

1600 SE 190th Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF DECISION

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

Case File: T2-2018-10442 **Permit:** Accessory Use Determination

Location: 41900 SE Trout Creek Rd, Corbett
Tax Lot 800, Section 18, Township 1 South, Range 5 East, W.M.
Alt. Acct # R995180030 Property ID#342918

Applicant: Greg Engelgau

Owners: Greg Engelgau

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

Overlays: None

Summary: A request for an Accessory Use Determination to construct an approximately 2400 sq. ft. accessory building (shop). The Accessory Use Determination is necessary given the proposed building would bring the total combined footprint of accessory buildings on the property beyond the 2500 sq. ft. limit.

Decision: Approved with Conditions

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, August 28, 2018 at 4:00 pm.

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.

Issued by:



Chris Liu, Asst. Planner

For: Michael Cerbone, AICP
Planning Director

Date: Tuesday, August 14, 2018



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 Chris Liu, Staff Planner at 503-988-2964 or email chris.liu@multco.us.

Applicable Approval Criteria: Multnomah County Code (MCC): 37.0560 *Code Compliance*, MCC 35.0005 & MCC 35.2275 *Lot of Record*, MCC 35.0565 *Condition of Approval – Accessory Structures*, MCC 35.0570 *Dark Sky Lighting Standards*, MCC 35.2220(T) *Allowed Uses*, MCC 35.2225(L) *Review Uses*, MCC 35.2256 *Forest Practice Setbacks and Fire Safety Zones*, MCC 35.2261 *Development Standards for Dwellings and Structures*, MCC 35.2273 *Access*

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at multco.us/landuse/zoning-codes at the link *Chapter 35: East of the Sandy River Rural Plan Area.*

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. 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.

2. This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690(B). The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. The accessory building shall not be used for any commercial purposes or for storage of items that support a commercial business. If code provisions in the specific zone provide a land use review (i.e. Home Occupation Permit, Review Use, Conditional Use, etc.) to potentially approve such uses, approval must be obtained through the proper procedures for such a review.

a. In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the County's approval, the County may institute a revocation or modification proceeding under MCC 37.0702 *Revocation of Decisions*.

4. The applicant shall ensure all exterior lighting installed on the accessory building are fully shielded with opaque materials and directed downwards. The lighting must be contained within the boundaries of the Lot of Record (the subject property) [MCC 35.0570(C)].

5. The accessory building shall have a fire retardant roof [MCC 35.2261(C)].

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, Chris Liu, at (503) 988-2964, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County Land Use Planning Division and Multnomah County Transportation Division 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.

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: The applicant requests an Accessory Use Determination to construct an approximately 2400 sq. ft. accessory building (shop). The Accessory Use Determination is necessary given the proposed building would bring the total combined footprint of accessory buildings on the property beyond the 2500 sq. ft. limit by approximately 764 ft.

2. Property Description:

Staff: The subject property is located in the Commercial Forest Use -4 zone on SE Trout Creek Rd in East Multnomah County. The surrounding area is primarily zoned Commercial Forest Use, with a few small pockets zoned Rural Residential. The immediate area consists of forest dwellings, associated accessory structures, and forestland.

3. Administration and Procedures:

3.1 CODE COMPLIANCE AND APPLICATIONS

MCC 37.0560: 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: County Land Use Case # LE 6-88 approved an exempt minor partition creating the subject parcel in its current configuration. The existing single-family dwelling and barn are noted in the decision as existing and lawfully established. The subject property is a Lot of Record.

Standard met

3.2 MCC 35.0565 Condition of Approval – Accessory Structures:

Prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner

understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use.

Staff: The property owner recorded the required covenant [Exhibit A.9].

Standard Met.

3.3 MCC 35.0570 Dark Sky Lighting Standards:

(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.

Staff: The applicant states in the narrative [Exhibit A.3] that all light sources will be fully shielded and contained within the boundaries of the Lot of Record. A condition of approval [Condition #4] of this decision requires the applicant meet the above standards.

Standards met through a condition of approval.

4. Commercial Forest Use – 4 Approval Criteria:

4.1 LOT OF RECORD

MCC 35.0005: 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 35.7785.

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.

