



## MULTNOMAH COUNTY OREGON

### LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

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# NOTICE OF DECISION

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This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

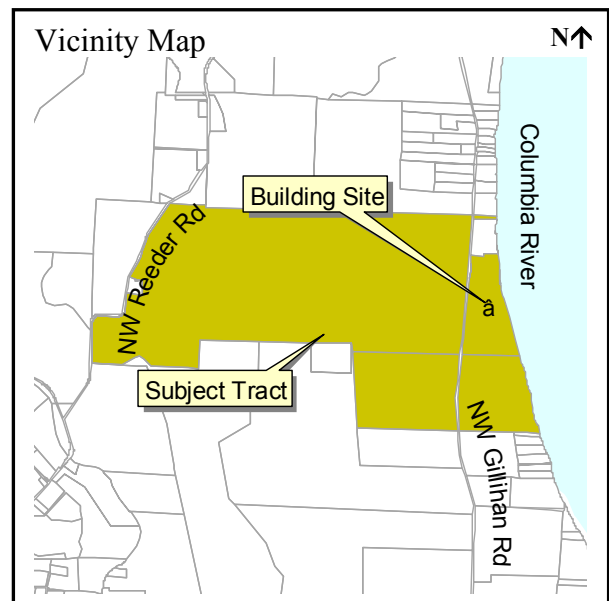
**Case File:** T2-04-028

**Permit:** Accessory Farm Help Dwelling

**Location:** 21400 NW Reeder Road  
TL 1200, Sec 11, T2N, R2W, W.M.  
Tax Account #R97111-0020

**Applicant:** Tom Armstrong  
Winterbrook Planning  
310 SW 4<sup>th</sup> Ave. Suite 1100  
Portland, OR 97204

**Owner:** Larry Petersen  
Jacobson Family Properties  
1130 SW Missouri, Suite 400  
Phoenix, AZ 85914



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**Summary:** One additional farm help dwelling to the main farm compound.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective Tuesday, July 20, 2004, at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, July 6, 2004

**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's 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 Don Kienholz, Staff Planner at 503-988-3043.

**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 (LUBA) 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 Tuesday, July 20, 2004 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 34.0005(L)(13); MCC 34.2625(E); MCC 34.2660 and MCC 34.2675

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at [http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use).

### **Scope of Approval**

1. 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.
2. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

### **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.

1. The proposed dwelling is approved as an Accessory Farm Help Dwelling, and when occupied, may only be occupied by a person, or persons, who will be principally engaged in the farm use of the land [MCC 34.2625(E)(1)].

**FINDINGS:** Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. Staff comments and analysis are identified as **Staff:** and follow Applicant comments identified as **Applicant:** to the applicable criteria. Staff comments include a conclusionary statement in *italic*.

1. **Project Description**

**Applicant:**

**Project Description**

The applicant requests to build a new, stick-built, accessory farm help dwelling on the same parcel (Parcel I) as the main compound with the principal dwelling. The applicant proposes to re-organize the occupants in the dwellings so that the Jacobson family will occupy the new accessory dwelling and an employee of Columbia Farms will move into the manufactured home. The result will be one additional farm help dwelling to provide additional housing for a farm worker employed by Columbia Farms, Inc.

<b>Dwelling (Year Built)</b>	<b>Current Occupants</b>	<b>Proposed Occupants</b>
Main House (1943)	Dave Kunkel, owner of Columbia Farms	Same
Small House (1943)	Office and Seasonal Worker Housing	Same
Manufactured Dwelling (the Embassy) (1980)	Jacobson family	Columbia Farms employee
Reeder Road Manufactured Dwelling (2002)	Berry operation manager (Columbia Farms employee)	Same
Proposed Dwelling		Jacobson family

**Staff:** The applicant is requesting to add a stick-built single-family dwelling to the property as a farm help dwelling. The property owners would move into the new dwelling and assume a more prominent role in operating the farming operation on the 875-acre farm. The applicant is proposing to shift the occupants in the existing dwellings on the property around so that the owners occupy the new home. The proposed dwelling would be clustered with the other existing dwellings on the east side of NW Gillihan Road near the Columbia River and on poorer quality soils.

2. **Site Characteristics**

**Applicant:**

**Site Characteristics**

The tract is located on Sauvie Island and runs from the Columbia River on the east, across Gillihan Road to Reeder Road on the west (Exhibit 1). In general, the surrounding area consists of large farm parcels. To the immediate north of the main compound area is a small parcel (5.58 acres) with a single-family dwelling.

