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## NOTICE OF DECISION

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**Case File:** T2-2020-13121

**Permit:** Time Extension

**Applicants:** Mike Herrick

**Owners:** AC Holdings LLC

**Location:** 12950 NW Marina Way  
Tax Lot 700, Section 28D, Township 2N, Range 1W, W.M.  
Tax Account #R971280500 Property ID #R325279

**Base Zone:** MUA-20

**Overlays:** Willamette River Greenway (WRG), FEMA 100-yr Floodplain

**Proposal Summary:** Second Request for a 12-month Time Extension for Case # T3-2016-5319

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**Decision:** Approved with Conditions

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is August 28, 2020 at 4:00 pm.**

**Opportunity to Review the Record:** The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.35/per page. For further information, contact Aldo Rodriguez, Staff Planner at 503-988-4159 or at [aldo.rodriguez@multco.us](mailto:aldo.rodriguez@multco.us)

**Opportunity to Appeal:** 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 office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

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**Issued by:**



**By:** Aldo Rodriguez, Planner

**For:** Carol Johnson, AICP  
Planning Director

**Date:** August 14, 2020



### **Applicable Approval Criteria:**

**For this application to be approved, the proposal will need to meet applicable approval criteria below:**

**Multnomah County Code (MCC):** Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

Lot of Record – General Provisions: MCC 39.3005 Lot of Record – Generally

Lot of Record Requirements Specific to Each Zone: MCC 39.3080 Lot of Record – Multiple Use Agriculture-20 (MUA-20)

Procedures: MCC 39.1195 Extension of a Type II or Type III Decision

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:

**Chapter 39 - Zoning Code**

### **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. 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.

1. Case T3-2016-5319 for Conditional Use Permit for on-site commercial processing of forest products, Design Review Permit to establish the business infrastructure on-site, and Willamette River Greenway Permit for a new development on the property, and deviation from the surfacing standard of MCC 34.4180(A) approval will expire on May 23, 2021.

2. Except for approvals of dwellings listed in MCC 39.1185(C), additional one-year extensions shall be authorized where applicable criteria for the decision have not changed. For each additional extension, the Planning Director shall confirm compliance with the standards in MCC 39.1195 (A) (1-4).
3. All conditions of approval from land use case #T3-2016-5319 shall remain in effect and shall be incorporated in this decision by reference as exhibited in (Exhibit B.3).

**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*.

### **1.0 Project Description & History:**

- 1.1 Staff:** The applicant is requesting a second 12-month time extension approval for land use case file # T3-2016-5319 regarding Conditional Use Permit for on-site commercial processing of forest products, Design Review Permit to establish the business infrastructure on-site, and Willamette River Greenway Permit for a new development on the property, and deviation from the surfacing standard of MCC 34.4180(A). The previous extension was granted on May 29, 2019, which extended the expiration date to May 23, 2020.

### **2.0 Public Comment:**

**Staff:** Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in C.2. Staff did receive public comments during the 14-day comment period.

- 2.1 Shawn and David Looney, property owners located 12937 NW Newberry Rd., provided an e-mail on July 30, 2020. (Exhibit D.1)**

**Staff:** Shawn and David Looney expressed support of the work Mike Herrick has been doing on the property. In addition, they both supported granting the 12-month extension.

### **3.0 General Provisions:**

#### **3.1 MCC 39.1515 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 Zoning 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 Zoning 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.**

**(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the**



property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

**Staff:** There are no active code compliance issues associated with the properties; therefore, the County has the authority to issue this land use decision. *This criterion is met.*

### **3.2 MCC 39.3005 Lot of Record – Generally**

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. 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:

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**Staff:** Land use case # T3-2016-5319 found that the subject property is a Lot of Record. *This criterion is met.*

### **3.3 MCC 39.3080 Lot of Record – (MUA-20)**

(A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, SR zone applied;

- (2) July 10, 1958, F-2 zone applied;
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;
- (6) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

**(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**  
 .....

**Staff:** Land use case #T3-2016-5319 found that the subject property is a Lot of Record. *This criterion is met.*

#### **4.0 Procedure Criteria:**

##### **4.1 MCC 39.1195 EXTENSION OF A TYPE II OR TYPE III DECISION.**

**(A) The Planning Director shall grant one extension period of 24 months for approvals of dwellings listed in MCC 39.1185 (C) and shall grant one extension period of up to 12 months for all other approvals provided:**

**(1) An applicant makes a written request for an extension of the development approval period;**

**Staff:** The applicant, Mike Herrick, submitted a request for a second 12-month time extension to T3-2016-5319. The decision involves a Conditional Use Permit for on-site commercial processing of forest products, Design Review Permit to establish the business infrastructure on-site, and Willamette River Greenway Permit for a new development on the property, and deviation from the surfacing standard of MCC 34.4180(A).

**(2) The request is submitted to the county prior to the expiration of the approval period;**

**Staff:** The second request was submitted to the county prior to the expiration of the approval period (Exhibit A.1). The second request for the extension was submitted on March 23, 2020, which is 61 days before the expiration of T2-2019-11606 on May 23, 2020. T2-2019-11606 was the first extension granted (Exhibit B.2) *This criterion is met.*

**(3) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and**

**Staff:** As part of the narrative, the applicant discusses the reasons that prevented the applicant from beginning the development within the approval period. The applicant states:

“AC Holdings is requesting a 12 month time extension for Case Number T3-2016-5319 due to the corona virus and delay in permitting. City of Portland offices have been closed and our permit has been delayed thus we are requesting an extension” (Exhibit A.1).

Based on this information from the applicant, it appears that due to the closing of the City of Portland permitting department because of the outbreak of the Corona Virus (Covid-19), the applicant has not been able to move forward with the development. *This criterion is met.*

**(4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.**

**Staff:** Based on the applicant’s narrative, the applicant was unable to move forward with construction for reasons for which the applicant was not responsible. As discussed previously, the Corona virus disrupted the City of Portland permitting department which was closed the public. The project has not been able to proceed. Based on this information, it does not appear the applicant was responsible for the closure of the City Portland permitting department, which delayed the applicant from proceeding with the development. *This criterion is met.*

**(B) Pursuant to OAR 660-033-0140, approval of an extension in EFU and CFU districts is an administrative decision, is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision. All other extension requests authorized by this section are land use decisions and shall be reviewed under the Type II procedures set forth in MCC 39.1125.**

**Staff:** The subject property is not located in the EFU or CFU zoning district. The property is zoned Multiple Use Agriculture-20 (MUA-20). Therefore, this standard is not applicable. As required above, this time extension is a land use decision and is required to be reviewed under the Type II procedures set forth in MCC 39.1125. *This criterion is met.*

## **5.0 Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Time Extension permit to extend the approval of Case T3-2016-5319; a Conditional Use Permit for on-site commercial processing of forest products, Design Review Permit to establish the business infrastructure on-site, and Willamette River Greenway Permit for a new development on the property, and deviation from the surfacing standard of MCC 34.4180(A). This approval is subject to the conditions of approval established in this report.

## 6.0 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Comments Received

Exhibits with a "\*" after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5" x 11" for mailing purposes. All other exhibits are available for review in Case File T2-2020-13121 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	3.23.2020
'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for R325279 (Alt Acct# R971280500)	3.23.2020
B.2	4	T2-2019-11606 Decision	7.24.2020
B.3	60	T3-2016-5319 HO Decision	7.24.2020
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	4.22.2020
C.2	2	Opportunity to Comment and Mailing List	7.24.2020
C.3		Administrative decision	
'D'	#	Comments	Date
D.1	1	Shawn and David Looney	7.30.2020