



MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.multco.us/landuse>

NOTICE OF DECISION

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

Case File: T2-2011-1719

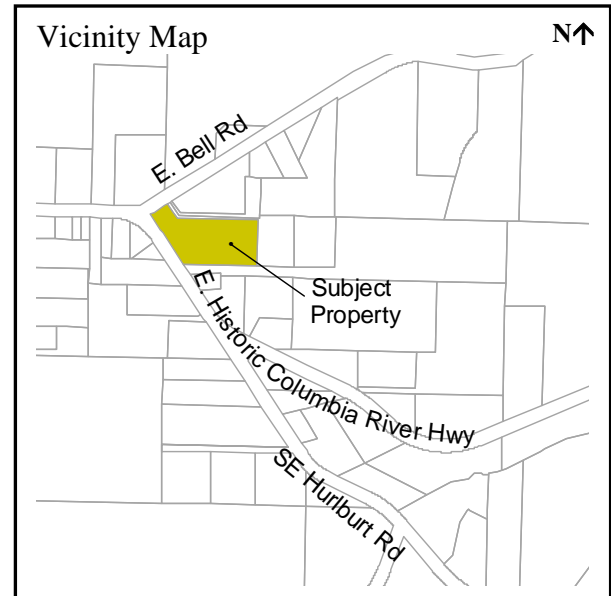
Permit: Land Division, Lot of Exception,
Verification of a Non-Conforming Use

Location: 32417 E. Historic Columbia River
Highway
Tax Lot 100, Section 04BB,
Township 1S, Range 4E, W.M.
#R649791880

**Applicant/
Owner:** Garret and Beverly Law

Base Zone: Springdale Rural Center (SRC)

Overlays: None



Summary: Partition the subject property that contains two existing dwellings into two parcels with a dwelling on each new parcel. Verification of a Non-Conforming Use for the structures within the required setbacks.

Decision: Approved With Conditions

Unless appealed, this decision is effective Wednesday, April 4, 2012, at 4:00 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, March 21, 2012

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 Wednesday, April 4, 2012 at 4:00 pm.

Applicable Approval Criteria: 35.0005 Lot of Record, 35.0560 Code Compliance, 35.3355 Dimensional Requirements, 35.3360(A) Lots of Exception, 35.3370 Lot of Record, 35.3385 Access, 35.7775 Category 3 Land Divisions, 35.7890 through 35.7965 General Standards and Requirements.

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) 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> or <http://web.multco.us/transportation-planning>.

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 pursuant to MCC 37.0690(A) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, 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. **The owner shall move the flower stand such that it is at least 30-feet from the front property line and provide evidence of the move to planning staff prior to the filing of the partition plat [MCC 37.0560 and MCC 35.3355].**
2. **All future utilities shall be located underground [MCC 35.7965].**
3. **Before the partition plat is submitted to the Multnomah County Surveyor's Office, two (2) blue-line copies of the plat are to be filed with the Planning Director. Within 10 business**

days of filing, the Planning Director will determine whether the plat complies with this decision and the conditions of approval contained herein. At such time as the plat complies with this decision, a letter of zoning compliance will be provided to the Multnomah County Surveyor [MCC 35.8015(A)].