The subject tract, as defined under MCC 34.2610(J), consists of three contiguous parcels that total 875.52 acres (Exhibit 2).

Parcel	Tax Parcel No.	Size
Parcel I	2N 1W, TL 1200	529.87 acres
Parcel II	2N 1W, TL 1300	183.57 acres
Parcel III	2N 1W 9, TL 100	162.08 acres

The subject tract is generally flat and is used to grow many types of crops. About 85 acres of the farm is planted in berries, primarily on Parcel I. The current crop rotation also includes: grass seed (250 ac.), winter wheat (150 ac.), peas (150 ac.), clover (50 ac.), sweet corn (40 ac.), spring wheat (25 ac.).

The main farm compound is located between Gillihan Road and the Sauvie Island Dike. An additional accessory farm dwelling is located on Reeder Road (Parcel III). The new accessory dwelling is proposed to be generally located on the north side of the main compound, near the Sauvie Island Dike (Exhibit 3). The new dwelling is proposed on land that currently lies fallow because of poor soils due to the presence of sandy dredge spoils.

**Staff:** The subject property is zoned Exclusive Farm Use and is part of an 875-acre tract used for farming purposes. The property stretches from the Columbia River on the east to NW Reeder Road on the west and includes four dwellings used in the farm operation. The building site that the applicant has chosen to locate the dwelling is between the Columbia River and NW Gillihan Road. This area is also where three of the existing farm help dwellings are located as well several large barns and storage containers for produce grown on the property. The building site and majority of the tract is very level and flat and located on the inside of the island dike.

### 3. Public Comment

#### **MCC 37.0530(B) Type II Decisions**

**(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject Tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Directors decision shall become final at the close of business on the 14<sup>th</sup> day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is signed.**

**Staff:** An Opportunity to Comment was sent out to all property owners within 750-feet of the property lines on May 11, 2004. One anonymous comment was received.

The letter focused on the criteria of MCC 34.2625(E)(1) and who the term “Principally engaged” refers to. The author of the letter states that the owner of the property does not live on the farm or in the state. Secondly, the author states that the Kunkels reside on the property in one of the homes on the property. Thirdly, the author points out that the owners of the property, the Jacobson’s “have very little to do with their land.”

The applicant notes that the Jacobson’s want to occupy the new dwelling. Dave Kunkle also lives on the property and is owner of Columbia Farms, which leases the property and operates the berry farming activities. He is principally engaged in the operation of the day to day farming activities.

The concept of “Principally Engaged” in the operation of the farm is an extremely important one for Exclusive Farm Use zoned property. One of the purposes of the accessory farm help dwelling provisions is to provide opportunities for large farm owners to have the help they need manage the farm actually locate on the farm itself. As part of this standard, those who occupy the housing on a particular site must be “Principally Engaged” in the operation of the farm. This does not require “exclusively engaged” as the letter from the anonymous letter author indicates. The Multnomah County Code does not provide a definition for “Principally Engaged,” but *www.Dictionary.com* gives the following definition for “Principal:”

*“A main participant in a situation.” And “A person having a leading or starring role.”*

From this definition, it is clear that a person does not need to be exclusively engaged in the farm activity, rather, they must be a main participant. The definition does allow for individuals to be partially engaged in other activities, whatever those activities may be. The applicant discusses the roles of the occupants of each dwelling unit on the property in their narrative and staff addresses their roles in Finding #6.

*Criterion met.*

#### 4. **Proof of Ownership**

##### **37.0550 Initiation Of Action.**

**Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.**

**Applicant:** The current deed of ownership demonstrating the subject parcel is owned by the Jacobson Family Properties, Limited Partnership (Exhibit 4). This application has been authorized by Lawrence J. Petersen, Treasurer of Jaco, Inc., the corporate general partner of Jacobson Family Properties, LP by his signature on the standard application form

**Staff:** Multnomah County Assessment and Taxation records (Exhibit 1) show Jacobson Family Properties as the owner of property known as 21400 NW Reeder Road. Larry Peterson, Treasurer for Jacobson Family Properties, LP of Phoenix, Arizona, has signed the General Application form. Tom Armstrong has signed under the “Applicant’s” section of the General Application form and is authorized to act on behalf of Jacobson Family Properties. Note that the applicants’ exhibits are located within the case file as part of their submittal unless otherwise noted by staff an included as a staff exhibit.

