



**MULTNOMAH COUNTY OREGON**  
**LAND USE AND TRANSPORTATION PROGRAM**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

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## NOTICE OF DECISION

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

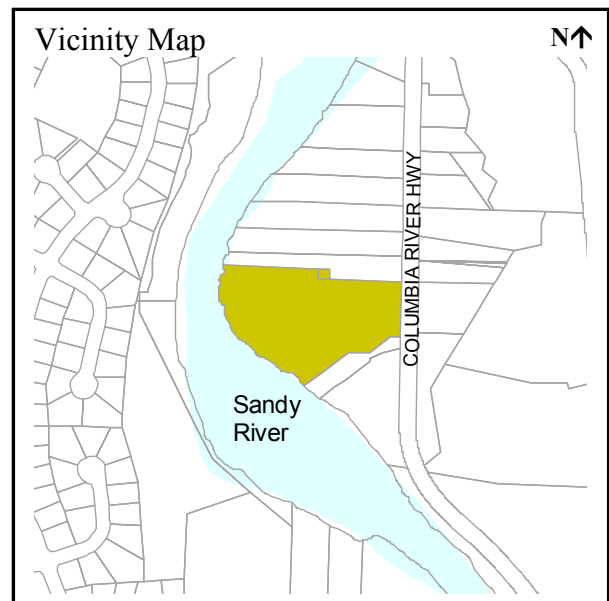
**Case File:** T2-04-071

**Permit:** National Scenic Area Site Review for a property line adjustment

**Location:** 2187 E. Historic Columbia River Hwy.  
TL 700, Sec 31B, T1N, R4E, W.M.  
Tax Account #R83130-2890

**Applicant:** Don Heffron  
PO Box 267  
Troutdale, OR 97060

**Owner:** Don Heffron  
PO Box 267  
Troutdale, OR 97060



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**Summary:** The application is to adjust the property line between lots 39 and 40 of Thompson Villa Tracts.

**Decision:** Approved with Conditions.

Unless appealed, this decision is effective Friday, December 3, 2004 at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Tammy Boren-King, Planner

For: Karen Schilling - Planning Director

Date: Friday, November 19, 2004

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted in support of the 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 Chuck Beasley, Staff Planner at 503-988-3043.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was mailed pursuant to the provisions of MCC 38.0640. 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 is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, December 9, 2004 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC):  
**38.040(A)**, Review Uses-Land Divisions in the National Scenic Area  
**38.3060**, GGR-2 Dimensional Standards  
**38.7035**, General Management Area Scenic Review Criteria  
**38.7045** General Management Area Cultural Resource Review Criteria  
**38.7055** General Management Area Wetland Review Criteria  
**38.7060** General Management Area Stream, Wetland, and Riparian Area Review Criteria  
**38.7065** General Management Area Wildlife Review Criteria  
**38.7070** General Management Area Rare Plant Review Criteria  
**38.7970**, Property Line Adjustment

### **Scope of Approval**

1. Approval of this land use permit is based on the 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 38.0690(B), 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 38.0690 and 38.0700. Extension requests must be made prior to the expiration date of the permit.**

### **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.

1. An Alta survey or equivalent shall be prepared that specifies the setbacks between the adjusted property line and the buildings nearest the property lines. This survey is to allow the planner to ensure the dimensional requirements of **MCC 38.3060** have been met. This survey shall be submitted to planner Tammy Boren-King prior to the Land Use Planning Division approval of the final map and legal descriptions.
2. The applicant is to complete the procedures given in the enclosed “Applicant’s Instructions for Finishing a Property Line Adjustment.” They are also to provide their surveyor the enclosed “Surveyor’s Instructions for Finishing a Property Line Adjustment” which provides instructions for drafting required materials (**MCC 38.7970 (C)(2)**).

**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:** (Formatting Note: Staff provides the Findings included here as necessary to address Multnomah County ordinance requirements. Multnomah County Code requirements are referenced using a **bold** font. Written responses to code criteria prepared by or on behalf of the applicant are identified as “**Applicant:**”. Planning staff comments and analysis may follow applicant responses. Where this occurs, the notation “**Staff:**” precedes the comments.)

