location of the proposed development(s), erosion control measures, and trees proposed for removal. [MCC 36.4550(A) and MCC 36.5515]

- b. Submit a site plan that clearly shows the primary fire safety and secondary fire safety zone buffers around the proposed single-family dwelling. [MCC 36.2056 Table 1, MCC 36.2056(D)(1) and (2)]
 - c. Submit plans, titled "Fire Access and Water Supply Plan" that demonstrate compliance with Multnomah Rural Fire Protection District #10 requirements as discussed in Fire Service Agency Review (Exhibit A.17) including:
 - i. Site plans showing the location of address signage and the location of turn-around for fire access roads that are over 150 feet long
 - ii. Building plans showing compliance with Section 903.1.3 (NFPA13D) fire sprinkler system in the proposed single-family dwelling.
 - iii. An engineer's letter stating that the access road meets OFC, Appendix D and Section D102.1[MCC 29.003]
 - d. Submit building plans that demonstrate that the proposed single-family dwelling has:
 - i. A fire retardant roof
 - ii. A spark arrester on each chimney [MCC 36.2061(C)]
 - e. Submit a building plan and provide cut/specification sheets showing all new exterior lighting supporting the single-family dwelling. The exterior lighting shall be fully shielded with opaque materials and directed downwards. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding. Shielding must be permanently attached. The exterior lighting shall be contained within the boundaries of the Lot of Record on which it is located. [MCC 36.2061, MCC 36.0570, and MCC 36.4550(B)]
5. Prior to the start of the next planting season (December to April) the property owner or their representative shall:
- a. Plant 92 trees in the areas designated in Figure 1.
- Planting area "A" is approximately 900 square feet, and shall be planted with 45 trees (species listed in Table 1) that are 3-4 feet in height on 12-foot centers.
- Planting area "B" is approximately 9,000 square feet, located along the drainage ravine that flows through the western portion of the property and shall be planted with 47 trees (species listed in Table 1) that are 3-4 feet in height in groups of 3-5 on 12 foot centers. [MCC 36.4560(B)]

Table 1. Native Tree Species List

Common name	Scientific name	Area
Grand Fir	<i>Abies grandis</i>	A
Douglas Fir	<i>Pseudotsuga mezei</i>	A
Big Leaf Maple	<i>Acer macrophyllum</i>	A and B
Vine Maple	<i>Acer circinatum</i>	B
Red Osier Dogwood	<i>Cornus sericea</i>	B
Western Crabapple	<i>Malus fusca</i>	B
Western Red Cedar	<i>Thuja plicata</i>	B

Figure 1



6. Prior to and during construction, the property owner or their representative shall ensure that:
 - a. The access road is constructed and maintained as described in Fire Service Agency Review (Exhibit A.17). [MCC 29.003]
 - b. Spoil material or stockpiled topsoil associated with the development shall be prevented from eroding by installing protective plastic covering.
 - c. Erosion and sediment control measures are in proper working order. The property owner and project engineer shall monitor the erosion and sediment control measures to ensure the measures are in proper working order. Additional measures shall be immediately installed to remedy the problem if sediment is determined to be escaping the development area.
 - d. The disturbed soil area is reseeded with grass seed in spring once it is warm enough for the seed to germinate. Until there is permanent vegetative cover, disturbed soil area shall be mulched with straw to prevent sediment runoff. The applicant shall inspect the site after all large rain events to determine that the erosion control is working and that no sediment is leaving the property. If there is any evidence that the installed erosion control silt fencing is not properly working and sediment is leaving the property, the applicant shall immediately reinstall the silt fence to prevent any further sediment from leaving the property.
 - e. Non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters are prevented from leaving the construction site through proper handling, disposal, continuous site monitoring, and clean-up activities. On-site disposal of construction debris is not authorized under this permit. This permit does not authorize dumping or disposal of hazardous or toxic materials, synthetics (i.e. tires, etc), petroleum-based materials, or other solid wastes which may cause adverse leachates or other off-site water quality effects. [MCC 36.5520(A)(2)]
 - f. Any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems is removed. If any features within the adjacent public right-of-way are

disturbed, the property owner shall be responsible for returning such features to their original condition or a condition of equal quality [MCC 33.5520(B)].

7. Prior to issuance of the Certification of Occupancy, the property owners or their representative shall:
 - a. Remove, demolish or convert the existing dwelling to an allowable nonresidential use. The removal, demolition or conversion shall occur within three months of the completion or occupancy of the replacement dwelling. [MCC 36.2020(D)(1)]
8. As an on-going condition, the property owner shall:
 - a. Monitor the mitigation sites. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted, as described in the Wildlife Conservation Plan, shall remain alive on the fifth anniversary of the date that the mitigation planting is completed. [MCC 36.4560(B)]
 - b. Maintain the Fire Safety Zones on the subject property as described below:
 - i. Primary Fire Safety Zone - A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches with-in 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height. [MCC 36.2056(D)(1)]
 - ii. Secondary Fire Safety Zone - A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices, which meet these objectives, may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. [[MCC 36.2056(D)(2)]
 - c. Maintain a vertical clearance of 13'6" for the entire length of the access road [MCC 29.003]
9. The following nuisance plants, in addition to the nuisance plants defined in 36.4510, which include plants listed in the latest edition of the Metro Nuisance Plant List and the Prohibited Plant List, and include those plants listed in the latest edition of the State of Oregon Noxious Weed List, shall not be used as landscape plantings.

