

**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/landuse>

---

## NOTICE OF DECISION

---

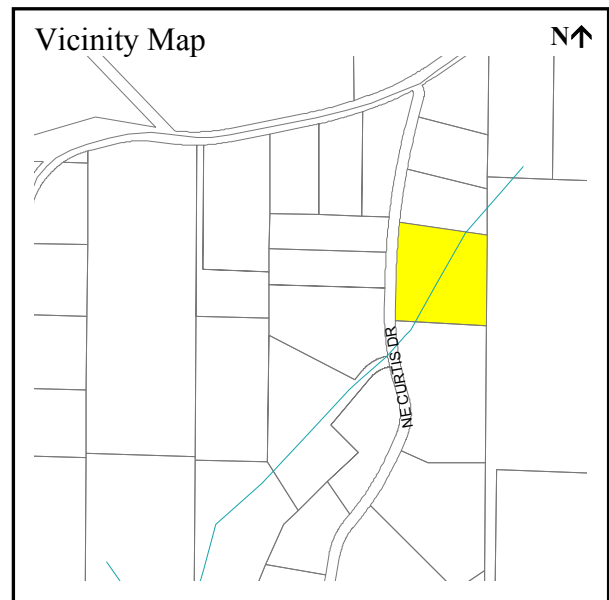
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-06-034

**Permit:** Administrative Decision by the Planning Director

**Location:** 346 NE Curtis Dr, Corbett, OR  
Lot 6 of Block 2 of Big Cedar Tracts  
TL 900, Sec 34C, T1N, R4E, W.M.  
Tax Account #R078501400

**Applicant:** Rosanne Hudson



---

**Summary:** Applicant is requesting certification that the building site of the proposed replacement manufactured home is outside the existing 150-ft stream buffer requirement (Policy 21 – East of Sandy River Rural Plan)

**Decision:** **Approved.** Site is outside of the stream buffer area.

Unless appealed, this decision is effective Friday, July 14, 2006, at 4:30 PM.

---

Issued by:

By:

---

Kenneth Born, AICP, Planner

For: Karen Schilling- Planning Director

Date: June 30, 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 Ken Born, 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 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, July 14, 2006 at 4:30 pm.**

**Applicable Approval Criteria:**

**East of Sandy River Rural Area Plan:**

*Streams and Watersheds Policies*

Policy 21

**Multnomah County Code (MCC):**

*General Provisions*

MCC 35.0005 Definitions - (H)(1) Habitable dwelling, (L)(3) Lawfully established dwelling, (L)(13) Lot of Record, (N)(2) Non-Conforming Use

*Administration and Procedures*

MCC 37.0530(B) - Type II Decisions, MCC 37.0550 - Initiation of Action and MCC 37.0560 - Code Compliance and Applications.

*Rural Residential*

MCC 35.3120 Allowed Uses

MCC 35.3155 Dimensional Requirements

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/landuse>.

**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. **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 or**

**37.0700, as applicable. A request for permit extension may be required to be granted 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 of Fact**

**FINDINGS:** 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*.

### **1. Project Description**

*Applicant: My request is to replace the existing 24 x 52 manufactured home with another manufactured home in the same location on the property. The newer home measures 20 x 66, for a total increase of 600 square feet.*

**Staff:** The applicant submitted an application on March 21, 2006 for a Verification and Alteration of a Nonconforming Use at staff’s direction in order to facilitate the replacement of an existing, lawfully established, 24 x 52 ft manufactured home with a newer 28 x 66 ft manufactured home (Exhibit A.4). The new manufactured home will be 14.5 feet in height (Exhibit A.11). The existing use was lawfully established in 1995 prior to the effective date of the East of Sandy River Rural Area Plan, which was adopted on July 10, 1997.

The Smith Creek corridor has been defined as a significant stream in the 1995 East of Sandy River Wildlife Habitat and Stream Corridor ESEE Report (Exhibit B.5). Policy 21 of the East of Sandy River Rural Area Plan (Exhibit B.6) provides a specific protection measure to prohibit or limit conflicting uses for areas within 150 feet of the centerline of a significant stream. It states:

Protect significant streams in the East of Sandy River Rural Area by prohibiting new residential development within 150 feet of a stream centerline and limiting new roads, stream crossings, additions to existing structures, and other grading activities within this 150 foot area. Additions to existing dwellings of up to 400 square feet shall be exempt from the setback requirements. All related ground disturbing activities within the 150 foot stream setback shall be confined to the period between May 1 and October 1 in any year.

