

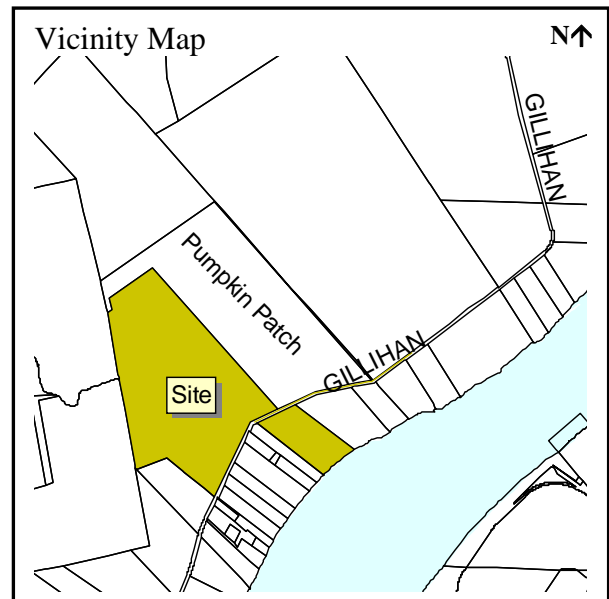


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

Case File: T2-08-018
Permit: Administrative Decision by the Planning Director & Transportation Variance
Location: 16205 NW Gillihan Road
TL 200, Sec 22, T 2N, R 1W, W.M. &
TL 400, Sec 22D, T 2N, R 1W, W.M.
Tax Account #R97122-0050 &
R97122-0020
Applicant: Bella Organic Farms
c/o Mike Hashem
Owner: Mike & Elizabeth Hashem
Zone: Exclusive Farm Use (EFU)



Summary: The applicant is requesting revisions to the approved farm stand to allow a special event in April, July and September to promote the sale of farm products. In addition, the revisions reconfigure the layout of the parking lot, special event parking and other restrictions. A Transportation Variance for a second driveway access has been requested. The property is located in the Exclusive Farm Use zone.

Decision: Approved with Conditions.

Unless appealed, this decision is effective Friday, October 31, 2008 at 4:30 PM.

Issued by:

Issued by:

By: _____
Lisa Estrin, Planner

By: _____
Ken Born, Transportation Planning Specialist

For: Karen Schilling, Planning Director

For: Brian Vincent, County Engineer

Date: Friday, October 17, 2008

Date: Friday, October 17, 2008

Instrument Number for Recording Purposes: #2007007808

Opportunity to Review the Record: A copy of the Planning Director's Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Planner at 503-988-3043, ext. 22597.

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 Friday, October 31, 2008 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): *Exclusive Farm Use Zone* - MCC 34.2625(H) Review Uses - Farm Stands, MCC 34.2660 Dimensional Requirements, MCC 34.4100 through MCC 34.4215 Off-Street Parking and Loading, MCC 34.7055(C)(3) through (7) Landscaping of Parking Areas.

Comprehensive Plan Policies: Policy 36- Transportation System Development Requirements, Policy 37- Utilities, Policy 38- Facilities

Transportation Variance: MCC 16.000 Variance from County Standards and Requirements, MCC 16.100 Variance Requirements, MCC 16.200 General Variance Criteria, & MCC 16.225 Access Variance Standards.

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 (2) 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. The request for a permit extension must be submitted prior to the expiration of the approval period.**

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. Prior to land use sign-off of the building permit, the property owner 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 a copy filed with Land Use Planning. 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. [MCC 37.0670]

