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NOTICE OF DECISION

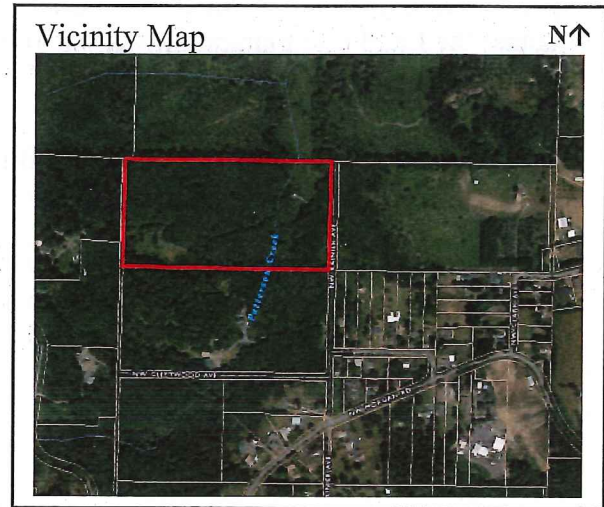
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-2017-8103
Permit: Planning Director Determination
Location: 20245 NW Clark Ave
Tax Lot 00100, Section 12C
Township 2 North, Range 2 West, W.M.
Tax Account #R708300020
Property ID# R255818

**Applicants/
Owners:** Emily L. Van Der Laan

Base Zone: Commercial Forest Use - 2

Overlays: Significant Environmental Concern for
Wildlife Habitat, and Scenic Views

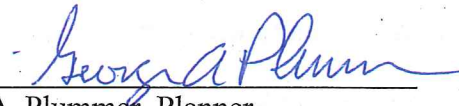


Request: A Planning Director Determination to amend previous Land Use Case Decisions PRE-19-92 (Use Under Prescribed Conditions) and HDP-38-92 (Hillside Development Permit) to approve the existing dwelling location.

Decision: Approved with Conditions

Unless appealed, this decision is effective November 2, 2017, at 4:00 PM.

By:


George A. Plummer, Planner

For: Michael Cerbone, AICP
Planning Director

Date Issued: October 19, 2017

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 George Plummer, Planner at george.a.plummer@multco.us or (503) 988-0202 (8 am to 4 pm Tuesday through Friday)

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 November 2, 2017, at 4:00 PM.

Applicable Approval Criteria: Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): MCC Chapter 37, MCC 33.2256: Forest Practices Setbacks and Fire Safety Zones, MCC 33.2261: Development Standards for Dwellings and Structures MCC 33.5500 – 33.5515: Hillside Development Overlay standards.

Scope of Approval

1. 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 establishing Primary and Secondary Fire Safety Zones. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

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. **Condition of Approval for Fire Safety Zones in the areas to the north, northeast and east of the dwelling:**
The property owner shall establish and maintain Primary and Secondary Fire Safety Zones for these areas as described in Conditions of Approval 3 and 4. The Primary Fire Safety Zone shall be a fire break extending from the dwelling a minimum of 80 feet out to the north, northeast and east of the dwelling. The property owner shall establish and maintain a Secondary Fire Safety Zone extending a minimum of 100 feet wide in all directions around the primary safety zone. The location for the Secondary Fire Safety Zone extends beyond the 80 foot Primary Fire Safety Zone outer line an additional 100 feet. Thus the Primary and Secondary Fire Safety Zone are a total of 180 feet for the areas north, northeast and east of the dwelling.

2. Condition of Approval for Fire Safety Zones in the areas to the northwest, west, southwest, south and southeast for the dwelling:

The property owner shall establish and maintain Primary and Secondary Fire Safety Zones for these areas as described in Conditions of Approval 3 and 4. The Primary Fire Safety Zone shall be a fire break (described below) extending from the dwelling a minimum of 30 feet to the northwest, west southwest, south and southeast from the dwelling. 30 feet wide. The location for the Secondary Fire Safety Zone extends beyond the 30 foot Primary Fire Safety Zone outer line an additional 100 feet. Thus the primary and Secondary Fire Safety Zone are a total of 130 feet for the areas to the northwest, west, southwest, south, and southeast of the dwelling.