Common Name	Scientific	Common Name	Scientific
Lesser celandine	<i>Chelidonium majus</i>	Purple Loosestrife	<i>Lythrum salicaria</i>
Canada Thistle	<i>Cirsium arvense</i>	Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Common Thistle	<i>Cirsium vulgare</i>	Reed Canary grass	<i>Phalaris arundinacea</i>
Western Clematis	<i>Clematis ligusticifolia</i>	Annual Bluegrass	<i>Poa annua</i>
Traveler' s Joy	<i>Clematis vitalba</i>	Swamp Smartweed	<i>Polygonum coccineum</i>

Common Name	Scientific	Common Name	Scientific
Poison hemlock	<i>Conium maculatum</i>	Climbing Binaweed	<i>Polygonum convolvulus</i>
Field Morning-glory	<i>Convolvulus arvensis</i>	Giant Knotweed	<i>Polygonum sachalinense</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>	Common Name	Scientific
Lady' s nightcap	<i>Convolvulus seppium</i>	English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Pampas grass	<i>Cortaderia selloana</i>	Poison Oak	<i>Rhus diversiloba</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>	Himalayan Blackberry	<i>Rubus discolor</i>
Scotch broom	<i>Cytisus scoparius</i>	Evergreen Blackberry	<i>Rubus laciniatus</i>
Queen Ann' s Lace	<i>Daucus carota</i>	Tansy Ragwort	<i>Senecio jacobaea</i>
South American Waterweed	<i>Elodea densa</i>	Blue Bindweed	<i>Solanum dulcamara</i>
Common Horsetail	<i>Equisetum arvense</i>	Garden Nightshade	<i>Solanum nigrum</i>
Giant Horsetail	<i>Equisetum telemateia</i>	Hairy Nightshade	<i>Solanum sarrachoides</i>
Crane' s Bill	<i>Erodium cicutarium</i>	Common Dandelion	<i>Taraxacum officinale</i>
Robert Geranium	<i>Geranium roberianum</i>	Common Bladderwort	<i>Utricularia vulgaris</i>
English Ivy	<i>Hedera helix</i>	Stinging Nettle	<i>Urtica dioica</i>
St. John' s Wort	<i>Hypericum perforatum</i>	Periwinkle (large leaf)	<i>Vinca major</i>
English Holly	<i>Ilex aquafolium</i>	Periwinkle (small leaf)	<i>Vinca minor</i>
Golden Chain Tree	<i>Laburnum watereri</i>	Spiny Cocklebur	<i>Xanthium spinosum</i>
Duckweed, Water Lentil	<i>Lemna minor</i>	Bamboo sp.	<i>various genera</i>
Fall Dandelion	<i>Loentodon autumnalis</i>		

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, the applicant shall call the Staff Planner, Rithy Khut, at (503) 988-0176 or e-mail at rithy.khut@multco.us, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. 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, a fee will be collected. In addition, an erosion control inspection fee may be required.

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*.

1.00 Project Description:

Staff: The applicant is requesting a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit, a Hillside Development and Erosion Control (HD) permit, and a Forest Development Standards Review to construct a replacement single-family dwelling.

2.00 Property Description & History

Staff: The proposed single-family dwelling will be located on Homan Road within the Commercial Forest Use – 2 (CFU-2) zoning district in the West of Sandy River Rural Area. The property has multiple environmental overlays on the property including: a Significant Environmental Concern (SEC-g) and a Significant Environmental Concern for Scenic Waterway (SEC-sw) on the northern portion of the property, a Significant Environmental Concern for Water Resources (SEC-wr) on the northwestern portion of the property, a Significant Environmental Concern for Wildlife Habitat over a majority of the interior of the property and a Hillside Development and Erosion Control (HD) overlay on the north and the western portions of the property.

Originally owned by Clarice A. Perry, the property was eventually purchased by Cecil and Kimberly Delacruz in 2015. At 25.42 acres, the property is currently being reforested after 21 acres of the property was clearcut in 2014. The property also contains a smaller area that is adjacent to Homan Road that is currently growing Christmas trees. The existing single-family dwelling and detached garage are located in the northeastern portion of the property near the bluff that slopes down to Oxbow Park and the Sandy River.

3.00 Code Compliance Criteria

3.01 § 37.0560 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 Land Use 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 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: There are no active code compliance issues associated with the property; therefore, the County has the authority to issue this land use decision. *These criteria are met.*

4.00 Lot of Record Criteria

4.01 § 36.0005 DEFINITIONS.

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 36.7785. 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.

* * *

§ 36.2075 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this 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 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, 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.

(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;**

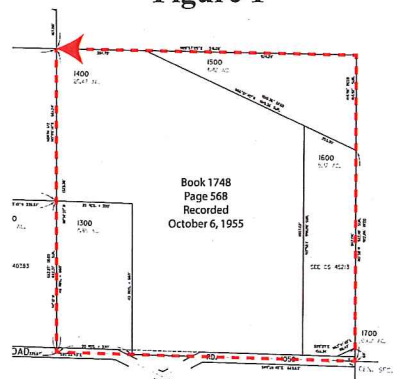
(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 36.2073, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(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: The applicant has provided a warranty deed, recorded on October 6, 1955 in Book 1748 and page 568 that described the property as the "Southeast quarter of the Northwest quarter of Section 15, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon" (Exhibit A.10 and Figure 1).