## **1. Project Description**

**Staff:** The applicant is proposing to adjust the boundary between lots 39 and 40 of Thompson Villa Tracts as illustrated in the site plan attached as Exhibit A. Each lot currently contains a house and outbuildings.

As part of this property line adjustment, the applicant is also proposing to consolidate 1N4E31B00600 into lot 39 of Thompson Villa Tracts. Property 1N4E31B00600 will be referred to as “tax lot 600” for the remainder of this decision. Tax lot 600 was incorrectly divided from lot 38 of Thompson Villa Tracts by deed in 1974 when the owners were attempting to make a property line adjustment. Please see finding 5 for more information on this aspect of the project. The proposed consolidation will eliminate the existing land division violation.

The subject property is inside the city limits of the City of Troutdale as well as being inside the National Scenic Area (NSA). Since the City of Troutdale has not adopted a program to implement the NSA, the adjustment must be reviewed under the NSA criteria established in the Multnomah County Code (MCC). MCC 38.0040(A)(1)(c) establishes property line adjustments as a Review Use in the NSA. The property line adjustment was approved through the City’s land use review process and a decision approving the adjustment with conditions was issued on August 6, 2004. A copy of the City’s Staff Report and Decision is included as Exhibit B.

## **2. The county adhered to the required notification procedures.**

**Staff:** An Opportunity to Comment was sent out to the County’s list of property owners within 750-feet and to the required Agencies, Confederated Tribes, and Recognized Neighborhood Associations pursuant to MCC 38.0530(B).

Comments were received from the USDA Forest Service in the form of a Cultural Resources Survey Determination, the Oregon Parks and Recreation Department, the Oregon Natural Heritage Program, and the Oregon Department of Fish and Wildlife. These comments are directed at code criteria related to various aspects of the National Scenic Area site review and are addressed in findings 9 through 12 of this report.

Additional comments were received from the City of Troutdale and the Friends of the Columbia River Gorge. The City of Troutdale noted that their comments are included in the decision they rendered on this action in City case 04-075. The City’s letter and a copy of the City’s decision are included as Exhibit B.

The Friends of the Columbia River Gorge submitted comments which delineate the code criteria they believe to be applicable and preserve their standing in the case. Their letter is included as Exhibit I. The Friends group raised some substantive issues with the proposal. Their main issues are as follows:

- The subject properties may not be lots of record. According to the City's decision the underlying subdivision lots were consolidated by deed and tax lot 600 was improperly created. This property line adjustment may be actually creating a land division.
- The property line adjustment will be taking a parcel that is more than two acres and making it less than two acres
- The site plan does not include all of the information required by MCC 38.0045(A)(2)
- The site plan shows the subject property as containing land below the high water mark, which is land that belongs to the State of Oregon.

A copy of this letter was forwarded to the applicant who responded with a revised scalable site plan and legal descriptions on November 8, 2004. The revised site plan is included as Exhibit A and the revised legal descriptions are included as Exhibit J. These revised materials do not include any land that is below the high water mark and address the Friends group's concerns regarding the inadequacies of the site plan originally submitted for review.

The Lot of Record issue is discussed at length in finding 4 with a brief synopsis being given here. The applicant's original site plan and the City of Troutdale's land use decision are confusing in that they represent tax lots not lots of record. The applicant is adjusting the boundary line between two subdivision lots that were originally created by plat in 1917. The plat has not been vacated by replat and thus is still valid.

The Friends group raised a concern that the applicant's materials describe land that is below the high water mark of the Sandy River. The 1917 plat described the lots to the low water mark of the Sandy River and did subsequent deeds. On February 5, 2002, the Oregon State Land Board made a "Declaration of Title Navigability of the Sandy River" declaring that the Sandy River between River Mile 0 and River Mile 37.5 is a title navigable water way. This formally exerted the State's ownership of all rights, title and interest in and to the submerged and submersible lands within that portion of the title navigable reach of the Sandy River lying below the line of ordinary high water since February 14, 1859. The subject property is within the title navigable reach of the Sandy River. This means that since statehood, the State of Oregon has owned the land below the high water mark. While the original plat described the lots to the low water mark, the State has always owned the land up to the high water mark. Therefore, the property line adjustment must describe the lots to the high water mark and calculate lot area based on the high water mark, not the low water mark of the Sandy River.

