

NOTICE OF DECISION

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

Case File: T2-2018-10982

Permit: Forest Development Standards, Accessory Use Determination, and Significant Environmental Concern for Wildlife Habitat (SEC-h)

Applicants: Rocky L. Eells

Owners: Oxbow Framily LLC

Location: 5238 Oxbow Parkway, Gresham
Tax Lot 800, Township 1 South, Range 4 East, Section 15B, W.M.
Tax Account #R994150070 Property ID #R341817

Base Zone: Commercial Forest Use (CFU)

Overlays: Significant Environmental Concern for Water Resources (SEC-wr), Significant Environmental Concern for Wildlife Habitat (SEC-h), Hillside Development and Erosion Control (HD)

Proposal Summary: The applicant is requesting a review of Forest Development Standards, an Accessory Use Determination, and a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit to construct at 52' x 44' deck and yurt to be placed atop of the deck.

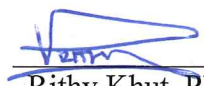
Decision: Approved with Conditions

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, August 12, 2019 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact Rithy Khut, Staff Planner at 503-988-0176 or at rithy.khut@multco.us

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

Issued by:



Rithy Khut, Planner

For: Adam Barber,
Interim Planning Director

Date: Monday, July 29, 2019

Instrument Number for
Recording Purposes: #2017078009



Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet the applicable approval criteria below:

Administration and Procedures: MCC 37.0560 Code Compliance and Applications

General Provisions: MCC 36.0005 Definitions

Administration and Enforcements – Permits and Certificates: MCC 36.0565 Condition of Approval – Accessory Structure, MCC 36.0570 Dark Sky Lighting Standards

Commercial Forest Use CFU: MCC 36.2020(T) Allowed Uses, MCC 36.2025(L) Review Uses, MCC 36.2050 Building Height Requirements, MCC 36.2056 Forest Practice Setbacks and Fire Safety Zones, MCC 36.2061 Development Standards for Dwellings and Structures, MCC 36.2075 Lot of Record, MCC 36.2095 Sewage, Storm Water, Water Systems and Grading Requirements

Significant Environmental Concern, SEC: MCC 36.4515 Uses – SEC Permit Required, MCC 36.4550 General Requirements for Approval in Areas Designated as SEC-wr or SEC-h, MCC 36.4560 Criteria for Approval of SEC-h Permit –Wildlife Habitat, MCC 36.4567 SEC-h Clear and Objective Standards

Hillside Development and Erosion Control: MCC 36.5505 Permits Required, MCC 36.5510 Exempt Land Uses and Activities

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 36 – West of Sandy River Rural Area

Conditions of Approval

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.

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. Permit Expiration –

- a. This land use permit shall expire as follows:
 - i. When construction has not commenced within two (2) years of the date of the final decision, or; [MCC 37.0690(B)(1)]
 - ii. When the structure has not been completed within four (4) years of the date of commencement of construction, or; [MCC 37.0690(B)(2)]
- b. For purposes of Condition 1.a.i, notification of commencement of construction will be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
- c. For purposes of Condition 1.a.ii, 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.

Note: The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

2. Prior to Land Use Planning sign-off for a building permit, the property owners or their representative shall:
 - a. Record pages 1 through 7 and Exhibit A.18 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 with County Records that states that the owner understands and agrees that no accessory structures on the property can be occupied as a dwelling or alternatively for any other form of permanent or temporary residential use. [MCC 36.0565 and MCC 36.2020(T)(5)]
3. At the time of land use planning review for building permit authorization, the property owner or their representative shall:
 - a. Submit and re-register the agricultural building. The reregistration shall ensure that such buildings shall be used for their allowed farm purposes only and, unless so authorized, shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use. [MCC 36.6020(T)(8)]

- b. Provide a new site plan showing the Primary Fire Safety Zone all buildings and structures as shown in Figure 6. [MCC 36.2056 Table 1, MCC 36.2056(D)(1), and MCC 36.2056(D)(4)]
 - c. Submit a site plan and building plan showing the locations of all exterior lighting and provide cut/specifications showing all exterior lighting supporting the subject property. The exterior lighting shall be fully shielded with opaque materials and directed downwards.
 - i. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding.
 - ii. Shielding must be permanently attached.
 - iii. The exterior lighting shall be contained within the boundaries of the parcel on which it is located. [MCC 36.0570, MCC 36.2061, and MCC 36.4550(B)]
 - d. Provide evidence in the form of photos or a site inspection that the two accessory buildings adjacent to the agricultural building are removed from the property. Alternatively, if the property owner chooses to keep the buildings, the buildings shall be moved to within 100 feet of the existing single-family dwelling. If the buildings are moved to within 100 feet of the existing single-family dwelling, a site plan will be required showing compliance with the primary fire safety zone standards. [MCC 36.2056 Table 1, MCC 36.2056(D)(1), and MCC 36.2056(D)(4)]
 - e. Provide evidence that all buildings will have or have a fire retardant roof [MCC 36.2061(C)(4)]
4. Prior to construction, the property owner or their representative shall:
- a. Comply with the standards of the applicable building code for all buildings and structures. Evidence shall be provided that a building permit was sought and approved from the City of Gresham, if applicable. [MCC 36.2061(C)(1)]
5. As an on-going condition, the property owner shall:
- a. Plant one (1), half inch in caliper, measured at 6 inches above the ground level to replace the western redcedar (*Thuja plicata*). If any trees are removed due to requirements of the Primary Fire Safety Zone, they shall be replaced at a 1-to-1 replacement ratio. The replacement trees shall be native evergreen trees that are a half inch in caliper, measured at 6 inches above the ground level. [MCC 36.4560(B)]
 - b. Ensure that trees within the primary safety zone of all accessory buildings and structures 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. [MCC 36.2056(D)(1)(a)]

- c. Ensure that the following nuisance plants in the table below shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property. [MCC 36.4550(C) and MCC 36.4567(C)]

Common Name	Scientific
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler' s Joy	<i>Clematis vitalba</i>
Poison hemlock	<i>Conium maculatum</i>
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady' s nightcap	<i>Convolvulus seppium</i>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Ann' s Lace	<i>Daucus carota</i>
South American Waterweed	<i>Elodea densa</i>
Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telemateia</i>
Crane' s Bill	<i>Erodium cicutarium</i>
Robert Geranium	<i>Geranium roberianum</i>
English Ivy	<i>Hedera helix</i>
St. John' s Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex aquafolium</i>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>