4. No building permits will be issued, nor shall any of the parcels be sold, transferred or assigned until the final plat is signed by the Planning Director and County Surveyor and has been recorded with the Multnomah County Recorders Office. The Final Plat shall show all new lots and parcels. The Plat must be 18" x 24" in size and should contain the information required by Chapter 92 of Oregon Revised Statutes as amended by Oregon Laws, Chapter 772 [MCC 35.8030].
5. Prior to building permit review, the applicant shall dedicate a 25-foot radius for right-of-way purposes at the northwest corner of the lot. Contact Pat Hinds at (503) 988-5050 Ext. 83712 to complete the easement dedication. [MCRR 6.100 / DCM 2.3.1]
6. Evidence of the radius dedication must be presented to the land use staff at the same time as the submittal of the final plat. A copy of the dedication language shall be recorded with the County Record's Management Office (503-988-3034) on a map showing the dedication area. Proof that this document has been recorded shall be presented to the planning office before submittal of the final plat [MCC 35.8020].
7. The applicant is to complete the procedures as described in the "Applicant's Instructions for Finishing a Land Division" (Exhibit B.9). The applicant is also to provide his/her surveyor the enclosed "Surveyor's Instructions for Finishing a Land Division" (Exhibit B.10) which provides instructions for drafting required materials.
8. Prior to final approval of a subdivision plat or partition plat by the County Engineer, the applicant shall execute and file with the County Engineer an agreement with the county, which shall include:
 - A. A schedule for the completion of required improvements;
 - B. Provision that the applicant file with the County Engineer a maintenance bond, on forms provided by the Engineer, guaranteeing the materials and workmanship in the improvements required by this Chapter against defects for a period of 12 months following the issuance of a certificate of acceptance by the County Engineer; and
 - C. A surety bond, executed by a surety company authorized to transact business in the State of Oregon, or a certified check or other assurance approved by the County Attorney, guaranteeing complete performance. Such assurance shall be for a sum equal to 110% of the actual costs of the improvements as estimated by the County Engineer [MCC 35.8010].
9. All proposed easements for utilities, access, and sanitation facilities shall be recorded on the new deeds for the proposed parcels [MCC 35.7935(A) & MCC 35.7955].
10. Acquire a driveway permit for the proposed access onto E. Bell Road. Please contact Alan Young at (503) 988-3582 to obtain a permit [MCRR 18.250].

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 (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.00 Project Description:

Staff: The applicant is seeking to divide the subject 2.10-acre property into two parcels. The subject property currently contains two existing dwellings and several accessory structures. As seen on the applicant’s tentative plan (Exhibit A.18), each new parcel would retain one dwelling. Because each property would contain one existing dwelling, the process is eligible for a Lot of Exception which allows the new parcels to be below the minimum lot size.

As proposed, one parcel would be at or above the minimum lot size while the other will be slightly under the minimum lot size for new parcels. The property abuts both E. Bell Road as well as the Historic Columbia River Highway. However, access for both dwellings currently is from the highway.

Some structures are within the required setbacks and therefore the applicant must demonstrate they are lawfully established through a verification of a non-conforming use in order for them to remain in their current location.

2.00 Code Compliance:

MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.

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

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or in-stall furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: There are no registered code compliance cases on the subject property. However, during the completeness review staff did discover a roughly 8x8-foot structure within the required front setback that

had not been reviewed for zoning and land use compliance. The applicant subsequently noted the structure is a small flower stand that the applicant sells bulbs and flowers raised on the subject property. After notification of the structure encroaching into the required setback, the applicant proposed moving the structure such that it met the 30-foot minimum street side yard setback. The applicant's November 18, 2011 site plan (Exhibit A.18) shows the flower stand's new location adjacent to the existing shop and 30-feet from the property line along the Historic Columbia River Highway. Moving the flower stand shall be a condition of approval. With the condition, staff finds there are no code compliance issues that will not be resolved through the approval of this permit.

3.00 Lot of Record:

MCC 35.3370 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 35.0005, 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 and R zones 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, RC zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change to RC for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004 applied a minimum 2 acre lot size to RC zoned areas outside "acknowledged unincorporated communities" except where properties are within one mile of the Urban Growth Boundary the minimum is 20 acres;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

(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 35.3385, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 35.3360, 35.3375, and 35.4300 through 35.4360, 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.

(D) The following shall not be deemed to be a lot of record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**

(3) An area of land created by court decree.

Staff: The subject property was created through a County reviewed partition – LD 2-97/LE4-98. The subject parcel has not been altered or reconfigured since that approval and is therefore a Lot of Record.

The subject property is a Lot of Record

4.00 Verification of Non-Conforming Use:

MCC 35.7204 VERIFICATION OF NONCONFORMING USE STATUS

(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:

(1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and

(2) Has not been abandoned or interrupted for a continuous two year period.

(B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:

(1) Description of the use;

(2) The types and quantities of goods or services provided and activities conducted;

(3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

(4) The number, location and size of physical improvements associated with the use;

(5) The amount of land devoted to the use; and

(6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.

(7) A reduction of scope or intensity of any part of the use as determined under this subsection (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

(C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use

procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.

Staff: The dwelling listed as “House A” on the applicant’s site plan (Exhibit A.18) encroaches within the required front yard and side street setback. Under the Springdale Rural Center zoning district, structures must be 30-feet from the noted property lines. The house is 10-feet from the East Historic Columbia River Highway and 25-feet from E. Bell Road while the shop is 27-feet from the East Historic Columbia River Highway. According to Multnomah County Assessment and Taxation records, the two dwellings were constructed in 1905 and 1927.

