

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

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

<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

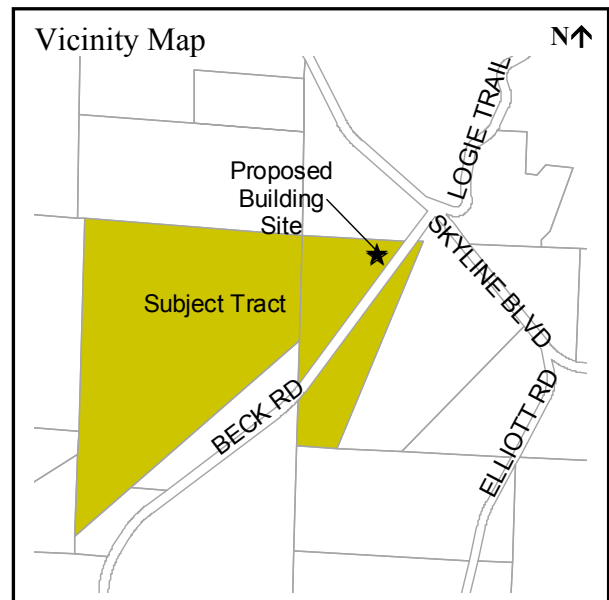
Case File: T2-06-044

Permit: Administrative Decision for construction of a barn for use as an equestrian training and rehabilitation facility in the CFU-2 zone with an SEC-h overlay.

Location: 21300 NW Beck Road
Tax Lots 500, 600, Section 2N,
Township 2W, Range 23A, W.M.
Tax lot 100, Section 2N, Township 2W,
Range 23B, WM.
R97223-0360, R972230040,
R972230620

Applicant: Mark Johnson

Owner: Mark & Shirley Johnson



Summary: Administrative decision for the establishment of a barn for use as an equestrian training and rehabilitation facility as a farm use.

Decision: Approved with conditions.

Unless appealed, this decision is effective June 20, 2006, at 4:30 PM.

Issued by:

By: _____
Tammy Boren-King, AICP,
Planner

For: Karen Schilling- Planning Director

Date: June 6, 2006

Instrument Number for Recording Purposes: #2003-133815

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 x 24562.

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 June 20, 2006 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 33.0005(L)(13) Definitions, Lot of Record; MCC 33.2220 Allowed Uses; MCC 33.2260 Dimensional Requirements; MCC 33.2275 Lot of Record; MCC 33.2285 Off Street Parking and Loading; MCC 33.2290 Access; MCC 33.2305 Development Standards for Dwellings and Structures; MCC 33.4515 Significant Environmental Concern, Exceptions

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/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. 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 shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. (MCC 37.0670)

2. Prior to the initiation of ground disturbing activities, the applicant or owner shall obtain a Grading and Erosion Control permit or a Minimal Impact Project grading approval, which ever is required by the final grading proposal. (MCC 29.333, 29.336)
3. Prior to the initiation of construction of the structure, the owner shall obtain an Agricultural Building Land Use Permit for the structure. If electricity, plumbing, or mechanical systems will be provided in the building, the owner shall also obtain the appropriate trade permits from the City of Portland Bureau of Development Services. (MCC 29.003)
4. If plumbing will be installed in the building, the applicant or owner shall submit a statement from the City of Portland Bureau of Environmental Soils that adequate sanitation can be provided on the subject lot prior to the authorization of a Grading and Erosion Control permit or an Agricultural Building Land Use Permit for the structure. (MCC 29.003) This may be done on the County's Certification of On-Site Sewage Disposal Form.
5. The applicant or owner shall submit a revised site plan showing the locations of the primary and secondary fire safety zones prior to the authorization of a Grading and Erosion Control permit or an Agricultural Building Land Use Permit for the structure.
6. The applicant or owner shall provide evidence of a recorded fire break easement for the portion of the fire break extending onto the property to the north prior to the authorization of a Grading and Erosion Control permit or an Agricultural Building Land Use Permit for the structure. (MCC 33.2305(A)(5)(c))
7. The property owner shall construct and perpetually maintain a primary fire safety zone extending a minimum of 30 feet in all directions around the equestrian facility. 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. (MCC 33.2305(A)(5)(c)).
8. The property owner shall construct and perpetually maintain a secondary fire safety zone 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. (MCC 33.2305(A)(5)(c)).
9. The applicant or owner shall submit a copy of a recorded easement allowing the shared use of the well on the property to the north and allowing a water line to traverse the property to the north prior to the authorization of a Grading and Erosion Control permit or an Agricultural Building Land Use Permit for the structure. (MCC 33.2305(C)) This easement and shared well agreement must specify that the subject property shall not use the well in excess of the Oregon Water Resources Department's allocation for agricultural wells.

10. The applicant or owner shall submit a revised site plan showing the location of the proposed parking areas prior to the authorization of a Grading and Erosion Control permit or an Agricultural Building Land Use Permit for the structure.
11. Prior to the authorization of a Grading and Erosion Control permit for an Agricultural Building Land Use Permit for the structure, the applicant shall obtain a driveway permit from Multnomah County Right-of-Way division for the connection of the driveway to NW Beck Road. (Road Rules Section 18.250)
12. Prior to authorization of an Agricultural Building Land Use Permit, the applicant shall submit building plans sufficient to verify that the proposed roofing material is fire retardant. (MCC 33.2305(B))

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.

