

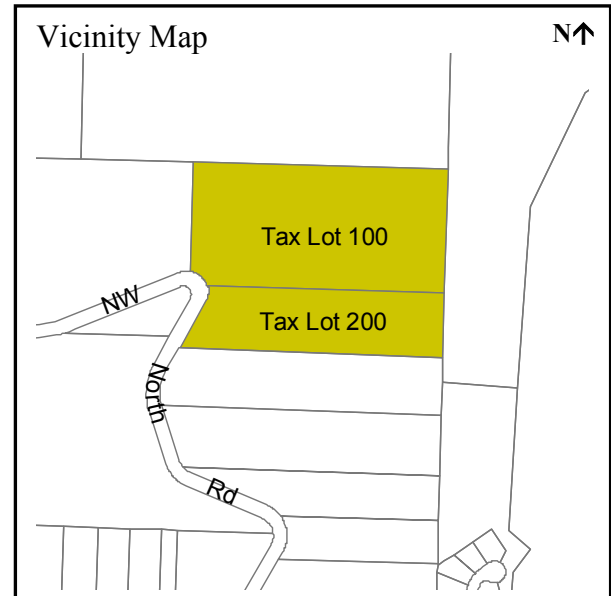
**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

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: T2-04-094**Permit:** Property Line Adjustment**Location:** 4330 NW North Road
1N 1W 22D Tax Lot 100
Bonny Slope Lot 31
Alt. Account #R09060-2420
&
4280 NW North Road
1N 1W 22D Tax Lot 200
Bonny Slope Lot 32
Alt. Account #R0906-2440**Applicant:** Ben Schonberger, Winterbrook Planning**Owners:** NW North Tree Farm, LLC (TL 100)
&
Tualatin Valley Water District (TL 200)

Summary: Request for a Property Line Adjustment to exchange an equal amount of property (approximately 0.9 acres). No net change in the size of the lots, or in the number of lots would result. Subject properties are in a Rural Residential (RR) zoning district.**Decision:** Approved with conditions.Unless appealed, this decision is effective **Monday, May 16, 2005, at 4:30 PM.**

Issued by:

By:

Beverly Bruesch, Planner

For: Karen Schilling, Planning Director

Date: May 2, 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 Beverly Bruesch, 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 Monday, May 16, 2005, at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 33.0005(L)(13) - Lot of Record; MCC 33.3100-33.3185 - Rural Residential Zoning District; MCC 33.7970 - Property Line Adjustment (Lot Line Adjustment); and Chapter 37 – Administration and Procedures.

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. A request for permit extension may be required to be granted 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. Owners of both properties involved in the Property Line Adjustment shall record a conveyance or conveyances conforming to the approved Property Line Adjustment. [MCC 33.7970(C)(2)]
2. The applicant shall complete the procedures provided in the enclosed “Applicant’s Instructions for Finishing a Property Line Adjustment,” and “Surveyor’s Instructions for Finishing a Property Line Adjustment.” [MCC 33.7970(D)]

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.
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Findings of Fact

Format Note: 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*.

Project Description

Staff: The proposed Property Line Adjustment is being requested by the applicant to provide adequate space for a single-family residence and the associated sanitary drainfield in the southeastern corner of Tract 1.

The proposal is to exchange of an equal amount of property between Tract 1: 4330 NW North Road (Tax Lot 100; Bonny Slope Lot 31) and Tract 2: 4280 NW North Road (Tax Lot 200; Bonny Slope Lot 32), as shown in the Tentative Plan Map (Exhibit 1).

As shown on Exhibit 1, the Property Line Adjustment would result in approximately 340 feet of the southern (side) property line of Tract 1 moving approximately 117 feet to the south, and approximately 512 feet of the northern (side) property line of Tract 2 moving approximately 77 feet to the north. It will not alter the length of the front property line/NW North Road frontage of either tract.

Site Characteristics

Both tracts are in the Bonny Slope Subdivision and are zoned Rural Residential (RR). They have overlay zones of Significant Environmental Concern for streams (SEC-s) and Hillside Development (HD). South Bronson Creek flows in a southwesterly direction through Tract 1.

