

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

NOTICE OF DECISION

Case File: T2-2019-11636

Permits: Significant Environmental Concern

Applicant(s): Steve Hennig **Owner:** Steve Hennig

Location: 18020 NW Johnson Rd, Portland.
Tax Lot 1400, Section 15, Township 2 North, Range 2 West, W.M.
Tax Acct: R972150110

Zoning: Commercial Forest Use – 2 (CFU-2)

Overlays: Significant Environmental Concern for Wildlife Habitat (SEC-h)

Proposal Summary: Replace existing dwelling in CFU-2 Zone with manufactured dwelling within 100 feet of the existing dwelling. The applicant has applied for a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit for the project and review of Forest Development Standards.

Decision: Approved with Conditions

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is **Friday May 17, 2019**, at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, Katie Skakel, Senior Planner at (503) 988-0202 (8 am to 4 pm Tuesday through Friday) or katie.skakel@multco.us

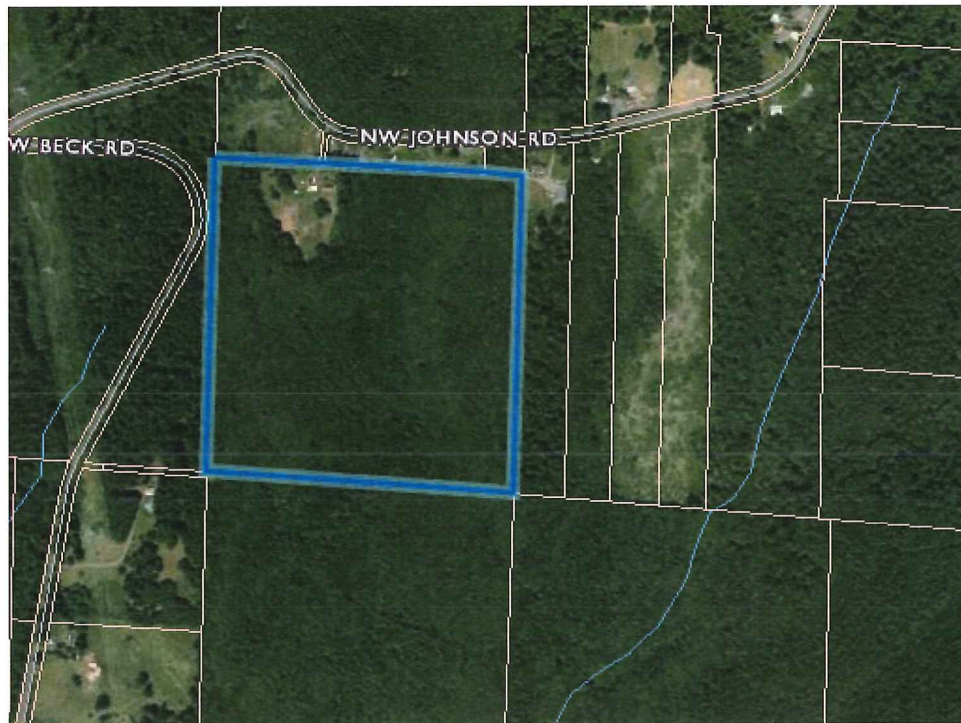
Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued By:


Katie Skakel, Senior Planner

For: Adam Barber, Interim
Planning Director

Date: 5/3/2019



Applicable Approval Criteria: Multnomah County Code (MCC):

MCC 39.0005 Definitions: Habitable Dwelling, Lawfully Established Dwelling and Lot of Record

MCC 39.2225(A) Review Uses

MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones

MCC 39.4115 Development Standards for Dwellings and Structures

MCC 39.2275 Lot of Record

MCC 39.5500 Uses; SEC Permit Required

MCC 39.5860 Application for SEC Permit

MCC 39.4570 Criteria for Approval of SEC-h Permit -Wildlife Habitat

Multnomah County Road Rules (MCRR)

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office or by visiting our website at multco.us/landuse/zoning-codes under the link Chapter 39: The Multnomah County Road Rules can be obtained by contacting our office or online at multco.us/transportation-planning/plans-and-documents under the link Multnomah County Road Rules.