The applicant provided a narrative statement indicating the home encroaching into the setbacks was built in 1910, which while not being the same dates as from Assessment and Taxation is in the same time period. Furthermore, Mr. Law provided photographs (Exhibit A.17) showing the dwelling on site in 1949 as well as a photograph showing the shop on the property in 1958. The photograph of the shop is of particular interest as it shows an additional store front attached to the shop building along with a “Philco” sign. According to the applicant, the store front was removed in the early 1970’s, which increased the setback. Based on the photographs and physical attributes of the dwelling and the shop building, it is clear they are very old. Staff has no reason to believe that the dates on the photographs are incorrect and as such finds that the dwelling was established in 1927 or earlier and the shop was established in 1959 or earlier. Based on the architectural elements of the sign in the photograph, the physical age of the shop architecture and design, the applicant’s narrative and the lack of adversarial comments received regarding the age of the shop, staff finds that the shop was built in 1947 as claimed by the applicant. On properties with mixed uses, it is common that the structures and uses were built and established around the same time period. Therefore it is reasonable to believe that the shop was established shortly after the dwelling and within the timeframe claimed by the applicant, especially considering the photographs.

Zoning requirements in Multnomah County establishing minimum setbacks were first adopted in 1958 on a permanent basis. That said, both the dwelling shown as House A and the shop were constructed prior to the adoption of the zoning code and therefore lawfully established to the rules in place at the time. The substandard setbacks are therefore also lawfully established. The setbacks to the building have not been abandoned since the structure has not been removed.

Building setbacks are unique when it comes to non-conforming use status because the structures are stationary and are not a use, per se. Scope, intensity of use, customers etc do not play a role in determining a continuation of a non-conforming setback as they would for the occupation of a building as a dwelling or a business. As such, staff finds that the criteria of MCC 35.7204(B) and (C) are not applicable.

The setbacks are a lawfully established non-conforming use.

5.00 Base Zone Requirements:

MCC 35.3355 DIMENSIONAL REQUIREMENTS

- A. (A) Except as provided in MCC 35.3360, 35.3370, 35.3375 and 35.4300 through 35.4360, the minimum lot size for new parcels or lots shall be one acre.**

Staff: The applicant is seeking a Lot of Exception under MCC 35.3360, therefore the minimum lot size of 1-acre would not apply.

Criterion met.

- B. **(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: Because the applicant is seeking a Lot of Exception which allows the creation of parcels less than the minimum lot size, the calculation of area within an adjacent right-of-way is not necessary.

Criteria met.

- C. **(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: Staff modified one of the applicant's site plans to clearly show the location of the front and rear lot lines (Exhibit B.8) after the land division. Based on the new configuration shown on the applicant's site plan (Exhibit A.18) and staff's modified plan, the new lot line satisfies the setback requirements to the existing structures. Additionally, no new structures are proposed as part of this application.

As seen on the applicant's site plan, both proposed parcels have 50-feet of road frontage. Parcel 1E has an unusual configuration that resembles a Flag Lot but still has the required 50-feet of road frontage.

Considering the above, the yard requirements are met.

Criteria met.

- D. **(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 county Road Official shall determine the necessary right-of-way widths based upon the county "Design and Construction Manual" and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

Staff: No new structures are being proposed therefore the yard does not need to be increased to a property line adjacent to the right-of-way. The relocated flower stand is 30-feet away from the property line adjacent to the Historic Columbia River Highway. ODOT did not require any increase in the road right-of-way thus the relocated flower stand meets the minimum yard requirements as well.

Criterion met.

- E. **(E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

Staff: No structures are proposed.

Criterion met.

- F. **(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the contiguous ownership.**

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces that are greater than 400 square feet in area. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The applicant has submitted a completed on-site sewage disposal signed by the City of Portland Sanitarian indicating the land division will not adversely impact the existing systems (Exhibit A.7 and A.8). The applicant submitted two stormwater certificates completed, stamped and signed by an Oregon registered Professional Engineer certifying the stormwater from the existing structures will adequately be handled on site and that no stormwater system is required (Exhibit A.11).

Criteria met.

- G. **(G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

Staff: No ground disturbing actions are proposed.

Criterion met.

- H. **(H) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:**

(1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or

(2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that states he recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

Staff: The proposal does not include a new, replacement, or expanded dwelling.