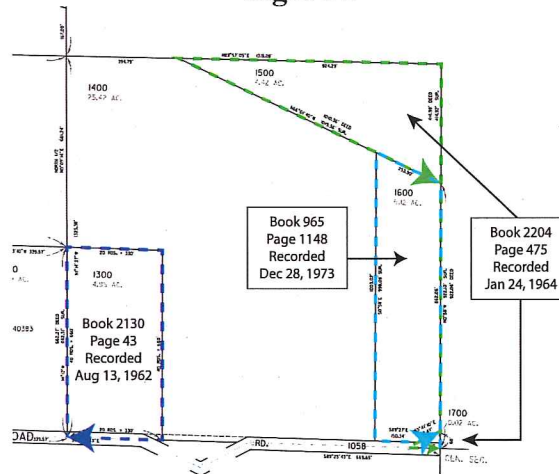
Figure 1



Subsequently, in 1962 the original property was further divided. A contract of sale was recorded on August 13, 1962 in Book 2130, Page 43 that created what is now known as tax lot 1300 (Exhibit A.12). At that time, the zoning was F2, which required a minimum lot size of two acres. Then in 1964, a warranty deed was recorded on January 24, 1964 in Book 2204, page 475 that created what is now known as tax lot 1500 and 1700 (Exhibit A.14). At that time,

the zoning was F2, which tax lot 1500 met, but tax lot 1700 did not (Exhibit B.4). However, in 1966, a conditional use permit, land use case CS 16-66 was approved for the creation of Oxbow Park that legalized tax lot 1700. Then in 1973, a contract of sale was recorded on December 28, 1973 in Book 965, Page 1148 that created what is now known as tax lot 1600 (Exhibit B.5). At that time, the zoning was F2, which required a minimum lot size of two acres. See Figure 2.

Figure 2



Due to the land divisions that occurred between 1962 and 1973, the original, “Southeast quarter of the Northwest quarter of Section 15, Township 1 South, Range 4 East” was reduced to it’s current size at 25.42 acres. At 25.42 acres, what remained met the minimum lot size requirements of the F2 zoning. Additionally, as of February 20, 1990, this property was not under the same ownership with any contiguous parcels or lots. Considering the above facts, the subject property, tax lot 1400, 1 South, 4 East, Section 15B is a Lot of Record.

These criteria are met.

5.00 Commercial Forest Use (CFU) Criteria

5.01 § 36.2020 ALLOWED USES.

(D) Alteration, maintenance, replacement or restoration of an existing lawfully established habitable dwelling as defined in MCC 33.0005 and located within 100-feet from an existing dwelling.

- (1) In the case of a replacement dwelling, the existing dwelling shall be removed, demolished or converted to an allowable nonresidential use within three months of the completion or occupancy of the replacement dwelling.**
- (2) Restoration or replacement due to fire, other casualty or natural disaster shall commence within one year from the occurrence of the fire, casualty or natural disaster.**

Staff: The applicant/property owners are seeking a replacement dwelling approval provided in the above code. Therefore it must be determined that the house satisfied the code provisions above. The County’s code is listed above with pertinent definitions below. Under Multnomah County Code a habitable dwelling is defined as:

MCC 36.0005 - Habitable dwelling - An existing dwelling that:

- (a) Has intact exterior walls and roof structure;*
- (b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
- (c) Has interior wiring for interior lights;*
- (d) Has a heating system; and*
- (e) Was lawfully established.*

Lawfully established is defined as:

Lawfully established dwelling - A dwelling that was constructed in compliance with the laws in effect at the time of establishment. The laws in effect shall include zoning, land division and building code requirements. Compliance with Building Code requirements shall mean that all permits necessary to qualify the structure as a dwelling unit were obtained and all qualifying permitted work completed.

As defined the applicant/property owners has provided photographs of the existing dwelling showing that it currently meets the above definition (Exhibit A.5). The applicant/property owners also provided a building permit (Permit No. 25313) issued in 1964 that established the single-family dwelling that is currently on the subject property.

The applicant is proposing to replace the existing dwelling with a new dwelling that will be located 16 feet to the south from the current location of the existing dwelling. However to ensure compliance with MCC 36.2020(D)(1), a condition will be required that the existing dwelling shall be removed, demolished or converted to an allowable nonresidential use within three months of the completion or occupancy of the replacement dwelling. *As conditioned, these criteria are met.*

5.02 § 36.2050 BUILDING HEIGHT REQUIREMENTS

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: The site plan indicates that the proposed single-family dwelling will be less than 25 feet in height (Exhibit A.6: A301 and A302) and no other structures such as barns, silos, windmills, antennae, and chimneys are being proposed. *These criteria are met.*

5.03 § 36.2056 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Table 1

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
At least a portion of the replaced or restored dwelling is within 100 ft. of existing dwelling	May maintain current nonconforming setback but shall increase to 30 ft. if less than 30 ft.	30	30	Primary required; Maintenance of vegetation in the Secondary is required to the extent possible

Staff: As measured on the site plan, the proposed single-family dwelling is located 65 feet from the existing single-family dwelling. The proposed single-family dwelling is setback from all of the properties lines by at least 200 feet. However the applicant has failed to include a site plan indicating the Fire Safety Zone. Therefore, to ensure that the Fire Safety Zones are clearly identified, a site plan including the Fire Safety Zones will be required. *As conditioned, these criteria are met.*

(C) The minimum forest practices setback requirement shall be increased where the setback 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 setback requirements in consultation with the Road Official.