MCC 35.2275(A): In addition to the Lot of Record definition standards in MCC 35.0005, 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.

Staff: As referenced above, Land Use Case # LE 6-88 approved the subject property in its current configuration. Therefore, the subject property is a Lot of Record.

Criteria met.

4.2 ALLOWED USES

MCC 35.2220(T): Accessory Structures subject to the following:

- (1) The Accessory Structure is customarily accessory or incidental to any use permitted or approved in this district and is a structure identified in the following list:
 - (a) Garages or carports;

 - (d) Workshops;
- (2) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.
- (3) The Accessory Structure may contain one sink.
- (4) The Accessory Structure shall not contain:
 - (a) More than one story;

(b) Cooking Facilities;

(c) A toilet;

(d) Bathing facilities such as a shower or bathing tub;

(e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or

(f) A closet built into a wall.

(5) Compliance with MCC 35.0565 is required.

(6) The combined footprints of all Accessory Buildings on a Lot of Record shall not exceed 2,500 square feet.

(7) An Accessory Structure exceeding any of the Allowed Use provisions above shall be considered through the Review Use provisions.

Staff: The proposed accessory building is an open floor plan, single story, non-plumbed, 40' x 60' shop that will house personal vehicles and personal recreational equipment. The applicant recorded the necessary covenant barring residential uses of the structure per MCC 35.0565 [Exhibit A.9].

Because the proposed building will bring the total combined footprint of accessory buildings on the subject property above the allowed 2500 sq. ft. limit, the structure requires review per the Review Uses in MCC 35.2225. See section 4.3 below.

Standards met.

4.3 REVIEW USES

MCC 35.2225: The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

(L) Structures or uses customarily accessory or incidental to any use permitted or approved in this district, which do not meet the "accessory structures" standard in MCC 35.2220 Allowed Uses, but which meet the following provisions:

(1) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.

(2) The Accessory Structure shall not contain a bathing tub.

(3) Any toilet or bathing facilities, such as a shower, shall be located on the ground floor of any multi-story building.

(4) An Accessory Structure containing a toilet or bathing facilities shall not contain Cooking Facilities.

(5) The Accessory Structure shall not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage.

(7) Compliance with MCC 35.0565 is required.

Staff: The proposed accessory building has an open floor plan, no plumbing, no cooking facilities, and no bed or other sleep aid. The applicant recorded a covenant barring residential uses of the proposed structure as required by MCC 35.2225(L)(7) [Exhibit A.9].

Standards met.

4.3.1 MCC 35.2225(L)(6): The applicant must show that building features or combined building footprints exceeding the Allowed Use provisions are the minimum possible departure from the Allowed Use standards to accommodate the use.

Staff: The subject property currently contains a 36' x 24' (864 sq. ft.) pole barn that houses goats, laying hens, feed, and other related items. Additional animals including horses may be stabled in the building in the future. The combined footprint of the existing barn and the proposed building is 3264 sq. ft., which exceeds the allowable limit by 764 sq. ft. The barn was originally approved as an exempt agricultural building; however, given the applicant's activities do not qualify as a farm use per ORS 215.203, the building was converted to an accessory structure and permitted as such.

Although the applicant does not qualify for a farm use that would exempt the square footage of the barn from the combined 2500 sq. ft. limit for accessory buildings, it is not unreasonable to view the barn as an "agricultural building" for the purposes of this review. The proposed building is a building that the applicant will use solely for storage of personal vehicles and personal recreation equipment. If the proposed building is approved, the applicant would have one (1) "agricultural building" and (1) "recreational building" on the subject property. The excess 764 sq. ft. requested essentially allows the applicant to recoup the space dedicated to agriculture that would otherwise be available for recreational purposes. Given the number and size of the personal recreational vehicles and equipment owned by the applicant that they plan to house in the proposed building, it is reasonable to view the request as a minimal departure from the Allowed Use standards.

Standard met.

4.4 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:

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)
Accessory structures within 100 ft. of the dwelling	N/A	30	30	Primary Required

Staff: The proposed building location is within 100' of the dwelling. In the applicant's submitted site plan, all required setbacks from property lines are met [Exhibit A.4]. Fire Safety Zone requirements are discussed in section 4.4.1 below.

