



**MULTNOMAH COUNTY**  
**LAND USE PLANNING DIVISION**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
<http://www.co.multnomah.or.us/dscd/landuse>

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## NOTICE OF DECISION

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

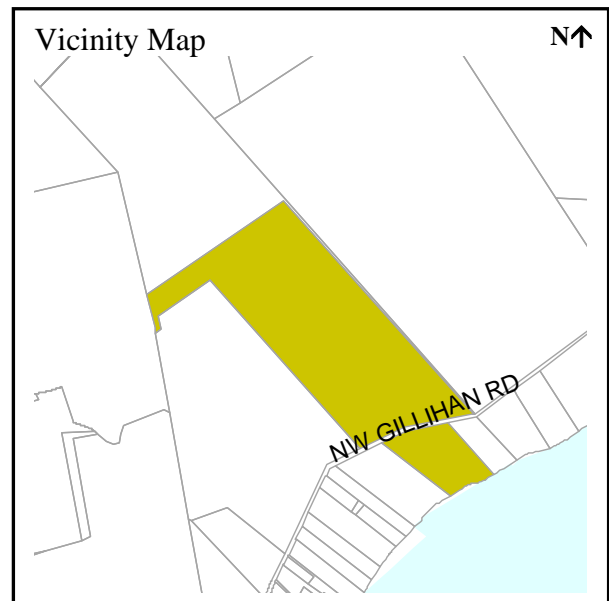
**Case File:** T2-05-044

**Permit:** Farm stand and Two Accessory Farm  
Help Dwellings

**Location:** 16511 Gillihan Road  
Tax Lots 100 and 300, Section 22,  
Township 2N, Range 1W, W.M.

**Applicant:** Bob & Kari Egger  
16450 NW Gillihan Rd.  
Portland, OR 97231

**Owners:** Same as Applicant



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**Summary:** To authorize continued use of the farm stand and two existing dwellings on the property as accessory farm help dwellings.

**Decision:** Approved with conditions.

Unless appealed, this decision is effective Friday, December 30, 2005, at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Tammy Boren-King, AICP, Planner

For: Karen Schilling - Planning Director

Date: Friday, December 16, 2005

Instrument Number for Recording Purposes: 98091845

**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 Tammy Boren-King, 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, December 30, 2005 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): Chapter 37 Administration and Procedures; MCC 34.2625(E) Accessory Farm Help Dwelling; MCC 34.2625(I) Farm Stands; MCC 34.2660 Dimensional Requirements; MCC 34.2675 Lot of Record; MCC 34.4105 Off-Street Parking – General Provisions; MCC 34.4120, Off-Street Parking - Plan Required; MCC 34.4125, Off-Street Parking – Use of Space; MCC 34.4130, Off-Street Parking – Location of Parking; MCC 34.4125, Off-Street Parking – Use of Space; MCC 34.4175, Off-Street Parking – Dimensional Standards; MCC 34.4180, Off-Street Parking – Improvements; MCC 34.4205, Off-Street Parking – Minimum Required Off-Street Parking Spaces; Policy 36 – Transportation System Development Requirements; Policy 37 - Utilities; and Policy 38 – Facilities; Multnomah County Road Rules adopted pursuant to MCC 29.500 et. seq.

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/dscd/landuse>.

### **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. **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 or 37.0700, as applicable. A request for permit extension may be required to be granted 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 or prior to building permit sign-off, whichever happens first, the applicant shall record the Notice of Decision (pages 1-4 of this decision) with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and filed with the Land Use Planning Division. Recording shall be at the applicant's expense. The County Recorder's office is at 501 SE Hawthorne Blvd. in Room 158. They can be reached at 503-988-3034 for recording instructions and fee information.
2. This farm stand approval is limited to those elements that have been identified herein as needing approval as a farm stand (as opposed to activities that constitute farm use) and that have been approved as meeting the definition of a farm stand. Those elements include: the market (Building No. 2), the café (Building No. 14, including the open air roof structure), the gift shop and office (Building No. 11) and the corn maze. (MCC 34.2625(I))
3. All incidental sales and fee-based activities shall remain within the 25% of annual sales limitation as interpreted in this decision. All produce sold from outside the local agricultural area, defined to be comprised of that area centered on Sauvie Island in which farms regularly market their produce directly to other farm stands or farmer's markets and vice versa, shall count against the 25% annual sales limitation. (MCC 34.2625(I))
4. The corn-maze shall not be operated during hours when the market is not open to retail customers. (MCC 34.2625(I))
5. During the off-season, the gift shop shall not be used for any purposes other than administration of the farm. None of the other structures shall be used during the off-season for other than farm use. (MCC 34.2625(I))
6. On-street parking for employees, suppliers and patrons of the Pumpkin Patch farm stand is prohibited. Applicant shall maintain Lots 1, 2, 3 and New Lot 2005 identified in its November 2, 2005 traffic management plan for off-street parking. (Comprehensive Framework Plan Policy 36B, MCC 34.4105) Any changes to off-street parking will require new land use approval. Applicant shall not charge for on-site parking. (MCC 34.4125(A))
7. Overflow parking lots identified on the Traffic Control Plan dated December 14, 2005 (Exhibit A.10) as lots 2, 3, and "New Lot" shall be surfaced with grass or gravel during the time of use. The overflow parking lot identified as Lot 1 on the Traffic Control Plan shall be surfaced with grass or be surfaced with at least two inches of straw mulch at all times in use. If straw mulch surfacing is used, the owners shall retain the root structure of the previous crop to the extent possible in order to provide structure and bind the soil. (MCC 34.4180(A)(2); MCRR 16.100)
8. Points of ingress/egress onto NW Gillihan Road serving the overflow parking lots shall be reconfigured and their use shall be limited as specified in the County Engineer's driveway variance (Exhibit S.4) dated December 14, 2005. All conditions of the variance are incorporated

as conditions of this land use decision. Permits for construction of the approved access points shall be obtained as specified in the variance document included as Exhibit S.4. (MCRR 16.100; MCC 34.4180(A)(2))

9. Applicant shall obtain a building permit for the open-air roof structure associated with the café within 90 days of this decision becoming final. (MCC 37.0560; 29.003)
10. Applicant shall remove any travel trailer(s) being used as a residence within 30 days of this decision becoming final. (MCC 37.0560)
11. The two accessory farm help dwellings identified on the site plan as Dwellings No. 6 and 7 shall only be occupied by persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use is or will be required. (MCC 34.2625(E))
12. Within 90 days of the decision becoming final, the applicant shall verify that Dwelling No. 6, approved herein as an accessory farm dwelling, has been on site since the 1940s and that no modifications to the structure that might have required a building permit have been made since building codes became applicable. Otherwise, applicant shall obtain building permits for the structure. (MCC 37.0560; 29.003)
13. Within 90 days of this decision becoming final, the applicant shall obtain all necessary placement, building and sanitation permits for Dwelling No. 7, approved herein as an accessory farm dwelling. (MCC 37.0560; 29.003)
14. The applicant shall submit a copy of the authorization for sanitary waste disposal for dwelling number 6 and dwelling number 7 within 90 days of this decision becoming final. No building permits for either dwelling shall be issued until such authorization is received. (Policy 37)

Once this decision is final, application for building permits may be made. **When ready to have building permits signed off, the applicant shall call the Staff Planner, Tammy Boren-King, at (503) 988-3043, to schedule 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. Six (6) sets each of the site plan and building plans are needed for building permit authorization.

**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**

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

### **1. PROPOSAL DESCRIPTION AND BACKGROUND:**

**Staff:** The application is for the approval of a farm stand on an existing farm in the EFU Zone District. The farm stand includes a market building, a gift shop, a café, an animal barn and a corn maze. In addition, the review of the subject property for approval of the existing farm stand prompted the applicant, pursuant to MCC 37.0560, to seek approval of two existing farm accessory dwellings on the property, to bring the property into compliance with the Multnomah County Zoning Ordinance.

### **2. PROOF OF OWNERSHIP**

**MCC 37.0550:** 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.

**Staff:** Assessment records show that Bob & Kari Egger are the owners of the property (Exhibit A.1). Kari and Bob Egger have signed the application form initiating the application.

*Criterion met*

### **3. TYPE II CASE PROCEDURES**

**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 May 9, 2005 and was deemed complete as of September 1, 2005. An "Opportunity to Comment" notice was mailed on September 13, 2005 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. The comment period was open for fourteen days. Two written comments were received. A copy of the Opportunity to Comment letter, the mailing list and the written comments are in the file.