Staff: The County Road Official has issued a permit to use public road right of way, permit number 80038, which determined that the public right-of-way is sufficient. *This criterion is met.*

(D) Fire Safety Zones on the Subject Tract

(1) Primary Fire Safety Zone

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

(c) The building site must have a slope less than 40 percent.

(2) Secondary Fire Safety Zone

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of 36.2110.

(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.

(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: As measured on the site plan, the slopes within 30 feet of the proposed dwelling are less than 10 percent, when measured down the slope of the proposed dwelling. Therefore, the primary fire safety zone shall be 30 feet and the secondary fire safety zone shall be 100 feet extending beyond the primary, as showed in the staff exhibit (Exhibit B.7). To ensure that the tree spacing, pruning and vegetation maintenance are met a condition will be required that prior to building permit approval, the applicant shall submit plans that show the primary and secondary safety zone as drawn in the staff exhibit (Exhibit B.7) and that on-going vegetation maintenance shall be done. *As conditioned, these criteria are met.*

5.04 § 36.2061 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES.

All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A). All exterior lighting shall comply with MCC 36.0570:

Staff: The standards for MCC 36.0570, Dark Sky Lighting Standards are as follows:

(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

(1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding. Shielding must be permanently attached.

(2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.

The building plans and elevations did not include exterior lighting information. Therefore, to ensure that these requirements are met, a conditional of approval will be required that all exterior lighting comply with MCC 34.0570. *As conditioned, this criterion is met.*

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

(2) Replacement or restoration of a dwelling.

(c) Replacement or restoration of a dwelling that is not located within the footprint of the original dwelling but it is located where at least a portion of the replacement dwelling is within 100 feet of the original dwelling: Shall meet the development standards of MCC 36.2061(C);

Staff: As measured on the site plan, the proposed single-family dwelling is located within 100 feet of the original dwelling (Exhibit A.6). *These criteria are met.*

(C) The dwelling or structure shall:

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

Staff: As shown on the floor plan A101 and elevations A301, there is one stove in the living room and one outdoor fireplace. Additionally the elevations A302 indicates that the roof will be a "Standing Seam Roof" (Exhibit A.6). Typically, this type of roof is made of metal, which is fire retardant. However to ensure compliance with these criteria, conditions will be required that the stove and outdoor fireplace have spark arresters within each chimney and the roof will be constructed of fire retardant materials. *As conditioned, these criteria are met.*

5.05 § 36.2073 ACCESS

All lots and parcels in this district shall abut a public street or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 36.2075(C).

Staff: The proposed single-family dwelling is located on a parcel that abuts Homan Road, which is a public street. *This criterion is met.*

5.06 § 36.2095 SEWAGE, STORM WATER, WATER SYSTEMS AND GRADING REQUIREMENTS

(A) 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.

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

(2) Storm water/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 project has been reviewed by Lindsey Reschke, Wastewater Specialist, City of Portland Bureau of Development Services for onsite septic concerns. The Septic Review Certification states that the, "Replacement home poses no concerns with the layout as shown" (Exhibit A.9). The project was also reviewed for storm water disposal by Neil Pietrok, Registered Professional Engineer to ensure that the proposed development meets the 10-year/24-hour storm event requirement. The Stormwater Certificate indicates that mitigation measures will need to be installed in the form of planters to ensure that there will be adequate capacity handle a 10-year storm event (Exhibit A.8). *These criteria are met.*

(B) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.

Staff: The applicant has applied for a Hillside Development and Erosion Control Permit. The Hillside Development and Erosion Control standards are the same as MCC Chapter 29. Those findings are discussed in Section 7.00. The applicant has met most of the requirements of the Hillside Development and Erosion Control Permit, however additional measures will be required to ensure compliance with those criteria.

5.07 § 36.2107 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: The applicant is proposing a new single-family dwelling to replace the existing single-family dwelling. A condition of approval shall require that evidence is provided that the landowner for the dwelling has been recorded with the County Recorder (also known as the County Division of Records) that binds the landowner, and the landowner's successors in interest, that prohibits 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. *As conditioned, this criterion is met.*

6.00 Significant Environmental Concern Criteria:

6.01 § 36.4550 GENERAL REQUIREMENTS FOR APPROVAL IN AREAS DESIGNATED AS SEC-WR OR SEC-H.

The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas in addition to the provisions of 36.4555 or 36.4560 as applicable.

(A) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

Staff: The project has been reviewed by AG Rolin Consulting LLC principle, Adam G. Rolin, Registered Professional Engineer to ensure that mitigation measures will be installed to minimize areas of erosion and potential erosion concerns (Exhibit A.7). However, to ensure compliance with these requirements, a condition will be required that the applicant provide final grading plan(s) that show that this criterion is satisfied. *As conditioned, this criterion is met.*

(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.