Standard met.

4.4.1 MCC 35.2256(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:

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

Staff: The proposed building is within an existing cleared area; therefore, an adequate fire break is in-place. Slopes for the proposed building location are relatively flat and does not exceed 40 percent as required.

Standards met.

4.4.2 MCC 35.2256(D)(2): Secondary Fire Safety Zone

Staff: A secondary fire safety zone is not required per Table 1 in MCC 35.2256.

Standard met.

4.5 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES

MCC 35.2261: 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 35.0570:

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

(3) Accessory buildings.

(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 35.2261(C);

Staff: Section 4.5.1 below addresses the development standards of MCC 35.2261(C).

Criteria met.

4.5.1 MCC 35.2261(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: A condition of approval [Condition #5] is included in this decision and requires that the building have a fire retardant roof. (1), (2), and (4) above do not apply as the structure is not a mobile home and does not have a chimney.

Criteria met through a condition of approval.

4.6 ACCESS

MCC 35.2273: 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 35.2275(C).

Staff: The subject property abuts SE Trout Creek Rd., a public street.

Standard met.

5. Multnomah County Road Rules (MCRR)

5.1 Staff: County Transportation Planner Scott Adams reviewed the subject property and provided the following findings:

“Driveway/Access Permit

*This site was reviewed per Multnomah County Road Rules (MCRR) 4.000, Access to County Roads, and no access permit was found on file. However, the **Existing Non-Conforming Access (ENCA)** process (MCRR 4.700) allows property owners with pre-existing driveways to update their legal status (unpermitted to permitted) by documentation of a prior land use decision on the property.*

*Transportation staff found **building permit BP-2014-3616**, which contains a site plan showing the existing driveway, and thus an ENCA driveway permit was issued. (permit #81677).”*

6. Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary to approve the Accessory Use Determination for the proposed 40’ x 60’ shop building in the CFU-4 zone. This approval is subject to the conditions of approval established in this report.

7. 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 T2-2018-10442 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	Accessory Use Determination Application Form	5.16.2018
A.2	1	Index of Submitted Forms	5.16.2018
A.3	3	Narrative	5.16.2018
*A.4	2	Site Plan	5.16.2018
A.5	3	Fire Service Agency Review	5.16.2018
A.6	6	Septic Review Certification and Stormwater Certificate	5.16.2018
A.7	24	Title Report	5.16.2018
A.8	12	Copy of Land Use Case # LE 6-88	5.16.2018
A.9	3	Covenant To Prohibit Residential Use of Accessory Structure	5.16.2018
A.10	6	Elevations and Floor Plan of proposed accessory building	5.16.2018
‘B’	#	Staff Exhibits	Date

B.1	4	A&T Property Information for 1S5E18 - 00800	5.16.2018
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	6.14.2018
C.2	3	Opportunity to Comment	6.21.2018
C.3	11	Administrative Decision	8.14.2018

SITE PLAN

OF TAX LOT 800
SITUATED IN THE EAST ONE HALF OF SECTION 18, TOWNSHIP 1
SOUTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, COUNTY
OF MULTNOMAH, STATE OF OREGON.

SCALE: 1"=100'



DATE

APRIL 24, 2018

LEGEND

- = PROPERTY CORNER
- ⊗ = TREE
- ⊕ = POWER POLE
- E — = POWER EXISTING
- PE — = POWER PROPOSED

PARCEL INFORMATION

OWNER: GREG ENGELGAU
CELL: 971-235-0037
EMAIL: GREG@STATEWIDESURVEYING.COM
ADDRESS: 41900 SE TROUT CREEK ROAD
CORBETT, OREGON 97019

MAP/TAX LOT: 1S5E18/00800

ALT ACCOUNT NUMBER: R995180030

PROPERTY ID: R342918

WATERSHED NAME: TROUT CREEK

FIRE DISTRICT: CORBETT RURAL FIRE
PROTECTION DISTRICT #14

RURAL PLAN AREAS: EAST OF SANDY RIVER
RPA

MC_ZONING: EAST OF SANDY RIVER RPA CFU4
— COMMERCIAL FOREST USE

NOTES

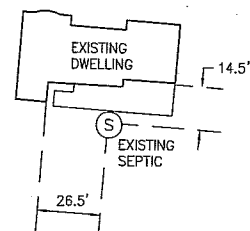
1) BOUNDARY SHOWN IS AS PER SURVEY
NUMBER 50579, MULTNOMAH COUNTY
SURVEY RECORDS.

