

**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: T2-2013-2928

Permit: Administrative Decision by Planning Director

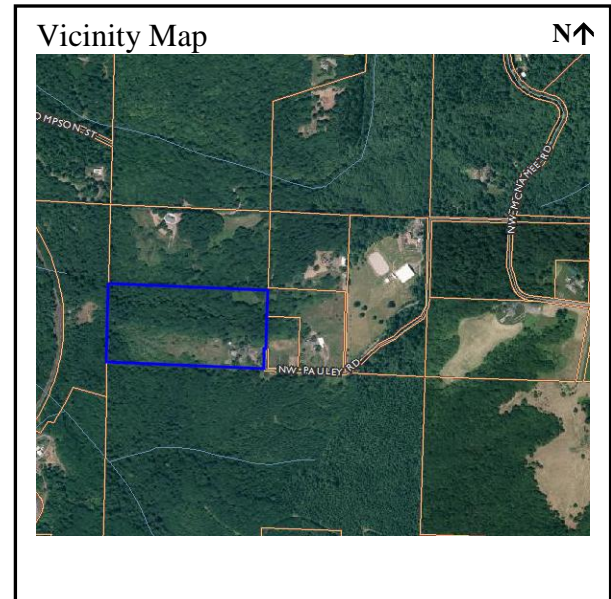
Location: 17006 NW Pauley Road
Tax Lot 900, Section 31,
Township 2 North, Range 1 West, W.M.

Applicants: Raymond J. Fraga

Owners: Raymond J. Fraga & Cecelia Hall

Base Zone: Commercial Forest Use - 2

Overlays: Significant Environment Concern for Wildlife Habitat



Summary: Request for a Verification of a Nonconforming Use for the two existing single family dwellings and a shop building on property in the Commercial Forest Use – 2 zone.

Decision: The two single family dwelling uses are verified as lawfully established habitable dwellings and conforming uses. The shop building is an agricultural building conforming use.

Unless appealed, this decision is effective September 13, 2013, at 4:00 PM.

Issued by:

By: _____
George A. Plummer Planner

For: Karen Schilling- Planning Director

Date: Friday, August 30, 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 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 September 13, 2013, at 4:00 PM.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 33.2200 - 33.2310: CFU-2

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

Approval of this decision is based on the submitted written narrative(s), plan(s) and other documents included as Exhibits A1- A.10.

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. PROJECT DESCRIPTION

Staff: A request for a Verification of a Nonconforming Use for the two existing single family dwellings and a shop building on a property within the Commercial Forest Use -2 zone.

2. PROPERTY DESCRIPTION

Staff: The 19.94 acre property is predominately used as forested property, with a few acres of farmland and residential uses. Two dwellings exist on the property as described below. There is also a shop building and a couple small outbuildings. The property owners needed to replace the septic system on the property, thus County Land Use Planning needs to confirm that the two existing single family dwellings and shop building uses on the property are either conforming uses, or have nonconforming use status in order for those uses to be allowed to continue. The property owners signed a Voluntary Compliance Agreement with the County Code Compliance Program to allow the septic system to be replaced prior to issuance of this decision (UR-2013-2865).

3. COMMERCIAL FOREST USE – 2 (CFU-2) ZONE

3.1. Shop Building

MCC 33.2220(C): Allowed Uses - Farm use, as defined in ORS 215.203.

Staff: The shed appears on a 1977 aerial photo (Exhibit B.5). The 1998 photo of the shed indicates that it is an old building (Exhibit A.6). It was used as a shop to maintain the property which includes a farming and forest uses. The shop was established as an agricultural building and the property owners verbally stated to staff that the shop is used in conjunction with the management of the property for storage and maintaining of equipment for the farm use. As long as the shop continues to be used for these purposes, then it can be maintained on the property as an agricultural building. *Staff finds the shop building to be a conforming use.*

3.2. Dwellings

MCC 33.2220 (D): Allowed Uses - 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.

(1) In the case of a replacement dwelling, the existing dwelling shall be removed, demolished or converted to an allowable non-residential use within three months of the completion or occupancy of the replacement dwelling.