Common Name	Scientific
Fall Dandelion	<i>Loentodon autumnalis</i>
Purple Loosestrife	<i>Lythrum salicaria</i>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Reed Canary grass	<i>Phalaris arundinacea</i>
Annual Bluegrass	<i>Poa annua</i>
Swamp Smartweed	<i>Polygonum coccineum</i>
Climbing Binaweed	<i>Polygonum convolvulus</i>
Giant Knotweed	<i>Polygonum sachalinense</i>
English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Poison Oak	<i>Rhus diversiloba</i>
Himalayan Blackberry	<i>Rubus discolor</i>
Evergreen Blackberry	<i>Rubus laciniatus</i>
Tansy Ragwort	<i>Senecio jacobaea</i>
Blue Bindweed	<i>Solanum dulcamara</i>
Garden Nightshade	<i>Solanum nigrum</i>
Hairy Nightshade	<i>Solanum sarrachoides</i>
Common Dandelion	<i>Taraxacum officinale</i>
Common Bladderwort	<i>Utricularia vulgaris</i>
Stinging Nettle	<i>Urtica dioica</i>
Periwinkle (large leaf)	<i>Vinca major</i>
Periwinkle (small leaf)	<i>Vinca minor</i>
Spiny Cocklebur	<i>Xanthium spinosum</i>
Bamboo sp.	<i>various genera</i>

- d. Ensure that the accessory structures are not used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters, or any other residential use. [MCC 36.2020(T)(2)]
 - e. Ensure that the accessory structures do not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage. [MCC 36.2020(T)(4)(e)]
6. The following procedures shall be in effect if any materials of archaeological, historical, prehistorical or anthropological nature are located or discovered on the parcel or within the project area, including finding any evidence of historic campsites, old burial grounds, implements, or artifacts:
 - a. Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
 - b. Notification – The project applicant shall notify the County Planning Director and the State Historic Preservation Office (SHPO) within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.
 - c. Survey and Evaluation – The applicant shall follow any and all procedures outlines by SHPO and if necessary obtain the appropriate permits (see ORS 273.705 and ORS 358.905 to 358.955).
 - d. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.
 - e. Construction activities may recommence when SHPO requirements are satisfied. [MCC 36.4515(B)]
7. The following procedures shall be in effect if human remains are discovered during excavation or construction (human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts):
 - a. Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
 - b. Notification – Local law enforcement officials, the Multnomah County Planning Director, State Historic Preservation Office and the Indian tribal governments shall be contacted immediately.
 - c. Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
 - d. Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and this protection process may conclude.
 - e. Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760. [MCC 36.4515(B)]

Note: Once this decision is final, building plan check can be done with Multnomah County prior to an application for building permits with the City of Gresham. You will need to complete the following steps prior:

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, 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 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, Rithy Khut, at (503) 988-0176 or rithy.khut@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 Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

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

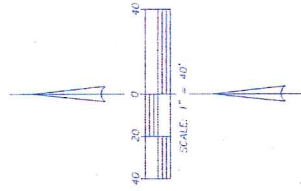
ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

SKETCH MAP DETAIL

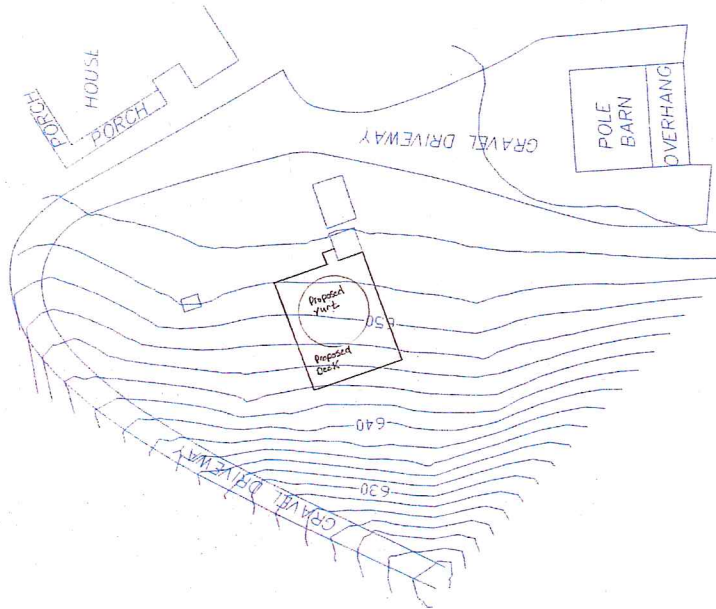
SITE PLAN FOR YURT/DECK CONSTRUCTION
 154E15B TAX LOT 00800 - DOCUMENT NO. 2017-07800
 SITUATED IN THE N.W. 1/4, SECTION 15, T.1S., R.4E., W.M.
 MULTNOMAH COUNTY, OREGON

MARY ASSOCIATES
 18615 E. BURNSIDE STREET
 PORTLAND, OR 97233
 TEL: 503-667-5550
 FAX: 503-667-5550
 EMAIL: DON@MARYASSOCIATES.NET

DATE: JANUARY 25, 2018
 ACCOUNT NO. 18127
 DRAWING NO. 18127SITEPLAN



154E15B TAX LOT 1400



REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 FEBRUARY 14, 1985
 JAMES L. BAUER
 2123
 EXPIRATION DATE: 12/31/19

RECEIVED
 APR 8 2019
 BY:

ZONING:
 CFU - COMMERCIAL FOREST USE

SITE SIZE:
 854,467 SQUARE FEET - 19.62 ACRES

PARCEL DATA:
 154E15B TAX LOT 00800 - DOCUMENT NO. 2017-078009

BENCHMARK
 WEST 1/4 CORNER, SECTION 15, T15S4E
 CITY OF PORTLAND BENCHMARK NO. 4260
 673.624 CITY OF PORTLAND DATUM

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 applicant is requesting a review of Forest Development Standards, an Accessory Use Determination, and a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit to construct at 52’ x 44’ deck and yurt (the yurt will be placed on top of the deck and is a separate building) within the Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay.

2.0 Property Description & History:

Staff: The proposed construction of a 52’ x 44’ deck and yurt to be placed atop of the deck will be located on a 5238 SE Oxbow Parkway within the Commercial Forest Use (CFU) zoning district in the West of the Sandy River Rural Planning Area. The property has multiple overlays including Significant Environmental Concern for Wildlife Habitat (SEC-h), Significant Environmental Concern for Water Resources (SEC-wr), and Hillside Development and Erosion Control (HD). All three overlays cover a majority of the property. The only area where there are no overlays present is adjacent to SE Oxbow Parkway.

The Multnomah County Department of Assessment, Records, and Taxation (DART) records indicate that John and Toni Sieling, Nancy Vitangeli, Laura Beving and Danny Shultz previously owned the property before conveying it to the current property owners, Oxbow Family LLC on August 3, 1999. The Limited Liability Corporation members include Nancy Vitangeli, Danny Shultz, Laura Beving, and John Sieling. The property is 19.42 acres and currently contains two (2) single-family dwellings. The single-family dwelling closest to SE Oxbow Parkway contains an attached garage. The second single-family dwelling, shed and “farm building” are all closer to the rear of the property. The rest of the property contains forestland.

