



MULTNOMAH COUNTY OREGON
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
http://www.co.multnomah.or.us/dbcs/LUT/land_use

NOTICE OF DECISION

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

Case File: T2-04-038

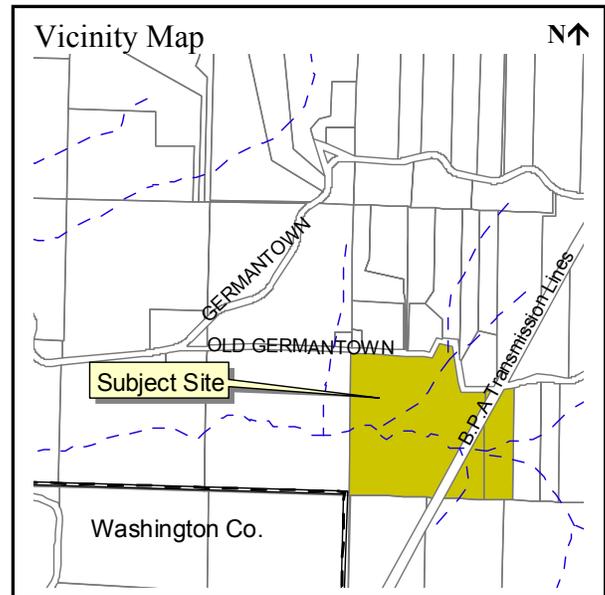
Permit: Significant Environmental Concern

Location: 14400 NW Old Germantown Rd
TL 2400 & 2500, Sec 9C, T 1N, R1W,
W.M.
Tax Account #R02670-1700 & R02670-
2500

Zoning: Exclusive Farm Use (EFU), Significant
Environmental Concern for wildlife
habitat (SEC-h) and streams (SEC-s)

Applicant: David Green
29100 SW Burkhalser Rd
Hillsboro, OR 97123

Owner: Donald Keeler &
Elizabeth Oaks
14400 NW Old Germantown Rd
Portland, OR 97231



Summary: Applicant is proposing to permit after the fact a 60 ft by 120 ft pole barn for a riding arena and barn for personal use only of the property owners in the Exclusive Farm Use zone. A Significant Environmental Concern Permit for Wildlife Habitat is required to permit this accessory building.

Decision: Approved with conditions.

Unless appealed, this decision is effective Friday, September 3, 2004, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Friday, August 20, 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 Lisa Estrin, 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 Friday, September 3, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC):

Significant

Environmental Concern: MCC 33.4520 Application for SEC Permit, MCC 33.4525 Applicable Approval Criteria & MCC 33.4570 Criteria for Approval of SEC-H permit – Wildlife Habitat

Exclusive Farm Use: MCC 33.2620 Allowed Uses, MCC 33.2660 Dimensional Requirements & MCC 33.2675 Lot of Record

General Provisions: MCC 33.0005(L)(13) & Chapter 37 Administration & Procedure

Comprehensive Plan Policies: Policy 14 Development Limitations, Policy 37 Facilities & Policy 38 Utilities

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.

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. **Within 30 days of this decision becoming final, the property owners or their representative shall record the Notice of Decision (pages 1 through 4) and the site plans (Exhibit A.5 & A.6). The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and the proof shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. Failure to record the Notice of Decision within the 30 day period shall void the decision.** [MCC 37.0670]
2. Prior to sign-off for the building plan check, the property owner or their representative shall hire a licensed surveyor to measure between the front property line of the subject property and the front eave of the pole barn/riding arena. If the pole barn/riding arena does not meet the minimum setback of 30 feet from the front property line, the property owner shall immediately take corrective measures to bring the building into compliance with the dimensional requirements of MCC 33.2260(C). [MCC 37.0560 & MCC 33.2260(C)]
3. Within 3 months of this decision becoming final, the property owner or their representative shall obtain consent on the County's Fire District Review Form from Tualatin Valley Fire & Rescue that there is adequate water pressure and flow for fire fighting purposes for the existing pole barn structure and submit that information to the Land Use Planning Section. The property owner or their representative shall demonstrate that the requirements contained under Policy 38 can be met within this 3 month time period or remove the building within 120 days of this decision becoming final. [Policy 38 and MCC 37.0560]
4. Within 6 months of this decision, the property owners or their representative shall obtain building permits from the City of Portland to legalize the existing pole barn/riding arena on the subject site. Failure to obtain the necessary building permits within this time period will void this decision. [MCC 37.0560]
5. **The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:**

Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine
<i>Cirsium arvense</i>	Canada Thistle
<i>Cirsium vulgare</i>	Common Thistle
<i>Clematis ligusticifolia</i>	Western Clematis
<i>Clematis vitalba</i>	Traveler's Joy
<i>Conium maculatum</i>	Poison hemlock
<i>Convolvulus arvensis</i>	Field Morning-glory

Scientific Name	Common Name
<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convolvulus</i>	Climbing Binaweed

Scientific Name	Common Name
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory
<i>Convolvulus seppium</i>	Lady's nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann's Lace
<i>Elodea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail
<i>Equisetum telemateia</i>	Giant Horsetail
<i>Erodium cicutarium</i>	Crane's Bill
<i>Geranium roberianum</i>	Robert Geranium
<i>Hedera helix</i>	English Ivy
<i>Hypericum perforatum</i>	St. John's Wort
<i>Ilex aquafolium</i>	English Holly
<i>Laburnum watereri</i>	Golden Chain Tree
<i>Lemna minor</i>	Duckweed, Water Lentil

Scientific Name	Common Name
<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Rhus diversiloba</i>	Poison Oak
<i>Rubus discolor</i>	Himalayan Blackberry
<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Solanum dulcamara</i>	Blue Bindweed
<i>Solanum nigrum</i>	Garden Nightshade
<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<i>Urtica dioica</i>	Stinging Nettle
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinosum</i>	Spiny Cocklebur
<i>various genera</i>	Bamboo sp.

[MCC 33.4570(B)(7)]

Building Permit Note

Note: Once this decision is final and all applicable conditions have been met, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, Lisa Estrin, at (503) 988-3043, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building area are needed for building permits signed off.

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

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. The applicants statements are identified below as ‘**Applicant:**’. Staff comments and analysis are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

Description of Project

Applicant: 60 x 120 Pole Barn/Riding Arena. The purpose of this barn is purely personal – there will be no business use. It is a riding arena/barn for the owners only.

Staff: The subject pole barn/riding arena was constructed on the subject site approximately 6 months ago as indicated by neighbor’s comments received during the Opportunity to Comment. Though the building has been constructed, the applicant will need to demonstrate compliance with the applicable criteria in order to keep the structure in its current location. The structure is 60 ft wide by 120 feet and will need to be determined to be an accessory building to be permitted. The subject site is currently zoned Exclusive Farm Use with overlays of Significant Environmental Concern for wildlife habitat (SEC-h) and streams (SEC-s). The building is not located with the SEC-s overlay so it is not applicable to this application. The primary use of the property is a Single Family Dwelling. Approximately 27 acres is currently used for the growing of trees (forest practice) and those acres are within the County’s Forest Deferral tax program. The remaining 8.5+ acres is in the residential use of the property (dwelling, barn, riding area, landscaping, riding trails, etc).

1.00 ***Administration & Procedures***

1.01 **Type II Case Procedure**

MCC 37.0530(B): ...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...

Staff: The application was submitted April 30, 2003 and was deemed complete as of June 10, 2004. An “Opportunity to Comment” notice was mailed on June 18, 2004 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. Two neighbors provided written comments. Their concerns involved the construction of the riding arena without permits, light pollution, dust abatement, commercial use of the structure exacerbating the dust and light condition, loss of animal habitat, conversion of farm land to a non-farm use.

While the construction of the pole barn/riding arena occurred prior to obtaining permits, the existence of the building is only significant when writing conditions of approval and establishing shorter timelines than would otherwise be set. The concern expressed by the neighbor regarding the light pollution and dust unfortunately could not be addressed through applicable land use criteria, but all parties should be aware that the use of a property for the hobby of riding horses is not treated the same as a “farm” use and nuisance laws may apply. Staff recommends that all concerned parties get together and work out adequate resolution to the light pollution and dust problems. If the property was a “farm” as defined pursuant to ORS 215.203(2)(a), dust concerns would be directed to the Department of Agriculture. The use of the property as a “farm” is an allowed use.

