



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Approved with Conditions

Permit Type: EFU Replacement Dwelling

File No. Z0438-22-ARD

Proposal: Application to replace a manufactured home placed on the subject property in 1997 via land use Z1426-97 and placement permit of MH085597. The new home will be placed within 50' east of the original SFR footprint and an accessory structure is proposed to be located front of the new dwelling.

Decision Date: October 26, 2022

Deadline for Filing Appeal: November 7, 2022, at 4:00.

Unless appealed, this decision is effective on November 7, 2022 at 4:00 pm.

Issued By : Roman Sierra, Planner I, RSierra@clackamas.us

Assessor's Map & Tax Lot(s): T2S R3E Section 35 Tax Lot 01000

Site Address: 17830 S Eaden Rd

Applicant: Joshua Stewart

Owner of Property: Timothy O Noreuil

Zoning: EFU (Exclusive Farm Use)

Community Planning Organization (CPO) for Area:

Redland – Fishers Mill – Viola CPO

Community Planning Organizations (CPOs) are part of the county's community involvement program. They are advisory to the Board of County Commissioners, Planning Commission and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact the Community Involvement Office at 503-655-8751.

OPPORTUNITY TO REVIEW THE RECORD: The submitted application is available for review online at <https://accela.clackamas.us/citizenaccess/>. Select the Planning tab and enter the file

number to search. Select Record Info and then select Attachments from the dropdown list, where you will find the submitted application. The complete application file is available for inspection at no cost by contacting the Planner listed on the first page of this decision. Copies of all documents may be purchased at the rate of \$2.00 per page for 8 1/2" x 11" or 11" x 14" documents, \$2.50 per page for 11" x 17" documents, \$3.50 per page for 18" x 24" documents and \$0.75 per sq ft with a \$5.00 minimum for large format documents.

APPEAL RIGHTS: Any party disagreeing with this decision, or the conditions of approval, may appeal this decision to the Clackamas County Land Use Hearings Officer. An appeal must include a completed County Appeal Form and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified on the first page of this decision.

Appeals may be submitted in person during office hours (8:00 am to 4:00 pm Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

The County Appeal Form is available at www.clackamas.us/planning/supplemental.html . Any party or parties appealing this decision may withdraw their appeal at any time prior to the hearing or final decision by the Hearings Officer. A party wishing to maintain individual appeal rights may file an individual appeal and pay the \$250.00 fee, even if an appeal by another party or parties has been filed.

A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

APPLICABLE APPROVAL CRITERIA: This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 401 and 1307.

PUBLIC AND AGENCY COMMENTS:

Notice was sent to applicable agencies and owners of property within 750 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section.