The site plan originally submitted by the applicant measured the lot area to the top of bank. A subsequent site plan was submitted indicating that the reconfigured lot 39 will be 1.2 acres to the top of bank and 2.3 acres to the high water mark and that the

reconfigured lot 40 will be 1.4 acres to the top of bank and 2.1 acres to the high water mark. According to the revised materials submitted by the applicant, each property will exceed the minimum lot size of 2 acres. The proposed property line adjustment will not create any new parcels and will result in both parcels being over the minimum lot size. The site plan included as Exhibit A and the legal descriptions included as Exhibit J describe the subject properties to the mean high water mark.

### **3. Proof of ownership and initiation of action**

**Staff:** Applications for National Scenic Area Site Review permits are classified as Type II permit applications (MCC 38.0530). As such, they may only be initiated upon written consent of the property owner or contract purchaser (MCC 38.0550). County Assessment Records included as Exhibit C and deed records included as Exhibit D show that the owner of the property is Donald Heffron. Donald Heffron has signed the application form providing the necessary consent to process this request. A copy of the signed application form is included as Exhibit E.

### **4. The subject property meets the definition of “Parcel.”**

**Staff:** MCC 38.0015(P)(1) defines the word “parcel” as, *“Any unit of land, satisfying all applicable land division and zoning regulations in effect on the date of creation, created and separately described by a lawful sales contract, deed, partition map or plat, or subdivision plat.”*

The subject proposal includes lots 39 and 40 of Thompson Villa Tracts as well as a portion of lot 38 Thompson Villa Tracts known as tax lot 1N4E31B00600. For the remainder of this decision, these properties will be referred to as simply lots 39, 40, and tax lot 600. Lots 39 and 40 were originally created by subdivision plat in 1917. Transferring title to multiple subdivision lots on the same deed does not vacate the underlying plat. In order to vacate a subdivision plat, a replat is required by ORS 92.185. This plat has never been vacated by replat and thus is still valid under ORS 92.017. Tax lot 600 was not created by the plat of Thompson Villa Tracts and is discussed in depth later in this finding.

Lots 39 and 40 have been reconfigured since the subdivision was platted in 1917. Copies of the recorded deeds which changed the property lines over time and which created tax lot 600 are included as Exhibit D.

The properties annexed into the City of Troutdale in 1972. All reconfigurations that have happened since that time have been subject to the City of Troutdale’s regulations. The National Scenic Area was created in 1986. Any reconfigurations happening since that time have required concurrent approval under the National Scenic Area regulations.

Lot 40 has been reconfigured to incorporate a portion of Lot 41 Thompson Villa Tracts. In 1988, a property line adjustment was approved by both the City of Troutdale and the Columbia River Gorge Commission for the current configuration of lot 40. A copy of the

City's approval is included as Exhibit G. A copy of the Gorge Commission's approval is included as Exhibit F. Lot 40 is a lawfully established parcel.

Lot 39 has been reconfigured to incorporate the southerly 39.13 feet of the westerly 180.29 feet of lot 38. This reconfiguration was done by deed on May 24, 1974 and recorded in Book 988, Page 1264. Staff contacted the City of Troutdale planning division to establish if a property line adjustment approval was required by their office in 1974. City of Troutdale staff responded stating that a property line adjustment approval was not required, but that minimum lot size and lot dimension requirements were in existence. Correspondence between County staff and City staff is included as Exhibit H. In 1974, the City of Troutdale's code required the property to have a minimum lot size of 10,000 square feet, a minimum lot frontage of 15 feet, a minimum lot width of 70 feet, and an average lot depth of 100 feet. The reconfiguration met these standards and thus was done in accordance with all applicable land division and zoning regulations. Lot 39 is a lawfully established parcel.

Tax lot 600 was created in error in 1974 when the owners were attempting to adjust the property line between lots 38 and 39. Book 988, page 1264 recorded May 24, 1974 transfers title of the southerly 39.13 feet of the westerly 180.29 feet of lot 38, all of lots 39, 40, 41, and 42 from E. J. and Shirley Mocabee to Richard and Christine Ridout. After the sale, it became apparent that a mistake had been made in the legal description. As a result, on July 19, 1974 another deed was recorded in book 1012, page 453 which transferred title of tax lot 600 from the Ridouts to the Mocabees. The bottom of this deed states, "This deed is being re-recorded to correct a typographical error in the legal description." It is clear that the intent of the owners at the time was to adjust the property line between lots 38 and 39, not to create a land division. Since the deed to lot 600 was recorded separately from the deed for the remainder of the land, a land division violation was accidentally created.

