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: T2-2012-2150

Permit: Significant Environmental Concern

Permit – Wildlife Habitat (SEC-h);

Road Rules Variance

Location: 16620 NW Elliott Road

TL 1500, Sec 23A, T2N, R2W, W.M.

Tax Account #R972230260

Applicants/

Douglas and Kerry Markwell

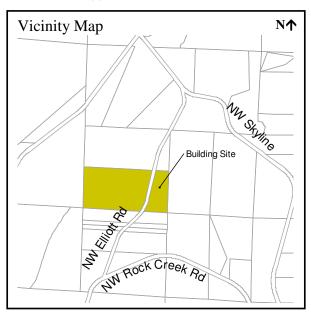
Owner:

Base Zone: Commercial Forest Use-2

Overlays: Significant Environmental Concern –

Wildlife Habitat (SEC-h), Streams

(SEC-s); Slope Hazard



Summary: Build a 38x29-foot attached garage, originally approved in 2009 but expired, on the

existing dwelling, relocate the driveway to the north of the dwelling, and obtain a Road

Rules Variance for a new access point.

Decision: Approved with Conditions

Unless appealed, this decision is effective June 29, 2012, at 4:00 PM.

Issued	d by:	
Ву:	Don Kienholz, Planner	

For: Karen Schilling- Planning Director

Date: Friday, June 15, 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 June 29, 2012 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 33.2250 Building Height; 33.2256 Forest Practice Setbacks and Fire Safety Zones; 33.2261 Development Standards; 33.2273 Access; 33.4570 SEC-h Approval Criteria. Multnomah County Road Rules (MCRR) 4.000 and 16.000.

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(B) 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.

Note: Once this decision is final, application for building permits may be made with the City of Portland. 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 Portland. Five (5) 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.

- 1. The owner shall maintain the primary fire safety setback outlined in MCC 33.2256(D)(1):
 - 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.
- 2. At the time of zoning sign-off for building permits, the owner shall provide documentation that the roof of the attached garage shall be constructed of fire retardant materials [MCC 33.2261(C)(3)].
- 3. Prior to zoning approval for building permit sign-off, the owner shall obtain a driveway access permit from the County's Right of Way department. The owner shall also construct a 20-foot paved approach to NW Elliott Road [MCC 33.2273 and MCRR 4.000].
- 4. The driveway shall be minimum 12-feet in width and a maximum of 25-feet [MCC 33.2273, Case T2-08-073].
- 5. Prior to building permit sign-off, the owner shall submit a stamped and signed statement from a professional engineer that the driveway to the dwelling will support a 75,000 Gross Vehicle Weight (GVW) load and a 12,500 pound point load [MCC 33.2273, Case T2-08-073].
- 6. No nuisance plants as listed in MCC 33.4570(B)(7) shall be planted on the subject property. If any of the listed plants are in the development area, they shall be removed during construction [MCC 33.4570(B)(7)].
- 7. The owner shall remove and maintain the ferns on the bank, south of the proposed driveway location as identified in the sight distance analysis (Exhibit A.13) and shall raise the proposed driveway grade, such that the elevation of the driveway is approximately one foot above the edge of pavement, as measured at a location 10 feet back from the edge of pavement [MCRR 6.000].

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 approval for an attached garage to an existing dwelling approved under Multnomah County case T2-08-073. The garage was a part of that original application but was never constructed before the permit expired. This application is to finish that project as well as move the driveway from its existing path south of the dwelling to a shorter path to the public road north of the dwelling. The new access point on to the public road requires a Road Rules Variance.

2.00 Code Compliance:

MCC 37.0560 Code Compliance

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.

Staff: There are no known code compliance issues associated with the subject property.

3.00 Lot of Record:

MCC 33.0005 Definitions

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 33.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

- (a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.
- (b) "Satisfied all applicable land division laws" shall mean the parcel or lot was created:

- 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
- 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
- 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or
- 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
- 5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)
- (c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.
 - 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.
 - 2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

Staff: The subject property was found to be a Lot of Record in a previous land use permit, T3-06-001. The configuration has not changed since that approval, therefore the property is still a Lot of Record.

4.00 Commercial Forest Use-2 Zone:

A. MCC 33.2220 ALLOWED USES

(D) Alteration, maintenance, replacement or restoration of an existing lawfully established habitable dwelling as defined in MCC 33.0005 and located within 100-feet from an existing dwelling.

Staff: The dwelling was lawfully established through permits T3-06-001 and T2-08-073. The dwelling is habitable. The addition of a garage to the existing dwelling is a permitted use.

Criterion met.

B. MCC 33.2250 BUILDING HEIGHT REQUIREMENTS

(A) Maximum structure height – 35 feet.

Staff: The two story garage (storage area above the main floor) will not exceed the 35-foot height limitation. The height limitation will be confirmed at zoning sign-off for building permits.