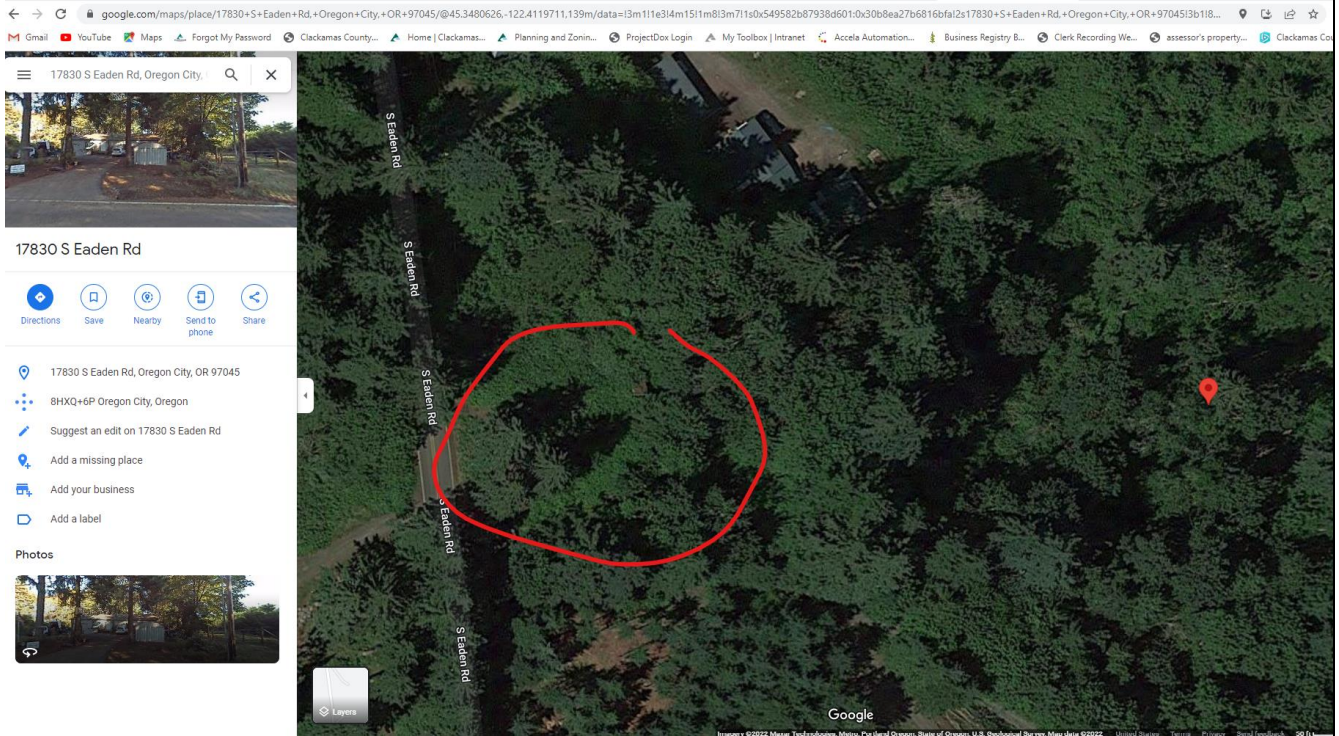
NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

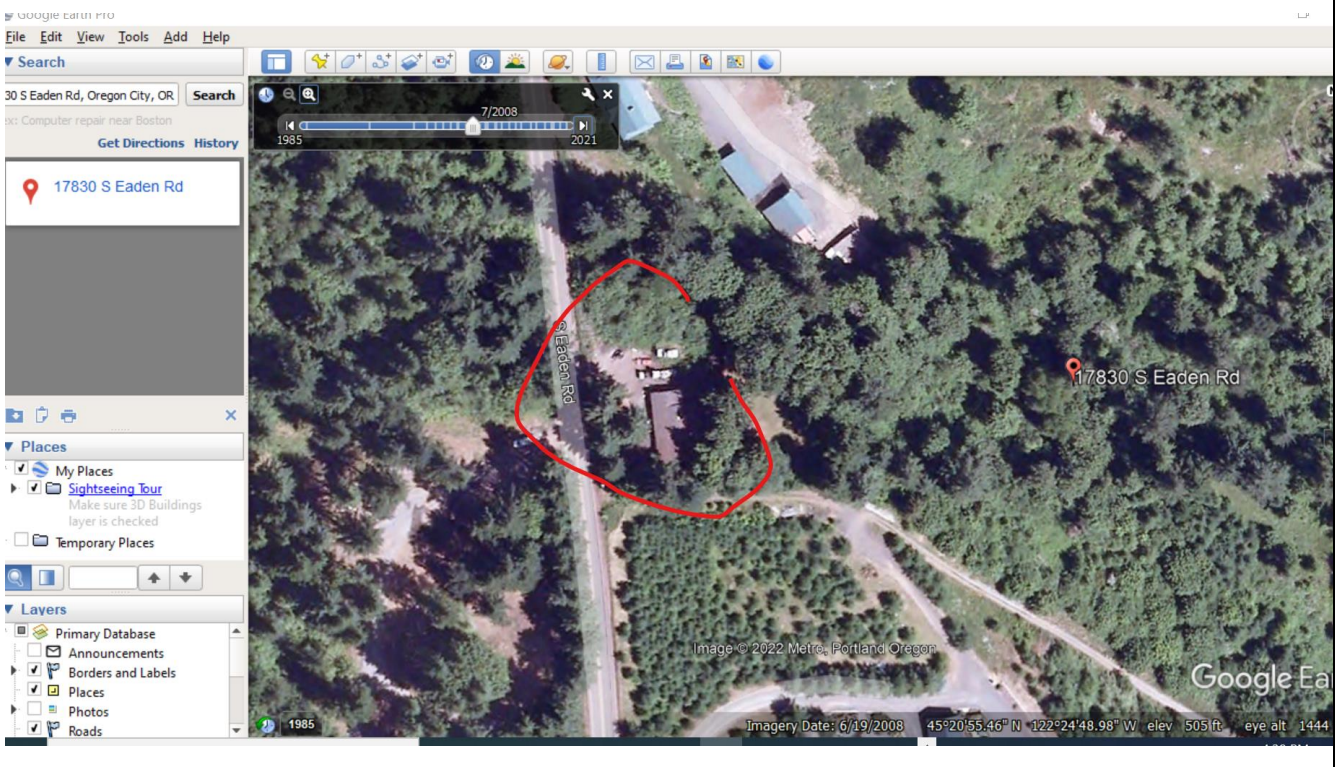
503-742-4545: ¿Traducción e interpretación? |Требуется ли вам устный или письменный перевод?
翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통역?