Once this decision is final and a Grading and Erosion Control or Minimal Impact Project approval has been secured, application for an Agricultural Building Land Use Permit may be made. When ready to have the Agricultural Building Land Use Permit signed off, the applicant shall call the Staff Planner, Tammy Boren-King, at (503) 988-3043 x24562, to schedule an appointment for review and approval of the conditions and to sign the building plans. Information regarding the proposed grading as well as the proposed erosion control measures must be shown on the plans. Two (2) sets each of the site plan, floor plan and building plans are needed for the Agricultural Building Land Use Permit authorization.

Findings of Fact

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

1.0 Project and Vicinity Description

Applicant: The owner is applying to construct an agricultural building in conformance with a farm use, an allowed use under MCC 33.2220(C) and ORS 215.203. Farm use includes the current employment of land by stabling or training equines. Farm use includes the on-site construction and maintenance of facilities used for the training and boarding of horses (ORS 215.203).

Staff: The applicant is proposing the construction of a horse barn as a farm use on a piece of forested land NW Skyline and NW Beck Roads. The subject parcel is currently vacant and heavily forested. The surrounding area is predominately composed of forested tracts with scattered home sites. As can be seen in the 2004 aerial photo of the vicinity included as Exhibit S1, there is some nearby land to the southeast that has been cleared for use as pasture, though forestry is the predominant land use in the vicinity.

2.0 Public Comment (MCC 37.0530(B))

Staff: MCC 37.0530(B) requires the county to issue notice of an application and an invitation to comment to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract upon receipt of a complete application. The Planning Director accepts comments for 14 days after the notice. A 14 day Opportunity to Comment was mailed to various parties as required by MCC 37.0530(B) on April 26, 2006. A copy of the notice and mailing list are included in the file. One letter of comment was received from the County's transportation planning staff regarding access improvements for a driveway connection to the public right-of-way. This letter is included as Exhibit S2. *Procedures met.*

3.0 Proof of Ownership and Initiation of Action (MCC 37.0550)

MCC 37.0550 Initiation Of Action.

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

Staff: Multnomah County Assessment and Taxation records show Mark & Shirley Johnson as the owners of the subject lot. This ownership is verified by deed records submitted to the file and included as Exhibit A3 of this decision. Mark Johnson has signed the application form, a copy of which is included as Exhibit A2. *Criterion met.*

4.0 The property is in full compliance as required by MCC 37.0560.

MCC 37.0560 Code Compliance And Applications.

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

Staff: There are no structures currently present on the subject property. Staff performed a site visit on 5-15-06 and observed no violations of the zoning code. The property is in full compliance. *Criterion met.*

5.0 The property is a Lot of Record. (MCC 33.0005(L)(13) and MCC 33.2275)

5.1 (13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or

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

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

Applicant: The 52-acre parcel is a Lot of Record pursuant to MCC 33.2275(A)(1). See (the file) for the chain of title.

Staff: The applicant has submitted a substantial amount of information regarding the status of the subject property under the Lot of Record provisions. The structure is proposed on tax lot 500. As is discussed in finding 5.2, the Lot of Record is tax lots 2N2W23B-100, 2N2W23A-500, and 600. *Criteria met.*

5.2 § 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:

(1) A parcel or lot which was not *contiguous* to any other parcel or lot under the *same ownership* on February 20, 1990, or

(2) A group of *contiguous* parcels or lots:

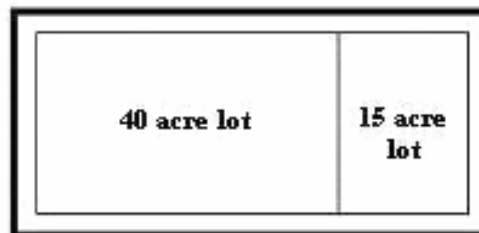
(a) Which were held under the *same ownership* on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

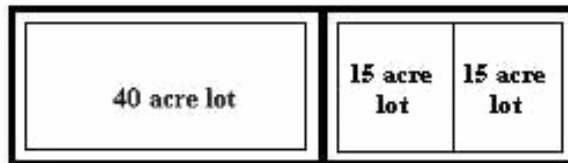
1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with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

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record.

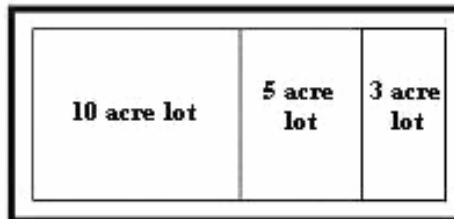
3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:



**Example 1:
One 55 acre Lot of Record**



Example 2:
One 40 acre Lot of Record and
one 30 acre Lot of Record



Example 3:
One 18 acre Lot of Record

Applicant: The 52-acre parcel is a Lot of Record pursuant to MCC 33.2275(A)(1). See (the file) for the chain of title.

