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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: T2-2017-7869

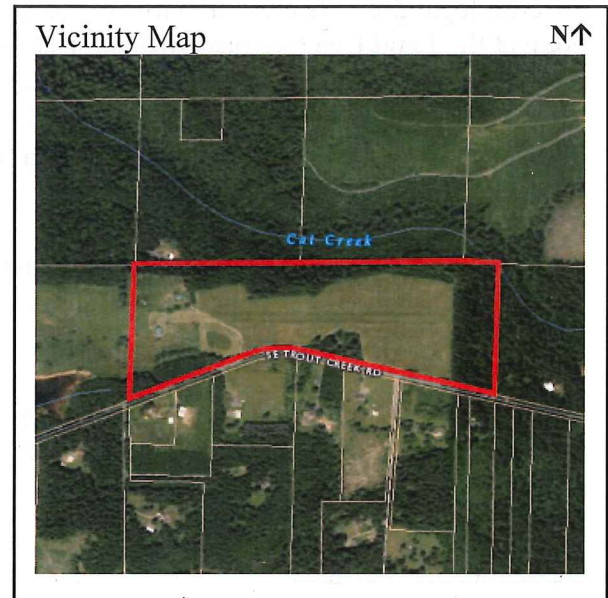
Permit: Administrative Decision by Planning Director

Location: 41313 SE Trout Road
Tax Lot 00400, Section 18A, Township 1 South, Range 4 East, W.M.
Alt. Acct # R994100170
Property ID# R342921

Applicants: Tom Lehman

Owners: John T. Lehman &
Karen N. Yoder-Lehman

Base Zone: Commercial Forest Use – 4 (CFU-4)



Summary: A request for a Planning Director Determination to amend previous Land Use Cases Decisions PRE-1-94 (Use Under Prescribed Conditions) to approve the existing dwelling location.

Decision: Approved with Conditions

Unless appealed, this decision is effective January 3, 2017, at 4:00 PM.

Issued by:



George A. Plummer, Planner

For: Michael Cerbone, AICP
Planning Director

Date: Wednesday, December 20, 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 January 3, 2017, at 4:00 PM.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC Chapter 37, MCC 35.2256: Forest Practices Setbacks and Fire Safety Zones, and MCC 35.2261: Forest Development Standards for Dwellings and Structures

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

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 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.

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

The property owner shall maintain Primary and Secondary Fire Safety Zones as described in (a) and (b) below. The property owner shall maintain a Primary Fire Safety Zone extending a minimum of 30 feet in all directions around a dwelling or structure and a Secondary Fire Safety Zone, a fire break extending a minimum of 100 feet in all directions around the primary safety zone.

(a) 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.

(b) Description of the required Secondary 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. Project Description:

Staff: A request for a Planning Director Determination to amend previous Land Use Cases Decisions PRE-1-94 (Use Under Prescribed Conditions) to approve the existing dwelling location. The existing dwelling location is not the approved location. This review will evaluate the current location and determine if it is in a suitable location according to criteria.

2. Property Description & History

Staff: The subject property was reviewed for a dwelling in two previous cases PRE 22-89 and PRE 1-94.

The existing dwelling was approved through Case PRE 1-94 with an appeal. That case approved a dwelling site at 375 feet from the north property line (Exhibit B.4), a site that would have been on the airfield runway. The driveway for the dwelling was limited to a maximum 500 foot length, however was not shown on the site plan for the building permit. The dwelling was built in a location that is about 125 feet north of where it was approved. It was sited in a location that was about 250 feet from the northern property line with a driveway exceeding 500 feet.

The soils on the property include Cazadero silty clay loam 9B a Class IIe soil, 9C a Class IIIe soil and 9D Class IVe soil (Exhibit B.5). Within a couple hundred feet of northern property line is the Class IVe, soil with more steep slopes. There is Class IV soil also along Trout Creek in the southwest area. The small pocket western side, mid- property about 200 to 400 feet south of the north property line is Class IIIe soil, where the existing dwelling is located. Most of the property is Class IIe soils.

Class IIe soil is the best farm soil while Class IVe is a good forest soil. A finding for PRE 1-94 concluded that placing a dwelling in the Class IIIe soil area would not impact farm practices any more than siting it on Class VI soil.

The forest land on the property is in areas that are the Class III and IV soils. Forested areas include a grove of trees along Trout Creek Road in the southwestern part of the property, an area ranging about 100 to 200 feet wide along the northern property line and an area about 350 feet wide along the eastern property line. The farm land on the property is mostly the Class II soil with some on Class III soil.

The property still has a second dwelling on it that was required to be removed by PRE 1-94 condition of approval. The property owner has signed a Voluntary Compliance Agreement which requires the removal of that dwelling.

The subject property was determined to be a Lot of Record through a finding in Case PRE 22-89.

3. Commercial Forest Uses – 4

3.1. Forest Practices Setbacks and Fire Safety Zones

MCC 35.2256: 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:

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)
Replaced or restored dwelling over 100 ft. from existing dwelling	Meet current setback standards	30		130	Primary & Secondary required

Staff: The closest property line for the existing dwelling is 250 feet. The existing dwelling meets all of the forest practices setbacks. *These standards are met.*

3.2. Fire Safety Zones on the Subject Tract

MCC 35.2256(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

Staff: The downward slope area from the dwelling is less than 10 percent. Thus the Primary Fire Safety Zone is located between zero and 30 feet surrounding the dwelling. The 2016 aerial photo (Exhibit B.3) shows Primary Fire Safety Zone standards have been met. *This standard is met.*

(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: The Secondary Fire Safety Zone located between 30 feet and 130 feet from the dwelling. It appears that the Secondary Fire Safety Zone may not be full established but can be established on the property. A condition of approval will require the Secondary Fire Safety Zone to be fully established. *This standard is met through a condition of approval.*

* * *

(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: A condition of approval can require the Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2). *This standard is met through a condition of approval.*

3.3. Development Standards for Dwellings And Structures

3.3.1. MCC 35.2261(B)(2) The structure shall satisfy the following requirements:

- (a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 35.2256;**

Staff: The dwelling is located about 250 feet from the adjacent property to the north. A dwelling on adjacent property is located directly north of the subject dwelling in-effect somewhat clustering of the dwelling locations.