Criterion met.

- I. **(I) New, replacement or expansion of existing industrial use buildings shall minimize storm-water drainage impacts by limiting the footprint of the building or buildings to 7,500 square feet of the maximum 15,000 square feet.**

Staff: The proposal does not include an industrial use building.

Criterion met.

6.00 Lot of Exception:

MCC 35.3360 LOTS OF EXCEPTION AND PROPERTY LINE ADJUSTMENTS

(A) Lots of Exception

An exception to permit creation of a parcel of less than one acre, out of a Lot of Record, may be authorized when in compliance with the dimensional requirements of MCC 35.3355(C) through (E). Any exception shall be based on the following findings:

Staff: The subject property is a lot of record as determined under Finding #3.

- A. **(1) The Lot of Record to be divided has two or more permanent habitable dwellings;**

Staff: There are two dwellings on the subject property that the applicant currently is renting out. The applicant submitted photos (Exhibit A.12) showing they both meet the definition of “habitable dwellings” in MCC 35.0005.

Criterion met.

- B. **(2) The permanent habitable dwellings were lawfully established on the Lot of Record before October 4, 2000;**

Staff: According to Assessment and Taxation, the dwellings were lawfully established in 1905 and 1927 (Exhibit B.1).

Criterion met.

- C. **(3) Each new parcel created by the partition will have at least one of the habitable dwellings; and**

Staff: As seen on the submitted site plan (Exhibit A.18), each new parcel will contain one of the existing dwellings.

Criterion met.

- D. **(4) The partition will not create any vacant parcels on which a new dwelling could be established.**

Staff: neither of the new parcels will be vacant; each will contain one of the existing dwellings.

Criterion met.

7.00 Access and Transportation Standards:

A. MCC 35.3385 ACCESS

All lots and parcels in this district shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 35.3370(B).

Staff: The subject parcel is a lot of record that is proposed to be divided. As seen on the site plan, both properties would abut a public street. Parcel 1W will abut both E. Bell Road as well as the Historic Columbia River Highway. Parcel 1E will abut the Historic Columbia River Highway. While parcel 1E has 50-feet of road frontage, it appears that there are concerns over accessing the property. Comments (Exhibits C.1) received by this office from one of those who received the Opportunity to Comment discussed the concern of having an additional access point off of the highway, the amount of existing traffic in the area and the potential for additional traffic conflicts. The applicant has stated in their application that Parcel 1E, the eastern most parcel, will share an access with the parcel immediately to the north and east of Parcel 1E and will not create an additional access point onto the highway. The shared access is off of East Bell Road and there is an existing easement in place. Because each new parcel will contain one of the existing dwellings, there will not be any additional traffic generated from the land division beyond what is seen now on the Historic Columbia River Highway

Criterion met.

B. MCRR 4.000 Access to County Roads

MCRR 4.100 Required Information: Applicants for a new or reconfigured access onto a road under County Jurisdiction may be required to provide all of the following:

- A. Site Plan;**
- B. Traffic Study-completed by a registered traffic engineer;**
- C. Access Analysis-completed by a registered traffic engineer;**
- D. Sight Distance Certification from a registered traffic engineer; and**
- E. Other site-specific information requested by the County Engineer**

Staff: The applicant is proposing a shared access off of East Bell Road with the property immediately to the north and east of the subject property. The applicant will need to obtain an access permit for the new access onto E. Bell Road utilized by proposed parcel 1E.

Criterion met with condition of approval.

C. MCRR 4.200 Number: Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property will be the standard for approval. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system.

Staff: The subject property is served by one driveway onto the Historic Columbia River Highway as seen in the applicant's site plan. A driveway is shown as serving 1E but that driveway on the site plan only to demonstrate access to the proposed Parcel 1E is feasible through what is commonly known as the 'flag pole' of the property, although technically it is not a Flag Pole as defined since there is at least 50-feet of road frontage. The proposal does not increase the number of access points to a county road.

- D. **MCRR 4.300 Location: All new access points shall be located so as to meet the access spacing standards laid out in the Design and Construction Manual.**

Staff: No new access points are proposed. The applicant has shown that it is feasible to locate a driveway completely on Parcel 1E. However, the driveway is not proposed and access to Parcel 1E will be an access by easement over the property immediately to the north and east of proposed Parcel 1E.