One single-family dwelling was first taxed in 1980 and the second single-family dwelling was first taxed in 1992 as demonstrated from Multnomah County Department of Assessment, Records and Taxation (DART) records. The property has had an extensive permit history. Below are the land use and building permits that are on record for the subject property:

Figure 1 – Previous Land Use Cases and Building Permits

Case Number	Description	Decision Date
LE 2-79	Lot of Exception – Decision Denied	05/07/1979
791564	Single-Family Dwelling	08/02/1979
791604	State Approved Mobile Home while Building Single-Family Dwelling	08/08/1979
PRE 3-85	Resource Related Single-Family Dwelling	05/21/1985
MC-818	Building Permit for Resource Related Single-Family Dwelling authorized in PRE 3-85	05/03/1991
PRE 3-85a	Site Plan Authorization of Resource Related Single-Family Dwelling as Prescribed in PRE 3-85	09/17/1991
	Exempt Farm Structure	06/17/1992
GEC 37-99	Grading and Erosion Control Permit for Fill Dirt	08/09/1999
	Building Permit for an Addition to Resource Related Single-Family Dwelling	05/08/2000
BP-2015-4223	Exempt agricultural building for farm machinery storage	09/12/2016
T2-2015-4647	Administrative Decision by Planning Director regarding status of permitted Forest Help Dwelling and can property be divided through a Lot of Exception	03/28/2016

The most recent land use case, T2-2015-4647, was an Administrative Decision by the Planning Director that outlined the relationship between the two (2) single-family dwellings on the property. The Administrative Decision found that:

“The 1985 dwelling on the subject parcel is a dwelling for the housing of help, accessory to the primary 1979 dwelling . . . Additionally, because the 1985 dwelling is accessory to the 1979 dwelling, that relationship must remain intact. . . .”

Additionally, the Administrative Decision stated,

“A second dwelling on CFU zoned property is non-conforming use, and if the approved use is discontinued, it must go away. Separation of the primary and secondary dwelling would cause the underlying approval to be discontinued and the secondary dwelling to be non-compliant.”

Although this application does not propose alterations to either single-family dwelling, if at any time those buildings are altered, a verification and alteration of a non-conforming use must occur.

3.0 Code Compliance and Applications:

3.1 § 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:

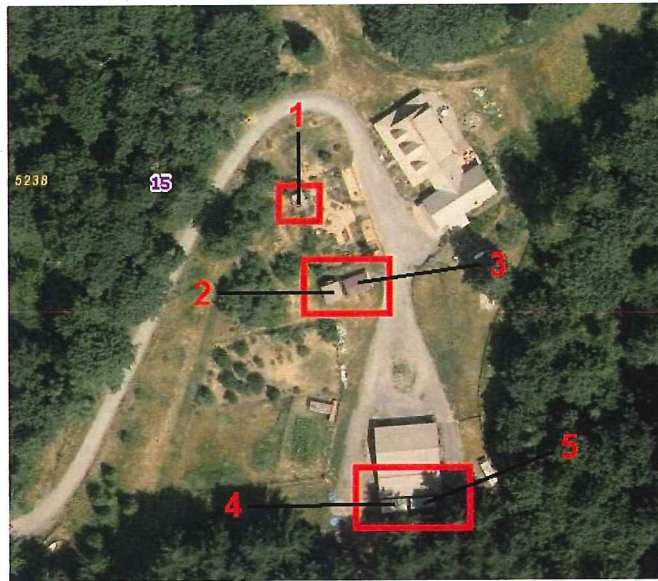
- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work 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: As required above the County shall not make a land use decision approving development 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. At this time, there are no active code compliance, “Under Review (UR)” complaint cases associated with this property. However, upon review of previous permit approvals and aerial photo analysis, there are apparent code compliance issues associated with the subject property.

In comparing aerial photos from 1998 and 2002, it appears that the exempt agricultural building was altered and enlarged. Originally reviewed on June 17, 1992, the exempt agricultural building was approximately 50 feet by 40 feet. Then during some point between 1998 and 2002, the building was enlarged to approximately 50 feet by 60 feet (Exhibit B.4 and B.5). There are also five structures, two adjacent to the agricultural building and three south and west of the single-family dwelling, that do not appear on any of the associated site plans that were reviewed by the County. One of the structures adjacent to the agricultural building appeared between 2006 and 2008 and the other appeared between 2008 and 2010. The buildings are shown in the figure below and marked in red.

Figure 2 – Buildings not previously reviewed or shown on previous site plans



Therefore, as a part of this application, retroactive review, which is discussed below, will need to occur which would result in the property coming into full compliance with all applicable provisions of the Multnomah County Code.

4.0 Commercial Forest Use CFU Criteria:

4.1 § 36.2020 ALLOWED USES.

(T) Accessory Structures subject to the following:

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

- (a) Garages or carports;**
- (b) Pump houses;**
- (c) Garden sheds;**
- (d) Workshops;**
- (e) Storage sheds, including shipping containers used for storage only;**
- (f) Greenhouses;**
- (g) Woodsheds;**
- (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;**
- (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;**
- (j) Sport courts;**
- (k) Gazebos, pergolas, and detached decks;**
- (l) Fences, gates, or gate support structures; and**
- (m) Mechanical equipment such as air conditioning units, heat pumps and electrical boxes; and**
- (n) Similar structures.**

Staff: The applicant is proposing to construct a deck and a yurt that will be constructed on the deck. The deck will be 52 feet by 44 feet or 2,288 square feet and the yurt will be a 32 feet across or 804.25 square feet (Exhibit A.18). As listed above, a detached deck is identified as potentially accessory to the single-family dwelling use; however, a yurt is not listed above. The building plans for the yurt show that the yurt will have an open floor plan. In comparing the yurt to the listed structures above, a yurt could be similar to a gazebo or pergola except for the fact that it is enclosed. The deck and yurt are approximately 100 feet from the single-family dwelling on the other side of the driveway. As is typical for a single-family dwelling, a deck is generally considered as customarily accessory. The applicant proposes to use the deck for exercise, yoga, and meditation (Exhibit A.15). Further, the deck would not exist without the single-family dwelling, thereby being incidental.

The deck and yurt are both accessory structures and can be found to be customarily accessory or incidental to a use, single-family dwelling.

The subject property also contains four buildings that have been constructed on the property that were not shown on previous site plans or reviews. The dimension and size of the other buildings as labeled in Figure 2 are below:

Figure 3 – Dimension and size of buildings not previous reviewed

	Length (feet)	Width (feet)	Square Footage (square feet)
Building 1	6	9	54
Building 2	12	13	156
Building 3	21	15	315
Building 4	21	10	210
Building 5	20	7.5	150
Exhibit A.18 and Exhibit B.4			

From aerial photo review, three of the buildings are located near areas that appear to be gardens and two other buildings are located adjacent to the agricultural building. Due to their location, it appears that each of the buildings are sheds that are being used as garden sheds or storage sheds. Both garden sheds and storage sheds are listed in the above list in MCC 36.2020(T)(1). It is assumed that each of the shed buildings are being used for storage associated with the single-family dwelling, the buildings would not typically exist on the land without the single-family dwelling; therefore, these buildings are accessory and incidental to the single-family dwelling use of the subject property. *This criterion is met.*

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

(3) The Accessory Structure may contain one sink.