This standard requires an applicant to demonstrate the subject property was lawful when created and reconfigured according to all zoning laws which include minimum lot size, dimensional standards, and access requirements., It then requires an applicant to demonstrate the subject property satisfied all applicable land division laws in effect on or after October 19, 1978, or by recorded deed prior to October 19, 1978.

Zoning and Division Laws in Effect:

The three tax lots that make up the subject tax lots (100, 500 and 600) were originally created in two separate deeds as explained below and met the zoning and division laws in effect as demonstrated below.

The County adopted its zoning ordinance, maps and test for the Northwest unincorporated portion of the County on July 10, 1958, which applied the Agricultural District (F-2) district to the property. See MCC 332075(4)(B)(I). The F-2 district had a minimum lot size of two acres. Multnomah County First Zoning Ordinance, April 19, 1955, 3.10 (Agricultural District F-2). The three subject tax lots all exceeded the minimum lot size when created as explained below. On December 9, 1975, the F-2 minimum lot size was increased to 38 acres for forest land and 20 acres for farm land in Ordinance 115 and 116. MCC 33,2075(B)(B)(Z). The existing code recognized a lot of record that was less than the required area if it was created by recorded deed prior to the date of the ordinance. Ordinance No. 115 at 3.1244. The F-2 zone remained on the property until it was rezoned Multiple Use Forest, 20. Acre Minimum Lot Size ("MUF-20"). See Exhibit A4 Zoning Map, October 10, 1977, Ordinance 149. On August 14, 1980, the zoning was changed to MUF-19, which required a minimum lot size of 19 acres for land divisions. In 1993, the property was rezoned from MUF-19 to Commercial Forest Use-2 ("CFU") which has an 80 acre minimum lot size for land divisions.

The F-2 district defined a lot of record as "A parcel of land with an area or front lot line less than the minimums required in this district and for which a deed or other instrument dividing land was recorded with the department of Administrative Services or was in recordable form prior the effective date ***": Ordinance No. 115, amending Ordinance No. 100) December 9, 1975. In subsequent amendments of Ordinance 100, and its replacement with Ordinance 300, a lot of record was continually recognized for substandard parcels created by a recorded (or recordable) deed prior to the effective date of Ordinance 115 on December 9, 1975. TL 100 was created in 1944 and TL 500 and 600 were created in 1967 as currently configured, as demonstrated below.

The county adopted its first aggregation provision in Ordinance No. 300 on March 23, 1982. The lot aggregation provision applicable to the MUF-19 zone was codified at MCC 11.15.2182 (1982). The new provision provided that: "Parcels of land which are contiguous and which greater than possessory interests are held by the same person, partnership, or business entity shall be aggregated to comply as nearly as possible with lot size of ten acres, without creating any new lot line, and with the front lot line minimums of this district." As of 1982, Publishers Paper owned all three tax lots. TL 100 exceeded ten acres so it was not aggregated with TL 500 and 600 at this point in time. TL 500 and 600, being under ten acres, were aggregated because they were in the same ownership by a business entity, Publishers Paper.

In 1990, the county enacted an amended lot of record aggregation provision which defined same ownership as property held by "the same person or persons, spouse, minor age child, single partnership or business entity." On February 20, 1990, Longview Fibre, a corporation, owned Tax Lot 100, 500 and 600. Because TL 500 and 600 together did not meet the minimum lot size of 19 acres, the three tax lots were aggregated into one Lot of Record for zoning purposes,. The same configuration is now owned by Mark and Shirley Johnson which remains one Legal Lot of Record as demonstrated below. See Exhibit A3.

Creation of TL 100

The subject property is comprised of TL 100 (40 acres) TL 500 (7.13 acres) and TL 600 (4.29 acres). TL 100 was created on November 15, 1944 as conveyed in a deed from Skyline Land Co. to Paul and Mary Howerton. See Exhibit A5, Book 942, Page 273. The next conveyance was on December 14, 1976 from Howerton to Publishers Paper Co., a Delaware Corporation. Book 1146, Page 1648., On February 1, 1983, TL 100 Stanley and Shirley Hodes quitclaimed any interest in the property to Publishers Paper Co. See Book 1645, Page 420. On March 27, 1987, Times Mirror Land and Timber Company conveyed the property to Longview Fibre Company in a Bargain and Sale Deed. See Book 1991, 856 (Exhibit A6). Longview Fibre owned the three contiguous tax lots on February 20, 1990. On May 13, 1994 Longview Fibre conveyed all three tax lots to Lewis W. Douglas III. See Instrument No. 94-81377. On July 1, 1994, Douglas conveyed the property to Stephan Michelson,. See Instrument No. 94-106540. On June 6, 2003, Stephan Michelson conveyed all three tax lots to the present owners and applicant, Mark and Shirley Johnson. See Exhibit A3, Vesting Deed, Instrument No. 2003.-133815.

