

**MULTNOMAH COUNTY OREGON****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

http://www.co.multnomah.or.us/dbcs/LUT/land_use

NOTICE OF DECISION

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

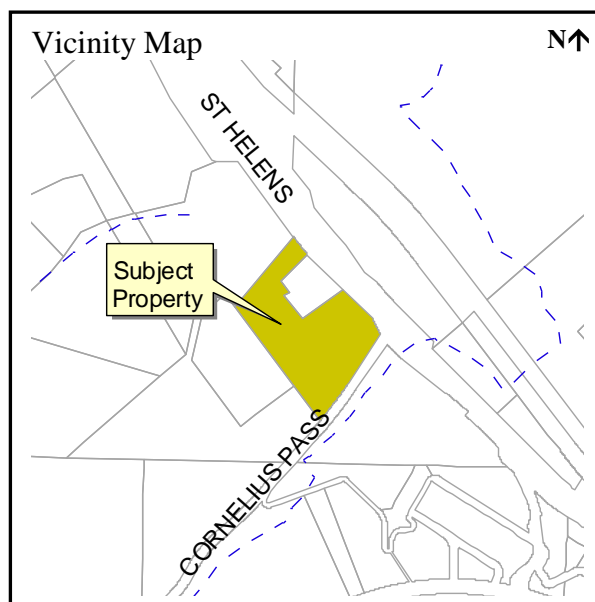
Case File: T2-03-082

Permit: Lot Of Record Determination

Location: Adjacent to 17841 NW St. Helens Road
TL 700, Sec 18D, T 2 N, R 1 W, W.M.
Tax Account #R97118-0290

Applicant: Nancy Montgomery
Clodfelter Co. LLC
18525 NW St Helens Road
Portland, OR 97231

Owner: Clodfelter Co. LLC
18525 NW St Helens Road
Portland, OR 97231



Summary: The property owner is requesting a determination that the subject 9.5 acre property is a Lot of Record pursuant to Multnomah County Code.

Determination The subject property, designated as 2N1W18D-00700 was created in compliance with the applicable zoning and land division regulations on its date of creation, and is a Lot of Record in the Commercial Use Forest -2 zone.

Unless appealed, this decision is effective Wednesday, July 14, 2004, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, June 30, 2004

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-3043.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, July 14, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC):

General Provisions: MCC 33.0005(L)(13) Definitions – Lot of Record,

Commercial Forest Use – 2: MCC 33.2275 CFU-2 – Lot of Record,

Administrative & Procedures: MCC 37.0530(B) Type II Decisions, MCC 37.0550 Initiation of Action, MCC 37.0560 Code Compliance and Applications.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at http://www.co.multnomah.or.us/dbcs/LUT/land_use.

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

Findings of Fact

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

1.00 **Administration and Procedures**

1.01 **MCC 37.0530(B): ...Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision...**

Staff: The application was submitted December 31, 2003 and was deemed complete as of January 29, 2004. An “Opportunity to Comment” notice was mailed on February 9, 2004 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. No written comments were received. On April 8, 2004, the applicant requested that the decision be *Stayed* until such time as the County’s amendments to the Lot of Record provisions became effective (Exhibit A.10). On June 6, 2004 newly adopted language became effective. Staff modified the applicable criteria and finished writing the report on June 28, 2004. The administrative decision was mailed to the applicable parties on June 30, 2004.

1.02 **Proof of Ownership**

MCC 37.0550 Initiation of Action

Except as provided in MCC 37.0760, Type I – IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.

Staff: The proposed project is located on Tax Lot 700, Section 18D, Township: 2 North, Range: 1 West. Assessment & Taxation records show that the land is owned by Clodfelter Company LLC. The property owner has granted approval for Nancy Montgomery to make application for this Lot of Record Determination (Exhibit A.1). *This criterion has been met.*

1.03 **Multnomah County Code (MCC) section MCC 37.0740 authorizes the Planning Director to decide all questions of interpretation or applicability of any provision of the comprehensive framework plan, rural area plan, or other land use code, to specific properties. This Lot of Record Determination is authorized under this provision and has been processed as a Type II application as required therein.**

1.04 **Applicant’s Narrative:** This property is now owned by the Clodfelter Co. LLC. We wish to sell this now and making sure it is a lot of record is the first step.

Emily H. Gaylord received the entire parcel from her family estate – The Holbrook Estate – in 1949. It has been held by her family and heirs from that time. No other adjoining property belonged to her or her heirs since then.

The 1.71 acres was properly taken out according to the zoning at the time and as of 1975 no longer was owned by present owners.