2) CONTOURS SHOWN ARE AT A INTERVAL
RATE OF 5 FEET AND ARE AS PER
MULTNOMAH COUNTY LAND USE AND
PLANNING GIS WEBSITE.

3) EXISTING BUILDINGS, FENCES,
DRIVEWAYS, AND AG BUILDING ARE
SURVEYED MEASUREMENTS.

DETAIL A

1" = 50'



5/8" IRON ROD
FROM SURVEY
NUMBER 50579

SE TROUT CREEK ROAD
N 78°19'16" W 421.39'

CENTERLINE

5/8" IRON
ROD
FROM
SURVEY
NUMBER
50579

EXISTING
DWELLING

SEE DETAIL A

30' SETBACK

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OWNER: HOOLEY, DANIEL M & HOOLEY, DEANNE J
SITE ADDRESS: 41720 SE TROUT CREEK RD CORBETT,
97019
PROPID: R342945
MAP/TAX LOT: 1S5E18 -01200
ALTACCTNUM: R995180430

OWNER: NOE, CAROLE J
SITE ADDRESS: 41910 SE TROUT CREEK RD CORBETT,
97019
PROPID: R342951
MAP/TAX LOT: 1S5E18 -00900
ALTACCTNUM: R995180510

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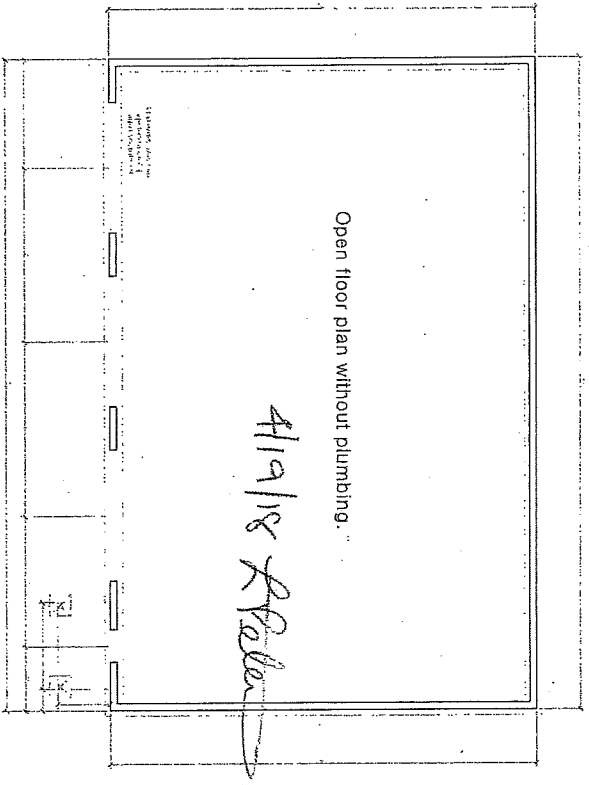
N 88°33'32" E 355.42'

5/8" IRON ROD
FROM SURVEY
NUMBER 50579

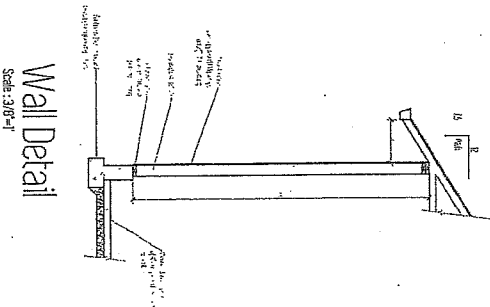
5/8" IRON ROD
FROM SURVEY
NUMBER 50579

OWNER: NOE, CAROLE J
SITE ADDRESS: 41910 SE TROUT CREEK RD CORBETT,
97019
PROPID: R342951
MAP/TAX LOT: 1S5E18 -00900
ALTACCTNUM: R995180510

18-140622-SE



Foundation Plan



Wall Detail
Scale: 3/8"=1'