3. Description of the required Primary Fire Safety Zone:

Trees within Primary Fire Safety Zone shall be spaced with greater than 15 feet between the crowns. Vegetation shall be pruned and spaced so that fire will not spread between crowns of trees. 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.

4. Description of the required Secondary Fire Safety Zone:

A Secondary Fire Safety Zone is a fire break extending a minimum of 100 feet wide in all directions around the Primary Fire 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 35.2256(D)(1) and 2)]

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. APPLICATION DESCRIPTION

Staff: A Planning Director Determination to amend previous Land Use Case Decisions PRE-19-92 (Use Under Prescribed Conditions Permit) and HDP-38-92 (Hillside Development Permit) to approve the existing dwelling location.

2. HISTORY AND DESCRIPTION

Staff: The subject property has an existing habitable dwelling established in 1995 (Exhibits A.6 and B.1) through a Building Permit issued July 15, 1993 (Exhibit A.7). The dwelling was approved through two land use cases, Use Under Prescribed Conditions Permit Case PRE-19-92 (Exhibit A.8) and a Hillside Development Permit Case HDP-38-92 (Exhibit A.9) when the property was zoned Multiple Use Forest - 19 (MUF-19).

A Building Permit was issued for the dwelling and finalized (Exhibit A.7) thus was lawfully established. However the dwelling was built in a different location than that approve. This review is to determine whether the existing location of the dwelling meets the requirements the HDP standards and CFU-2 Forest Setbacks and Development Standards.

The building permit for the existing dwelling, issued on July 15, 1993, predating the 1994 adoption for the Significant Environmental Concern for Wildlife Habitat, and Scenic Views codes. Thus a Significant Environmental Concern Permit is not required.

3. COMMERCIAL FOREST USE – 2 ZONE

3.1. Forest Practices Setbacks and Fire Safety Zones

MCC 33.2256: 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:

Use	Forest Practice Setbacks		Fire Safety Zones
Description of use and location	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
New Forest Dwelling	30	130	Primary & Secondary required

Height 35 feet

Staff: The existing dwelling meets the 130 foot forest practices setbacks. The dwelling is less than 35 feet in height. *These standards are met.*

3.2. **Fire Safety Zones on the Subject Tract**

MCC 33.2256(D)(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

(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 re-moved 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 pro-visions of 33.2310.

Staff: When the down-slope away from the dwelling is between 10 and 20 percent the 30 foot Primary Fire Safety Zone is increased by an additional 50 feet thus a total of 80 feet. The down-slope area is to the north, northeast and east from the dwelling is between 10 and 20 percent (measured within thirty feet of the dwelling). Thus the Primary Fire Safety Zone in those directions must be measured from the dwelling extending out 80 feet from the dwelling to the north, northeast and east. The Secondary Fire Safety Zone is an additional 100 feet. The location for the Secondary Fire Safety Zone extends beyond the 80 foot Primary Fire Safety Zone outer line an additional 100 feet. Thus the Primary and Secondary Fire Safety Zone are a total of 180 feet for the areas north, northeast and east of the dwelling.

To the northwest, west, southwest, south, and southeast the land either slopes upward from the dwelling or less than 10 percent down slope for the area within thirty feet of the dwelling. Thus the Primary Fire Safety Zone the area in those direction extends a minimum of 30 feet in all these directions around a dwelling. The location for the Secondary Fire Safety Zone extends beyond the 30 foot Primary Fire Safety Zone outer line an additional

100 feet. Thus the primary and Secondary Fire Safety Zone are a total of 130 feet for the areas to the northwest, west, southwest, south, and southeast of the dwelling.

Both the Primary and Secondary Fire Safety Zone are required for the area around the dwelling for the subject property. Given the existing location of the dwelling both of the fire safety zones can be established on the subject property. A condition of approval will require both the Primary and Secondary Fire Safety Zone to be established and maintained. *These standards will be met through meeting conditions of approval.*

3.3. Development Standards for Dwellings

MCC 33.2261(2): The structure shall satisfy the following requirements:

Staff: Given the dwelling was not located in the previously approved location, per Case PRE-19-92 staff has determined that the following locational development standards must be found to be met by the existing dwelling location. The other standards that were found to be met through Case PRE-19-92 (Exhibit A.8).

