

**MULTNOMAH COUNTY****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.

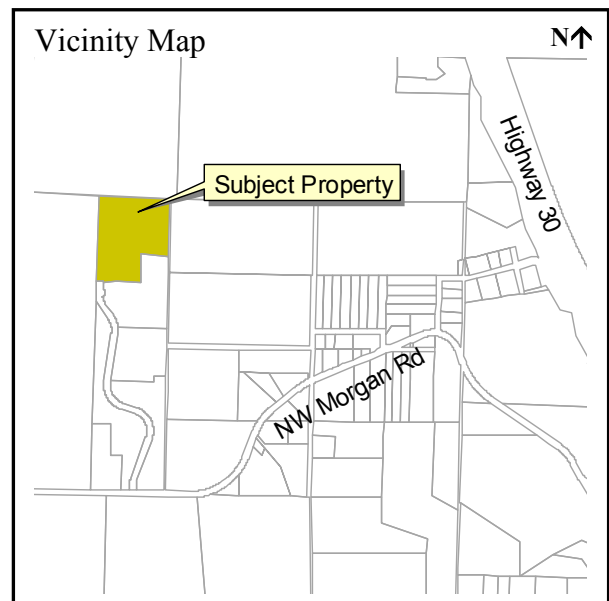
**Case File:** T2-04-088

**Permit:** Planning Directors Determination

**Location:** 20133 NW Morgan Road  
TL 300, Sec 12, T2N, R2W, W.M.  
Tax Account #R97212-0330

**Applicant:** Reinhard Jensen  
20133 NW MOrgan Road  
Portland, OR 97231

**Owner:** Reinhard and Jean Jensen  
20133 NW MOrgan Road  
Portland, OR 97231



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**Summary:** The applicant is requesting a Lot of Record Determination.

**Decision:** Approved.

Unless appealed, this decision is effective Friday, February 11, 2005, at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Friday, January 28, 2005

**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 Don Kienholz, 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 Friday, February 11, 2005 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 37.0560 Code Compliance; MCC 33.0005(L)(13) - Definition of Lot of Record, MCC 33.2275 – Lot of Record

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](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.**

**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:** Written findings are contained herein. The Multnomah County Code criteria are in **bold** font. Staff comments and analysis are identified as **Staff:** and follow Applicant comments identified as **Applicant:** to the applicable criteria. Staff comments include a conclusionary statement in *italic*.

1. **Project Description**

**Applicant:** This is an application by Reinhard and Jean Jensen to obtain Legal Lot status and to conform with modern code requirements. The property owners established their dwelling with building permits in the early 1980's; but when the permit for the garage was requested in 2002, the status of the creation of the lots was brought into question. The staff referenced a Hearings Officer ruling from a 1994 land use case (CU 4-94-HV 1-94) that all of the lots along the unnamed easement road were unlawfully created. The property owners met with the county planning staff to determine what could be done to resolve the unlawful creation issue. Initially, the staff recommended that a Comprehensive Plan Amendment and Zone Change be initiated to correct the situation. Prior to submitting the Comprehensive Plan Amendment and Zone Change Application, the staff recommended that Legal Lot status be pursued as a remedy.

This application will address the Fire Siting Standards for dwellings and structures in the CFU Zone, and it will also address the Significant Environmental Concern Standards for wildlife. In addition, the standards for a Lot of Record contained in the West Hills Plan and the Multnomah County Code will be addressed. All of the applicable approval criteria have been listed, and a response has been provided for each criterion. The evidence in this case supports the premise that the Jensen property was lawfully created because it was created by a recorded instrument prior to October 19, 1978. The fact that the site is already developed with a principal dwelling and outbuildings made the Fire Siting Standards for the garage easy to meet. The location of the subject property is shown in Figure 1, Vicinity Map.

**Staff:** The applicant is seeking a Lot of Record determination on the subject property and a finding of being in compliance with the land division rules and zoning code rules in place at the time the property was created. The applicant wants the lot deemed legally created so that future improvements to the property and existing dwelling can be approved.

The property was first created on October 24, 1972 along with four other lots (Deed is Exhibit 3; Exhibit 4 shows the creation of the other lots and their parcel size). In 1972, the property was zoned F2 and the only requirement for meeting the zoning requirements was to have a minimum lot size of 2 acres. Creating four or more lots within one calendar year required obtaining a subdivision from the county and going through a land use process.

2. **Site Characteristics and Vicinity**

**Staff:** The subject lot is currently zoned Commercial Forest Use-2 (CFU-2) with a minimum lot size of 80-acres. A Significant Environmental Overlay for Wildlife Habitat (SEC-h), Significant Views (SEC-v) and a Slope Hazard Overlay cover the property. Steep slopes and heavily forested areas dominate the property. The only cleared areas are the immediate areas around the dwelling and an accessory building. The surrounding properties are also heavily forested and contain steep slopes. The property is one of four lots that get access from a driveway on a separate tax lot owned by the owners and with access by easement. The tax lot driveway takes access off of NW Morgan Road.

3. **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:** Multnomah County Assessment and Taxation records show Reinhard and Jean Jensen as the owners of the subject lot. Both Mr. and Mrs. Jensen have signed the green General Application Form (Exhibit 1), thus giving authorization for the application. A letter was also included (Exhibit 2) and signed by both Mr. and Mrs. Jensen giving Frank Walker and Associates authorization to act on their behalf for the application as well.

