

**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.

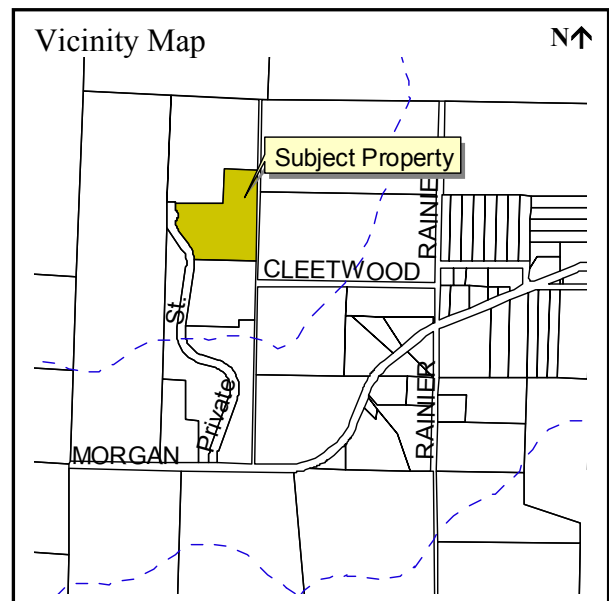
Case File: T2-05-018

Permit: Planning Directors Determination

Location: 20127 NW Morgan Road
TL 400, Sec 12C, T2N, R2W, W.M.
Tax Account #R972120320

Applicant: Constance Kreitz

Owner: Richard & Constance Kreitz
20127 NW Morgan Road
Portland, OR 97231



Summary: The property owners are requesting a Lot of Record Determination.

Determination: The property known as Tax Lot 400, 2N2W12C is a Lot of Record pursuant to MCC 33.2275(A)(4) and MCC 33.0005(L)(13).

Unless appealed, this decision is effective Friday, May 6, 2005, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Friday, April 22, 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 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 Friday, May 6, 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.

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*.

1.00 **Project Description**

Staff: The property owners/applicants are seeking a Lot of Record determination on the subject property. The applicant believes the property has been legally created, if so this determination would remove the cloud of uncertainty from the parcel.

The subject property was first created on October 20, 1972 along with four other lots (Exhibit A.2 & A.3). In 1972, the property was zoned F-2 and the only requirement for meeting the zoning requirements was to have a minimum lot size of 2 acres. The subject property is 6.39 acres in size. In addition to this property being divided off, the previous property owner also created four other lots during the same calendar year. The creation of four or more lots within one calendar year required approval of a subdivision from the County.

1.01 **Site Characteristics and Vicinity**

Staff: The subject property 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. Approximately 5 acres is forested. The property contains a single family dwelling, pump house, pole barn and septic system. The only cleared areas are the immediate areas around the dwelling leading down to the accessory building. The surrounding properties are also heavily forested with areas of steep slopes. The property is one of four lots that gains access to Morgan Road via a driveway on a separate tax lot owned by the various property owners with access by easement.

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: Multnomah County Assessment and Taxation records show Richard and Constance Kreitz as the owners of the subject property. Both property owners have signed the General Application Form (Exhibit A.1), thus giving authorization for the application. Constance Kreitz is designated as the applicant.

This criterion has been met.

1.03 **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: The following structures are located on the property as shown on the submitted site plan (Exhibit A.4). The chart below details the permits for the property.

Type	Permit Number	Year Constructed
LFS	LFS 61-75	1975
Single Family Dwelling	790578	1979
Pump House	No BP Req.	1976
Pole Barn	Exempt Farm Structure	1976
Septic Permit	1236	1975

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

This criterion has been met.

2.00 ***Lot of Record 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.)

Staff: The subject property was created by deed in 1972 along with three other properties. The zoning at the time was F-2 with a minimum lot size of two acres (Exhibit B.2). The F-2 zoning district did not have a street frontage requirement at the time. Each of the properties created was a minimum of 5 acres in size except for the private roadway which was 2.86 acres in size and was to be used as a private roadway. The private roadway leading to the property has never been accepted by the County as a street due to a number of issues including improvement.