Smith Creek is denoted on County maps as traversing the subject property from the southwest to the northeast. The proposed replacement dwelling site, based on the GIS data, appeared to lie within 150 feet of the streamline of the creek. As such, the existing manufactured home on the subject property was considered to be a “nonconforming use,” based on the best information available to County staff.

The applicant submitted a site plan at a scale of 1/8 inch equals 10 feet (Exhibit A.4) on March 21, 2006. The replacement dwelling site is proposed to be located on top of the existing one, with additional 600 square feet extending 14 feet to the south. The southwest corner of the structure is shown just less than 150 feet from Smith Creek, as depicted on County maps. The site plan shows the replacement manufactured home approximately 30 feet from the side property line. It indicates that the manufactured home site is provided access by an approximately 460 foot driveway accessed at the southwest corner of the subject property. A

16 x 20 ft barn is situated in the northwest corner of the property approximately 70 feet from the property line. A 10 x 10 ft shed is shown at 10 feet to the southeast of the dwelling, and 10 feet from the property line. According to the site plan, this shed does not conform to the setback requirements in the RR zone.

A revised site plan was submitted by the applicant on May 24, 2006. In a cover letter describing the revisions (Exhibit A.9), she states: "As we discussed on the phone, the site plan that was submitted with original packet for replacement of the manufactured home was created before I could even walk across the property. The closest measurement from the lowest point of the property to the front of the existing home site is about 165 feet. The home site actually is not in an area of non-conforming use."

## **2. Site Characteristics**

**Staff:** The 4.11-acre parcel is zoned Rural Residential (RR). An existing septic system currently services the manufactured home, and is located just to the west of the dwelling site. Slopes can be classified as moderate, ranging from 4% to 12%.

The property is identified on the National Wetlands Inventory (NWI) Washougal quad map as containing a freshwater wetland, classified PSSA (Exhibit B.4). Characteristics of PSSA wetlands include waterlogged soil during the growing season, and ground coverage with as much as 6 inches of water with the water table at or near the surface. PSSA wetlands are common along drainage depressions. The NWI map shows the wetland traversing down slope in the same pattern as Smith Creek, as defined by the East of Sandy River Wildlife Habitat and Stream Corridor EISE Report and County GIS maps.

Smith Creek is defined in this area north of Curtis Drive by the EISE Report as "Section 10 – Headwater Area" (pg. E-23-E-24):

This section is viewed from Curtis Road, since property owners did not grant permission for access. The stream appears to be a ditch along a driveway with pools of water in it. The water is approximately 4 inches deep, and may include domestic runoff from the house. The ditch disappears into a blackberry thicket. The reach is mostly lawn and pasture.

Headwater areas typically consist of multiple smaller creeks at the uppermost end of a stream system which contribute to larger creeks and rivers. The subject property and surrounding environs contain features characteristic of a headwater area. At least two drainage conduits east of the property line (Exhibit B.2) direct surface runoff on and near the property, including the middle of the site, consistent with the mapped Smith Creek, and to the southeast corner of the site, and eventually to the adjacent property to the south. A defined stream channel was not observed on the subject property. The area focused 150 feet around the stream centerline reflected on the County GIS system could more appropriately be defined as a drainage depression. Water which drains down slope eventually settles in a low spot near a 12 inch culvert located 84 feet from the street side lot line on the northern side of the unpaved driveway. A well defined stream corridor was observed 145 feet south of the site from the easterly shoulder of Curtis Drive, however. The surface water passes beneath the road within a culvert and continues through neighboring properties to the south and west. It appears to originate on Tax Lot 100 to the east, and may briefly pass over the subject property at the

southeast corner. (Exhibit B.7)

### 3. **Public Comment**

#### **Type II Case 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 March 21, 2006 and became complete on April 20, 2006. An "Opportunity to Comment" notice was mailed on April 20, 2006 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. A brief summary of comments received are listed below.

#### **Multnomah County Transportation Program**

In a memo dated May 3, 2006, County transportation staff indicated that they do not object to the proposal, and will not require any conditions of approval. The comment letter has been included as Exhibit D.1.