Location Map

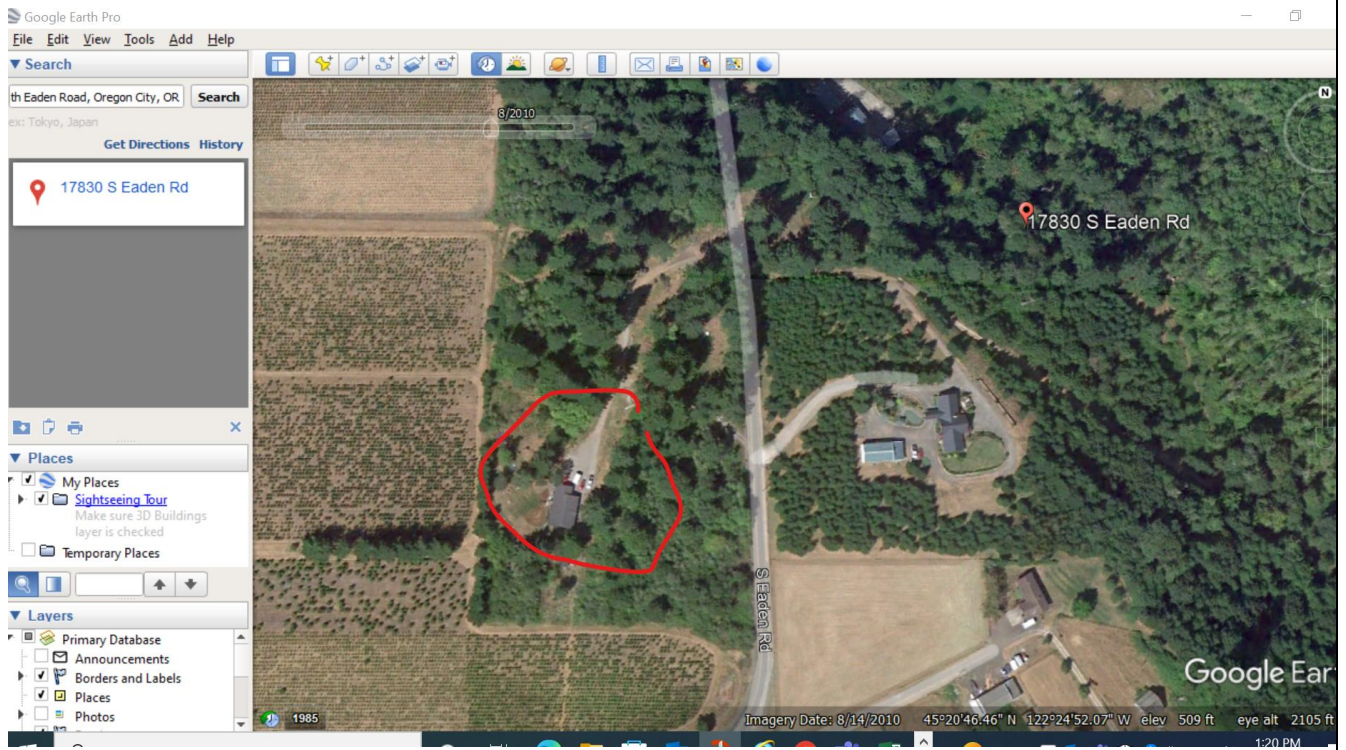
Aerial view after overgrowth and removal of MH