*Procedures met.*

### **4. CODE COMPLIANCE AND APPLICATIONS**

**MCC 37.0560:** The County shall not approve any application for a permit or other approval, including building permit applications, 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 permit or other approval, including building permit applications, may be authorized if it results in the parcel coming into full compliance with all applicable provisions of the Multnomah County Code.

**Staff:** This provision requires that all aspects of the land uses on the subject property be in compliance with the zoning ordinance and permits already issued on the property before a land use approval can be issued. Applicants' attorney suggested that the appropriate forum for dealing with such issues is the code enforcement process. However, Applicant's attorney appears to overlook this provision of the code. This code provision requires that any outstanding land use compliance issues be addressed as a condition of gaining land use approval for new permits.

Applicant does not argue that the County is precluded from applying this criterion under *Brentmar*. The County does not believe that *Brentmar* can be used to override the County's ability to enforce its own ordinances to ensure compliance. The issue is not of the County's making; it relates to a condition that is of the applicant's making and that is within the applicant's control to remedy.

Staff performed a site visit on May 24, 2005 and as set forth in staff's letter of June 7, 2005, observed the existence of four structures without necessary planning or building approvals from the County. Those apparent violations include the following:

- Machinery Shed (Building #1) – no planning or building approval,
- Farm help dwelling (Building #6) – no planning or building approval,
- Farm help dwelling (Building #7) – no planning or building approval, and
- Open-air roof structure over café area (Building #14) – no planning or building approval.

In addition, it appears from comments supplied by a neighbor and verified by the owner's attorney that there are two additional unpermitted travel trailers on the site being used as residences.

The machinery shed is clearly used to support farm use of the subject farming operation and therefore is an outright permitted use under the code. It is a use that requires no review. See MCC 34.2620(B). Staff finds that there are no setback issues under the code. Applicants have applied for and received an agricultural exemption for this building. Staff finds that nothing further is needed to bring this building into compliance with the code.

With respect to the open-air roof structure over the café, planning approval for this structure is resolved by this application, with approval of the farm stand, of which the roof structure is a part. Applicants will need to obtain a building permit. Staff finds that pursuant to ORS 455.315(2)(b), this structure cannot be granted an exemption as an agricultural exempt structure due to the fact that it is used by the general public. Therefore, this approval will be subject to a condition that applicant obtain a building permit for this structure.

With respect to the unpermitted dwellings, applicant has applied for approval of both as accessory farm dwellings. Dwelling No. 6 is a stick-built structure that applicants claim is being used as a farm accessory structure. Dwelling No. 7 is a manufactured home.

Applicants submitted information on December 2, 2005, that Dwelling No. 6 was built elsewhere and transported by barge as a completed structure to the site by a previous owner in the 1940s. The continued presence of this structure on the site since that time could possibly allow this use to be approved as a nonconforming use; however, applicants have not provided evidence to verify the nonconforming use. Instead, applicants have chosen to justify the house as an accessory farm

dwelling. Elsewhere in this administrative decision, in response to the application for an accessory farm dwelling, staff finds that this dwelling qualifies as an accessory farm dwelling. Staff finds that if in fact the structure has been on site since the 1940s, no building permit needs to be issued. However, applicant needs to verify that the structure has been on site since that time and to verify that no changes have been made to the building since building codes have been in place that would have required a permit. The building code and its associated permit requirements first became effective in Multnomah County on August 4, 1955. This will be a condition of approval.

With regard to Dwelling No. 7, elsewhere in this administrative decision, staff finds that this structure qualifies as an accessory farm dwelling. That determination resolves any planning issues regarding that structure. Applicant will still need to obtain necessary placement, electrical, plumbing and sanitation approvals for this structure. This will be a condition of approval.

With regard to the two travel trailers identified in Mr. Beall's letter of September 24, 2005, these structures will need to be removed from the property. This decision will be conditioned accordingly.

*Criterion met, as conditioned.*

## **5. THE PROPERTY IS A LOT OF RECORD**

**MCC 34.2675(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:**

**Staff:** The subject use is sited on a 114-acre lot of record, comprised of two Tax Lots- Tax lot 100 on map 2N1W22 and tax lot 300 on map 2N1W22D. These two tax lots represent one deeded property. The property was recognized as a single lot of record in Multnomah County Decision PRE-19-98 and WRG 9-98.

*Criteria met.*

## **6. EXCLUSIVE FARM USE – REVIEW USES – FARM STAND**

**MCC 34.2625 REVIEW USES**

**(I) Farm Stands when found that:**

- (1) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farms in the local agricultural area, including the sale of retail incidental items, and fee-based activity to promote the sale of farm crops, if the annual sale of the incidental items and fees from promotional activity do not make up no more than 25 percent of the total sales of the farm stand; and**
- (2) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.**

**Staff:** From information submitted by the applicant, staff makes the following findings on this application. Five narrative submittals were received. Copies are included as Exhibits C through G. Applicant operates a commercial farm on Tax Lots 100 and 300, together comprising approximately 114 acres, with an additional 550 leased acres, altogether producing 40 different crops on 2-40 acres each. The top selling crops are winter squash, pumpkins, cabbage, green beans and corn. Applicant also raises cannery crops for ground rotation, including grass seed and corn.

The farm sells its produce on the wholesale and retail markets. The wholesale operation, known as Delta Farms, sells fresh-picked produce to local grocery chains and their warehouses, such as Fred Meyer, Safeway and Albertsons and to regional distribution warehouses, such as Pacific Coast, United Grocers and Charlie's. In addition, produce is wholesaled through other farm stands in the area. Fall is the busiest time for harvest, as the farm supplies other pumpkin patches and all of the local Albertsons stores with their October pumpkins. According to the applicant, wholesale operations make up 60% of the annual sales of the farm.

The retail operation sells farm produce grown on the farm and elsewhere to individual customers through a farm stand and café on the property.

The farm operation is supported by several structures, located on Tax Lot 100, including the following (numbered in accordance with the legend on the aerial photo/ site plan submitted with the application included as Exhibit A.2):

- #1 Machinery storage shed
- #2 Retail and wholesale produce market
- #3 Box storage and supply storage shed
- #4 Maintenance buildings and shop and maintenance supply storage shed
- #5 Machinery shed
- #6 Seasonal farm help dwelling
- #7 Seasonal farm help dwelling (manufactured home)
- #8 Farm worker house
- #9 Farm worker house
- #10 Seasonal farm help dwelling (manufactured home)
- #11 Gift shop and office
- #12 Animal barn
- #13 Storage shed
- #14 Mobile food cart and open air roof structure for Patio Café

In addition, applicant operates a corn maze, located on Tax Lot 100, immediately to the west of the structures identified on the aerial photograph.

According to the applicant, the farm stand is comprised of the following elements: a retail market, a gift shop, an animal barn, a food wagon and a corn maze. These activities are supported by the following structures: the retail and produce market (#2), the gift shop and office (#11), the animal barn (#12) and the mobile unit for serving food (#14). In addition, applicants contend that the corn maze adjacent to the west of the supporting structures, is a part of the farm stand use. Each of these elements will be reviewed under the definition set forth above.

### Discussion and Analysis



General discussion relative to all farm stand components: The definition of “farm use” means “the current employment of land for the primary purposes of making a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof.” ORS 215.203(2)(a), MCC 34.2620(A) (incorporation statutory definition by reference). Under the ORS 215.203 definition, “farm use” also includes “the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use.” ORS 215.203(2)(a). “Current employment” of land includes “land under buildings supporting accepted farm practices.” ORS 215.203(2)(b)(F). Accepted farming practices are “a mode of operation that is common to farms of a similar nature, necessary to operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.” ORS 215.203(2)(c).

Under ORS 215.203(1), land within an EFU zone “shall be used exclusively for farm use, except as otherwise provided in ORS 215.213, 215.283 or 215.284.” This language was emphasized by the Oregon Supreme Court in analyzing whether a winery and retail tasting room could be allowed upon land that was being planted with grapes for wine. *Craven v. Jackson County*, 799 P2d 1011 (1989). In light of this language and the purpose of the EFU zone, the Court cautioned against giving decisive weight to the idea of commercial enterprise and the statutory language “for the primary purpose of obtaining profit in money” through the marketing of products of the land, lest county decision-makers be lead down a path of “countless uses of agricultural land,” for such uses as shopping malls or supermarkets, gift shops selling candles of tallow, etc.<sup>1</sup>

Under the definition of “farm use”, it appears that to the extent that applicant is marketing exclusively its own farm produce, resort to any of the other uses described in the EFU zone would not be necessary.<sup>2</sup> In this case, resort to other such uses is required, because the Pumpkin Patch farm stand sells farm produce not grown on site and sells other retail items not produced on site.