As shown on the Tentative Plan Map (Exhibit 1) and a 2002 aerial photograph of the subject tracts (Exhibit F), both of the tracts have frontage along the NW North Road right-of-way. Tract 1 is accessed via a dirt road that extends from NW North Road across the northwestern corner of Tract 2 and into Tract 1. This road is the subject of a zoning violation (ZV-95-023). As discussed in Item 1.3 below, the property owners have signed a Voluntary Compliance Agreement to correct the violation (Exhibit C).

Tract 1 has three unlawful structures located at the southeastern corner of the tract (not shown on the aerial photograph). As discussed in Item 1.3 below, these structures must be permitted or removed in accordance with the Voluntary Compliance Agreement (Exhibit C).

Tract 2, owned by the Tualatin Valley Water District (TVWD), has a 100-foot-diameter water tank. Service access to the water tank is gained from NW North Road via an easement through the residential property directly south of Tract 2.

1 Administration & Procedures

1.1 Type II Application Procedures

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 November 12, 2004 and was deemed complete December 27, 2004. An "Opportunity to Comment" notice was mailed on February 7, 2005 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. No written comments were received.

1.2 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: Based on current Multnomah County Assessment and Taxation records, Tract 1 (Tax Lot 100) is owned by the NW North Tree Farm, LLC/Andrew Michaels and Tract 2 (Tax Lot 200) is owned by the TVWD -- shown on County records as Wolf Creek Highway Water District (Exhibit A). Authorized signatories for both property owners signed the Statement of Property Owners Consent (Exhibit 3) to initiate the Property Line Adjustment application (Exhibit 2). *This criterion is met.*

1.3 MCC 37.0560 Code Compliance and Applications

Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, 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.

MCC 37.0560(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

Staff: Tracts 1 and 2 are in violation of HDP 36-92 (ZV-95-023), and Tract 1 is in violation of building and zoning regulations (UR-04-085) as described below.

Tracts 1 and 2 - Violation of HDP 36-92. Both tracts are currently in violation of a previously issued Hillside Development Permit (HDP): HDP 36-92. The violation, ZV-95-023, involves grading of a road that is not in compliance with HDP 36-92:

1. The driveway is within 100 feet of South Bronson Creek without a mitigation plan satisfying the requirements of OAR 340;
2. Fill material from the driveway excavation encroaches within 100 feet of South Bronson Creek without a mitigation plan satisfying the requirements of OAR 340;
3. The driveway does not follow the site plan approved by the HDP 36-92 Permit; and
4. Hillside cuts for the driveway exceed a slope of 3:1 without a Geotechnical Engineer's approval in violation of the Permit.

Tract 1 only - Violation of Multnomah County Building Regulations, Chapter 29. The Building Regulations require that the County issue building permits for structures in the County. A site visit by County staff confirmed the existence of three unpermitted structures on Tract 1, which is a violation of Multnomah County Code (MCC) Chapter 29. The structures include (1) a yurt (a round wooden platform with canvas sides and roof) with an attached, enclosed wood-framed living area, (2) a separate bathroom structure with sink, shower, and compost toilet, and (3) what appears to be a storage structure/viewing platform.

Tract 1 only - Violation of Multnomah County Zoning Ordinance, Chapter 33: West Hills Rural Plan Area, Section 33.3115, Uses. The Zoning Ordinance requires that the County find that the allowed uses comply with the applicable portions of the zoning ordinance. The property owner of Tract 1 has acknowledged that the unpermitted yurt and attached living space on Tract 1 is used periodically as a residence and that use was not approved by the County in accordance with MCC 33.3115.

Tract 1 only - Violation of Multnomah County Zoning Ordinance, Chapter 33: West Hills Rural Plan Area, Section 33.3120(F), Accessory Structure. The Zoning Ordinance requires that the County approve accessory structures. The bathroom and storage structures on Tract 1 are not accessory to a use that was permitted or approved in this district in accordance with MCC 33.3120(F).

Pursuant to MCC 37.0560(A)(1), authorized signatories for both property owners have signed a Voluntary Compliance Agreement to bring the properties into compliance (Exhibit C). *These criteria are met.*

2 Lot of Record Criteria

2.1 MCC 33.0005 Definitions

MCC 33.0005(L)

2.1.1 (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.)