1.02 **Proof of Ownership**

MCC 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.

Staff: The proposed project is located on Tax Lots 2400 & 2500, Section 09C, Township: 1 North, Range: 1 West. Assessment & Taxation records show that the land is owned by Donald Keeler & Elizabeth Oakes. The property owners have granted approval for David Green to make application for the necessary permits to permit the riding arena on the subject property (Exhibit A.1). *This criterion has been met.*

1.03 **MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.**

Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

Staff: The proposed application under review is to correct the construction of a pole barn/riding arena without obtaining the necessary permits. Once the application is approved and all necessary conditions and permits are obtained, the building will be in compliance with Multnomah County Codes. Staff is not aware of any other violations on the site, but this application only permits the pole barn/riding arena. Timelines, which are not usually found in land use decisions for a new building, have been included with this decision to ensure that the property owners correct the situation in a timely manner.

2.00 ***General Provisions***

2.01 **MCC 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.

(A)(1) Accessory Building – A subordinate building, the use of which is clearly

incidental to that of the main building on the same lot.

Staff: A farm use structure (barn, pole building, and riding arena) that does not exceed the ground floor area of the dwelling is considered an accessory building pursuant to Land Use Planning's Administrative Guideline 13 (Exhibit B.5). The existing ground-floor footage of the dwelling on the site is 2,976 square feet. The proposed riding arena is 7,200 square feet in size. So, it is not possible to determine just by size and use that the riding arena is subordinate. We then need to look at the use of the building. The existing structure is to be used as a riding arena. The horses are boarded within an existing barn on the site. The single family dwelling is the primary use. People live in this structure and occupy it on a nearly daily basis. One would not usually find a riding arena alone on a site unless it was subordinate to an existing use. In this case, the riding arena will be used by the owners to ride their horses. Their horse riding is a hobby and is ancillary to their enjoyment of the use of the single family dwelling. Since, the riding arena allows for the property owners to enjoy horse riding on their property during sunny or inclement weather and would not be needed if their hobby is discontinued, it appears that the proposed riding arena is an accessory building and is subordinate in use to the single family dwelling on the lot. *This criterion has been met.*

2.02

(L)(13) 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 and CFU districts.)**

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

Staff: The subject tract of land is composed of Lots 17 through Lot 25 of Andrews Acres Tract (Exhibit A.9, A.13, A.14 & A.15). The Andrews Acres Tract was recorded in September, 1911 prior to the adoption of zoning for the area in 1958. The total land area is 35.53 acres in size and all lots combined qualify as a single Lot of Record. Subsection (c) above does not apply as the property is zoned Exclusive Farm Use. *This criterion has been met.*

3.00 ***Exclusive Farm Use Criteria***

3.01 **MCC 33.2620 Allowed Uses**

(P) Structures such as garages, carports, studios, pergolas, private workshops, barns, loafing sheds, storage buildings, greenhouses or similar structures, whether attached or detached, when in accordance with the yard requirements of this district;

Applicant: The purpose of this barn is purely personal – there will be no business use. It is a riding arena/barn for the owners only.

Staff: The proposed pole barn/riding arena is a similar structure to a barn. The structure will meet the dimensional standards of this district. See additional findings for yard requirements below. *This criterion has been met.*

3.02 **MCC 33.2660 DIMENSIONAL REQUIREMENTS**

(A) Except as provided in MCC 33.2675, the minimum lot size for new parcels shall be 80 acres in the EFU district.

(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 subject Lot of Record has existing lots which have been in existence since September, 1911 (Exhibit B.6). No new parcels are proposed as part of this application. *This criterion has been met.*

3.03 **(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: What is the height of the proposed structure? 21'6".