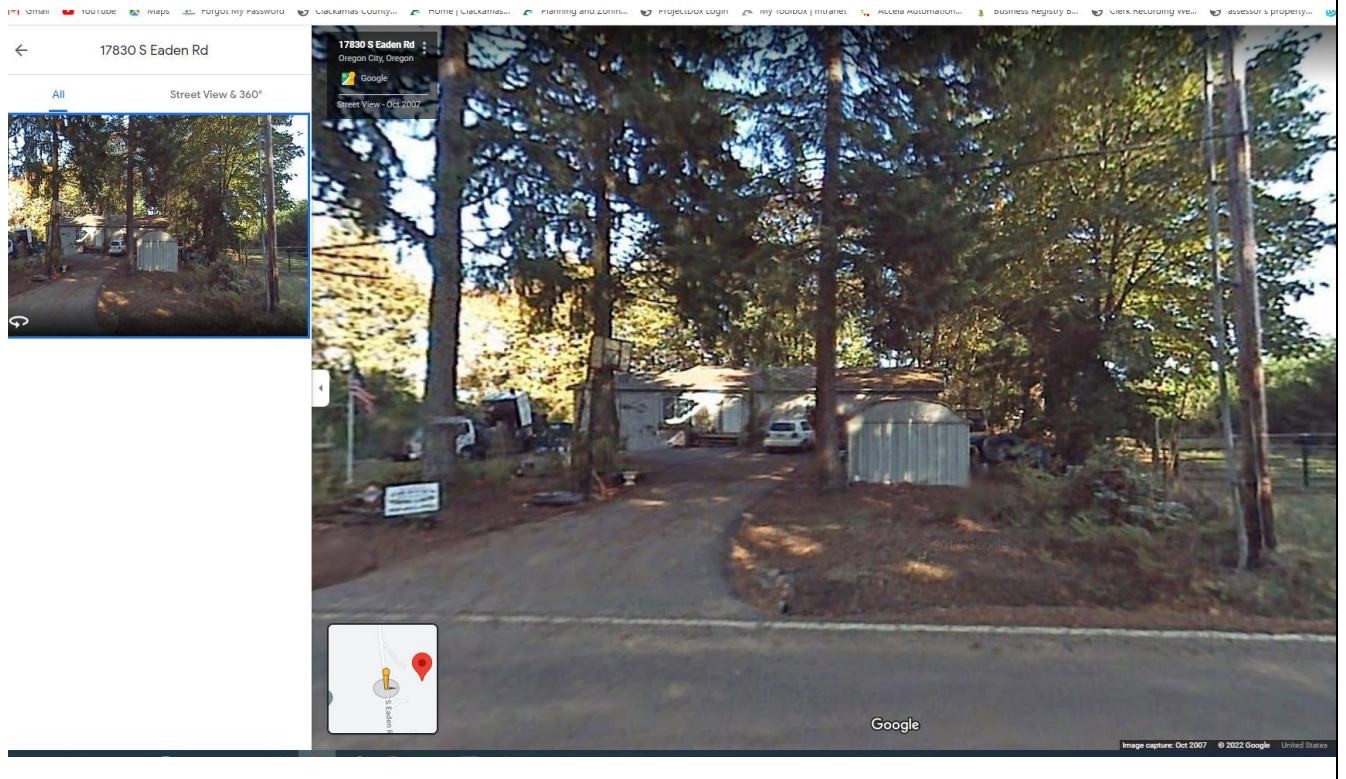
Prior to overgrowth and removal & relocation of MH in 2009/2010