(a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 33.2256;

Staff: The adjacent properties to the west and south are residentially developed properties. The existing location of the dwelling is somewhat clustered with the residential development on those properties. The adjacent properties to the northwest, north and northeast are appear to be managed as forest and minor amount of agriculture. The existing location of the dwelling provides a more distant setback to those properties of more than 400 feet at the closest property line location to the north. Given the distance to the nearby or adjoining forest or agricultural lands managed lands, the existing dwelling location provides for the least impact on those forest and agricultural managed lands. The forest practices setback standards in MCC 33.2256 are met and the fire safety zone standards are met through meeting the conditions of approval. *These standards are met and will be met through meeting conditions of approval.*

(b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

Staff: The existing dwelling is located in an area on the property will minimize adverse impact on the forest operations and accepted farming practices on the tract. The location provides for the forest practice setbacks and a lesser Primary Fire Safety Zone than if the dwelling was located father to the north or east. The existing location is result in less impact then the previously approved dwelling location. *This standard is met.*

(c) The amount of forest land used to site the dwelling... is minimized;

Staff: The amount of area used to site the dwelling in minimal amount about a half-acre and about another half-acre garden and yard area (septic drainfield). That is a standard amount for a rural dwelling. *This standard is met.*

4. HILLSIDE DEVELOPMENT PERMIT

Staff: The dwelling was approved through PRE-19-92 (Use Under Prescribed Conditions) and HDP-38-92 (Hillside Development Permit). The location was represented in the HDP-38-92 review as 300 feet north of the southern property line and 250 feet east of the western property line (Exhibit A.9, A.10 and B.3). Another site plan map included in the case submittal shows the dwelling at 250 feet from both western and southern property lines (Exhibit A.9 and A.10). The existing dwelling is was built about 195 feet from western property line and about 215 feet from the southern property line as measured on the County Land Use Planning's 2016 aerial photo. The dwelling was built about 55 feet to the west and about 85 feet the south of the site plan summited with the building permit zoning approval.

The Geotechnical Report by Robert J. Duncan P.G. the Consulting Engineering Geologist submitted with the application for Case HDP-38-92 discusses the geology of the building site. Mr. Duncan describes the "upper terrace" as stable. While the report indicated there was no evidence of slope failure on site, more concern was expressed about the steeper slopes on the property north and east the approved dwelling site. The existing dwelling is located further from the slopes of concern in an area of most gentle shallow slopes. Staff assessment is that by moving the dwelling site further from the steeper slopes, the existing location is in an area that Mr. Duncan determined was upper terrace was the best location for the dwelling. Staff finds that the existing dwelling location met the intent of the Geotechnical Report and HDP to be located up on the terrace area and actual it is further back from the steeper slopes. *The HDP standards are met.*

5. Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Administrative Determination by Planning Director to establish that the existing dwelling location meets the Multnomah County Code for the siting of an approved dwelling in the Commercial Forest Use – 2 zone and the Hillside Development Permit standards. This approval is subject to the conditions of approval established in this report.

6. Exhibits

'A' Applicant's Exhibits

'B' Staff Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	7/13/17
A.2	1	Vicinity Map	7/13/17
A.3	1	Survey Map Showing Existing Dwelling	7/13/17
A.4	1	Aerial Photo of Property showing	7/13/17
A.5	4	Narrative	7/13/17
A.6	9	Photos of the Existing Dwelling Showing Features of Habitable Dwelling	7/13/17

A.7	3	City of Portland Building Permit and Inspection List	7/13/17
A.8	56	Documents in PRE 19-92 (Use Under Prescribed Conditions) Case File including the PRE Decision and the	7/13/17
A.9	34	Documents in HDP 38-92 (Hillside Development Permit) Case File including the HDP Decision	7/13/17
A.10	7	Maps and Site Plans from PRE 19-92 Case File	7/13/17
A.11	1	County Assessment Program Tax Map with Property Highlighted	7/13/17
'B'	#	Staff Exhibits	Date
B.1	2	County Assessment Program Property Information	NA
B.2	1	Site Plan from the County Building Permit Record File with an unsigned stamp	NA