

## NOTICE OF DECISION

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**Case File:** T2-2018-10965 & T2-2018-10966

**Permit:** New Forest Dwelling, Significant Environmental Concern, Exception to the Secondary Fire Safety Zone, Property Line Adjustment.

**Applicant(s):** Dorothy Cofield, Cofield Law Office      **Owner(s):** Ari Ampudia

**Tract 1:** 5947 NW Cornell Road  
Tax Lot 200, Section 31BA, Township 1 North, Range 1 East, W.M.  
Alternate Account #R590301830      Property ID #R223172

**Tract 2:** 5849 NW Cornell Road  
Tax Lot 500, Section 31BA, Township 1 North, Range 1 East, W.M.  
Alternate Account #R590301760      Property ID #R223171

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

**Overlays:** Significant Environmental Concern - wildlife habitat (SEC-h); Streams (SEC-s); Hillside Development (HD)

**Proposal Summary:** The applicant in T2-2018-10966 proposes a property line adjustment (PLA) to transfer 0.40 of an acre (17,424 sq. ft.) from Tract 1 to Tract 2. The applicant in T2-2018-10965 proposes a new forest dwelling through the template test option. If approved, the existing dwelling on Tract 2 can be legalized through the building permit process or a new dwelling constructed on the tract in the CFU-2 zone. The application includes a Significant Environmental Concern permit for wildlife habitat (SEC-h) and streams (SEC-s).

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**Decision:** Approved with Conditions

**This decisions are final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal for either application is Thursday, August 1, 2019 at 4:00 pm.**

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**Opportunity to Review the Record:** The complete case files, 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, contact Chris Liu, Staff Planner at 503-988-2964 or at [chris.liu@multco.us](mailto:chris.liu@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.

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Issued By: Chris Liu  
Chris Liu, Assistant Planner

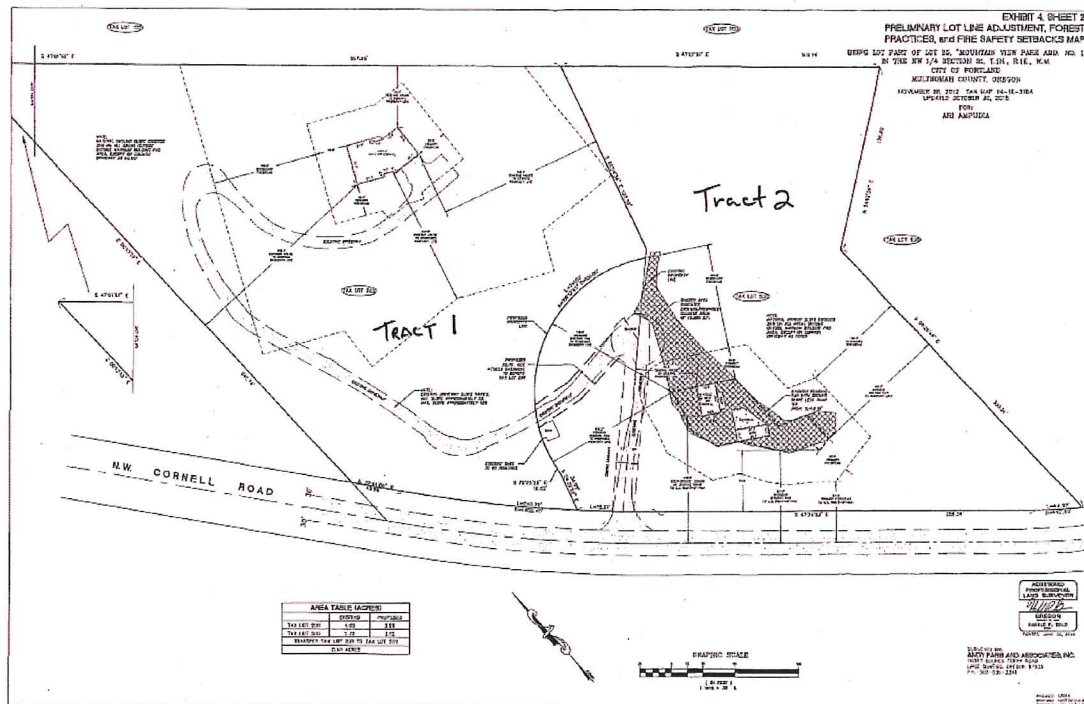
For: Adam Barber  
Interim Planning Director

Date: Thursday, July 18, 2019

Instrument Number for Recording  
Purposes:  
Tract 1: #2011-058249  
Tract 2: #2017-141617

## Vicinity Map

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### Applicable Approval Criteria: Multnomah County Code (MCC):

*General Provisions* - MCC 37.0560 Code Compliance, MCC 33.2275 Lot of Record, MCC 33.0005 Definitions, Lot of Record, MCC 33.0570 Dark Sky Lighting Standards

*Property Line Adjustment* - MCC 33.2225(G) Review Uses - Lot Line Adjustments, MCC 33.2256 Forest Practices Setbacks and Fire Safety Zones, MCC 33.2263 Lot Size Requirements, MCC 33.2270 Lot Line Adjustment; Property Line Adjustment, MCC 33.7790 Property Line Adjustment,

*New Forest Dwelling* - MCC 33.2225(B)(2), MCC 33.2240(A) Template Dwelling, MCC 33.2250 Building Height, MCC 33.2256 Forest Practices Setbacks and Fire Safety Zones, MCC 33.2261 Development Standards for Dwellings, MCC 33.2285 Off-Street Parking, MCC 33.2307 SFD Covenant

*Exception to Secondary Fire Safety Zone* – MCC 33.2310

*Significant Environmental Concern* – (SEC-h) MCC 33.4520 Application for SEC Permit, MCC 33.4567 SEC-h Clear and Objective Standards, MCC 33.4570 Criteria for Approval of Wildlife Habitat; (SEC-s) – MCC 33.4520 Application for SEC Permit, MCC 33.4575 Criteria for Approval of SEC Permit - Streams

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-304 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link *Chapter 33: West Hills Rural Plan Area* and *Chapter 37: Administration & Procedures*.

## **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. The land use permit, T2-2018-10966 for the property line adjustment **expires** as detailed in (a) below:
  - (a) When the final deeds or plat for the proposed Property Line Adjustment has not been recorded with the county recorder within **two years of the date of the final decision and all specifications and conditions of approval for land use permit, T2-2018-10966 have not been met within that two year time period**. Applicable conditions of approval for the PLA are: Condition 2 and Condition 4. [MCC 37.0690(A)]
3. The land use permit, T2-2018-10965 for the new forest dwelling **expires** as detailed in (a) and (b) below:
  - (a) When construction has not commenced within **four years of the date of the final decision**. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. [MCC 37.0690(C)]
  - (b) When the structure has not been completed within **four years of the date of commencement of construction**. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval. [MCC 37.0690(C)]

**Note:** The property owner may request to extend the timeframe within which these two permits are valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.
4. The applicant shall follow the steps listed in (a) and (b) below to complete the property line adjustment:
  - (a) Prior to County Land Use Planning approval of the legal descriptions and survey for the property line adjustment:
    - i. Submit copies of the draft deeds, legal descriptions, and survey to County Land Use Planning for review prior to their recordation to ensure compliance with this decision.
  - (b) Once County Land Use Planning approves the draft deeds, legal descriptions and survey:

- i. Record the new deeds, legal descriptions and survey for the property line adjustment with the County Recorder within the two year time period.
  - ii. Submit a copy of the recorded deeds, legal descriptions, survey, and pages 1 through 6 of this Notice of Decision to County Land Use Planning.
- (c) No additional lots or parcels shall be created through the recordation of the property line adjustment. [MCC 33.7790(A) & MCC 37.0690(A)]
- 5. Prior to Land Use Planning review and sign-off for a building permit for the new forest dwelling, the property owners or their representative shall:
  - (a) Record pages 1 through 6 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 37.0670]
  - (b) Record a covenant, conditions, and restrictions form with the County Recorder specifying the following:
    - i. The landowner and the landowner's successors in interest are prohibited from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.
    - ii. That the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices. [MCC 33.2240]
  - (c) If the applicant decides to build the 5,412 sq. ft. dwelling, they shall obtain an Erosion and Sediment Control Permit, complete a new Stormwater Certificate, and complete a new Septic Review Certification for the proposed expanded footprint.
  - (d) If the applicant decides to build the 5,412 sq. ft. dwelling, a mitigation plan meeting the requirements of MCC 33.4575 shall be provided for the protected intermittent stream along the current western property line. The plan will need to demonstrate that the project enhances the riparian corridor on a 1 sq. ft. to 1 sq. ft. basis. The plan shall have the required information contained in MCC 33.4575.
  - (e) If any portion of the proposed expanded footprint for the 5,412 sq. ft. dwelling is within the Geologic Hazard (formerly Slope Hazard) overlay as shown on County Maps or any portion of the dwelling will occur on 25% or more slopes, the applicant shall demonstrate that the development is exempt from obtaining a Geologic Hazards permit or obtain a Geologic Hazard Permit (formerly known as a Hillside Development Permit) and it must be obtained prior to building plan review and sign-off. [MCC 33.5505/ MCC 39.5075]
  - (f) Submit a stocking report for the property to Land Use Planning. [MCC 33.2261]
  - (g) Provide documentation from the water master that the proposed spring is an allowable water source for the proposed dwelling. [MCC 33.2240]
  - (h) If the existing accessory building is not removed from the property, the applicant must demonstrate that the accessory structure complies with MCC 33.2310(B)(6) – (B)(8).



