

## NOTICE OF DECISION

**Case File:** T2-2019-12390

**Permit:** Lot of Record Verification

**Applicant(s):** Amy Schotthoefer      **Owner(s):** Amy Deters (Schotthoefer)

**Location:** 36041 SE Hurlburt Rd.  
Tax Lot 300, Section 03D, Township 1 South, Range 4 East, W.M.  
Tax Account #R994030300      Property ID #R341216

**Zoning:** Rural Residential (RR)

**Overlays:** None

**Proposal Summary:** The applicant requests a Lot of Record Verification for the subject property. The County will review the creation or reconfiguration of the subject property to verify that the creation or reconfiguration of the unit of land satisfied all applicable zoning and land division laws in effect on the date of its creation or reconfiguration.

**Determination:** The subject property (1S4E03D-00300) is a Lot of Record in its current configuration.

**This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, October 25, 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 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.

**Issued By:**



Chris Liu, Assistant Planner

**For:**

Adam Barber,  
Interim Planning Director

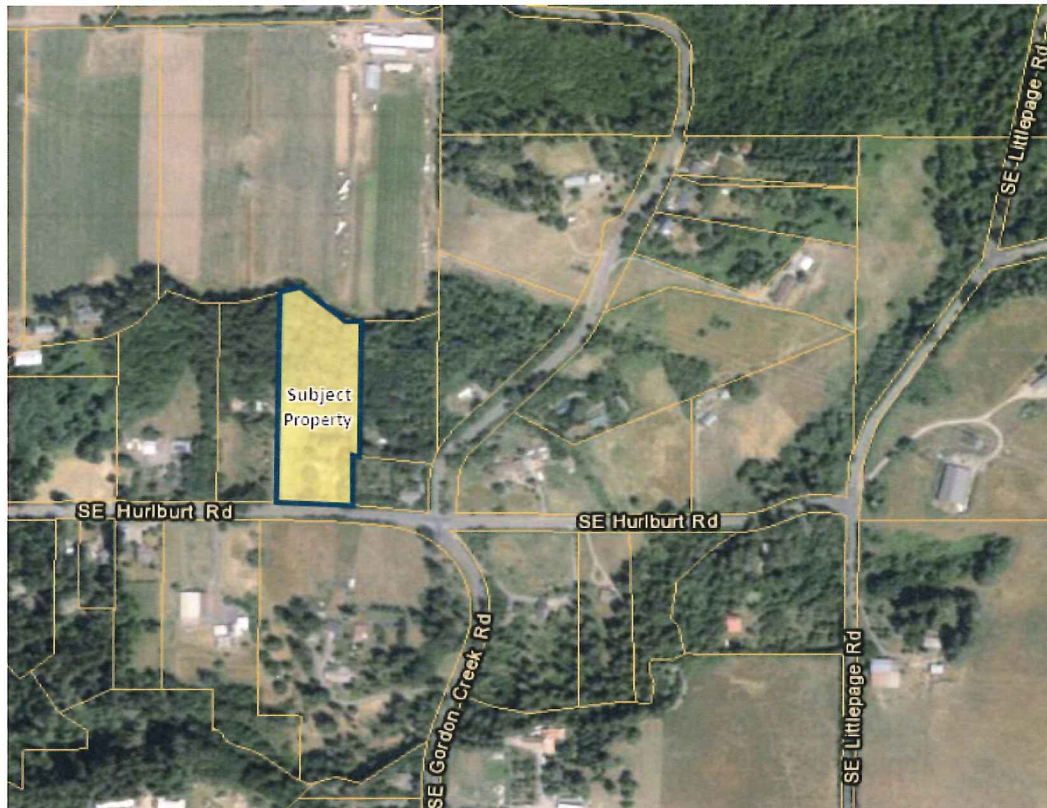
**Date:**

Friday, October 11, 2019

Instrument Number for Recording  
Purposes: #2011-106511

## Vicinity Map

N↑



**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3090 Lot of Record – Rural Residential (RR)

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link *Chapter 39: Zoning Code*.

## **Conditions of Approval**

1. Record pages 1 through 2 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 39.1175]

## **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 requests a Lot of Record Verification for Tax Lot 300, Section 03D, Township 1 South, Range 4 East, W.M. (the “subject property”). The subject property is located adjacent to SE Hurlburt Road and identified as 36041 SE Hurlburt Road.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot or unit of land involved in the request. The County then verifies that the creation or reconfiguring of the unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. If the unit of land met all the applicable zoning and land division laws in effect at the time, it may be determined to be a Lot of Record.