*Criterion met.*

5. **Use Is Allowed Under The Exclusive Farm Use Zoning District**

**MCC 34.2615      Uses**

**No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC 34.2620 through 34.2630 when found to comply with MCC 34.2660 through 34.2690.**

**Applicant:** Accessory farm dwellings are a review use listed in MCC 34.2625(E). MCC 34.2660 through 34.2690 standards are addressed below.

\* \* \*

**MCC 34.2625      Review Uses**

**(E) An accessory farm help dwelling, including a mobile or modular home customarily provided in conjunction with farm use if:**

**Staff:** An accessory farm help dwelling as requested by the applicant is an allowed use subject to a Type II land use review.

*Criterion met.*

6. **The Standards For A Farm Help Dwelling Are Met**

**(E) An accessory farm help dwelling, including a mobile or modular home customarily provided in conjunction with farm use if:**

- A. **(1) The accessory farm help dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose assistance in the management of the farm use is or will be required by the farm operator; and**

**Applicant:** The partners and employees of Jacobson Family Properties, LP currently occupy one of the existing dwellings (the Embassy) in the main farm compound in connection with their management of the farm and berry growing operations. The family is a joint venture partner with Columbia Farms in the berry operations. Under the terms of the joint venture partnership, the Jacobson family is responsible for 40% of the costs of the berry operation (equipment, plantings, labor, marketing) and participates in the management decisions. In addition, the Jacobson family leases the balance of the farm tract to Columbia Farms on a standard sharecropping basis, but retains a key role in management decisions regarding crop rotation and farm improvements.

As part of this land use approval, the applicant proposes to re-organize the occupants in the dwellings on the subject tract so that the Jacobson family will occupy the new accessory dwelling and an employee of Columbia Farms will move into the manufactured home. The proposed occupants are as follows:

<b>Dwelling (Year Built)</b>	<b>Current Occupants</b>	<b>Proposed Occupants</b>
Main House (1943)	Dave Kunkel, owner of Columbia Farms	Same
Small House (1943)	Office and Seasonal Worker Housing	Same
Manufactured Dwelling (the Embassy) (1980)	Jacobson family	Columbia Farms employee
Reeder Road Manufactured Dwelling (2002)	Berry operation manager (Columbia Farms employee)	Same
Proposed Dwelling		Jacobson family

In reviewing the conditions of approval for the accessory farm help dwelling on Reeder Road (T2-02-012), we find Condition of Approval #1 would be appropriate and propose the following condition of approval:

This dwelling is approved as an accessory farm help dwelling, and as such may only be occupied by a person or persons who will be principally engaged in the farm use of the land and whose assistance in the management of the farm use is required by the farm operator.

Applicant narrative submitted June 16, 2004

The primary occupants of the “Embassy” (a 20-year old mobile home located in the main compound) are Amy Jo Gottfurcht (The Jacobson’s daughter and president of the family business), and Larry Petersen, treasurer and Business Manager. Over the past few years, they have been on the farm 6-8 times per year, especially in late winter or early spring (prior to planting), during the berry harvest, and in the fall during the harvest. While at the farm, Mrs. Gottfurcht inspects farm operations and improvements, and the productivity of the farm with Dave Kunkle and Dale VanderZanden of Columbia Farms, Inc. Mr. Petersen reviews the operations, discusses future expenditures and improvements, and consults on tax and financial matters. Further, Mr. VanderZanden, co-founder and current president of Columbia Farms, Inc. is planning to retire by the end of the year. It is anticipated that his departure will require more involvement by the Jacobson family in farm operations.

The new dwelling is needed as replacement housing because the Embassy is a 20+ year old mobile home and the family would like a larger and nicer place to stay when they are on the farm. However, rather than replacing the Embassy, it is an opportunity to provide additional needed housing for some of farm employees. Columbia Farms currently employs 6 full time workers and 15 seasonal workers. The berry manager occupies the house on Reeder Road. The Embassy will be occupied by a full time employee of Columbia Farms.

We acknowledge that this is a unique situation, but it is still consistent with intent and standards for farm dwellings. The standard requires the occupant to be principally engaged in the farm use assisting the farm operator. The Jacobson family will be the sole occupant of the new dwelling. They will occupy the home when they are required to be on-site to manage their interests in the berry operation and the farm. In this case, the assistance they provide is not farm labor, per se, but it is management consultation and oversight of the important strategic decisions required in running this 875+ acre farm that has been in the Jacobson family for 40 years.