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 four years from the date the decision is final pursuant to MCC 39.1185 (C) as applicable. **Note:** The property owner may request to extend the timeframe within which this

permit is valid, as provided under MCC 39.1185 (C), as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. Prior to issuance of the Certification of Occupancy, the property owner(s) shall establish and maintain a Primary Fire Safety Zone as described below:
 - 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.
4. The property owner(s) shall ensure that exterior lighting is directed downward and sited, hooded and shielded.
 - 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.
 - The lighting must be contained within the boundaries of the Lot of Record on which it is located. [MCC 39.6850]
5. In the case of a replacement dwelling, the existing dwelling is removed, demolished or converted to an allowed nonresidential use within three months of the completion or occupancy of the replacement dwelling. [MCC 39.4075 (A.1)].
6. The nuisance plants (Attachment A.) shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property. [MCC 39.5580]]
7. A condition of this permit will require that the applicant obtain retroactive building permits for the as for the existing carport within 6 months of the completion or occupancy of the replacement dwelling (Chapter 39.3030).
8. By June 15, 2019, the property owners shall plant (15) 3-4 foot native trees as shown on Exhibit (D) and commence removal of the blackberries within the SEC-h overlay zone. Blackberry removal shall be by hand with no ground disturbing activities or machinery in the SEC-h overlay. Active replanting of exposed soils shall occur where blackberries are removed and shall utilize native vegetation or seeds.
9. The fifteen (15) native trees shall be maintained in a living state. If they die, are damaged, removed or become diseased they shall be replanted by the next growing season with trees that are at least 5-gallons in size.
10. Prior to issuance of sign-off for building plan check, the County's Covenant to Prohibit Residential Use of Accessory Structure document. Documentation shall be provided to Land Use Planning before sign off. (Attachment B).

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off by land use planning, the applicant or property owner shall complete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, "Prior to land use sign-off for building plan check..." Be ready to demonstrate compliance with the conditions.

2. Contact the City of Portland, Bureau of Development Services, On-Site Sanitation at 503-823-6892 or e-mail septic@portlandoregon.gov for information on how to complete the Septic Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan. Included in your materials for a Building Permit signoff, there must be a Septic Review Certificate that includes a site plan and floor plan both signed by one of the sanitarians.
3. Contact Katie Skakel, Planner at (503) 988-0213 (8 am to 4 pm Tuesday through Friday) or katie.skakel@multco.us, for an appointment for review of the conditions of approval and to sign the building permit plans. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department. At the time of this review, Land Use Planning will collect additional fees.

The above must be completed before the applicant can obtain building permits from the City of Portland. Five (5) sets each of the building plans with site plan (attached to the front of each set of plans) are needed for building permit sign off. We also need the completed signed Fire District Review and Septic Review form both with a signed site plan and signed floor plan. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.0 Project Description:

Staff: Request to replace existing dwelling in CFU-2 Zone which has an SEC-h overlay requiring a Wildlife Conservation Plan.

2.0 Property Description & History:

Staff: The property can be identified as Tax Lot 1400 of Multnomah County Assessor’s Map Township 2 North, Range 2 West, Section 15. is located off of NW Johnson Road by approximately 154 feet and is accessed by a narrow 20 foot wide public right-of-way which is a private easement. . The property is located within the Commercial Forest Use District (CFU-2) in the West Hills Rural Area. The entire property is within the Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay. There is an existing single-family dwelling which was first taxed in 1933 as shown on records from Multnomah County Department of Assessment, Records, and Taxations. There are no building permits associated with the property. The existing home was constructed prior to Multnomah County establishing zoning and building department regulations.

