

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

<http://www.multco.us/landuse>

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## NOTICE OF DECISION

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

**Case File:** T2-2012-2204

**Permit:** Significant Environmental Concern for Wildlife Habitat

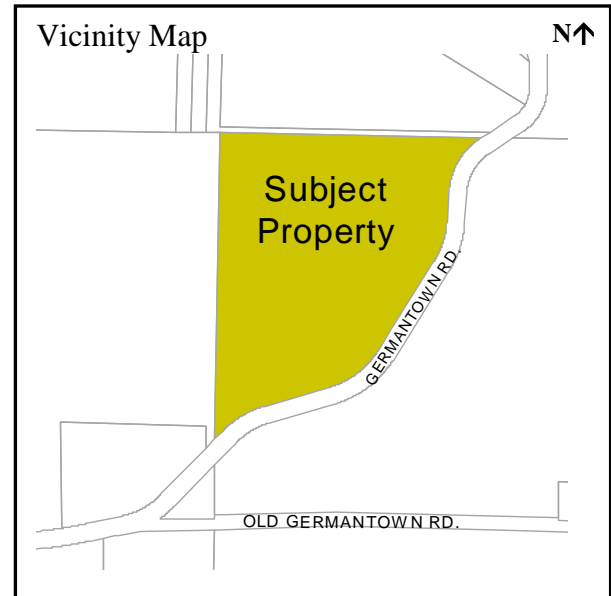
**Location:** 14777 NW Germantown Road  
Tax Lot 300, Section 08D,  
Township 1 North, Range 1 West, W.M.  
Tax Account #R961080450

**Applicants/**

**Owners:** Marcos & Timothea Barnatan

**Base Zone:** Commercial Forest Use – 2

**Overlays:** Significant Environmental Concern for Wildlife Habitat



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**Summary:** Build an in-ground swimming pool and a ground mounted solar array in the Commercial Forest Use -2 (CFU-2) Zone and the Significant Environmental Concern for Wildlife Habitat (SEC-h) Overlay Zone.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective June 8, 2012, at 4:00 PM.

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Issued by:

By: \_\_\_\_\_  
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Friday, May 25, 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 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 June 8, 2012, at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): Multnomah County Code (MCC): MCC 33.2200 et. al: CFU-2, MCC 33.4500 et. al: SEC

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 property owners shall establish and maintain around the structures a Primary Safety Zone within the subject tract according to the following:  
Primary Fire Safety Zone: 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. [MCC 33.2256(D)]
2. The pool and the solar array shall comply with the standards of the applicable building code.

3. The property owners shall plant 50 Douglas fir trees (saplings), six western rhododendrons, six Oregon grape and six snowberry shrubs and 2 magnolia trees on the south portion of the property shown on Exhibit A.6. [MCC 33.4570(C)]
4. The following nuisance plants listed in the following table shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property [MCC 33.4570(B)(7)]:

Scientific Name	Common Name	Scientific Name	Common Name	Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine	<i>Equisetum telemateia</i>	Giant Horsetail	<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Cirsium arvense</i>	Canada Thistle	<i>Erodium cicutarium</i>	Crane's Bill	<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Cirsium vulgare</i>	Common Thistle	<i>Geranium roberianum</i>	Robert Geranium	<i>Rhus diversiloba</i>	Poison Oak
<i>Clematis ligusticifolia</i>	Western Clematis	<i>Hedera helix</i>	English Ivy	<i>Rubus discolor</i>	Himalayan Blackberry
<i>Clematis vitalba</i>	Traveler's Joy	<i>Hypericum perforatum</i>	St. John's Wort	<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Conium maculatum</i>	Poison hemlock	<i>Ilex aquafolium</i>	English Holly	<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Convolvulus arvensis</i>	Field Morning-glory	<i>Laburnum watereri</i>	Golden Chain Tree	<i>Solanum dulcamara</i>	Blue Bindweed
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory	<i>Lemna minor</i>	Duckweed, Water Lentil	<i>Solanum nigrum</i>	Garden Nightshade
<i>Convolvulus seppium</i>	Lady's nightcap	<i>Loentodon autumnalis</i>	Fall Dandelion	<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Cortaderia selloana</i>	Pampas grass	<i>Lythrum salicaria</i>	Purple Loosestrife	<i>Taraxacum officinale</i>	Common Dandelion
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species	<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil	<i>Urtica dioica</i>	Stinging Nettle
<i>Cytisus scoparius</i>	Scotch broom	<i>Phalaris arundinacea</i>	Reed Canary grass	<i>Vinca major</i>	Periwinkle (large leaf)
<i>Daucus carota</i>	Queen Ann's Lace	<i>Poa annua</i>	Annual Bluegrass	<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Elodea densa</i>	South American Water-weed	<i>Polygonum coccineum</i>	Swamp Smartweed	<i>Xanthium spinosum</i>	Spiny Cocklebur
<i>Equisetum arvense</i>	Common Horsetail	<i>Polygonum convolvulus</i>	Climbing Binaweed	<i>various genera</i>	Bamboo sp.