Staff: The building plans and elevations did not include lighting information about exterior lighting. Therefore as discussed in Section 5.06, to ensure that these requirements are met, a conditional of approval will be required that all exterior lighting comply with MCC 34.0570 and MCC 36.4550(B). *As conditioned, these criteria are met.*

(C) The following nuisance plants, in addition to the nuisance plants defined in 36.4510, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone:

**Table 1
Nuisance Plant List**

Common Name	Scientific	Common Name	Scientific
Lesser celandine	<i>Chelidonium majus</i>	Purple Loosestrife	<i>Lythrum salicaria</i>
Canada Thistle	<i>Cirsium arvense</i>	Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Common Thistle	<i>Cirsium vulgare</i>	Reed Canary grass	<i>Phalaris arundinacea</i>
Western Clematis	<i>Clematis ligusticifolia</i>	Annual Bluegrass	<i>Poa annua</i>
Traveler' s Joy	<i>Clematis vitalba</i>	Swamp Smartweed	<i>Polygonum coccineum</i>

Common Name	Scientific	Common Name	Scientific
Poison hemlock	<i>Conium maculatum</i>	Climbing Binaweed	<i>Polygonum convolvulus</i>
Field Morning-glory	<i>Convolvulus arvensis</i>	Giant Knotweed	<i>Polygonum sachalinense</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>	Common Name	Scientific
Lady' s nightcap	<i>Convolvulus seppium</i>	English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Pampas grass	<i>Cortaderia selloana</i>	Poison Oak	<i>Rhus diversiloba</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>	Himalayan Blackberry	<i>Rubus discolor</i>
Scotch broom	<i>Cytisus scoparius</i>	Evergreen Blackberry	<i>Rubus laciniatus</i>
Queen Ann' s Lace	<i>Daucus carota</i>	Tansy Ragwort	<i>Senecio jacobaea</i>
South American Waterweed	<i>Elodea densa</i>	Blue Bindweed	<i>Solanum dulcamara</i>
Common Horsetail	<i>Equisetum arvense</i>	Garden Nightshade	<i>Solanum nigrum</i>
Giant Horsetail	<i>Equisetum telemateia</i>	Hairy Nightshade	<i>Solanum sarrachoides</i>
Crane' s Bill	<i>Erodium cicutarium</i>	Common Dandelion	<i>Taraxacum oficinale</i>
Robert Geranium	<i>Geranium roberianum</i>	Common Bladderwort	<i>Utricularia vulgaris</i>
English Ivy	<i>Hedera helix</i>	Stinging Nettle	<i>Urtica dioica</i>
St. John' s Wort	<i>Hypericum perforatum</i>	Periwinkle (large leaf)	<i>Vinca major</i>
English Holly	<i>Ilex aquafolium</i>	Periwinkle (small leaf)	<i>Vinca minor</i>
Golden Chain Tree	<i>Laburnum watereri</i>	Spiny Cocklebur	<i>Xanthium spinosum</i>
Duckweed, Water Lentil	<i>Lemna minor</i>	Bamboo sp.	<i>various genera</i>
Fall Dandelion	<i>Loentodon autumnalis</i>		

Staff: The applicant shall remove and keep removed from cleared areas the list the nuisance plants referred to in this criterion. To ensure compliance with this requirement, a condition will be required that the applicant shall remove and keep removed the plants listed in the table above. *As conditioned, this criterion is met.*

6.02 § 36.4560 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT.

Development within areas designated SEC-h shall comply with the provisions of this section. An application shall not be approved unless it contains the information in 36.4540(A) and (D).

(A) Development standards:

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Staff: The applicant has indicated on the Significant Environmental Concern for Wildlife Habitat worksheet that the location of the proposed single-family dwelling will be located in an area that is defined as a non-forested "cleared" area. However based on aerial photos from 2012 and documentation of a Forest Practice Act Notification, notification number 2014-581-00595, the location of the proposed single-family dwelling cannot be deemed a non-forested "cleared" area (Exhibit B.6 and A.18). A forested area is defined as:

"A forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan."

Because a forest practice harvest occurred on the property in the location of the proposed single-family dwelling, the development does not meet the definition above. Additionally, the site plan indicates that the proposed single-family dwelling is located over 700 feet from the public road (Exhibit A.6). MCC 36.4560(A)(2) requires that the development occur within 200 feet of the public road.

Based on the site characteristics provided on the site plan, the applicant can locate the proposed single-family dwelling within 200 feet of a public road and outside of the Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay. However, the applicant is electing to locate the proposed development in the proposed location although the development can meet the Clear and Objective Standards of MCC 36.4560(A). Therefore, the proposal will be required to meet the requirements of MCC 36.4560(B)(2) using a Wildlife Conservation Plan. *This criterion is not met.*

(B) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

(2) The applicant can meet the development standards of Section (A), but demonstrates that the alternative conservation measures exceed the standards of Section (A) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (A).

Applicant: First option considered is to do nothing, which is not a viable option for the property owners. The Second option considered is the option proposed, which is to build a new house 100 feet south from the steep bluff, essentially locating the north side of the new house

where the driveway currently ends. This not only minimizes new impacts to the property, but also gives the new home a safety buffer from the edge of the bluff.