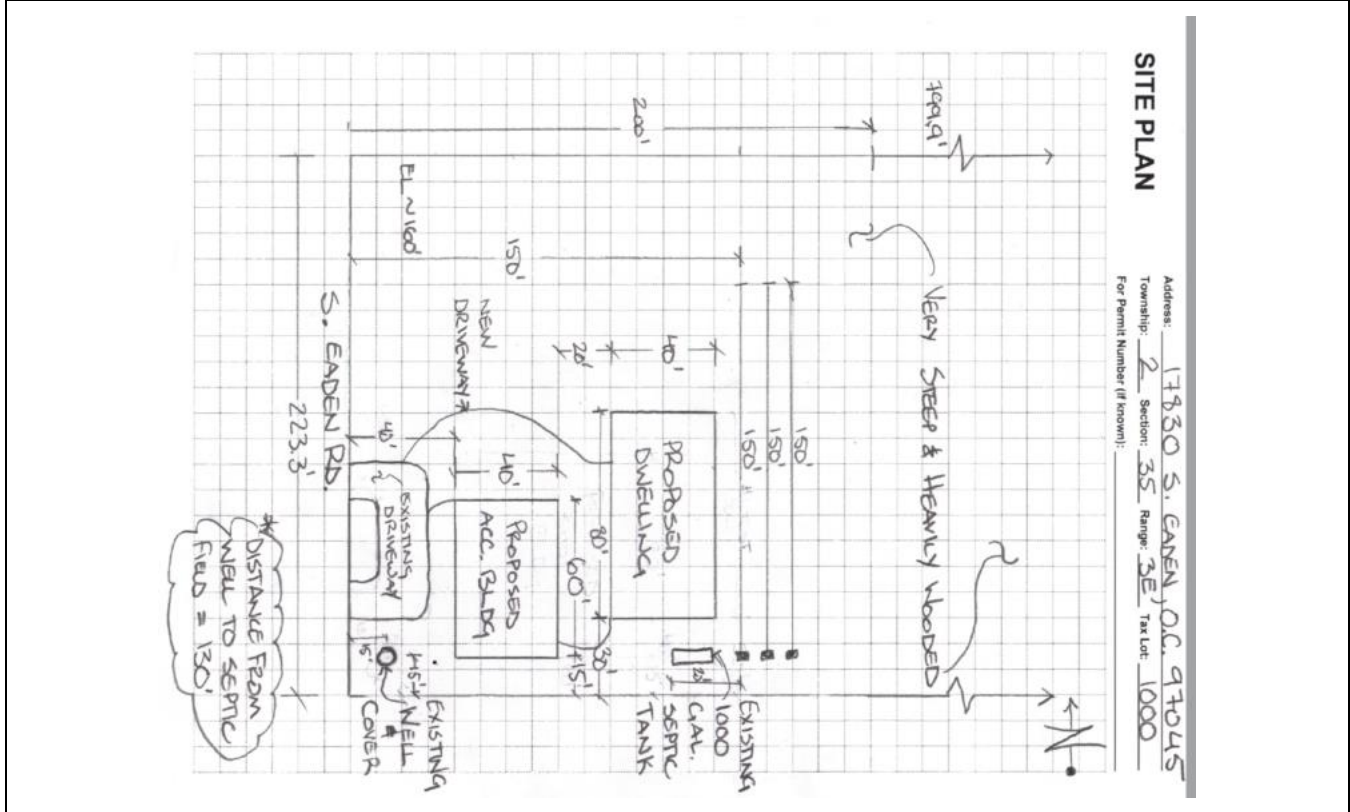
Original MH relocated to new location across S Eaden Rd in 2009/2010



