

**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: T2-2012-2165

Permit: Significant Environmental Concern
Permit- general (SEC-g)

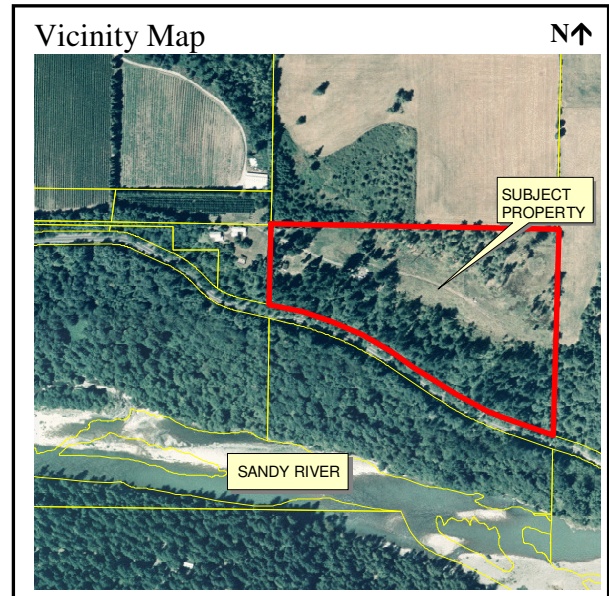
Location: 36435 SE Gordon Creek Road
Tax Lot 200, Section 11B,
Township 1S, Range 4E, W.M.
R994110120

Applicants: Aaron Blake/Suzanne Olsen

Owners: Aaron Blake/Christina Davis

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

Overlays: Significant Environmental Concern –
general (SEC-g); Slope Hazard



Summary: Install a 9 kW Solar Array On the Roof of an Existing Dwelling

Decision: Approved with Conditions

Unless appealed, this decision is effective Monday, June 18, 2012.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Monday, June 4, 2012

Instrument Number for Recording Purposes: #01118685

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 George Plummer, Staff Planner at 503-988-3043, ext. 29152.

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 Monday, June 18, 2012 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 37.0560 Full Compliance, 35.0005 Definitions (Accessory Alternative Energy System, Habitable Dwelling, Lawfully Established Dwelling, Lot of Record), 35.2220(W) Allowed Uses, 35.4520 Application for SEC Permit, 35.4555 Criteria for Approval of SEC Permit

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. Prior to zoning sign-off, the owner shall submit evidence the covenant regarding system abandonment has been recorded [MCC 33.2220(W)].**
- 2. The conditions of approval from T2-06-122 are still applicable and shall be maintained by the owner.**
- 3. The color of the racking and modules for the solar panels shall be black [MCC 35.4555(L)].**
- 4. The reflectivity of the solar panels shall be 4% or less [MCC 35.4555(L)].**

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 the installation of a 9kW solar array mounted onto an existing dwelling.

2.00 Property Description & History:

Staff: The 19.83-acre rectangular subject property is located across the river from Oxbow Regional Park along SE Gordon Creek Road in the East of the Sandy Rural Plan Area. The northern half of the property is predominately cleared and is being used to grow hundreds of small evergreen trees. The southern, steeper half of the property is heavily forested and inaccessible.

A previous land use decision was issued on the subject property in 2007 (T2-06-122). That request was for a replacement dwelling that constructed the dwelling the solar array is proposed to be located on.

3.00 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**

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

The CFU-4 zone does not allow dwellings as an outright allowed use. However, dwellings are permitted to be used and continued provided they were lawfully established and habitable [MCC 35.2220(D)]. In this instance, the subject property contains two dwellings. As determined in T2-06-122, the oldest dwelling was constructed in 1939 has an address of 36441 SE Gordon Creek Road and was lawfully established. The second dwelling was approved under that decision as a replacement dwelling and is the dwelling the solar array will be located on. Because it was approved under T2-06-122, it was lawfully

established. The applicant has submitted photographs (Exhibit A.12) showing the dwelling is habitable and eligible for modifications.

