



**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>

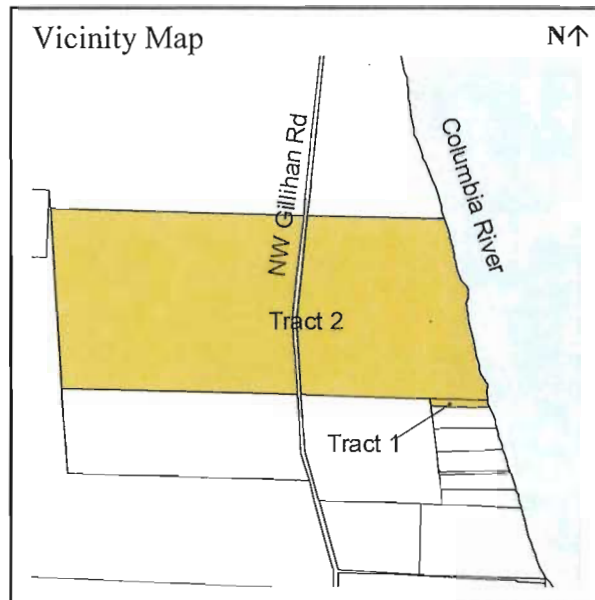
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## NOTICE OF DECISION

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

**Case File:** T2-2013-2783  
**Permit:** Property Line Adjustment  
**Location:** 19924 NW Gillihan Road  
Tax Lots 100 and 1300, Section 11,  
Township 2N, Range 1W, W.M.  
#R971110060 and #R971110030  
**Applicant:** Dave Kunkle  
**Owners:** Dave and Diane Kunkle  
Jacobson and Co. LLC  
**Base Zone:** Exclusive Farm Use (EFU)  
**Overlays:** Flood Hazard



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**Summary:** Equal area exchange Property Line Adjustment between Tax Lot 100 (Tract 1) and 1300 (Tract 2) to widen Tax Lot 100.

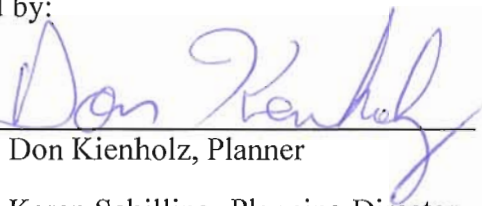
**Decision:** Approved with Conditions

Unless appealed, this decision is effective Friday, September 27, at 4:00 PM.

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Issued by:

By:

  
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Friday, September 13, 2013

**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 Friday, September 27, 2013 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): 37.0560 Code Compliance, 34.0005 Lot of Record, 34.2660 Dimensional Requirements, 34.2670 Property Line Adjustment, 34.2675 Lot of Record, 34.7790 Property Line Adjustment. Multnomah County Road Rules (MCRR) 4.000 Access to County Roads.

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. **This approval is based on submitted materials. The proposed property line adjustment shall be completed as shown and described in the application materials submitted by the applicant and as shown on Exhibit A.3 [MCC 37.0580].**

2. A copy of the recorded septic easement on each new parcel shall be submitted to Land Use Planning prior to any future land use or building permit approvals [Multnomah County Comprehensive Plan Policy 37].
3. Prior to submitting new legal descriptions for county review for recording purposes, the owner of Tract 2 shall obtain an access permit for the access from Tract 2 onto NW Gillihan Road [MCRR 4.000].
4. The applicant and their surveyor shall complete the procedures as described in Section (a) of Exhibit B.6, Instructions on Processing and Finishing Property Line Adjustments. A Property Line Adjustment Finalization Fee of \$78 shall be paid at the time new legal descriptions are submitted to Land Use Planning Staff for final review [MCC 34.7790].
5. After receiving approval from Land Use Planning staff of the new legal descriptions and County Surveyor's approval of the new survey, new deeds shall be filed with County Records describing the new property boundaries of each new parcel with a metes-and-bounds description. The transferred property areas shall not exist as separate properties with their own deed or deed description [MCC 34.7790(A)].

**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 modify the common property line between two properties in order to increase the width of Tract 1. The property line adjustment is an equal area exchange between two properties that are both zoned Exclusive Farm Use.

### **2.00 Property Description:**

**Staff:** The two properties are located on the east side of Sauvie Island off of NW Gillihan Road. Tract 1 is a 1.08-acre property on the bank of the Columbia River and is accessed via easement over another parcel. Tract 2 is 183.57-acres and fronts on NW Gillihan Road as well as the Columbia River. Tract 1 contains a dwelling and is used for residential purposes while Tract 2 is vacant and used for farming activities.

