



**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>

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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:** T2-08-065

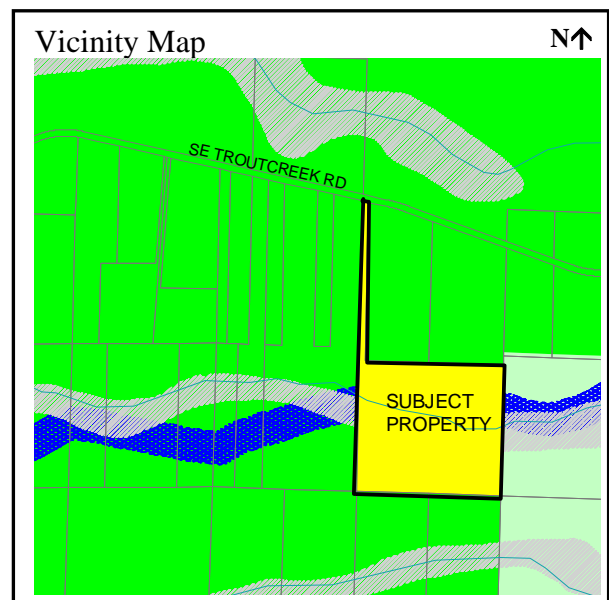
**Permit:** Health Hardship Permit

**Location:** 42700 SE Troutcreek Road  
TL 1700, Sec 17, T1S, R5E, W.M.  
Tax Account #R995170480

**Applicant:** Conrad Yuckert

**Owners:** Yuckert, Conrad M TR-1/2 &  
Yuckert, Toni M TR-1/2

**Zone:** Commercial Forest Use-4 (CFU-4)



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**Summary:** The applicant has requested a Temporary Health Hardship dwelling in the Commercial Forest Use-4 zone.

**Decision:** **Approved with conditions**

Unless appealed, this decision is effective January 19, 2009, at 4:30 PM.

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Issued by:

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

For: Karen Schilling- Planning Director

Date: January 5, 2009

Instrument Number for Recording Purposes: # 2008045028

**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 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, ext. 29270.

**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 January 19, 2009 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): 35.0515, Temporary health Hardship Permit; 35.2200 – 35.2310, Commercial Forest Use-4.

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 (2) 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. The request for a permit extension must be submitted prior to the expiration of the approval period.**

### **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. **After the decision is final and prior to building permit sign-off, the property owner shall record the Notice of Decision cover sheet through the conditions of approval with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to building permit sign-off and a copy filed with Land Use Planning. Recording shall be at the applicant's expense (MCC 37.0670).**

2. **Prior to issuance of land use sign off for the building permit, a penal bond in the amount of \$1,000 is to be submitted to the Land Use Planning Section. The health hardship dwelling shall be removed from the property within six months after the health hardship ceases to exist. Failure to remove the health hardship dwelling within this time period may cause the forfeiture of the penal bond to the County (MCC 35.0515(A)(5)).**
3. **The health hardship dwelling shall be connected to the same public facilities (e.g., sewer, water or power mains, etc.) as the permanent dwelling (MCC 35.0515(A)(4)(c)).**
4. **The Health Hardship Dwelling permit may be renewed if the Health Hardship situation continues. The applicant shall apply for a renewal of the Health Hardship permit every two (2) years from the date this land use decision becomes final (MCC 35.0515(A)(6)). This renewal shall include: A recent (within 6 months prior to the two year deadline) physician's statement verifying that the Health Hardship situation still exists and a letter from the care provider describing the continuing assistance being given.**
5. **Prior to issuance of land use sign off for the building permit, evidence must be provided that a statement has been recorded with the County Division of Records verifying that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices (MCC 35.2245(B)).**
6. **The property owners shall establish and maintain a primary fire safety zone of 30-feet around the temporary health hardship dwelling. Within the primary safety zone the trees shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height. The primary fire safety zone shall be shown on the to scaled site plan (architect or engineer's scale) for the building permit (MCC 35.2256 & MCC 35.2245(A)(2)).**
7. **Only Class A or non-combustible materials shall be used for the roof of the dwelling (MCC 35.2245(A)(2)).**

**Note:** Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, Don Kienholz, at (503) 988-3043 ext. 29270, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 may be required.