Applicant has applied for approval of its retail sales activity operations as a farm stand. Under statute, a “farm stand” use is an outright permitted use under ORS 215.283(1). Under the Oregon Supreme Court’s decision in *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), such uses may not be subjected to additional locally-imposed criteria. However, the use at issue must still be determined to fall within the parameters of the definition of the listed ORS 215.283(1) use. See *Warburton v. Harney County*, 39 Or LUBA 398, affirmed 174 Or App 322, 25 P3d 978 (2001).

The express terms of the farm stand use description contemplate that the use will consist of either sales of farm goods and incidental retail sales or fee-based activities intended to promote the sale of farm crops or livestock. The elements of the use are as follows: (Sale of Farm Goods and Incidental Retail Sale) (a) structures designed and used for the sale of farm crops or livestock; (b) farm crops and livestock must be grown on the subject farm or farms in the local agricultural area; (c) with incidental retail items not making up any more than 25% of the total sales of the farm stand; or (Fee-based Activities) (a) fee-based activity (b) to promote the sale of farm crops or livestock sold at the farm stand. See ORS 215.283(1)(v)(A), OAR 660-033-130(23)(a), MCC 34.2625 (I)(1).

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<sup>1</sup> Farm stands were added to the ORS 215.283(1) list of uses after the Craven decision, in an apparent response to that decision.

<sup>2</sup> The test is not whether the *predominant* activity falls within the definition of “farm use”, because as noted earlier state law requires uses in the farm use zone to be *exclusively* for farm use or otherwise justified by the alternative uses listed under state statute.

Retail market: The retail market sells farm fresh produce daily from 9:00 AM until 6:00 PM from June through October. The produce sold includes produce grown on applicant's farm and produce grown by other farms, both on and off Sauvie Island. According to applicant, 55% [REDACTED] of the produce sold is grown on applicant's farm. Some produce is sold from other farms on Sauvie Island and from other farms off of Sauvie Island, such as watermelons from Hermiston and apples and pears from the Hood River area and additional produce brought in from other states. The market also sells produce that is picked on-site by the customers, such as strawberries. In addition, the market sells "incidental" items such as jams, honey, canned vegetables, canning supplies, potted flowers and seasonal supplies for such things as gardening and pumpkins.

The market utilizes the market and produce building (Building # 2). Crops grown on the farm are brought into the rear of the market building, where along with produce bound for wholesale distribution, they are washed and packed and then refrigerated. Crops bound for wholesale distribution through grocery stores or warehouses are loaded onto trucks for distribution out the back of the market building. Crops sold through the retail operation are sold through the market at the front of the market building.

From applicant's description, submitted on July 20, and the aerial photograph in the file, it is clear that the market and produce building is designed and used for the sale of farm crops grown on the property or from nearby farms. The building has been designed and arranged for the particular purpose of selling farm produce and there is no question that it is used for such purposes.

With respect to the second prong, staff finds that there is no definition under state law for purposes of the farm stand use of what constitutes the "local agricultural area." Accordingly, staff finds that the County has discretion in determining what that area should be. This is an issue in this case, since the applicant sells apples and pears from the Hood River Valley and watermelons from Hermiston. In addition, the applicant sells produce from "other agricultural areas" and from out of state.

In response to a query from County staff, applicant submitted an explanation on November 23 of what it considered to be the "local agricultural area" based upon the distance a farmer is willing to travel to sell his goods on a regular basis. The applicant stated that it is a regular practice in the farming business for farms from as far away as Hermiston to transport its produce to the Portland area in order to sell the produce directly to other farmers or at farmer's markets. In turn, those farms will often purchase produce from Portland area farms that may be out of season or that can't be grown in their area to take back to sell at their farm stands. In this way, these farms help sustain each other and thus can be considered to be in the same market area and farm economy. Staff finds that it is appropriate to consider market area to be a basis for determining what constitutes a "local agricultural area" and therefore accepts applicant's approach to defining what constitutes the local agricultural area. Staff is not entirely comfortable with accepting Hermiston and other locales as distant as Hermiston as part of the "local agricultural area." Specific information related to the percentage of farm stand sales that come from Hermiston versus neighboring counties was not provided. From the description of sales, it is reasonable to conclude that most come from the island or surrounding counties such as Hood River County. It is unlikely that sales of Hermiston watermelons are substantial enough to materially impact the reported income data. In their November 23 submittal, the applicants characterized [REDACTED] 21%, as being from sales of local area produce not grown on their farm. Staff accepts applicant's figures in this respect.

The fact that produce from outside the local agricultural area is also sold at the Pumpkin Patch does not automatically disqualify the Pumpkin Patch operation from being considered to be a farm stand use; it does require that such produce be considered to be part of incidental retail sales, subject to the 25% limitation. In response to staff inquiry, applicant provided data on November 23, 2005 indicating that [REDACTED] of the market sales is produced from what would be considered to be out of area farm producers and other incidental sales. Staff accepts applicant's figures.

With respect to the third prong, in determining whether the percentage of incidental retail use falls within the 25% incidental retail sales cap, staff must first determine what number the 25% limitation should be applied to. Does it apply to all produce sales from the farm or are sales from a farm stand intended to encompass a more limited subset of farm and incidental retail products, such as all direct sales to individual purchasers? Applicant appears to have used the total produce sales from the entire farm as the basis for its figures. Again, staff finds that there is no definition associated with the farm stand use that provides a definitive answer to this question. There is no common dictionary definition of "farm stand" that is useful in resolving this question. In this case, staff finds from the evidence supplied by the applicant on July 20 that the retail and wholesale operations operate alongside each other in the market building in a unified operation. Phone calls for each side of the operation come into the same office. The produce comes into the same area for preparation and is stored in the same refrigeration system. The only difference is that depending upon who places a particular order, some of the produce is dispatched to the loading dock and some is dispatched to the front portion of the market building. Therefore, for purposes of establishing a base number, staff will use the figure that represents both wholesale and retail sales being made through the market building operation.

In this case, as set forth in the Profit and Loss Statement,<sup>3</sup> applicant's sales figures are as follows:

[REDACTED]

Based upon this figure, staff finds that the 25% cap on incidental sales is [REDACTED]. Therefore, all incidental sales, including fee-based activities, sales of non-local farm produce, and non-farm produce must fall within that capped amount. Staff finds that provided that incidental sales do not exceed the [REDACTED] figure, the market portion of the farm stand meets the farm stand definition. For the reasons set forth below, staff finds that the entire farm stand operation meets that criterion.

In a letter of comment dated 9-26-05, Mark Beall asserts that the market sells produce not produced on the property. As set forth above, this is allowed so long as the produce not grown in the local agricultural area does not constitute more than 25% of the overall annual sales of the farm stand. A copy of Mr. Beall's letter is included as Exhibit S.1.

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<sup>3</sup> Applicant submitted a profit and loss statement from 2002 and 2003 income figures for the maze as the basis for its numbers. Although staff would have preferred more current figures, applicant was unwilling to supply such data. Staff is willing to use this figures in its review because the important factor here is to determine the relationship between the numbers at a fixed point in time. In addition, as is detailed further on, the data indicates that there is a substantial cushion under the 25% incidental sales cap.

Corn Maze: The corn maze was added to the farm sometime after the applicants acquired the farm in 1991. From information supplied by applicant's attorney on October 4, 2005, it appears that the maze occupies a portion of Tax Lot 100 under a lease arrangement with Craig Easterly, who is a principal in Oregon Maze Co, LLC, an Oregon LLC, first registered in 1999. The corporate registry for the company lists the address as 16525 NW Gillihan Road. It appears from information obtained by staff online that Mr. Easterly has a franchise agreement or other licensing arrangement with the Maize Company, a Utah-based company that provides technical and marketing support for operating a maze as well as a homepage on the Maize Company's website. The Maize Company supports maze locations in more than 30 states and in five foreign countries and has helped start mazes in 840 locations according to information published on their website at [www.cornfieldmaze.com](http://www.cornfieldmaze.com).