2. This subject approval amends and replaces the prior land use decision, T2-07-068.
3. The farm stand shall be used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. "Farm crops or livestock" includes both fresh and processed farm crops and livestock and includes jams, syrups and apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items. Processed products utilizing the produce and fruit grown on the subject farm and from the local agricultural area are not subject to the 25% of the total sales limitation.
4. All incidental sales, prepared food items and fee-based activities shall make up no more than 25% of the total sales from the farm stand. Processed products utilizing produce and fruit grown from outside the local agricultural area are also subject to the 25% of the total sales provision. Any produce sold from outside the local agricultural area (Oregon or an adjacent county in Washington that borders Multnomah County) shall count against the 25% annual sales limitation. Sales of prepared food from the farm stand may only occur when the stand is operating and may not operate independently during the off-season. [MCC 34.2625(H) & OAR 660-033-0130(23)(d)]
5. The special events are limited to the hours that the farm stand is operated (9:00 am to 9:00 pm) and shall not occur unless the farm stand is open to retail customers. The purpose of the special events shall be to promote the sale of farm crops or livestock grown on the farm operation and other farm operations in the local agricultural area. The special events may be held for up to 4 weekends in each month of April and September, and up to a total of 4 weekends in June & July. [MCC 34.2625(H)]
6. Use of the farm stand for banquets, public gatherings or public entertainment is prohibited. [MCC 34.2625(H)(2)]
7. On-street parking for employees, suppliers and patrons of the Bella Organic Farms or their leaseholder farms is prohibited. All parking spaces within the paved parking lot and the overflow parking area as shown on Exhibit A.12 shall be available for the parking of vehicles of customers, occupants and employees without charge or other consideration. [MCC 34.4125(A)]
8. Prior to use of the 50 ft wide by 100 ft long structure as the farm stand, the property owner shall obtain a building permit from the County's Building Department and obtain occupancy to use the building for the general public.
9. Prior to land use approval for the building permit for the farm stand, the property owner shall dedicate 5 feet of right-of-way along Tax Lot 200, 2N1W22 & Tax Lot 400, 2N1W22D [MCRR 5.300 & Policy 36]
10. Prior to occupancy & operation of the farm stand, all on and off-site improvements shall be completed and the permanent parking for the farm stand shall be paved and improved to meet the Off-Street Parking Ordinance of MCC 34.4100 et al.
11. By December 1st of each of the next three farm seasons in which the farm stand operates, the property owners shall submit evidence to Land Use Planning demonstrating compliance with Condition No.3 above. [MCC 34.2625(H)(1)]
12. Prior to land use sign off of the building permit for the farm stand, the property owner shall submit a revised parking plan which accesses the overflow parking area south of the farm stand. The plan shall be drawn to scale and shall meet the Off-Street Parking Ordinance. [MCC 34.4100 to 34.4205].

13. The restroom facilities for U-Pick and Farm Stand customers shall be placed within the farm stand building and be connected to a subsurface sewage disposal system. Except during the special events, no port-a-potties shall be used on the site. [Policy 37 Utilities]
14. The use of the driveway access point that leads to the existing single family dwelling on Tax Lot 200, 2N1W22 shall be for the residential use only. The use of this residential driveway access in conjunction with the operation of the farm stand, and/or associated special events, is prohibited. This driveway access point shall be chained or have a gate installed to regulate its use for the residents of the existing dwelling and to prevent the “U-Pick” and farm stand-related vehicles from using the driveway to gain access to and from the site. [MCRR 16.225(A)&(B)]
15. The property owner shall be responsible for the decommissioning and closure of the existing driveway which currently provides access to Tax Lot 400, 2N1W22D. **Prior to the decommissioning of the existing driveway access point and the lawful establishment of the new driveway access point towards the center of the frontage for Tax Lot 400**, the property owner shall obtain an Access/Encroachment Permit from the Transportation’s Right-of-Way section. Decommissioning shall involve the restoration of the access point area and right of way to its original condition, at the property owner’s expense. Within sixty (60) days of this decision becoming final, the property owner shall schedule and have completed a site inspection with the Code Compliance office to verify that the access point is no longer usable. [MCRR 16.225(A)&(B)]
16. To prevent the need for people to walk across Gillihan Road to the 4 acre “U-Pick” blueberry field (Tax Lot 400, 2N1W22D), “U-Pick” customers visiting this field shall park their vehicles on Tax Lot 400, 2N1W22D. A temporary payment booth may be set up while the field is being picked. [MCC 34.4205(E)]

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, Lisa Estrin, at (503) 988-3043 ext. 22597, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 may be required.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

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

Project History: In land use case T2-07-068, Bella Organic Farms was granted approval for a farm stand which included 15 temporary stalls for small farmers renting farm land onsite. The sale of farm product from local Sauvie Island farms and the local agricultural area (Oregon or an adjacent county in Washington that borders Multnomah County) are permitted without restriction. The annual sales of incidental items or produce from outside of the area may make up no more than 25% of the total sales. The farm stand was permitted to operate from 9 am to 6 pm from May to October. No fee based activities, other than U-Pick were permitted as part of the application.

