



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, Oregon 97301-2524

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Web Address: <http://www.oregon.gov/LCD>

NOTICE OF ADOPTED AMENDMENT

September 28, 2006

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Multnomah County Plan Amendment
DLCD File Number 001-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: October 13, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Ron Eber, DLCD Farm/Forest Specialist
Gary Clifford, Multnomah County

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FORM 2

DEPT OF

SEP 25 2006

DLCD NOTICE OF ADOPTION

LAND CONSERVATION AND DEVELOPMENT

This form must be mailed to DLCD within 5 working days after the final decision per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

Jurisdiction: MULTNOMAH COUNTY Local File No.: PC 04-007 (PART 1)
(If no number, use none)

Date of Adoption: SEPTEMBER 21, 2006 Date Mailed: SEPTEMBER 22, 2006
(Must be filed in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: JANUARY 17, FEB 2, & MARCH 13, 2006

Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment

Land Use Regulation Amendment Zoning Map Amendment

New Land Use Regulation Other: _____

(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

ADDED A CODE SECTION ALLOWING FOR THE APPROVAL OF THE CREATION OF CERTAIN LOTS AND PARCELS THAT WERE UNLAWFULLY DIVIDED IN THE PAST. ANOTHER SECTION ALLOWS THE ISSUANCE OF CERTAIN BUILDING PERMITS FOR "PRINCIPAL USES" PRIOR TO JULY 1, 1986 TO BE VERIFICATION OF COMPLIANCE WITH ZONING AND LAND DIVISION REGULATIONS (A LOT OF RECORD).

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

SAME

Plan Map Changed from : _____ to _____

Zone Map Changed from: _____ to _____

Location: _____ Acres Involved: _____

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: _____

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 001-06
(14937)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: _____

Local Contact: GARY CLIFFORD Area Code + Phone Number: 503-988-3043 X26782

Address: 1600 SE 190TH AVENUE City: PORTLAND

Zip Code+4: 97233-5910 Email Address: gary.clifford@co.multnomah.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO (2) Copies of the Adopted Amendment to:**

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1080

Amending MCC Chapters 33, 34, 35, 36 and 37 to Allow for the Review and Approval of Certain Past "Unlawfully Divided" Lots and Parcels and to Allow for the Issuance of Certain Building Permits to be Considered Verification of Compliance with Zoning and Land Division Laws in the Determination of "Lots of Record"

(Language ~~stricken~~ is deleted; double underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. Since 1975 the zoning requirements in the rural areas of Multnomah County have over time required an increasing amount of acreage for the creation of new parcels of land. This requirement has been part of the statewide planning program to protect farm and forest lands for resource production and to guide most new development to areas inside the Urban Growth Boundary.
- b. Those increasing minimum parcel acreages in the rural areas have resulted in situations for some property owners where the minimum standard has changed, for example, from minimum lot size requirements of two acres (1958) to twenty acres (1970) to nineteen acres with farm management plan (1980) to 38 acres with farm management plan (1990) to eighty acres (1993). During that time there have also been a number of changes in other approval criteria and review process.
- c. To be eligible for development, all lots and parcels must be "Lots of Record" that met all zoning and land division requirements at the time they were created. If a lot or parcel created in the past did not meet all the zoning and land division regulations in effect at the time it was created, then the only remedy now is review under today's zoning and land division standards. Due to the increasing lot size requirements, however, lots and parcels created prior to 1993 are seldom able to meet today's minimum parcel requirements. A further complication to the ability to just combine the unlawfully divided parcels back into the original size and configuration of the prior lawful parcel is that most times the parcels are in different ownership, sometimes after several intervening ownerships. In addition, sometimes, in these situations there are houses on the unlawfully divided parcels and then the property owner's increased investment is also subject to the uncertainties associated with the property not being a legal Lot of Record.
- d. Also, from 1977 to 1993 most rural zoning districts included provisions regarding the ability to divide properties where the deed description included land on both sides of public roads and where a zoning district boundary crossed through a property. Those specialized provisions are no longer in the zoning code in compliance with state administrative rules. However, some divisions of properties during that time period missed being reviewed under some land division code requirements. In many situations this incomplete review can be characterized as primarily a procedural flaw at no fault of the property owner.
- e. The Planning Commission placed a high priority on finding a regulatory remedy for these "unlawfully divided" land division issues and saw a need to balance a sense of fairness, practicality, and recognition of legal standards that must also be met.
- f. A related issue for which the Planning Commission sought improvement in the code involved the procedure for determining if a property was a Lot of Record when a building permit for new

development was issued in the past. In that situation, it is found that the issuance of certain development permits should act as verification that all zoning and land division laws were met and there was no need for subsequent property owners to provide additional documentation regarding compliance with zoning and land division standards for the property on that date. It is further found that the permits issued by Multnomah County when the county was a full service building permit services provider are the permits which the county has the most confidence in for their use under this provision.