In Case PRE 1-94 the applicant proposed the dwelling be placed closer to the northern property line. The PRE 1-94 findings state that by locating the dwelling closer to the northern property line it would have a greater impact on the forest use on that adjacent parcel specifically because of concerns that aerial spraying may be impeded because potential of spray drifting unto the subject property at the dwelling location. The hearing officer noted that the staff decision failed to notice there is a dwelling on the adjacent property to the north directly north of the proposed dwelling site, however that would not impact aerial spraying. Staff finds most likely property owners are not going to aerial spray their own dwelling. Clustering the dwellings reduces likelihood of impacts to forest practices on the adjacent property to the north.

The other nearest forest property is more than 900 feet from the dwelling. Because of the clustering the subject dwelling with the dwelling to the north and the fire safety zones staff finds that the subject dwelling actually has the least impact on nearby or adjoining forest. The subject dwelling is more than 300 feet from farm land on any adjoining property, which is in

the same ownership tract. There is no other farm land adjoining the property. *This criterion is met.*

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

Staff: The soils on the property include Class IIe, Class IIIe and Class IVe soils (Exhibit B.5). Within a couple hundred feet of northern property line is Class IVe, soil with more steep slopes. There is Class IV soil also along Trout Creek on the west side. The mid- property on west side and an area northern 200 to 400 feet (west side) are Class IIIe soil, where the existing dwelling is located. Most of the property is Class IIe soils.

The predominate soil on the property, Class IIe soil, is the best farm soil while Class IVe is a good forest soil. A finding for PRE 1-94 concluded that placing a dwelling in the Class IIIe soil area would not impact farm practices any more than siting it on Class VI soil. The existing dwelling located in an area of Class IIIe soils.

The original dwelling site with zoning approval with the stumped and signed building permit site plan (Exhibit B.4) would have put the dwelling right on the airfield runway. However, the existing dwelling is just north of the runway, clustered with the runway, but at an appropriate distance, about 90 feet north. It is on a slight slope of about six percent. The current location is the least favorable for farming and forestry on the property; so the dwelling's location is does not interfere with farm and forest practices. Much of the rest of the property is low lying with a swale and is often covered in fog during the winter months. The dwelling site is just a little above the fog line thus is a dryer and sunnier area in the winter. The forested area on the property is generally the more sloped area, the northern and western few hundred feet. The existing dwelling location provides minimal impacts on the farm and forest areas on the property. *This criterion is met.*

(c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;

Staff: The dwelling site is limited in size. The amount of land for the dwelling is less than an acre. The dwelling would have impacted about the same amount of land if placed anywhere on site. Placing it near the runway and farm field reduces the amount of forested area thinned for fire breaks.

While the access road is about 700 feet long it serves multiple functions and pre-existed the dwelling. The driveway accesses a farm building, the runway, the farm fields and forest land on the north side of the property. The driveway is used for multiple uses, thus the amount of driveway on the property is minimized. *This criterion is met.*

(d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and

Staff: The dwelling was built a little more than 100 feet north of where it was approved (Exhibit B.3 and B.4). The original approved location was on the existing airfield runway, which was not feasible. The property owner located the dwelling about 90 feet north of the

runway. While the access road on the property is about 700 feet long, it serves multiple functions that pre-existed the dwelling. The driveway accesses a farm building, the runway, the farm fields and forest land on the north side of the property. Through using the existing driveway which was previous used for multiple uses, the amount of driveway on the property is the minimum length needed due previously described physical attributes unique to the property. The fact the driveway existed and was used for multiple purposes supporting the farm and forest uses of the property was not presented in the previous case. *This standard is met.*

3.3.2. MCC 35.2261(B)(3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

- (a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access.**
- (b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the lo-cation of the emergency water source.**

Staff: The application included a Fire Safety Agency Review signed by the Fire District Chief which states the development meets fire apparatus access standards. The tract has a pond which is within 100 feet of Trout Creek Road and can be accessed from the road. *These standards are met.*

4. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Administrative Decision by Planning Director to legalize the dwelling location in the CFU-4 zone. This approval is subject to the conditions of approval established in this report.

5. Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application form	6/9/17
A.2	1	Narrative	6/9/17
A.3	1	Site Plan	6/9/17
A.4	1	Elevation Drawings of the dwelling	6/9/17
A.5	1	Dwelling floor plans	6/9/17
A.6	2	Certificate of Satisfactory Completion for septic system with site plan	6/9/17

A.7	5	Fire District Review with attached site plan and floor plans,	6/9/17
A.8	1	State of Oregon Aeronautics Division Dated June 10. 1974 Airport License No. 268	6/9/17
A.9	1	Narrative Addendum	08/31/17
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	NA
B.2	1	A&T Tax Map with Property Highlighted	NA
B.3	1	2016 Aerial Photo	NA
B.4	1	PRE 1-94 approved site plan for building permit	NA
B.5	1	<i>Soil Survey of Multnomah County</i> map by Soil Conservation Service showing the soil composition for the property	NA