Staff: It appears that the applicant's site plan and site plan detail (Exhibit A.5 & A.6) represents that the building is 40 ft from the front property line to the north, 40 feet from the western side property line, 1200 ft from the rear property line to the south and approximately 800 feet to the eastern side property line adjacent to Old Germantown Road. Staff visited the site and measured from the centerline of the road 30 feet to establish the front property line based on the Applicant's exhibit A.5. The distance from the centerline of the right-of-way to the property line is 30 feet in length on that exhibit, which utilizes a County A&T map as its base.. It appeared that the fence was sited along the front property line. Staff then measured from the horse fence until the first pole of the pole barn/riding arena and found that there may be only 21 feet between the front property line and the building. It may be that the applicant measured the setbacks from the edge of the roadway of Old Germantown instead of the front property line accidentally siting the pole barn within the required yard. Since the applicant's site plan and site plan detail do not clearly show whether he is measuring from the front property line or the edge of pavement, a condition of approval has been included requiring that a licensed surveyor measure the distance between the front property line and the eave of the building and submit a copy of a stamped survey to planning staff documenting the distance. This will allow verification that the yard requirements have been properly met. If the building is too close to the property line, corrective measures will need to be taken. Options available and feasible to the property owner would be to cut back the building to meet the yard requirement or disassemble and move the building to comply with the site plan. The applicant's elevations (Exhibit A.4) show that the barn will be 21 ft & 6 inches. *As conditioned, this criterion has been met.*

- 3.04 **(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.**

Staff: Old Germantown Road is a Local Street as designated on the Multnomah County's Functional Classification of Trafficways. The standard right of way width for Rural Local Roads is 60 feet. The current width from the centerline of the road to the subject front property line is 30 feet (Exhibit A.5 & A.9). No additional dedication is needed from this property at this time. *This criterion is not applicable at this time.*

- 3.05 **(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.**

Staff: The pole barn/riding arena is 21 ft, 6 in. in height (Exhibit A.4). *This criterion is not applicable at this time.*

- 3.06 **MCC 33.2675 Lot of Record**

(A) In addition to the Lot of Record definition standards in MCC 33.0005, 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:

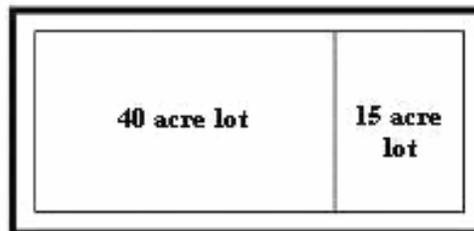
(a) Which were held under the *same ownership* on February 20, 1990; and

(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.

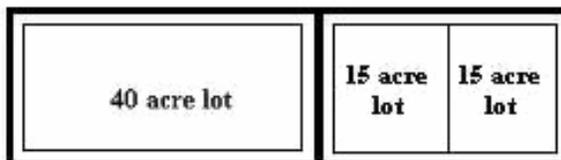
1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with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

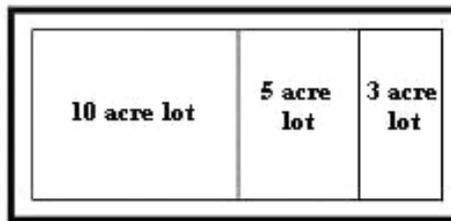
3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:



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 or urban zones (e.g. MUA-20, RR, RC, R-10), 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) Exception to the standards of (A)(2) above:

(a) 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.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, F-2 zone applied;

(2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

(3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;

(4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, Ord. 236 & 238;

(5) February 20, 1990, lot of record definition amended, Ord. 643;

(6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;

(7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access

requirements of MCC 33.2690 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(D) The following shall not be deemed a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest;**
- (3) A *Mortgage Lot*.**
- (4) An area of land created by court decree.**

Applicant: See deeds attached.

Staff: Tax Lot 2400 & 2500 were owned by Marci & Richard Duff on February 20, 1990. Tax Lot 2400 is 5.81 acres in size and Tax Lot 2500 is 29.72 acres in size. The combined total acreage is 35.53 acres. Lots 17 through 25, Andrews Acres qualify as a single lot of record at this time.

4.00 ***Significant Environmental Concern Criteria***

4.01 **MCC 33.4520 Application for SEC Permit**

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 33.4560 through 33.4575.