- g. The provisions in this ordinance were submitted to the State of Oregon Department of Land Conservation and Development and there has been consultation with the staff of that state agency on the code provisions.
- h. It is in the public interest to adopt this ordinance to: (1) allow for the current review and approval of certain unlawfully divided lots/parcels under the standards in effect on the date the lots/parcels were originally divided, and (2) allow for the issuance of certain building permits before July 1, 1986 to be used as verification that a lot or parcel is a Lot of Record.

Multnomah County Ordains as follows:

Section 1. §§ 33.0005, 34.0005, 35.0005, and 36.0005 are amended as follows:

§ 33.0005 Definitions.

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

* * *

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof ~~that, which~~-when created ~~and~~-when 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.

* * *

§ 34.0005 Definitions.

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

* * *

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof ~~that, which~~-when created ~~and~~-when 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.

* * *

§ 35.0005 Definitions.

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

* * *

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof ~~that, which~~ when created ~~and~~ when 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 35.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

* * *

§ 36.0005 Definitions.

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

* * *

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof ~~that, which~~ when created ~~and~~ when 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 36.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

* * *

Section 2. Lot of Record §§ 33.2075 [CFU-1], 33.2275 [CFU-2], 33.2675 [EFU], 34.2675 [EFU], 35.2075 [CFU-3], 35.2675 [EFU], 36.2075 [CFU], and 36.2675 [EFU] are amended as follows:

(A) * * *

(2) A group of *contiguous* parcels or lots:

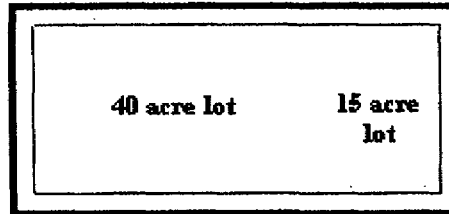
(a) Which were held under the *same ownership* on February 20, 1990; and

(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.

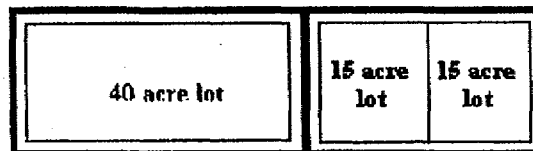
1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with 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.

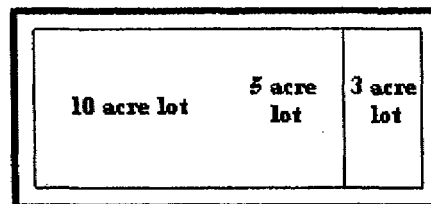
3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:



Example 1:
One 55 acre Lot of Record



Example 2:
One 40 acre Lot of Record and
one 30 acre Lot of Record



Example 3:
One 18 acre Lot of Record

(3) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established *habitable dwelling*, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the *same ownership* on February 20, 1990.

(b) 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.

* * *

(E) Issuance of building permit as verification of a Lot of Record.

(1) The issuance of a building permit described in this subsection for new development on a lot or parcel is considered verification of compliance with applicable zoning and land division regulations for the creation of a lawful lot or parcel. The lot or parcel described in the building permit is considered a Lot of Record if the building permit was issued prior to July 1, 1986 (date of intergovernmental agreement contracting for building permit services with other jurisdictions) and complies with all of the following:

(a) There is a copy of the building permit in the Multnomah County or City of Portland permit records and the building permit indicates that the proposed development complied with zoning and land division requirements; and

(b) The building permit was for a new principle use, such as a new dwelling, commercial, industrial, community service, or conditional use; and

(c) There is a clear property description on the permit for the property for which the building or placement permit was issued. The description may be confirmed by tax lot references, tax lot maps, site plans, or deeds recorded at the time.

