



MULTNOMAH COUNTY OREGON
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.

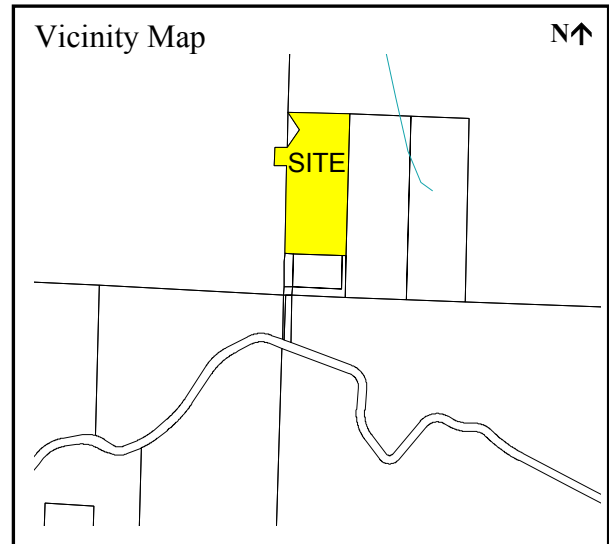
Case File: T2-05-117

Permit: Lot of Record Determination

Location: 22443 NW Rocky Point Rd.
T3N, R2W, Sec. 35BC, TL-300
#R98235-0040

Applicant: Greg Phillips
PO Box 83883
Portland, OR 97283

Owner: Megan Holbrock
PO Box 83883
Portland, OR 97283



Summary: The applicant has requested a Planning Director's Determination on whether or not the property located at 22443 NW Rocky Point Road is a Lot of Record. The subject property is zoned Commercial Forest Use-1.

Determination: **The property is a Lot of Record as defined by the Commercial Forest Use-1 zoning code (MCC 33.2075 & 33.0005(L)(13)).**

Unless appealed, this decision is effective March 29, 2006 at 4:30 PM.

Issued by:

By: _____
Adam Barber, Planner

For: Karen Schilling - Planning
Director

Date: March 15, 2006

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 Adam Barber, 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 **March 29, 2006 at 4:30 pm**.

Applicable Approval Criteria: Multnomah County Code (**MCC 33.0005(L)(13) & MCC 33.2075**): Lot of Record standards; 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/dscd/landuse>.

Scope of Approval

1. Approval of this land use permit is based on the submitted evidence.

DECISION OF THE PLANNING DIRECTOR

(Formatting Note: As necessary to address Multnomah County ordinance requirements; Staff provides Findings referenced here. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Written responses by the applicant or their representative are *italicized*. Planning staff comments and analysis may follow applicant responses. Where this occurs, the notation “Staff” precedes such comments.)

Findings of Fact

1.0 PROJECT AND VICINITY DESCRIPTION

Staff: The applicant has requested a Lot of Record determination for 22443 NW Rocky Point Road, also referred to as Tax Lot 300 of Township 3 North, Range 2 West of Section 35BC. The 10.62-acre subject property is located north of Rocky Point Road 0.5 miles northeast of the Rocky Point Road/Skyline Boulevard intersection (Exhibit A1). The property is currently zoned Commercial Forest Use-1 with a zoning overlay for Significant Environmental Concern (Wildlife Habitat). Topography of the subject property varies from nearly level near the center to slopes exceeding 40 percent towards the north and south sides. In general, the property slopes towards the northeast and is heavily forested.

2.0 PUBLIC COMMENT (MCC 37.0530(B))

Type II decisions - 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: An opportunity to comment was prepared in accordance with **MCC 37.0530(B)** and mailed on February 7th, 2006. Comments were submitted by Alison Winter, Transportation Planning Specialist (Exhibit A2). Ms. Winter indicates in the response that County Transportation does not have any comments on the proposal.

3.0 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.

Staff: Multnomah County Assessment and Taxation records show Megan Holbrock and Greg Phillips as owners of the subject property. Greg Phillips (owner) signed the General Application Form contained in the permanent record authorizing Multnomah County to process this Type II request.

4.0 LOT OF RECORD (MCC 33.0005(L)(13))

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: According to historic county zoning maps, the subject property was most recently divided prior to October 6th of 1977 when the F-2 zoning regulations required new properties to be at least 2-acres in size. Because the property resulting in the land division was 10.52-acres, Staff finds it was properly formed.

The subject property was configured into the present configuration in 1986 by county approved property line adjustment EMP 8-86. A copy of the land use signature authorizing the creation of the subject property in the current configuration is presented as Exhibit A3. A copy of the deed describing the boundaries of the subject property approved by EMP 8-86 is presented as Exhibit A4. This deed was recorded into Multnomah County records on October 24th, 1986 in Book 1965, Pages 520 – 521.

The new property description of the other property involved in property line adjustment to the immediate west was incorrectly recorded. This resulted in the unlawful creation of a 0.25 acre triangular property known today as Tax Lot 400. Tax Lot 400 ended up as a third piece of property, where the creation of a third property was not authorized by the property line adjustment in 1986.

The improper reconfiguration of Tax Lot 400 does not negatively impact the Lot of Record determination for the subject property for two reasons. First of all, the area within Tax Lot 400 was approved by the county planning department to become incorporated into the parcel to the west rather than the subject property. Secondly, the dimensions approved by the county for the

subject property after the property line adjustment were accurately recorded. In conclusion, Staff finds the creation of the subject property satisfied all applicable land division and zoning laws at the time of creation. This is further supported by the county's approval signature in Exhibit A3 and the recorded deed in Exhibit A4.

5.0 LOT OF RECORD (MCC 33.2075)

(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

(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.

Staff: Staff reviewed county property assessment records on 10/15/89 and 5/1/90 which span the February 20th, 1990 target date referenced in the code above. These assessment records suggest no other contiguous parcel of record was under the same ownership as the subject property on February 20th, 1990. The only contiguous ownership on that date was a ¼ percentage ownership between the owner of the subject property at that time (Kefton Black) and a 60-foot wide access right of way to the south. (Book 1965, Page 520-521, recorded October 24th, 1986). Staff finds the subject property meets the requirements of **MCC 33.2075(A)(1)** because the access right of way is not a parcel or lot. Staff finds the subject property is not aggregated with any contiguous lot or parcel.

6.0 CODE COMPLIANCE (MCC 37.0560)

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.

Staff: The Land Use Planning office approved a property line adjustment approval for the subject property on August 15th, 1986. At that time, Multnomah County Code prohibited land use signoff for properties in violation of land use requirements (**MCC 11.45.040, “*Compliance Required*”).** Because Staff can not reinterpret a previous land use decision at this point, Staff finds the subject property was in full compliance with zoning regulations as of August 15th, 1986.

According to Multnomah County assessment records, the existing single family dwelling and farm building were constructed in 1977 and therefore were determined to be in compliance with zoning regulations in 1986. In conclusion, the subject property and all associated development appear to be in compliance with all county codes and permit approvals.

Conclusion

Considering all evidence, Staff finds that Tax Lot 300 of Township 3 North, Range 2 West of Section 35BC (22443 NW Rocky Point Road) is a separately conveyable Lot of Record.

Exhibits

All materials submitted by the applicant, prepared by County staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record of this application. Exhibits referenced herein are enclosed, and a brief description of each is listed below:

<u>Label</u>	<u>Description</u>
A1	Property Location Map
A2	Comments from Alison Winter, Multnomah County Transportation Specialist
A3	Permit EMP 8-86
A4	October 24 th , 1986 Deed of Last Reconfiguration