The property line adjustment the Ridouts and the Mocabees were attempting to achieve in July of 1974 was allowable at the time without land use review. A separate property line adjustment approval is not required to consolidate the deeds of these two lots in order to extinguish the violation created by a recording error in 1974. If the adjustment had been accomplished correctly, it would have met the dimensional requirements of the City of Troutdale's code in effect at the time. The consolidation of tax lot 600 with lot 39 of Thompson Villa tracts would correct the error created in 1974 and extinguish the land division violation between tax lot 600 and lot 38 of Thompson Villa Tracts.

The subject application includes the consolidation of tax lot 600 with lot 39. After the consolidation of tax lot 600 and lot 39 is accomplished, lot 39 will remain a lawfully established parcel under the above definition.

*Criterion met.*

**5. The proposal complies with the land division standards of MCC 38.0040.**

**The following Review Uses may be permitted when allowed by the district and found to satisfy the applicable approval criteria pursuant to the provisions of MCC 38.7000 through 38.7085:**

**(A) Land Divisions**

**(1) Land Divisions within the NSA shall be classified and found to satisfy the applicable approval criteria specified in MCC 38.7700 through 38.8035, subject to the following:**

**(c) Adjustment of the boundary between two or more contiguous parcels which does not result in the creation of an additional parcel may be allowed if none of the parcels larger than the minimum parcel size before the adjustment becomes smaller than the specified minimum parcel size after the adjustment.**

**Staff:** The subject proposal is for the adjustment of the boundary between two parcels, both of which meet the minimum lot size of the GGR-2 district (two acres) after the proposed adjustment. The proposal will not create any additional parcels. The subject proposal is reviewed for compliance with the standards of the zoning district and of the applicable portions of MCC 38.7000-38.7085 in findings seven through 12 of this decision.

*Criterion met.*

**6. The proposal is allowed in the GGR District.**

**Staff:** MCC. 38.3025(A)(6) allows land divisions as a review use in the GGR district pursuant to the provisions of MCC 38.0040(A). Property Line Adjustments are allowed under the Land Division provisions of MCC 38.0040(A).

**7. The proposal meets the dimensional standards of the GGR zone (MCC 38.3060).**

**Staff:** The proposed reconfiguration will result in both parcels exceeding the minimum lot size of the GGR-2 district as documented by the materials submitted by the applicant. The reconfigured lot 39 will be 2.3 acres and the reconfigured lot 40 will be 2.1 acres measured to the mean high water mark of the Sandy River.

The proposed property line adjustment meets the setback standards of the GGR zone. The applicant has provided a scalable site plan (Exhibit A) which does not specify the distance to the well house on lot 40 from the proposed property line. A previous site plan submitted by the applicant and included as Exhibit K states there is 16 feet, 6 inches between the well house on lot 40 and the proposed property line. The site plan was prepared by a licensed professional land surveyor who wrote the following text on the site plan, "I hereby certify that no buildings are closer than 15 feet from existing or proposed property lines. East end of barn is over 30 feet from east property line." According to the information submitted by the applicant, all structures are at least 10 feet from the proposed side property lines and 30 feet from the proposed front and rear property lines as required by MCC 38.3060(C).



An ALTA survey or equivalent will be required prior to final approval of the property line adjustment and recordation of the new deeds to verify that all structures on both lots meet the setback requirements of the GGR zone.

*Criteria met with conditions*

**8. The proposal meets the GMA Scenic Review Criteria of MCC 38.7035.**

MCC 38.7035(A) requires evaluation of the Columbia River Gorge Scenic Resources for all Review Use development proposals. The standards of this section regulate the size, scale, color, and visual impact of structures and other physical development such as roads and mineral extraction operations. The subject proposal involves the relocation of the property line between lots 39 and 40 and does not involve any construction, ground disturbing activity, removal or addition of vegetation, or any other alterations to the physical environment. Staff finds that relocating the common boundary between lots 39 and 40 will have no impact on Scenic Resources of the Columbia River Gorge.