**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.

## **1.0 PROJECT DESCRIPTION**

**Staff:** The applicant is proposing to place a 1,800 square foot manufactured home on the property for use as a temporary health hardship dwelling. The dwelling will be located 95-feet east of the existing dwelling on the property and will be used to provide care to one of the landowners.

## **2.0 PROPERTY DESCRIPTION**

**Staff:** The 37.99-acre forested property is near the end of Trout Creek Road in the East of Sandy River Plan Area. Trout Creek runs through the northern third of the property approximately 200-feet south of the existing riding arena, barn and dwelling situated near the northern property line (Exhibit 18). Slopes on the property range from less than 10% to over 40% with the steepest slopes running along Trout Creek. Slopes in the development area are gentle and estimated at less than 10%. Developed properties in the area tend to also be forested and smaller than the subject property. Undeveloped properties in the area tend to be forested and larger than the subject property.

## **3.0 PUBLIC COMMENT**

### **MCC 37.0530(B) Type II Decisions**

**(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. 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. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Directors decision shall become final at the close of business on the 14<sup>th</sup> day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is signed.**

**Staff:** An opportunity to comment was mailed to property owners within 750-feet of the property on November 12<sup>th</sup>, 2008 (Exhibit 17). No written comments were received.

## **4.0 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. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.**

**Staff:** Multnomah County Assessment and Taxation records list *Yuckert, Conrad M TR-1/2* & *Yuckert, Toni M TR-1/2* as the property owner(s). Conrad Yuckert has signed the General Application Form providing the necessary authorization to process this request (Exhibit 1).

## **5.0 FULL 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**
- (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:** No compliance issues have been identified in association with the subject property. The creation of the subject property was authorized by Multnomah County by approved land division LD 26-97 (Exhibit 8).

## **6.0 A HEALTH HARDSHIP DWELLING IS A REVIEW USE IN CFU-4 ZONE**

**The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:**

**(C) A mobile home, in conjunction with an existing dwelling, upon obtaining an annual Temporary Health Hardship Permit pursuant to all applicable approval criteria, including but not limited to MCC 35.0515, 35.2245 and 35.2256.**

**Staff:** The proposed dwelling is labeled a “manufactured” home on the submitted site plan which qualifies as a mobile home (Exhibit 9). It will be located east of the existing dwelling authorized as a replacement dwelling the County November 20<sup>th</sup>, 1992 (Exhibit 14). A condition of this decision requires renewal of this Temporary Health Hardship permit every two years as required by MCC 35.0515 (A)(6). The applicable provisions of MCC 35.0515, 35.2245 and 35.2256 are evaluated below.

## **7.0 TEMPORARY HEALTH HARDSHIP PERMIT**

### **§ 35.0515 Temporary Health Hardship Permit**

**The purpose of the Temporary Health Hardship Permit is to allow the convenient provision of daily health care needs to a person with a demonstrated health hardship by allowing the placement of a mobile home on a lot with an existing single family residence. The permit is**

**temporary in nature and not intended to encourage an increase in the residential density beyond that envisioned by the Comprehensive Plan and its implementing ordinances.**

**(A) The Planning Director may grant a Temporary Health Hardship Permit to allow occupancy of a mobile home on a lot with a single family residence based on the following findings:**

**(1) The person with the health hardship is either one of the property owners or is a relative of one of the property owners.**

**(a) If the person with the health hardship is one of the property owners, then the care provider in the other residence is not required to be a relative.**

**(b) If the person with the health hardship is a relative of one of the property owners, then the care provider must be a relative.**

**(c) For the purposes of this section, a relative is defined as a grandparent, parent, child, brother or sister, either by blood or legal relationship.**

**Staff:** The person with the health hardship is a property owner. It is Staff's understanding that the person with the health hardship will live in the mobile home rather than the existing dwelling because the existing dwelling is not ADA compliant. The applicant has stated the care providers will be the husband as well as the son of the individual with the health hardship.

*The provisions of MCC 35.0515 are satisfied.*

**(2) The person with the health hardship is unable to adequately provide daily self-care needs because of a physical and/or medical impairment based upon a statement from a licensed physician describing the nature of the impairment and its resultant limitations. The physician shall indicate that those limitations are severe enough to warrant daily assistance and that at least one of the residents of the property is capable of providing that assistance.**

**Staff:** The applicant has submitted the necessary documentation, prepared by a licensed physician, demonstrating the person with the health hardship is unable to adequately provide daily self-care needs because of a physical and/or medical impairment.