Criterion met.

- E. **MCRR 4.400 Width: Driveway and Accessway widths shall conform to the dimensions laid out in the Design and Construction Manual.**

Staff: No new access points are proposed.

Criterion met.

- F. **MCRR 4.500 Sight Distance: All new access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the Design and Construction Manual and AASHTO's A Policy on Geometric Design of Highways and Streets.**

Staff: No new access points are proposed. Parcel 1W has access off of the Historic Columbia River Highway which is under the authority of the Oregon Department of Transportation. Parcel 1E will share an access off of Bell Road with the parcel immediately to the north and east of the subject parcel.

Criterion met.

- G. **MCRR 5.000 Transportation Impact**

MCRR 5.100 To determine if a Transportation Impact is caused by a proposed development, the County Engineer will determine the number of new trips generated by a site by one of the following methods:

- A. Calculations from the most recent edition of the Institute of Transportation Engineers' Trip Generation (ITE); or
- B. A site development transportation impact study conducted by a professional engineer registered in the State of Oregon and accepted by the County.

MCRR 5.200 The County Engineer will use the information obtained pursuant to subsection 5.100 and/or the frontage length of the subject property to determine the pro-rata share of the requirements set forth in Section 6.000.

MCRR 5.300 Except where special circumstances require the County Engineer to make an alternate determination, any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour shall be found to have a *Transportation Impact*. A minimum increase of 10 new trips per day is required to find a transportation impact.

Staff: The Multnomah County Road Rules defines a Transportation Impact as the affect of any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour [MCRR 3.000]. A minimum increase of 10 new trips per day is required to find a transportation impact.

According to the ITE Manual, 8th Edition, a Single Family Residential use generates approximately 10 trips per day. The proposed partition creates two lots, with each lot having one single family dwelling. One of the lots is proposing access off of E. Bell Road via a shared driveway, a county road with a Rural Local classification. New trips from the partitioned lot and single family dwelling use will result; therefore, a transportation impact will be caused by the proposed development since trips generated by the site onto E. Bell Road will be increased with the partition where access to the current lot is off of E. Historic Columbia River Highway. Improvement requirements will be required as outlined under 6.000 below to address the impacts.

Criteria met.

F. MCRR 6.000 Improvement Requirements

MCRR 6.100 Site Development: The owner of the site or the applicant for a proposed development, which is found to cause a Transportation Impact will be responsible for improvements to the right-of-way as follows:

A. Dedication Requirement***

Staff: The County standard right of way width for a Rural Local (Bell Road) facility is 50 feet. Adequate right-of-way exists for Bell Road; however a 25-foot turning radius is required at the intersection. The applicant is required to dedicate a portion of the corner of the lot at the intersection of Bell Road and E Historic Columbia River Highway in order to achieve a 25-foot corner radius. A standard 25-foot radius is required to accommodate turning movements and to mitigate against the impacts of the travel demand generated by the new access onto E. Bell Road. The applicant will need to contact Pat Hinds at (503) 988-5050 Ext. 83712 to complete the easement dedication.

Criteria met.

8.00 Land Division Criteria:

A. MCC 35.7800 CRITERIA FOR APPROVAL, CATEGORY 1 TENTATIVE PLAN

Staff: MCC 35.7855 requires compliance with (B), (C), and (H) below.

In granting approval of a Category 1 tentative plan, the approval authority shall find that:

1. **(B) Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances;**

Staff: Once divided, both parcels will contain dwellings, which are defined as development. Access to both properties is available with direct access to public roads as well as an access by easement for Parcel 1E.

Criterion met.

2. **(C) The tentative plan complies with the applicable provisions, including the purposes and intent of the Multnomah County Land Division Ordinance.**

Staff: The purpose of the Land Division Ordinance is to implement the Multnomah County Comprehensive Plan and provided for the orderly division of land. Some of the basic tenants of the land division code is to provide new parcels that can be developed, have access from a public street or other legal access, and to maintain the carrying capacity of the land in terms of septic capacity, stormwater infiltration, and access to water. As demonstrated in the applicant's materials, both sites will be adequately served by on-site sewage disposal systems (Exhibit A.8), have public water (Exhibit A.10, and have stormwater handled on-site (Exhibit A.11). Both proposed parcels have access to a public street as seen on the applicant's site plan. Based on these facts, the proposal meets the purposes and intent of the Multnomah County Land Division Ordinance.