2.00 **General Provisions**

2.01 **MCC 33.0005(L)(13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. 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 following shows the historical zoning for the subject property for the portion located in Multnomah County’s jurisdiction:

Time Period	Zoning District
July 1958 to 10/5/1977	Suburban Residential (SR)

Oct. 6, 1977 to 8/13/1980	Multiple Use Forest – 20 (MUF-20)
8/14/1980 to 1/6/1993	Multiple Use Forest – 19 (MUF-19)
1/7/1993 to 7/8/1998	Commercial Forest Use (CFU)
7/9/1998 to Present	Commercial Forest Use – 2 (CFU-2)

The following recorded documents have been identified by the applicant as modifying or transferring ownership of the subject property.

Recorded Documents	Exhibit #	Recordable Form	Zoning/ Min Lot Size	Tax Lots Involved	Lot Size
Deed from Holbrook Estate to Emily Gaylord	A.4	1/13/1943	Prior to Zoning	TL 700* 2N1W18D	11.92 acres
Deed from E. Gaylord Estate to TS & EJ Clodfelter	A.5	9/18/1975	SR / (40,000 sq. ft)	TL 600 2N1W18D	1.706 acres
Personal Rep. Deed from M.H Clodfelter Estate to E. S Clodfelter (1/2 Interest)	A.6	3/9/1993	CFU / 80 acres	TL 700 2N1W18D	10.214 acres
Memo of Contract Sale from E & C Conrad to ES Clodfelter	A.7	3/28/1995	CFU / 80 acres	TL 700 2N1W18D	10.214 acres
Statutory Quitclaim Deed from E & C Conrad to E & C Conrad	A.8	6/1/1995	CFU / 80 acres	TL 700 2N1W18D	10.214 acres

* Parent Parcel

In 1943, Emily H. Gaylord obtained from the Holbrook Estate 11.92 acres currently known as Tax Lot 700 and 600, Section 18D, Township 2 North, Range 1 West (Exhibit A.4). This transfer of land was prior to Multnomah County having any zoning regulations in the area. In September 1975, the Emily H. Gaylord Estate transferred 1.706 acres to Thomas S. and Ellen Jeane Clodfelter, husband and wife. The zoning at the time was Suburban Residential and allowed lots as small as 40,000 square feet provided the site had an approved water supply (public or private), an approved individual sewage disposal system, approved public access and an approved plan for future re-subdivision of total tract when urban conditions develop (Exhibit B.1). Tax Lot 700 is currently vacant and is 10.214 acres in size. The property is mainly pasture land and is semi-flat. The site appears to have suitable areas for a septic system and well and is immediately adjacent to Highway 30 for public access. It appears that Tax Lot 700 met the zoning regulations at the time it was modified to its present size and shape.

In 1975, the County did not regulate partitioning of land. Only when the owner subdivided 4 lots at a time or within a calendar year did the County's Subdivision Regulations come into play. As such, the partitioning of Tax Lot 600 from Tax Lot 700 did not require review by the County Planning Department at the time.

Tax Lot 700 is not located within an acknowledged unincorporated community and is currently zoned Commercial Forest Use – 2.

Based upon the above findings, these criteria have been met.

3.00 **Commercial Forest Use - 2**

3.01 **MCC 33.2275 Lot of Record**

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

(1) A parcel or lot which was *noncontiguous* to any other parcel or lot under the *same ownership* on February 20,1990, or

(2) A group of *contiguous* parcels or lots:

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

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

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

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

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

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e. g. MUA-20. RR, RC, R-10) but shall apply to contiguous parcels and lots within all farm and forest resource zones (i. e. EFU and CFU), or

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

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

(a) Where two contiguous parcels or lots are each developed with a lawfully *established habitable dwelling*, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in *the same ownership* on February 26, 1990.

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

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

- (1) July 10, 1958, F-2 zone applied;
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;
- (5) February 20, 1990, lot of record definition amended, Ord. 643;
- (6) January 7, 1993, m-19 & 38 zones changed to CFU-80, Ord. 743 & 745;
- (7) August 8, 1998, CFU-2 zone applied, Ord. 916 (reenacted by Ord. 997);
- (8) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 33.2290, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(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: Tax Lot 700 is currently owned by Clodfelter Company LLC. In 1989 and 1990, Tax Lot 700 was owned by Myra Helen Clodfelter (1/2 interest) and Eleanor Conrad (1/2 interest). The following family history was provided by the applicant:

Emily H. Holbrook (a.k.a. Emily H. Gaylord)				
Daughter	Myra Helen Clodfelter		Daughter	Eleanor Conrad
Myra's Husband	E. Scott Clodfelter		Eleanor's Husband	Charles H. Conrad
Myra's & E. Scott's Son	Thomas S. Clodfelter			
Thomas' Wife	Ellen Jeane Clodfelter			