4.00 Commercial Forest Use-4 Zoning Requirements:

A. MCC 35.2220 Allowed Uses

(W) Solar, photovoltaic and wind turbine alternative energy production facilities accessory to uses permitted in the zoning district, provided that:

1. (1) All systems shall meet the following requirements:

- a. (a) The system is an accessory alternative energy system as defined in MCC 35.0005;**

Staff: The definition of an accessory alternative energy system is:

“Accessory Alternative Energy System -- A system accessory to a primary structure or use that converts energy into a usable form such as electricity, and conveys that energy to uses allowed on the same tract as the primary use. Accessory Alternative Energy Systems typically convert mechanical energy into electrical energy. An Accessory Alternative Energy System is a solar, photovoltaic or wind turbine structure, or is composed of multiple structures, that individually or together have a total installed rating capacity of up to 12kW”

The proposed photo voltaic system is attached to a single family dwelling, a primary use, and is proposed at 9kW in capacity.

Criterion met.

- b. (b) The system meets all overlay zone requirements;**

Staff: This application is for the SEC-g overlay on the subject property. Approval of this permit will meet all the overlay zone requirements

Criterion met.

- c. (c) The system is mounted to a ground mount, to the roof of the dwelling or accessory structure, or to a wind tower;**

Staff: The system is proposed to be mounted to a dwelling.

Criterion met.

- d. (d) The land owner signs and records a covenant stating they are responsible for the removal of the system if it is abandoned. In the case of a sale or transfer of property, the new property owner shall be responsible for the use and/or removal of the system. Systems unused for one consecutive year are considered abandoned;**

Staff: This standard will be met with implantation of a condition of approval.

Criterion met.

2. **(2) The overall height of solar energy systems shall not exceed the peak of the roof of the building on which the system is mounted;**

Staff: As seen on the applicant's elevation plans (Exhibit A.6), the system will not exceed the peak of the roof of the dwelling it is mounted on.

Criterion met.

3. **(3) Wind Turbine Systems:**

(a) Wind turbine systems shall be set back from all property lines a distance equal to or greater than the combined height of the turbine tower and blade length. Height is measured from grade to the top of the wind generator blade when it is at its highest point;

(b) No lighting on wind turbine towers is allowed except as required by the Federal Aviation Administration or other federal or state agency.

Staff: The proposed system is not a wind turbine.

Criterion met.

B. MCC 35.2250 BUILDING HEIGHT REQUIREMENTS

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: The solar array will not break the peak of the roof of the existing dwelling. Therefore, the array meets the height standards.

Criterion met.

C. MCC 35.2256 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:

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 &/or less 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	Property owner is encouraged to establish Primary to the extent possible

Staff: The proposed solar array is considered an alteration of a dwelling. Since the array will fit entirely within the roof footprint, there is no encroachment or reduction in the previously approved and established Forest Practice Setback and Fire Safety Zones.

Criteria met.

D. MCC 35.2261 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 35.2261;

(b) Expansion of more than 400 square feet additional ground coverage to an existing dwelling: Shall meet the development standards of MCC 35.2261(C);

Staff: While the proposal is considered an expansion simply because it is a modification of an existing dwelling, there will be no additional ground coverage as a result of the project. The solar array will fit entirely on the established roof of the dwelling. As such, no additional standards of MCC 35.2261 are applicable

Criteria met.

E. **MCC 35.2275 LOT OF RECORD**

Staff: The property was found to be a lot of record in County approved case T2-06-122. The property has not changed configuration since that approval therefore the property is still a lot of record.

Criteria met.

5.00 Significant Environmental Concern Permit:

A. **MCC 35.4510 USES - SEC PERMIT REQUIRED**

(C) Activities proposed for lands designated as scenic waterways under the Oregon Scenic Waterways System shall be subject to an SEC permit in addition to approval from the Oregon Parks and Recreation Department.

Staff: The subject property is within the scenic overlay for the Sandy River under the Oregon Scenic Waterways System and is subject to approval from the Oregon Parks and Recreation Department. Oregon Parks and Recreation issued an approval on February 16, 2012 (Exhibit A.13).

Criterion met.

B. **MCC 35.4555 CRITERIA FOR APPROVAL OF SEC PERMIT**

The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

1. **(A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.**

Staff: The proposed solar array will be located on an existing dwelling approved under T2-06-122, which met this standard in its application process. The array will not require any removal of vegetation between the dwelling and the Sandy River.

Criterion met.