Project Description:

Applicant: We are requesting a modification for the farm stand permit case T2-07-068 to allow the following:

1. The use of the existing 50 ft wide by 100 ft long farm building for the operation of the farm stand retail and the wholesale operation.
 - a. To locate the restrooms at the same building.
 - b. To relocate the parking area to the presently graveled area near the farm stand.
 - c. A variance for maintaining the second driveway on the farm stand lot open on lot 200.
 - d. Permit a driveway on lot 400.
2. We are proposing to develop over a five year plan three special event to promote organic farming and products.
 - a. A tulips based event, to run on consecutive weekends in April Customers, would pick the tulips, then buy the past season bulbs, to plant in their own gardens.
 - b. A berries based event to highlight the organic berries on our Farm, to run during the U-Pick season.
 - c. A harvest fest to be held at the end of season, to help sell our Final crop.

All the events need time to develop. We need to develop our crops, from tulips, to berries, and other fruits, and vegetables. That is why we said this is a five year plans.

All the events would require some supporting activities similar to other events in the area. It includes play area for kids, and activities suitable for grown ups including musical acts. We need to have the ability to charge a fee for an activities if the circumstances allow it as long as we maintain the 25% ratio. A fee based activity in some cases is crucial to attracting customers and to defer cost of advertising and promotion of farming and farm products.

3. The farm stand will operate between April and October, 9:00 AM to 9:00 PM.
4. We will provide 36 paved parking spaces as required by the permit. We will use adjacent grassy area for overflow traffic.

The application propose to locate the farm stand in the existing farm structure on lot 200, add a parking lot and allow u-pick berries on both lots 200 and 400. A paved parking lot is proposed to include 36 parking spaces between the farm stand and Gillihan Road, with overflow parking provided on an adjacent grass field, if needed. Access to the farm stand will be through the existing west driveway.

The farm stand will operate daily between April and October, 9:00 a.m. to 9:00 p.m.

Staff: On July 31, 2008 the applicant revised the site plan to relocate the overflow parking lot south of the farm stand building. The special event activities will be located in the field north of the farm stand (Exhibit A.12). This permit replaces the permit T2-07-068. The farm stand will be split between the wholesale and retail operations of Bella Organic Farms. Restrooms will be provided in the building for customers and a kitchen area will prepare ready to eat items (Exhibit A.15 & A.16). During special events, a mobile food card or food booths will be used to promote the organic produce of the farm.

1.00 ***Administration and Procedures***

1.01 **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 March 31, 2008 and was deemed complete as of June 25, 2008. An "Opportunity to Comment" notice was mailed on August 1, 2008 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. Comments were received supporting the proposed project, but the neighbors were concerned with a pedestrian crosswalk located at the bend in Gillihan Road due to the number of vehicle incidents at that location.

1.02 **Proof of Ownership**

MCC 37.0550 Initiation of Action

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

Staff: The proposed project is located on Tax Lot 200 & 400, Section 22, Township: 2 North, Range: 1 West. Assessment & Taxation records show that the land is owned by Mike & Elizabeth Hashem. Both property owners have signed the General Application Form (Exhibit A.1). Mr. Hashem has been designated as the applicant for this matter. *This criterion has been met.*

1.03 **MCC 37.0560 Code Compliance And Applications.**

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

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

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an**

affected property.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: There are no known violations at this time.

2.00 ***Exclusive Farm Use Criteria***

2.01 **MCC 34.2625 Review Uses.**

(H) 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 farm operations in the local agricultural area, including the sale of retail incidental items, and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of 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.**
- (3) As used in this section, “farm crops or livestock” includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, “processed crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.**
- (4) As used in this section, “local agricultural area” includes Oregon or an adjacent county in Washington that borders Multnomah County.**

Staff: Bella Organic Farms is owned and operated by Mike & Elizabeth Hashem and they currently farm approximately 64 acres more or less. The remainder of the 114 acre parcel is farmed by another farmer. Bella Organic also leases acreage to small farmers or growers so the amount of land available for them to farm varies from year to year. Agricultural products from Bella Organic Farms & other local farmers will be marketed through the proposed farm stand and “U-Pick” operations.

