

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

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

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

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## NOTICE OF DECISION

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

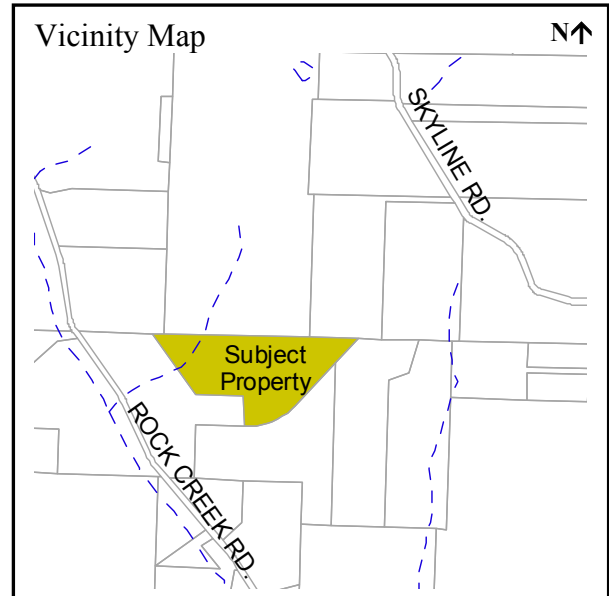
**Case File:** T2-05-082

**Permit:** Administrative Decision by the Planning  
Director Commercial Forest Use  
Development Standards

**Location:** 12937 NW Skyline Road  
Tax Lot 100, Section 36C,  
Township 2N, Range 2W, W.M.

**Applicant:** Dustin Guetter  
31531 SE Hamlet Drive  
Boring, OR 97009

**Owner:** Ronald W. & Jorie L. Kincaid  
12937 NW Skyline Road  
Portland, OR 97231



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**Summary:** A determination that the proposed 36' by 60' agricultural barn for horses meets the development standards for structures in the Commercial Forest Use – 2 (CFU-2) Zone District.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective September 15, 2003 at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Thursday, September 1, 2005

**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 George A. Plummer, 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 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 September 15, 2005 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): Chapter 37 and MCC 33.2200 through 33.2310.

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

### **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. 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. The property owner shall maintain a primary and a secondary fire safety zone on the subject tract.
  - A. A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

B. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Maintenance of the secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the property owner.

2. The proposed building shall have a fire retardant roof.

**Note:** Once this decision is final, application for a Farm Agricultural Building Land Use Permit may be made with County Land Use planning. When ready for the permit signed off, the applicant shall call the Staff Planner, George Plummer, at (503) 988-3043, for an appointment for zoning review plan check and to sign the permit form. Please note, Multnomah County must review and sign off the permit form and plans before the applicant begins to build the structure. Two (2) sets the plans and site plan of the building area are needed for permit 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 AND CONCLUSIONS**

This decision is based on the findings and conclusions in the following section.

**Staff Report Formatting Note:** To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. At the end of the report, Exhibits are described. The applicant's submittals are included and made part of this decision under the category Exhibit 1...

### **1. DESCRIPTION OF THE PROPOSAL:**

**Applicant:** *Barn for Horses - 36' x 60' Agg. Structure – Administrative Decision by the Planning Director regarding CFU Development Standards.*

**Staff:** Request to build a 36' by 60' agricultural barn for horses on property within the Commercial Forest Use – 2 (CFU-2) Zone District. Property owner breeds horses (Exhibit 1.1).

### **2. SITE AND VICINITY CHARACTERISTICS**

**Staff:** The subject property is a 20 acre lot in Skyline Ridge Estates. Existing development on the property includes a dwelling, a small shed and a sports court. The property has a farm deferral and is used for raising horses. A little more than half of the property is forested (Exhibit 2.3). The property slopes to the west. The adjacent properties are a mix of residential and either farm or forest uses or a combination of the two. The area is generally made up of large acre, 20 acre or more, mixed use properties with most having a dwelling and some forest land.

### **3. 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:** County Assessment records show the property owners as Ronald W. & Jorie L. Kincaid (Exhibit 2.1). The applicant, Dustin Guetter, submitted an application form with a property owner's signature (Exhibit 1.1).

### **4. TYPE II CASE PROCEDURES**

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

**(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject Tract. The Planning Director accepts comments for 14 days after the notice of**

**application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Director's decision shall become final at the close of business on the 14<sup>th</sup> day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is signed.**

**Staff:** An opportunity to comment was mailed to property owners within 750-feet of the property lines on August 5, 2005. A letter of comment was received from Michael Winslow, property owner at 12943 NW Skyline Blvd., the property adjacent to the west (Exhibit 3.1).