Criterion met.

3. **(H) Approval will permit development to be safe from known flooding and flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood waters into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:**

(1) The infiltration of flood waters into the system; and

(2) The discharge of matter from the system into flood waters.

Staff: The subject site is roughly 2500-feet from the nearest flood hazard zone, so flood hazards are not an issue. Both parcels are currently served by public water and have existing septic systems that due to the distance to the flood zones, will not discharge or be infiltrated by flood waters.

Criteria met.

B. MCC 35.7855 CRITERIA FOR APPROVAL: CATEGORY 3 TENTATIVE PLAN

In granting approval of a Category 3 tentative plan, the Planning Director shall find that the criteria listed in subsections (B), (C) and (H) of MCC 35.7800 are satisfied and that the tentative plan complies with the area and dimensional requirements of the underlying zoning district.

Staff: As noted in previous findings, the parcels do not need to meet the minimum area and size requirements because they applicant is also applying for a Lot of Exception and some of the setbacks are lawfully established non-conforming uses.

MCC 35.7865 TENTATIVE PLAN APPROVAL TIME LIMITS; STAGED DEVELOPMENT

Tentative plan approval expiration and extension shall be in accordance with MCC 37.0690 through 37.0700.

C. MCC 35.7890 LAND SUITABILITY

A land division shall not be approved on land found by the approval authority to be both unsuitable and incapable of being made suitable for the intended uses because of any of the following characteristics:

(A) Slopes exceeding 20%;

(B) Severe soil erosion potential;

(C) Within the 100-year flood plain;

(D) A high seasonal water table within 0– 24 inches of the surface for three or more weeks of the year;

(E) A fragipan or other impervious layer less than 30 inches from the surface; or

(F) Subject to slumping, earth slides or movement.

Staff: The proposal to divide the property will not create a vacant parcel. As proposed, each parcel would already contain a single-family dwelling, septic system, public water utilities and be considered suitable for such development. That said, the subject parcels are both under 20% slope as seen on contour maps and staff's site visit, is more than 2500-feet from the nearest flood hazard zone, and outside the slope hazard overlay which is for properties with soils subject to slumping, earth slides or movement. The property is made up of two soil types according to the Multnomah County Soil Survey with the majority being 34A – Powell Silt Loam. That soil type is known to have a fragipan between 20 and 30 inches depth and continue down to 60-inches. The water table is typically between 18 and 24-inches in depth. However, there is a track record of the property being developed for over 80-years with two dwellings and the associated utilities. Staff is unaware of any problems associated with the fragipan or water table.

Given the overall suitability of the property, the existing development and track record, staff finds the two proposed parcels are suitable for the intended and existing residential uses.

Criteria met.

D. MCC 35.7895 LOTS AND PARCELS

The design of lots and parcels shall comply with the following:

1. **(A) The size, shape, width, orientation and access shall be appropriate:**

a. **(1) To the types of development and uses contemplated;**

Staff: The proposed configuration is irregular in shape and does not follow the established development pattern of the area in terms of rectangular parcels. However, the proposed development does provide for one of the existing dwellings to be fully established on each of the proposed parcels, including the septic systems.

Criterion met.

b. **(2) To the nature of existing or potential development on adjacent tracts;**

Staff: The proposed parcels do not follow the general nature of configuration and orientation of the adjacent properties. Generally speaking, the adjacent parcels are more rectangular. However, while the proposed parcels are irregular, they do provide each new parcel with full services for the existing dwellings, cardinal direction orientation, access to a public street and do not adversely impact the adjacent properties. The density of the area will not be increased as a result of the proposed land division, so the neighboring properties will not be adversely impacted by additional traffic or residential impacts over what already exists.

Criterion met.

c. **(3) For the maximum preservation of existing slopes, vegetation and natural drainage;**

Staff: The proposed land division will not alter the existing slopes, vegetation or natural drainage. Both proposed parcels will have an existing dwelling after the division and so no development is proposed at this time.

Criterion met.

d. **(4) To the need for privacy through such means as transition from public to semi-public to private use areas and the separation of conflicting areas by suitable distances, barriers or screens; and**

Staff: The proposed land division will not alter the privacy of the existing dwellings on the subject parcel of the adjacent parcels as the homes already exist. The configuration has the potential to allow for the relocation of each dwelling on the new parcels but such development would actually provide greater privacy for the dwellings on the new parcels from the public areas such as the streets nearby. All the surrounding properties are residential in nature so there will be no conflicting uses near the dwellings.