The site plan (Exhibit A.12) shows 13.25 acres of land in three “U-Pick” fields for berries (blueberries, raspberries and strawberries) on the northwestern area of the property and 4+/- acres in a “U-Pick” blueberry field on the portion of the property northeast of Gillihan Road. All farm products are to be sold through the farm stand, except the “U-Pick” fields will allow individuals to gather their own farm product. A small temporary sales booth may be used adjacent to these fields to allow for the weighing and payment by individual customers.

The special events will occur between the farm stand and the three “U-Pick” fields on the northwest portion of the property. This area is approximately 7 acres in size (Exhibit A.12). Temporary overflow parking will be available during the special events on the field south of the

farm stand. The area designated for parking is approximately 250 ft wide by 450 ft long. Access to this overflow parking area will be via the same driveway access point as the farm stand.

The applicant has indicated that three special events are proposed for each farm season. The first event will be tulip event (spring flowers). The event will run on consecutive weekends in April. The second event will highlight the berries being grown on the farm and will occur for two to four consecutive weekends in June and/or July depending on the ripening of the berries. The final event will be held in September and will have a harvest festival theme. This event is to help sell the final crops of the season and will run up to 4 consecutive weekends during the month.

Bella Organic Farm has not operated a farm stand on the subject property in the past and is still in the process of developing its farm operations on the property. Since total sales from a farm stand on this site are not available, the ratio of the sales of incidental items and special events to total farm sales can not be verified at this time. To verify the special events and the sale of incidental items do not exceed the 25% of the total sales limitation listed above, a condition of approval has been included requiring the submittal of financial information for the next three farm seasons in which the farm stand is operated. *As conditioned, these criteria have been met.*

2.03 **MCC 34.2660 Dimensional Requirements.**

(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 county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.

Staff: The revised site plan (Exhibit A.12) shows the farm stand meets the above setbacks plus the additional five feet needed for the public right-of-way to meet the County’s Rural Collector required width of 60 ft.

2.04 **§ 34.2690 ACCESS**

All lots and parcels in this district shall abut a street, or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles, except as provided for Lots of Record at MCC 34.2675(C).

Staff: Transportation Planning has indicated that Gillihan Road is a Rural Collector. The County’s standard for Rural Collector right of way width is 60 ft. The Gillihan Road right-of-way is 50 ft wide along these two tax lots and provides access to these two tax lots. Transportation Planning has required a dedication of 5 ft from both tax lots to mitigate the impacts that the proposed development will have on the subject roadway. Please see additional findings under section 4.01 below. The applicant has requested a Transportation Variance to allow a second driveway on Tax Lot 200, 2N1W22. The variance criteria are listed below in

section 5.00.

3.00 **Off-Street Parking and Loading Criteria**

3.01 **MCC 34.4105 General Provisions.**

In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section.

Staff: The applicant is proposing to convert an exempt farm structure to a farm stand for wholesale and retail sales of farm product from the property and to hold three special events associated with the promotion of farm products. The farm stand and special events are a new use to the site and off-street parking must be provided.

3.02 **MCC 34.4120 Plan Required**

A plot plan showing the dimensions, legal description, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit, or for a change of classification to O-P.

Staff: The applicant has submitted a plot plan showing a proposed parking lot. The design of the parking lot indicates that it is conceptual (Exhibit A.8). The overflow parking area has been moved from the northern field to a field south of the farm stand and will require a modification to the paved parking lot's layout. A condition of approval has been included requiring the redesign and compliance with the Off-Street Parking Ordinance.

3.03 **MCC 34.4205 Minimum Required Off-Street Parking Spaces.**

(E) Unspecified Uses - Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.