(4) The Accessory Structure shall not contain:

- (a) More than one story;**
- (b) Cooking Facilities;**
- (c) A toilet;**

- (d) Bathing facilities such as a shower or bathing unit;**
- (e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or**
- (f) A closet built into a wall.**

Staff: The proposed deck/yurt and the retroactively reviewed sheds are not designed or used as dwellings. The yurt building does not contain a sink, cooking facilities, toilet, bathing facilities, closets, and is not more than one story (Exhibit A.22). There is no indication that the sheds contain the listed improvements. However to ensure that the sheds do not contain the listed improvements a condition will be required that a floor plan be provided for each of the sheds and that if the improvements are located in those buildings, then they will need to be removed. A second condition will also be required that at no time shall a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage are placed in the yurt. *These criteria are met.*

(5) Compliance with MCC 36.0565 is required.

Staff: As required above, MCC 36.0565 requires:

MCC 36.0565 Prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use.

In order to ensure compliance with this criterion, a condition will be required because the applicant is proposing a new accessory building and retroactively permitting four other accessory buildings. *As conditioned, this criterion is met.*

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

Staff: As defined in MCC 36.0005 a building is:

MCC 36.0005 Building – Any structure used or intended for supporting or sheltering any use or occupancy.

A structure is defined as:

MCC 36.0005 Structure – That which is built or constructed. An edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner]

Based on the definition above the yurt and sheds would be considered as buildings because they are used and intended to support or shelter an accessory use. As measured from the site plan and aerial photos, the footprint of the accessory buildings are as follows:

Figure 4 – Footprint of Accessory Buildings

	Length (feet)	Width (feet)	Square Footage (square feet)
Yurt	32 (radius)		804.25
Building 1	6	9	54
Building 2	12	13	156
Building 3	21	15	315
Building 4	21	10	210
Building 5	20	7.5	150
Total			1,689.25
Exhibit A.18 and Exhibit B.4			

Based on the square footage above, the combined footprints of all accessory buildings is less than 2,500 square feet threshold.

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

Staff: None of the accessory structures exceeds any of the allowed use provisions above. Additionally, the combination of footprints of all accessory buildings is below the 2,500 square feet threshold. Therefore, the proposal is not required to be considered through the Review Use provisions. *This criterion is not applicable to the proposal and retroactive review.*

(8) Buildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions. Such buildings shall be used for their allowed farm purposes only and, unless so authorized, shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.

Staff: The subject property contains one building that was registered as an Agricultural Structure in 1992. The request for the agricultural building was for the storage of farm machinery and horses. In comparing aerial photos from 1998 and 2002, it appears that the exempt agricultural building was altered and enlarged (Exhibit B.4, B.5, and B.6). Since the building was altered, a condition of approval will require re-registration of the building and a covenant be signed and recorded that the building shall be used for their allowed farm purposes only. The covenant will also state that the building shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use. *As conditioned, this criterion is met.*

4.2 § 36.2050 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 building plans indicate that the yurt will have a height of approximately 16 feet, which is less than the 35 feet maximum height (Exhibit A.20, A.21, and A.22). The other sheds are also similar in height. *This criterion is met.*

4.3 § 36.2056 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:

Table 1

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Accessory structures within 100 ft. of the dwelling	N/A	30	30	Primary required
Accessory structures located more than 100 ft. from the dwelling	N/A	30	130	Primary & Secondary required
Addition to an existing structure	May maintain current nonconforming setback(s) if less than 30 ft. to property line	30	30	Primary is required to the extent possible within the existing setbacks.

Staff: The applicant has provided two site plans that show the accessory structure, accessory buildings, and the agricultural building. As shown in Exhibit A.17 and A.18 and measured on those site plans the buildings and structures are located as follows:

Figure 5 – Yard dimensions requirements for buildings and structures on the Site Plan

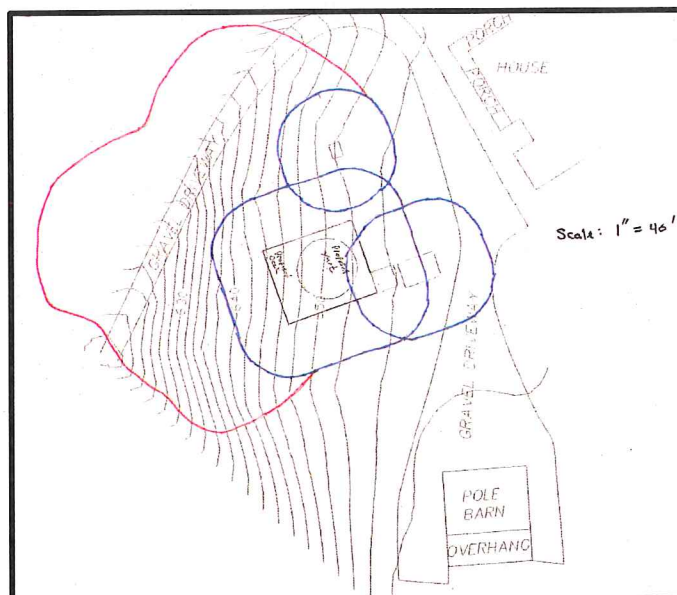
	Forest Practice Setback Requirement	Distance from building / structure to Property Line
Deck and Yurt (100' from dwelling)		
Front (adjacent to SE Oxbow Parkway)	30'	Approx. 900'
Rear (eastern property line)	30'	400'
Side (southern property line)	30'	230'
Side (northern property line)	30'	Approx. 358'
Accessory Building #1 (80' from dwelling)		
Front (adjacent to SE Oxbow Parkway)	30'	860'
Rear (eastern property line)	30'	438'
Side (southern property line)	30'	320'
Side (northern property line)	30'	332'
Accessory Building #2 (98' from dwelling)		
Front (adjacent to SE Oxbow Parkway)	30'	890'
Rear (eastern property line)	30'	388'
Side (southern property line)	30'	245'
Side (northern property line)	30'	420'
Accessory Building #3 (68' from dwelling)		
Front (adjacent to SE Oxbow Parkway)	30'	908'
Rear (eastern property line)	30'	363'
Side (southern property line)	30'	255'
Side (northern property line)	30'	392'
Agricultural Building Addition		
Front (adjacent to SE Oxbow Parkway)	30'	930'
Rear (eastern property line)	30'	310'
Side (southern property line)	30'	89' 7"
Side (northern property line)	30'	440'

The deck structure and the three buildings shown on the site plan are all located within 100 feet of a dwelling. Based on the measurements, the structures and buildings above all meet the Forest Practice Setbacks.

The deck structure and the three buildings shown on the site plan are all located within 100 feet of a dwelling; therefore, they each require a primary fire safety zone (FSZ). The agricultural building only requires a primary FSZ to the extent possible within the existing setbacks. As required by MCC 36.2056(D), the FSZ of each of the buildings or structure are 30 feet (shown in blue in Figure 6), if the slopes within the FSZ are less than 10 percent. The slopes within the primary fire safety zone of all the buildings have a range approaching but less than 25% slope. Based on the table in MCC 36.2056(D), the primary fire safety zone will need to be increased

to upwards of 105 feet (shown in red) down the slope from the buildings and structures as shown in the staff drawn Figure below:

Figure 6 – Fire Safety Zones for accessory structure and buildings #1 through #3



To ensure that the FSZ requirements are met, a new site plan will need to be submitted at the time of land use planning review of the building permit, which accurately reflects the primary FSZ.