The applicant submitted information on 10-4-05 (Exhibit A.5) stating that Mr. Easterly pays rent to the applicant and applicant agrees to plant, water and cultivate corn for the maze. After the corn grows up, Mr. Easterly cuts the maze out of the corn. The maze is then operated on a daily basis from August until October during the hours that the market is open. The maze is staffed by a combination of personnel hired by Mr. Easterly and by the applicant. Visitors are charged a fee to use the maze. Tickets are sold by staff out of a small mobile booth. Reservations are made through the retail phone line of the Pumpkin Patch farm. Profits from the maze are shared by Mr. Easterly and the applicant. In their 10-4-05 submittal (Exhibit A.5), the applicants verified the [REDACTED] amount represents the gross income of the Corn Maze, not any individual's share.

The first issue in analyzing this activity is whether it makes any difference that the activity is operated under an agreement by an independent contractor. Staff finds that nothing in the language of the ordinance or state statute places such a restriction on farm stand uses. The statutory context for this and other uses in the farm zone shows that the legislature knows how to and sometimes has limited who might could occupy a particular use (such as for accessory farm help dwellings) and no such limitation has been included for farm stand uses. Accordingly, staff finds that applicant's contractual relationship with Mr. Easterly and Oregon Maze Co. LLC complies with the farm stand description.

The next issue is whether the corn maze constitutes a "fee-based activity." The facts show that in order to gain access to the maze, users must purchase tickets. Under these facts, there is no question that the maze constitutes a "fee-based activity."

The final issue is whether the maze activity can be regarded as one that "promotes the sale of farm crops." This phrase is not defined in the County code or in the Oregon Revised Statutes. The language is open-ended with reference to farm crops generally and not particular products. If it is sufficient for the activity to generate traffic such that the presence of the patrons attracted by the fee-based activity is likely to boost sales of farm produce, then the corn maze would clearly seem to comply. If, on the other hand, there needs to be a closer tie through the activity to the promotion and sale of particular farm products, then the answer is less clear. It is difficult to see how participating in the corn maze activity would in and of itself promote sales of a particular farm product. For that matter, it is difficult to conjure up much of any such activity in and of itself that would directly promote sales of farm products unless the activity involved the consumption of farm products, such as through pie-eating or apple-bobbing contests, where the cost of such consumed farm products were a part of the fee. The description of fee-based activities is open-ended and does not appear to preclude such activities, even if they could also be described as Mark Beall's comments attempt to, as "entertainment."

Staff finds for the purpose of determining what activities promote sales of farm products that it is sufficient if the activity has a tie to the retail farm stand sales operation generally, in that the fee-based activity is physically present at the same site as the farm stand and is open only during hours that the farm stand is operating to sell farm produce. Although the open-ended nature of what may constitute an activity that promotes sale of farm products may be troublesome, the description of the activity is also self-limiting. It cannot exist independent of farm stand activity, and the proceeds cannot exceed 25% of the farm stand sales.

Staff finds that the corn maze qualifies if the sales figures from this activity when added to the other incidental sales figures comes in under 25% of gross annual sales for the farm stand. For the reasons set forth below, staff finds that applicant has met its burden on this issue.

Gift Shop: According to applicant, the gift shop sells farm-related goods and crafts, including Pumpkin Patch souvenirs, pumpkin and animal-related food items, cameras and film, and other miscellaneous items. In response to inquiries from staff, applicant clarified by supplemental submittals on November 30, 2005 (Exhibit A.7) and December 1, 2005 (Exhibit A.8) what the nature of those retail items are. Staff finds that those items include pumpkins; dried decorative gourds from the Pumpkin Patch's own gourds sold in the market; Pumpkin Patch label jams and syrups and salad dressings as well as cookies and sweets, locally grown mulling spices for cider sold in the market and other local mixes and seasonings; fresh-cut flowers from the Pumpkin Patch's u-cut field and potted plants from a nearby nursery; and dried floral arrangements the u-cut field. In addition, staff finds that the gift shop sells items of a non-produce nature such as homemade crafts from local artisans; pumpkin bakery items, mixes and pumpkin-themed and harvest decorations; Thanksgiving and Christmas decorations; garden themed functional items and décor; Pumpkin Patch toys (mostly farm related), John Deere items (including toys, kitchenware, etc.) and Pumpkin Patch clothing items, such as hats.

It is unclear to staff exactly what percentage of this trade involves farm produce from the Pumpkin Patch and other farms in the local agricultural area. Information in a letter dated November 30, 2005 (Exhibit A.7) contains a list of items sold in the gift shop. This includes items produced in the local agricultural area or on the Pumpkin Patch farm such as fresh cut flowers, dried flower arrangements, decorative gourds, pumpkins, pumpkin butter, jams and jellies made from local berries, and pumpkin cookies. Information submitted on December 2, 2005 (Exhibit A.8) indicates that 45% of the gift shop items are specifically tied to the Pumpkin Patch. This information does not differentiate between farm crops and incidental sales. However, staff finds that the definition of farm stand does not require that any particular percentage of retail goods sold from a structure that is part of a farm stand be farm produce from the subject farm or other farms in the local agricultural area. So long as some amount of the retail items sold from the store is made up of produce from the farm or other farms in the local area and provided that the entire percentage of incidental retail sales from the farm stand operation does not exceed 25%, staff finds that a subsidiary retail operation qualifies as part of a farm stand. Staff finds that under these facts there is a sufficient tie to sale of local farm produce sold at the gift shop that the gift shop qualifies as a farm stand use. This addresses the concern in Mark Beall's letter of comment (Exhibit S.1) that gift shops are not allowed in EFU zones.

The next issue is whether the *structure* qualifies as being part of a farm stand. The farm stand definition requires that a farm stand structure be both designed and used for the sale of farm produce and incidental retail items. The gift shop is located in a mobile home (labeled as Building # 11 on

Exhibit A.2) that is also used as an office for the applicants. Clearly, given the finding made above, the structure is used as a part of a farm stand. Applicants did not supply any information that would bear on whether the structure has a particular design that commits it to farm stand use. However, staff finds that the office portion of the building qualifies as farm use, since it is devoted to managing and operating the entire farming operation. While office and commercial gift shop use would seem to be generic in nature, staff finds that the structure has a sufficient connection to farm use through its current use for management of the entire farm operation that there is little danger that the structure would be used for something other than a farm or farm stand use. However, just to be sure, this approval will be conditioned on the office/gift shop not being used for any use other than for administration of the farm during the time period when the gift shop is closed for the season.

Finally, it must be determined how much of the gift shop income constitutes incidental retail sales. Staff finds from the applicant's submitted profit and loss statement that the total sales figure for the gift shop equals [REDACTED]. As noted above, staff was unable to determine from the figures supplied by applicants what percentage of the gift shop sales constitute sales of farm produce from the local agricultural area. In attempting to break down the sales from the gift shop, applicant failed to isolate the farm produce out from all gift sales from the local agricultural area. However, as will be demonstrated below, even if the entire [REDACTED] amount is attributed to incidental retail sales, it does not cause the 25% cap to be exceeded.

Café: According to applicant's initial submittal, the café serves food to customers on weekends in the summer and on most days in October. The café serves lunch and desserts using farm fruits and vegetables, including such produce as berries, corn, tomatoes and lettuce. Applicant provided further information in its November 23, 2005 submittal, detailing that the café servings are comprised of seasonal crops grown on the applicants' farm, utilizing such crops as strawberries, raspberries, blueberries, Marion berries, katata berries, peaches, nectarines, apples, tomatoes, bell peppers, hot peppers and corn.

The café is housed in what applicant characterizes as a mobile "food cart" (labeled as Building #14). There is no indoor seating. Customers give their orders at one window and pick up the prepared food at another window.

Staff finds that the structure is designed and used for the sale of farm crops. It is a structure that has been customized for the seasonal preparation and sale of food items as a food booth. The customers order their food at one window and pick up their food at a separate window. There is no indoor seating. Staff finds that the nature of the structure is such that it is dedicated to food preparation and sales such that it cannot be used in the off-season for some other use, such as residential use or general commercial uses.

Mark Beall noted in a letter of comment included as Exhibit S.1 that the café structure is not mobile, but is been hard-wired and has not moved in 15 years. Staff finds that whether or not the structure is temporary is not determinative of whether the structure qualifies as a farm stand. As noted above, staff finds that the café structure has been customized to implement a farm stand use and that the structure is in fact so used.

Information submitted by the applicant on December 1, 2005 (Exhibit A.8) reports that café gross sales were [REDACTED] for the year reported. As noted on the Profit and Loss statement originally submitted, this number is included in the overall market retail sales number of [REDACTED]. All sales

from the café are accounted for as sales from the retail portion of the Pumpkin Patch. Staff finds from applicant's description that a very high percentage of café sales will be farm products and not incidental sales. Presumably, the café sales were included in the applicant's breakdown of the retail operation's sales of produce grown on their property and in the local agricultural area versus incidental sales.