The Multnomah County Department of Assessment, Records, and Taxation indicate that Roxanne Rattay and Steven Hennig are current property owners. The property is 40.06 acres and currently contains a single-family dwelling, a 20’ x 24’ metal carport (equipment storage) and 12’ x 16’ greenhouse which is proposed to be demolished. The property has a shallow slope less than 10 percent on east side of the road in the location of the proposed dwelling and at least thirty feet from the dwelling (Exhibit A.2) . The slope drops 10 to 25 % south and east of the proposed dwelling beyond the 30 foot primary fire safety zone. The proposed dwelling location is cleared with few remaining trees and blackberry bushes. To the south and east of the dwelling site the property is heavily forested.

The subject property fronts onto a narrow 20’ public right of way. The driveway’s location from the subject property has been set by the existing location of the right of way. The driveway cannot be moved without an easement from an adjacent property. The property to the northeast of the subject parcel has a

driveway onto NW Johnson Road. The property to the northwest also accesses onto NW Johnson Road. No other property takes access onto the small 20' public right of way. .

3.0 Code Compliance and Applications

MCC § 39. 3030 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.

Staff: There are no known code violations on subject property. *This standard is met.*

4.0 Commercial Forest Use – Applicable Criteria

4.1 MCC 39.4070 Allowed Uses. The following uses and their accessory uses are allowed, subject to applicable supplementary regulations contained in MCC Chapter 39.

(T) Accessory Structure subject to the following:

- (1) The accessory structure is customarily or incidental to any use permitted or approved in this base zone, is located within 100 feet of the dwelling and is a structure identified in the following list:
 - (a) Garages and carports;
 - (b) pump house;
 - (c) Gardenshed;
 - (d) Workshops;
 - (e) Storage sheds, including shipping containers used for storage only;
 - (f) Greenhouses;
 - (g) Woodsheds;
 - (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage tack storage, and indoor exercise area;
 - (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;
 - (j) Sport court;
 - (k) Gazebos, pergolas, and detached decks;
 - (l) Fences, gates, or gate support structure; and
 - (m) Mechanical equipment such as air conditioning units, heat pumps, and electrical boxes; and
 - (n) Similar structures.

Staff: The applicant has demonstrated that the accessory buildings are used as a carport and storage of equipment for the Forest property. A condition of approval will be included that a covenant be recorded indicating that the conversion of the existing building can not be used or approved as a dwelling.

(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 39.8860 is required.

Staff: The applicant has provided a floor plan (Exhibit A.12) indicating that the proposed accessory structure (the to be converted single family dwelling); that all features above - including the toilet, cabinets, kitchen, bedroom, closets built into a wall will be removed and that the structure will be converted to personal storage. As a condition of approval, applicant shall record a covenant with the County Records that states that the owners understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. *With condition, criteria can be met.*

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

Staff: Based on site plan, review of aerial photography, and staff site visit the combined footprints of all accessory buildings do not exceed 2,500 sq. ft. *Criteria met.*

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

Staff: The accessory structure which is an unpermitted carport (24' x 24' which has three sides and is a total of 568 sq ft) was built according to applicant in 2010 without a Building Permit. The proposed accessory building is about 20 feet away from the existing home (36' x 28' and totals 608 sq ft) and will be converted to an accessory use by the applicant. The total request for accessory buildings is 1,176 sq ft which is below the 2,500 sq ft. The applicant has submitted the floor plan of existing single family dwelling and shows the proposal to convert to accessory use to an open storage plan (Exhibit A.12). A condition of this permit will require that the applicant obtain building permits for the new manufactured dwelling as well as receiving a retroactive Building Permit for the existing carport and conversion of existing house into an accessory building to be used as storage. *With conditions, criteria can be met.*

4.2 Review Uses. MCC 39.4075 The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

(A) Replacement or restoration of an existing lawfully established habitable dwelling more than 100 feet from the existing dwelling.