There were two buildings that were not drawn on the site plan; therefore, an aerial photo measurement was used to provide approximate measurements. The two buildings are located near the agricultural building and are further than 100 feet from the existing dwelling. The Forest Practice setbacks and their distance to various property lines are shown below:

Figure 7 – Yard dimensions requirements for buildings and structures on aerial photo (Exhibit B.7)

	Forest Practice Setback Requirement	Distance from building / structure to Property Line
Accessory Building #4 (212' 7" from dwelling)		
Front (adjacent to SE Oxbow Parkway)	30'	Approx. >900'
Rear (eastern property line)	130'	343' 9"
Side (southern property line)	130'	77' 10"
Side (northern property line)	130'	Approx. >500'
Accessory Building #5 (209' 2" from dwelling)		
Front (adjacent to SE Oxbow Parkway)	30'	Approx. >900'
Rear (eastern property line)	130'	320' 9"
Side (southern property line)	130'	81' 6"
Side (northern property line)	130'	Approx. >500'

Based on the aerial measurements, it appears that accessory building #3 and #4 are encroaching into the forest practice setbacks. The buildings are located further than 100 feet from the dwelling and require a forest practice setback of 130 feet from all other property lines. The buildings are insufficiently setback from the southern property line. Additionally, both of the buildings would require a primary and secondary FSZ. Based on their location, the secondary FSZ could not be accommodated on the subject property based on those structures' current location. The applicant has not applied for an adjustment or variance of the Forest Practice Setbacks. Additionally, the FSZ requirements cannot be adjusted or varied and must be located on the subject property. Therefore, a condition will be required that either

1. The accessory buildings adjacent to the agricultural building are removed from the property, or;
2. The accessory buildings adjacent to the agricultural building are moved within 100 feet of the single-family dwelling to eliminate the need of the secondary FSZ.

As conditioned, this criterion is met.

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

Staff: The applicant has two buildings that have an inadequate Forest Practice Setback dimension. The applicant has not applied for an adjustment or variance; therefore, a condition will be required that either:

1. The accessory buildings adjacent to the agricultural building are removed from the property, or;
2. The accessory buildings adjacent to the agricultural building are moved within 100 feet of the single-family dwelling to eliminate the need of the secondary FSZ.

As conditioned, this criterion is met.

(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 36.2110 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

Staff: As discussed previously, there are two buildings that are located further than 100 feet from the dwelling; therefore, the buildings would require a Primary and Secondary Fire Safety zone surrounding the buildings. Based on their location, there is inadequate space to locate the both the Primary and Secondary FSZ on the subject property. The applicant has not applied for an Exception to the Secondary FSZ, therefore it will be required that a condition be added that that either

1. The accessory buildings adjacent to the agricultural building are removed from the property, or;
2. The accessory buildings adjacent to the agricultural building are moved within 100 feet of the single-family dwelling to eliminate the need of the secondary FSZ.

As conditioned, this criterion is met.

(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: The subject property abuts SE Oxbow Parkway, a rural local classified street. As required by MCC 29.571 Right-of-Way and Improvement Standard, a rural local classified street requires a minimum of 50 feet of right of way width. The right of way width along this section of SE Oxbow Parkway is 50 feet. Therefore, the minimum yard requirement does not need to be increased. *This criterion is not applicable.*

(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: As discussed previously, the deck structure, the yurt building, and five accessory buildings all require a primary fire safety zone due to their location on the subject property. Due to slopes surrounding the deck structure and three accessory buildings, the buildings would require a FSZ that is a distance up to 105 feet from the buildings due to slopes that are upwards of 25%, as previously shown in the Figure 6.

As required above, the trees within the primary 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

Two of the buildings near the agricultural structure also require a primary FSZ. The site plan does not have slope information for that location; however, based on contour information provided by Metro, the area appears flat (Exhibit B.8). Due to the slope, the buildings near the

agricultural structure would be 30 feet and would not require enlargement of the FSZ. However as previously discussed, the accessory structures are required to be removed or moved closer to the existing single-family dwelling. If that occurs, then the site plan would be required to contain a primary FSZ and potentially a secondary FSZ. A condition will be required to reflect that scenario. *As conditioned, this criterion is met.*

(2) Secondary Fire Safety Zone

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be 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 36.2110.

Staff: As discussed previously, the deck structure and three of the five accessory buildings near the deck do not require a secondary fire safety zone because they are located within 100 feet of the dwelling; however two other accessory buildings near the agricultural building are located further than 100 feet from the dwelling and do require a secondary FSZ. Due to their location and proximity to the southern property line, both buildings cannot accommodate the secondary FSZ on the subject property. Therefore, as discussed previously, the accessory structures are required to be removed or moved within 100 feet of the existing single-family dwelling. If that occurs, then the site plan would need to show that the accessory buildings demonstrate compliance with the primary FSZ and potentially a secondary FSZ. A condition will be required to reflect that scenario. *As conditioned, this criterion is met.*

(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

Staff: The applicant has not provided evidence that a forest management plan approved by the State of Oregon Department of Forestry is active on the subject property. Therefore, this criterion is not applicable. *This criterion is not applicable.*

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

Staff: As discussed previously the deck structure and all the buildings can establish a primary FSZ; however, the buildings adjacent to the agricultural building cannot establish a secondary FSZ. As conditioned, the buildings adjacent to the agricultural buildings will need meet the conditions as outlined under MCC 36.2056 Table 1 and MCC 36.2056(D)(2). *As conditioned, this criterion is met.*

(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: As discussed previously the deck structure and buildings adjacent to the deck will be required to comply with MCC 36.2056(D)(1). For the buildings adjacent to the agricultural building, they will also need to comply with MCC 36.2056(D)(1), if the buildings are relocated on the property. *As conditioned, this criterion is met.*

4.4 § 36.2061 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 36.0570:

Staff: The applicant has not indicated that any of the buildings require exterior lighting. However to ensure compliance with the above, a condition will be required that all exterior lighting supporting any of the accessory buildings, structures or agricultural building comply with MCC 36.0570. *As conditioned, this criterion is met.*

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

* * *

(3) Accessory buildings.

(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 36.2061(C);

Staff: The site plan indicates there are three accessory buildings, which are located within 100 feet of the existing dwelling. The accessory buildings are all clustered near the proposed deck and yurt (Exhibit A.18). As required above, those accessory buildings shall meet the standards of MCC 36.2061(C).

(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 36.2061(B)&(C);

Staff: The site plan indicates that two of the accessory buildings are located further than 100 feet from the existing dwelling. The accessory buildings are both clustered near the agricultural building (Exhibit A.18). As discussed in Section 4.3, both buildings do not meet Forest Practice Setbacks or Fire Safety zone requirements. Therefore, conditions required that either:

1. The accessory buildings adjacent to the agricultural building are removed from the property, or;
2. The accessory buildings adjacent to the agricultural building are moved within 100 feet of the single-family dwelling to eliminate the need of the secondary FSZ.