*Animal Barn:* According to applicant, the animal barn houses animals during the months of August through October for visitors to see. The applicant does not indicate what kinds of animals, how many animals are involved, nor whether they are raised on the farm or on nearby farms, whether they are for sale or what happens to the animals after October. The animals are housed in what applicant characterizes as an "antique red barn," labeled as Building #12 on applicant's aerial photograph.

Applicant has not demonstrated that the animal barn constitutes a part of a farm stand. It does not appear that such animals are kept for sale; therefore the animals do not fit within the sales portion of the farm stand test. In addition, there is no evidence that they are kept as part of any fee-based activity. Under these facts, the animal barn cannot be regarded as fitting within a farm stand use. However, staff finds that the keeping of animals in a structure on the property is an aspect of "animal husbandry" that is allowed as a farm use of the property. Therefore, staff finds that the keeping of animals in the animal barn is an allowed use of the property. The public comment from Mark Beall in this regard is not valid.

*Percentage of Incidental sales/ Fee-based activity:* The farm stand includes sales of incidental retail items and fee based activities. Therefore, in order for the farm stand to qualify as a farm stand use, the farm stand must not have incidental sales totaling more than 25% of annual sales. That amount has been determined to be [REDACTED]. For the reasons set forth below, staff finds that incidental sales do not exceed this amount.

Staff found from applicant's November 30, 2005, submittal that the total amount of incidental sales from the market was [REDACTED]. Staff finds that by definition, 100% of the income from the corn maze constitutes a fee-based activity subject to the 25% cap. Staff finds from income figures submitted for the corn maze on November 16, 2005 that the income from that fee-based activity is [REDACTED]. As set forth above, staff will attribute the entire [REDACTED] income from the gift shop as being incidental retail sales. These figures add up to [REDACTED], leaving a cushion of [REDACTED]. Staff finds this cushion is more than enough to cover any incidental sales that could be attributable to the café.

Based upon the foregoing analysis, staff finds that applicant's operations as documented in its application and supplemental submittals meet the definition of what constitutes a farm stand.

*Criterion met.*

## **7. EXCLUSIVE FARM USE – DIMENSIONAL REQUIREMENTS**

### **MCC § 34.2660 DIMENSIONAL REQUIREMENTS**

**(A) Except as provided in MCC 34.2675, 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.**

**(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.**

**(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.**

**(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:** Applicant provided an aerial photograph with the various structures associated with the farm stand labeled. From reviewing the aerial photograph, staff finds that the yard requirements are met.

*Criteria met.*

**8. EXCLUSIVE FARM USE – PARKING REQUIREMENTS**

**MCC 34.4105 GENERAL PROVISIONS**

**MCC 34.4125 USE OF SPACE**

**MCC 34.4130 LOCATION OF PARKING AND LOADING SPACES**

**MCC 34.4120 PLAN REQUIRED**

**MCC 34.4175 DIMENSIONAL STANDARDS**

**MCC 34.4180 IMPROVEMENTS**

**MCC 34.4200 LANDSCAPING AND SCREENING REQUIREMENTS**

**MCC 34.4205 MINIMUM REQUIRED OFF-STREET PARKING SPACES**

**Staff:** From the applicant's July 20, 2005 submittal staff finds that the farm provides parking at 65 paved, striped parking spaces located in and amongst the farm stand buildings. Access to the parking area from Gillihan Road is along a paved access way, which is the main entrance to the farm. Cars enter and leave from that access point. Staff finds from the November 2, 2005 memo of Traffic Engineer Bikram Raghubansh that peak traffic occurs during the month of October. In the traffic control plan (Exhibit A.10), submitted on November 2, 2005, applicant has proposed to provide overflow parking at four additional parking lots, two on the north side of Gillihan Road (labeled "Lot 1" and "New Lot 2005" on the traffic management plan) to the east of the farm stand and two on the south side of Gillihan Road, across from the farm stand (labeled as "Lot 2" and "Lot 3").



Gillihan Road is designated as a Minor Arterial under the County's TSP. Staff finds that during the height of the fall harvest in October, traffic levels on Gillihan Road rise dramatically, particularly on weekends, and that in order to protect the efficient flow of traffic on Gillihan Road, it is essential that the Pumpkin Patch provide adequate off-street parking for the traffic it generates.

Under MCC 34.4105, the code's parking requirements are triggered when changes in use of the land result in an intensified use by customers, occupants, employees or other persons. Staff finds that the change of use associated with the corn maze has resulted in large numbers of additional customers coming to the Pumpkin Patch property, particularly during weekends in October, and that therefore under the code, the parking requirements apply to the Pumpkin Patch use.

Applicant asserts that application of the parking provisions of the code would involve application of regulations that may not permissibly be applied under *Brentmar v. Jackson County*. *Brentmar* has been interpreted to preclude application of supplemental locally-imposed criteria to ORS 215.283(1) uses, including farm stands. However, subsequent to *Brentmar*, the Oregon Supreme Court held in *Lane County v. LCDC*, 325 Or 569, 942 P2d 278 (1997) that ORS 215.283(1) uses can be subject to additional regulation pursuant to *state-imposed* criteria adopted and applied pursuant to LCDC Goals and administrative rules. Such state-imposed criteria can be applied even though they could result in denial of a 215.283(1) use. Therefore, staff finds that although the parking requirements of the code go beyond the requirements set forth in ORS 215.283(1)(v) for farm stands, to the extent the requirements implement state-mandated criteria under LCDC's Statewide Planning Goals or administrative rules, the code provisions may be applied to the subject application.

MCC 34.4105 requires that new buildings, additions to buildings or changes in use that result in intensified use require a demonstration that applicant can provide off-street parking. Staff finds that this general requirement for off-street parking implements state regulations promulgated pursuant to Statewide Planning Goal 12 and its implementing administrative rule. Goal 12 relates to transportation and mandates planning authorities to "provide and encourage a safe, convenient and economic transportation system." That goal is implemented through what is known as the Transportation Planning Rule, set forth at OAR 660 Division 12. The TPR requires local planning jurisdictions to adopt Transportation System Plans in accordance with the TPR. OAR 660-012-0015(3). A TSP must include a road plan for a system of arterials and collectors and local streets. OAR 660-012-0020(2). Among other items, a TSP must provide for access control measures to protect the identified function of a street, standards to protect future operation of roads, and a process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities. OAR 660-012-0045(2)(a), (b) and (e).

Multnomah County's Comprehensive Plan includes an adopted TSP and various transportation-related comprehensive plan policies. For example, Comprehensive Plan Policy No. 34, Trafficways, includes Policy 34F which expresses a policy to limit the number of access points to arterials and collectors. That policy is also expressed under Comprehensive Plan Policy No. 36, Transportation System Development, Policy No. 36B. Policy 36B requires establishment of vehicular and truck off-street parking and loading areas to promote and increase the efficiency of trafficways. Strategy 34C(1) under Comprehensive Plan Policy No. 34 contemplates that the Multnomah County Code will include permitting requirements and operational measures to implement the Policies 33c, 33d, 34 and 35 of the Comprehensive Plan.

Staff finds that the requirement expressed in MCC 34.4105 that developments provide for off-street parking is a requirement imposed pursuant to state mandate. Accordingly, those applicable off-street parking requirements that promote usable and adequate parking facilities and that provide for adequate

circulation within parking areas and safe access to public roadways as a means to protect the function of public trafficways, such as Gillihan Road, may validly be applied to the subject proposal. For the purposes of this decision, staff has determined that those applicable provisions are as follows: 34.4105 (General Provisions), 34.4120 (Plan Required), 34.4125 (Use of Space), 34.4130 (Location of Parking and Loading Spaces), 34.4135 (Improvements Required), 34.4140 (Change of Use), 34.4145 (Joint Parking or Loading Facilities), 34.4170 (Access), 34.4175 (Dimensional Standards), 34.4180 (Improvements), 34.4195 (Design Standards: Setbacks), 34.4205 (Minimum Required Off-Street Parking Spaces) and 34.4210 (Minimum Required Off-Street Loading Spaces). Staff finds that MCC 34.4200, Landscape and Screening Requirements, do not add to the adequacy of the off-street parking and circulation and therefore pursuant to *Brentmar* cannot be applied.