#### **Thomas Hooker**

Mr. Hooker noted that as the previous owner of the subject property, he was not aware of a stream present on the property. He requested that staff conduct a site visit, and update the appropriate County map. (Exhibit D.2)

#### **Oregon Department of State Lands**

In a June 15, 2006 letter, Michael Morales indicated that based on the department's investigation and research, the ground disturbance that had taken place on the subject property was not under the jurisdiction of the Department of State Lands. (Exhibit D.3)

### 4. **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:** The proposed project is located on Tax Lot 400, Section 34C, Township: 1 North, Range: 4 East. Assessment & Taxation records show that the land is owned by Rosanne Hudson. Ms. Hudson has signed the General Application Form which authorizes the County to process the application on the subject property located at 346 NE Curtis Drive. (Exhibit A.1). *This criterion has been met*

### 5. **Code Compliance**

## **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.**

**(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**

\*\*\*\*\*

### **Staff:**

The subject property also contains a 10 x 10 ft shed which currently is encroaching upon the rear yard setback (10 feet). The shed does not appear to be a legally established accessory structure. The applicant entered into a voluntary compliance agreement on June 23, 2006 specifying that she will move the in order to comply with the applicable yard requirements for the Rural Residential zone [MCC 35.3155(C)] within approximately 15 months (Exhibit B.10).

In the first of two site visits conducted by staff on May 1, 2006 to the subject property, ground disturbance was observed at a quantity (greater than 10,000 square feet), and at a proximity to a drainage area (less than 200 feet), which required the submittal of a Grading and Erosion Control application prior the conduction of said disturbance. This disturbance was described by the applicant in Exhibit A.11 as:

- *There was a 6-foot high pile of dirty diapers and household trash behind the house and five trees were removed there that would threaten the home should the east wind get the better of them.*
- *The driveway was graded and a little gravel added to keep the mud under control.*
- *The trees from behind the house had to be taken through the middle of the property to the staging area located at the bend of the driveway. This path was chosen to avoid running over the home site and the septic field. The cat disturbed the dirt in the middle of the property to move the trees.*
- *The dirt was disturbed for tree removal northwest of the bend in the driveway to clear the area for a shop building.*
- *In the area west of the "trees removed" indication on the site plan, there was a pile of garbage covered with dirt and blackberries that measured about 5 feet high, 10 feet wide and 40 feet long. That area was disturbed to remove an old swimming pool, car parts, tires, rolls of plastic, carpet, and more household trash.*
- *Among and just west of the middle of the low point of the property is an area of three burn piles and a garbage dump that included pieces of appliances, bedsprings, carpet, a roof's worth of shingles, car parts, sheet metal, and more household trash.*
- *The cat operator did run through the southwest corner by the culvert in his enthusiasm to remove blackberries and I asked him to not work in that area any more because he had already disturbed more dirt than should have been touched.*

Consequently, a land use complaint form was forwarded to Michael Grimm, a Code Compliance Specialist with the County, who processed the complaint as Case UR-06-041 (Exhibit B.9). Subsequent to a site visit conducted by Mr. Grimm, the applicant submitted an application for a Grading and Erosion Control permit (T1-06-038) on May 26, 2006.

Upon completion of the Grading and Erosion Control permitting process, and removal of the 10 x 10 ft shed beyond the 30 ft setback consistent with the timelines included in the voluntary compliance agreement, the property and all structures will be in compliance with applicable zoning regulations. *This criterion has been met.*

**6. The Subject Property is a Lot of Record**

**MCC 35.2275 Lot of Record**

**(A) In addition to the Lot of Record definition standards in MCC 35.0005, 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:** The subject property is subdivision Lot 6 of Big Cedar Tracts which was platted in 1978 (Exhibit B.8). The property when created (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws when created. The subject property is a lot of record. *This criterion has been met.*

**7. The Replacement Manufactured Home will be More Than 150 feet from Smith Creek**

On May 22, 2006, the applicant provided a revised site plan depicting the proposed site for the manufactured home as being outside the 150 ft stream buffer. In order to verify the information provided on the revised plan, staff conducted the second of two site visits to the subject property on June 14, 2006.

The site visit was conducted alongside Joy Friebaum, Natural Resource Coordinator with the Oregon Department of State Lands (DSL) - Wetland and Waterways Conservation Division. DSL provides both technical and planning assistance on wetland issues to local governments and landowners, and has the statutory authority to assert jurisdiction over any removal or fill activity that disturbs the soil within waters of the state. Ms. Friebaum needed to determine whether the actions described in Finding #5 above took place within the mapped wetland, and involved removal or fill of more than 50 cubic yards. In a letter dated June 15, 2006, Michael Morales, the Western Region Operations Manager indicated that the DSL did not have jurisdiction over the ground disturbance that had taken place.

