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## NOTICE OF DECISION

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**Case File:** T2-2020-12842

**Permit:** Type B Home Occupation Renewal

**Applicants:** Hal Keever

**Owners:** Randy & Diana Robinson

**Location:** 9430 NW Kaiser Rd.

Tax Lot 700, Section 5C, Township 1 North, Range 1 West, W.M.

Alternate Account #R749706050

Property ID #R266284

**Base Zone:** Exclusive Farm Use (EFU)

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

**Proposal Summary:** The applicant requests a Type B Home Occupation Renewal for an existing Type B Home Occupation for a wine storage and distribution business permitted via land use case #T2-2015-4601. No new use or expansion is proposed in this application.

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**Decision:** Approved with Conditions

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, February 20, 2020 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.

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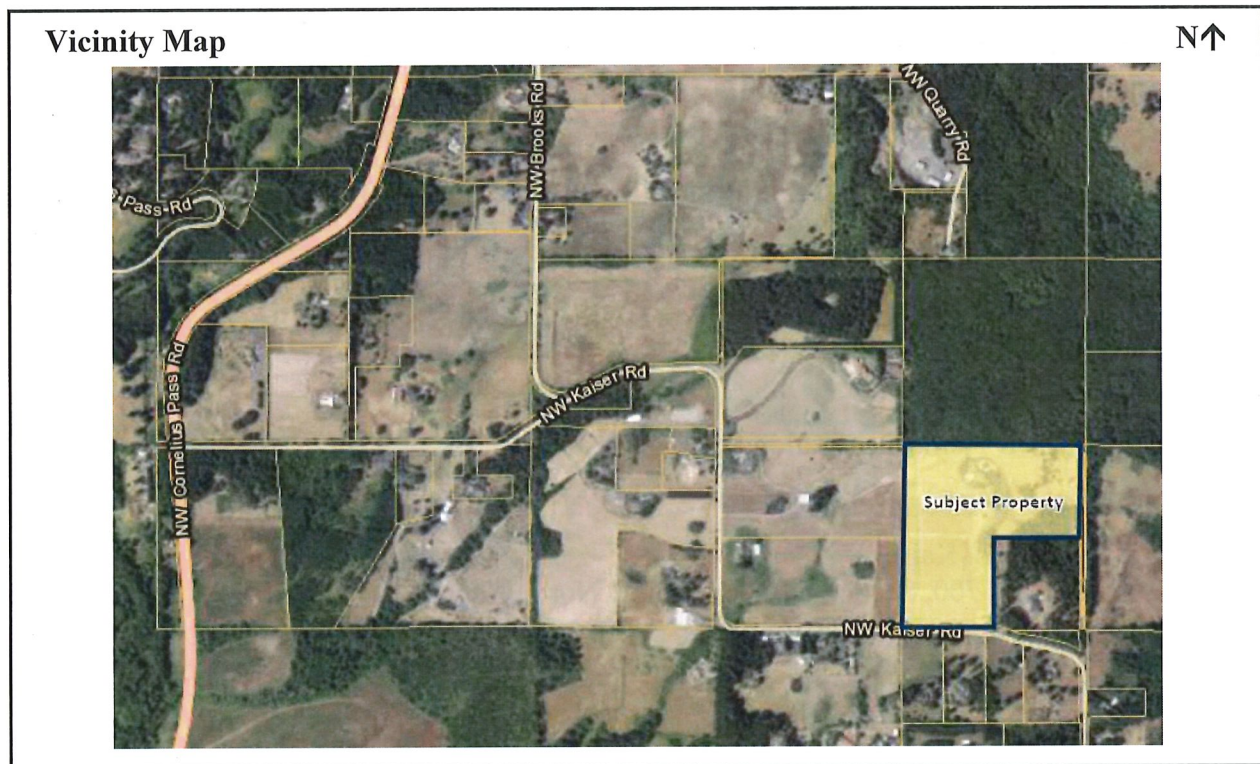
**Issued by:**



**By:** Chris Liu, Planner

**For:** Carol Johnson, AICP  
Planning Director

**Date:** Thursday, February 6, 2020



### 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 39.3070: Lot of Record – Exclusive Farm Use, MCC 39.8850(D): Type B Home Occupation Renewal

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office or by visiting our website at [multco.us/landuse/zoning-codes](http://multco.us/landuse/zoning-codes) under the link **Chapter 39: Multnomah County Zoning Code**.

### Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. 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.

1. The Type B home occupation **may continue for a period of three years from March 4, 2019**, provided it is in compliance with this permit. At the end of the three year period, the right to operate the Type B home occupation from the property expires automatically unless the permit is renewed pursuant to MCC 39.8850(D).

**Note:** The application for a permit extension must be submitted prior to the expiration of the approval period noted in this land use decision. Provided the renewal application is submitted on or before the expiration date, the business operator may continue the

Type B home occupation pending the County's final decision on the renewal request. As part of the renewal process, the County must determine that the Type B home occupation has been conducted in full compliance with the permit for a preponderance of the time since the prior approval.

2. The business operator must operate the Type B home occupation (business) in full compliance with this permit. If the business operation changes, the business operator must contact Land Use Planning to revise the home occupation permit. Failure to operate the business in compliance with this approval may affect the outcome of the renewal process. [MCC 39.8850(D)(1)]
3. Notwithstanding the transfer of approval rights in MCC 39.8850(C), approval of a Type B home occupation does not run with the land and is not transferred with ownership of the land. Approval of a Type B home occupation is personal to the business operator and specific to the authorized premises. Approval of a Type B home occupation terminates automatically, immediately and without notification if the business owner ceases to reside full-time on the authorized premises. [MCC 39.8850(C)]

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

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



## **Findings of Fact**

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

### **1.0 PROJECT DESCRIPTION:**

**Staff:** The applicant requests a Type B Home Occupation renewal for an existing Type B Home occupation for a wine storage and distribution business permitted via land use case #T2-2015-4601.

### **2.0 PROPERTY DESCRIPTION:**

**Staff:** The 28.87 subject property is located in rural Multnomah County in the West Hills area. The property is outside of the Metro Urban Growth Boundary. Land Use Case #T2-2015-4601 approved a Type B Home Occupation inside an approximately 540 sq. ft. section of an approximately 60-ft. wide by 70-ft. long (with eaves) accessory building. The Home Occupation involves storing and distributing wine from grapes grown on the property, with the wine produced and bottled off-site.

### **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.

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**Staff:** There are no known compliance issues on the subject property. Land use case no. T2-2018-9865 resolved a compliance issue resulting from a non-permitted addition. The applicant provided documentation (Exhibit A.16 – A.17) to address the conditions of approval for case no. T2-2018-9865.

### **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, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

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

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or ...

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**MCC 39.3080: Lot of Record – (MUA-20)**

(A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 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, MUA-20 zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;
- (6) 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 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 39.4330, 39.4335, 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.

(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:** Land use case no. T2-2015-4601 found that the 28.86 acres subject property is a Lot of Record based on the determination in the approval for the dwelling case no. PRE 26-90. The current size of the subject property is 28.86 acres, which matches the description provided in T2-2015-4601. Therefore, the 28.86 acres noted in the aforementioned previous land use cases is a Lot of Record. *Criteria met.*

## **5.0 TYPE B HOME OCCUPATION RENEWAL CRITERIA:**

- 5.1 MCC 39.8850(D): The Type B home occupation may continue for a period of three years from date of the final decision provided it is in compliance with the approved permit. At the end of the three year period, the right to operate the Type B home occupation from the property expires automatically unless the permit is renewed for an additional three year period pursuant to the following:**

**(1) The Type B home occupation has been conducted in full compliance with the permit for a preponderance of the time since the prior approval.**

**Staff:** Case no. T2-2015-4601 approved a Type B home occupation in an accessory building for the storage and distribution of bottled wine from grapes grown on the property. The approval noted that the home occupation would utilize approximately 540 sq. ft. of the accessory building (Exhibit A.11). Per the applicant's narrative, all on-site business functions are conducted entirely within the existing garage/barn (accessory) building. The total area dedicated to the wine storage and distribution activities is 540 sq. ft. as identified on the submitted floor plan (Exhibit A.5). Diana Robinson continues to serve as the business operator (Exhibit A.3). *Criterion met.*