(2) A request for verification that a lot or parcel is a Lot of Record under the provisions of this section (E) may be submitted to the Planning Director. A decision by the Planning Director is a ministerial action based upon the evidence described in this section. An appeal of the director's decision for verification of a Lot of Record shall be submitted under the provisions of MCC 37.0740.

Section 3. § 35.2275 [CFU-4] is amended as follows:

§ 35.2275 Lot of Record

(A) In addition to the *Lot of Record* definition standards in MCC 35.0005, 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

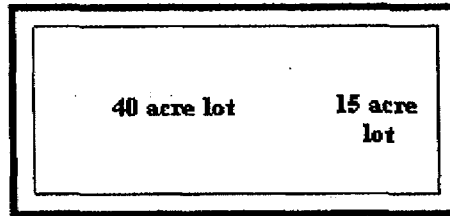
(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

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.

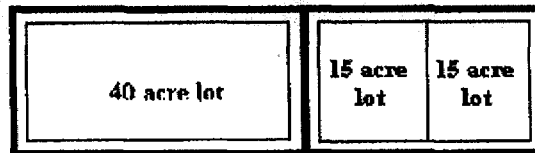
2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on

February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

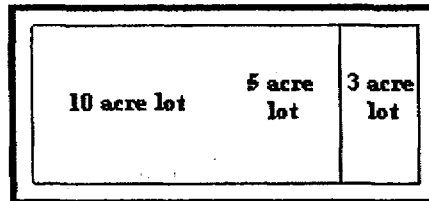
3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:



Example 1:
One 55 acre Lot of Record



Example 2:
**One 40 acre Lot of Record and
one 30 acre Lot of Record**



Example 3:
One 18 acre Lot of Record

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception, urban, or Columbia River Gorge National Scenic Area zones (e.g. MUA-20, RR, RC, R-10, GGA-40), 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) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established *habitable dwelling*, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the *same ownership* on February 20, 1990.

(b) 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.

(c) Disaggregation of a Lot of Record for consideration of a new template or heritage tract dwelling may be allowed subject to the standards in (E) below.

* * *

(F) Issuance of building permit as verification of a Lot of Record.

(1) The issuance of a building permit described in this subsection for new development on a lot or parcel is considered verification of compliance with applicable zoning and land division regulations for the creation of a lawful lot or parcel. The lot or parcel described in the building permit is considered a Lot of Record if the building permit was issued prior to July 1, 1986 (date of intergovernmental agreement contracting for building permit services with other jurisdictions) and complies with all of the following:

(a) There is a copy of the building permit in the Multnomah County or City of Portland permit records and the building permit indicates that the proposed development complied with zoning and land division requirements; and

(b) The building permit was for a new principle use, such as a new dwelling, commercial, industrial, community service, or conditional use; and

(c) There is a clear property description on the permit for the property for which the building or placement permit was issued. The description may be confirmed by tax lot references, tax lot maps, site plans, or deeds recorded at the time.

(2) A request for verification that a lot or parcel is a Lot of Record under the provisions of this section (E) may be submitted to the Planning Director. A decision by the Planning Director is a ministerial action based upon the evidence described in this section. An appeal of the director's decision for verification of a Lot of Record shall be submitted under the provisions of MCC 37.0740.

Section 4. Lot of Record §§ 33.2475 [CFU-5], 33.2870 [MUA-20], 33.3170 [RR], 33.3370 [RC] 34.2870 [MUA-20], 34.3170 [RR], 34.3370 [RC] 35.2870 [MUA-20], 35.3170 [RR], 35.3370 [RC] 36.2870 [MUA-20], 36.3170 [RC], 36.3370 [PH-RC], 36.3470 [OR] and 36.3570 [OCI] are amended as follows:

* * *

(E) Issuance of building permit as verification of a Lot of Record.

(1) The issuance of a building permit described in this subsection for new development on a lot or parcel is considered verification of compliance with applicable zoning and land division regulations for the creation of a lawful lot or parcel. The lot or parcel described in the building permit is considered a Lot of Record if the building permit was issued prior to July 1, 1986 (date of intergovernmental agreement contracting for building permit services with other jurisdictions) and complies with all of the following:

(a) There is a copy of the building permit in the Multnomah County or City of Portland permit records and the building permit indicates that the proposed development complied with zoning and land division requirements; and

(b) The building permit was for a new principle use, such as a new dwelling, commercial, industrial, community service, or conditional use; and

(c) There is a clear property description on the permit for the property for which the building or placement permit was issued. The description may be confirmed by tax lot references, tax lot maps, site plans, or deeds recorded at the time.