*Criterion met.*

4. **The Property Is In Full Compliance With All Applicable Codes**

**MCC 37.0560 Code Compliance And Applications.**

**The County shall not approve any application for a permit or other approval, including building permit applications, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County. A permit or other approval, including building permit applications, may be authorized if it results in the parcel coming into full compliance with all applicable provisions of the Multnomah County Code**

**Staff:** There are extensive building permit records on file for the property. Below is a chart detailing the permits for the property.

Type	Permit Number	Year Issued
LFS	#119-75	1975
Exempt Ag Building	N/A	8/6/1980
Single Family Dwelling	#801732	9/8/1980
Addition to Home	N/A	10/15/1981
Solar Panels	N/A	3/16/1982
Plumbing	#40111	10/1/1982
Garage	N/A	8/9/1994
Subsurface Sewage	#016091	4/26/2000

At this time, it does not appear there are any code violations on the property.

*Criterion met.*

5. **The Property is a Lot of Record**

**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.**

**MCC 33.2275 Lot of Record**

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

**Staff:** The subject lot was not contiguous to any parcel or lot in common 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, MUF-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;**

- B. (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.**

**Applicant:** At the time the subject property was created by deed, it did conform to the applicable zoning laws that were in effect at that time (1974). The CFU zoning was not in effect, nor was the MUF 19 zoning in effect at that time. The former owner of the property had traditionally and historically created properties through deed descriptions and recordings. The subject property was created in just such a manner (please see enclosed original deed, which is the first document following the Pre-Application Meeting Notes).

The setbacks for the dwelling and other outbuildings met standards that were in effect at the time and still meet them today. The access to the subject property is via a private road that is a separately deeded tax lot from the original holding. Since this is not a county-maintained road, it is not known whether or not it met development standards which were in effect at the creation date; however, the road does meet most modern county standards with the possible exception of overall grade and turnarounds. Parts of the road do have grades in excess of modern county standards. The road also lacks an appropriately designed turn-around at the end despite the fact that the Scappoose Fire District has communicated to Mr. Jensen that fire apparatus can reach the site. A December 10, 2003, letter from Mike Greisen of the Scappoose Rural Fire Protection District outlined the following improvements which the Fire District would like to be considered for approval of the access road:

1. Remove the gate at the beginning of N. W. Morgan Road to provide easy access for fire apparatus.
2. Establish a better emergency vehicle turnaround at the end of the access road. This can be accomplished by increasing the width of the existing turnaround to 20 feet.

3. The emergency turnaround should be posted with a sign reading "No Parking, Emergency Turnaround" after low brush and weeds are removed.

**Staff:** The Lot of Record status of the subject lot has been called into question under a Previous Hearings Officers Decision (CU 4-94). That decision, made for property known as #R972120300 and 2N 2W Section 12, old tax lot 30, brought into question the legality of several lots off of NW Morgan Road that take access from a private driveway. The Hearings Officer called into question the legality of creating lots in conjunction with the creation of the road and not going through a Subdivision application with the County.

However, over time, the County gave eight approvals for development or pre-development work. With permitting starting in 1975 when the property was zoned F2, we assume that the County did its due diligence in researching the property to the extent that was required at that time. Lot of Record code provisions were first placed on the property in 1977 when the zoning changed from F2 to MUF-20. On August 6, 1980, the property was zoned Multiple Use Forest-20 (MUF-20) and the first permit was issued for the property. Two days later, on August 8, 1980, the zoning changed to MUF-19 and still had Lot of Record requirements. One month later, on September 8, 1980, Multnomah County issued a building permit for a Single Family Dwelling.

At the time of the permitting of the land feasibility study, the agricultural building and the new dwelling, Multnomah County had reason to know there was an issue with the road accessing the property due to considerable correspondence between the owner and the original land owner, Halsten Lee, regarding the road. Multnomah County further knew there were Lot of Record requirements in place prior to the issuance of both the agricultural building and the dwelling. Therefore, it is reasonable to assume that Multnomah County reviewed the requirements in place at the time and believed the property met them in order to issue permits for the land feasibility study, the agricultural building, and the dwelling.

Additional permits were issued in 1981 for an addition, in 1982 for solar panel additions and for plumbing and then again in August of 1994 (after the April 1994 Hearings Officers decision CU 4-94) for a new garage. In 2000, a subsurface sewage review was also conducted. The history of permitting, along with the proximity of those permits to key dates such as new Lot of Record requirements in the 1970's and 1980's, indicate that the County had full knowledge of the history of the property, the question of the legality of the lot tied to the road creation and still issued the permits. It is reasonable to assume that each time the County issued a permit, it was processed correctly.

Figure 1.		
Type	Permit Number	Year Issued
LFS	#119-75	1975
Exempt Ag Building	N/A	8/6/1980
Single Family Dwelling	#801732	9/8/1980
Addition to Home	N/A	10/15/1981
Solar Panels	N/A	3/16/1982
Plumbing	#40111	10/1/1982
Garage	N/A	8/9/1994
Subsurface Sewage	#016091	4/26/2000

Multnomah County cannot go back in time and undo the permits that have been issued or the process in which they were issued. Therefore, considering all the evidence in the record, staff finds the subject lot is in fact a Lot of Record.

*Criteria met.*

### **Conclusion**

Based on the findings and other information provided above, The Planning Director determines the property known as #R972120330 (2N 2W Section 12 tax lot 300) was legally created and is a Lot of Record, complete with development rights as allowed by the current zoning designation.

### **Exhibits**

1. General Application Form
2. Letter of Authorization for Frank Walker and Associates
3. Deed of Creation for Subject Property
4. Tax Card Showing Deed Numbers for Creation of the Other Lots on the Private Access Road