(A) An application for an SEC permit shall include the following:

- (1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 33.4560 through 33.4575.**
- (2) A map of the property showing:
 - (a) Boundaries, dimensions, and size of the subject parcel;**
 - (b) Location and size of existing and proposed structures;**
 - (c) Contour lines and topographic features such as ravines or ridges;**
 - (d) Proposed fill, grading, site contouring or other landform changes;**
 - (e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;**
 - (f) Location and width of existing and proposed roads, driveways, and service corridors.****

Staff: The applicant has provided a response for the criteria under MCC 33.4570(B) (Exhibit A.3). The applicant’s site plan, site plan detail and aerial photograph (Exhibits A.5, A.6 & A.8) show the boundaries and dimensions of the subject property, the location and size of existing and proposed buildings, details regarding the topography in the area of construction and the location and width of the existing roads and driveways. The aerial photograph shows the location of the stream overlay in relation to the proposed barn and the location of vegetation on the site. *This criterion has been met.*

4.02 **MCC 33.4525 APPLICABLE APPROVAL CRITERIA**

(A) The approval criteria that apply to uses in areas designated SEC-w, SEC-v, SEC-h and SEC-s on Multnomah County zoning maps shall be based on the type of protected resources on the property, as indicated by the subscript letter in the zoning designation, as follows:

Zoning Designation	Approval Criteria (MCC#)
SEC-w (wetlands)	33.4560
SEC-v (scenic views)	33.4565
SEC-h (wildlife habitat)	33.4570
SEC-s (streams)	33.4575

The zoning maps used to designate the SEC-s zoning subdistrict were created digitally by interpreting various data sources including the hand drawn maps contained in the Goal 5 ESEE report. Care was taken in the creation of the maps, but in some instances mapping inaccuracies have occurred during the process. For those areas included in Ordinance 830 (West Hills Rural Area Plan), the Stream Conservation Area designated on the zoning maps as SEC-s is an area extending 300 feet from the nearest point on the centerline on both sides of the protected stream. In the event of a mapping inconsistency, the SEC-s zoning subdistrict shall be interpreted to be the defined Stream Conservation Area.

Staff: While the subject property has Significant Environmental Concern overlays for wildlife habitat (SEC-h) and streams (SEC-s), the proposed pole barn is located approximately 270 feet from the edge of the SEC-s boundary. The SEC-s criteria are not applicable to this application at this time. Future projects may trigger this overlay.

4.03 **MCC 33.4570 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT**

(A) In addition to the information required by MCC 33.4520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

(1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;

For the purposes of this section, a *forested area* is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11

inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A *non-forested "cleared"* area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.

(2) Location of existing and proposed structures;

(3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;

(4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

Staff: The 2002 Air Photo (Exhibit B.7) shows the location of forested and cleared areas on the site. The applicant's site plan detail (Exhibit A.5) shows the location of the structure to be permitted, the driveway and Old Germantown Road. *This criterion has been met.*

4.04 **(B) Development standards:**

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Staff: No significant trees existed in the area of the development. An air photo from 1998 (Exhibit B.8) shows that 2 small clumps of trees/shrubs were removed to allow the pole barn/riding arena in the cleared area. All other vegetation remains on the subject site (Exhibit B.7 & B.8). *This criterion has been met.*

4.05 **(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**

Applicant: ok

Staff: The pole barn/riding arena is located within 40 ft of the front property line adjacent to Old Germantown. *This criterion has been met.*

4.06 **(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

Applicant: ok

Staff: No driveway access is proposed for the pole barn/riding arena. The existing driveway leading to the house and on to the barn is approximately 496 feet in length. *This criterion has been met.*

4.07 **(4) The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary.**

Applicant: ok

Staff: The driveway/access road for the dwelling to the west is approximately 725 ft from the shared side property line (Exhibit B.7). The driveway/access way to the east is approximately 227 feet from the shared side property line. *This criterion has been met.*

- 4.08 **(5) The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.**

Applicant: ok

Staff: The development to the west is approximately 700 feet away from the side property. The property adjacent to the east is vacant. The proposed pole barn/riding arena is 40 feet away from the western side property line. *This criterion has been met.*

- 4.09 **(6) Fencing within a required setback from a public road shall meet the following criteria:**

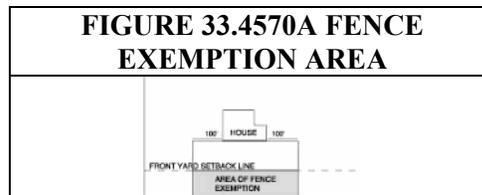
(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.