Creation of TL 500 and 600

On April 16, 1943, Skyline Land Co., conveyed TL 400, 500 and 600 the property to H. H. Herzog. Book 743, Page 286. On April 20, 1954, the same three tax lots were then conveyed from H. H. Herzog and Zelle B Herzog to Millen F. Kneeland. See Exhibit XXX, Recording No., 37131. On November 14, 1957, Kneeland conveyed the property to Nevael Investment Corporation. Book 1872, Page 245, On January 18, 1963, Nevael conveyed the property to Walter A. Martin and Wanda C. Martin. Book 2152, Page 83. Martin then conveyed TL 400, 500 and 600 to Harold M. Loe and Ann G. Loe, on November 27, 1967. Book 594, Page 611.

On November 27, 1967, Harold and Ann Loe conveyed TL 500 and 600 in its current configuration to Leonard C. Brooks and Mary M. Brooks. See Exhibit A7, Book 594, Page 613. Thus, TL 500 and 600, now separate from TL 400, were created as of November 27, 1967 and exceeded the minimum lot size in effect of 2 acres. Brooks then conveyed TL 500 and 600 to Publishers Paper Co. on January 5, 1977, but no land division by deed occurred as the same configuration as in the 1967 deed was conveyed. Book 1149, page 1703. At this point, Publishers Paper now owned all three tax lots (TL 100 being conveyed in Book 1146, Page 1648, December 14, 1976), Because land divisions by recorded deed prior to October 19, 1978 are lawful as set out in MCC 33.005(L)(i3(l)(b)(2), TL 500 and 600 were lawfully created and met the minimum lot size in effect when created in their current configuration.

On November 15, 1990, Ann G. Loe conveyed TL. 400, 500 and 600 to Donis McArdle. See Book 2362, page 1082. In a correction deed, McArdle then conveyed TL 500 and 600 to Longview Fibre in Book 2389, Page 2540. The McArdle Deed states the purpose of the deed is to "clear any cloud on the chain of title." Ticor Title reviewed these deeds and did not find a deed of record which re-created an interest for Ann Loe. Ticor finds its safe to assume that the "cloud" was created by the deed from Loe to McArdle,. See Electronic E-mail exhibit,. As explained above in the "TL. 100 Creation" section, Longview Fibre had already taken title to all three tax tots on March 27, 1987, from Times Mirror (the old Publishers Paper Co).

On February 20, 1990, Longview Fibre, a corporation, owned Tax Lot 100, 500 and 600, a group of contiguous parcels in the same ownership. See Exhibit A6. Because TL 500 and 600 do not meet the minimum lot size of 19 acres, the three tax lots are aggregated into one Lot of Record. The same configuration is now owned by Mark and Shirley Johnson which remains one Legal Lot of Record as demonstrated above. See Vesting Deed, supra. See Exhibit A3.

Staff:

Staff concurs with the analysis submitted by the applicant. Tax lot 100 was created by deed on November 15, 1944. This pre-dates land regulation in Multnomah County and is therefore a lawfully created parcel. Tax lots 500 and 600 together make one lawfully created parcel, which was created in its current configuration by deed on November 27, 1967. The zoning in effect at that time was F2, which required a 2 acre minimum lot size. The parcel composed of tax lots 500 and 600 is 11.42 acres exclusive of the road and was therefore created in accordance with the zoning and land division laws in effect at the time and is a lawfully created parcel. (Exhibits A5 and A7)

Tax lots 100, 500, and 600 are all vacant and were owned by Longview Fibre on

February 20, 1990. (Exhibit A6) Staff also checked ownership records for surrounding properties on February 20, 1990 and generated the ownership map included as Exhibit S3. As can be seen on this map, Longview Fibre did not own any other contiguous lots on this date. As such, the subject property is part of a larger Lot of Record composed of tax lots 100, 500, and 600. *Criterion met.*

6.0. The proposed equestrian facility is an allowed use in the CFU-2 zone. (MCC 33.2220(C))

§ 33.2220 Allowed Uses

(A) The following uses pursuant to the Forest Practices Act and Statewide Planning Goal 4:

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

ORS 215.203 Zoning ordinances establishing exclusive farm use zones; definitions.

(2)(a) 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. “Farm use” also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. “Farm use” includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. “Farm use” does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).

Applicant: The owner is applying to construct an agricultural building in conformance with a farm use, an allowed use under MCC33.2220(c) and ORS 215.203. Farm use includes the current employment of land by stabling or training equines. Farm use includes the on site construction and maintenance of facilities used for the training and boarding of horses (ORS 215.203)

A copy of the business plan for BeckWood Stables, LLC is (included in the record), which indicates that the only proposed uses of the property are those that are allowed uses under the code. Specifically, the farm use for this property will be "primarily for the purpose of obtaining a profit in money by stabling or training equines." An important point in our application for an agricultural building is that we will not be open to the public for any reason, including riding lessons, training clinics or schooling

shows.

If this line of reasoning is not convincing, then we believe you could consider us as currently operating a “farm,” albeit not at this location. We own two horses in training stabled elsewhere. The trainer listed in our business plan owns four horses that re currently in training as well and they will be moved to the new facility. In addition we have discussed our business plan with others and have commitments for at least two additional horses. So we have lined up eight horses to be trained at BeckWood Stables once the facility is approved and constructed. Hopefully this is sufficient to show we are in business.