(1) In the case of a replacement dwelling, the existing dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the completion or occupancy of the replacement dwelling.

MCC 33.2000 Definitions – 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.

Staff: The proposed replacement dwelling will be on a parcel with an existing dwelling established in 1933(Exhibit A.2). The application includes photos to help demonstrate the existing dwelling has the required habitable dwelling features listed in (a) through (d) (Exhibit A.3). While the building is deteriorated, it has the basic components listed above to qualify as a “habitable dwelling”. Photographs of the dwelling show that the exterior walls and roof structure are intact. The dwelling has electrical outlets and sockets for lighting and shows that electricity is in place as of 12/4/2018. Photos show a furnace unit in the basement for heat. The kitchen has a kitchen sink. The bathroom has a bathtub and toilet and a sink. The indoor plumbing is connected to a septic system as shown on the septic review form (Exhibit A.8). The subject dwelling qualifies as a “Habitable Dwelling”. *Criteria are met.*

5.0 FOREST DEVELOPMENT STANDARDS REVIEW

5.5.1 Forest Practices Setbacks and Fire Safety Zones

MCC 39.4110 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	Non Conforming 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(s) if less than 30 ft. to property line	30	30	Primary required to the extent possible within the existing setbacks
Other Accessory structures	N/A	30	130	Primary and secondary required

Staff: According to submitted site plan (Exhibit A.2), the proposed replacement dwelling is 77 feet from the existing house. The existing detached garage will be approximately 67 feet from proposed house location. The proposed location of the new manufactured dwelling, which is within 100 feet of existing dwelling, is 30 feet from all property lines, and meets fire safety zone requirements which state that a primary fire safety zone is a fire break extending of 30 feet in all

directions around a dwelling or structure. The proposed site plan shows that the carport (which will require a retroactive Building Permit) will be retained and meets the primary and secondary setback as it is 130 feet from all other setbacks and thirty feet from front yard setback and possible to retain the existing single family residence which is proposed to be converted to an accessory use. *This criterion has been met.*

5.2 MCC 39.4110(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 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.

(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:

Staff: The proposed manufactured home and the existing carport is within 100-ft of the existing dwelling in order to meet the forest practice setbacks (Exhibit A.2). The applicant has indicated on the site plan that the greenhouse will be removed and that the pump house was shown on the site plan in error. The location of the proposed new manufactured dwelling meets the requirements for the primary fire safety zone in (a) above, in that the 30 feet fire break in all directions as it is mostly cleared area, except for the accessory carport structure; and (b) above as there is not an area with 10% or greater slope from the dwelling. *This criterion has been met.*

5.3 MCC 39.4115 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 39.6850:

(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 development standards of MCC 39.4115 (C).

Staff: The proposed dwelling is within 100 feet from the existing dwelling, thus proposed dwelling must meet the criterion in A.2 (c) which requires that the dwelling be located within 100 feet of the original dwelling and meet MCC 39.4115 (C) as outlined below.

(3) Accessory buildings.

(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 39.4115(C).

(C) The dwelling or structure shall:

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 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: The proposed replacement structure is a manufactured dwelling which is 77 ft from the existing single family dwelling (Exhibit A.2). The manufactured home shall have a fire retardant roof, and a spark arrester if a chimney is installed in the new manufactured single family dwelling and comply with standards of MCC 39.4115 (C). The accessory structure which is an unpermitted carport (24' x 24' and three sides, totalling 568 sq ft) built which, according to applicant was built in 2010 - is about 20 feet away from the existing home (56' x 28' totalling 1,512 sq ft) which will be converted to an accessory use by the applicant. The total request for accessory buildings is 2,080 sq ft which is below the 2,500 sq ft. The applicant has submitted the floor plan of existing single family dwelling and shows the proposal to convert to accessory use to an open storage plan (Exhibit A.12). A condition of this permit will require that the applicant obtain building permits for the new manufactured dwelling as well as receiving a retroactive Building Permit for the existing carport and conversion of existing house into an accessory building to be used as storage. *This standard is met through implementing conditions of approval.*

(D) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 1 stream as defined in the Forest Practices Rules.