Staff: The applicant has proposed a paved 36 space parking lot with an overflow parking lot to the south for use during high volume events. The proposed farm stand is 5,000 sq ft in size. In recent farm stand cases, Land Use Planning determined that 1 parking space per approximately 100 sq ft of farm stand was a sufficient amount of parking for these types of facilities. The use of the farm stand will be split at approximately 50% retail and 50% wholesale operations (Exhibit A.15). At one space per 100 sq. ft, 25 spaces would be needed for the retail portion of the stand. The remaining area is being parked at one space per 400 sq. ft. which would require six spaces for customers and employees. The remaining paved spaces are for the U-Pick operations on the site.

The farm stand building is located on Tax Lot 200, 2N1W22. To prevent the need for people to park on the main portion of the property (Tax Lot 200, 2N1W22) and walk across Gillihan Road to the 4 acre "U-Pick" blueberry field (Tax Lot 400, 2N1W22D), vehicles may park along the proposed driveway and a temporary payment booth set up while the field is being picked. This temporary parking condition should last approximately one month a year.

4.00 ***Comprehensive Plan Policies***

4.01 **Policy 36 – Transportation System Development Requirements**

(The portions of this policy applicable to the subject request are the following excerpted

policies)

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

- A. The dedication of additional right-of-way appropriate to the functional classification of the street given in Policy 34 and chapter 11.60.**
- 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 36A, 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 Sections 3.00 through 3.03 regarding off-street parking. Findings showing compliance with Policy 36A & 36B are below.

Comprehensive Plan Policy 36A calls for dedication of additional right-of-way if a development proposal affects the road system. This policy is implemented through Chapter 29 of the County code and the County road rules. A development proposal affects the road system when it has a *Transportation Impact*. According to County Road Rules 5.300, a Transportation Impact exists when new construction, including alterations, 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. A minimum increase of 10 new trips per day is required to find a transportation impact.

The ITE manual does not provide a trip standard for farm stands. The proposed Tax Lot 200, 2N1W22 will have a 5000 sq. ft farm stand with approximately 2,500 sq. ft in retail area and 2,500 sq. ft in wholesale operation space. The applicant is proposing 36 parking spaces with an overflow lot. According to the applicant's traffic engineer, the uses proposed under this application will generate 44 vehicle trips during the Saturday peak hour. This is an increase in the number of trips over the existing residential and farm use. An increase in 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 is found to have a "transportation impact," per the definition provided in the Multnomah County Road Rules. As such, the proposed development will have a transportation impact on NW Gillihan Road. The owner of the site or the applicant for a proposed development, which is found to cause a transportation impact, is responsible for right-of-way and easement dedications necessary to bring affected, existing, created or planned public streets and other facilities within and abutting the development of the current County standard.

NW Gillihan road is classified as a Rural Collector facility with a standard right-of-way width of 60 feet. The existing right-of-way of NW Gillihan Road at the site's frontage is 50 feet. A right-of-way dedication requirement of 5 feet mitigates the traffic impact because it brings the right-of-way up to the Rural Collector standard at the site's frontage.

A dedication requirement of 5 feet of right-of-way is proportional to the impact of the project because the development is occurring in a rural area where a smaller number of properties utilize the road system. This means that transportation impacts associated with a given development are greater than what occurs in an urban area where there is a much larger number of properties. A typical farm operation will have minimal trips generated by the existence of the dwelling and its workers coming to the site. In the case of this proposal, the number of farmers and workers are increased from a typical farm as there are multiple operators. In addition, the farm stand(s) and U-pick operation add additional vehicle trips by customers. As

described above, the number of increased trips can average 44 vehicle trips during the Saturday peak hour. The proposed use will generate significantly more trips than a typical farm use of this size. A requirement that the property owners dedicate 5 feet of right-of-way for the length of the two tax lots is incorporated as a condition of approval.

Policy 36B triggers the requirement for application for an access permit in compliance with the Multnomah County Road Rules (MCRR). 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 2.00]. 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 2.00]. 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 2.00]. The access requirements are authorized pursuant to Statewide Planning Goal 12 and are intended to implement the requirements of the Transportation Planning Rule (TPR). As set forth above, the TPR includes a mandate to protect the capacity of the transportation facilities by appropriate access restrictions.