Staff: The business plan for BeckWood stables is included in the file. As summarized above, this business plan shows that the primary purposes of the use will be to obtain a profit in money from the stabling and training of equines. The property owners are currently engaged in such activity off-site and wish to relocate their horses to their property. This is consistent with the definition of “farm use.” The proposed use is a farm use which is allowed outright in the zone. *Criteria met.*

7.0 The proposal is in compliance with the applicable dimensional standards and the development requirements of the CFU-2 district. (MCC 33.2260, 33.2305, 33.2285)

7.1 § 33.2260 Dimensional Requirements

(C) Minimum Forest Practices Setback Dimensions from tract boundary – Feet:

Road Frontage	Other Front	Side	Rear
60 from centerline of road from which access is gained	130	130	130

**Maximum Structure Height - 35 feet
Minimum Front Lot Line Length - 50 feet.**

Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 33.2310, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 33.2305 (A) (5) (c) 2.

(D) The minimum forest practices setback 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 requirements.

(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.

Applicant: The proposed structure is an agricultural building as specified in ORS 55.315(2) and allowed under MCC 33.2220(c). The applicants will be producing income pursuant to the Business Plan. When income is established, the applicants will submit the farm receipts to the tax assessor. Pursuant to ORS 308A.071, the farmer has five years to produce the farm income when converting from forest to farm deferral.

Pursuant to the exception for agricultural buildings in MCC 33.2260(g), the rear and side setbacks for the structure will meet the 30 foot requirement. The front setback (toward Beck Road) will exceed the road frontage setback and the 130 foot setback to conform to the fire safety zones. The proposed setbacks are in excess of 130 feet from Beck Road, to the south and to the west. The proposed setback will exceed 30 feet from the northern boundary of the Lot of Record (See the site plan in Exhibit A1). The applicants own the adjoining property to the north and will allow the secondary fire safety zone on Section 14 2N2W TL.1200. As a condition of approval, the owners will create a deed covenant and restriction on TL 1200 for the purpose of the secondary fire safety zone.

The maximum height of the proposed structure may be greater than 35 feet pursuant to MCC 33.2260(E). The proposed structure is a barn (agricultural building) that may exceed the 35-foot maximum height requirement, as permitted.

Staff: The applicant is proposing an agricultural building. As shown on the applicant's site plan (Exhibit A1) this building will be over 130 feet from the east, west, and south property lines and 30 feet from the north property line. This is allowable pursuant to subpart (G) above. See findings 7.6 through 7.11 for a discussion of the fire safety standards. Though no specifics were given regarding the proposed building height, agricultural buildings are allowed to exceed the 35 foot height limit pursuant to subpart (E). *Criteria met.*

7.2 **§ 33.2305 Development Standards for Dwellings and Structures**

Except as provided for the alteration, replacement or restoration of dwellings under MCC 33.2220 (D) and (E) and 33.2225 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

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

(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 minimum setback requirements are met as described above. The purpose of siting the structure so close to the northern boundary of the Lot of Record is specifically to have the least impact on the commercial forest, See the site plan in Exhibit A1. The

topography further south on the property is more sloped and would create a need for additional secondary fire safety zones and grading to obtain a level surface large enough to accommodate the proposed structure.

Exhibit A8 includes a listing and map of all ten tracts adjacent to the Lot of Record. The properties fall within three categories: 1) CFU with vacant land, 2) CFU with permitted residence, and 3) rural residential zoning with no commercial forest/and or agricultural activity taking place. The applicants will address and comply with all applicable forest practices and agricultural regulations to ensure there is no adverse impact on these adjacent properties.

Tract 1 is owned by the applicants and is zoned CFU with a resource related residence permit. The applicants live on the tract and manage 75% of it as a Douglas fir stand. The tract was commercially thinned in 1989 to enhance the growth of the remaining stand. The forecasted harvest of the stand is still at least twenty years in the future. Forest management practices of thinning, pruning, monitoring potential disease, and clearing of underbrush will continue during that time span., The applicant has attended "Tree School" sponsored by the OSU extension service and is actively following a prudent management plan. The tract is slightly uphill from the Lot of Record. The proposed structure will be close to the border of this tract. The development of the permitted farm use of an equine facility on the Lot of Record will not adversely impact the ability to continue to manage Tract 1 in its current direction and on its current schedule.

Tract 2 is similar to Tract 1 in that it is zoned CFU with a resource related residence permit. Tract 2 is generally uphill from the proposed structure and is more than 250 feet from the proposed structure at its nearest point. The Douglas fir stand on this tract is similar to the stand on Tract 1. The owner appears to be managing the stand in accordance with generally accepted forest practices. The proposed structure will not be in sight of this tract, nor will the proposed use alter the direction or schedule of the forest management activities on this tract. There will be no adverse impact on Tract 2.

Tracts 3, 4, and 5 are along the westerly edge of the Lot of Record. All three of these tracts are vacant land. The timber on all of these tracts was harvested with a clear cut at the same time as TL 100 and replanted shortly thereafter. They are being managed similar to TL 100 with a stand of Douglas fir with a projected maturation in about thirty years. The nearest point to the proposed structure exceeds 1,500 feet and is separated by several ravines on TL 100. There will be no adverse impact on these tracts.