(i) The Building Plans shall contain the following:

- i. Details on the proposed lighting to demonstrate compliance with MCC 33.0570 Dark Sky Lighting Standards.
- ii. Details demonstrating the dwelling does not exceed the maximum structure height of 35 feet. [MCC 33.2250]
- iii. Details demonstrating the dwelling will have a fire retardant roof and a spark arrester on any chimney. [MCC 33.2261]
- iv. Details demonstrating that the structure will be constructed in accordance the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended. [MCC 33.2261]
- v. Details demonstrating that the dwelling will have a central station monitored 13D sprinkler system. [MCC 33.2261]
- vi. Details demonstrating the applicant has addressed the requirements determined by Tualatin Valley Fire & Rescue.

(j) The Site Plans shall contain the following:

- i. Details demonstrating the proposal meets the required Primary Fire Safety zones surrounding the dwelling. The plan shall clearly designate the location of the required Primary fire safety zones on the property. [MCC 33.2256]

6. The property owner shall:

- (a) Establish and maintain a 130 ft. primary fire safety zone to the West and East of the dwelling. Establish and maintain a 105 ft. primary fire safety zone to the South of the dwelling. Establish and maintain a 30 ft. primary fire safety zone on the north side of the dwelling. Trees within the primary fire safety zone shall be spaced with greater than 15 feet between crowns. The Trees shall 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. Since the Exception to the Secondary Fire Safety zone has been granted, it is the property owners choice if they choose to implement it on any portion of the property. [MCC 33.2256]
- (b) Access roadways shall be approved; developed and maintained in accordance with the requirements of Tualatin Valley Fire & Rescue. [MCC 33.2261]
- (c) 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 location of the emergency water source. [MCC 33.2261]
- (d) All storm water generated by a development shall be collected and disposed of onsite into dry wells or by other best management practice methods which emphasize groundwater recharge and reduce peak stream flows. [MCC 33.4575(E)(2)]
- (e) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area. [MCC 33.4575(E)(3)]

- (f) Any trees over 6" in caliper that are removed as a result of any development shall be replaced by any combination of native species whose combined caliper is equivalent to that of the trees removed. [MCC 33.4575(E)(4)]
  - (g) Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area. [MCC 33.4575(E)(6)]
  - (h) The planting of any invasive non-native or noxious vegetation as listed in MCC 33.4570(B)(7) and MCC 33.4570(A)(4) is prohibited. A list of native plants can be found in the latest. [MCC 33.4575(F)(1)]
  - (i) Outside storage of hazardous materials as determined by DEQ is prohibited, unless such storage began before the effective date of this ordinance; or, unless such storage is contained and approved during development review. [MCC 33.4575(F)(2)]
  - (j) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure. [MCC 33.2310(B)(3)]. If any fencing is proposed, the applicant must follow the relevant procedures to demonstrate compliance with MCC 33.4570(B).
7. The applicant shall provide to Land Use Planning a copy of the finalized building permit and certificate of occupancy issued by the City of Portland within 30 days of their completion.

**Note:** Once this decision is final and the property line adjustment completed, 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 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 Right-of-Way Permits at [row.permits@multco.us](mailto:row.permits@multco.us), or schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/>, or at 503-988-3582 for an appointment to review your plans, obtain your access permit, and satisfy any other requirements. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation at 503-823-6892 or e-mail [septic@portlandoregon.gov](mailto:septic@portlandoregon.gov) for information on how to complete the Septic Evaluation or 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.
4. Contact Staff Planner, Chris Liu, at 503-988-2964 or [chris.liu@multco.us](mailto:chris.liu@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 site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

**Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **Findings of Fact**

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

### **1.0 PROJECT DESCRIPTION:**

**Staff:** The property line adjustment application, T2-2018-10966 is to shift the existing western property line of Tract 2 to the west to allow for the existing non-permitted dwelling to be legalized or allow for the removal of the existing dwelling and subsequent establishment of a new dwelling on Tract 2.

The application, T2-2018-10965 is for a new forest dwelling utilizing the template dwelling option, an Exception to the Secondary Fire Safety zone and a Significant Environmental Concern permit for wildlife habitat (SEC-h) and streams (SEC-s). Once the two applications are approved and necessary steps to complete the property line adjustment are completed, the applicant would be able to pursue building permits and related development permits to legalize the existing single-family dwelling or remove the existing dwelling and establish a new dwelling on Tract 2.

### **2.0 PROPERTY DESCRIPTION & HISTORY:**

**Staff:** The subject properties are located in rural West Multnomah County in the Commercial Forest Use – 2 (CFU-2) zone. The subject properties are outside of the Metro Urban Growth Boundary and adjacent to the Forest Park Area in the City of Portland.

The subject property previously contained an existing single-family dwelling that was constructed in 1936. Actions were taken that caused the loss of the dwelling right. These two applications, if approved, will allow the property owner the right to pursue permits to legalize the existing non-permitted dwelling or remove the existing dwelling and establish a new forest dwelling on the property. A small accessory building exists to the southeast of the existing, non-permitted dwelling.

### **3.0 GENERAL PROVISIONS:**

#### **3.1 MCC 37.0560: Code Compliance And Applications**

**Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.**

**(A) A permit or other approval, including building permit applications, may be authorized if:**



- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

**(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.**

**Staff:** 5849 NW Cornell Road contains a non-permitted single-family dwelling that replaced a previous dwelling constructed on or around 1936. Approval of the Template Test Dwelling request and associated requests for this application would provide a method for the property owner to legalize the dwelling. Staff is not aware of any other compliance issues on this property. An accessory building also exists on site. If the building is to remain, the applicant will need to demonstrate lawful establishment and compliance with the Forest Development Standards in MCC 33.2261. A condition of approval has been included to rectify the accessory building situation.

5947 NW Cornell Road is part of the Property Line Adjustment request. Staff is not aware of any compliance issues on this property.

- 3.2 MCC 33.0005: 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 33.7785. 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.

**Staff:** The applicant provided a warranty deed (Exhibit A.6) recorded on March 7, 1946 in Book 1024, Page 536-538 that describes the property identified as 5849 NW Cornell Road (Tract 2). The deed description matches the description contained in the statutory bargain and sale deed recorded November 22, 2017 as Instrument #2017-141617 (Exhibit A.6). These documents demonstrate that the parcel was created by deed prior to zoning laws and prior to October 19, 1978. Therefore, Tract 2 was lawfully created.

The applicant provide a warranty deed (Exhibit A.15) recorded on October 20, 1971 in Book 819, Page 988-989 that describes the property identified as 5947 NW Cornell Road (Tract 1). The deed description matches the description contained in the statutory warranty deed recorded on May 18, 2011 as Instrument #2011-058249. These documents demonstrate that the parcel was created by deed prior to October 19, 1978. In 1971, Tract 1 was zoned R-20, which required a 20,000 sq. ft. minimum lot size. Currently, Tract 1 is 4.09 acres, which exceeds the minimum dimension requirements in the R-20 zone in 1971. Therefore, Tract 1 met the applicable zoning laws and was lawfully created.

*Criteria met.*

### 3.3 MCC 33.2275: Lot of Record

(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous

combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot Size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, F-2 zone applied;

(2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

(3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;

(4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;

(5) February 20, 1990, lot of record definition amended, Ord. 643;

(6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;

(7) August 8, 1998, CFU-2 zone applied, Ord. 916 (reenacted by Ord. 997);

(8) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;

**Staff:** The applicant submitted a chain of title (Exhibit A.6 & A.15) which demonstrates neither Tract 1 nor Tract 2 was under the same ownership with adjacent properties on February 20, 1990. *Criteria met.*

- 3.4 (C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 33.2273, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

**Staff:** Tract 1 and Tract 2 are less than the 80-acre minimum lot size for new parcels in the CFU-2 zone. Both properties are an individual Lot of Record and may be occupied by an allowed, review, or conditional use when in compliance with all other applicable requirements in the CFU-2 zone. *Criteria met.*

**3.5 (D) The following shall not be deemed a Lot of Record:**

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest;**
- (3) A Mortgage Lot.**
- (4) An area of land created by court decree**

**Staff:** Tract 1 and Tract 2 are not areas of land describes solely for assessment and taxation purposes; an area of land created by foreclosure of a security interest; a mortgage lot; or an area of land created by court decree. *Criteria met.*

*Based on the findings in section 3.2 – 3.5 above, Tract 1 and Tract 2 are each an individual Lot of Record.*

**4.0 PROPERTY LINE ADJUSTMENT CRITERIA:**

**4.1 MCC 33.2225: Review Uses**

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

**(G) Lot Line Adjustment pursuant to all applicable approval criteria, including but not limited to the provisions of MCC 33.2270.**

**Staff:** Sections 4.4 – 4.7 include findings related to MCC 33.2270 and other applicable approval criteria for a Lot Line Adjustment in the CFU-2 zone.