If the applicant elects to meet the second condition, then the accessory buildings will need to meet the requirements of MCC 36.2061(A)(3) and MCC 36.2061(C). *As conditioned, this criterion is met.*

* * *

(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):

* * *

Staff: Due to the fact that conditions will be required that the non-permitted buildings adjacent to the agricultural building are to be removed from the property or moved within 100 feet of the single-family dwelling these standards are not applicable. *This criterion is not applicable.*

(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;

Staff: As required above, the accessory buildings, the deck and the yurt will be required to comply with the standards of the applicable building code. To ensure compliance with the standard above, a condition will be required. *As conditioned, this criterion is met.*

(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;

Staff: The applicant is not proposing a mobile home as part of this application; therefore, this criterion is not applicable. *This criterion is not applicable.*

(3) Have a fire retardant roof; and

Staff: As required above, the accessory buildings and the yurt will be required to have a fire retardant roof. To ensure compliance with the standard above, a condition will be required. *As conditioned, this criterion is met.*

(4) Have a spark arrester on each chimney.

Staff: Based on the information provided by the applicant, none of the buildings contains a chimney; therefore, this criterion is not applicable. *This criterion is not applicable.*

4.5 § 36.2075 LOT OF RECORD.

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district a Lot of Record is either:

Staff: As defined in MCC 36.0005, a Lot of Record is:

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 36.7785. 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 subject property has had one prior land use case that provided Lot of Record findings. As shown in Exhibit B.9, the land use case PRE 3-85 contained the following statement from Robert Hall concluding, "This property is a Lot of Record in excess of ten acres for which a forest management plan has been prepared." Additionally as part of land use case PRE 3-85 a condition required that, "the owner shall record with the Divisions of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forest or farming practices." That statement was recorded in Book 1942, Page 516 on September 30, 1986.

As part of the application materials provided in PRE 3-85, a warranty deed was supplied that was recorded in Book 1416, Page 904 on January 31, 1980 (Exhibit B.11). The deed fulfills the Contract dated on June 26, 1979 recorded on June 27, 1979 in Book 1362, Page 1007. In 1979, the zoning on the property was Multiple Use Forest – 20 (MUF) and the minimum lot size was 20 acres (Exhibit B.16 and B.17). As described in the deed, the property is described as follows, "the north half of the southwest quarter of the northwest quarter." The typical size of

this description is 20 acres. Therefore as described, the subject property is a parcel that satisfied all applicable zoning laws and satisfied all applicable land division laws. *This criterion is met.*

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

Staff: Based on a review of the ownership for the surrounding tax lots using Multnomah County Department of Assessment, Records, and Taxation records, the subject property was not contiguous to any other parcel under the same ownership on February 20, 1990. The subject property was owned by William and Iris Driver as shown in the Warranty Deed recorded on January 21, 1980 in Book 1419, Page 904 (Exhibit B.11). The ownership of the surrounding properties based on a comparison of Multnomah County Department of Assessment, Records, and Taxation records are shown in the table below.

Figure 8 – Ownership Comparison

Alterative Account #	Pre-1990 Tax Roll Property Owner(s)	Post-1990 Tax Roll Property Owner(s)
R994150070	Iris Driver	Iris Driver
Adjacent Properties to the Subject Property		
R994150020	United States of America	United States of America
R994150080	James Wambaugh	James Wambaugh
R994150090	Claude & Ruth Wallace	Claude & Ruth Wallace
R994150180	Michael & Carol Mulder	Michael & Carol Mulder
R994150210	Robert & Kathleen Atkeson	Robert & Kathleen Atkeson
R994150320	James Wambaugh	James Wambaugh
R994160530	Gary & Shirley Moller	Gary & Shirley Moller
R994150190	Margaret Rogers	Margaret Rogers

Based on the ownership record, subject property is a separate legal parcel that is not aggregated with any contiguous parcels

(2) A group of contiguous parcels or lots:

- (a) Which were held under the same ownership on February 20, 1990; and**
- (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.**

* * *

Staff: As discussed previously the subject property was not held under the same ownership on February 20, 1990 and is larger than the minimum lot size of 19 acres. Therefore, these criteria do not apply. *These criteria are not applicable.*

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

Staff: The parcel was not created by partition or subdivision, therefore this criterion does not apply. *This criterion is not applicable.*

(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.

Staff: The subject parcel was not created through a Lot of Exception application, therefore this criterion does not apply. *This criterion is not applicable.*

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

* * *

Staff: Criterion (B) does not affect the determination on this case. *This criterion is not applicable.*

(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 36.2073, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Criterion (C) does not affect the determination on this case. *This criterion is not applicable.*

(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: The subject property is not an area of land described as a tax lot solely for assessment and taxation purposes, created by the foreclosure of a security interest, a mortgage lot, or created by court decree. *These criteria are met.*

5.0 Significant Environmental Concern, SEC Criteria:

5.1 § 36.4515 USES - SEC PERMIT REQUIRED.

(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that development, including but not limited to, the location and design of any use, or change, replacement or alteration of a use, except as provided in MCC 36.4520, shall be subject to an SEC permit.

Staff: The proposed development is located on lands designated SEC, more specifically Significant Environmental Concern for Wildlife Habitat (SEC-h); therefore the proposed development shall be subject to the SEC permit requirements as discussed below.

(B) Any excavation or any removal of materials of archaeological, historical, prehistorical or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.

Staff: As required above, any excavation or any removal of materials of archaeological, historical, prehistorical, or anthropological nature shall be conducted under the conditions of an SEC permit. Although there are no indication of archaeological, historical, prehistorical, or anthropological areas within the project site; if archaeological artifacts are found, a condition will be required that during construction activities that the applicant or their representatives shall halt construction, notify the Planning Director, conduct a survey and evaluation, and prepare a mitigation plan. *As conditioned, this criterion is met.*

(C) Activities proposed for lands designated as Scenic Waterways under the Oregon Scenic Waterways System shall be subject to an SEC-sw permit in addition to approval from the Oregon Parks and Recreation Department.

Staff: As the proposed development and retroactive review of accessory buildings are not located on lands designated as Scenic Waterways under the Oregon Scenic Waterways System; therefore, these requirements do not apply. *This criterion is not applicable.*

5.2 § 36.4550 GENERAL REQUIREMENTS FOR APPROVAL IN AREAS DESIGNATED AS SEC-WR OR SEC-H.

The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas in addition to the provisions of 36.4555 or 36.4560 as applicable.

(A) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

Staff: The applicant has applied for a Grading and Erosion Control permit that will review that the proposed development will utilize erosion control measures that implement Best Management Practices for erosion control. That permit is being reviewed concurrently with this land use application.

(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.