(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.

(c) Cyclone, woven wire, and chain link fences are prohibited.

(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.

(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.



Applicant: There are no prohibitive fencings.

Staff: No fencing exists along the front property line (Exhibit A.5 & A.6). *This criterion has been met.*

- 4.10 **(7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:**

Scientific Name	Common Name	Scientific Name	Common Name
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<i>Chelidonium majus</i>	Lesser celandine
<i>Cirsium arvense</i>	Canada Thistle
<i>Cirsium vulgare</i>	Common Thistle
<i>Clematis ligusticifolia</i>	Western Clematis
<i>Clematis vitalba</i>	Traveler's Joy
<i>Conium maculatum</i>	Poison hemlock
<i>Convolvulus arvensis</i>	Field Morning-glory
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory
<i>Convolvulus sepium</i>	Lady's nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann's Lace
<i>Elodea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail
<i>Equisetum telemateia</i>	Giant Horsetail
<i>Erodium cicutarium</i>	Crane's Bill
<i>Geranium roberianum</i>	Robert Geranium
<i>Hedera helix</i>	English Ivy
<i>Hypericum perforatum</i>	St. John's Wort
<i>Ilex aquafolium</i>	English Holly
<i>Laburnum watereri</i>	Golden Chain Tree
<i>Lemna minor</i>	Duckweed, Water Lentil

<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Rhus diversiloba</i>	Poison Oak
<i>Rubus discolor</i>	Himalayan Blackberry
<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Solanum dulcamara</i>	Blue Bindweed
<i>Solanum nigrum</i>	Garden Nightshade
<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<i>Utica dioica</i>	Stinging Nettle
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinosum</i>	Spiny Cocklebur
<i>various genera</i>	Bamboo sp.

Applicant: ok

Staff: Planning Staff did not identify any of the above plants on the subject property during her site visit, but the site is quite large. A condition of approval has been included requiring the property owners not to plant these species on the subject site within the cleared areas (see Exhibit B.7 for cleared areas). *As conditioned, this criterion has been met.*

- 4.11 (C) **Wildlife Conservation Plan.** An applicant shall propose a wildlife conservation plan if one of two situations exist.

(1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or

(2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).

Staff: Staff has demonstrated that the proposed application to legalize the existing pole barn/riding arena has demonstrated compliance with the standards of Section (B). *No wildlife conservation plan is applicable.*

5.00 ***Comprehensive Plan Policies***

5.01 **Policy 14**

The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

- A. Slopes exceeding 20%;
- B. Severe soil erosion potential;
- C. Land within the 100 year flood plain;
- D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;
- E. A fragipan less than 30 inches from the surface;
- F. Land subject to slumping, earth slides or movement.

Applicant: n/a

Staff: In the location of the pole barn/riding arena, the soil type is Cascade silt loam (7C) with slopes ranging from 8 to 15 percent. The Soil Survey of Multnomah County states that Cascade silt loam (7C) has a moderate erosion potential with a high water table at a depth of 18 to 30 inches and a slowly permeable fragipan at a depth of 20 to 30 inches. The subject parcel is not located within a 100 year flood plain. No known landslides exist on the subject site. The site is currently occupied by an existing single family dwelling and a barn. Since these buildings have been on the site for a number of years, it appears that the subject site is suitable for a pole barn/riding arena. *This comprehensive plan policy has been met.*

5.02 **Policy 37**

Water and Disposal Systems

- A. **Shall be connected to a public sewer and water system, both of which have adequate capacity; or**
- B. **Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
- C. **Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system;**

or

- D. Shall have an adequate private water system, and a public sewer with adequate capacity.**

Applicant: n/a

Staff: The applicant has submitted in a Certification of On-Site Sewage Disposal form. The sanitarian indicates that no plumbing is proposed or approved for the riding area. The existing single family dwelling is connected to an existing on-site sewage disposal system and well. *This comprehensive plan policy has been met.*

