

STAFF REPORT

Land Use Planning Division



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PLANNING COMMISSION WORK SESSION

November 3, 2025

CHAPTER 39 ZONING CODE AMENDMENTS RELATING TO LOT OF RECORD PROVISIONS

(PC-2025-0005)

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1.0 Introduction

As part of the larger Zoning Code Improvement Project (ZCIP), the project team has taken on an accelerated project to update three particularly problematic areas of the Zoning Code:

1. Full Compliance
2. Lot of Record
3. Nonconforming Uses

The project team has provided preliminary amendments to the Lot of Record provisions, which is the subject of the November 3rd work session. The preliminary amendments are draft and will likely change after a more thorough internal review, so we suggest the commissioners focus their attention instead on the code audit findings (Attachment B) and the table below describing paths to establish a lot of record. The purpose of this work session is to highlight the overall approach to the proposed changes and to solicit Commission feedback. Attachment A shows the current draft of the proposed changes.

Current Lot of Record Standards in the Zoning Code have been universally identified as overly complex and burdensome by members of the community, frequent applicants, and staff alike. Generally, new uses on land in any zoning district can be allowed if that use will occur on a lawfully created piece of land (Lot of Record). What this means for applicants is that they must prove that a use will occur on a Lot of Record (as opposed to an unlawfully created or divided piece of land). The process to clear this Lot of Record step in the process can involve significant deed history and research in order to show that a property's current configuration met all of the land division requirements in effect at the time of the action that created the property. Sometimes, as in the case of a recent partition or subdivision, the paper trail is clear and easy to document. However, older land divisions may take research in order to prove that the recorded land division met the zoning rules and land division provisions in effect at the time. In some cases, a property was created before County zoning rules were in effect (pre 1950s). Importantly, state law prescribes minimum lot sizes for most types of rural zoning designations and most uses must occur on property that was lawfully created either in compliance with zoning law or is otherwise assumed to have been lawfully created prior to the existence of zoning. For instance, a 2-acre property located in the MUA-20 zone which requires a 20-acre minimum lot size may be a lawfully created nonconforming lot if it was created in 1940 prior to County zoning rules.

Lot of Record Findings

The MIG project team conducted a Code Audit in May 2025 (Attachment B), which included the following findings related to the Lot of Record code standards:

<i>Topic</i>	<i>Code Audit Findings</i>
<i>Lot of Record - Specific Requirements by Zone</i> (39.3010-39.3160)	• Each zone contains series of complex and specific additional criteria (to 39.3005) for determining a “legal lot of record” in the specific zone. Includes specific criteria including but not limited to, minimum lot size, front lot lines, configuration, and exemptions. • Most zones contain a list of significant dates and ordinances for verifying zoning compliance although as currently written, the list is not all inclusive. These provide the dates and corresponding ordinance numbers when specific zoning law were added or amended. • Not all zones in Multnomah County have the additional specific zoning requirements. • Other jurisdictions do not require evidence and research that a “legal lot” complied with specific criteria of zoning or subdivision laws when established or modified. Consider simplifying the “legal lot” determination process. • Verifying if a lot was in compliance with all zoning and land division ordinances in effect at the time of creation (typically completed by previous owners) or determining if the lot creation was done correctly by the previous owners or the jurisdiction could be considered a barrier to development. Owners typically have a deed as their only record. • See Deschutes County code ‘22.04.040 Verifying Lots of Record: Verified by County staff with land use permit application’ for an example of a simpler, more reasonable and less onerous process.
<i>Lot of Record Verification Procedure</i> (39.1225)	• 39.1225.C requires that a request for a verification for a Lot of Record to be processed as a Type II application. Lot of record verification should be Clear and Objective (C&O) process, and the County could consider moving it to a Type I process. • Type II process for “Lot of Record Verification” requires public notice and a discretionary decision which is not required, needed or reasonable for a lot verification and could be considered a barrier to development. • See Deschutes County code ‘22.04.040 Verifying Lots of Record: Verified by County staff with land use permit application’ for an example of a simpler process that could be considered for use in Multnomah County. • See additional recommendations related to Lot of Record requirements in subsequent sections of this report. <i>(included above)</i>

- “Unit of Land” as defined in state law could also be considered in lieu of ‘lot of record’.