2. **(B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.**

Staff: The property is zoned for forest use (CFU-4). The proposal will not remove any forest land from potential or actual forest use/harvest.

Criterion met.

3. **(C) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.**

Staff: The proposed solar array will be located on an existing structure and will not adversely affect any areas of environmental significance.

Criterion met.

4. **(D) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.**

Staff: There are no recreational uses on the subject property nor will any be created as a result of this project.

Criterion met.

5. **(E) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

Staff: No change to the use of the land is proposed. The gated driveway, in combination with the fact that the development is not highly visible from a public road, is adequate to minimize risk of vandalism and trespass.

Criterion met.

6. **(F) Significant fish and wildlife habitats shall be protected.**

Staff: The proposed array will be located on an existing dwelling and will not require any removal of vegetation that could be wildlife habitat or ground disturbance that could potentially cause sedimentation in streams.

Criterion met.

7. **(G) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.**

Staff: The proposal does not include any vegetation removal on the subject property or near the river.

Criterion met.

8. **(H) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.**

Staff: The proposed solar array does not include any ground disturbance that could impact any archaeological areas.

Criterion met.

9. **(I) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.**

Staff: The subject site is outside of the floodplain and the proposed development will be sited on an existing dwelling. No water areas or wetlands will be impacted by the proposal.

Criterion met.

10. **(J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.**

Staff: There is no erosion potential from the development since the solar array will be located on an existing building.

Criterion met.

11. **(K) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.**

Staff: There will be no intensification of use. Two dwellings already exist on the property and no new uses are being approved. The proposal to add a solar array will not increase the footprint of the structures on site. The solar arrays will be stationary and will not have noise inducing equipment. Staff finds the proposal will not impact the quality of the air, water, noise levels or land resources of the area.

Criterion met.

12. **(L) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.**

Staff: The proposed solar array will be constructed of a black solar panel system with a reflectivity rating of 4% as described on the provided Technical Bulletin from Solar World (Exhibit A.9). The panels will lie parallel to the roof line of the existing dwelling and will blend in with the existing roofing. The mature tree canopy will help blend the dwelling and the new array as seen from the Sandy River. The roughly 900-feet + to the river provides a small window of potentially visibility to those who travel along the river. The higher elevation of the dwelling compared to the river combined with the mature trees, distance and dark colors will provide visual subordination and create a compatible character to the surrounding natural area.

Criterion met.

13. **(M) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection**

of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

Staff: There are no known fragile or endangered plant habitat located on the subject property nor areas valued for specific vegetative features. The area of environmental significance is the view as seen from the Sandy River, which will be protected.

Criterion met.

14. **(N) The applicable policies of the Comprehensive Plan shall be satisfied.**

Staff: The policies of the Comprehensive Plan are satisfied through implementation of the zoning code.

Criterion met.

6.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern Permit – General (SEC-g) to establish an accessory alternative energy production system in the form of a photovoltaic array in the Commercial Forest Use-4 zone. This approval is subject to the conditions of approval established in this report.

7.00

‘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 T2-2012-2165 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit
A.1	1	General Application Form
A.2	1	Table of Contents of Application
A.3	2	Applicant’s February 22, 2012 Narrative
A.4*	1	Full Property Site Plan
A.5	1	Development Area Close Up Site Plan
A.6*	1	Elevation Plans
A.7	1	Accessory Building Floor Plan With 2007 Gresham Approval
A.8	2	SnapNrack Information Sheets On Solar Array Modules
A.9	1	SolorWorld Technical Bulletin
A.10	1	Applicant’s Copy of Recorded Notice of Decision for T2-06-122
A.11	2	Applicant’s Copy of Accessory Structure Covenant from T2-06-

		122
A.12	1	Applicant's Photo's Demonstrating Dwelling is Habitable
A.13*	1	Oregon Department of Parks and Recreation Approval Letter
A.14	4	Applicant's Public Records Report for Subject Property
A.15	2	Applicant's Copy of Non-Recorded Accessory Alternative Energy Production System Abandonment Covenant
'B'	#	Staff Exhibits
B.1	2	A&T Property Information
B.2	1	March 21, 2012 Complete Letter
B.3	9	Opportunity to Comment and Mailing List