The following people owned property surrounding the subject property (Tax Lot 700):

Alternate Account #	Base Zone	Property Owner via 2/20/1990
TL* 500	RC	Holbrook Family Partnership – Eleanor Conrad – 10.5% ownership
TL 200	MUA-20	David & Palmberg & Judith Kujala

TL 1001	CFU-2	Sabra Sauder
TL 900	CFU-2	Edward & Elaine Perkins
TL 800	CFU-2	Kenneth & Patricia Larson
TL 600	CFU-2	Thomas & Ellen Clodfelter

* Tax Lot

MCC 33.2210(H) defines *Same Ownership* as *greater than possessory interests held by the same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity, separately, in tenancy in common or by other form of title. Ownership shall be deemed to exist when a person or entity owns or controls ten percent or more of a lot or parcel, whether directly or through ownership or control or an entity having such ownership or control.*

MCC 33.2210(D) defines *Contiguous* as *parcels or lots which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels or lots separated only by an alley, street or other right-of-way.*

Lot of Record criterion MCC 33.2275(A)(1) specifies that a property which is *noncontiguous* to any other property under the *same ownership* on February 20, 1990 is a Lot of Record. In February 1990, TL 600 was owned by Thomas & Ellen Clodfelter. Thomas Clodfelter is Scott & Myra Clodfelter's adult son (Exhibit A.2). Since Thomas was an adult in 1990 the *same ownership* does not apply as it only applies to *minor age child*.

Eleanor Conrad owned 50% of TL 700 and 10.5% of TL 500 on February 20, 1990 (Exhibit A.9 & B.4). Though TL 500 is separated from TL 700 by Cornelius Pass Road, it is still contiguous per MCC 33.2210(D). Based upon the ownership information specified above. TL 700 does not qualify as a Lot of Record under this criterion.

Lot of Record criterion MCC 33.2275(A)(2) specifies that a group of *contiguous* parcels or lots held under the *same ownership* on February 20, 1990 and 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. TL 700 is 6.24 acres in size. TL 500 is 10.99 acres. If these parcels were both zoned CFU-2, they would aggregate into a single Lot of Record. But, MCC 2275(A)(2)(b)4. states that the aggregation requirement shall not apply to properties within an exception zone (e. g. MUA-20. RR, RC, R-10) but shall apply to contiguous parcels and lots within all farm and forest resource zones (i. e. EFU and CFU) (Exhibit B.5). TL 700 is zoned Commercial Forest Use – 2 (CFU-2). TL 500 is zoned Rural Center (RC). As specified under MCC 33.2275(B)(4), TL 700 qualifies as a Lot of Record.

4.00 **Conclusion**

Considering all evidence in its entirety, Land Use Planning staff finds that Tax Lot 700, Section 18D, Township 2 North, Range 1 West is a Lot of Record.

5.00 **Exhibits**

All materials submitted by the applicant, prepared by County staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record of this application. Exhibits referenced herein are enclosed, and a brief description of each is listed below:

Exhibit #	# of Pages	Description	Date Received
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A. Applicant's Exhibits

A.1	1	General Application Form	12/30/03
A.2	1	Family Tree Information	12/30/03
A.3	1	Narrative Statements Regarding Ownership	12/30/03
A.4	4	1943 Deed of Sale [Book 1313, Page 571 – 574]	12/30/03
A.5	2	1975 Deed [Book 1066, Page 1142 & 1143]	12/30/03
A.6	2	1993 Personal Representative Deed [Book 2659, Page 887 & 888]	12/30/03
A.7	3	1995 Memorandum of Contract of Sale	12/30/03
A.8	3	1995 Statutory Quitclaim Deed	12/30/03
A.9	1	Partner's Share of Income, Credits, Deductions, Etc.	4/5/04
A.10	1	Stay Letter	4/8/04

B. Staff's Exhibits

			Date
B.1	5	Suburban Residential Zoning District	7/7/1958 to 10/6/1977
B.2	1	Survey of the Holbrook Property	4/9/1973
B.3	1	Survey of Tax Lot 600, Sec. 18D, T.2N R.1W	7/31/1975
B.4	1	February 1990 Ownership Map	
B.5	1	Zoning and Tax Lot Information Surrounding Properties	6/25/04

C. Administration & Procedures

C.1	1	Complete Letter – Day 1	1/29/04
C.2	1	Opportunity to Comment	2/9/04
C.3	9	Administrative Decision – Day 94	6/30/04