Tracts 6 and 7 are south of TL 100 and southwest of TL 500 and are zoned Rural Residential. There are single family homes on these tracts and there does not appear to be any commercial forest/and or agricultural activity taking place. There will be no adverse impact on these tracts.

The proposed structure will not be in sight of these homes. The activity at the facility will add approximately 2-4 automobile round trips daily on the first several hundred feet of Beck Road as workers arrive and leave. Several times per year, a cargo truck will deliver hay. Livery vans or trailers will arrive to deliver or pick up horses up to twenty times per year. There will be no adverse impact on the quality of life at the residences on these tracts.

Tract 8 is vacant land and shows a stand of Doug/as fir somewhat older than the stand on the Lot of Record. This tract is on the opposite side of Beck Road from the proposed structure. Based on a visual investigation, the stand is being managed with a maturation date in excess of twenty years, There will be no adverse impact on this tract.

Tract 9 is vacant land. The owner applied for a Heritage Dwelling permit in 2002 and was approved, but based on a visual inspection from the road, construction has not commenced. This tract is on the opposite side of Beck Road but does not abut Beck Road. Access is off Elliott Road. There will be no adverse impact on this tract.

Tract 10 is similar to Tract 1 in that it is zoned CFU with a resource related residence permit. Tract 10 is generally uphill from the proposed structure and on the opposite side of Beck Road. Access to this tract is on Skyline Blvd. between Beck Road and Elliott Road. This tract shows a stand of Douglas fir of approximately the same age as that on Tract 1. Based on a visual investigation, the stand is being managed with a maturation date in excess of twenty years. There will be no adverse impact on Tract 10.

Staff: The proposal satisfies the minimum yard requirements.

The applicant has provided a thorough analysis of the farming and forestry uses on the surrounding parcels. The placement of the structure at the north end of the property near the existing house to the north and in close proximity to the road is intended to result in a configuration that stays as close as possible to existing developed areas, limiting the potential impact on surrounding properties. This placement should provide the smallest departure from current forestry practices as practicable. Staff concurs with the applicant's analysis that the proposed location will have the least impact on farm and forest uses on surrounding lands. *Criterion met.*

7.3 **(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

Applicant: The structure will be placed in the northeasterly corner of the parcel in order to minimize the impact on forest operations on the tract. Only four acres of the 52 acre tract will be set aside for farm use. The remaining 48 acres will continue to be managed as a forest.

The entire Lot of Record was commercially clear cut in approximately 1989 and replanted shortly thereafter with two-year old Douglas fir. The current stand is approximately twenty years old. The forecasted harvest of the stand is still at least thirty years in the future if it is to be clear-cut. However, the applicant intends to manage the Douglas fir stand in a more ecologically sound manner through the practices of selective cutting and replanting, thinning, pruning, and clearing of underbrush continuously.

The proposed site for the agricultural building was specifically designed to minimize the impact on the remaining 48 acre stand.

Staff: The proposed use is a farm use. It is being established in a manner that clusters the farm use in close proximity to the nearest adjacent development, the residence on the lot to the north. This is intended to leave the majority of the property for forest practices. The applicant has stated that up to four acres may be cleared to provide for the farm use.

Farm uses are outright allowed in the zone and are not considered to conflict with forest uses under Goal 4. The clustering of the farm use on the northern portion of the lot which is the portion closest to any neighboring development will minimize the impact of the use on forest operations on the tract. Photos of the cleared area where the barn is proposed are included as Exhibit S4.

Criterion met.

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

Applicant: Forest land will only be cleared or thinned to the extent necessary to accommodate the structure and the required fire safety zone. We intend to hold the amount of land converted from forest land to farm use at only 4 acres.

Staff: The applicant has proposed the placement of the structure as close to the property lines as allowed by the zone. Additional land will be cleared to provide for the fire breaks. The applicant's assessment that up to four acres may be needed exceeds what is required for fire breaks. However, clearing land for pasturage related to the farm use is allowed in the zone. The applicant is placing the structure on the portion of the lot which will require the least amount of land to serve the structure by placing it as close to the property line and road as the fire safety requirements allow. *Criterion met.*

7.5 **(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: The access road will be less than 150 feet.

Staff: The access road will not exceed 500 feet. *Criterion met.*

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

(a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;

(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: The property is within the bounds of the Tualatin Valley Fire & Protection District.

Staff: Staff concurs that the property is within a fire protection district. No mapped perennial water sources exist on the lot. *Criteria met.*

7.7 **(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:

Percent Slope	Distance In Feet
Less than 10	Not required
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 33.2260 (F) and 33.2310.

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 to the extent possible within the area of an approved yard (setback to property line).

Applicant: A primary fire safety zone will be maintained extending a minimum of 30 feet in all directions from the structure. The surrounding stand of trees will be thinned and pruned to the above standards, and all other vegetation will be kept less than 2 feet in height.

The slope within the primary fire safety zone around the structure is expected to be less than 10 percent. If a down slope is greater than 10 percent, the primary safety zone will be extended as required.