**Staff:** This criterion originates directly from an Oregon Administrative Rule (OAR) and is implanted through this section of our zoning code. The corresponding OAR is OAR 660-033-0130. In 2003, the Legislature changed a portion of the rule to allow stick built dwellings for accessory farm help dwellings if the dwelling is to be located on the same lot or parcel as the primary farm dwelling. Additionally, the OAR is very specific as to who is authorized to occupy the dwelling. Below, staff address each issue for the purposes of this application.

The farm tract involved with the proposal is roughly 875-acres in size. The farm produces a number of different crops including several kinds of berries, cucumbers, etc. The products are labor intensive and require a large number of employees for the harvesting, planting and maintaining of the farm. Because of the large number of employees, types of products, size of the farm and hours of operation, several managers are required for the business. Below, the applicant discusses what roles the Jacobson's participate in for the farm business. When the dwelling is occupied, the residents in the dwelling will be actively engaged in those defined roles.

Multnomah County implements state administrative rules with regards to Accessory Farm Help Dwellings (OAR 660-033-0130). These rules require that the residents of the dwelling be Principally Engaged in the management of the farm. Nothing in these rules defines the term Principally Engaged and we are not aware of any case law on the term or the how long an occupant needs to occupy the dwelling. However, the OAR does refer to the dwelling being allowed on a "seasonal" basis.

As such, staff must read the criterion literally. Again, the Multnomah County criterion states:

*"The accessory farm help dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose assistance in the management of the farm use is or will be required by the farm operator."*

The applicant has stated that the Jacobson's share in 40% of the expenses for running the farm, participate in top management decisions, help determine crops and crop rotations and are involved in the marketing, labor and equipment decisions when on the property. Accumulatively, this meets the definition of "principally engaged" for the County's purposes of this section. A 40% stake in a business is a major partner while being involved in management, crop, labor and equipment decisions has a significant impact on the business. These operations are essential to the running of any farm and are required to run the subject farm, meeting the requirement of *required assistance by the farm operator for the management of the farm*. For these reasons, the Jacobson's are "principally engaged" in the operation of the farm as described by the applicant.



Staff must also look at the occupation of the dwelling for this criterion because the code states the dwelling "...will be occupied by a person or persons who will be principally engaged in the farm use of the land..." Therefore, staff concurs with the applicant's proposal for a condition of approval and finds that *when* the dwelling is occupied, a person or persons occupying the dwelling must be principally engaged in the running of the farm. As staff determined earlier, the management decisions performed by the employees and family members of the Jacobson Family Properties are considered to be actions consistent with the management of the farm. So when family members and employees occupy the proposed dwelling, no matter what the duration of the stay, one or more must be principally engaged in the farm use of the tract. This shall be a condition of approval for the decision.

*Criterion met.*

**B. (2) The accessory help dwelling shall be located:**

**(a) On the same lot or parcel as the dwelling of the principal farm dwelling; or**

**Applicant:** The new accessory dwelling is proposed to be generally located on the north side of the main compound, near the Sauvie Island Dike (Exhibit 3). The proposed site is on land that currently lies fallow because of poor soils due to the presence of sandy dredge spoils.

**Staff:** Multnomah County Assessment and Taxation shows that the property the dwelling is proposed to be located on contains the 1942 principal farm dwelling as well. This is labeled "Parcel I" on the applicants 2002 air photo (Exhibit 2). The property is known as 2 North, 1 West, Section 11, Tax Lot 1200. The proposed dwelling is to be a part of the cluster of development the owners have established for their workers and managers on the property. Therefore, the proposed dwelling would be located on the same property as the existing principal farm dwelling.

*Criterion met.*

**C. (3) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling; and**

**Applicant:** The subject tract is composed of three parcels that are all in the EFU zone. The tract includes four (4) existing dwellings, which are all occupied by persons working on the subject farm. Therefore, there are no dwellings on the tract that are vacant or occupied by persons not working on the subject farm.