**4.2 MCC 33.2256: Forest Practices Setbacks and Fire Safety Zones**

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road	All Other Setbacks	Fire Safety Zone Requirements (FSZ)
Property Line Adjustment; Lot of Exception; Land Divisions.	May maintain current nonconforming setback to existing structures	30 feet	30 feet	On tracts with required Primary & Secondary FSZ as part of a land use decision, both shall be maintained

**Staff:** Tract 1 contains an existing single-family dwelling and accessory building that currently meets and will continue to meet the minimum required forest practice setbacks of 30 ft. from all property lines. No secondary fire safety zone is required at this time as part of a land use decision. The minimum setbacks and primary fire safety zone will be maintained following the proposed property line adjustment (PLA) as shown in Exhibit A.9.

Tract 2 does not contain any approved buildings/structures. The applicant applied for a template test to establish a new single-family dwelling on the subject property; see sections 5.1 – 5.13 and 6.1 – 6.13 below. The required primary and secondary fire safety zone associated with the template test review are addressed in sections 7.6 – 7.8 and 7.16 – 7.19 of this decision.

*Criteria met.*

#### **4.3 MCC 33.2263: Lot Size Requirements**

**(A) The minimum lot size for new parcels or lots shall be 80 acres, except as provided in MCC 33.2265, 33.2270, 33.2275, and 33.2280.**

**(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.**

**(C) The minimum Front Lot Line Length is 50 feet, except for flag lots as provided in MCC 33.7895(D).**

**Staff:** The proposed lot size will be 3.69 acres for Tract 1 and 3.12 acres for Tract 2 (Exhibit A.9). The proposed lot size is less than the 80-acre minimum lot size for new parcels; however, this proposal is for a PLA as provided by MCC 33.2270. As shown in Exhibit A.9, both proposed adjusted lots exceed the 50 ft. minimum Front Lot Line Length. *Criteria met.*

#### **4.4 MCC 33.2270: Lot Line Adjustment; Property Line Adjustment**

**(A) Pursuant to the applicable provisions in MCC 33.7790, an adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:**

**(1) The permitted number of dwellings will not thereby be increased above that otherwise allowed in this district;**

**(2) The resulting lot configuration is at least as appropriate for the continuation of the existing commercial forest practices in the area as the lot configuration prior to adjustment;**

**Staff:** Tract 1 and Tract 2 are contiguous Lots of Record as described in section 3.2 – 3.5 above. The Commercial Forest Use – 2 (CFU-2) zone provides a mechanism for a Lot of Record to have one (1) single-family dwelling provided the property meets one of the three types of potential dwelling review criteria. Tract 1 has the maximum permissible one (1) single-family dwelling and Tract 2 will have one (1) single family dwelling provided it meets the template test (Exhibit A.9). Therefore, there will be no increase in the permissible number of dwellings on the subject properties following the proposed PLA. *Criteria met.*

#### **4.5 (3) The new lot line is in compliance with the dimensional requirements of MCC 33.2256; and**

**Staff:** As described in section 4.2 above, the adjusted property configurations comply with the required forest practices setbacks and fire safety zones. *Criterion met.*

- 4.6 (4) Neither of the properties is developed with a dwelling approved under the provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use; and**

**Staff:** Tract 1 has an existing single-family dwelling that was not approved as a Health Hardship provisions or the housing of help. Tract 2 does not currently have an approved dwelling. *Criterion met.*

- 4.7 (5) If the properties abut a street, the required access requirements of MCC 33.2273 are met after the relocation of the common property line**

**Staff:** The properties abut NW Cornell Road, a public street and both will maintain street frontage after the PLA. The properties share an existing approved driveway access that provides access from NW Cornell Road. There are no changes to the existing driveway access as part of the PLA. *Criterion met.*

**4.8 MCC 33.2273: Access**

**All lots and parcels in this district shall abut a public street or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 33.2275(C)**

**Staff:** Tract 1 and Tract 2 are each a pre-existing Lot of Record as described in section 3.2 0 3.5 above and each has existing road frontage adjacent to NW Cornell Road. Both tracts will have road frontage after the PLA. *Criterion met.*

**4.9 MCC 33.7790: Property Line Adjustment**

**A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:**

**(A) No additional lot or parcel shall be created from any parcel by the property line adjustment; and**

**(B) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and**

**Staff:** The proposed PLA is between two adjacent parcels and no additional lot or parcel will be created provided the property line adjustment is completed as shown in Exhibit A.9. The listed property owners for Tract 1 and Tract 2 consent to the adjustment as shown in Exhibit A.3. *Criteria met.*

- 4.10 (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district; and**



**(D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.**

**Staff:** The adjusted properties meet the approval criteria for a PLA in the CFU-2 zones as described in section 4.4 – 4.8 above. The applicant followed the required procedure for submitting the necessary forms as shown in Exhibits A.1 – A. 35 and as conditioned in condition of approval no. 4. *Criteria met.*

## **5.0 TEMPLATE TEST CRITERIA (EXISTING CONFIGURATION):**

### **5.1 MCC 33.2225(B)(2): Review Uses**

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

**(B) The following dwellings:**

**(2) A Template Dwelling pursuant to all applicable approval criteria, including but not limited to MCC 33.2240(A);**

**Staff:** The applicant requests approval of a new forest dwelling under the template dwelling criteria. Sections 5.2 – 5.13 contain findings for the relevant template test criteria. Approval of the template dwelling will allow the applicants to pursue legalizing the non-permitted dwelling currently on the subject property that replaced a dwelling established on or around 1936.

### **5.2 MCC 33.2240: Template and Heritage Tract Dwellings**

**(A) A template dwelling may be sited on a tract, subject to the following:**

**(1) The lot or lots in the tract shall meet the lot of record standards of MCC 33.2275;**

**(2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC 33.2256 and 33.2261;**

**Staff:** As described in section 3.2 – 3.5 the subject property is a single Lot of Record. Findings for MCC 33.2256 and 33.2261 are in section 7.2 – 7.14. *Criteria met.*

### **5.3 (3) The tract shall meet the following standards:**

**(c) If the tract is predominantly composed of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and**

**1. The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and**

**Staff:** The parcel contained in Tract 2 was established in 1946 and lawfully existed on January 1, 1993. The applicant submitted documents to demonstrate that there are at least 11 other lawfully created lots that existed on January 1, 1993 within the 160-acre square (Exhibits A.15

and A.30 – A.33). The table below contains an abbreviated summary of the information the applicant provided to demonstrate the minimum requirement. *Criterion met.*

#	Address	Document	Legal?
1	5947 NW Cornell Rd.	Warranty Deed recorded on October 20, 1971 in Book 819, Page 988-989	Yes
2	5830 NW Cornell Rd.	Real Estate Contract recorded on February 1, 1990 in Book 2273, Page 1555-1557	Yes
3	5711 NW Cornell Rd	Warranty Deed recorded on August 21, 1973 in Book 944, Page 1400-1402	Yes
4	5750 NW Cornell Rd.	Land Sale Contract recorded on January 9, 1978 in Book 1233, Page 390-395	Yes
5	1025 NW 53 <sup>rd</sup> Dr.	Warranty Deed recorded on November 26, 1946 in Book 1124, Page 544	Yes
6	6254 NW Cornell Rd.	Quitclaim Deed recorded on February 25, 1953 in Book 1586, Page 32	Yes
7	6108 NW Thompson Rd.	Warranty Deed recorded on November 17, 1960 in Book 2037, Page 373-374	Yes
8	6103 NW Cornell Rd.	Warranty Deed recorded on September 21, 1956 in Book 1806, Page 375	Yes
9	6000 NW Cornell Rd.	Warranty Deed recorded on April 19, 1988 in Book 2096, Page 654	Yes
10	1431 NW 53 <sup>rd</sup> Dr.	Bargain and Sale Deed recorded on September 1973 in Book 949, Page 1070-1073	Yes
11	No Address. NW Cornell Rd. (1N1E31B -00100)	Warranty Deed recorded September 28, 1951 in Book 1500, Page 148-149	Yes

#### 5.4

#### **2. At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square and those dwellings either continue to exist or have been replaced by lawful replacement dwellings.**

**Staff:** The applicant submitted documentation to demonstrate that there were at least five lawfully existing dwellings on January 1, 1993 (Exhibits A.15 and A.30 – A.33). The applicant's documentation demonstrated that there were more than five lawfully existing dwellings. The table below contains an abbreviated version of some of the dwellings highlighted by the applicant to demonstrate the minimum requirements. *Criterion met.*

#	Address	Year of Construction	Legal?
1	5947 NW Cornell Rd.	1990	Yes
2	5830 NW Cornell Rd.	1940	Yes
3	5711 NW Cornell Rd	1936	Yes
4	5750 NW Cornell Rd.	1987	Yes
5	1025 NW 53 <sup>rd</sup> Dr.	1938	Yes
6	6254 NW Cornell Rd.	1928	Yes
7	6108 NW Thompson Rd.	1958	Yes

5.5

**(d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.**

**(e) There is no other dwelling on the tract,**

**(f) No other dwellings are allowed on other lots (or parcels) that make up the tract;**

**Staff:** The subject property, the eleven lots and five dwellings being utilized for the template dwelling requirement of MCC 33.2240(A)(3)(c) are not within the urban growth boundary as evidenced by Exhibit A.16. The subject tract is immediately adjacent to the UGB to the north but a substantial number of properties are outside of the UGB to the west, south and east.