- (1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**
- (2) Evidence of a domestic water supply means:**
 - (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or**
 - (b) A water use permit issued by the Water Resources Department for the use described in the application; or**
 - (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

Staff: The subject property has an existing well established in 1971 for domestic water supply which is from a source authorized in accordance with the Department of Water Resources. Water Resources Department has informed us that domestic use of well water does not need a water right. *This standard is met.*

5.4 CFU-2 LOT OF RECORD COMMERCIAL FOREST USE (CFU).

MCC MCC 39.0005 Definitions - 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 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was

created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

Staff: The submittal included a deed signed on February 14, 1938 in Book 436, Page 236 and a deed signed on the 18th day of May 2017 (and recorded June 5, 2017). The current deed matches the original deed (Exhibit A.4). Given the property met the zone and land division requirements on December 7, 1975, the property is a Lot of Record. *This standard is met.*

MCC 39.3030 Lot of Record – Commercial Forest Use – 2 (CFU-2)

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 district a Lot of Record is either:

(A) 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 an 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.

*** * ***

(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.

Staff: The subject parcel dimensions are approximately 1,284 feet by 300 feet (Exhibit A.3) for a total area of 40.06 acres (area within the road are included per MCC 39.3005). All of the properties that are adjacent to this property exceed 19 acres in size, therefore there would not have been a requirement for this property to aggregate with any other property and there have been no aggregation. The subject property meets the standards as not required to be aggregated to any other parcel. The subject property meets the lot of record standards, thus it is a lot of record.

6.0 SEC-H DEVELOPMENT STANDARDS REVIEW

§ MCC 39.5860 Criteria For Approval of SEC-H Permit – Wildlife Habitat

MCC 39.5860 (B)(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.

Staff: As shown on Exhibit A.1, the proposed manufactured dwelling and carport and landscaping are located within an existing cleared area. The proposed landscaping will occur near the proposed manufactured home and will not use nuisance plants listed in MCC 39.5580 (Table 1). The applicant does not propose to remove any trees to place manufactured dwelling as the location is in an already cleared area near the existing single family dwelling. The majority of the parcel is forested. *Standard met.*

MCC 39.5860 (B)(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: As shown in Exhibit A.1, the proposed location of the manufactured home, carport, and proposed accessory structure will be located within 200 feet of the public road. *Standard met.*

MCC 39.5860 (B)(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Staff: As shown on Exhibit A.1, the existing driveway is 154 ft in length. *Standard is met.*

MCC 39.5860 (B)(4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

(a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or

Staff: The subject property fronts onto a narrow 20' public right of way. The driveway's location from the subject property has been set by the existing location of the right of way. It cannot be moved unless an easement exists across the adjacent properties. The property to the northeast of the subject parcel has a driveway onto NW Johnson Road. The property to the northwest also accesses onto NW Johnson Road. No other property takes access onto the small 20' public right of way. No clustering of driveways is required for this site. *Standard met.*

MCC 39.5860 (B)(5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

Staff: As shown on Exhibit A.3, the dwelling on the Tax Lot 1200 is 38' from its southern side property line. The proposed dwelling is located within 52' from the shared property line with Tax Lot 1200 and the proposed dwelling is within 200' of the existing dwelling on Tax Lot 1200. Since this standard can not be met and a Wildlife Conservation Plan has been submitted in accordance with MCC 39.5860 (C) below in order to address this criteria.

MCC 39.0005 defines Lot Line (side) as "Any lot line not a front or rear lot line. MCC 39.0005 defines Lot Line (front):

"In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot. A minimum front lot line length is a dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards.