Staff: The applicant has not indicated that new exterior lights are being proposed. However, if exterior lighting is proposed a condition will be required to ensure that illumination from outdoor lighting shall be minimized through use of a hooded fixture type and location. *As conditioned, this criterion is met.*

(C) The following nuisance plants, in addition to the nuisance plants defined in 36.4510, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone:

**Table 1
Nuisance Plant List**

Common Name	Scientific
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler' s Joy	<i>Clematis vitalba</i>
Poison hemlock	<i>Conium maculatum</i>
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady' s nightcap	<i>Convolvulus seppium</i>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Ann' s Lace	<i>Daucus carota</i>
South American Waterweed	<i>Elodea densa</i>
Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telemateia</i>
Crane' s Bill	<i>Erodium cicutarium</i>

Common Name	Scientific
Fall Dandelion	<i>Loentodon autumnalis</i>
Purple Loosestrife	<i>Lythrum salicaria</i>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Reed Canary grass	<i>Phalaris arundinacea</i>
Annual Bluegrass	<i>Poa annua</i>
Swamp Smartweed	<i>Polygonum coccineum</i>
Climbing Binaweed	<i>Polygonum convolvulus</i>
Giant Knotweed	<i>Polygonum sachalinense</i>
English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Poison Oak	<i>Rhus diversiloba</i>
Himalayan Blackberry	<i>Rubus discolor</i>
Evergreen Blackberry	<i>Rubus laciniatus</i>
Tansy Ragwort	<i>Senecio jacobaea</i>
Blue Bindweed	<i>Solanum dulcamara</i>
Garden Nightshade	<i>Solanum nigrum</i>
Hairy Nightshade	<i>Solanum sarrachoides</i>
Common Dandelion	<i>Taraxacum officinale</i>

Common Name	Scientific
Robert Geranium	<i>Geranium roberianum</i>
English Ivy	<i>Hedera helix</i>
St. John' s Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex aquafolium</i>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>

Common Name	Scientific
Common Bladderwort	<i>Utricularia vuigaris</i>
Stinging Nettle	<i>Utica dioica</i>
Periwinkle (large leaf)	<i>Vinca major</i>
Periwinkle (small leaf)	<i>Vinca minor</i>
Spiny Cocklebur	<i>Xanthium spinoseum</i>
Bamboo sp.	<i>various genera</i>

Staff: To ensure compliance with this requirement, a condition will be required that the nuisance plants in the table above shall not be planted and if found shall be removed and kept removed from the subject property. *As conditioned, this criterion is met*

5.3 § 36.4560 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT.

Development within areas designated SEC-h shall comply with the provisions of this section. An application shall not be approved unless it contains the information in 36.4540(A) and (D).

(A) Development standards:

* * *

(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 required above, the development shall occur within 200 feet of a public road and the access road/driveway serving the development shall not exceed 500 feet in length. As measured on the site plan, the development will occur more than 800 feet from the public road. The driveway is more than 1,000 feet (Exhibit A.17). As proposed, the development does not meet the Type 1 Standards of MCC 36.4567 and therefore must be reviewed as at Type 2 land use application. Those standards are discussed below. *These criteria are not met.*

(B) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

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

Staff: As proposed, the applicant can meet the development standards of Section (A) but is electing to provide alternative conservation measures due to the location of the second dwelling on the property. The development pattern of the property would indicate that there is adequate space to locate the deck and yurt structure within 200 feet of the public road and utilize the driveway so that it does not exceed 500 feet in length. Alternatively, the applicant is proposing to locate the development more than 800 feet from the public road.

Based on this proposal, the applicant will need to demonstrate that the alternative conservation measures exceed the standards of Section (A) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (A). If the applicant had proposed the development within the first 200 feet of a public road, the development would have a large impact to the forested areas contained in the first 200 feet of the property. Outside of the already impacted areas surround the single-family dwelling, there is a dense stand of trees along the front 200 feet of the property.

The Environmental Professional hired by the applicant, Jonathan E. Campbell, who has an background in both forest management and biology, provided a narrative (Exhibit A.11 and A16). The narrative documents that the existing conditions on the site. The study found:

“There are no forested areas directly adjacent to the proposed deck site. It is surrounded by an orchard, vegetable garden area and driveway . . . A study of game paths and scat in the area show that *odocoileus heminus columbianus* (black tailed deer) . . . use runs to the south of the proposed construction site.”

The applicant proposes to plant multiple trees and control nuisance plants as part of the Wildlife Conservation Plan (Exhibit A.11 and A16). Therefore, a condition will be required that they follow through with those proposed conservation measures to ensure that the development exceeds the standards in Section (A) and has a less detrimental impact on forest wildlife habitat. *As conditioned, this criterion is met.*

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

(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

Staff: As proposed, the project will include measures to reduce impacts to forested areas to the minimum necessary to serve the proposed development. The proposed development is located in an area that is already cleared and being used for as a planting area for a residential garden. The cleared areas have been in existence prior of the adoption of the Significant Environmental Concern for Wildlife Habitat overlay in 2003 as showed on building permit review from 2000. The proposal will only remove one native tree, a western redcedar (*Thuja plicata*), which the applicant proposes to replace

(Exhibit A.11 and A16). No other forested areas on the property will be effected by the proposed development. To ensure compliance with the replacement of this native tree, a condition will be required. *As conditioned, this criterion is met.*

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

Staff: As stated previously, the proposed development is located in an area that is already cleared and being used as a planting area for a residential garden. As proposed the deck/yurt and adjacent accessory buildings will encompass a little more than 3,000 square feet of area, which is less than the one acre provided in the standard. *This criterion is met.*

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

Staff: The applicant has not proposed any new fencing as part of this application. *This criterion is met.*

(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.

Staff: As discussed previously, the applicant is proposing development in an area that has already been cleared. The proposed development is not proposing to create new cleared areas; therefore, no revegetation is required. *This criterion is met.*

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

Staff: As discussed previously, the applicant is proposing development in an area that has already been cleared. The applicant is not proposing to disturb stream riparian areas, drainages or streams. Therefore, no revegetation is required in those areas. *This criterion is met.*

5.4 § 36.4567 SEC-H CLEAR AND OBJECTIVE STANDARDS.

At the time of submittal, the applicant shall provide the application materials listed in MCC 36.4540(A) and (D). The application shall be reviewed through the Type I procedure and may not be authorized unless the following are met:

(A) The proposed development meets the standards listed in 36.4560(A)(1) through (5);

Staff: The proposal development does not meet the standards listed in MCC 36.4560(A)(1) through (5); therefore, the proposal is unable to meet the Clear and Objective Standards of Section (A) and is required to meet the requirements of MCC 36.4540(B), which is discussed in Section 5.3.

(B) The proposed development shall meet the applicable storm water and grading and erosion control requirements of MCC Chapter 29. Ground disturbance within 100 feet of a watercourse as defined by MCC 29.351 shall be limited to the period between May 1st and September 15th. Revegetation and soil stabilization must be accomplished no later than October 15th.