Drainage

- E. Shall have adequate capacity in the storm water system to handle the run-off; or**
F. The water run-off shall be handled on the site or adequate provisions shall be made; and
G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Applicant: “F”

Staff: The applicant has 35.53 acres of land and has indicated on the site plan that the water from the roof area of the pole barn/riding arena will be piped to the interior of the property and dispersed in an area of vegetation (Exhibit A.6). The outfall is over 400 feet to the north of the SEC-s stream. *This comprehensive plan policy has been met.*

Energy and Communications

- H. There shall be an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and Communications facilities are available.**

Applicant: n/a

Staff: The site is currently served with electricity and telephone at the existing dwelling. No additional service is needed for the pole barn/riding arena. *This comprehensive plan policy has been met.*

5.03

Policy 38

It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:

Fire Protection

- B. There is adequate water pressure and flow for fire fighting purposes; and**
C. The appropriate fire district has had an opportunity to review and comments on the proposal.

Applicant: “C” – see attached

Staff: The applicant in Exhibit A.16 indicated the following: “The purpose of this barn is purely personal – there will be no business use. It is a riding arena/barn for the owners only.”

The proposed pole barn/riding arena does not qualify as an “Agricultural Building” pursuant to ORS 455.315 as it is not located on a farm as a farm has the intent to make money. The Fire District’s indication that its approval is not required as per House Bill 3063 as the facility is exempt is incorrect. Via a phone conversation with Drew DeBois, Deputy Fire Inspector for Tualatin Valley Fire and Rescue it was indicated that adequate water pressure and flow for fire fighting purposes could be provided for the pole barn/riding arena by fire pumper truck. A condition of approval has been included requiring that the property owner or their representative obtain agreement that there is adequate water pressure and flow for fire fighting purposes as described by Policy 38. *As conditioned, this comprehensive plan policy will be met.*

6.00 **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary a Significant Environmental Concern permit for wildlife habitat in the EFU zoning district. This approval is subject to the conditions of approval established in this report.

7.00 **Exhibits**

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	General Application Form	5/10/04
A.2	3	Pre-Filing Notes	5/10/04
A.3	11	Narrative Statements	5/10/04
A.4	1	Floor Plan & Elevations	5/10/04
A.5	1	Site Plan	5/10/04
A.6	1	Site Plan Detail	5/10/04
A.7	6	Construction Details	5/10/04
A.8	1	Aerial Photo with SEC-s overlay and Building Pad Location	5/10/04
A.9	14	Title Report	5/10/04
A.10	1	Fire District Review	5/10/04
A.11	4	House Bill 3063	5/10/04
A.12	1	Certification of On-Site Sewage Disposal	5/10/04
A.13	2	Warranty Deed Recorded 4/13/1942 (Book 674, Page 578 & 579)	5/10/04
A.14	2	Warranty Deed Recorded 5/12/1944 (Book 835, Page 435 & 436)	5/10/04
A.15	2	Warranty Deed Recorded 8/14/1944 (Book 859, Page 576 & 577)	5/10/04
A.16	1	Purpose Statement for Barn	6/4/04

‘B’		Staff Exhibits	Date of Document
B.1	1	A&T Property Record Printout	5/10/04
B.2	3	Letter from Neighbor David Kunze Regarding	7/2/04

Structure			
B.3	1	Letter from Neighbors Rick & Carol Selby	6/28/04
B.4	1	A&T Improvement Information	7/30/04
B.5	2	Administrative Guideline 13	7/30/04
B.6	2	Andrews Acres Tract	7/30/04
B.7	1	2002 Air Photo	7/30/04
B.8	1	1998 Air Photo	7/30/04
B.9	2	A&T Property Record Printout for Tax Lot 2400 1N1W09C	8/3/04
B.10	1	Map of Survey Recorded 8/4/1967 Splitting Lot 24 in half	8/4/1967

'C'		Administration & Procedures	Date
C.1	1	Incomplete Letter	6/4/04
C.2	1	Acceptance of 180 Day Time Period	6/7/04
C.3	1	Complete Letter – Day 1	6/10/04
C.4	3	Opportunity to Comment	6/18/04
C.5	20	Administrative Decision – Day 72	8/20/04