Mr. Winslow states that, "...the proposed use of the property does not qualify as a farm use under ORS 215.203..." continuing on to explain that he believes the horses are for personal use only. In addition Mr. Winslow states that, "the proposal still fails to meet the approval criteria of MCC 33.2305(A)(1)..." which requires the development be located to have the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements. He continues pointing out that at the closest point the proposed building will be 60 feet from his property and about 200-250 feet away from their house. He states, "...the applicants have an alternative, feasible location for the agricultural barn on their property that will not impact our property – or any other residential properties in the development – to the same degree." He then discusses an alternative site. Mr. Winslow ends the letter stating that the County should limit the number of horses that can be kept on the property.

We will address the first two of Mr. Winslow's concerns in the findings under Sections 5.1 and 5.4 (Subsections 5.4.1 and 5.4.2). Per Mr. Winslow last concern, the number of horses kept on the property is not regulated by County Land Use Code thus can not be limited by this permit.

## **5. CFU-2 DISTRICT**

### **5.1 CFU-2 Uses**

**MCC 33.2215 No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC 33.2220 through 33.2240 when found to comply with MCC 33.2245 through 33.2310.**

\* \* \*

#### **Allowed Uses:**

**MCC 33.2220 (C) Farm use, as defined in ORS 215.203;**

**MCC 33.2220 (U) Other structures or uses determined by the Planning Director to be customarily accessory or incidental to any use permitted or approved in this district.**

**Applicant:** *Horse breeding - Barn for Horses - 36' x 60' Agg. Structure.*

**Staff:** The property owner has indicated that the structure is accessory to farm use. That use is described as breeding horses. Multnomah County Code refers to the farm use definition in ORS 215.203 which states:

"As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining 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. "Farm use" 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. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows."

The owner has stated that the farm use exists by indicating that on the Farm Agricultural Building Land Use Permit form (Exhibit 1.4). The subject property is enrolled in the Farm Deferral tax assessment program (Exhibit 2.1). The proposed building is to be used for housing horses. The subject property has an established farm use, the proposed building is customarily accessory to the farm use of breeding and raising horses; and stabling and training horses for obtaining a profit in money (Exhibit 1.4). This standard is met for the proposed building to be an accessory building.

## **5.2 Dimensional Requirements**

**MCC 33.2260 (G) Agricultural buildings, as specified in ORS 455.315 (2) and allowed under MCC 33.2220 (C), may have minimum side and rear yard setbacks of 30 feet, but in no case shall any setback be less than the minimum primary fire safety zone required by MCC 33.2305 (A) (5) (c) 2.**

**Staff:** Under ORS 455.315(1) an "equine facility" is allowed as an exempt agricultural building which allows it to be built without a building permit ORS 455.315 (2)(c) "Equine facility" means a building located on a farm and used by the farm owner or the public for:

- (A) Stabling or training equines; or
- (B) Riding lessons and training clinics.

The applicant has submitted a request for an agricultural building to house horses (Exhibit 1.1 and 1.4). According to the site plan (Exhibit 1.3) the proposed barn will be 60 feet from the nearest property line meeting the minimum setback requirements and the minimum 30 foot primary fire safety zone required by MCC 33.2305(A)(5)(c)(2). Dimensional requirements have been met.

## **5.3. The Subject Property is a Lot of Record**

**MCC 33.0005(L)(13) – Lot of Record**

**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.

**MCC 33.2275      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:**

\* \* \*

**(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.**

**Staff:** The subject property is subdivision Lot 4 of Skyline Ridge Estates (Exhibit 2.1) which was platted in 1993. The property when created (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws when created. The subject property is a lot of record.

**5.4.      CFU-1 Development Standards**

**MCC 33.2305(A) The dwelling or structure shall be located such that:**

**5.4.1.    MCC 33.2305(A)(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of 33.2260 (C) through (G);**

**Applicant:** *The structure has a 60' setback of centerline of the road which access is gained, 130' front, side, and rear.*

**Staff:** The proposed barn will be located 60 feet from the nearest adjacent property to the west, at 12943 NW Skyline Road. This property is owned by Michael and Darcy Winslow. The Winslow property is developed with residential uses in the front 350 feet to 400 feet (Exhibit 2.3). The Winslow property does not have a farm deferment. This area is non-forested thus the nearest forestland on adjoining properties is at least 400 feet from the proposed structure. The nearest agricultural land on adjoining property is more than 390 feet away. Given the distance to both forestlands and agricultural lands the proposed barn should have no impact on forest or agricultural lands. This standard is met.

**5.4.2.    MCC 33.2305(A)(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

**Applicant:** *There are no impacts on forest operations and farming practices will be minimized.*

**Staff:** The impacts to the forest management on the property are minimized by locating the new structure in an area already cleared (Exhibits 1.3 and 2.3). The cleared area is large enough to provide the primary fire safety break. No additional forest land will be removed from production.