Staff finds that satisfaction of these requirements can be imposed as a condition of approval pursuant to MCC 37.0660.

### Number of Parking Spaces

One of the key issues is how many parking spaces are required under Section 34.4205 the code. Section 34.4145 requires that when more than one use occupies a lot, the total lot parking and loading requirements are the sum of the requirements for each individual use. In this case, the farm stand has different components and staff finds that each component should be analyzed to determine how much parking is needed.

Applicant's submittal indicated that a total of 14.5 spaces are required, based upon square footage of the market building, the gift shop and the café and the criteria for stores, supermarkets and personal service shops. Applicant's submittal indicates that the 65 paved, striped spaces meet the code requirements. Staff disagrees. The applicant's analysis does not account for parking that is generated by the corn maze aspect of the farm stand use. In addition, the analysis does not apply the proper criteria for evaluating the café aspect of the farm stand, but as discussed below, that does not affect the outcome.

With respect to the café, staff finds that it is not appropriate to use the dimensions of the mobile food structure itself as the measure of how much parking is required. The square footage of the mobile food cart equates solely to the kitchen area typically found within a restaurant, but doesn't include the dining area. Staff finds that the dining area equates to the space under the covered roof area. Accordingly, staff finds that pursuant to MCC 34.4205(C)(4), the cafe could conceivably be required to provide one parking spot for each 100-square feet of gross floor area under the dining canopy. However, staff finds that this does not affect whether the farm stand meets the parking criteria. Staff finds there to be an excess of 50 spaces in the paved parking area, so at a rate of one spot per 100-square feet of gross floor area, the dining area could take up to 5,000 square feet before the amount of parking spaces attributed to the café seating area would cause the parking space count to be deficient. Staff finds that the canopy does not cover that large of an area. While the applicant provided no specific data regarding the size of the canopy structure, it appears to be approximately 50 feet by 30 feet as shown on the 2002 aerial photos. This is roughly 1,500 square feet.

With regard to the corn maze, the code does not specify parking requirements for such a use. In such cases, MCC 34.4205(E) allows staff to apply the requirements of the use from among those listed in MCC 34.4205 that is most nearly equivalent to the use at issue. Staff finds that the corn maze activity does not involve a structure and accordingly does not present any good equivalents for the purpose of applying MCC 34.4205(E). However, staff finds that this provision is intended to allow flexibility to cover

situations not specified in the code. In this case, applicant has provided for four temporary overflow lots, Lots 1, New Lot 2005, Lot 2 and Lot 3. Staff finds that due to the existing operation of the corn maze, the applicant has a basis for determining the amount of parking that is needed and that accordingly, the parking provided will be sufficient. Staff will impose a condition of approval that all on-street parking be prohibited.

#### Nature of Parking Provided

MCC 34.4130 requires that parking be provided on the same lot as the use being served. Staff finds that this criterion is met. MCC 34.4125 requires that required parking be available free of charge to customers, occupants and employees. Again, staff finds that this criterion has been met. Just to be clear on this point, staff will condition this approval on continuing to make parking available free of charge.

MCC 34.4175 sets forth dimensional standards that parking spots and aisles must meet. These dimensional standards in turn are then used for marking the required parking spots in accordance with MCC 34.4180(C). Staff finds that pursuant to MCC 34.4180, large parking fields for intermittent uses may be unmarked if the parking of vehicles is supervised. Staff finds that the nature of such temporary unmarked parking lots and the allowance for an exception to marking individual spots indicates that as a practical matter, strict adherence to the parking dimension standards is not applicable in such instances.

Applicant's November 2, 2005 parking plan does not propose parking attendants, except for certified flaggers for overflow periods to assist pedestrians in crossing Gillihan Road when Lot 2 is in use. As a condition of approval, applicant will be required to also provide parkers in each of the overflow lots during the periods when use of the overflow parking lots is required, as suggested in the Traffic Engineer's November 9, 2005 memo. Because these parkers would be operating solely on private property, they need not be certified as would be required if MCRR 18.180 were to apply.

MCC 34.4180(A) requires that parking lots be surfaced. MCC 34.4180(A)(2) allows intermittent parking areas to be surfaced with gravel or grass. For the reasons set forth herein, staff finds that this provision is applicable to applicants and may permissibly be applied notwithstanding the *Brentmar* decision. Staff finds that the time of peak use of the overflow parking areas coincides with the onset of the rainy season and that in rainy weather dirt parking lots can become unusable or unattractive for use by customers. Staff finds that this could encourage customers to seek alternative parking arrangements on Gillihan Road, which would interfere with the efficiency and safety of that traffic facility. Accordingly, staff finds that the parking surfacing requirement has a sufficient connection to a state-imposed mandate that applicant can be required to comply with them.

This decision will include conditions of approval that require lots 2, 3, and the "new lot" to be surfaced with gravel or grass. In conversations with the applicant, it was established that the area used as lot 1 is the most highly productive soil on the farm operation, delivering two to three crops as year in addition to serving as overflow parking. The removal of this lot from farm production would be a hindrance to the farm operation as well as a conflict with the intent of the EFU zone. Staff recognizes the intent of the gravel/grass surfacing requirement is to ensure the lot is suitable for use in two separate ways. The first is to ensure that the parking lot is not so muddy that visitors to the site are unwilling to park in the lot. The second is to ensure that vehicles exiting the lot do not have tires that are caked with mud that will be tracked onto the public road. For lot 1, the applicant will address these concerns by leaving the root structure of the previous crop intact and applying mulch to those areas that are exposed and traveled. Retaining the root structure will serve to bind the soil while the mulch cover will work to reduce the

muddiness of the lot. A condition of approval is included requiring the use of mulch as surfacing for lot 1.

For the same reasons established above, staff finds that the access points to the overflow parking lots from Gillihan Road must be graveled to allow for efficient access to and from the County's transportation facility and to prevent mud from being tracked onto Gillihan Road. The traffic engineer's memo of November 9, 2005 recommends that each approach be graveled for 100 feet back from Gillihan Road. This requirement will be made a condition of approval.

## **9. EXCLUSIVE FARM USE – REVIEW USES – ACCESSORY FARM DWELLINGS**

### **MCC 34.2625 REVIEW USES**

**(E) Accessory farm dwellings, which includes all types of residential structures allowed by the applicable state building code, customarily provided in conjunction with farm use if each accessory farm dwelling meets all the following requirements:**

- (1) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator; and**

**Staff:** Structures No. 6 and 7, as shown on the aerial photograph are, respectively, a stick-built dwelling reportedly moved onto the property in the 1940s and a mobile home moved onto the property in 1980. Because neither of these structures is documented with land use permits or other approvals, by virtue of MCC 37.0560, the presence of these dwellings must be justified under the zoning code if applicants are to gain approval for their farm stand.

In this case, applicants state that both Structures No. 6 and 7 are occupied by farm workers who are directly involved in the planting and harvesting of crops on the farm. Staff accepts applicant's statement in this regard. This criterion is met.

- (2) The accessory farm dwelling shall be located:**

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

**(b) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or**

**(c) On a lot or parcel on which the primary farm dwelling is not located, when:**

**1. The accessory farm dwelling is limited to only a manufactured dwelling; and**

**2. A deed restriction is filed with the county clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party; and**

**3. The manufactured dwelling may remain if it is reapproved; or**

**(d) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi- unit residential structures allowed by the applicable state building code or similar types of farm labor housing as such farm labor housing may exist on the farm or ranch operation that is registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. All accessory farm dwellings approved under this subparagraph shall be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or**

**(e) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least 80 acres in area and the lot or parcel complies with the applicable gross farm income requirements in MCC 34.2625(E)(4) below; and**

**Staff:** Both accessory dwellings are located on the same property as the applicant's primary dwelling. The property is composed of two tax lots as noted in the Lot of Record findings in Section 5. This criterion is met.

**(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**

**Staff:** The applicants document that there are a total of 6 dwellings on the property used as residences. Those dwellings include the dwellings listed as Buildings 6-10 on the site plan and the Eggers own residence (located south of Gillihan Road and not shown on the site plan). Staff has determined that the dwellings listed as 6 and 7 have no prior approvals from the County.<sup>4</sup>

Applicant indicates that the houses are used as follows:

- No. 6: Used for farm worker housing.
- No. 7: Used for farm worker housing.
- No. 8: Used as a dwelling by the manager of the corn maze.
- No. 9: Used for farm worker housing.
- No. 10: Used for farm worker housing.