Proof of MH at subject property prior to relocation



Site Plan



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 parentheses.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on 9/8/2022 and additional documents submitted on 9/27/2022. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. **Prior to issuance of a building permit the applicant/property owner shall complete the following:**
 - a. The landowner for the dwelling shall sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. (ZDO 401.05(A)(3))

3. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use within one year from the date the replacement dwelling is certified for occupancy (or in the case of a manufactured home, within one year from the date of final inspection) by the Building Codes Division pursuant to ORS 455.055. Within 30 days of removal, demolition or conversion, the applicant must cause to be recorded in the deed records of the County a statement that the dwelling to be replaced has been removed, demolished or converted and must provide a copy of the recorded statement to the County Planning and Zoning Division. (ZDO 405.05(C)(1)(c)(ii))
4. A replacement dwelling must comply with all applicable siting requirements of the Exclusive Farm Use Zone (setbacks) at the time of construction. (ZDO 401.07)
5. A replacement dwelling under Subsection 401.05(C) must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling. (ZDO 401.05(C)(1)(e))
6. This land use decision for an EFU replacement dwelling permit is not subject to expiration. (Oregon Administrative Rule 660-033-0130(8)(a))

FINDINGS

The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

1. **PROJECT OVERVIEW:** The applicant proposes to replace a lawfully established dwelling and add an accessory structure on the same lot of record and approximately 50 feet east from original footprint location as the pre-existing dwelling. The pre-existing home was placed on the property since 1997 via a land use (Z1426-97 and placement permit of MH085597). The manufactured home seems to be outdated and new owner would like to replace it with a stick built dwelling. The subject lot is a lot of record created by deed # 73-29571 prior to the more restrictive partition provisions of 1975.
2. **ZDO SECTION 401: EXCLUSIVE FARM USE DISTRICT (EFU):**

ZDO 401.05(A)(3): The landowner for the dwelling shall sign and record in the deed records for the County a document binding the land owner, and the landowner's successors in interest prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Finding: *As a condition of approval, the landowner shall be required sign the above mentioned document prior to issuance of building permits for the new replacement home. As conditioned, this criterion is required to be met.*

ZDO 401.05 (C)(1): A lawfully established dwelling may be altered, restored or replaced if:
(a): When an application is submitted, the County finds to its satisfaction, based on substantial evidence, that the dwelling to be altered, restored or replaced has, or formerly had:

- i. Intact exterior walls and roof structure;
- ii. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- iii. Interior wiring for interior lights; and
- iv. A heating system; and

Finding: *The dwelling to be replaced was established on the subject property in 1997, as evidenced by County Tax Assessor appraisal records. The subject lot is a lot of record created by deed 73-29571. The subject lot previously contained a lawfully established dwelling in 1997 by land-use Z1426-97 as confirmed by previous County history files and County Tax Assessor appraisal data. County historical zoning maps confirm that this area of the County was first zoned RA-1 recorded on 7/11/1973, which allowed for a dwelling per acre of land. The dwelling to be replaced was lawfully established in 1997 via a land use Z1426-97.*

*The dwelling to be replaced was removed from the subject property sometime in 2010, as evidenced by historical aerial photography and submitted evidence by the applicant. County Tax Assessor Appraisal records indicate that the dwelling formerly had a kitchen with oven and range, bathroom facilities, electric heating and is served by electrical service. The dwelling to be replaced had intact exterior walls and roof structure, indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary system, interior wiring for lights and a heating system as confirmed by County Tax Assessor appraisal records and photograph. **Based on the photographs submitted by the applicant in 2022, as well as tax assessment records, staff finds this criterion is met.***

ZDO 401.05(C)(1)(b): A dwelling to be replaced meets one of the following conditions:

- i. If the dwelling was removed, destroyed or demolished, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes and any removal, destruction or demolition occurred on or after January 1, 1973;
- ii. If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or
- iii. A dwelling not described in Subsection 401.05(C)(1)(b)(i) or 401.05(C)(1)(b)(ii) was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years; or from the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.