**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.

**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, George Plummer, at (503) 988-3043 ext. 29152, 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 will be required.

## **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. PROJECT DESCRIPTION**

**Staff:** The request is to build an in-ground pool and a ground mount solar array accessory to the existing dwelling established in 2005 in the Commercial Forest Use – 2 (CFU-2) Zone and Significant Environmental Concern for Wildlife Habitat (SEC-h) Overlay Zone.

### **2. PROPERTY DESCRIPTION**

**Staff:** The subject property has a dwelling established in 2005 as a replacement dwelling approved by Case T2-02-044. The proposed pool will be located on the shallow sloped terraced lawn about 10 feet from the house and the solar is located in a shallow sloped area about 70 feet from the house. The slope does not exceed ten per in either area. The proposed development is in a cleared area on the property.

### **3. COMMERCIAL FOREST USES – 2 ZONE**

#### **3.1. Allowed Uses**

##### **3.1.1. MCC 33.2220(T) Accessory Structures:**

(1) **Other structures or uses listed below when customarily accessory or incidental to any use permitted or approved in this district located within 100 feet of the dwelling.**

\* \* \*

(i) **Swimming pools, pool houses, hot tubs, saunas, and changing rooms;**

**MCC 33.0005: Definitions - Habitable dwelling - An existing dwelling that:**

- (a) **Has intact exterior walls and roof structure;**
- (b) **Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;**
- (c) **Has interior wiring for interior lights;**
- (d) **Has a heating system; and**
- (e) **Was lawfully established.**

**Staff:** The existing dwelling was established in 2005 as a replacement dwelling through Case T2-02-044. A copy of the building permit and inspections list is included as Exhibit A.7 demonstrating the dwelling is lawfully established. Photographs included as Exhibit A.8 show the features of the dwelling necessary to demonstrate the dwelling is a habitable dwelling as defined

by the MCC 33.0005. The pool is an allowed use subject to building code requirements, thus a building permit must be obtained. *These standards are met or are met through building permit review.*

**3.1.2. MCC 33.2220(W) Solar, photovoltaic and wind turbine alternative energy production facilities accessory to uses permitted in the zoning district, provided that:**

- (1) All systems shall meet the following requirements:**
  - (a) The system is an accessory alternative energy system as defined in MCC 33.0005;**
  - (b) The system meets all overlay zone requirements;**
  - (c) The system is mounted to a ground mount, to the roof of the dwelling or accessory structure, or to a wind tower;**
  - (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;**
- (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;**

**MCC 33.0005: 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.

**Staff:** The proposed solar array is an allowed use subject to building code requirements thus a building permit must be obtained. *These standards are met through building permit review.*

**3.2. Forest Practices Setbacks And Fire Safety Zones**

**3.2.1 MCC 33.2256: 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: Multnomah County – Chapter 33 - West Hills Rural Plan Area 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)
Accessory structures within 100 ft. of the dwelling	N/A	30	30	Primary is required

**Staff:** The proposed pool and solar array are located within 100 feet of the dwelling. For the proposed pool and solar array the closest property line is more than 80 feet from the pool and the other setbacks to the pool and solar array exceed that amount. The Forest Practices setback for the pool and solar array exceed the 30 foot setback standard. *These standards are met.*

\* \* \*

- 3.2.2. MCC 33.2256(C):** The minimum forest practices setback requirement shall be increased where the setback 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 setback requirements in consultation with the Road Official.

**Staff:** The property abuts Germantown Road which is 60 feet wide meeting the right-of-way width standard for a rural collector having sufficient width. *This standard is not applicable.*

**3.2.3. MCC 33.2256(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
Less than 10	No additional required
* * *	

**Staff:** The proposed pool will be located on the shallow sloped terraced lawn about 10 feet from the house and the solar array is located in shallow sloped area about 70 feet from the house. The slope does not exceed ten percent in either area. A Primary Fire Safety Zone of 30 feet is required. *This standard is met through a condition.*

**3.3. 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):

- 3.3.1. MCC 33.2261(A):** For the uses listed in this subsection, the applicable development standards are limited as follows:

**(3) Accessory buildings.**

- (a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 33.2261(C);
- (b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 33.2261(B)&(C);