We also considered the recommendation to try to move the new building site closer to Homan Road and out of the wildlife overlay. This is not feasible for several reasons. The first 200 feet inside the property from Homan Road to the east of the driveway is currently forested, and providing wildlife habitat. The first 200 feet inside the property and west of the driveway has been cleared, reforested and is characterized by steep and variable slopes. Building here would be high impact and high risk. The new building could potentially be located slightly closer to the road by building in the cleared meadow, but that would be entirely new impact, require a section of new driveway and put the home nearer to the existing wildlife corridor being used along the east property line. In a nutshell, the proposed building location is ideal from the standpoints of minimizing environmental impacts and avoiding wildlife impacts.

Staff: Based on the information provided from Charles M. Lobdell, Fish and Wildlife Biologist, the proposed development is in a location that results in the least detrimental impact on forested wildlife habitat. As stated above, the location is nearly within the same footprint as the previously established single-family dwelling. However, by moving the development further from the cliff edge and more interior to the property, it will preserve forested areas along the creek on the western portion of the property and provide more distance between the development and the unbroken tract of forest inside Oxbow Park to the north. *This criterion is met.*

(3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (B)(5) of this section, the wildlife conservation plan must demonstrate the following:

(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

Applicant: Post-project Conditions: Upon completion of the proposed project, the existing gravel road will be 20 feet wide to accommodate fire safety. This net increase in width of 30% will have no impact on the wildlife corridors on the property. The new house will be constructed essentially where the driveway terminates, and the existing buildings will be removed. This will have zero affect on the wildlife corridors on the property, as the building site is currently occupied and has been in place for many years. The location of the new home is likely a long-term improvement to the ecological integrity of the site, not to mention the safety of the home owners as it will be physically 100 feet further back from the edge of the steep slope. Also, the existing septic will be replaced with an improved system, and the overhead power line will be removed. All in all, this project as proposed will result in zero impacts to wildlife corridors while improving the overall safety of the home by moving back from the bluff, and bird strike risk will be eliminated with removal of the power line.

Staff: Based on the information provided from Charles M. Lobdell, Fish and Wildlife Biologist, the proposed development is the minimum necessary to serve the proposed

development. There will be minor clearance relating to the dwelling site and access road. There will be no removal of trees as part of this project. *This criterion is met.*

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

Staff: The site plan indicates that there will be less than one acre (Exhibit A.6). *This criterion is met.*

(c) That no fencing will be built outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.

Staff: The site plan (Exhibit A.6) does not indicate that fencing will be installed; therefore, this criterion does not apply. *This criterion is met.*

(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.

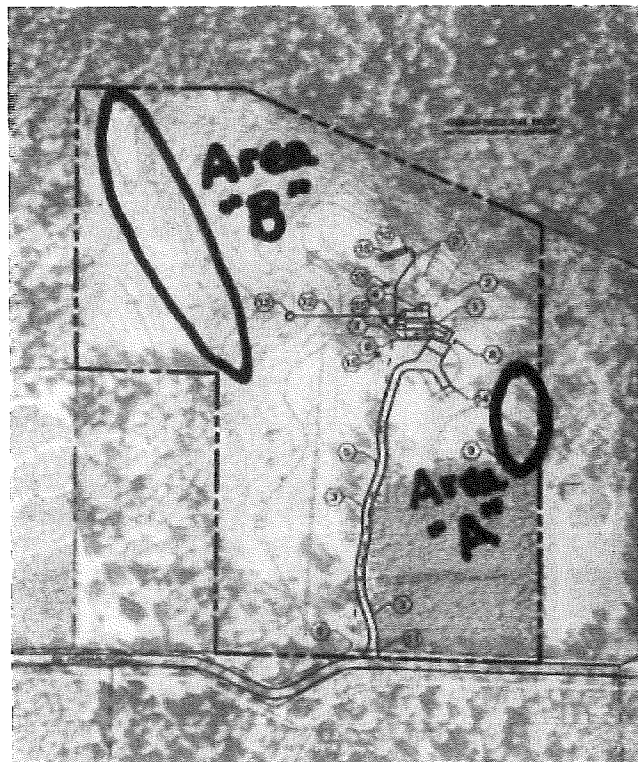
(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

Applicant: Our proposed Wildlife Conservation Plan is provided via MCC 36.4560(B)(4)(b) as mitigation to offset 9,145 square footage of new building impact. Per (4)(b) we will plant 92 trees in the areas designated in Figure 1. Planting area "A" is approximately 900 square feet, and will be planted with 45 trees (species listed in Table 1) that are 3-4 feet in height on 12 foot centers. Area "A" ties together the 3 acre patch of existing forest to the northeast swale which is a wildlife corridor being used by elk and deer. Planting area "B" is approximately 9,000 square feet, located along the drainage ravine that flows through the western portion of the property. This area will be planted in several patches to fill in the sparse corridor that currently exists. We will plant 47 trees (species listed in Table 1) that are 3-4 feet in height in groups of 3-5 on 12 foot centers.

Table 1. Native Tree Species List

Common name	Scientific name	Area
Grand Fir	<i>Abies grandis</i>	A
Douglas Fir	<i>Pseudotsuga mezei</i>	A
Big Leaf Maple	<i>Acer macrophyllum</i>	A and B
Vine Maple	<i>Acer circinatum</i>	B
Red Osier Dogwood	<i>Cornus sericea</i>	B
Western Crabapple	<i>Malus fusca</i>	B
Western Red Cedar	<i>Thuja plicata</i>	B

Figure 1. Mitigation Planting Areas



Staff: Based on the information provided from Charles M. Lobdell, Fish and Wildlife Biologist, the applicant will need to mitigate the building impact with the planting of 92 trees in area A and area B, which is located along a stream riparian area (Exhibit A.19). Therefore, to ensure that this Wildlife Conservation Plan is met, a condition will be required that 92 trees be planted as described in the Wildlife Conservation Plan. Additionally, to ensure that the Wildlife Conservation Plan is met, monitoring and reporting shall be required. *As conditioned, these criteria are met.*

7.00 Hillside Development and Erosion Control Criteria:

7.01 § 36.5505 PERMITS REQUIRED.