*This standard is met.*

**(3) There is a demonstrated lack of appropriate alternative accommodations within the area entitled to notice, including, but not limited to, rental housing or space within the existing residence.**

**Staff:** There are no alternative housing accommodations within 750-feet of the subject property that have been identified during this review. Stairs within the existing home render the use of the existing dwelling insufficient for the type of health hardship housing needed.

*This standard is met.*

**(4) The following locational criteria are satisfied:**

**(a) The proposed siting of the mobile home will satisfy the applicable setback standards of the zoning district without requiring a variance. An adjustment of the setback requirement may be approved.**

**Staff:** The applicable setback standards are addressed within section 9.0 of this decision. Neither a variance nor an adjustment is necessary.

*This standard is met.*

**(b) The mobile home shall be located in a manner which satisfies the locational requirements of a second residence on properties capable of being divided under the existing zoning within those areas designated as urban by the Comprehensive Framework Plan.**

**Staff:** The 80-acre minimum lot size for new parcels in the CFU-4 zone prohibits the ability to divide the 37.99 acre property (MCC 35.2263).

*This standard does not apply.*

**(c) The mobile home will not require any new main connections to public facilities or services (e.g., sewer, water or power mains, curb cuts, etc.) unless sited in the manner allowed in subsection (b) above, in which case those services may be extended to the area on the property which satisfies the locational requirements of a second residence.**

**Staff:** Both the existing dwelling and temporary health hardship dwelling will be served by the same septic system, well and power main line.

*This standard is satisfied.*

**(d) The mobile home will not require any attached or detached accessory structures other than wheelchair ramps to accommodate the health care needs of the proposed occupant.**

**Staff:** The submitted information does not show any attached structures. The use of an attached wheelchair ramp to access the dwelling would be acceptable if proposed at the time of building plan signoff.

**(5) A penal bond in the amount of \$1,000 is posted to insure removal of the mobile home within six months after the health hardship ceases to exist.**

**Staff:** Submittal of the bond has been made a condition of this approval.

*As conditioned, this standard is met.*

**(6) As a condition of approval, every two years from the approval date the applicant shall submit:**

**(a) A recent (within 6 months prior to the two year deadline) physician's statement verifying that the situation described in (2) above still exists; and**

**(b) A letter from the care provider describing the continuing assistance being given.**

**Staff:** These requirements have been incorporated into conditions of approval.

*As conditioned, these standards are met.*

## **8.0 USE COMPATIBILITY STANDARDS**

**MCC 35.2245(A) Specified uses of MCC 35.2225 (C), (D), and (E) and MCC 35.2230 (A), (B), and (C) may be allowed upon a finding that the use will:**

**(1) Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands;**

**Staff:** 31.99 acres of the subject property, along with other properties in the area, are enrolled in the county's forest land tax deferral program and therefore are engaged in some level of forest practices. Five acres of the subject property is enrolled in the County's farm deferral tax program. The health hardship dwelling will be clustered near the edge of the northern property boundary between a barn and dwelling. The driveway to the existing home will provide access to the temporary dwelling and existing on-site utilities will be used to serve the temporary dwelling. The dwelling will be placed in the same location as a dwelling that existed prior to 1993 and will not be placed in a portion of the property being used for forestry or farming. Staff foresees no reason why the temporary dwelling will have any impacts on surrounding forestry or farming practices considering the number of other dwellings in the area and the proposed location exceeding the minimum setback requirements.

*This standard is met.*

**(2) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and**

**Staff:** A condition of approval requires the use of a class A or non-combustible roof on the dwelling and a 30-foot primary fire safety zone to be maintained as discussed in more detail within section 9.0 of this decision. These fire suppression methods are reasonable in a forested setting, have been documented to reduce fire hazards and are required by this and other sections of county code.

*As conditioned, this standard has been met.*

**(3) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices.**



**Staff:** This decision has been conditioned such that proof of recordation of this statement must be presented to the county Land Use and Transportation Program prior to building plan signoff by the county.