The north property line separates the subject lot from the street, it is also the most closest to parallel with the street which serves the lot.

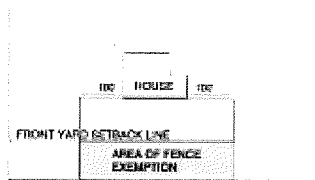
MCC 39.005 defines Lot Line (rear) as "The line dividing one lot from another and on the opposite

side of the lot from the front lot line..." therefore the southern property line is the rear property line. The eastern and western property lines are found to be the Side Property Line. There is an existing dwelling located within the 200 feet of the east Side Property Line which requires the home to be placed within 300 feet of the east property line. The applicant is proposing to locate the dwelling more than 300 feet from the east property line. *The criterion is not met.*

MCC 39.5860 (B)(6) Fencing within a required setback from a public road shall meet the following criteria:

- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.
- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.
- (c) Cyclone, woven wire, and chain link fences are prohibited.
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.
- (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.

**FIGURE 33.4570A FENCE
EXEMPTION AREA**



- (f) Fencing standards do not apply where needed for security of utility facilities.

Staff: There is an existing three-rail fence with wire mesh that is 42 inches in height with a minimum 17 inch gap between the ground and the bottom of the fence and runs along the front property line but it is located on neighbor's property. *This criteria has been met.*

MCC 39.5860 (B)(7) The listed nuisance plants(Attachment A) in this section shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:

Staff: *Through a condition, standard can be met.*

MCC 39.5860 (C) Wildlife Conservation Plan. An applicant shall proposed wildlife conservation plan if one of two situations exist.

- (1) The applicant cannot meet the development standards in subsection (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or
- (2) The applicant can meet the development standards of subsection (B), but demonstrates that the alternative conservation measures exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).

Staff: The proposed dwelling is predominately located more than 200 feet from the public road, thus the development standards of Section (B) are not met. The development met all the other standards of Section (B). The septic system drainfield is located to the rear of the property. The

placement of the manufactured home is proposed to be built in an existing cleared area to the west of the existing dwelling. The proposed location provides for the primary fire safety zone. Several physical characteristics unique to the property coming come together to support the proposed location of the dwelling, while only partially within 200 from the road, not predominately, all these factors lead to it being minimum departure from the standards required in order to allow the use.

This standard is met.

(3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), 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.

Staff: The proposed measures are included to minimize the 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. *This standard 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 proposed dwelling site is located in a pre-existing cleared area that is not greater than one acre. *This standard is met.*

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

Staff: No fencing is proposed and existing fence shown on the site plan is along the front of property but it is along the neighbor's property. *This standard 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.

Staff: The only cleared area on the property is the developed area in the front of the parcel. There is no newly cleared area. *This standard is met.*

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

Staff: There is no stream riparian areas on the property. *This standard is not applicable*

(4) For a property meeting subsection (C)(1) above, the applicant may utilize the following mitigation measures for additions instead of providing a separate wildlife conservation plan:

(a) Each tree removed to construct the proposed development shall be replaced on a one to one ratio with a six foot tall native tree.

(b) For each 100 square feet of new building area, the property owner shall plant, one, 3-4 foot tall native tree or three native tree seedlings. The trees shall be planted to improve wildlife habitat first within non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas before being placed in forested areas or

adjacent to landscaped yards.

(c) Existing fencing located in the front yard adjacent to a public road shall be consistent with subsection (B)(6).

(d) For non-forested “cleared” areas that require nuisance plant removal pursuant to subsection (B)(7), the property owner shall set a specific date for the work to be completed and the area replanted with native vegetation. The time frame must be within two years from the date of the permit.