**Staff:** Staff confirmed the number of dwellings on an air photo and by site visit and concurs with the applicant on the number of dwellings on the tract. Near the area the applicant calls the "Main Compound" (Exhibit 3) on the easternmost portion of the property, there are currently three dwellings. As labeled in their narrative and on their air photo (Exhibit 3), the three homes on the eastern portion are occupied as follows:

Dwelling (Year Built)	Current Occupants
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Main House (1943)	Dave Kunkel, owner of Columbia Farms
Small House (1943)	Office and Seasonal Worker Housing
Manufactured Dwelling (the Embassy) (1980)	Jacobson family

Dave Kunkle owns and operates Columbia Farms, who lease the tract for farming, lives in the Main House. The Small House is occupied by employees of Columbia Farms who help run and operate the farm. Members of the Jacobson family occupy the Embassy and help oversee the farming operation and are part owners of the company as described in Finding #6(A).

A forth dwelling is located on the westernmost portion of the property off of NW Reeder Road. It is a manufactured dwelling occupied by farm employees and serves as a dormitory structure. It was approved by the County as case #T2-02-012.

As such, all dwellings on the property are occupied by employees of the farm. There are no vacant dwellings on the tract that could be reasonable used as a farm help dwelling.

*Criterion met.*

**D. (4) The principal farm dwelling to which the proposed dwelling would be accessory,**

**(b) On land identified as high-value farmland, the principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.**

**The approval authority shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of MCC 34.2625 (D), a parcel may be created consistent with the minimum parcel size requirements in MCC 34.2660.**

**Applicant:** Farm income documents show that Jacobson Family Properties exceed the \$80,000 gross annual farm income test requirements (Exhibit 5). Jacobson Family Properties is a joint venture partner with Columbia Farms in the berry operation. Under the terms of the joint venture partnership, the Jacobson family is responsible for 40% of the costs of the berry operation (equipment, plantings, labor, marketing) and shares in the management decisions with Columbia Farms.

The balance of the farm is leased on a sharecropping basis to Columbia Farms. The Jacobson family is responsible for improvements to the farm and is involved in decisions regarding crop rotation.

**Staff:** The tract the proposed dwelling would be located on is in farm deferral according to Multnomah County Assessment and Taxation and is in farm production as seen during a site visit and confirmed by air photos. The applicant has submitted income statements for the properties that show the farm produces at least \$80,000 in gross annual income from farming practices dating back to 1999. This meets the requirement of MCC 34.2625(E)(4).

*Criterion met.*

7. **The Proposed Dwelling Meets The Dimensional Standards**

**MCC 34.2660      Dimensional Requirements**

- A. **(A) Except as provided in MCC 34.2675, the minimum lot size for new parcels shall be 80 acres in the EFU district.**

**Staff:** No new parcels are being created.

*Criterion not applicable.*

- B. **(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.**

**Staff:** The tract is over 875-acres in size.

*Criterion met.*

- C. **(C) Minimum Yard Dimensions - Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**Applicant:** As shown on the site plan, the proposed site for the new accessory farm dwelling will be located north of the main compound. The dwelling will be set back at least 100 feet from the north property line and at least 5 feet from the toe of the dike to comply with the drainage district setback standards. This location can comply with all minimum yard requirements, which will be determined as part of the building permit review process. There is no proposed design for the new accessory farm help dwelling, so compliance with this requirement will be determined as part of the building permit review process. The subject parcel has 1,200 feet of frontage along NW Gillihan Road

**Staff:** The site of the proposed dwelling is over 50-feet from any property line as shown on the submitted air photo (Exhibit 3). The dwelling will not be permitted to be over 35-feet in height when reviewed by Land Use for building permit sign-off. Staff concurs there is over 50-feet of road frontage.

*Criteria met.*

- D. **(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by Ordinance.**

**Applicant:** NW Gillihan Road is a two-lane rural road. The minimum front setback to the principal farm dwelling is 367 feet, which exceeds the 30 foot minimum front setback and leaves sufficient space if additional right-of-way width is needed.

**Staff:** The proposed dwelling is well over 100-feet from the front property line and therefore the yard does not need to be increased.

*Criterion met.*

- E. **(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

**Applicant:** One large barn and the silos exceed the height requirement, but are located more than 400 feet from the property line (Exhibit 3).