Hillside Development Permit: All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC 36.5510.

Staff: The proposed development is located in a mapped hazard area on the "Slope Hazard Map." The applicant has applied for a Hillside Development permit to authorize the proposed development.

7.02 § 36.5515 APPLICATION INFORMATION REQUIRED.

An application for development subject to the requirements of this subdistrict shall include the following:

- (A) A map showing the property line locations, roads and driveways, existing structures, trees with 8-inch or greater caliper or an outline of wooded areas, watercourses and include the location of the proposed development(s) and trees proposed for removal.
- (B) An estimate of depths and the extent and location of all proposed cuts and fills.
- (C) The location of planned and existing sanitary drainfields and drywells.
- (D) Narrative, map or plan information necessary to demonstrate compliance with MCC 36.5520 (A). The application shall provide applicable supplemental reports, certifications, or plans relative to: engineering, soil characteristics, stormwater drainage, stream protection, erosion control, and/or replanting.
- (E) A Hillside Development permit may be approved by the Director only after the applicant provides:
 - (1) Additional topographic information showing that the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a known landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or

Staff: The applicant has provided a letter from Adam G. Rolin, Registered Professional Engineer and Hillside Development Permit Worksheet indicating that the proposed development will occur on land with average slopes less than 25% and located more than 200 feet from a known landside (Exhibit A.7). The site plan shows the proposed development will be located in an area that has slopes between 0-10% with downward sloping faces to the north and west (Exhibit A.6). Because of the information provided, the applicant will not be required to obtain a Hillside Development permit. However, the development plans shall be subject to the design standards for grading and erosion control, as described below.

(G) Development plans shall be subject to and consistent with the Design Standards for Grading and Erosion Control in MCC 36.5520 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.

Staff: The applicant shall be subject to the requirements of the Design Standards for Grading and Erosion Control as discussed in Section 7.03 below.

7.03 § 36.5520 GRADING AND EROSION CONTROL STANDARDS.

Approval of development plans on sites subject to a Hillside Development Permit shall be based on findings that the proposal adequately addresses the following standards. Conditions of approval may be imposed to assure the design meets the standards:

(A) Design Standards For Grading and Erosion Control

(1) Grading Standards

(a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require

additional studies or information or work regarding fill materials and compaction;

(b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;

(c) Cuts and fills shall not endanger or disturb adjoining property;

(d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;

(e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;

Staff: The applicant's engineer, Adam G. Rolin, Registered Professional Engineer indicated on the Hillside Development Permit Worksheet that there is no fill included in the proposed project and that all cuts will be away from any slopes exceeding 5% (Exhibit A.7). Additionally, the project was also review for storm water disposal by Neil Pietrok, Registered Professional Engineer to ensure that the proposed development meets the 10-year/24-hour storm event requirement. The Stormwater Certificate indicates that mitigation measures will need to be installed in the form of planters to ensure that there will be adequate capacity handle a 10-year storm event (Exhibit A.8). *These criteria are met.*

(2) Erosion Control Standards

(a) Erosion and stormwater control plans shall be designed to perform as prescribed by the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook " and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)".

Staff: The applicant has submitted a Hillside Development Permit Worksheet and Stormwater Certificate indicating that measures will be designed to handle erosion and stormwater.. *As conditioned, this criterion is met.*

(b) Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;

(c) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff;

(d) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

Staff: The Hillside Development Permit Worksheet indicated that there will be no stripping of vegetation, grading (including cut and fill) or other soil disturbance outside of the building area

of the proposed single-family dwelling. However, the applicant has not provided a site plan showing erosion control measures. Therefore, to ensure that erosion control is managed on the property, a condition will be required that the applicant submit an erosion control plan. *As conditioned, these criteria are met.*

(e) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

1. A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;

2. The buffer required in 1. may only be disturbed upon the approval of a mitigation plan which utilizes erosion and stormwater control features designed to perform as effectively as those pre-scribed in the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook " and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)" and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340;

Staff: The site plan indicates that a 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland (Exhibit A.6). *These criteria are met.*

(f) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;

(g) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;

(h) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;

(i) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding;

(j) All drainage provisions shall be designed to adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural watercourses, drainage swales, or an approved drywell system;

(k) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;

Staff: The Hillside Development Permit Worksheet indicated that there will be no permanent plantings proposed. The project was also review for storm water disposal by Neil Pietrok, Registered Professional Engineer to ensure that the proposed development can effectively accommodate increased runoff caused by altered soil and surface conditions. The Stormwater Certificate indicates that mitigation measures will need to be installed in the form of planters to ensure that there will be adequate capacity handle a 10-year storm event. The applicant has not provided a site plan showing erosion control measures. Therefore, to ensure that erosion control is managed on the property, a condition will be required that the applicant submit an erosion control plan. *As conditioned, these criteria are met.*

(l) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:

- 1. Energy absorbing devices to reduce runoff water velocity;**
- 2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;**
- 3. Dispersal of water runoff from developed areas over large undisturbed areas.**

Staff: The applicant has not provided a site plan showing erosion control measures. Therefore, to ensure that erosion control and sediment control devices are installed to prevent polluting discharges from occurring on the property, a condition will be required that the applicant submit an erosion control plan. *As conditioned, these criteria are met.*

(m) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures;

Staff: A condition will be required that disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures. *As conditioned, this criterion is met.*

(n) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.