### **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:**

Tract 1: Tract 1 contains a single family dwelling as noted on the tax records since 1958. Building permits were required in this area of the county as of 1955. The applicant provided a copy of building permit #9055 (Exhibit A.11) from the 1950’s permitting the construction of the dwelling. Lot of Record findings are made on the property in Finding #4.00 below. There are no known land use violations on Tract 1.

Tract 2: Tract 2 is a vacant parcel that is 183.57-acres in area. There are no identified code violations on Tract 2. An aerial photo of the property (Exhibit B.7) shows an access from the property onto the County road, however there is no access permit on file. A condition of approval requires the owner to obtain a permit for site access. Lot of Record findings are made in Finding #4.00 below.

*The criteria can be satisfied with a condition of approval.*

#### **4.00 Lot of Record:**

##### **MCC 34.0005 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 34.7785. 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 district.)

(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.

\* \* \*

##### **MCC 34.2675 LOT OF RECORD**

**(A) In addition to the Lot of Record definition standards in MCC 34.0005, 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.**

**4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or**

**(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.**

**(4) Exception to the standards of (A)(2) above:**

**(a) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.**

**(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:**

**(1) July 10, 1958, F-2 zone applied;**

**(2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;**

**(3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;**

(4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties, Ord. 236 & 238;

(5) February 20, 1990, lot of record definition amended, Ord. 643;

(6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;

(7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

**(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 34.2690 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**(D) The following shall not be deemed 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) A Mortgage Lot.**

**(4) An area of land created by court decree.**

**Staff:** Tract 1: The applicant submitted a copy of a legal description along with the original building permit for the dwelling (Exhibit A.11) that demonstrates Tract 1 existed at that time of the building permit. It also appears on the county's acknowledged first zoning maps (Exhibit B.8). On the building permit's upper right corner, it notes that the 'zone' the permit was issued under was "Interim." The Interim zoning and building codes were adopted in 1953. In the 1953 zoning ordinance there were no minimum lot size requirements (Exhibit B.5). Staff finds the parcel existed during the interim zoning time frame and thus was created when no minimum lot size, road frontage or access requirements were in place. Partition requirements were not adopted until 1978. As such, the property satisfied the zoning and land division requirements at the time it was created and is therefore a Lot of Record.

Tract 2: Tract 2 has a lot size of 183.57-acres and has been on County tax lot maps since at least 1962 (Exhibit B.8). The applicant submitted a copy of a deed from 1956 (Exhibit A.5) demonstrating the property in its current configuration. The property existed prior to the adoption of zoning requirements. Land division requirements were not adopted until 1978. As such, the property met all applicable zoning and land division rules at the time it was created and therefore is a lot of record.

*Both properties are lots of record.*

## **5.00 Property Line Adjustment:**

### **A. MCC 34.2660 DIMENSIONAL REQUIREMENTS**

#### **(C) Minimum Yard Dimensions - Feet**

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**(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.**

**(F) Agricultural structures and equine facilities such as barns, stables, silos, farm equipment sheds, greenhouses or similar structures that do not exceed the maximum height requirement may have a reduced minimum rear yard of less than 30 feet, to a minimum of 10 feet, if:**

**Staff:** The existing dwelling on Tract 1 that after the adjustment will have an increased setback from the new property line. As seen on the site plan (Exhibit A.3), the home's setback to the new property line increases from 20-feet to approximately 50-feet. Tract 2 is vacant and has no structures near the new property line.

*Criteria met.*

**B. MCC 34.2670 LOT LINE ADJUSTMENT; PROPERTY LINE ADJUSTMENT**

**(A) Pursuant to the applicable provisions in MCC 34.7790, an adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:**

1. **(1) All dwellings that were situated on the same lot prior to the adjustments must remain together on the reconfigured lot; and**

**Staff:** There is a dwelling on Tract 1 that will remain on Tract 1. Tract 2 is vacant and will remain vacant after the adjustment.

2. **(2) The following dimensional and access requirements are met:**

**(a) The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements; and**

**(b) If the properties abut a street, the required access requirements of MCC 34.2690 are met after the relocation of the common property line; and**

**Staff:** The adjusted property line is in compliance with all minimum yard and minimum front lot line length requirements as noted in Finding #5(A). Only one subject property abuts a street, therefore access requirements are not triggered.

*Criteria met.*

3. **(3) The reconfigured lot areas will each:**

**(a) Be a minimum of 80 acres, or**



**(b) Retain the same lot area that existed prior to the exchange.**

**Staff:** The proposed property line adjustment is an “equal area exchange” where each parcel will retain the same lot area after the exchange as existing prior to the exchange as seen on the site plan (Exhibit A.3).