MCRR allows the County to require applicants for a new or reconfigured access onto a road under County jurisdiction to provide a plot plan, complete a traffic study, provide an access analysis and a sight 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 alteration would increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or more than 10 trips in the peak hour [MCRR 5.300].

MCRR 4.200 restricts access to arterials and collectors to one driveway access per property. In this case, the applicant has shown on his Partial Site Plan two existing driveways leading from Tax Lot 200 to Gillihan Road. Right of Way staff was contacted to review driveway permits for this property. Right-of-Way staff found a driveway access permit for the driveway leading to the manufactured dwelling. No permit was found for the second driveway access leading to the farm stand. The applicant has applied for and been granted a Transportation Variance subject to conditions of approval for the second driveway access point leading to the farm stand and overflow parking. To ensure that the two driveway access points are used for their intended purposes, the driveway access point leading to the dwelling needs to be restricted to prevent farm stand customers from using the driveway for ‘U-Pick’ parking on Tax Lot 400.

Comprehensive Plan Policy 36 has been met through conditions of approval.

4.02 **Policy 37 – Utilities**

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

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: A private well system will be used to provide water for the farm stand operation. The applicant has proposed to construct restrooms within the farm stand building for the customers. The provision of portable toilets does not meet the requirements for providing a subsurface sewage disposal system. The subject site currently has a septic system for the existing manufactured dwelling. It may be feasible to connect into this existing system. This system can be improved or a second system added to the property to serve the farm stand operations. For special events, the number of restrooms proposed will not be adequate to serve the number of customers the applicant hopes to bring to the site. It may be feasible to allow the temporary use of port-a-potties during these events. *Comprehensive Plan Policy 37 has been met through a condition of approval.*

4.03 **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:

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 stands are within the boundary of and are served by the Sauvie Island Rural Fire Protection District. The applicant has submitted a service provider form from the Fire District signed by a representative of the Sauvie Island Rural Fire Protection District stating that the farm stands are exempt farm structures and exempt from the fire flow processes. A farm stand serves the public and as such does not qualify as an exempt farm structure. A building permit will be required to be obtained and exiting requirements met. The appropriate fire district has had an opportunity to review and comment on the proposal (Exhibit A.17). *Comprehensive Plan Policy 38 has been met.*

4.04 **Police Protection**

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

Staff: Multnomah County Sheriff Department has indicated that they can provide adequate police protection for the proposed operation. They have indicated that in October during the height of the operation of the Pumpkin Patch Corn Maze they may have a deficiency in service. This deficiency is not caused by the proposed operation but is an existing condition due to the level of farm stand activities on Sauvie Island during the fall harvest season.

5.00 **Transportation Variance**

5.01 **16.000 Variance from County Standards and Requirements**

16.100 Variance Requirements:

A. Multnomah County Code 29.507 provides for a variance by the County Engineer from County standards and requirements when written documentation substantiates that the requested variance is in keeping with the intent and purpose of County Code

and adopted rules, and the requested variance will not adversely affect the intended function of the County road system or related facilities. A variance approval may include mitigation measures as conditions of approval.

B. All requests for a variance to these Road Rules that are part of a development that requires approval of that development as a “land use decision” or “limited Multnomah County Road Rules land use decision,” as defined in ORS 197.015, shall be submitted to the County Engineer at the time that application for the land use review is submitted to the applicable planning office having land use jurisdiction. The County Engineer’ decision on the variance to these Road Rules shall not become effective until the date that the associated land use decision becomes effective.

C. For properties within unincorporated areas of Multnomah County for which Multnomah County has not contracted for planning and zoning services, the Hearings Officer shall be the final County decision maker for all applications for variances to these Rules that are in conjunction with applications for development classified as a “Type III” or an appeal of a “Type II” land use permit application under MCC Chapter or the corresponding code parts in MCC Chapter 38, as applicable.

***Applicant:** The site currently has two access locations to Gillihan Road and physical improvements on the site have occurred with a reliance on these two accesses. The proposed farm stand would be located at the second (west) access, and the primary (east) access would be used for the residence and an exit for u-pick customers. The site has sufficient frontage to meet County spacing standards.*

Staff: MCRR 4.200 restricts access to one driveway access per property. In this case, the applicant submitted materials demonstrating existing access points to Tax Lot 200 via two separate driveways along the property’s frontage on NW Gillihan Road and. To the south, across NW Gillihan, access to Tax Lot 400 is currently provided by one driveway.