The Lot of Record status of the subject property has been called into question under a Previous Hearings Officers Decision (CU 4-94) (Exhibit B.4). That decision, made for property known as 2N2W12C, Tax Lot 600 (R972120300) brought into question the legality of this and several other properties taking access from the private roadway. The Hearings Officer questioned the legality of the various properties and the private roadway as they had not gone through a Subdivision application with the County.

The County's Lot of Record code provisions were first placed on the subject property in 1977 when the zoning changed from F-2 to MUF-20. In April, 1979, the property was zoned Multiple Use Forest-20 (MUF-20) and the County issued the building permit to construct the dwelling on the subject property. It appears the dwelling was a replacement dwelling as a note on the building permit indicates that the "Existing mobile home to be removed before occupancy." Since the building permit was issued after the 1977 Lot of Record adoption date, we assume that the County did its due diligence in researching the property to the extent that was required at that time.

At the time of the land use sign off for the dwelling, Multnomah County knew there was an issue with the road accessing the property due to considerable correspondence between the County and the original land owner, Halsten Lee, regarding the acceptance of the road for public purposes (Exhibit B.4). Multnomah County further knew there were Lot of Record requirements in place prior to approval of the replacement dwelling in 1979. 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 the building permit. The history of permitting, along with the proximity of those permits to key dates such as new Lot of Record requirements in the late 1970's, indicate that the County had full knowledge of the history of the property, the question of the legality of the property tied to the road creation and still issued the permits. It is reasonable to assume that at the time the County issued a permit, it was processed correctly. Based upon the evidence in the record, the subject property met the applicable zoning and land division requirements at the time of creation.

This criterion has been met.

2.03 **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:

(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.

(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 20, 1990.

Staff: Staff reviewed the County's A&T records for 1989 and 1990 and has compiled a map showing the owners of contiguous property owners (Exhibit B.3). MCC 33.2210 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.* Richard and Constance Kreitz own their 6.39 acre property and 22% of the private roadway allowing access to their property. The other property owners, Jean & Reinhard Jensen, Reinhold & Carolyn Kather, Nick & Joanne Emerson and Sven Johnson each own a portion of the roadway known as Tax Lot 700, 2N2W12C. Each of the owners had a house on their property on February 20, 1990 as such the Kreitz property remains a separately transferable property. As discussed in this finding and under the finding for MCC 33.0005(L)(13), the subject property is a Lot of Record.

This criterion has been met.

3.00 **Conclusion**

Based on the findings and other information provided above, the Planning Director determines the property known as 20127 NW Morgan Road (2N2W12C, Tax Lot 400) was legally created and is a Lot of Record, complete with development rights as allowed by the current zoning designation.

4.00 **Exhibits**

'A' Applicant's Exhibits
'B' Staff Exhibits
'C' Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	2/24/05

A.2	1	Warranty Deed Which Created the Subject Property	2/24/05
A.3	1	Tax Card Showing Deed Numbers for Creation of the Other Lots on the Private Access Road	11/10/2004
A.4	1	Site Plan Showing Improvements on Property	2/24/05
A.5	1	Amended General Application Form	3/9/05
A.6	1	Copy of Plumbing Permit and Certificate of Satisfactory Completion of Septic System	3/9/05
A.7	3	Building Permit Records for Construction of Single Family Dwelling	3/9/05
A.8	2	Copy of Current Deed	3/9/05

'B'		Staff Exhibits	Date
B.1	12	1962 through 1974 F-2 Zoning Regulations	1962 - 1974
B.2	2	1962 through 10/5/1977 Zoning Map for 2N2W12	1962 - 1977
B.3	1	1989 and 1990 Ownerships	4/19/05
B.4	47	CU 4-94/HV 1-94 Decision	4/11/1994
B.5	1	Improvement Information for 2N2W12C – 00400	3/2/05

'C'		Administration & Procedures	Date
C.1	2	Incomplete Letter	3/3/05
C.2	1	Acceptance of 180 Days to Complete Application	3/9/05
C.3	1	Complete Letter – Complete March 9, 2005 (Day 1)	3/24/05
C.4	9	14 Day Opportunity to Comment	3/28/05
C.5	7	Administrative Decision – Day 44	4/22/05