The lowest point of the property within the drainage depression area (the mapped Smith

Creek) was identified as approximately 145 feet from the street side property line, and 188 feet from the southerly property line. A 100-foot tape measure was used by staff to obtain the distance from the depression to the proposed roofline of the replacement manufactured home. 176 feet separated the two points. This distance is greater than 150 feet, and thus beyond the 150 foot buffer requirement set forth in Policy 21 of the East of Sandy River Rural Area Plan. As such, the applicant is not required to apply for an alteration of a non-conforming use, because the existing manufactured home was not a non-conforming use.

The more appropriate centerline of Smith Creek appears to begin to the east of the subject property, and traverses mainly to the south, crossing through the applicant's property at the southeast corner. Future stream corridor inventories and associated mapping should be updated accordingly. Until such time, Policy 21 of the East of Sandy River Plan would continue to be applied.

Also, the Department of State Lands will continue to recognize the drainage depression area as a jurisdictional wetland until such time a wetland delineation report is generated at the initiation of the property owner, and said report is approved by the DSL recognizing the area as not exhibiting hydrophytic vegetation, hydric soils, and wetland hydrology.

## 8. **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary to prove that the proposed replacement dwelling is more than 150 feet from the centerline of Smith Creek, as required by Policy 21 of the East of Sandy River Rural Area Plan.

## 9. **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  | 03/21/06                 |
| A.2       | 1          | Application Cover Sheet   | 03/21/06                 |
| A.3       | 2          | Application Narrative   | 03/21/06                 |
| A.4       | 1          | Site Plan   | 03/21/06                 |
| A.5       | 1          | Floor Plan  | 03/21/06                 |
| A.6       | 2          | Service Provider Forms <ul style="list-style-type: none"> <li>a. Fire District Review Access</li> <li>b. Fire District Review Fire Flow Requirements</li> <li>c. Certification of Water Service</li> <li>d. Certification of On-Site Sewage Disposal</li> <li>e. Storm Water Certificate</li> </ul> | 03/21/06                 |

|      |    |   |                        |
|------|----|---|------------------------|
| A.7  | 18 | Storm Water Drainage Plan   | 03/21/06               |
| A.8  | 2  | Letter from Rosanne Hudson Regarding Revised Site Plan  | 05/24/06               |
| A.9  | 1  | Revised Site Plan   | 05/24/06               |
| A.10 | 4  | Revised GEC Narrative / Application Status Inquiry  | 06/20/06               |
| 'B'  |    | Staff Exhibits  | Date                   |
| B.1  | 2  | A&T Property Information  | 11/28/05               |
| B.2  | 1  | Zoning Map with 10 ft contours and 150' stream buffer   | N/A                    |
| B.3  | 1  | Wetland Land Use Notification Form  | 05/15/06               |
| B.4  | 1  | Copy of National Wetlands Inventory Map (Washougal quad)  | N/A                    |
| B.5  | 9  | East of Sandy River Wildlife Habitat and Stream Corridor ESEE Report (pgs. 19 and E-21 to E-24) | 01/1997                |
| B.6  | 4  | Policy 21- East of Sandy River Rural Area Plan  | 07/10/97               |
| B.7  | 4  | Site Visit Photographs  | 05/01/06 &<br>06/14/06 |
| B.8  | 1  | Plat Map – Big Cedar Tracts (Book 1210 Page 74)   | 02/15/78               |
| B.9  | 6  | UR-06-041 - Request for Voluntary Correction  | 05/01/06               |
| B.10 | 5  | Voluntary Compliance Agreement  | 06/23/06               |
|      |    |   |                        |
| 'C'  |    | Administration & Procedures   | Date                   |
| C.1  | 1  | Complete Letter – Day 1   | 04/20/06               |
| C.2  | 1  | Opportunity to Comment  | 04/20/06               |
| C.3  | 3  | Administrative Decision   | 06/30/06               |
| 'D'  |    | Comments Received   | Date                   |
| D.1  | 1  | Multnomah County Transportation Planning  | 05/03/06               |
| D.2  | 1  | Thomas Hooker   | 05/10/06               |
| D.3  | 1  | Oregon Department of State Lands  | 06/15/06               |