**Staff:** While the proposed uses are no buildings they must meet the standard in MCC 33.2261(C)(1).

**3.3.2. MCC 33.2261(C) The dwelling or structure shall:**

- (1) Comply with the standards of the applicable building code**

\* \* \*

**Staff:** A condition will require these standards to be met. *Standards met through conditions.*

### **3.4. Lot of Record**

**MCC 33.2275 (A)** In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district a Lot of Record is either:

- (1)** A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or
- (2)** A group of contiguous parcels or lots:
  - (a)** Which were held under the same ownership on February 20, 1990; and
  - (b)** Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.
    - 1.** Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.
    - 2.** There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

**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

**Staff:** The tract is made up of Andrew’s Acres Subdivision Lots 39, 40 and 41 approved September 11, 1911 (Exhibit B.4). All of these properties, which were under the same ownership on February 20, 1990, are less than 19 acres thus under MCC 33.2275 (A)(2) are required to be aggregated together under the same ownership as a lot of record. *The proposed use is on a Lot of Record.*

## **4. SIGNIFICANT ENVIRONMENTAL CONCERN FOR WILDLIFE HABITAT**

### **4.1. SEC-h Development standards**

- 4.1.1. MCC 33.4570(B)(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:** The proposed development is located in a cleared area (Exhibit A.5 and A.8). *This standard is met.*

**4.1.2. MCC 33.4570(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 development is not within 200 feet of Germantown Road, a public road, which provides access to the property (Exhibit A.5 and A.6). *This standard is not met.*

**4.1.3. MCC 33.4570(B)(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

**Staff:** The driveway length exceeds 500 feet (Exhibit A.6). *This standard is not met.*

**4.1.4. MCC 33.4570(B)(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.**

**Staff:** The driveway access is located within 200 feet of the driveway drive for the property to the north. (Exhibit B.3). *This standard is met.*

**4.1.5. MCC 33.4570(B)(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 adjacent property does not have structures and developed areas within 200 feet of that common side property line.

**4.1.6. MCC 33.4570(B)(6) Fencing within a required setback from a public road shall meet the following criteria: ...**

**Staff:** No fencing is proposed within the required setback from the road. *This standard is met.*

**4.1.7. MCC 33.4570(B)(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 (the plant list is included in the conditions):**

**Staff:** The standard can be required as a condition. *This standard is met through a condition.*

**4.2. Wildlife Conservation Plan**

**MCC 33.4570(C) An applicant shall propose a wildlife conservation plan if one of two situations exist.**

- (1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the**



wild-life conservation plan results in the minimum departure from the standards required in order to allow the use; or

- (2) **The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).**

**Staff:** Given the location of the pool and solar array are dependant of the location of the dwelling the applicants cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicants are proising to located the uses within a hundred feet of the dwelling in a cleared area resulting in the in the minimum departure from the standards required in order to allow the uses. The applicants propose planting 50 Douglas fir trees (saplings), six western rhododendrons, six Oregon grape and six snowberry shrubs and 2 magnolia trees. *The proposal meets wildlife conservation plan requirements.*

## **6. TRANSPORTATION STANDARDS**

### **MCRR 4.000: Access to County Roads**

**Staff:** The property has one approved driveway accessing to Germantown Road.. *Access requirement is met.*

## **7. Code Compliance and Applications**

**MCC 37.0560** 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:** The subject property has an active code case for the failure to meet the Wildlife conservation Plan planting requirement condition of the previous SEC-h Case T2-02-044. The property owners have entered into a VCA with the County to address this compliance issue. This standard is met through the VCA.

## **8. CONCLUSION**

Based on the findings and other information provided above, the applicant has carried the burden necessary for approval of a Significant Environmental Concern for Wildlife Habitat for an in-ground pool and ground mount solar array in the Commercial Forest Use – 2 Zone. This approval is subject to the conditions of approval established in this decision.

## **9. EXHIBITS**

‘A’ Applicants’ Exhibits

‘B’ Staff Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	3/9/12
A.2	2	Introduction and index of application submittal	3/9/12
A.3	10	CFU Development Standards Worksheet Form A	3/9/12
A.4	10	Significant Environmental Concern for Wildlife Habitat Permit Worksheet	3/9/12
A.5	2	Site Plan showing proposed pool location, floor plan and erosion control	3/9/12
A.6	1	Site Plan showing proposed pool and solar array	3/9/12
A.7	3	Building permit and inspection record for dwelling	3/9/12
A.8	5	Photos to demonstrate habitable dwelling	3/9/12
A.9	7	On-Site Sewage Disposal form and attached plans	3/9/12
A.10	4	Deed for the property	3/9/12
‘B’	#	Staff Exhibits	Date
B.1	2	A&T Property Information	NA
B.2	1	A&T Tax Map with Property Highlighted	NA
B.3	1	2010 Aerial Photo of subject property	NA