MCC 33.2225(A): The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

(A) Replacement or restoration of an existing lawfully established habitable dwelling more than 100 feet from the existing dwelling.

MCC 33.0005: 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 applicant has asked for a nonconforming use determination for two single family dwellings located on the subject property. In the CFU-2 Zone a new dwelling is not an outright allowed use, unless it is an existing habitable dwelling that have been lawfully established. An existing lawfully established is allowed to be continued or replaced through MCC 33.2220(D) or MCC 33.2225(A) if the dwelling meets the definition listed under MCC .0005: Definition – “Habitable Dwelling.” While there are two single family dwellings located on the subject property, these dwelling are conforming uses if they are lawfully established habitable dwellings.

The applicant has submitted photographs of both houses located on the property, referred to in this decision as the main dwelling and the cabin. The photos show the exterior walls and roof and the features listed in the habitable dwelling definition (Exhibits A.5, A.6, A.7 and A.10) for both dwellings. Both dwellings appear on our earliest aerial photo of the area taken in 1977 (Exhibit B.5).

The main house on the property was established in 1891 according County Assessment records (Exhibit B.1). The zoning code was established in 1958 and building permits have been required since 1955. Given the 1891 dwelling was built prior to adoption of zoning and building permit requirements, the dwelling meets the lawfully established standard. Given 1891 dwelling has the habitable dwelling features listed under MCC 33.0005 it meets the habitable dwelling standard. *Thus the 1891 dwelling is a lawfully established habitable dwelling and a conforming use.*

In a letter dated May 5, 2013, Margaret Pauly Tate daughter of Herbert E. Pauly states that her dad built the cabin on the property in 1931 (Exhibit A.4). Given the 1931 cabin was built prior to adoption of zoning and building permit requirements, the dwelling meets the lawfully established standard. These habitable dwelling features, as shown in Exhibit A.7, have a historic appearance for the bath tub, kitchen sink and interior design for the 1930 timeframe. Additionally, the application submittal includes letters from people that have been guests of the owners and have stayed in the cabin (Exhibit A.8). Given the 1931 dwelling has the habitable dwelling features listed under MCC 33.0005 it meets the habitable dwelling standard. *Thus the 1931 cabin dwelling is a lawfully established habitable dwelling and a conforming use.*

3.3. Lot Of Record

MCC 33.2075(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.**

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 applicant submitted a deed for the property recorded with County Records on April 5, 1974 in Book 979 on Pages 175- 181. The zoning was F-2 in 1974 with a minimal parcel size requirement of two acres. There was no land division review requirement for creating a parcel by deed in 1974. Thus the property met zoning and land division laws when created. The property area is greater than 19 acres, meeting the CFU-2 Lot of Record standard under MCC 33.2075(A)(2)(b). *The subject property is a lot of record.*

4. Transportation Standards

MCRR 4.000 Access to County Roads

Staff: There is no proposed development for the property, thus there are no increased transportation impacts.

5. Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for a Director Determination that the two single family dwellings are lawfully established habitable dwellings and are therefore conforming uses located on a lot of record property within the CFU-2 zone.

6. Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application form	6/6/13
A.2	1	Site Plan	6/6/13
A.3	1	Narrative	6/6/13
A.4	1	Letter dated May 5, 2013 from Margaret Pauly Tate addressing	6/6/13

		establishment date of the cabin	
A.5	2	Photos taken in the 1950s with cabin in the background	6/6/13
A.6	1	Photos taken of shop and cabin taken in 1988	6/6/13
A.7	4	Current photos of cabin (showing habitable dwelling feature) and shop	6/6/13
A.8	4	Letter from people that have stayed in the cabin	6/6/13
A.9	7	Deed records for the property recorded on 4/5/74 deed in Book 979 on Pages 175- 181	6/6/13
A.10	4	Current photos of the 1891 main house showing habitable dwelling features	6/12/13
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	
B.2	1	A&T Tax Map with Property Highlighted	
B.3	1	Zoning map	
B.4	1	2012 Aerial Photo	
B.5	1	1977 Aerial Photo	