### **2.0 PROPERTY DESCRIPTION:**

**Staff:** The subject property is located in rural East Multnomah County in the Rural Residential (RR) zone. The subject property is approximately 3.92 acres and is outside the Urban Growth Boundary and outside the Columbia River Gorge National Scenic Area. Based on Assessment and Taxation records, the property contains an existing single-family dwelling and a detached garage.

### **3.0 GENERAL PROVISIONS:**

#### **3.1 MCC 39.1515 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 Zoning 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 Zoning 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 noted in Section 1.0 above, this application is a request for a Lot of Record Verification, which does not require the County to approve development, a land division, a property line adjustment, or a building permit. Therefore, this standard is not applicable. Nonetheless, there are no known compliance issues on the subject property at this time.

#### **4.0 LOT OF RECORD CRITERIA:**

##### **4.1 MCC 39.3005: Lot of Record – Generally:**

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

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

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

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

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**Staff:** To qualify as a Lot of Record, the subject property, when created or reconfigured, must have (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

#### Applicable Zoning Laws

To satisfy all applicable zoning laws at the time of creation, the subject property must have been created in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

The applicant submitted a recorded deed from August 30, 1945 describing the parent parcel of the property (Exhibit A.4), portions of which would later be divided off leaving the remainder as the subject property. At the time of recording of the aforementioned deed, zoning regulations were not yet in effect.

On May 9, 1974, a Deed was recorded in Book 984, Page 1437 (see Exhibit A.3) which conveyed a portion [the westerly 192 feet] of the original parent parcel to what is currently tax lot 1S4E03D - 00400. Through recording the aforementioned 1974 deed, the subject property was created at its current size of approximately 3.92 acres.

At the time of recording of the 1974 deed creating the 3.92 acre subject property, the zoning in the area was 'F-2' (Exhibit B.3). The minimum lot size for the F-2 zone was 2.0 acres. (Exhibit B.4). Therefore, at the time of creation in 1974, the subject property met the minimum lot size requirements and satisfied all applicable zoning laws at that time.

#### Applicable Land Division Laws

In 1974, the process to divide a property into two new units of land was to write up new legal descriptions and record a new deed or contract that utilized the new description. The property owner at that time did utilize the correct land division process and satisfied all applicable land division laws at that time (Exhibit A.3).

*Based on the information discussed above, the creation of this parcel in 1974 satisfied all applicable zoning and land division laws at the time. The subject property therefore qualifies as a Lot of Record.*

#### **4.2 MCC 39.3090: Lot of Record – Rural Residential:**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the RR district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, RR zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;**

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

**(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 39.4395, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**Staff:** The subject property is currently zoned Rural Residential (RR) which requires a 5.0 acre minimum lot size and a minimum front lot line length of 50 feet. The subject property is approximately 3.92 acres and has a front lot line length of approximately 240 feet. While the parcel has less than the minimum lot size for a new parcel in the RR zone, it is a legally created parcel under finding 4.1 of this land use decision.

**4.3 (C) Except as otherwise provided by MCC 39.4380, 39.4385, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.**

**Staff:** The structures on the subject property do not have any known issues with the required minimum yard requirements. As stated in section 4.2 of this land use decision, the lot meets the minimum front lot line length requirement for the RR zone.

**4.4 (D) The following shall not be deemed to be 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) An area of land created by court decree.**

**Staff:** The subject property was not created by the foreclosure of a security interest or a court decree. The subject property is not an area of land described solely for assessment and taxation purposes. *Criteria met.*

*Based upon the findings in 4.1 through 4.4, the approximately 3.92 acre subject property is a Lot of Record.*

## **5.0 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 T2-2019-12390 at the Land Use Planning office.

<b>Exhibit #</b>	<b># of Pages</b>	<b>Description of Exhibit</b>	<b>Date Received/ Submitted</b>
A.1	1	Application Form	08.22.2019
A.2	4	Title Report Cover Page and Maps	08.22.2019
A.3	3	Statutory Bargain and Sale Deed recorded on September 27, 2011 as Instrument no. 2011-106511	08.22.2019
A.4	3	Deed recorded August 30, 1945 in Book 963, Page 179-181	08.22.2019
A.5	2	Parcel Record Card for 1S4E03D – 00300	08.22.2019
A.6	2	Application, License, And Record of Marriage – demonstrating legal name change for the property owner.	09.11.2019
<b>'B'</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	County Assessment & Taxation Property Information	08.22.2019
B.2	2	Request for Waiver of Pre-Filing Meeting Requirement	08.22.2019
B.3	1	1962 Zoning Map for 1S4E03	08.22.2019
B.4	1	F2 zoning regulations – Zoning Ordinance as amended effective May 21, 1968	08.22.2019
<b>'C'</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	1	Complete Letter (Day 1)	09.04.2019
C.2	2	Opportunity to Comment	09.06.2019
C.3	7	Administrative Decision	10.11.2019