*Criteria met.*

**C. MCC 34.7790 PROPERTY LINE ADJUSTMENT**

**A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:**

1. **(A) No additional lot or parcel shall be created from any parcel by the property line adjustment; and**

**Staff:** The proposal begins with two parcels and ends with only two parcels.

*Criterion met.*

2. **(B) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and**

**Staff:** Owners of both properties have signed the PLA Application Form (Exhibit A,1).

*Criterion met.*

3. **(C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district; and**

**Staff:** The proposed adjustment meets the EFU zone requirements as noted in Finding #5(A).

*Criterion met.*

4. **(D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.**

**Staff:** The applicant has submitted application on the required forms.

*Criterion met.*

## +6.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for approval of the Property Line Adjustment in the Exclusive Farm Use zone. This approval is subject to the conditions of approval established in this report.

## 7.00 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 T2-2013-2783 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit
A.1	1	Property Line Adjustment Application Form
A.2	1	Applicant’s March 12, 2013 Narrative and Summary
A.3*	1	March 12, 2013 Site Plan
A.4	6	Storm Water Certificate Form For Land Divisions and Property Line Adjustments and Attached Site Plans
A.5	1	Deed Instrument Book 1781, Page 369 From 1956 for Tract 1
A.6	3	Deed Instrument Book 105, Pages 126 Through 128 from 1964 for Tract 2
A.7	4	Applicant’s Copy of Pre-Filing 2012-2626 Notes
A.8	9	Certification of On-Site Sewage Disposal, Site Plan, Floor Plan and Septic Easement and Supporting Materials
A.9	1	Applicant’s Acceptance of 180-Day Incomplete Clock
A.10	6	Storm Water Certificate and Documents Addressing Impervious Area of Dwelling
A.11	1	Building Permit 9055 From Time Period 1953-1955
A.12	1	Legal Description of Tract 1 From 1953-1955 Time Period
‘B’	#	Staff Exhibits
B.1	4	A&T Property Information
B.2	1	A&T Tax Map with Property Highlighted
B.3	5	April 10, 2013 Incomplete Letter and Attachments
B.4	1	August 7, 2013 Complete Letter
B.5	3	Copy of 1953 Interim Zoning Code
B.6*	1	Instructions on Processing and Finishing Property Line Adjustment
B.7	1	Air Photo of Subject Properties
B.8	1	1962 Zoning Map

TRACT 2

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**a. Neither property is a lot or parcel in a recorded plat or subdivision:**

- (1) Hire a licensed surveyor to survey the two properties, monument the new property lines, draft new legal descriptions for the area to be transferred and for both modified parcels.
- (2) Drop off the survey and new legal descriptions to your case planner for initial consistency check. This can take 1 to 2 weeks. We will contact you if revisions are needed.
- (3) Submit a copy of the survey to the County Surveyor's Office for concurrent review. The County Survey Office will review the survey for technical accuracy. This can take 1 to 2 weeks. They will contact you if revisions are needed.
- (4) Complete any corrections to survey and legal descriptions as required by the County Surveyor or Land Use Planning.
- (5) Pay all outstanding property taxes due to the County on either property.
- (6) File final mylar with the County Surveyor's Office.
- (7) Drop off your corrected legal descriptions and surveys for your case planner to review and stamp. This can take up to 1 week.
- (8) Once you have the stamped legal descriptions and surveys back, have deeds drawn up with the approved legal descriptions and have them signed by all applicable parties. Three deeds will be needed:
  - a. Deed transferring the exchange area from one property owner to the other
  - b. Deed describing the new Tract 1
  - c. Deed describing the new Tract 2
- (9) Take the approved deeds to the County's Assessment & Taxation Records Management Office for their review and approval. They are located at 501 SE Hawthorne Blvd, Ste 175, Portland. Phone # 503.988.3326. File All Three (3) Deeds with the County Recorder.

**b. One or More of the properties is a Lot or Parcel in a recorded plat or subdivision:**

- (1) Hire a licensed surveyor to survey and monument the two properties, property lines, and draft a new partition plat including both properties.
- (2) Drop off the partition plat including both properties to your case planner for initial consistency check. This can take 1 to 2 weeks.
- (3) Submit the partition plat with the County Surveyor's Office for concurrent review (this can take 1 to 3 weeks).
- (4) Make any required changes from Land Use Planning or the County Surveyor.
- (5) After County Surveyor and land use Approval, pick up the plat and take to the County Assessor to pay uncollected taxes, then to the County Recorder to record the final plat.