- 5.2 (2) Each renewal period shall be for a three year period from the last expiration date. The Type B home occupation may be renewed an unlimited number of times.**

**Staff:** A condition of approval is included in this decision to ensure this criterion is met. *This criterion can be met through a condition of approval.*

- 5.3 (3) To obtain a renewal of the Type B home occupation, the business operator shall use the forms provided by the Planning Director and shall submit the application prior to expiration of the permit. Provided the renewal application is submitted on or before the expiration date, the business operator may continue the Type B home occupation pending the County's final decision on the renewal request.**

**Staff:** The applicant submitted the request for a renewal as well as the required forms and documents on December 7, 2018 (Exhibits A.1 – A.17). Case T2-2015-4601 was set to expire on March 4, 2019; hence, the applicant submitted the request prior to the expiration date of the original approval. Due to a delay with finalizing a building permit for an addition to the barn that was approved via land use case no. T2-2018-9865, the previous Type B Home Occupation renewal case assigned case no. T2-2018-11254 could not be issued. Therefore, the original materials were resubmitted on January 06, 2020. *This criterion is met.*

- 5.4 (4) A Type B home occupation renewal shall be processed pursuant to the Type II approval process in MCC 39.1105.**

**Staff:** Staff has processed the application pursuant to the Type II procedures described in MCC 39.1105. An opportunity to comment was mailed to adjacent property owners on January 21, 2020 (Exhibit C.2). No comments were received. There will be a 14-day appeal period for this decision as noted on page 1 of this decision. *This criterion is met.*

- 5.5 (5) The Planning Director may consider minor modifications to the business activities authorized in (B) above and the conditions of approval if requested by the business operator as part of a Type B home occupation renewal application. A minor modification may be approved if it: (a) Is consistent with the prior approval; (b) Is consistent with MCC 39.8850(A); and (c) Does not increase the intensity of use of the premises.**

**Staff:** No modifications to the previous approval (case no. T2-2015-4601) are proposed as part of this renewal application.

## **6.0 CONCLUSION:**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Type B Home Occupation Renewal Permit to continue the wine storage and distribution business for wine made from grapes grown on the subject property in the EFU zone as authorized in land use case no. T2-2015-4601. This approval is subject to the conditions of approval established in this report.

## **7.0 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 T2-2020-12842 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	2	General Application Form	01.06.2020
A.2	10	Table of Contents and Introduction	01.06.2020
A.3	6	Applicant Narrative	01.06.2020
A.4	1	Site Plan	01.06.2020
A.5	1	Accessory Building Floor Plan	01.06.2020
A.6	1	Appendices List of Contents	01.06.2020
A.7	1	Dept. of Assessment, Taxation, & Records Tax Map	01.06.2020
A.8	2	Statutory Warranty Deed recorded July 02, 1998 as instrument no. 98116941	01.06.2020
A.9	1	Multnomah County Zoning Map for Subject Property	01.06.2020
A.10	3	Pre-filing Conference Summary Notes	01.06.2020
A.11	9	Notice of Decision for land use case no. T2-2015-4601	01.06.2020

A.12	5	Voluntary Compliance Agreement for case no. UR-2016-4743	01.06.2020
A.13	13	Notice of Decision for land use case no. T2-2018-9865	01.06.2020
A.14	17	Misc. Information from land use case no. T2-2015-4601	01.06.2020
A.15	6	Stormwater Certificate	01.06.2020
A.16	15	Documentation for required tree plantings associated with land use case no. T2-2018-9865	01.06.2020
A.17	1	Documentation for required building permit associated with the outbuilding addition approved in land use case no. T2-2018-9865	01.16.2020
'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1N105C -00700	01.06.2020
B.2	1	Copy of General Application Form for original renewal request assigned case no. T2-2018-11254	01.06.2020
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (Day 1)	01.16.2020
C.2	2	Opportunity to comment & mailing list	01.21.2020
C.3	8	Administrative decision & mailing list	02.06.2020