The subject property currently contains a non-permitted dwelling; however, approval of this template test will allow a pathway for the applicants to legalize this dwelling (Exhibit A.9). There will only be one (1) single-family dwelling approved on the subject property. There is only one parcel in the tract.

5.6

**(g) Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**

**(h) No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**

**Staff:** There is only one parcel contained in the subject tract (Exhibit A.9). After approval there will not be any available parcels within the tract as it exists that could build a dwelling. *Criteria met through a condition of approval.*

5.7

**(i) Pursuant to the definition of "Date of Creation and Existence" in MCC 33.0005, if the lot, parcel or tract does not qualify for a dwelling under the standards in MCC 33.2240(A), any reconfiguration after November 4, 1993 cannot in any way enable the tract to meet the criteria for a new dwelling**

**(j) Pursuant to the definition of "Date of Creation and Existence" in MCC 33.0005, lots, parcels and tracts that are reconfigured after November 4, 1993 cannot be counted as meeting the "other lawfully created lots" existing on January 1, 1993 standard in MCC 33.2240(A)(3)(a), (b), and (c): 3, 7, and 11 lots respectively.**

**(k) "Within" as used in the context of (a)2., (b)2. and (c)2. shall mean that all of the dwellings or any part of the dwellings are in the 160-acre square.**

**Staff:** This template test relates to the configuration of the subject property prior to the proposed PLA. The date of creation and existence for the current Tract 2 is 1946. Provided the

existing Tract 2 qualifies for a dwelling before the property line adjustment is completed, its reconfiguration through the PLA will not alter its date of creation and existence from 1946. Exhibits A.6, A.15 and A.30 – A.33 provide documentation on the lots utilized for this template test. None of the lots proposed as part of the template were reconfigured after November 4, 1993. Staff utilized the definition of “Within” as described in sections 5.2 – 5.7 above. *Criteria met.*

- 5.8 (4) The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable.**

**Staff:** The subject property is located outside a big game winter habitat area as defined by the Oregon Dept. of Fish and Wildlife per the County comprehensive plan – wildlife habitat map (Exhibit A.20). *Criterion met.*

- 5.9 (5) Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance;**

**Staff:** The subject property has access via NW Cornell Road, a Multnomah County Road (Exhibit A.9). The proposed dwelling will utilize a shared driveway that commences on Tract 1. The applicant has provided evidence of an access easement through Tract 1 to Tract 2 (Exhibit A.6). *Criterion met.*

- 5.10 (6) A condition of approval requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:...**

**Staff:** The subject property is not in forest deferral. A condition of approval will require the applicant to submit a stocking report prior to building plan review. *Criterion met through a condition of approval.*

- 5.11 (7) The dwelling meets the applicable development standards of MCC 33.2256 and 33.2261;**

**Staff:** Findings for the applicable development standards of MCC 33.2256 and 33.2261 are in sections 7.2 – 7.14 below. The proposed dwelling has met the applicable development standards or is conditioned to meet them. *Criteria met through a condition of approval*

- 5.12 (8) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;**

**Staff:** A condition of approval is included requiring the applicant to record the covenant noted above. *Criterion met through a condition of approval.*

- 5.13** (9) Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records;
- (a) The covenants, conditions and restrictions shall specify that:
    - 1. All lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and
    - 2. No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;
  - (b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the tract is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;
  - (c) Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December, 1995).

**Staff:** The subject tract contains one single parcel. There is no need to require the CCRs as there are not other available parcels or lots within the subject tract. *Criteria met.*

## **6.0 TEMPLATE TEST CRITERIA (ADJUSTED CONFIGURATION):**

### **6.1 MCC 33.2225(B)(2): Review Uses**

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

**(B) The following dwellings:**

- (2) A Template Dwelling pursuant to all applicable approval criteria, including but not limited to MCC 33.2240(A);

**Staff:** The applicant requests approval of a new forest dwelling under the template dwelling criteria. Section 6.2 – 6.13 contain findings for the relevant template test criteria. Approval of the template dwelling will allow the applicants to pursue legalizing the non-permitted dwelling currently on the subject property. This template is based on the adjusted configuration of the subject property following the proposed PLA.

### **6.2 MCC 33.2240: Template and Heritage Tract Dwellings**

- (A) A template dwelling may be sited on a tract, subject to the following:

**(1) The lot or lots in the tract shall meet the lot of record standards of MCC 33.2275;**

**(2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC 33.2256 and 33.2261;**

**Staff:** As described in section 3.2 – 3.5 the subject property is a single Lot of Record. Findings for MCC 33.2256 and 33.2261 are in sections 7.2 – 7.14. *Criteria met.*

**6.3**

**(3) The tract shall meet the following standards:**

**(c) If the tract is predominantly composed of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and**

**1. The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and**

**Staff:** The applicant submitted documents to demonstrate that there are at least 11 other lawfully created lots that existed on January 1, 1993 within the adjusted 160-acre square (Exhibits A.6, A.15 and A.30 – A.33). None of the previous 11 other lots were removed from the template after adjusting its placement due to the PLA. The table below contains an abbreviated summary of the information the applicant provided to demonstrate the minimum requirement. *Criterion met.*

#	Address	Document	Legal?
1	5947 NW Cornell Rd.	Warranty Deed recorded on October 20, 1971 in Book 819, Page 988-989	Yes
2	5830 NW Cornell Rd.	Real Estate Contract recorded on February 1, 1990 in Book 2273, Page 1555-1557	Yes
3	5711 NW Cornell Rd	Warranty Deed recorded on August 21, 1973 in Book 944, Page 1400-1402	Yes
4	5750 NW Cornell Rd.	Land Sale Contract recorded on January 9, 1978 in Book 1233, Page 390-395	Yes
5	1025 NW 53 <sup>rd</sup> Dr.	Warranty Deed recorded on November 26, 1946 in Book 1124, Page 544	Yes
6	6254 NW Cornell Rd.	Quitclaim Deed recorded on February 25, 1953 in Book 1586, Page 32	Yes
7	6108 NW Thompson Rd.	Warranty Deed recorded on November 17, 1960 in Book 2037, Page 373-374	Yes
8	6103 NW Cornell Rd.	Warranty Deed recorded on September 21, 1956 in Book 1806, Page 375	Yes
9	6000 NW Cornell Rd.	Warranty Deed recorded on April 19, 1988 in Book 2096, Page 654	Yes
10	1431 NW 53 <sup>rd</sup> Dr.	Bargain and Sale Deed recorded on September 1973 in Book 949, Page 1070-1073	Yes



11	No Address. NW Cornell Rd. (1N1E31B -00100)	Warranty Deed recorded September 28, 1951 in Book 1500, Page 148-149	Yes
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6.4

**2. At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square and those dwellings either continue to exist or have been replaced by lawful replacement dwellings.**

**Staff:** The applicant submitted documentation to demonstrate that there remains at least five lawfully existing dwellings on January 1, 1993 (Exhibits A.6, A.15 and A.30 – A.33) after the shifting of the template location. None of the original five counted for the template test above were removed from this altered template location. The applicant's documentation demonstrated that there were more than five lawfully existing dwellings. The table below contains an abbreviated version of some of the dwellings highlighted by the applicant to demonstrate the minimum requirements. *Criterion met.*

#	Address	Year of Construction	Legal?
1	5830 NW Cornell Rd.	1940	Yes
2	5711 NW Cornell Rd	1936	Yes
3	5750 NW Cornell Rd.	1987	Yes
4	1025 NW 53 <sup>rd</sup> Dr.	1938	Yes
5	6254 NW Cornell Rd.	1928	Yes
6	6108 NW Thompson Rd.	1958	Yes

6.5

**(d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.**

**(e) There is no other dwelling on the tract,**

**(f) No other dwellings are allowed on other lots (or parcels) that make up the tract;**

**Staff:** The subject property, the eleven lots and five dwellings being utilized for the template dwelling requirement of MCC 33.2240(A)(3)(c) are not within the urban growth boundary as evidenced by Exhibit A.16. The subject tract is immediately adjacent to the UGB to the north but a substantial number of properties are outside of the UGB to the west, south and east. The subject property currently contains a non-permitted dwelling, approval of this template test will allow a pathway for the applicants to legalize this dwelling (Exhibit A.9). There will only be one (1) single-family dwelling approved on the subject property.