*** * ***

Staff: Both of the subject tracts are lots in the Bonny Slope Subdivision which was approved in March 1923 (Exhibit B). Therefore, they were created prior to the

enactment of zoning and subdivision laws. Both tracts are Lots of Record under the definition in MCC 33.0005(L)(13)(a) and (b)(1). *These criteria are met.*

2.2 MCC 33.3170 Rural Residential Lot of Record Criteria

2.2.1 MCC 33.3170(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this 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, RR zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

Staff: The Bonny Slope Subdivision was created in March 1923, prior to any of the zoning ordinances listed above. *This criterion is met.*

2.2.2 MCC 33.3170(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 33.3185, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Both of the subject tracts are smaller in size than the minimum lot size which is 20 acres for RR zoned lots within one mile of the Urban Growth Boundary. The proposed Property Line Adjustment involves an equal exchange of property and will not change the size of the subject tracts. The balance of this decision addresses the other requirements of the RR district.

2.2.3 MCC 33.3170(C) Except as otherwise provided by MCC 33.3160, 33.3175, and 33.4300 through 33.4360, 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.

Staff: As shown on Exhibit 1, on Tract 1, the Property Line Adjustment will increase the amount of yard between the building site for a future single-family residence (currently occupied by unlawful structures) and the southern (side) property line of that tract (Exhibit 1). On Tract 2, the Property Line Adjustment will increase the amount of yard between the existing water tank and the northern (side) property line of that tract (Exhibit 1). The minimum yard requirements can be met on both tracts after the Property Line Adjustment. The size of the lots will not change as a result of the Property Line Adjustment. *These criteria are met.*

3 Rural Residential Zoning District Criteria

3.1 MCC 33.3125 Review Uses

* * *

3.1.1 MCC 33.3125(F) Property Line Adjustment pursuant to the provisions of MCC 33.3160.

Staff: As discussed in Item 3.3, the Property Line Adjustment will comply with the provisions of MCC 33.3160. *This criterion is met.*

3.2 MCC 33.3155 Dimensional Requirements

3.2.1 MCC 33.3155(A) Except as provided in MCC 33.3160, 33.3170, 33.3175 and 33.4300 through 33.4360, the minimum lot size for new parcels or lots shall be five acres. For properties within one mile of the Urban Growth Boundary, the minimum lot size shall be as currently required in the Oregon Administrative Rules Chapter 660, Division 004 (20 acre minimum as of October 4, 2000).

Staff: Both of the subject tracts are within a mile of the Urban Growth Boundary and are smaller than the minimum lot size of 20 acres. As discussed in Item 2, both tracts are Lots of Record in accordance with MCC 33.0005 and MCC 33.3170. *This criterion is met.*

3.2.2 MCC 33.3155(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.

Staff: No street is to be vacated. *This criterion does not apply.*

3.2.3 MCC 33.3155(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

Staff: As shown on Exhibit 1, the Property Line Adjustment will result in approximately 340 feet of the southern (side) property line of Tract 1 moving approximately 117 feet to the south, and approximately 512 feet of the northern (side) property line of Tract 2 moving approximately 77 feet to the north. It will not alter the length of the front property line/NW North Road frontage of either tract. This will have the effect of moving the property lines farther from the future home building site on Tract 1 and the existing water tank on Tract 2. The future home site on Tract 1 will be approximately 30 feet from the nearest (eastern/back) property line of that tract. The existing water tank on Tract 2 will be approximately 55 feet from the nearest (southern/side) property line of that tract. *These criteria are met.*

- 3.2.4 MCC 33.3155(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional requirements not otherwise established by Ordinance.**

Staff: NW North Road has sufficient right-of-way width. *This criterion does not apply.*

3.3 MCC 33.3160 Lots of Exception and Property Line Adjustments

* * *

3.3.1 MCC 33.3160(B) Property Line Adjustment

Pursuant to the applicable provisions in the Multnomah County Land Division Ordinance, the approval authority may grant a property line adjustment between two contiguous Lots of Record upon finding that the approval criteria in (1) and (2) are met. The intent of the criteria is to ensure that the property line adjustment will not increase the potential number of lots or parcels in any subsequent land division proposal over that which could occur on the entirety of the combined lot areas before the adjustment.

(1) No additional lot or parcel is created; and

(2) At least one of the following situations occurs:

(a) The lot or parcel proposed to be reduced in area is larger than 5 acres prior to the adjustment and remains 5 acres or larger in area after the adjustment, or

(b) The lot or parcel proposed to be enlarged in area is less than 10 acres in area prior to the adjustment and remains less than 10 acres in area after the adjustment.