The proposed amendments in Attachment A are meant to simplify the Lot of Record verification process as much as possible, while retaining concepts such as ‘lot aggregation’ requirements in resource zones that are meant to keep farm and forest zoned properties in relatively large acreage. Another goal of the project is to lessen the burden on an applicant having to prove that a prior land division had to meet ALL of the zoning requirements in effect at the time of creation such as having had certain utilities and the like. Rather an applicant could only have to show that the property met the zoning minimum lot size and other basic provisions that were in effect at the time.

Provisions that are deemed clear and objective will likely provide a Type 1 review path in addition to the existing Type 2 review for processing certain Lot of Record verification applications. For instance, a simple verification of a recent partition plat should be a clear and objective Type 1 review, which translates to a quicker, less expensive path for applicants. The table below (provided by MIG) contemplates the process type, once the amendments are adopted, given the zoning and general scenario:

Paths to establishing a Lot of Record (LOR)

- Green – no LOR review required
- Yellow – Possible Type I for Lot Aggregation
- Orange – Type II LOR Verification

Paths	Means by which a lawfully established unit of land was created	Proof of Compliance Required?	Lot Aggregation Required?	Lot of Record (LOR)?
1a	Created in compliance with ORS 92.010 to 92.192 (e.g., subdivision, etc.)	No, lot was assumed to have complied with the zoning requirements when it went through the review process.	No, not in CFU, CFU-1, CFU-2, CFU-3, CFU-4, CFU-5 and EFU or not contiguous, etc.	Unit of land is a LOR
1b			Yes, in CFU, CFU-1, CFU-2, CFU-3, CFU-4, CFU-5 or EFU and contiguous, etc. – Possible Type I?	Aggregated units of land are one LOR
2a	Created by a deed or a sales contract that meets all of the criteria	Yes, applicant responsible for demonstrating that the lot or parcel was created in compliance with the zoning requirements – Type II LOR Verification	No, not in CFU, CFU-1, CFU-2, CFU-3, CFU-4, CFU-5 and EFU or not contiguous, etc.	Unit of land is a LOR
2b			Yes, in CFU, CFU-1, CFU-2, CFU-3, CFU-4, CFU-5 or EFU and contiguous, etc. - Possible Type I concurrent with Type II?	Aggregated units of land are one LOR
3a	Established pursuant to 39.9700 Legalization of Lots And Parcels that were Previously Unlawfully Divided.	No, proof of compliance occurred per 39.9700, no further proof of compliance needed.	No, not in CFU, CFU-1, CFU-2, CFU-3, CFU-4, CFU-5 and EFU or not contiguous, etc.	Unit of land is a LOR
3b			Yes, in CFU, CFU-1, CFU-2, CFU-3, CFU-4, CFU-5 or EFU and contiguous, etc. - Possible Type I or concurrent with 39.9700 Review?	Aggregated units of land are one LOR

General Staff Comments on Proposed Revisions

Staff has reviewed and commented on the proposed changes. While the review process is ongoing and iterative, we provide some generalized notes below.

1. Need further refinement of new or modified definitions.
2. Need to contemplate the status of so called ‘remainder lots’ left over when an older land division created conforming lots except for the ‘remainder lot’. The situation is occasionally found in older metes and bounds deeded properties that had the effect of dividing land.
3. Need to further contemplate how to handle ‘lots of exception’, lot consolidations, and properties that are legalized via MCC 39.9700.

4. Need more specificity regarding how the terms, unit of land, lot, or parcel are used.
5. Need further discussion around transferring land between lots of record comprised of aggregated lots. Relatedly, need to contemplate property line adjustments internal to a lot of record comprised of aggregated lots.

Attachments:

- A. Draft Lot of Record Amendments 10.28.25
- B. Code Audit Report 05.27.25