(2) A request for verification that a lot or parcel is a Lot of Record under the provisions of this section (E) may be submitted to the Planning Director. A decision by the Planning Director is a ministerial action based upon the evidence described in this section. An appeal of the director's decision for verification of a Lot of Record shall be submitted under the provisions of MCC 37.0740.

Section 5. §§ 33.7780, 34.7780, 35.7780 and 36.7780 are amended as follows:

§ 33.7780 Category 4 Land Division

Partitions not listed in MCC 33.7770 to 33.7775 are designated Category 4 Land Divisions.

(A) The Planning Director may approve a Category 4 Land Division based on a finding that the proposed parcels comply with the area and dimensional requirements of the zoning district in which the land division site is located and the tentative plan complies with the following approval criteria:

(1) MCC 33.7890 Land Suitability, 33.7895 Lots and Parcels, 33.7930 Sidewalks, Pedestrian Paths and Bikeways, 33.7935 Easements, 33.7950 Water System, 33.7955 Sewage Disposal, 33.7960 Surface Drainage, and 33.7965 Electrical and Other Wires;

(B) Notwithstanding (A) above, compliance with the area and dimensional requirements of the zoning district is not required to approve a lot or parcel that was unlawfully divided prior to January 27, 1994, as provided in MCC 33.7785(A). The applicable approval criteria are those listed in MCC 33.7785(A) and 33.7935 Easements, 33.7950 Water System, 33.7955 Sewage Disposal, and 33.7960 Surface Drainage.

(C) The procedure and forms for review and approval of a Category 4 Land Divisions shall be as provided for by the Planning Director. The contents of the tentative plan shall include those maps, written information and supplementary material listed for contents of a Category 3 tentative plan in MCC 33.7860 that are determined by the Planning Director to be adequate to demonstrate compliance with the applicable approval criteria.

§ 34.7780 Category 4 Land Division

Partitions not listed in MCC 34.7770 to 34.7775 are designated Category 4 Land Divisions.

(A) The Planning Director may approve a Category 4 Land Division based on a finding that the proposed parcels comply with the area and dimensional requirements of the zoning district in which the land division site is located and the tentative plan complies with the following approval criteria:

(1) MCC 34.7890 Land Suitability, 34.7895 Lots and Parcels, 34.7930 Sidewalks, Pedestrian Paths and Bikeways, 34.7935 Easements, 34.7950 Water System, 34.7955 Sewage Disposal, 34.7960 Surface Drainage, and 34.7965 Electrical and Other Wires;

(B) Notwithstanding (A) above, compliance with the area and dimensional requirements of the zoning district is not required to approve a lot or parcel that was unlawfully divided prior to January 27, 1994, as provided in MCC 34.7785(A). The applicable approval criteria are those listed in MCC 34.7785(A) and 34.7935 Easements, 34.7950 Water System, 34.7955 Sewage Disposal, and 34.7960 Surface Drainage.

(BC) The procedure and forms for review and approval of a Category 4 Land Divisions shall be as provided for by the Planning Director. The contents of the tentative plan shall include those maps, written information and supplementary material listed for contents of a Category 3 tentative plan in MCC 34.7860 that are determined by the Planning Director to be adequate to demonstrate compliance with the applicable approval criteria.

§ 35.7780 Category 4 Land Division

Partitions not listed in MCC 35.7770 to 35.7775 are designated Category 4 Land Divisions.

(A) The Planning Director may approve a Category 4 Land Division based on a finding that the proposed parcels comply with the area and dimensional requirements of the zoning district in which the land division site is located and the tentative plan complies with the following approval criteria:

(1) MCC 35.7890 Land Suitability, 35.7895 Lots and Parcels, 35.7930 Sidewalks, Pedestrian Paths and Bikeways, 35.7935 Easements, 35.7950 Water System, 35.7955 Sewage Disposal, 35.7960 Surface Drainage, and 35.7965 Electrical and Other Wires;

(B) Notwithstanding (A) above, compliance with the area and dimensional requirements of the zoning district is not required to approve a lot or parcel that was unlawfully divided prior to January 27, 1994, as provided in MCC 35.7785(A). The applicable approval criteria are those listed in MCC 35.7785(A) and 35.7935 Easements, 35.7950 Water System, 35.7955 Sewage Disposal, and 35.7960 Surface Drainage.