**9. The proposal is exempt from review under the GMA Cultural Resource Review Criteria of MCC 38.7045.**

**Staff:** MCC 38.7045(A)(1)(b) exempts property line adjustments and other uses that would not disturb the ground from review under for cultural resources.

**10. The proposal meets the GMA Wildlife Review criteria of MCC 38.7065.**

**Staff:** The proposed property line adjustment involves two parcels which abut the Sandy River. The Sandy River provides habitat for anadromous fish, making it a sensitive wildlife site. Property line adjustments are not specifically exempted from review and thus must be reviewed for compliance with the standards of this section pursuant to MCC 38.7065(C). MCC 38.7065(D) requires the Oregon Department of Fish and Wildlife to review the site plan for all uses not specifically exempted and determine whether or not there will be an impact to wildlife. Mr. Todd Alsbury provided comments via email on behalf of the Oregon Department of Fish and Wildlife stating that his office has no concerns with the subject proposal. Mr. Alsbury's email is included as Exhibit L.

**11. The proposal meets the GMA Rare Plant Review criteria of MCC 38.7070.**

**Staff:** The proposed property line adjustment involved properties which are mapped as being within 1,000 feet of a known rare plant. As such, the project must be reviewed under the standards of this section. Property line adjustments are not specifically exempted from review and thus must be reviewed pursuant to the standards of MCC 38.7070(C). MCC 38.7070(D) requires the Oregon Natural Heritage Program to review the site plan for all uses not specifically exempted and determine whether or not there will be an impact to rare plants. Ms. Sue Vrilakas provided comments via email on behalf of the Oregon Natural Heritage Program indicating that

no rare plants will be affected by the subject proposal. Ms. Vrillakas's email is included as Exhibit M.

**12. The proposal meets the GMA Wetland Review Criteria of MCC 38.7055 and the GMA Stream, Lake, and Riparian Area Review Criteria of MCC 38.7060..**

**Staff:** The GMA Wetland standards establish review criteria for projects which will disturb land in or near wetlands. The GMA Stream, Lake, and Riparian Area Review Criteria establish review criteria for projects which will disturb land or vegetation in or near streams, lakes, and riparian areas. No ground disturbing activities, removal of vegetation, addition of vegetation, or other alterations to the physical environment are proposed as part of the subject application. Since the proposed project will not alter the physical environment, there are no potential impacts to wetlands, streams, lakes, riparian areas, or rare plants.

**13. The proposal meets the Property Line Adjustment criteria of MCC 38.7970.**

**Staff:** The proposed property line adjustment is for the relocation of one common boundary between two abutting properties as required by MCC 38.7970(A). The proposal has been reviewed for compliance with the standards of MCC 38.0040(A)(1)(c) in finding 5 as required by MCC 38.7970(B).

The proposal meets all three of the requirements of MCC 38.7970(C) as explained in this paragraph. The proposal has the consent of the owner of both properties as shown by the signed application form included in Exhibit E. The adjusted properties meet all dimensional requirements in the underlying zoning district as discussed in Finding 7. The subject properties have road frontage on the Historic Columbia River Highway only. This facility is a state facility, not a county facility. As such, the properties do not have to meet any County right-of-way standards.

The procedure and forms for approving a property line adjustment were provided by the planning director. The form is attached as Exhibit E. This decision serves as the County's procedure for obtaining approval of a property line adjustment.

**Conclusion**

Based on the findings, site plan, and other information provided herein, this application, as conditioned, satisfies the applicable approval criteria required for Site Review in the National Scenic Area.

**Exhibits**

- A. Site plan
- B. City of Troutdale approval of property line adjustment
- C. Assessment Information on subject parcel showing current ownership
- D. Deed records submitted by applicant
- E. Signed application form

- F. Gorge Commission approval of 1988 property line adjustment
- G. City of Troutdale approval of 1988 property line adjustment
- H. Correspondence between City and County staff regarding 1974 property line adjustment standards in the City of Troutdale's jurisdiction
- I. Comment letter from Friends of the Columbia River Gorge
- J. Proposed legal descriptions
- K. Site Plan submitted October 8, 2004
- L. Oregon Department of Fish and Wildlife comments provided by Mr. Todd Alsbury
- M. Oregon Natural Heritage Program comments provided by Ms. Sue Vrilakas