Finding: *The dwelling to be replaced was assessed as a dwelling for the purposes of ad valorem taxation for more than five property tax years from the time when the dwelling was erected upon or affixed to the land in 1997, and became subject to assessment as described in ORS 307.010. The removal of the manufactured home occurred sometime in 2009 or early 2010. The subject tax lot does not have a lien for delinquent ad valorem taxes, as confirmed by the County Tax Assessor property database. **This criterion is met.***

ZDO 401.05(C)(1)(c): For replacement of a lawfully established dwelling:

- i. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use: within one year from the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or, if the dwelling to be replaced is in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, the dwelling to be replaced must be removed within 90 days from the date a replacement permit is issued; and
- ii. The applicant must cause to be recorded in the deed records of the County a statement that the dwelling to be replaced has been removed, demolished or converted.

Finding: *The dwelling to be replaced has been removed from the subject property and the structure has been relocated sometime in late of 2009 or early 2010 to a different lot across the street from the subject property. The condition of approval has been placed to ensure that the applicant will record a deed statement that the dwelling to be replaced has been removed, demolished or converted within one year after the date that the replacement dwelling is certified for occupancy. **As conditioned, this criterion is required to be met.***

ZDO 401.05(C)(1)(d): As a condition of approval, if the dwelling to be replaced is located on a portion of the lot of record that is not zoned EFU, the applicant shall execute and cause to be recorded in the deed records a deed restriction prohibiting the siting of another dwelling on that portion of the lot of record. The restriction imposed is irrevocable unless the planning director, or the director's designee, places a statement of release in the deed records of the County to the effect that the provisions of 2019 Oregon Laws, chapter 440, section 1 and ORS 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

Finding: *The proposed replacement dwelling will be sited same lot as the original preexisting dwelling. The entire subject lot is zoned Exclusive Farm Use. The proposed dwelling will not be located on a portion of the lot not zoned for Exclusive Farm Use, therefore a deed restriction is not necessary. **This criterion is not applicable.***

ZDO 401.05(C)(1)(e): A replacement dwelling under Subsection 401.05(C) must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating

to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

Finding: *The replacement dwelling will be reviewed through the building permit and septic permit process to ensure compliance with building codes, plumbing codes, sanitation codes and other requirements relating to health and safety. A condition of approval has been placed in this decision to ensure compliance with this standard. As conditioned, this criterion is met.*

ZDO 401.05(C)(1)(f): The replacement dwelling must be sited on the same lot or parcel:

- i. Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot of record; and
- ii. If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.

Finding: *The applicant proposes to replace the dwelling on the same lot and in close proximity of the same footprint as the preexisting dwelling. The replacement dwelling is propose to exceed the footprint of the replaced dwelling. The proposed replacement dwelling is clustered near several existing agricultural buildings on the site (located within 600 feet). This criterion is met.*

ZDO 401.05(C)(1)(g): If an applicant is granted a deferred replacement permit, the deferred replacement permit does not expire but, notwithstanding Subsection 401.05(C)(1)(c)(i), the permit becomes void unless the dwelling to be replaced is removed or demolished within three months after the deferred replacement permit is issued; and the deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

Finding: *The dwelling to be replaced is no longer on the premises and has been relocated to a new location. The proposed replacement dwelling is not considered a deferred replacement permit, therefore, this criterion is not applicable.*