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

1. *Mitigation Option 1.* In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the development site. Trees that are removed from the development site shall be replaced as shown in the table below. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Tree Replacement Table:

Size of tree to be removed (inches in diameter)	Number of trees and shrubs to be planted
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

(e) Location of mitigation area. All vegetation shall be planted within the mitigation area located on the same Lot of Record as the development and shall be located within the SEC-h overlay or in an area contiguous to the SEC-h overlay; provided, however, that if the vegetation is planted outside of the SEC-h overlay then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. (Note: an off-site mitigation option is provided in a streamlined discretionary review process). The mitigation area shall first be located within any existing non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas and last in forested areas or adjacent to landscaped yards.

Staff: Multnomah County Code 39.5860 Defines forest area as, “an area that has at least 75 % crown closure, or 80 square feet of basal area per acre. The total basal area per acre does not meet the definition of forested area and it appears based on aerial photography and applicant’s site plan and narrative that the development is occurring in the non-forested cleared areas. The applicant states that there are no trees being removed. For each 100 sq ft of new building area, 3-4 foot natives will be planted within the non-forested cleared area contiguous to the forest area. The proposed manufactured home is 27’ by 56’ totaling 1,512 sq. ft., based on one tree per 100 sq. ft of building, 15 trees will be planted.

- (f) Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.
- (g) Trees shall not be used as anchors for stabilizing construction equipment
- (h) Native soils disturbed during development shall be conserved on the property.
- (i) An erosion and sediment control plan shall be prepared in compliance with the Grading and Erosion Control standards set forth in MCC 39.6200 through MCC 39.6235.
- (j) **Plant size.** Replacement trees shall be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs shall be in at least a 1-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.
- (k) **Plant spacing.** Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on-center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on-center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.
- (l) **Plant diversity.** Shrubs shall consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.
- (m) **Nuisance plants.** Any nuisance plants listed in MCC 39.5580 Table 1 shall be removed within the mitigation area prior to planting.
- (n) **Planting schedule.** The planting date shall occur within one year following the approval of the application.
- (o) **Monitoring and reporting.** Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

Staff: The proposed new manufactured home is 27' by 56' totalling 1,512 sq ft. For each 100 square feet of new building area, the property owner shall plant, one 3-4 foot tall native tree or three native tree seedlings which total 15 trees which shall be planted to improve wildlife habitat first within non-forested cleared areas contiguous to forested areas. *This criterion is met.*

7.0 CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Type II SEC-h permit for a replacement dwelling in the Commercial Forest Use – 2 zone. This approval is subject to the conditions of approval established in this report.

8.0 EXHIBITS

'A' Applicant's Exhibits

'B' Staff Exhibits

Exhibit A.	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	10	Application Form	2/25/2019

A.2	1	Applicant's Site Plan	2/25/2019
A.3	9	Applicant's Photos showing existing dwelling "habitable dwelling" features	2/25/2019
A.4	7	Applicant's Exhibit "A" Deed recorded February 14, 1938 in Book 436 on Page 236 and Statutory Bargain and Sale Deed 06/05/2017	2/25/2019
A.5	2	Applicant's Exhibit 4: Fire District Review	2/25/2019
A.6	16	Applicant's Storm Water Certification completed, stamped and signed by Kelly Grover , PE	8/17/2018
A.7	1	Applicant's Proposed dwelling floor plans	2/25/2019
A.8	4	Applicant's Septic Review Certification	2/25/2019
A.9	6	Transportation Planning Review showing access permit #81888	2/25/2019
A.10	1	Applicant's Wildlife Conservation Plan	2/25/2019
A.11	1	Replacement Dwelling Agreement	2/25/2019
A.12	2	Floor Plan of existing single family dwelling and proposal to convert to accessory use which shows only open storage floor plan.	2/25/2019
B.	#	Staff Exhibits	Date
B.1	2	County Assessment Property Information	NA
B.2	1	County Assessment Map	NA
B.3	1	2016 Aerial Photo	NA
B.4	1	Earliest aerial photo 10/1977	NA
B.5	2	Opportunity to Comment	March 20, 2019