A secondary fire safety zone will be maintained extending a minimum of 100 feet in all directions from the primary fire safety zone. The secondary fire safety zone will extend onto the adjacent property to the north, which is owned by the applicants. As a condition of approval, the owners will create a deed covenant and restriction on their 10-acre parcel for the purposes of the secondary fire safety zone.

The owners will maintain the primary and secondary fire safety zones as required

Staff:

Staff performed a site visit on 5-15-06 and measured the slopes in the vicinity of the building site. These measurements verified that the slope of the land is approximately 8 to 10 percent near where the structure is proposed. Further downslope (south) of the proposed structure location, the slopes increase to approximately 16 percent. This is consistent with the slope information available on the County's GIS system (Exhibit S5). A thirty-foot primary fire safety zone is required and a 100 foot secondary safety zone is required.

The applicant is proposing the structure 30 feet from the north property line and over 130 feet from the other property lines. This does not provide adequate room on the Lot of Record to provide for the secondary fire safety zone to the north. The provisions of this section actually require the safety zones to be provided on the "tract." "Tract" is defined in MCC 33.2210 as, "One or more contiguous Lots of Record in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. Lots that are contiguous with a common boundary of only a single point are not a tract." The applicants own the property to the north upon which the secondary fire safety zone is proposed. While this property is not part of the Lot of Record, it is part of the tract. Providing the secondary fire breaks on the property to the north meets the requirements of this section.

Since the fire breaks will be provided on a property that is not part of the Lot of Record, the applicant will be required to provide evidence of a recorded fire break easement for the portion extending onto the property to the north prior to the authorization of a Grading and Erosion Control permit or an agricultural building land use permit for the structure.

Prior to the authorization of a Grading and Erosion Control permit or an agricultural building land use permit for the structure, the applicant shall submit a revised site plan showing the locations of the primary and secondary fire safety zones. *Criteria met with condition.*

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

Applicant: The building site has a slope less than 40 percent.

Staff: Staff concurs. *Criterion met.*

7.9 (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.**

Staff: The proposed structure is not a mobile home. No chimneys are proposed. The building must have a fire retardant roof. Prior to authorization of an Agricultural Building Land Use Permit, the applicant shall submit building plans sufficient to verify that the proposed roofing material is fire retardant. *Criteria met with condition.*

7.10 **(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.**

Applicant: The approved well on the adjacent property of the owners will be used as the water supply. As a condition of approval, the owners will provide an easement permitting the water line to cross the property line.

Michael McCord, District 20 Watermaster, has advised the applicants' attorney that agricultural use is exempt from OAR 690, Division 10 and that surface water for equine drinking use is allowed without a water use permit pursuant to OAR 690, Division 20. The applicants' existing well is registered with the State and falls within the domestic use exemption of 15,000 gallons per day. The proposed horse barn will be a commercial use which is exempt from water permitting requirements for up to 5000 gallons per day. ORS 537.545(1)(f); See also OAR 690, Division 20. The attached well log (Exhibit A9) demonstrates the existing well can serve the proposed horse barn as an exempt commercial use and the existing exempted domestic use.

Staff: The applicant has submitted a copy of the well log proving the existence of a well on the property to the north which they own. This well log is in the file. Prior to the authorization of a Grading and Erosion Control permit or an Agricultural Building Land Use Permit for the structure, the applicant shall submit a copy of a recorded easement allowing the water line to cross the property line. This easement and shared well agreement must specify that the subject property shall not use the well in excess of the Oregon Water Resources Department's allocation for agricultural wells. *Criterion met with condition.*

7.11 **(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 will be no dwelling on the property, however, the driveway will be constructed to meet these standards.

Staff: This standard specifically requires access improvements for dwellings. The subject proposal does not include a dwelling. As such, these standards do not apply. It is worth noting that the proposed access has been reviewed by the Fire District and also found to be exempt from fire district standards. (Exhibit S6) *Criteria do not apply.*

The applicant has stated that these standards will be met through the site plan (Exhibit A1) is unclear as to the exact width and length of the driveway. Staff performed a site visit on 5-15-06 and did not observe any waterways which would require the installation of a culvert or bridge. The driveway will be constructed at grade. The applicant has stated elsewhere that over 13,000 square feet of graveled area will be provided (Exhibit S6). Gravel is an all-weather surface suitable for driveways.

Prior to the authorization of an Agricultural Building Land Use Permit for the structure, the applicant shall provide a to-scale site plan showing the proposed width and length of the driveway.

It is worth noting under this finding that, in addition to the zoning code, the County's road rules apply. The County's transportation staff have provided a memo regarding requirements for connecting a driveway to the public road serving the property (Exhibit S2). These requirements must be met prior to the authorization of a Grading and Erosion Control permit or an Agricultural Building Land Use Permit for the structure.

7.12 **§ 33.2285 Off Street Parking and Loading**

Off street parking and loading permitted as an accessory use shall be provided as required by MCC 33.4100 through 33.4220.

Applicant: This criterion is applicable to an accessory use. An accessory building is defined in MCC 33.0005(A)(1) as "a subordinate building, the use of which is clearly incidental to that of the main building on the same lot." The horse barn is on its own separate legal lot of record and not accessory to the dwelling on TL 1200. A farm use is an outright permitted use in MCC 33.2020. The definition of farm use in ORS 215.203 includes the stabling of equines, which includes the construction and maintenance of the barn (ORS 215.203). Therefore, the barn is part of the farm use and not accessory under the state law definition. This criterion is not applicable.