Criterion met.

C. MCC 33.2256 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES

1. 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:

Table 1

Use	Forest Practice Setbacks		Fire Safety Zones	
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)
Replaced or restored dwelling in same location & greater than 400 sq. ft. additional ground coverage; Alteration and maintenance of dwelling	May maintain current nonconforming setback(s) if less than 30 ft. to property line	30	30	Primary is required to the extent possible within the existing setbacks

Staff: The garage is proposed to be added onto the existing dwelling. Pursuant to Table 1 above, the garage would need to meet the 30-foot Forest Practice Setbacks to the property lines as well as a 30-foot primary fire safety zone. As seen on the applicant's submitted site plan, Exhibit A.3, the garage is 75-feet from the closest property line, thus meeting all required setbacks.

Criterion met.

2. (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:

Percent Slope	Distance In Feet
Logg than 10	No additional
Less than 10	required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

Staff: There is no reason to extend the primary fire safety zone because slopes in the development area are less than 10%. A condition of approval will require the 30-foot primary fire safety zone around the garage be properly maintained.

Criterion met with condition of approval.

D. MCC 33.2261 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES

All dwellings and structures shall comply with the approval criteria in (B) through (E) below except as provided in (A):

- 1. (A) For the uses listed in this subsection, the applicable development standards are limited as follows:
 - (1) Expansion of existing dwelling.
 - (a) Expansion of 400 square feet or less additional ground coverage to an existing dwelling: Not subject to development standards of MCC 33.2261;
 - (b) Expansion of more than 400 square feet additional ground coverage to an existing dwelling: Shall meet the development standards of MCC 33.2261(C);

Staff: The standards of MCC 33.2261(C) are applicable and discussed below.

Criteria met.

- 2. MCC (C) The dwelling or structure shall:
 - a. (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;
 - (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

Staff: The proposal does not include a mobile home.

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Criteria met.

b. (3) Have a fire retardant roof; and

Staff: A condition of approval shall require the garage addition to have a fire retardant roof.

c. (4) Have a spark arrester on each chimney.

Staff: No chimney is shown on the floor plans.

Criterion met.

5.00 Significant Environmental Concern Permit - Habitat

MCC 33.4570 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT

- (B) Development standards:
- A. (1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Staff: As seen on the submitted site plan (Exhibit A.3), the proposed location of the garage is cleared as defined by the definition above.

Criterion met.

B. (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Staff: The proposed garage is located roughly 75-feet from the public road as measured on the site plan.

Criterion met.

C. (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Staff: The proposed new driveway on the north side of the property to the area of the proposed garage measures roughly 150-feet long as seen on the site plan (Exhibit A.3).

- D. (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:
 - (a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or

- (b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.
- (d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County "Design and Construction Manual," adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).
 - 1. The modification shall be the minimum necessary to allow safe access onto the public road.
 - 2. The County Road Official shall provide written findings supporting the modification.

Staff: A new driveway location is proposed as part of the application that would require a new access point onto the County road. There is no development within 200-feet of a common side property line, therefore the requirements of (a) above are not triggered. Likewise, there are no driveways on the opposite side of the road, therefore the requirements of (b) are not triggered. As such, the standards above are satisfied.

County Road Rules allow only one access point per property. With a new driveway proposed, the other must be either decommissioned or approved through a Road Rules Variance. The applicant is proposing to close the existing access, remove the driveway leading to the access and only utilize the new driveway north of the dwelling and roughly 50-feet from the northern property line. This action would remove a significant portion of the residential footprint from the CFU-2 zoned property and cluster the residential footprint to the northern corner exclusively.

Criteria met.

E. (5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

Staff: The property to the north has a structure and developed area 150-feet from the common property line. The proposed garage on the subject property is proposed to be located roughly 125-feet from the northern property line.

- F. (6) Fencing within a required setback from a public road shall meet the following criteria:
 - (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.

- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.
- (c) Cyclone, woven wire, and chain link fences are prohibited.
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.
- (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.

Staff: No fencing is proposed as part of this application.

Criteria met.