(BC) The procedure and forms for review and approval of a Category 4 Land Divisions shall be as provided for by the Planning Director. The contents of the tentative plan shall include those maps, written information and supplementary material listed for contents of a Category 3 tentative plan in MCC 35.7860 that are determined by the Planning Director to be adequate to demonstrate compliance with the applicable approval criteria.

§ 36.7780 Category 4 Land Division.

Partitions not listed in MCC 36.7770 to 36.7775 are designated Category 4 Land Divisions.

(A) The Planning Director may approve a Category 4 Land Division based on findings that:

(1) The proposed parcels comply with the area and dimensional requirements of the zoning district in which the land division site is located; and

(2) The proposed parcels satisfy the applicable General Standards and Requirements of MCC 36.7885 through 36.7965.

(B) Notwithstanding (A) above, compliance with the area and dimensional requirements of the zoning district is not required to approve a lot or parcel that was unlawfully divided prior to January 27, 1994, as provided in MCC 36.7785(A). The applicable approval criteria are those listed in MCC 36.7785(A) and 36.7935 Easements, 36.7950 Water System, 36.7955 Sewage Disposal, and 36.7960 Surface Drainage.

(C) The procedure and forms for review and approval of a Category 4 Land Divisions shall be as provided for by the Planning Director. The contents of the tentative plan shall include those maps, written information and supplementary material listed for contents of a Category 3 tentative plan in MCC 36.7860 that are determined by the Planning Director to be adequate to demonstrate compliance with the applicable approval criteria.

Section 6. §§ 33.7785, 34.7785, 35.7785, and 36.7785, Creation of Lots and Parcels That Were Unlawfully Divided, are added as follows:

33.7785 Creation of Lots and Parcels That Were Unlawfully Divided
34.7785 Creation of Lots and Parcels That Were Unlawfully Divided
35.7785 Creation of Lots and Parcels That Were Unlawfully Divided
36.7785 Creation of Lots and Parcels That Were Unlawfully Divided

ORS 92.177 authorizes the County to approve an application to create new legal lots or parcels notwithstanding that less than all of the owners of the existing legal lot or parcel have applied for the approval. This Code section provides the mechanism to review and, based upon findings of compliance with specific approval criteria, to approve certain unlawfully divided lots or parcels. The review mechanism differs according to the date the unlawful lot or parcel was divided as provided in (A) and (B) below. For the purposes of this section, an "unlawfully divided" lot or parcel means a lot or parcel that, when divided, did not satisfy all applicable zoning and land division laws.

(A) An application to create a legal lot or parcel that was unlawfully divided before January 27, 1994 (eff. date of Mult. Co. Ord. 781) shall be a Category 4 Land Division and be reviewed as a Type II permit. In addition to the applicable Category 4 Land Division requirements, the application shall satisfy the following approval criteria:

(1) The lot or parcel either:

(a) Conforms to current dimensional, access and area standards,

(b) Conforms to the dimensional, access and density standards in effect when the lot or parcel was unlawfully divided, or

(c) The lot or parcel has a property line that is contiguous to a road, street or zone boundary that intersected the property and the applicable zoning district on the date the lot or parcel was unlawfully divided allowed a land division when a County-maintained road, street or zoning district boundary intersects a parcel of land. The zoning districts and effective dates that apply to this provision are as follows:

1. The Rural Center (RC), Rural Residential (RR), and Multiple Use Agriculture-20 (MUA-20) zoning districts on or after October 6, 1977 (eff. date of Mult. Co. Ord. 148) and before January 27, 1994;

2. The Multiple Use Forest-20 (MUF-20) zoning district on or after October 6, 1977 (eff. date of Mult. Co. Ord. 148) and before August 14, 1980 (eff. date of Mult. Co. Ord. 236); and

3. The Multiple Use Forest-19 (MUF-19) and Multiple Use Forest-38 (MUF-38) zoning districts on or after August 14, 1980 (eff. date of Mult. Co. Ord. 236) and before January 7, 1993 (eff. date of Mult. Co. Ord. 743).

(2) No subsequent division of the lot or parcel or a property line adjustment has occurred.

(3) The owner or applicant demonstrates that the resulting lot or parcel can physically accommodate a use allowed in the zone, including necessary facilities and utilities, in compliance with all applicable siting standards of this zoning code chapter.