*As conditioned, this standard has been met.*

**(B) Single family dwellings as specified in MCC 35.2225 (B) may be allowed upon a finding that they will not significantly impact open space, public facilities, wildlife habitat, and rural community character.**

**Staff:** The temporary health hardship dwelling provisions are listed in MCC 35.2225(C). The applicant is not proposing a Large Acreage Dwelling, Template Dwelling or Heritage Tract Dwelling which are listed in MCC 35.2225(B).

*This standard does not apply.*

## **9.0 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES**

**The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:**

<b>Use</b>	<b>Forest Practice Setbacks</b>			<b>Fire Safety Zones</b>
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
At least a portion of the Temporary Health Hardship Dwelling is within 100 ft. of existing dwelling	N/A	30	30	Primary required

**Staff:** The dwelling will be located 50 feet from the closest property line to the north. The Forest Practice Setbacks are satisfied. The dwelling must also meet the Primary Fire Safety Zone standards below.

### **(D) Fire Safety Zones on the Subject Tract**

#### **(1) Primary Fire Safety Zone**

**(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**

**(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

<b>Percent Slope</b>	<b>Distance In Feet</b>
<b>Less than 10</b>	<b>No additional required</b>
<b>Less than 20</b>	<b>50 additional</b>
<b>Less than 25</b>	<b>75 additional</b>
<b>Less than 40</b>	<b>100 additional</b>

**Staff:** Slopes in the development area do not exceed 10%. A 30-foot primary fire safety zone must be established and maintained around the new dwelling as specified above as a condition of this approval.

*This standard is met.*

**(c) The building site must have a slope less than 40 percent**

**Staff:** Slopes in the development area do not exceed 40%.

*This standard is met.*

## **(2) Secondary Fire Safety Zone**

**A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of 35.2310.**

**Staff:** A secondary fire safety zone is not required for a health hardship dwelling located within 100-feet of an existing dwelling.

*These criteria do not apply.*

## **10.0 ACCESS**

**All lots and parcels in this district shall abut a street, or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles, except as provided for Lots of Record at MCC 35.2275(C).**

**Staff:** The property is a flag lot abutting Trout Creek Road. The Multnomah County Rural Fire Department #14 has indicated no improvements are required to access the site (Exhibit 4). The

Multnomah County Transportation Specialist has issued a Memorandum that no additional conditions or requirements are necessary.

*This standard is met*

## **11.0 BUILDING HEIGHT**

**§ 35.2250 Building Height Requirements. (A) Maximum structure height – 35 feet.**

**Staff:** The one story dwelling will not exceed the maximum structure height (Exhibit 10).

*This standard is met.*

## **12.0 CONCLUSION**

**Staff:** Based on the findings, narrative, and other information provided herein, this application has satisfied the applicable approval criteria required for a Temporary Health Hardship Permit.

## **13.0 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 for this application.

Exhibit 1	1 p.	General Application Form
Exhibit 2	10 p.	CFU Zone Development Standards Permit Application Form A, Type I
Exhibit 3	6 p.	Certification of On-Site Sewage Disposal Form and associated/supporting documentation
Exhibit 4	4 p.	Fire District Access Review Form
Exhibit 5	5 p.	Fire District Review Fire Flow Requirements Form
Exhibit 6	1 p.	Certification of Water Service Form
Exhibit 7	3 p.	Stormwater Certificate signed by Vic Accomando, Registered Professional Engineer with associated/supporting documentation
Exhibit 8	14 p.	Property configuration documents including fax cover sheet, meets and bounds descriptions, surveys and deeds.
Exhibit 9	1 p.	Site plan submitted November 3, 2008
Exhibit 10	1 p.	Floor plan typical elevation of proposed dwelling.
Exhibit 11	1 p.	Site plan submitted October 14, 2008
Exhibit 12	2 p.	Narrative submitted November 3 and October 24, 2008

- Exhibit 13      8 p.      Farm Agricultural Building Land Use Permit Records Associated with 120-foot by 60-foot barn (permit No. AG 01-02)
- Exhibit 14      1 p.      November 20, 1992 Approval Card For Existing Dwelling
- Exhibit 15      2 p.      October 30, 2008 Letter Deeming Application Incomplete.
- Exhibit 16      1 p.      November 12, 2008 Letter Deeming Application Complete.
- Exhibit 17      5 p.      14 Day Opportunity To Comment Packet Mailed November 12, 2008
- Exhibit 18      1 p.      2004 aerial photo of subject property and surrounding area