6.6

**(g) Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**

**(h) No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**

**Staff:** A condition of approval is included prohibiting the subject property from future rights to site a dwelling except as provided for a replacement dwelling. The subject tract contains one single parcel. *Criteria met through a condition of approval.*

- 6.7                    **(i) Pursuant to the definition of “Date of Creation and Existence” in MCC 33.0005, if the lot, parcel or tract does not qualify for a dwelling under the standards in MCC 33.2240(A), any reconfiguration after November 4, 1993 cannot in any way enable the tract to meet the criteria for a new dwelling**
- (j) Pursuant to the definition of “Date of Creation and Existence” in MCC 33.0005, lots, parcels and tracts that are reconfigured after November 4, 1993 cannot be counted as meeting the “other lawfully created lots” existing on January 1, 1993 standard in MCC 33.2240(A)(3)(a), (b), and (c): 3, 7, and 11 lots respectively.**
- (k) “Within” as used in the context of (a)2., (b)2. and (c)2. shall mean that all of the dwellings or any part of the dwellings are in the 160-acre square.**

**Staff:** This template test relates to the configuration of the subject property following the proposed PLA. The date of creation and existence for Tract 2 prior to the proposed PLA is 1946. The proposed reconfiguration through the PLA will not alter the original parcel’s date of creation and existence from 1946. Exhibits A.6, A.15, and A.30 – A.33 provide documentation on the lots utilized for this template test. None of the lots proposed as part of the template were reconfigured after November 4, 1993. Staff utilized the definition of “Within” as described in sections 6.3 – 6.6 above. *Criteria met.*

- 6.8                    **(4) The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable.**

**Staff:** The subject property is located outside a big game winter habitat area as defined by the Oregon Dept. of Fish and Wildlife per the County comprehensive plan – wildlife habitat map (Exhibit A.20). *Criterion met.*

- 6.9                    **(5) Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance;**

**Staff:** The subject property has access via NW Cornell Road, a Multnomah County Road (Exhibit A.9). The proposed dwelling will utilize a shared driveway that commences on Tract 1. The applicant has provided evidence of an access easement through Tract 1 to Tract 2. *Criterion met.*

- 6.10           **(6) A condition of approval requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:...**

**Staff:** The subject property is not in forest deferral. A condition of approval will require the applicant to submit a stocking report prior to building plan review. *Criterion met through a condition of approval.*

- 6.11           **(7) The dwelling meets the applicable development standards of MCC 33.2256 and 33.2261;**

**Staff:** Findings for the applicable development standards of MCC 33.2256 and 33.2261 are in sections 7.2 – 7.14 below. The proposed dwelling has met the applicable development standards or is conditioned to meet them. *Criteria met through a condition of approval*

- 6.12           **(8) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;**

**Staff:** A condition of approval is included requiring the applicant to record the covenant noted above. *Criterion met through a condition of approval.*

- 6.13           **(9) Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records;**

**(a) The covenants, conditions and restrictions shall specify that:**

**1. All lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**

**2. No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**

**(b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the tract is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;**

**(c) Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December, 1995).**

**Staff:** The subject tract contains one single parcel. There is no need to require the CCRs as there are no other available parcels or lots within the subject tract. *Criteria met.*

## **7.0 COMMERCIAL FOREST USE -2 ZONE CRITERIA:**

### **7.1 MCC 33.2250: Building Height Requirements**

**(A) Maximum structure height – 35 feet.**

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

**Staff:** The applicant can demonstrate compliance with the building height requirements during land use building plan review. Staff will verify that the maximum structure height is 35 feet or less at that time. Failure to demonstrate compliance with the above requirements will prevent the County from signing-off on the building plans. *Criteria met.*

### **7.2 MCC 33.2256: Forest Practices Setbacks and Fire Safety Zones**

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

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

**Staff:** The proposed dwelling is located approximately 87 feet from the front property line adjacent to NW Cornell Road. (Exhibit A.9). The existing or proposed expanded footprint dwelling will be 130 feet from the other surrounding property lines. The proposed dwelling complies with the Forest Practice Setbacks as required above. The findings for the required Fire Safety Zones for the dwelling can be found below in sections 7.6 – 7.8 and 7.16 – 7.20.

### **7.3 (A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.**

**Staff:** The applicant meets the required forest practices as described in section 7.2 above. *Criterion met.*

### **7.4 (B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 33.2310 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.**

**Staff:** The submitted site plan (Exhibit A.9) shows that applicant can meet the required primary fires safety zone. The applicant requests an exception to the Secondary Fire Safety Zone. Findings for MCC 33.2310 are in sections 7.16 – 7.20 below.

- 7.5 (C) The minimum forest practices setback requirement shall be increased where the setback abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional setback requirements in consultation with the Road Official.

**Staff:** County Transportation did not identify additional right-of-way requirements (Exhibit A.8 & A.24). Therefore, planning staff did not identify subsequent additional forest practices setback requirements. *Criterion met.*

7.6 (D) Fire Safety Zones on the Subject Tract

(1) Primary Fire Safety Zone

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

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

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

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

**Staff:** The submitted topographical map site plan (Exhibit A.9, Sheet 1) shows that the existing non-permitted dwelling or the expanded dwelling will be located on a building site with a slope of less than 40%. Given the presence of slopes between 25 – 40% adjacent to the dwelling, the required primary fire safety zone will need to be extended down slope. The total required primary fire safety zone is as follows: 130 feet to the East and West of the Dwelling (or expanded footprint of the Dwelling) and 105 feet to the South of the Dwelling (or expanded footprint of the Dwelling) abutting NW Cornell Road. A 30 ft. primary will need to be provided north of the dwelling. The expanded dwelling does not currently meet the primary fire safety zone and its footprint will need to be modified to comply with the requirement. A condition of approval has been included to modify or demonstrate compliance with this standard. *Through a condition, the criteria will be met.*

- 7.7 (2) Secondary Fire Safety Zone A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not

**spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of 33.2310.**

**Staff:** The submitted site plans (Exhibit A.9) show that the adjusted property configuration for the proposed dwelling will not meet the required secondary fire safety zone on all sides. The applicant requested an exception for the secondary fire safety zone for the existing dwelling or (if the existing dwelling is demolished) the proposed expanded footprint dwelling under the provisions of 33.2310 discussed in sections 7.16 – 7.20. *Criterion met.*

**7.8**

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

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

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

**Staff:** The applicant's narrative states that there is no ODF approved forest management plan for the subject property (Exhibit A.4). Conditions of approval are included in this decision requiring the property owner and all future property owners to establish and maintain the required primary and secondary fire safety zones. *Criteria met through a condition of approval.*

**7.9 MCC 33.2261: 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 33.0570:**

**(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):**

**(1) The structure shall satisfy the following requirements:**

**(a) To meet the Forest Practices Setback, the structure shall be located a minimum of 30-feet from a front property line adjacent to a county maintained road and 130-feet from all other property lines;**

**Staff:** As shown on the submitted site plans (Exhibit A.9), the existing dwelling or (if the existing dwelling is removed) proposed expanded footprint dwelling will be located more than 87 feet from the front property line adjacent to NW Cornell Road, a county maintained road to meet the primary fire safety zone. The proposed dwelling will be located 130 feet from all other property lines. *Criterion met.*



- 7.10**
- (b) The structure shall be located in a cleared area of at least 10,000 square feet that meets the tree spacing standards of a primary fire safety zone;**
  - (c) The entirety of the development site is less than 30,000 square feet in total cleared area, not including the driveway;**
  - (d) The structure is sited within 300-feet of frontage on a public road and the driveway from the public road to the structure is a maximum of 500-feet in length;**

**Staff:** As shown on the submitted site plans (Exhibit A.9), the proposed dwelling will be located in a total cleared area of 10,000 square feet, but less than 30,000 square feet. As shown on the site plan, the proposed expanded dwelling site is within 300 feet of NW Cornell Road. The existing driveway from NW Cornell Road to the proposed dwelling site is less than 500 feet. *Criteria met.*

- 7.11**
- (e) The local Fire Protection District verifies that their fire apparatus are able to reach the structure using the proposed driveway; or**

**Staff:** The applicant submitted a Fire Service Agency Review Form completed by Jeremy Foster of Tualatin Valley Fire & Rescue (Exhibit A.28). Foster indicated that their fire apparatus will be able to reach the proposed dwelling using the existing driveway if a compliant turnaround is provided. A condition of approval is included requiring the applicant to address any Tualatin Valley Fire & Rescue requirements. *Criteria met through a condition of approval.*

- 7.12**
- (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 location of the emergency water source.**

**Staff:** The proposed dwelling utilizes an existing driveway. A condition of approval is included requiring the property owner and all future property owners to maintain the access in accordance with Tualatin Valley Fire & Rescue requirements. A condition of approval is included requiring 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 on the lot. *Criteria met through a condition of approval.*

- 7.13**
- (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:** The proposed dwelling is not a mobile home. The stick built dwelling will need to obtain and final a building permit to meet this standard. A condition of approval is included requiring the applicant to demonstrate at building plan review that the roof is fire retardant and each chimney has a spark arrester. *Criteria can be met through a condition of approval.*

**7.14 (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: Multnomah County – Chapter 33 - West Hills Rural Plan Area 4-41 (S-1 LU 2017)**

**(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 property is served by a spring and the applicant provided a record of water rights to utilize the water source (Exhibit A.22). A condition of approval is included in this decision requiring the applicant to provide documentation from the water master verifying that a spring is an allowable water source. *Criteria met through a condition of approval.*

**7.15 MCC 33.2307: Single Family Dwellings Condition of Approval**

**As a condition of approval of a single family dwelling, the landowner for the dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a**

**claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.**

**Staff:** This requirement is included as a condition of approval. *Criterion met through a condition of approval.*

**7.16 MCC 33.2310: Exceptions to Secondary Fire Safety Zones**

**(A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of 33.2310 (B) when:**

**(1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or**

**(2) The dwelling or structure is proposed to be located within 130 feet of the centerline of a public or private road serving two or more properties including the subject site; or**

**(3) The proposed dwelling or structure is intended to be located within 130 feet of a legally existing dwelling or structure.**

**Staff:** The proposed expanded dwelling footprint will need to be 105 feet from the front property line to meet the primary fire safety zone (Exhibit A.9). NW Cornell Road is a county maintained road and serves more than two properties including the subject site. The applicant requests a reduction to the secondary fire safety zone for the south side of the dwelling, the reduction would provide a secondary fire safety zone of less than 50 feet. Once the exception is granted, no secondary will need to be provided on the tract unless the applicant chooses. *Criteria met.*

**7.17 (B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:**

**(1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban– Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or**

**(2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute UrbanWildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and**

**Staff:** The applicant proposes a reduced secondary fire safety zone of less than 50 feet. A condition of approval is included requiring the applicant to construct the dwelling in accordance with the International Fire Code Institute Urban – Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction. *Criteria met through a condition of approval.*

**7.18 (3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and**

**Staff:** The site plan does not show any combustible fences within 12 feet of the existing dwelling nor are any fences proposed (Exhibit A.9). A condition of approval prohibiting combustible fences within 12 feet of the exterior surface of the dwelling is included in this decision. *Criterion met through a condition of approval.*

- 7.19**            **(4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of MCC 33.2310 (B) (1) are utilized, or**
- (5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of MCC 33.2310 (B) (2) are utilized.**

**Staff:** A condition of approval is included requiring the installation of a central station monitored 13D sprinkler system. *Criteria met.*

- 7.20**            **(6) All accessory structures within the fire safety zone setbacks required by MCC 33.2256 shall have a central monitored alarm system.**
- (7) All accessory structures within 50 feet of a building containing shall have exterior walls constructed with materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.**
- (8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban-Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication.**

**Staff:** There are no proposed accessory structures. The subject property contains an existing shed, which is approximately 20 feet from the single-family dwelling and within the primary fire safety zone for the dwelling (Exhibit A.9). The shed will be removed to accommodate the proposed expanded footprint of the dwelling or will need to meet these criteria per a condition of approval. *Criteria met through a condition of approval.*

**7.21    MCC 33.0570: Dark Sky Lighting Standards**

**(A) The purpose of the Dark Sky Lighting Standards in this section is to protect and promote public health, safety and welfare by preserving the use of exterior lighting for security and the nighttime use and enjoyment of property while minimizing the obtrusive aspects of exterior lighting uses that degrade the nighttime visual environment and negatively impact wildlife and human health.**

\*\*\*

**(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:** A condition of approval is included requiring compliance with the above standards. The applicant must demonstrate compliance prior to County building plan review. *Condition of approval.*

## **8.0 SIGNIFICANT ENVIRONMENTAL CONCERN CRITERIA:**

### **8.1 MCC 33.4570: Criteria for Approval of SEC-h Permit – Wildlife Habitat**

(A) In addition to the information required by MCC 33.4520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

(1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and nonforested "cleared" areas; For the purposes of this section, a forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.

(2) Location of existing and proposed structures;

(3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;

(4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

**Staff:** The applicant provided the required information listed above in the site plans (Exhibit A.9) and accompanying photos.

### **8.2 (B) Development standards:**

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

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

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

**Staff:** As shown on the site plans (Exhibit A.9), the dwelling is located in an existing cleared area, is approximately 87 feet from the public road known as NW Cornell Road, and the existing driveway serving the dwelling is less than 300 feet in length. *Criteria met.*

**8.3**

**(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**

**(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.**

**(c) Diagram showing the standards in (a) and (b) above.**

**Staff:** The existing driveway for 5849 NW Cornell Road is shared with the adjacent property (Tract 1). Following the proposed adjustment the existing driveway will remain within 100 feet of the common side property line (Exhibit A.9).

**8.4**

**(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:** The adjacent property to the west (5947 NW Cornell) has structures and developed areas within 200 feet of the common side property line (Exhibit A.9). As shown on the site plans, the dwelling on the subject property is within 300 feet of that shared side property line (Exhibit A.9). *Criterion met.*

**8.5**

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

**Staff:** No fencing exists or is proposed per the submitted site plans (Exhibit A.9). A condition of approval prohibiting ensuring the applicant meets the requirements of (6) is included in this decision. *Criterion met through a condition of approval.*



- 8.6 (7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:**

**Staff:** A condition of approval is included that prohibits the planting of nuisance plants listed in the table in MCC 33.4570(B) on the subject property. The condition also requires that any nuisance plants shall be removed and kept removed from cleared areas on the subject property. *Criterion met through a condition of approval.*

- 8.7 (C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of the two situations exist.**

**(1) The applicant cannot meet the development standards of Section (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 Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).**

**Staff:** The applicant demonstrated that the proposal meets the requirements of (B) as described in section 8.2 – 8.6. Therefore, wildlife conservation plan is not required. *Criteria met.*

- 8.8 MCC 33.4575: Criteria for Approval of SEC-s Permit – Streams**

**(B) Except for the exempt uses listed in MCC 33.4515, no development shall be allowed within a Stream Conservation Area unless approved by the Approval Authority pursuant to the provisions of MCC 33.4575 (C) through (F).**

**Staff:** Findings for MCC 33.4575 (C) through (F) are in sections 8.9 – 8.16 below.

- 8.9 (C) In addition to other SEC Permit submittal requirements, any application to develop in a Stream Conservation Area shall also include:**

**(1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval equivalent to the best available U.S. Geological Survey 7.5' or 15' topographic information;**

**Staff:** The applicant included a scaled topographic map site plan showing the Stream Conservation Area boundary and all other required information listed above (Exhibit A.9, Sheet 1). *Criterion met.*

- 8.10 (2) A detailed description and map of the Stream Conservation Area including that portion to be affected by the proposed activity. This documentation must also include a map of the entire Stream Conservation Area, an assessment of the Stream Conservation Area's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat**

**Staff:** The topographic map site plan and SEC-s/SEC-h overlay map show the required information listed above (Exhibit A.9, Sheet 1). The relevant assessment is included in Exhibit A.4.

- 8.11 (3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;**

**Staff:** The applicant included a soil report for the subject property that indicated the entire parcel has Globle silt loam soil of either 17E or 17D classification (Exhibit A.13). The application does not include any proposed draining, filling, grading or dredging (Exhibit A.1 – A.35). Vegetation removal would be limited to that necessary to establish the primary and secondary fire safety zone. *Criterion met.*

- 8.12 (4) A study of any flood hazard, erosion hazard, and/or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards as required by (E) (5) below;**

**Staff:** The applicant submitted a site plan outlining the Stream Conservation Area (Exhibit A.9). The applicant's site plan shows a proposed future expansion to the footprint of the existing non-permitted dwelling to an approximately 5,412 sq. ft. maximum building pad. Prior to construction activities, the applicant would be required to obtain an erosion and sediment control permit to evaluate potential hazards. A condition of approval is included to ensure the erosion and sediment control permit and any other required permit(s) are obtained prior to building plan review. *Criterion met.*

- 8.13 (5) A detailed Mitigation Plan as described in subsection (D), if required; and  
(6) A description of how the proposal meets the approval criteria listed in subsection (D) below**

**Staff:** The applicant provided an explanation in the narrative (Exhibit A.4) regarding the required information listed above. Section 8.14 contains findings related to the approval criteria listed in (D) below. *Criteria met.*

- 8.14 (D) For the protected stream resources, the applicant shall demonstrate that the proposal:**

**(1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:**

- (a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by MCC 33.4575 (C);**
- (b) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;**
- (c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in MCC 33.4575 (D) (1);**
- (d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.**

**Staff:** The applicant provided a Topographical Map site plan as well as a SEC-s and SEC-h overlay Map (Exhibit A.9, Sheet 1 and Sheet 3). In the narrative, the applicant notes that the subject property is located approximately 260 feet north of Balch Creek and at a higher elevation (Exhibit A.4). Flowing along the western property line is a protected intermittent stream. This intermittent stream is the protected stream and is different than Balch Creek. The proposal for the existing non-permitted dwelling does not include the removal of any trees within the Stream Conservation Area. The proposed non-permitted dwelling legalization does not redirect the water resource, or propose other changes to the "functional characteristics or water resource" (Exhibit A.4) on site. The expanded dwelling would more than likely require the removal of trees within the protected overlay zone. The SEC-s only allows development to occur within its overlay boundaries if enhancement to the protected stream is provided. A condition of approval has been included requiring that the applicant submit a mitigation plan for the stream corridor running along/near the western property line if the larger 5,400 sq. ft. dwelling is to be constructed. Mitigation needs to be at a minimum of 1 sq. ft. for every 1 sq. ft. of development area to be altered or legalized. In addition, any trees removed will need to be replaced or other mitigation proposed for shading purposes. Mitigation can include removal of blackberries in the riparian area and then replanting of native riparian vegetation or planting of trees to shade the ground and stream. This plan will need to be provided prior to land use planning signing off on building plan check for the non-permitted dwelling and/or expanded dwelling.