In addition, in response to an issue raised by neighbor Mark Beall, applicant's October 4, 2005 submittal noted that there are two mobile homes on the property, used as follows: one by the farm foreman and the second by the operators of the farm stand café. Because it has not been established that these are validly permitted dwellings on the property, the occupancy of these mobile homes will not be addressed in response to this criterion and will be handled as an enforcement issue.

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<sup>4</sup> In addition, according to a neighbor's letter dated September 26, 2005 and the applicant's response of October 4, 2005, there appear to be two additional mobile homes or travel trailers on the property. Staff finds that these mobile structures will need to be removed from the property.

Mark Beall's comment letter (Exhibit S.1) questions whether or not dwelling No. 8 is occupied by "a person not working on the subject farm." Staff finds this dwelling to be occupied by Mr. Easterly. The letter claims that Mr. Easterly's presence on the farm appears to relate solely to the management and operation of the corn maze.

Staff finds from its context, this provision is intended to refer to persons who are engaged in "farm use" of the property. Subsection 1 requires that the accessory farm dwelling at issue be occupied by "a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator." Given that requirement, it only stands to reason that in order to satisfy this provision that all alternative dwellings on the property must meet that same standard. Staff finds that if the only work that Mr. Easterly did on the farm was to operate the corn maze, that would not constitute a "farm use" as that term is defined under statute and the County's ordinance. Staff finds, from additional information submitted by the applicant on December 1 (Exhibit A.8), that Mr. Easterly's duties on the farm also include rotatilling and leveling the ground and further tractor work to prepare the fields for planting, managing the marketing and advertising for the farm and transporting Pumpkin Patch-grown produce to the farmer's markets in Portland and Beaverton. Staff finds that Mr. Easterly's activities constitute sufficient involvement with the farm that Dwelling No. 8 can be regarded as being occupied by a person working on the farm. Accordingly, staff finds that this criterion is met.

**(4) In addition to the requirements in (1) through (3) in this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:**

**(a) On land not identified as high-value farmland, the primary 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 in the last two years or three of the last five years the lower of the following:**

**1. At least \$40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or**

**2. Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or**

**(b) On land identified as high-value farmland, the primary 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 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; or**

**Staff:** The subject property is identified as being on high value soils. Applicants have demonstrated that the dwelling is located on a farm that produces more than \$80,000 in annual gross income over the required time period. Staff finds that this criterion is met.

## **10. POLICY 36 – TRANSPORTATION SYSTEM DEVELOPMENT REQUIREMENTS**

10.1 The portions of this policy applicable to the subject request are the following excerpted policies:

### **10.2 Policy 36**

**The County's policy is to increase the efficiency and aesthetic quality of the trafficways and public transportation by requiring:**

- B. The number of ingress and egress points be consolidated through joint use agreements;**
- C. Vehicular and truck off-street parking and loading areas;**

**Staff:** Staff finds that by their terms, Policies 36B and 36C are mandatory criteria that are directly applicable to the approval of individual permits. Findings showing compliance with Policy 36C are set forth above in the section regarding off-street parking. Findings showing compliance with Policy 36B are set forth in this section below.

Staff finds that the Policy 36(B) triggers application of the access permit requirements of the County's Road Rules. Those road rules are authorized under MCC 29.500 and are intended to implement applicable policies of the Multnomah County Comprehensive Framework Plan, including policies 33-36. MCRR 2.000. In addition, the purpose of the rules is to provide a link between the County's ordinance provisions authorizing road rules and the County's Design and Construction Manual adopted under the provisions of the road rules. MCRR 2.000. Furthermore, the street standards are noted as being the street standard rules referenced in the Land Division Code chapters of the County's zoning ordinance. MCRR 2.000.

Any argument applicants may have under *Brentmar* to preclude application of these rules is subject to the same analysis set forth above regarding the parking requirements. As with the parking requirements, staff finds that the access requirements are authorized pursuant to Statewide Planning Goal 12 and are intended to implement the requirements of the TPR. As set forth above, the TPR includes a mandate to protect the capacity of transportation facilities by appropriate access restrictions.<sup>5</sup>

MCRR allows the County to require applicants for a new or reconfigured access onto a road under County jurisdiction to provide a site plan, complete a traffic study, provide an access analysis and a site distance certification from a registered traffic engineer and to provide such other site-specific information as may be requested by the County Engineer. MCRR 4.000. This section must be read in conjunction with MCRR 18.250, relating to Access Permits, which defines an "altered" access to be one where a change in the development it serves has a Transportation Impact as defined in Section 6.000 of the road rules. MCRR 18.250(A)(1). Under Section 5.000, a transportation impact occurs when any new construction or

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<sup>5</sup> State statute at ORS 374.305 gives additional authority to the County to restrict access to County roads. However, it is the policies in the County Comprehensive Framework Plan that provide the link that allows satisfaction of the access requirements to be made a condition of land use permit approval.

alteration would increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour. MCRR 5.300.<sup>6</sup>

In this case, the County required the applicant to submit a traffic study (Exhibit A.9). Applicant submitted such a study, dated August 22, 2005, indicating that during a typical Saturday peak hour (found to be 3:45 pm to 4:45 pm), the site generates 118 additional trips. Under these facts, the farm stand use has a transportation impact, which triggers the access permit requirements of the road rules. In addition, staff finds an even more compelling case that the activities of the farm stand constitute a traffic impact when the traffic associated with the corn maze and other harvest-time activities are considered. Staff finds from the November 9, 2005 memo of Senior County Traffic Engineer Bikram Raghubansh (Exhibit S.3) that the attractions at the Pumpkin Patch site generate a marked increase in traffic during the month of October that clearly indicate that the farm stand has a traffic impact.

MCRR 4.200 restricts access to arterials and collectors to one driveway access per property. In this case, the applicant submitted a traffic control plan showing access from the site by as many as seven separate driveways along the subject property's frontage along NW Gillihan Road. As noted earlier, the traffic control plan proposes four overflow parking lots, two north of NW Gillihan Road and two south of NW Gillihan Road, across from the farm stand operation. These lots are operated on days when the traffic exceeds the capacity of the existing 65-space paved parking lot.

Staff finds from the November 9, 2005 Traffic Engineer's report that none of the site's access points to NW Gillihan Road have access permits from the County, except for an access permit for the residence located south of Gillihan Road at 16450 NW Gillihan Road that was permitted in 1999. Some of these driveway accesses are thought to be pre-existing driveway accesses, but none of them has been permitted. In addition, the County's access permitting requirements clearly pre-date the addition of the corn maze to the property in the late 1990s. The single access point-per-property limitation was in force under the prior rules as well. See former MCRR 5.220(a).

MCRR 4.000 allows the County to regulate the following aspects of access: the number of accesses (MCRR 4.200), the location of access (MCRR 4.300), access width (MCRR 4.400) and sight distance (MCRR 4.500). As noted, the number of accesses in this case exceed the number of allowed access points. However, applicants may exceed the one access per property limit if they are able to obtain a variance pursuant to MCRR 16.000. In this case, pursuant to MCRR 16.400, the County Engineer initiated a variance, and that variance is being approved, subject to conditions, as part of this decision.

As discussed in the County Engineer's Variance (Exhibit S.4), the proposal from the applicants contains multiple driveways, some of which do not meet the 300 foot spacing standard. The County Engineer granted a variance to allow more than one driveway and to allow one exception to the spacing standard. The variance requires the applicant relocate and/or realign some of the driveways and comply with several conditions of approval such as the use of flaggers and a designated pedestrian crossing point. The rationale for the variance and the associated conditions of approval are included in the document attached to this decision as Exhibit S.4. The conditions of the variance decision are incorporated into Condition 7 of this decision.

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<sup>6</sup> The reference to MCRR 6.000 in MCRR 18.250 appears to be a scrivener's error. The appropriate cross-reference appears to be to MCRR 5.000.



## **11. POLICY 37- UTILITIES**

11.1 The portion of this policy applicable to the subject request is under the heading “Water and Disposal System”

### **11.2 Water and Disposal System**

- 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.**

**Staff:** The applicant has provided a Certification of Water service stating that the two on-site wells have adequate capacity to provide water for the proposal. A copy of this certification is in the file.