Criterion met.

e. **(5) To the climactic conditions including solar orientation and winter wind and rain.**

Staff: The proposed configuration does not impact the climatic conditions of the properties.

Criterion met.

2. **(B) The side lot lines shall be perpendicular to the front lot line or radial to the curve of a street, to the extent practicable.**

Staff: The exterior lot lines of the existing parcel have been in place since 1999. The proposed interior lot lines are generally perpendicular to the exterior lot lines. The front lot line of the existing property is adjacent to the Historic Columbia River Highway which is not in a cardinal direction at that segment of the highway. Because of the angle of the street and the existing development patterns, it is not feasible to have side lot lines be perpendicular to the front lot lines. As such, the design of the land division is perpendicular to the extent practicable.

Criterion met.

3. **(C) Double frontage or reverse frontage lots or parcels shall be provided only when essential for separation of land uses from arterials or to overcome specific disadvantages of topography or orientation.**

Staff: The existing parcel has double frontage because it is essentially a corner lot. However, once divided, only one parcel will have double frontage. Double frontage on one parcel cannot be avoided due to the orientation of the existing parcel in relation to the existing road system.

Criterion met.

4. **(D) A land division may include creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the applicable zoning district, subject to the following:**

Staff: Neither of the two new parcels are flag lots. Both have the required 50-feet of road frontage.

Criterion met.

5. **(E) Within a land division, flag lots shall not be stacked one behind the other as shown in MCC 35.7895 Figure 3. Instead, a private accessway shall be used as shown in MCC 35.7895 Figure 4.**

Staff: No flag lots as defined are proposed.

Criterion met.

E. MCC 35.7910 STREET DESIGN

The width, design and configuration of all streets in or abutting the land division shall comply with applicable ordinance standards as follows:

(A) For a public street — in accordance with the Street Standards Code and Rules; and

(B) For a private street — in accordance with the Street Standards Code and Rules, subject to the following additional requirements:

(1) Accessways shall be designed in accordance with Permit Requirements for Accessway Construction published by the Multnomah County Department of Environmental Service. Accessways shall have a maximum length of 300 feet.

(C) A cul-de-sac shall be as short as possible and shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a turnaround having a radius of 50 feet.

Staff: Both proposed parcels will abut a street and have road frontage. Therefore, the street design standards are satisfied.

Criteria met.

F. MCC 35.7935 EASEMENTS

Easements shall be provided and designed according to the following:

1. **(A) Along the front property line abutting a Street, a five foot utility easement shall be required. The placement of the utility easement may be modified as requested by a public or private utility provider. Utility infrastructure may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.**

Staff: County Transportation staff notified Land Use Planning that E. Bell Road has 60-feet of right-of-way which takes into account the utility easement. Therefore, no further utility easement is required. The Historic Columbia River Highway is owned by the State of Oregon and after being sent notice of the application, no requirements were submitted to the County for consideration.

Criterion met.

2. **(B) Where a tract is traversed by a water course such as a drainage way, channel or stream, a storm water easement or drainage right-of-way adequate to conform substantially with the lines of the water course shall be provided. In a drainage district or water control district, such easement or right-of-way shall be approved by the district board, in accordance with ORS 92.110. If not within such District, approval shall be by the County Engineer.**

Staff: No water course has been identified on the subject property.

Criterion met.

3. (C) Easements for pedestrian paths and bike-ways shall be not less than 10 feet in width.

Staff: No pedestrian paths or bike-ways are required for the two parcel partition.

Criterion met.

G. MCC 35.7940 STREET TREES

Street trees shall be planted by the applicant according to the street tree planting plan and not survived for one year after initial planting shall be replaced by the applicant within four months of loss.

Staff: The two parcel partition did not trigger a street tree planting plan; therefore, no trees are required.

Criterion met.

H. MCC 35.7950 WATER SYSTEM

The provision of domestic water to every lot or parcel in a land division shall comply with the requirements of subsections (4) (a), (b), or (c) of ORS 92.090 and MCC 35.7985 of this Chapter.

Staff: Both lots have existing dwellings and are served with public water from the Corbett Water District (Exhibit A.10). With each new parcel having a dwelling, each parcel will be served with water.

Criterion met.