The Stormwater Certificate (Exhibit A.24) completed by an Oregon Licensed Engineer indicates that the existing storm water generated from existing impervious surfaces is managed on the subject property. Additional impervious surfaces will be generated by the larger dwelling and a new Stormwater Certificate will be needed.

If the applicant decides to remove the existing dwelling and pursue construction of a new expanded footprint dwelling, the County Sanitarian would also need to complete a new septic review certification. Additionally, a new stormwater certificate, a revised mitigation plan, plan map, and monitoring plan would be required as noted in condition of approval no. 5.

**8.15 (E) Design Specifications** The following design specifications shall be incorporated, as appropriate, into any developments within a Stream Conservation Area:

**(1) A bridge or arched culvert which does not disturb the bed or banks of the stream and are of the minimum width necessary to allow passage of peak winter flows shall be utilized for any crossing of a protected streams.**

**(2) All storm water generated by a development shall be collected and disposed of onsite into dry wells or by other best management practice methods which emphasize groundwater recharge and reduce peak stream flows.**

**Staff:** The proposal does not include a bridge or arched culvert (Exhibit A.9). The applicant provided as Stormwater Certificate completed by Dan Symons, P.E. that indicates an on-site stormwater drainage control system is not required for the existing impervious surfaces. A condition of approval requires the applicant to submit a revised Stormwater Certificate prior to building plan review that addresses the proposed expanded building pad footprint. Any stormwater system required for the new forest dwelling will require mitigation. *Criteria met through a condition of approval.*

**8.16 (3) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area.**

**(4) Any trees over 6" in caliper that are removed as a result of any development shall be replaced by any combination of native species whose combined caliper is equivalent to that of the trees removed.**

**Staff:** A condition of approval is included requiring compliance with (3) and (4) above. The applicant will be required to demonstrate compliance with (3) prior to building plan review. (4) is included as a condition relative to the future footprint expansion. *Criteria met through a condition of approval.*

**8.17 (5) Satisfaction of the erosion control standards of MCC 33.5520.**

**(6) Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area.**

**(7) Demonstration of compliance with all applicable state and federal permit requirements.**

**Staff:** Prior to any construction activities, a condition of approval requires the applicant to obtain an Erosion and Sediment Control (ESC) Permit. The erosion control standards will be evaluated through that permit review. The requirements of (6) above is included as an ongoing condition of approval and during the ESC Permit review. *Criteria met through a condition of approval.*

**8.18 (F) For those Stream Conservation Areas located within Metro's jurisdictional boundaries, the following requirements apply in addition to (C) through (E) above:**

**(1) The planting of any invasive non-native or noxious vegetation as listed in MCC 33.4570(B)(7) and MCC 33.4570(A)(4) is prohibited. A list of native plants can be found in the latest edition of the Metro Native Plant List.**

**(2) Outside storage of hazardous materials as determined by DEQ is prohibited, unless such storage began before the effective date of this ordinance; or, unless such storage is contained and approved during development review.**

**Staff:** The Stream Conservation Area is within Metro's jurisdictional boundaries. A condition of approval is included requiring compliance with (1) and (2) above. *Criteria met through a condition of approval.*

**8.19 (G) For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the Mitigation Plan must comply only with measures identified in the Goal 5 protection program that has been designated for the site.**

**Staff:** The subject property is not located within the PAM subdistrict. *Criterion met.*

## **9.0 PUBLIC COMMENT**

### **9.1 Comments from Barry Olson, Nearby Property Owner**

**Olson noted that he did not want another out of state developer to build another short term rental unit here; especially if it would require circumventing existing environmental and fire safety regulations which were enacted for good reasons.**

**Staff:** The proposal is for a New Forest Dwelling. Findings for the Significant Environmental Concern – streams and Significant Environmental Concern – wildlife habitat code criteria are in sections 8.1 – 8.19.

### **9.2 Comments from Jerry Grossnickle, Chair of the Forest Park Neighborhood Association (FPNA)**

**FPNA noted concerns regarding effects to the water quality of Balch Creek. Specifically, FPNA is concerned with the proposed septic system and other water management strategies not fully considering the nature in of the drainage characteristics of soils in the area. If the system does not consider the above, FPNA is concerned that pollutants will enter the Creek.**

**Staff:** A Stormwater Certificate and Septic Review Certification are included as Exhibits A.24 and A.34 – A.35. Criteria for the Significant Environmental Concern –streams overlay are addressed in section 8.8 – 8.19. If the applicant decides to proceed with removing the existing dwelling and constructing an expanded footprint new dwelling, conditions of approval require a

new Stormwater Certificate and Septic Review Certification. An Erosion and Sediment Control Permit is required prior to construction.

### **9.3 Comments from Bob Sallinger, Conservation Director for Portland Audubon (PA).**

**PA requests denial of the application. PA noted that the proposed property line adjustment (PLA) would qualify the property for a dwelling when it would not qualify for a dwelling otherwise. PA also noted concerns with ORS 92.192 and proof that a dwelling actually existed prior to the purported destruction in 2012. PA noted concerns with the size of the development site and the Opportunity to Comment and the fact that a hearing for the application is yet to occur.**

**Staff:** Findings for the PLA criteria in Multnomah County Code (MCC) are in sections 4.1 – 4.10. Findings for the Template Test Criteria, both before and after the proposed PLA are in sections 5.0 and 6.0. Findings for the Development Standards for Dwellings and Structures, including the development site size, are in section 7.9 – 7.14. The requests outlined in this application fall under the Review Use provisions of MCC. Per MCC 37.0530, Review Uses do not require a hearing as the decision is rendered by the Planning Director.

## **10.0 CONCLUSION**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the proposed Property Line Adjustment (T2-2018-10966) in the CFU-2 zone. The applicant has also carried the burden necessary for the Template Test Dwelling criteria, Forest Development Standards, Significant Environmental Concern - wildlife habitat and Significant Environmental Concern – streams criteria to establish a New Forest Dwelling (T2-2018-10965) in the CFU-2 zone. This approval is subject to the conditions of approval established in this report.

## **11.0 EXHIBITS**

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Comments Received

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 T2-2018-10965 & T2-2018-10966 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	6	General Application Form	10.04.2018
A.2	1	Letter of Authorization	10.04.2018
A.3	2	Property Line Adjustment Application	10.04.2018
A.4	30	Narrative	10.04.2018

A.5	6	Table of Contents	10.04.2018
A.6	36	Exhibit 1: Trio Report and Chain of Title	10.04.2018
A.7	5	Exhibit 2: Pre-filing Conference Summary	10.04.2018
A.8	3	Exhibit 3: Transportation Division Memorandum dated 3/1/17	10.04.2018
*A.9	3	Exhibit 4: Site Plans (Not-to-scale)  Sheet 1: Topographic Site Survey and Tree Survey  Sheet 2: Preliminary Lot Line Adjustment, Forest Practices, and Fire Safety Setbacks Map  Sheet 3: SEC-s and SEC-h Overlay Map	10.04.2018
A.10	2	Exhibit 5: Multnomah County Zoning Map	10.04.2018
A.11	2	Exhibit 6: Multnomah County Property Summary Report	10.04.2018
A.12	2	Exhibit 7: Multnomah County Tax Assessment History (waiting for County to update website)	10.04.2018
A.13	2	Exhibit 8: USDA, NRCS Custom Soil Report	10.04.2018
A.14	4	Exhibit 9: 160 acre Square Templates Centered on the Subject Property	10.04.2018
A.15	147	Exhibit 10: Documents Supporting Lawfully Created Lots and Dwellings within the 160 Acre Template  Exhibit 10-1: 5947 NW Cornell Road (out UGB) Exhibit 10-2: 5830 NW Cornell Road(out UGB) Exhibit 10-3: 5711 NW Cornell Road(out UGB) Exhibit 10-4: 5750 NW Cornell Road (out UGB) Exhibit 10-5: 1025 NW 53 <sup>rd</sup> Drive (out UGB) Exhibit 10-6: 6254 NW Cornell Road (out UGB) Exhibit 10-7: 6108 NW Thompson Road (out UGB) Exhibit 10-8: 6103 NW Cornell Road (out UGB) Exhibit 10-9: 6000 NW Cornell Road (out UGB) Exhibit 10-10: 1431 NW 53 <sup>rd</sup> Drive (inside UGB) Exhibit 10-11: 5410 NW Cornell Road (out UGB) Exhibit 10-12: No Street Address: 1N1E31B – 100 (R316619) (out UGB)  Exhibit 10-13: No Street Address on NW Cornell Road; 1N1E31BD – 100 (R316589) (out UGB)  Exhibit 10-14: No Street Address on NW Cornell Road; 1N1E31BD – 500 (R316590) (small piece in UGB)	10.04.2018