In any event, the barn use will not have any impact on off-street parking and loading as follows: The property will not be open to the public. Furthermore, access will be from a driveway off Beck Road, and there is no on-street parking allowed on Beck Road. A gravel parking lot will be constructed only large enough to accommodate a few vehicles, the loading and unloading of horse trailers, the delivery of supplies such as hay, and access and turnaround space for fire equipment,.

The stated purpose of the off-street parking and loading regulations in MCC 33.4100 through 33.4220 is to reduce traffic congestion associated with residential, commercial, manufacturing, and other land uses; to protect the character of the neighborhoods; to

protect the public's investment in streets and arterials and to provide standards for the development and maintenance of off-street parking and loading areas,.

This use will generate at most an average of one or two traffic trips per day. Therefore, there is no need deal with traffic congestion or to protect the public's investment in the surrounding roads.

The structure is intended to be out of sight of Beck Road, and no parking will be allowed on Beck Road. The activity contemplated is in complete character of the neighborhood., Therefore, there is no need to protect the character of the neighborhood.

The use applied for is not listed in the regulations. Based on the information above, we respectfully request that the Planning Director determine that this criterion does not apply or can be met as demonstrated above.

Staff:

The off-street parking and loading standards of MCC 33.4100 through 33.4220 do not specify parking ratios for farm uses. Pursuant to MCC 33.4205(E), any use which is not specifically listed in the parking code shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director. The listed use which is most nearly equivalent to the proposed equestrian use is storage (MCC 33.4205(D)(2)). This criterion requires, "One space for each 5,000 square feet of storage area for the first 20,000 square feet, plus one additional space for each additional 50,000 square feet." In an email between the applicant and the Fire Marshall, the applicant reported that the total area under the roof will be 22,032 square feet and that a total of 13,680 square feet of graveled area will be provided on site. The 22,032 square feet of enclosed space would require 5 parking spaces pursuant to MCC 33.4205(D)(2). Pursuant to MCC 33.4180, parking areas may be graveled. The largest type of parking space described in MCC 33.4175 is a parallel parking space, which is nine feet wide and twenty-three feet long. This is a total of 207 square feet. Five parking spaces, 207 square feet each, would require 1,035 square feet of graveled area. The proposed 13,680 square feet of graveled area will be more than adequate to provide for the required parking to serve the use.

Prior to the authorization of the Agricultural Building Land Use Permit, the applicant shall submit a revised site plan showing the location of the proposed parking areas.

Criteria met with condition.

8.0 The proposed structure is exempt from review under the Significant Environmental Concern for Habitat standards. (MCC 33.4515(A))

8.1 § 33.4505 Area Affected

Except as otherwise provided in MCC 33.4510 or MCC 33.4515, this subsection shall apply to those lands designated SEC on the Multnomah County Zoning Map.

Staff:

The subject property is mapped as being with the Significant Environmental Concern (SEC) for Habitat overlay as shown in the zoning map included as Exhibit S7. *The SEC overlay applies to the subject property.*

8.2 § 33.4515 Exceptions

An SEC permit shall not be required for the following:

(A) Farm use, as defined in ORS 215.203 (2) (a), including buildings and structures accessory thereto on "converted wetlands" as defined by ORS 541.695 (9) or on upland areas;

Applicant: The proposed structure is an agricultural building for farm use as defined in ORS 215.203(2)(a) and therefore is exempt from the SEC permit requirements. Specifically, the farm use for this property will be “primarily for the purpose of obtaining a profit in money by stabling or training equines.”

Staff: Staff concurs. As detailed in finding 6, the equestrian facility is a farm use. Farm uses, including buildings, are exempt from the SEC requirements. No SEC permit is required for the proposed structure. *The proposed structure is exempt from the SEC requirements.*

9.0 Conclusion

Based on the findings and other information provided above, Staff finds that this application for an Administrative Decision by the Planning Director to allow the construction of a horse barn for farm use, with appropriate conditions, meets the applicable and Multnomah County Zoning Code requirements.

Exhibits

Applicant's Exhibits

- A1. Site Plan
- A2. Signed application form
- A3. Deed showing current ownership
- A4. Zoning map in effect on 10-10-1977
- A5. Deed recorded in Book 942, page 273 on 11-15-1944 (Deed of creation for tax lot 100)
- A6. Deed recorded in Book 1991, page 856 on 3-27-1987. (Deed showing lot of record ownership)
- A7. Deed recorded in Book 594, page 613 on 11-27-1967 (Deed of creation for parcel composed of tax lots 500 and 600)
- A8. Map and listing of surrounding farm and forest uses
- A9. Well log

Staff's Exhibits

- S1. 2004 Aerial Photo
- S2. Memo from County transportation staff.
- S3. Lot-of-Record ownership map
- S4. Staff photos of site
- S5. Topography map of site
- S6. Email chain between fire official and applicant
- S7. Zoning map