I. MCC 35.7955 SEWAGE DISPOSAL

The provision for the disposal of sewage from every lot or parcel in a land division shall comply with the requirements of subsection (5) (c) of ORS 92.090 and MCC 35.7990 of this Chapter.

Staff: Each new parcel has adequate room for the existing septic system that corresponds to the existing homes as certified by the City of Portland Sanitarian (Exhibit A.8).

Criterion met.

J. MCC 35.7960 SURFACE DRAINAGE

Surface drainage and storm sewer systems shall be provided as required by section MCC 35.7995. The County Engineer may require on-site water disposal or retention facilities adequate to insure that surface runoff volume after development is no greater than that before development.

Staff: The applicant provided a completed Stormwater Certificate signed and stamped by an Oregon Registered Professional Engineer certifying that the stormwater generated on each new parcel will be handled on-site for up to a 10-year/24-hour storm event (Exhibit A.11).

Criterion met.

K. MCC 35.7965 ELECTRICAL AND OTHER WIRES

Wires serving within a land division, including but not limited to electric power, communication, street lighting and cable television wires, shall be placed underground. The approval authority may modify or waive this requirement in acting on a tentative plan upon a finding that underground installation:

(A) Is impracticable due to topography, soil or subsurface conditions;

(B) Would result in only minor aesthetic advantages, given the existence of above-ground facilities nearby; or

(C) Would be unnecessarily expensive in consideration of the need for low-cost housing pro-posed on the lots or parcels to be served.

Staff: The applicant did not address the above considerations so staff assumes that requiring future utilities to be located underground is not impracticable and shall be a condition of approval.

Criterion met with condition of approval.

9.00 Conclusion:

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Verification of a Non-Conforming Use, Category 3 Land Division and Lot of Exception. This approval is subject to the conditions of approval established in this report.

10.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Comments Received (if needed)

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2011-1719 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit
A.1	1	General Application Form
A.2	3	Applicant’s Copy of PF 2011-1519 Notes
A.3	1	Applicant’s June 17, 2011 Reduced Site Plan
A.4	1	Applicant’s June 17, 2011 11x17 Site Plan
A.5	1	Applicant’s June 17 Narrative
A.6	2	Fire District Access Review and Access Site Plan
A.7	2	On-Site Sewage Disposal Certificate and Site Plan for 32417 E. Historic Columbia River Highway

A.8	2	On-Site Sewage Disposal Certificate and Site Plan for 32421 E. Historic Columbia River Highway
A.9	1	Police Services Review
A.10	1	Certification of Water Service
A.11	2	Stormwater Certificates for Both New Parcels
A.12	4	Photo's Showing Existing Homes are Habitable
A.13	1	Applicant's Response Letter Accepting 180-Day Clock
A.14	1	Applicant's Letter Deeming Application Complete and Requesting 30-Day Toll on Statutory 150-Day Clock
A.15	1	General Application for verification of Non-Conforming Use Review
A.16	3	Applicant's November 18, 2011 Supplemental Narrative
A.17	5	Applicant's Narrative and Evidence For Verification of Non-Conforming Use
A.18*	1	Applicant's Revised Site Plan Submitted November 11, 2011 (Reduced)
A.19	1	Applicant's Revised Site Plan Submitted November 11, 2011
A.20	10	Easement Agreements For the Subject Parcel
A.21	1	Septic and Drainfield Easement
A.22	3	Cascade Utilities Easement
A.23	6	Applicant's Request to ODOT for a new Access Onto E. historic Columbia River Highway (Subsequently Abandoned)
A.24	2	Recorded Partition Plat 1999-48
A.25	2	Fire District Access Review
'B'	#	Staff Exhibits
B.1	2	A&T Property Information
B.2	1	A&T Tax Map with Property Highlighted
B.3	4	July 15, 2011 Incomplete Letter
B.4	1	August 8, 2011 Resending of Incomplete Letter
B.5	5	Opportunity to Comment and Mailing List
B.6	1	Google Street View of Property
B.7	1	1979 Building Permit For Stove Installation Into Existing Dwelling
B.8*	1	Staff's Site Plan Showing Front and Rear Lot Lines
B.9*	1	Applicant's Instructions to Complete a Land Division
B.10*	1	Surveyor's Instructions to Complete a Land Division
'C'	#	Comments Received
C.1	1	Comment Letter from Troy and Michele Keough