Staff: As shown on the Tentative Plan Map (Exhibit 1), the Property Line Adjustment will not create an additional lot. Also, the sizes of both tracts will remain the same. *These criteria are met.*

4 Land Divisions Criteria

4.1 MCC 33.7970 Property Line Adjustment (Lot Line Adjustment)

A property line adjustment is the relocation of a common property line between two abutting properties.

- 4.1.1 MCC 33.7970(A) The Planning Director may approve a property line adjustment between two properties, in the Rural Area, where an additional lot or parcel is not created and where the existing lot or parcel reduced in size by the adjustment is not reduced below the minimum lot size established by the applicable zoning designation.**

Staff: As shown on the Tentative Plan Map (Exhibit 1), the Property Line Adjustment will not create an additional lot and the sizes of the subject tracts will not be reduced. *These criteria do not apply.*

- 4.1.2 MCC 33.7970(B) The Planning Director may approve a property line adjustment between two properties in the Rural Area where an additional lot or parcel is not created but where one or both of the adjusted properties are below the minimum lot size established by the applicable zoning district designation. Such an adjustment shall comply with any applicable zoning district standards for a Property Line Adjustment or Lot Line Adjustment.**

Staff: As shown on the Tentative Plan Map (Exhibit 1), the Property Line Adjustment will not create an additional lot. Also, both tracts are currently smaller in size than the minimum lot size of 20 acres and the sizes of both tracts will remain the same. *These criteria are met.*

MCC 33.7970(C) Property line adjustments approved under subsections (A) and (B) above shall meet the following additional standards:

- 4.1.3 (1) No additional lot or parcel shall be created from any parcel by the property line adjustment; and**

Staff: As shown on the Tentative Plan Map (Exhibit 1), the Property Line Adjustment will not create an additional lot.

- 4.1.4 (2) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and**

Staff: Based on current Multnomah County Assessment and Taxation records, Tract 1 (Tax Lot 100) is owned by the NW North Tree Farm, LLC/Andrew Michaels and Tract 2 (Tax Lot 200) is owned by the TVWD -- shown on County records as Wolf Creek Highway Water District (Exhibit A). Authorized signatories for both property owners signed the Statement of Property Owners Consent (Exhibit 3) to initiate the Property Line Adjustment application (Exhibit 2). *This criterion is met.*

4.1.5 (3) The adjusted properties shall meet all dimensional requirements in the underlying zoning district designation except for lot area.

Staff: As found in Item 3.2, the Property Line Adjustment shall meet the dimensional requirements in MCC 33.3155. *This criterion is met.*

4.1.6 (4) The right-of-way width between the front line of each adjusted property and the centerline of any adjacent County road shall comply with the applicable provisions of the Street Standards Code and Rules as determined by the County Engineer.

Staff: As shown on the Tentative Plan Map (Exhibit 1), the right-of-way width between the front line of each of the subject tracts and NW North Road will not be altered as part of the Property Line Adjustment. *This criterion is met.*

4.1.7 MCC 33.7970(D) The procedure and forms for obtaining approval of a property line adjustment shall be as provided for by the Planning Director.

Staff: Exhibits D and E include the instructions for obtaining approval of a Property Line Adjustment. *This criterion is met.*

5 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden of proof necessary for the Property Line Adjustment in the RR zoning district. This approval is subject to the conditions of approval established in this report.

6 Exhibits

Exhibits referenced in this decision, but not attached, are found in the case file, located at the Land Use Planning office; John B. Yeon Building, 1600 SE 190th Avenue, Gresham, Oregon.

Exhibit No.	No. of Pages	Exhibit
<i>Exhibits Provided by Applicant</i>		
1	1	Tentative Plan Map
2	1	General Application Form
3	1	Statement of Property Owners Consent
<i>Exhibits Provided by County</i>		
A	2	Multnomah County Assessment and Taxation Records (both tracts)
B	1	Bonny Slope Subdivision Map
C	5	Voluntary Compliance Agreement
D	1	Surveyor's Instructions for Finishing a Property Line Adjustment
E	1	Applicant's Instructions for Finishing a Property Line Adjustment
F	1	2002 Aerial Photograph of Subject Tracts