(4) Practical physical access to the site currently exists from a public road or can be provided through an irrevocable easement or equivalent means. Practical physical access at a minimum must meet the standards of MCC 29.012 and allow emergency vehicle access to the building site.

(5) The application shall include a tentative plan consisting of maps, written information and supplementary material adequate to provide the information required for a Category 4 land division and, if found to comply with the applicable approval criteria, a partition plat or subdivision plat shall be submitted in accordance with the requirements of ORS Chapter 92.

(B) An application to create legal lots or parcels that were unlawfully divided on or after January 27, 1994 (effective date of Mult. Co. Ord. 781) shall be subject to current review procedures for a land division. The application shall satisfy the following approval criteria:

(1) The lot or parcel conforms to current zoning requirements, or

(2) An unlawfully divided lot or parcel may be approved notwithstanding the required dimensional, access, and area requirements, subject to the following:

(a) The lot or parcel has a property line that is contiguous to a road, street or zone boundary that intersected the property; and

(b) The applicable zoning district on the date the lot or parcel was unlawfully divided allowed a land division when a County-maintained road, street or zoning district boundary intersects a parcel of land. The zoning districts and effective dates that apply to this provision are the Rural Center (RC), Rural Residential (RR), and Multiple Use Agriculture-20 (MUA-20) zoning districts on or after January 27, 1994 (eff. date of Mult. Co. Ord. 781) and before October 4, 2000 (eff. date of "Rural Residential" amendments to OAR 660-004-0040).

(C) If an application for a legal lot or parcel is approved under this subsection, the date of creation of the lots and parcels shall be the date the Partition or Subdivision Plat is recorded.

Section 7. § 37.0530, Summary of Decision Making Processes, is amended as follows:

§ 37.0530 Summary Of Decision Making Processes.

The following decision making processes chart shall control the County's review of the indicated permits:

APPROVAL PROCESS					
Permit Type	I	II	III	IV	PC
Initial Approval Body	(Not a "land use decision")	(Planning Director)	(Hearings Officer)	(Planning Commission)	(Legislative)

Lot of Record Verification/De termination		X			

Section 8. § 37.0550, Initiation of Action, is amended as follows:

§ 37.0550 Initiation Of Action.

Except as provided in MCC 37.0760, ~~33.7785, 34.7785, 35.7785, and 36.7785~~, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser, or by a government agency that has the power of eminent domain. PC (legislative) actions may only be initiated by the Board, Planning Commission, or Planning Director.

Section 9. § 37.0740, Interpretations, is amended as follows:

§ 37.0740 Interpretations and Requests for Lot of Record Verification.

(A) The Planning Director has the authority to decide all questions of interpretation or applicability to specific properties of any provision of the comprehensive framework plan, rural area plan, or other land use code. Any interpretation of a provision of the comprehensive framework plan, rural area plan or other land use code shall consider applicable provisions of the comprehensive framework plan, rural area plan, and the purpose and intent of the ordinance adopting the particular code section in question.

(B) A person may specifically request an interpretation of a provision in the code. An application for an interpretation shall be processed as a Type II application. ~~The Planning Director may refuse to accept an application for an interpretation if:~~

(C) A person may request verification of the Lot of Record status of a lot or parcel. The application shall be processed as a Type II application.

(D) The Planning Director may refuse to accept an application for an interpretation or Lot of Record verification if:

(1) The Planning Director determines that the question presented or Lot of Record verification can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director's judgment the requested determination should be made as part of a decision on an application for a quasi-judicial land use or zone change permit not yet filed; or

(2) The Planning Director determines that there is an enforcement case pending in which the same issue necessarily will be decided.

(GE) A determination by The the Planning Director ~~determination to not to~~ accept an application under paragraph (B) or (C) of this section is not a land use decision and shall be the county's final decision.

FIRST READING:

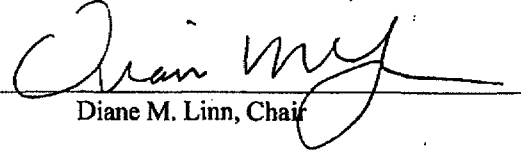
September 14, 2006

SECOND READING AND ADOPTION:

September 21, 2006

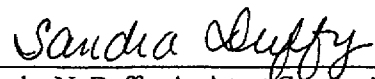


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Sandra N. Duffy, Assistant County Attorney