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## NOTICE OF DECISION

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**Case File:** T2-2022-15508

**Permit:** Lot of Record Verification

**Applicant:** Dale Pestes **Owners:** Dale & Patricia Pestes

**Location:** **Address:** 4230 SE Troutdale Rd, Gresham **Map, Tax Lot:** 1S4E07C-00100  
**Tax Account #**R994070480 **Property ID #**R341555

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

**Overlays:** Significant Environmental Concern for wildlife habitat (SEC-h) and water resources (SEC-wr); Geologic Hazards (GH)

**Proposal Summary:** The applicant is requesting a Lot of Record Verification for the above property. A Lot of Record Verification determines that a property was lawfully established in compliance with zoning and land division laws at the time of its creation or reconfiguration and the County's aggregation requirements.

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**Determination:** The subject property known as 1S4E07C-00100 is a Lot of Record in its current configuration.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, September 6, 2022 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 by contacting the case planner. Copies of all documents are available at the rate of \$0.40/per page. For further information, contact case planner Lisa Estrin at 503-988-0167 or via email at [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@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:** Lisa Estrin, Planner

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

**Date:** Monday, August 22, 2022



**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 – EFU

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**

**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 Lot of Record Verification for the property identified as 1S4E07C-00100 (subject property). The application does not propose any new development at this time.

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 reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. In the EFU zone, the County also considers adjacent ownership on February 20, 1990 in determining whether a parcel, lot, or unit of land is a Lot of Record on its own. If the parcel, lot, or unit of land met all applicable zoning laws, applicable land division laws and meets the aggregation requirements, it may be determined to be a Lot of Record.

### **2.0 Property Description & History:**

**Staff:** The subject property is located in unincorporated west Multnomah County in the area known as West of Sandy River. The property is zoned EFU and is located outside of Metro’s Urban Growth Boundary (UGB). Assessment & Taxation records indicate that the subject property is occupied by a dwelling constructed in 1948.

### **3.0 Public Comment:**

**Staff:** Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in C.4. Staff did not receive any public comments during the 14-day comment period.

### **4.0 Code Compliance and Applications Criteria:**

#### **4.1 § 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.**

\* \* \*

**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.*

### **5.0 Lot of Record Criteria:**

**5.1 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**

\* \* \*

**Staff:** To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the EFU zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The Lot of Record standards set forth in the EFU district establish additional requirements unique to the district, which are evaluated in Section 5.2 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided four deed(s) (Exhibit A.2 through A.6) to support the Lot of Record request. In February 1986 (Exhibit B.10), the County approved an Exempt Minor Partition for a Lot Line Adjustment of the subject property. On August 24, 1987, a Warranty Deed with the approved legal description was recorded (Exhibit A.6). Exhibit A.6 deed includes a legal description matching the current configuration of the subject property (Exhibit A.2). Since 1980, the subject property has been zoned Exclusive Farm Use (EFU) per historical County zoning maps (Exhibit B.6, B.7 & B.9). As the Exempt Minor Partition was for the Lot Line Adjustment and was approved by the County, the reconfiguration met the EFU zoning regulations.

*The subject property complied with all applicable zoning laws at the time of its creation or reconfiguration.*

In 1986, the County approved an Exempt Minor Partition to allow for a Lot Line Adjustment that reconfigured the subject property (Exhibit B.10). In 1987, a warranty deed implemented the Lot Line Adjustment in compliance with the exempt minor partition approval (exhibit A.6).

*Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1987.*

## **5.2 MCC 39.3070 LOT OF RECORD – EXCLUSIVE FARM USE (EFU).**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the EFU district a Lot of Record is either:**

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

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

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

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

**1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.**

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

**\* \* \***

**Staff:** The subject property is at least 19.05 acres (without road frontage) (Exhibit B.1). Planning staff reviewed the adjacent properties that could aggregate with the subject property. The property owners of the subject property on February 20, 1990 did not own any adjacent properties under 19 acres in size that would aggregate (Exhibit B.12). *The subject property is not aggregated with an adjacent property.*

**(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, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;**

**(3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;**

**(4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties. Ord. 236 & 238;**

\* \* \*

**(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 39.4260 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**Staff:** Section (B) is for information purposes. The subject property has less than the minimum lot size for new parcels or lots in the EFU zone and is subject to (C) above. It may be occupied by any allowed, review or conditional use when in compliance with the other requirements of this district provided it remains a Lot of Record. *Criteria met.*

**(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:** As discussed above in section 5.1, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject tracts are not an area of land created by the foreclosure of a security interest or created by court decree. *Criteria met.*

*Based on the findings in 5.1 & 5.2 above, the subject property is a single Lot of Record.*

## 6.0 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

All exhibits are available for review in Case File T2-2022-15508 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	2/7/2022
A.2	4	Warranty Deed recorded December 15, 2021 at Instrument #2021-180900	2/7/2022
A.3	3	Warranty Deed recorded on February 10, 1986 in Book 1884, Page 1502 – 1504	2/7/2022
A.4	2	Property Research Report from 1 <sup>st</sup> American Title	3/14/2022
A.5	6	Bargain & Sale Deed recorded June 7, 2013 at Instrument #2013-076942	3/14/2022
A.6	4	Warranty Deed recorded August 24, 1987 at Book 2036, Pages 298 – 301 [Deed of Creation]	3/14/2022



A.7	3	Warranty Deed recorded February 10, 1986 at Book 1884, Page 1502 - 1504	3/14/2022
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	Assessment, & Taxation (A&T) Property Information for 1S4E07C-00100 (R994070480 / R341555)	3/07/2022
B.2	1	Survey 49011	3/07/2022
B.3	6	Parcel Record Card for R994070480	7/8/2022
B.4	1	Current Tax Map for 1S4E07C	7/8/2022
B.5	1	October 6, 1977 Zoning Map (MUA-20)	7/8/2022
B.6	1	August 14, 1980 Zoning Map (EFU)	7/8/2022
B.7	1	1999 Zoning Map for 1S4E05, 06, 07 & 08 (EFU)	7/8/2022
B.8	10	1982 EFU Zoning Regulations	7/8/2022
B.9	1	1989 Zoning Map for 1S4E07	7/28/2022
B.10	12	Exempt Minor Partition for Lot Line Adjustment dated February 21, 1986	7/28/2022
B.11	44	1981 Subdivision Regulations	7/28/2022
B.12	1	1990 Property Ownership	8/03/2022
<b>‘C’</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	3	Incomplete letter	3/08/2022
C.2	1	Applicant’s acceptance of 180-day clock	3/14/2022
C.3	1	Complete letter (day 1 – April 13, 2022)	5/20/2022
C.4	3	Opportunity to Comment	5/26/2022
C.5	7	Administrative Decision	08/22/2022