**Staff:** The proposal is for a dwelling and not for any structure listed under this requirement.

*Criterion not applicable.*

8. **The Subject Lot Is A Lot Of Record**

**MCC 34.0005(L)(12)            Lot of Record**

**Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. 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**
- 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or**

**4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**

**5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See *Date of Creation and Existence* for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU district.)**

**MCC 34.2675      Lot of Record**

**(A) In addition to the Lot of Record definition standards in MCC 34.0005, 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.**

**2. An exception to the 19 acre minimum lot size requirement shall occur 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.**

**Applicant:** The subject parcel is part of a larger three-parcel tract that is 875.52 acres. As described in the attached memo (Exhibit 6), the larger parent parcel was part of the holdings of a partnership between L.C. Jacobson, John Beall, and A.F. Winter. On April 19, 1978, the partnership was dissolved and the property holdings were distributed through a series of deed conveyances, which resulted in L.C. Jacobson and Margaret Jacobson, his wife, becoming owners of the subject parcel and subject tract. In 1997, these holdings were transferred to the Jacobson Family Properties, LP, the current owner of record (Exhibit 2). According to MCC 34.2610(H), the definition of “same ownership” refers to greater than possessory interests held by the same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity, separately, in tenancy in common or by other form of title. Therefore, the subject parcel and tract have been held under the same ownership since April 19, 1978.

At the pre-filing meeting, County staff raised an issue with the Lot of Record status in relation to an 11.78 acre parcel (Beall/Egger parcel – 2N1W02c TL 500) that is across NW Gillihan Road. Both the subject parcel and the Beall/Egger parcel were part of a larger parent parcel. As part of the Lot of Record determination for the Beall/Egger parcel (T2-03-056), a deed was submitted

dated June 5, 1978 that describes the 11.78-acre property as part of the larger parent parcel. This deed is labeled as a “Corrective Deed” and replaced the original deed, which omitted a page of the legal description. This deed does not impact the April 19, 1978 conveyance from Jacobson to Beall that consolidated Beall’s ownership in the 11.78 acres.

On October 6, 1977, the County changed the zoning on the subject parcel from Suburban Residential (SR) to Exclusive Farm Use –38 (EFU-38), which had a minimum lot size of 38-acres. Therefore, when the partnership was dissolved on April 19, 1978, the subject parcel at 530-acres complied with zoning requirements. However, the Beall/Egger parcel at 11.78 acres would have been in violation of the zoning requirements.

On October 19, 1978, the County adopted land division regulations for three or fewer lots. After that date, any land division would have been required to go through County review to ensure compliance with the code. The deed conveyance that created the subject parcel and the Beall/Egger parcel took place six months prior, on April 19, 1978. Therefore, the division was consistent with the rules that were in effect at the time.

Therefore, subject parcel was created consistent with the zoning and land division requirements in effect on April 19, 1978, and the subject tract is a legal Lot of Record.

**Staff:** Staff concurs. Deeds submitted by the applicant match the description by the applicant and follow the submitted flow chart (Exhibit 4). The property when created and placed into its current configuration on April 19, 1978 meet all applicable zoning requirements. At that time, the property was zoned Exclusive Farm Use-38 (EFU-38). The requirements the property needed to have met were: 76-acre minimum lot size on Sauvie Island, had direct access onto a street, and had over 50-feet of road frontage. The lot exceeded all minimum standards by being over 500-acres in size, and having over 1000-feet of road frontage.

In April of 1978, the County did not have a land division ordinance that pertained to partitions of three or fewer lots in a calendar year. Therefore, the division did not need to be reviewed by the County and met the land division requirements in place at the time the property was created.

The property is over 19-acres in size and was not adjacent to properties small than 19-acres in size in the same ownership on February 20, 1990. Therefore, the property is a stand-alone Lot of Record.

*Criterion met.*

9. **The Proposed Dwelling Has Access To A Street**

**MCC 34.2690      Access**

**Any lot in this district shall abut a street, or shall have other access determined by the Hearings Officer to be safe and convenient for pedestrians and for passenger and emergency vehicles**

**Applicant:** The subject parcel abuts NW Gillihan Road and has an existing driveway that serves the main compound (Exhibit 3). This driveway will be extended along the toe of the dike to serve the new dwelling.

**Staff:** The property and area the proposed dwelling is proposed to be located in have direct access onto NW Gillihan Road.

*Criterion met.*

### **Conclusion**

Based upon the findings contained herein, the applicant has carried the burden necessary to demonstrate that, with conditions, the proposal for a Farm Help Dwelling have been met.

### **Exhibits**

1. Multnomah County Assessment and Taxation Printout
2. Applicants' Submitted 2002 Large Tract Air Photo
3. Applicants' "Main Compound" Air Photo
4. Deed History Flow Chart and Narrative

<b>Notice to Mortgagee, Lien Holder, Vendor, or Seller:</b>
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ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.
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