A Land Feasibility Study (Exhibit A.11) and a Certification of On-Site Sewage Disposal form (Exhibit A.12) have been submitted documenting that the City of Portland Sanitarian will be able to approve an adequate on-site sewage disposal system to provide public restrooms for the farm stand. A copy of this certification is in the file. No information was submitted regarding the suitability of the septic systems for the two accessory farm help dwellings. Staff contacted the City of Portland Sanitarian’s office by phone to discuss these structures. They indicated that a system for a mobile home was reviewed in the 1980’s but that no permit for the system was ever issued. A copy of the 1980’s review documents is included in the file. These documents show a 1,000 gallon tank with 3 drain lines as a new system for an existing dwelling with the notation that a future mobile home would be attached. It is not clear whether the future mobile home cited is dwelling 7 or not. City staff also advised that the stick built house from the 1940’s (dwelling 6) has not been reviewed for sanitary waste disposal. The approval of these dwellings for use as accessory farm help dwellings will be conditioned upon the issuance of authorization of sanitary waste disposal systems for each of the dwellings. The authorizations shall be obtained within 90 days of this decision becoming final.

## **12. POLICY 38- FACILITIES**

### **Policy 38: Facilities**

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

#### **School**

- A. The appropriate school district has had an opportunity to review and comment on the proposal.**

**Staff:** This farm stand use will not place any additional demands on the school system.

## **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 comment on the proposal.**

**Staff:** The farm stand and the accessory dwellings are within the boundary of and are served by the Sauvie Island Rural Fire Protection District. The applicant has submitted two service provider letters signed by a representative of the Sauvie Island Rural Fire Protection District stating that fire access and fire fighting water supply are both adequate to serve the proposed use. Copies of these certifications are included as Exhibits A.13 and A.14 respectively.

The form that captures comments about the fire fighting water supply indicates that adequate water is available to fight fires associated with residential uses. Staff had a phone conversation with Don Posvar, Sauvie Island Fire Chief, on December 15, 2005 to confirm that the supply is adequate for the farm stand. In that conversation, Mr. Posvar pointed out that each of the district's fire engines can hold 1,000 gallons, and that each of their two water tenders has a 4,000-gallon capacity. He also indicated that mutual aid agreements are in place with the City of Portland and Scappoose Fire District to allow the use of the Scappoose water tenders and City of Portland fireboat. The fireboat is equipped with a pump that can be used to fill water tenders directly from the channel, which is located at the property's southern boundary. Mr. Posvar stated that with these resources at the district's disposal, their fire fighting water supply needs are met for the farm stand as well as the residences.

## **Police Protection**

- D. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.**

**Staff:** Staff finds this criterion encompasses demands on the sheriff's office for traffic control as well as crime prevention and law enforcement. The applicant has submitted a copy of a signed Police Services Review form (Exhibit A.15) stating that the level of police service is adequate to serve the proposed use.

Staff finds that the only issue relevant to this criterion is the traffic impact from the use during the month of October each year. Planning staff contacted the sheriff's office for input regarding traffic issues. According to a 2002 Multnomah County Sheriff's Operational Plan, during weekends in October, up to 10,000 people a day come onto Sauvie's Island to attend the Pumpkin Patch and other farms for fall harvest celebratory activities. The magnitude of the issue is confirmed by the traffic counts taken by the County Engineer during the time period October 14, 2005 through November 9, 2005, as set forth in the November 9, 2005 memo from Senior Traffic Engineer Bikram Raghubansh (Exhibit S.3). Those counts showed as many as 7,916 cars crossing onto Sauvie Island on a Saturday in October. By comparison, on November 5, 2005, after the cessation of fall harvest activities at the Pumpkin Patch and other farm stands on the island, only 1,577 vehicles crossed onto the island. An email dated July 11, 2005 from Sergeant Matsushima indicates that the volume of traffic coming onto Sauvie's Island is such that it overwhelms the roadway, pushes out local residents, disrupts farming and commerce and on the busiest days defeats any efforts to control traffic flow. Backups often extend all the way out to US 30. In addition, at individual sites, volumes of pedestrians interacting

with vehicular traffic tie up crossing points, backing up traffic and causing unacceptable or unsafe intermingling of pedestrians and vehicles.

Staff acknowledges that the traffic is not all caused by the applicant. However, the Pumpkin Patch is the largest farm stand on the island. The applicant has acknowledged the traffic problem by cooperating with the Multnomah County Sheriff's office since 2002 in devising and implementing an Operational Plan for managing traffic. Comments from the Sheriff's office indicate that the 2002 Operational Plan is still used by the Department to manage the traffic impacts from the Pumpkin Patch and other farm stands on the island. A copy of the 2002 plan is included in the file. That plan contemplates that during October weekends there will be two two-person teams present on Sauvie Island to facilitate traffic control. One team will be stationed at the bottom of the Sauvie Island Bridge to manually direct traffic from the confluence of Sauvie Island Road and Gillihan Road onto the bridge to prevent back-up of outbound Gillihan Road traffic in order to ensure safe and expedient ingress and egress from the island. The other team will be stationed at the Pumpkin Patch site to maintain a law enforcement presence and to help manually direct traffic from Gillihan Road to designated parking lots and back again onto Gillihan Road and to assist in the safe passage of pedestrians crossing Gillihan Road from overflow parking areas to the site.

Comments received from the Sheriff's Office dated July 11, 2005 indicated the need for additional traffic control measures to supplement the existing Operational Plan. These issues are addressed in the applicant's November 2, 2005 Traffic Management Plan. Staff finds that if this plan is implemented in accordance with the requirements of the Traffic Engineer, this standard will be satisfied.

### **13. ISSUES RAISED IN PUBLIC COMMENTS**

**Staff:** Two letters of public comment were received, copies of which are included as Exhibits S.1 and S.2. The issues raised in these letters are addressed throughout this document as outline below:

Letter of Comment from Mark Beall (Exhibit S.1)

- Two mobile homes not shown on the plans are being used as dwellings. This is addressed in Finding 4 starting on page 5 and condition of approval 9.
- One of the farm worker dwellings is rented to the operator of the corn maze, not a farm worker. This is addressed in Finding 9 on pages 21-22.
- The corn maze is operated as a separate entertainment focused business and should not be counted as part of the farm stand operation. This is addressed in Finding 6 on pages 11-13.
- Questions regarding how the café, corn maze, gift shop, animal barn and sale of produce not grown on the Pumpkin Patch farm are allowed in EFU zoning. This is addressed throughout finding 6 on pages 7 through 15.
- Concerns regarding traffic. These are addressed in finding 11 on pages 23-24 as well as in Exhibits A.9, A.10, S.3 and S.4.

Anonymous Letter of Comment (Exhibit S.2)

- The corn maze is operated as a separate entertainment focused business and should not be counted as part of the farm stand operation. This is addressed in Finding 6 on pages 11-13.

## 14. CONCLUSION

Based upon the findings contained herein, the applicant has carried the burden necessary to demonstrate that, with conditions, the criteria for a farm stand and two accessory farm help dwellings contained in the Zoning codes have been met.

## EXHIBITS

All materials submitted by the applicant, prepared by county staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record for this application. Exhibits referenced herein are enclosed, and brief description of each are listed below:

### List of Exhibits

#### Applicant's Exhibits

		Date Submitted	Number of Pages
A.1	Application form Signed By Owner	5-9-05	1 pg
A.2	Site Plan and Legend		2 pgs.
A.3	Narrative dated 5-9-05	5-9-05	2 pgs.
A.4	Narrative dated 7-20-05	7-21-05	9 pgs
A.5	Narrative dated 10-4-05	10-5-05	4 pgs
A.6	Narrative dated 11-23-05	11-23-05	2 pgs.
A.7	Narrative dated 11-30-05	12-1-05	2 pgs.
A.8	Narrative dated 12-1-05	12-2-05	2 pgs
A.9	Traffic Impact Study (including acceptance by County Engineer)	9-1-05	4 pgs.
A.10	Traffic Control Plan Approved by County Engineer 12-14-05	9-1-05	1 pg. (oversized original)
A.11	Land Feasibility Study	5-9-05	1 pg.
A.12	Certification of On-Site Sewage Disposal	5-9-05	1 pg.
A.13	Fire Access Review	5-9-05	1 pg.
A.14	Fire Flow Review	5-9-05	1 pg.
A.15	Police Services Review	5-9-05	1 pg.

#### Staff's Exhibits

		Date Submitted	Number of Pages
S.1	Letter of Comment from Mark Beall	9-26-05	1 pg
S.2	Anonymous Letter of Comment	9-27-05	1 pg.
S.3	Memo from Bikram Raghubansh dated 11-9-05	11-9-05	4 pgs.
S.4	County Engineer Initiated Variance dated 12-14-05	12-15-05	7 pgs.