Staff: A condition will be required that non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters

shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. *As conditioned, this criterion is met.*

(B) Responsibility

(1) Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project;

Staff: A condition will be required that whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project. *As conditioned, this criterion is met.*

8.00 Building Code Criteria

8.01 § 29.003 ADOPTION OF STATE BUILDING CODE BY REFERENCE.

(A) Those portions of the state building code constituting the structural specialty code, mechanical specialty code, and the one- and two-family dwelling specialty code, are adopted and by this reference incorporated as part of this subchapter. The provisions of this subchapter shall take precedence over the similar provisions of the state specialty codes.

(B) Prior to land use review, the applicant shall demonstrate that the proposed development is in compliance with the most current version of the Oregon Fire Code. Documentation of compliance shall be on forms provided by the Planning Director. Depending on the location of the parcel, the following agency shall review:

(1) A property served by a structural fire service provider shall have the proposed development reviewed by the fire official serving it.

Staff: The local Fire District, Multnomah Rural Fire Protection District #10, has reviewed the proposed development and they have conditionally approved the development (Exhibit A.17). Based on Multnomah Rural Fire Protection District #10's review, the County will require that the applicant install a NFPA13D fire sprinkler system, Address Signage and access road improvements as a condition to ensure that this project meets Multnomah Rural Fire Protection District #10's requirements. *As conditioned, these criteria are met.*

9.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit, a Hillside Development and Erosion Control (HD) permit, and a Forest Development Standards Review to establish a replacement dwelling in the Commercial Forest Use (CFU) zone. This approval is subject to the conditions of approval established in this report.

10.00 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. All other exhibits are available for review in Case File T2-2017-6853 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	02/02/2017
A.2	1	General Application Form with property owner signatures	02/02/2017
A.3	9	Significant Environmental Concern for Wildlife Habitat (SEC-h) Worksheet	02/02/2017
A.4	10	Additional Narrative Information for SEC Worksheet	02/02/2017
A.5	12	Photographs of the existing single-family dwelling	02/02/2017
A.6	10	Site Plan and Building Plan <ul style="list-style-type: none"> - G001 – Cover Sheet - ST101 – Overall Site Plan - ST102 – Enlarged Site Plan - ST103 – Septic Test Pit Locations - A100 – Foundation Plan - A101 – Floor Plan - A102 – Second Floor Plan - A201 – Roof Plan - A301 – Elevations - A302 – Elevations 	02/02/2017
A.7	7	AG Rolin Consulting Cover Letter and Hillside Development Permit (HDP) Worksheet	02/02/2017
A.8	8	Storm Water Certificate	02/02/2017
A.9	9	Septic Review Certification	02/02/2017
A.10	1	Warranty Deed from Book 1748, Page 568 recorded on October 6, 1955	03/30/2017
A.11	1	Warranty Deed from Book 1918, Page 5 recorded on March 30, 1959	03/30/2017
A.12	1	Contract of Sale from Book 2130, Page 43 recorded on August 13, 1962	03/30/2017
A.13	1	Warranty Deed from Book 195, Page 183 recorded on December 22, 1964	03/30/2017
A.14	2	Warranty Deed from Book 2204, Page 475 recorded on January 24, 1964	03/30/2017
A.15	4	Warranty Deed recorded as Document Number 2015-044104 on April 21, 2015	03/30/2017

A.16	7	Historic Building Permit, Well Report, and Report of Subsurface Sewage Systems Permit for the subject property	03/30/2017
A.17	5	Fire Service Agency Review	03/30/2017
A.18	3	State of Oregon Department of Forestry – Department of Revenue Notification Number: 2014-581-00595	03/30/2017
A.19	15	Wildlife Conservation Plan prepared by Charles M. Lobdell, Fish and Wildlife Biologist	03/30/2017
'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1S4E15B -01400 (R#994150180)	02/02/2017
B.2	1	Department of Assessment, Records and Taxation (DART): Map with for 1S4E15B -01400 (R#994150180) highlighted	02/02/2017
B.3	6	Pre-file Conference Summary Notes	02/02/2017
B.4	1	Zoning Map showing zoning prior to Ordinance 149 which was adopted 10-05-1977	03/30/2017
B.5	1	Parcel Record – Cartographic Card	03/30/2017
B.6	1	Aerial Photo from 2012	03/30/2017
B.7	1	Site Plans with fire safety zones drawn by Staff	03/30/2017
'C'	#	Administration & Procedures	Date
C.1	4	Incomplete letter	03/02/2017
C.2	1	Applicant's acceptance of 180 day clock	03/30/2017
C.3	1	Complete letter (day 1)	04/28/2017
C.4	3	Opportunity to comment & mailing list	05/16/2017
C.5		Administrative decision & mailing list	