The proposed location minimizes adverse impacts on forest operations on the tract. By locating the barn behind the existing house near the sports court, area is not taken away from the farm fields on the property which can then continue to be used for pasture or crops. The proposed location minimizes the adverse impacts to accepted farming practices on the tract. Standard is met.

**5.4.3. MCC 33.2305(A)(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

**Applicant:** *The amount of forest land used to the structure will be minimized.*

**Staff:** No forest land will be taken out of production for the proposed building or access road. Standard is met.

**5.4.4. MCC 33.2305(A)(4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

**Applicant:** *No access road over 500 ft.*

**Staff:** The driveway accessing the proposed building will be about 300 feet long. Standard is met.

**5.4.5. MCC 33.2305(A)(5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

\* \* \*

**(b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC 33.2305 (D) with permanent signs posted along the access route to indicate the location of the emergency water source;**

**Applicant:** *Does not apply.*

**Staff:** There are no perennial water sources on site. The Tualatin Valley Fire and Rescue Department official has signed stating that an access road is not required for this structure (Exhibit 1.5). The address for this property has been posted. This standard is met.

**(c) Maintenance of a primary and a secondary fire safety zone on the subject tract.**

**1. A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**

**2. On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

<b>Percent Slope</b>	<b>Distance In Feet</b>
<b>Less</b>	<b>Not required</b>



Percent Slope	Distance In Feet
than 10	
Less than 20	50
Less than 25	75
Less than 40	100

**3. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 33.2060 (F) and 33.2110.**

**4. No requirement in 1., 2., or 3. above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and**

**5. Maintenance of a primary and a secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the home owner.**

**Applicant:** *The primary safety zone will be maintained. The slope of the land is less than 10%. There will be a secondary safety zone. Nothing will contradict the plan approved by the State of Oregon Department of forestry. The safety zone will be maintained by homeowner.*

**Staff:** The applicant has enough area on the property to provide the primary fire safety zones around the proposed barn. A condition of approval will require the primary fire safety zones to be maintained as well as the secondary zone on the property. This standard will be met through a condition.

**(d) The building site must have a slope less than 40 percent.**

**Applicant:** *The building site is less than 40 %.*

**Staff:** The building site for the proposed barn has a shallow slope. Standard is met.

**5.4.6. MCC 33.2305(B) The dwelling or structure shall:**

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**
- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**
- (3) Have a fire retardant roof; and**

**(4) Have a spark arrester on each chimney.**

**Applicant:** *Does not apply.*

**Staff:** The proposed building must have a fire retardant roof. No fire places are proposed for the barn. This standard is met through a condition.

**5.4.7. MCC 33.2305 (C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.**

**(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**

**(2) Evidence of a domestic water supply means:**

**(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or**

**(b) A water use permit issued by the Water Resources Department for the use described in the application; or**

**(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

**Applicant:** *The water supply is from a well located on the property.*

**Staff:** The applicant has submitted a well report form water resources (Exhibit 1.8). Staff contacted Michael McCord, District 20 Watermaster, State of Oregon Water Resources Department and he verified verbally that a water use permit is not required for the use as described unless the daily use exceeds 5000 gallons. Mr. McCord stated that it is unlikely that the use as described would exceed that limit. This standard is met.

**5.4.8. MCC 33.2305 (D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:**

**Applicant:** *There is not a private road.*

**Staff:** The driveway accessing the barn does not access the dwelling. This standard is not applicable.

**Conclusion:**

**Staff:** Based on the findings and other information provided above, this application for accessory agricultural structure satisfies the Commercial Forest Use-2 Dimensional and Development Standards, with imposed conditions.

## **8. EXHIBITS**

### **8.1. Exhibits Submitted by the Applicant:**

- Exhibit 1.1: Application form submitted (1 page);
- Exhibit 1.2: Applicant's narrative submitted (1 pages);
- Exhibit 1.3: Site Plan (1 pages);
- Exhibit 1.4: Farm Agricultural Building land Use Permit application (1 page);
- Exhibit 1.5: Fire District Review (3 page);
- Exhibit 1.6: Certification of On-Site Sewage Disposal review (3 pages)
- Exhibit 1.7: Storm Water Certificate (2 pages);
- Exhibit 1.8: Well Report for the property (2 pages).

### **8.2. Exhibits Provided by the County**

- Exhibit 2.1: County Assessment Record for the subject property (1page);
- Exhibit 2.2: Current County Zoning Map with subject property labeled (1 page);
- Exhibit 2.3: 2002 Aerial Photo showing subject property and overlay zone districts (1 page).

### **8.3. Exhibits Submitted by Others**

- Exhibit 3.1: Letter of comment received by fax from Michael Winslow, 12943 NW Skyline Blvd, submitted August 19, 2005 (3 pages).