A.16	2	Exhibit 11: Urban Growth Boundary Lookup Map	10.04.2018
A.17	19	Exhibit 12: Multnomah County Notice of Decision, T2-10-012 dated June 24, 2010	10.04.2018
A.18	3	Exhibit 13: Department of Forestry – Urban Fire Prevention	10.04.2018
A.19	13	Exhibit 14: Woodard v. Yamhill County, 56 Or LUBA 141 (2008)	10.04.2018
A.20	2	Exhibit 15: Multnomah County comprehensive Plan, Natural Resources, page 8, Figure 5 – Wildlife Habitat, Western Multnomah County	10.04.2018
A.21	3	Exhibit 16: Aerial Photograph of the Subject Parcel and Adjacent Properties	10.04.2018
A.22	19	Exhibit 17: Deed Grating Water Rights	10.04.2018
A.23	7	Exhibit 18: PF 2015-3900	10.04.2018
A.24	21	Exhibit 19: Service Provider Forms a. Septic (Unsigned) b. Storm Water Certificate (Signed) c. Fire (Signed) d. Transportation (Unsigned) e. Certificate of Water Service	10.04.2018
A.25	5	Exhibit 20: City of Portland Code Construction Violation Notice	10.04.2018
A.26	3	Response to Incomplete Letter	05.31.2018
A.27	3	Exhibit 1 – Applicants 150-Day Waiver Letter	05.31.2018
A.28	5	Exhibit 2 – Fire Service Agency Review Form	05.31.2018
A.29	3	Exhibit 3 – Paper Model and “Pin” for Subject Parcel	05.31.2018
A.30	3	Exhibit 4 – Paper Model and “Pin” for Subject Parcel after proposed PLA	05.31.2018
A.31	6	Exhibit 5 – 160 Acre Template for Pin Test for Existing Parcel	05.31.2018
A.32	6	Exhibit 6 – 160 Acre Template for Pin Test for Proposed Parcel after proposed PLA	05.31.2018
A.33	6	Exhibit 7 – Table with Parcel information for nearby dwellings and Lots	05.31.2018
A.34	3	Revised Septic Review Certification for 5849 NW Cornell Rd.	01.08.2019
A.35	4	Revised Septic Review Certification for 5947 NW Cornell Rd.	01.08.2019
A.36	3	*DUPLICATE* Exhibit 4: Site Plans (To scale) Sheet 1: Topographic Site Survey and Tree Survey	10.04.2018

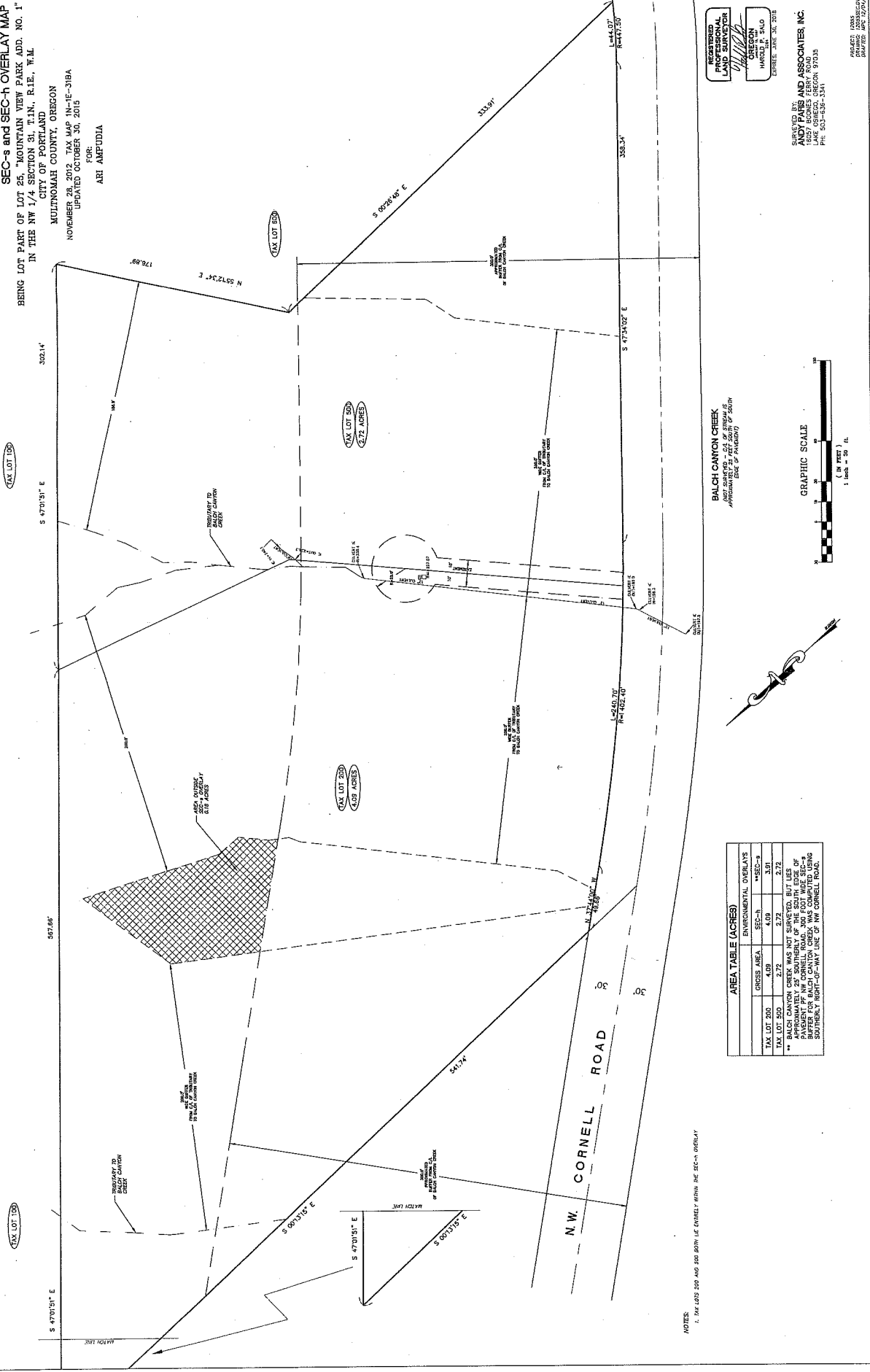


		Sheet 2: Preliminary Lot Line Adjustment, Forest Practices, and Fire Safety Setbacks Map	
		Sheet 3: SEC-s and SEC-h Overlay Map	
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1N1E31BA – 00500	10.04.2018
'C'	#	Administration & Procedures	Date
C.1	2	Incomplete Letter	11.2.2018
C.2	2	Applicant's Acceptance of 180 Day Clock	11.5.2018
C.3	-	Complete (Day 1)	12.21.2018
C.4	2	Decision Clock Extension Request #1	01.28.2019
C.5	2	Decision Clock Extension Request #2	05.31.2018
C.6	3	Opportunity to Comment (T2-2018-10965)	04.10.2018
C.7	2	Opportunity to Comment (T2-2018-10966)	04.10.2018
C.8	3	Revised Opportunity to Comment (T2-2018-10965)	06.24.2019
C.9	2	Revised Opportunity to Comment (T2-2018-10966)	06.24.2019
C.10	41	Administrative Decision	07.17.2019
'D'	#	Comments Received (if needed)	Date
D.1	1	Comments from Barry Olson	04.14.2019
D.2	2	Comments from Forest Park Neighborhood Association	05.08.2019
D.3	2	Comments from Bob Sallinger, Conservation Director Portland Audubon	05.08.2019





EXHIBIT 4, SHEET 3  
 SEC-3 and SEC-4 OVERLAY MAP  
 BEING LOT PART OF LOT 25, "MOUNTAIN VIEW PARK ADD. NO. 1"  
 IN THE NW 1/4 SECTION 31, T1N, R1E, W1M,  
 CITY OF PORTLAND, OREGON  
 MULTNOMAH COUNTY, OREGON  
 NOVEMBER 28, 2012 TAX MAP 1M-1E-31BA  
 UPDATED OCTOBER 30, 2015  
 FOR  
 AIR AMFUDIA



REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR  
 J. J. JENSEN  
 JENSEN, JENSEN & ASSOCIATES, INC.  
 1000 N. W. 10TH AVE.  
 SUITE 200  
 PORTLAND, OREGON 97227  
 PHONE 503-255-1341  
 FAX 503-255-1341

BALCH CANYON CREEK  
 (NOT SHOWN - 54' W. OF LOT 100)  
 APPROXIMATELY 50' W. OF LOT 100  
 (SEE PLAN SHEET 1)

AREA TABLE (ACRES)

TAX LOT	ENVIRONMENTAL OVERLAYS	
	OVERLAY AREA	PERCENTAGE
TAX LOT 200	4.09	4.09
TAX LOT 500	2.72	2.72
TOTAL	6.81	6.81

\*\* BALCH CANYON CREEK IS A PERMANENT STREAM AND IS LOCATED WITHIN THE ENVIRONMENTAL OVERLAY AREA. THE ENVIRONMENTAL OVERLAY AREA IS THE SOUTHERLY RIGHT-OF-WAY LINE OF NW CORNELL ROAD.

NOTES:  
 1. THE LOTS 200 AND 500 SHOWN ARE ENTIRELY WITHIN THE SEC-3 OVERLAY