Staff: The applicant has supplied a stormwater certificate and has applied for a Grading and Erosion Control permit. The grading and erosion control permit is being reviewed concurrently with this land use application. Additionally, the proposal is not located within 100 feet of a watercourse and therefore is not subject to the time limitation. However, revegetation and soil stabilization must be accomplished no later than October 15th. *As conditioned, this criterion is met*

(C) The nuisance plants in 36.4550, Table 1, in addition to the nuisance plants defined in 36.4510, shall not be used as landscape plantings within the SEC-h Overlay Zone.

Staff: To ensure compliance with this requirement, a condition will be required that the nuisance plants in the table above shall not be planted and if found shall be removed and kept removed from the subject property. *As conditioned, this criterion is met*

6.0 Hillside Development and Erosion Control Criteria

6.1 § 36.5505 PERMITS REQUIRED.

Hillside Development Permit: All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC 36.5510.

Staff: As shown below, the property contains hazard areas (denoted by orange crosshatch) identified on the "Slope Hazard Map."

Figure 9 – Slope Hazard Areas



The area of the proposed development is located within the slope hazard area. Therefore, the application will require a Hillside Development Permit unless the development meets the exemptions as listed in MCC 36.5510.

6.2 § 36.5510 EXEMPT LAND USES AND ACTIVITIES.

The following are exempt from the provisions of this Chapter:

(A) Development activities approved prior to February 20, 1990; except that within such a development, issuance of individual building permits for which application was made after February 20, 1990 shall conform to site-specific requirements applicable herein.

(B) General Exemptions - All land-disturbing activities outlined below shall be undertaken in a manner designed to minimize earth movement hazards, surface runoff, erosion, and sedimentation and to safeguard life, limb, property, and the public welfare. A person performing such activities need not apply for a permit pursuant to this subdistrict, if:

- (1) Natural and finished slopes will be less than 25 percent; and,**
- (2) The disturbed or filled area is 20,000 square feet or less; and,**
- (3) The volume of soil or earth materials to be stored is 10 cubic yards or less; and,**
- (4) Rainwater runoff is diverted, either during or after construction, from an area smaller than 10,000 square feet; and,**
- (5) Impervious surfaces, if any, of less than 10,000 square feet are to be created; and,**
- (6) No drainageway is to be blocked or have its stormwater carrying capacities or characteristics modified.**

Staff: The applicant has provided a site plan that shows the contours of the proposed development area. In the survey done by Daniel Bauer on January 25, 2018 the natural slopes are less than 25 percent in the development area (Exhibit A.17 and A.18). The applicant will be excavating 2 feet by 2 feet pier pads for the deck footings. The applicant is proposing to approximately 3,000 square feet of disturbance. No fill brought to the site as the soils that is excavated will be used to fill any excavations (Exhibit A.12 and A.13). *The proposal is an exempt from the provisions of this Chapter and this criterion is met.*

7.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Accessory Use Determination, Forest Development Standards review, and Significant Environmental concern permit to establish a deck, a yurt accessory building, and three other accessory buildings in the Commercial Use Forest (CFU) zone. This approval is subject to the conditions of approval established in this report.

8.0 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2018-10982 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	10/09/2018
A.2	1	Letter of Authorization	10/09/2018
A.3	3	Applicant Narrative	10/09/2018
A.4	1	Site Plan (11” x 17”)	10/09/2018
A.5	1	Floor Plan (11” x 17”)	10/09/2018
A.6	1	Elevation Plan – West (11” x 17”)	10/09/2018
A.7	1	Elevation Plan – North (11” x 17”)	10/09/2018
A.8	4	Septic Review Certification	10/09/2018
A.9	1	Fire Service Agency Review	10/09/2018
A.10	1	Certification of Water Service	10/09/2018
A.11	1	Memorandum concerning Significant Environmental Concern for Wildlife Habitat (SEC-h)	10/09/2018
A.12	4	Hillside Development Permit Application: Geotechnical Reconnaissance and Stability Preliminary Study	10/09/2018
A.13	6	Hillside Development Permit (HDP) Worksheet	10/09/2018
A.14	1	Memorandum from Joanna Valencia, AICP, Transportation Planning and Development Manager concerning EP-2018-10749	10/09/2018
A.15	1	Revised General Application Form	04/02/2019
A.16	3	Revised Narrative Addressing Completeness Items	04/02/2019
A.17	1	Site Plan Sketch Map (18” x 24”)	04/02/2019
A.18*	1	Site Plan Sketch Map showing Yurt and Deck (18” x 24”)	04/02/2019
A.19	1	Revised Floor Plan (11” x 17”)	04/02/2019
A.20	1	Revised Elevation Plan – North (11” x 17”)	04/02/2019
A.21	1	Revised Elevation Plan – West (11” x 17”)	04/02/2019

A.22	6	Yurt Plans P1.00: General Notes P2.00: 33' SIPS Subframe & Construction, page 1 P3.00: 33' SIPS Subframe & Construction, page 2 P4.00: 33' SIPS Subframe & Construction, page 3 P5.00: 33' SIPS Subframe & Construction, page 4 P6.00: 33' SIPS Subframe & Construction, page 5	04/02/2019
A.23	7	Storm Water Certificate	04/02/2019
B	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1S4E15B -00800 (R994150070)	10/09/2018
B.2	2	Department of Assessment, Records and Taxation (DART): Map with 1S4E15B -00800 (R994150070) highlighted	10/09/2018
B.3	1	State of Oregon Corporation Division: Amended Annual Report – Oxbow Framily LLC	04/02/2019
B.4	1	Aerial Photo from 1998	07/01/2019
B.5	1	Aerial Photo from 2002	07/01/2019
B.6	1	Aerial Photo from 2004	07/01/2019
B.7	1	Distance Measurements Utilizing Multnomah County GIS	07/01/2019
B.8	1	Contour Map from Metro GIS	07/01/2019
B.9	5	Land Use Case PRE 3-85	07/08/2019
B.10	1	Parcel Record – Cartographic Unit	07/08/2019
B.11	1	Warranty Deed from Book 1416, Page 904 recorded on January 31, 1980	07/08/2019
B.12	1	Quitclaim Deed from Book 2787, Page 444 recorded on November 22, 119	07/08/2019
B.13	2	Statutory Warranty Deed recorded as Instrument #2016-066527 on June 1, 2016	07/08/2019
B.14	2	Statutory Warranty Deed recorded as Instrument #2016-158919 on December 20, 2016	07/08/2019
B.15	3	Statutory Warranty Deed recorded as Instrument #2017-078009 on June 27, 2017	07/08/2019
B.16	1	Zoning Map from October 6, 1977	07/08/2019

B.17	2	Zoning Code as adopted on March 6, 1979 for Multiple Use Forest – 20 (MUF-20), pages 44-45	07/08/2019
'C'	#	Administration & Procedures	Date
C.1	4	Incomplete letter	11/07/2018
C.2	1	Applicant's acceptance of 180 day clock	11/24/2018
C.3	1	Complete letter (day 1)	04/05/2019
C.4	7	Opportunity to comment & mailing list	07/02/2019
C.5		Administrative decision & mailing list	