G. (7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:

	I
Scientific Name	Common Name
Chelidonium majus	Lesser celandine
Cirsium arvense	Canada Thistle
Cirsium vulgare	Common Thistle
Clematis ligusticifolia	Western Clematis
Clematis vitalba	Traveler's Joy
Conium maculatum	Poison hemlock
Convolvulus arvensis	Field Morning-glory
Convolvulus nyctagineus	Night-blooming Morning- glory
Convolvulus seppium	Lady's nightcap
Cortaderia selloana	Pampas grass
Crataegus sp. except C.	hawthorn, except native
douglasii	species
Cytisus scoparius	Scotch broom
Daucus carota	Queen Ann's Lace
Elodea densa	South American Water- weed
Equisetum arvense	Common Horsetail
Equisetum telemateia	Giant Horsetail
Erodium cicutarium	Crane's Bill
Geranium roberianum	Robert Geranium
Hedera helix	English Ivy
Hypericum perforatum	St. John's Wort
llex aquafolium	English Holly
Laburnum watereri	Golden Chain Tree
Lemna minor	Duckweed, Water Lentil

Scientific Name	Common Name
Loentodon autumnalis	Fall Dandelion
Lythrum salicaria	Purple Loosestrife
Myriophyllum spicatum	Eurasian Watermilfoil
Phalaris arundinacea	Reed Canary grass
Poa annua	Annual Bluegrass
Polygonum coccineum	Swamp Smartweed
Polygonum convolvulus	Climbing Binaweed
Polygonum sachalinense	Giant Knotweed
Prunus laurocerasus	English, Portugese Laurel
Rhus diversiloba	Poison Oak
Rubus discolor	Himalayan Blackberry
Rubus laciniatus	Evergreen Blackberry
Senecio jacobaea	Tansy Ragwort
Solanum dulcamara	Blue Bindweed
Solanum nigrum	Garden Nightshade
Solanum sarrachoides	Hairy Nightshade
Taraxacum otficinale	Common Dandelion
Ultricularia vuigaris	Common Bladderwort
Utica dioica	Stinging Nettle
Vinca major	Periwinkle (large leaf)
Vinca minor	Periwinkle (small leaf)
Xanthium spinoseum	Spiny Cocklebur
various genera	Bamboo sp.

Staff: Nuisance plant removal and long term abatement in the development area shall be a condition of approval.

6.00 Road Rules Findings:

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 has proposed to construct a reconfigured access onto NW Elliott Road, a County road under County Jurisdiction. An access is considered reconfigured when it will be physically altered, or when a change in the development that it serves has a Transportation Impact as defined in section 6.000 of the Multnomah County Road Rules. The reconfigured access is shown on the applicant's site plan (Exhibit A.3). A sight distance analysis was required due to visibility limitations at the posted speed limit and addressed under MCRR 4.500. All required information has been submitted.

Criterion met.

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 currently served by one driveway. After the driveway relocation and decommissioning of the existing driveway, the property will continued to be served by only one driveway.

Criterion met.

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: For a road classified as a local rural access road, there are no spacing standards.

Criterion met.

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

Staff: The reconfigured driveway must be a minimum of 12-feet wide and maximum of 25-feet wide. A condition of approval will ensure the new driveway meets these requirements.

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: Multnomah County Road Rules Section 4.500 states that access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the County Design and Construction Manual or AASHTO's *A Policy on Geometric Design of Highway and Streets*. The applicant hired Chris Cristofferson of Main Street Engineering, a registered Professional Transportation Engineer, to analyze the property sight distance of the proposed access point. His analysis looked the existing access point and the proposed access point (Exhibit A.13). As part of the analysis, the following mitigation measures were identified and shall be implemented to ensure that adequate sight distance is available:

- 1. Remove ferns on the bank, south of the proposed driveway location, and
- 2. Raise the proposed driveway grade, such that the elevation is approximately one foot above the edge of pavement, as measured at the location 10 feet back from the edge of pavement.

Based on the sight analysis, the proposed location does in fact meet the sight distance requirements and therefore does not require a Road Rules Variance. Conditions have been added to ensure maintenance of the sight distance.

7.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern Permit for Wildlife Habitat to construct an attached garage onto the existing dwelling in the CFU-2 zone. This approval is subject to the conditions of approval established in this report.

8.00 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits

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 T2-2012-2150 at the Land Use Planning office.

Exhibit	-	Description of Exhibit	
#	Pages		
A.1	1	General Application Form	
A.2	8	February 10, 2012 SEC-h Narrative	
A.3*	1	February 10, 2012 Site Plan	
A.4	1	February 10, 2012 Vegetation and Driveway Map	
A.5	5	Road Rules Variance Narrative	
A.6	1	11x17 Site Plan	
A.7	2	Fire Service Agency Review	
A.8	5	Stormwater Management System and Stormwater	
		Certificate	
A.9	3	On-Site Sewage Disposal Form and Signed Plans	
A.10*	1	Garage Main Level Floor Plan	
A.11	4	Applicant's Incomplete Response Email	
A.12*	1	Second Level Floor Plan	
A.13	10	Sight Distance Analysis By Main Street Engineering	
'В'	#	Staff Exhibits	
B.1	4	A&T Property Information	
B.2	2	March 9, 2012 Incomplete Letter	
B.3	7	March 13, 2012 Transportation Memorandum on Access	
B.4	1	April 3, 2012 Complete Letter	
B.5	4	April 24, 2012 Opportunity to Comment Packet and	
		Mailing List	