In terms of proposing access to Tax Lot 200, the applicant intends to use one access point to provide right of entry to a 36-space parking lot, which is shown adjacent to an existing pole barn and in between a designated “special events” and “overflow parking” area on the revised site plan (Exhibit A.12). The overflow lot would be operational on days when parking demand exceeds the capacity of the proposed 36-space parking lot. The application proposes a second access approximately 645 feet to the northeast, which currently provides access to a gravel driveway and single family dwelling.

The applicant may exceed the one access per property limit if they are able to obtain a variance pursuant to MCRR 16.000. The applicant has requested to obtain a variance. Compliance with the variance approval criteria is addressed in Findings 5.02 through 5.06 below.

5.02 16.200 General Variance Criteria: In order to be granted a variance, the applicant must demonstrate that:

A. Special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. The circumstances or conditions may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses;

***Applicant:** The site currently has two access locations to Gillihan Road and physical improvements on the site have occurred with a reliance on these two accesses. The proposed farm stand would be located at the second (west) access, and the primary (east) access would be used for the residence and an exit for u-pick customers. The site has sufficient frontage to*

meet County spacing standards.

Staff: Tax Lot 200 has approximately 1,630 feet of frontage along NW Gillihan Road. No other property within Section 22 (one square mile) occupies as much frontage along NW Gillihan as the subject property. Therefore, a physical condition relating to the size and shape of the property applies to Tax Lot 200 that does not apply to other properties in the same area. Further, reducing the potential for conflict between farming activities and residential development is in accordance with Multnomah County Comprehensive Framework Policy 13, which requires that land uses be buffered and/or isolated which are noise generators. *This criterion has been met.*

- 5.03 **B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards;**

Applicant: *If the site were only allowed one access, it would require construction of an additional on-site driveway parallel to Gillihan Road or relocation of the existing building proposed for the farm stand use. It would also mix traffic from the farm stand with the residence traffic.*

Staff: Both a single family dwelling and farm stand operation are allowed in the underlying zoning district if the applicant can demonstrate compliance with applicable land use standards. Site conditions, including the frontage length of Tax Lot 200, will limit the ability to access both structures without substantial out of direction vehicular travel on-site. In order for the commercial use to operate in a viable manner while limiting the potential for conflicts with the existing residential use on-site, adequate access will need to be provided. *This criterion has been met.*

- 5.04 **C. The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties;**

Applicant: *A second access location as requested does not have any adverse impacts on adjacent properties or be of detriment to operation and safety on Gillihan Road. The east access is located opposite and existing driveway and the west access is located between two existing farm accesses on the south side of the road, with spacing well in excess of County spacing standards of 100 ft.*

Staff: Traffic volumes and accident levels along NW Gillihan Road are relatively low. Transportation planning staff acknowledges the “crash rate” analysis provided by the applicant’s traffic engineer (Exhibit A.11), and accident-related information provided by neighbors during the 14-day public comment period (Exhibits D.1). However, as addressed in Finding 5.06 below, if the application is approved, the approval will be conditioned to require the implementation of specific access-related mitigation measures to help ensure that public safety and welfare will not be negatively impacted as a result of granting a variance from County access standards. *This criterion has been met.*

- 5.05 **D. The circumstances of any hardship are not of the applicant’s making.**

Applicant: *The request will allow efficient use of the existing farm facilities. The two access locations have long been in use at the site.*

Staff: According to the County Right-of-Way Permit Section, a 1991 right-of-way permit was issued to a previous owner of Tax Lot 200 in conjunction with the approval of the existing single family dwelling (91-0915). That permit recognized the existence of the second driveway, which remains unpermitted. Therefore, both access points existed prior to the

current owner obtaining an interest in the property, so the circumstances of any hardship are not of the applicant's making. *This criterion has been met.*

- 5.06 **16.225 Access Variance Standards:** Exceptions to access standards may be made by the County Engineer when spacing or other safety considerations make non-standard access acceptable. In addition to the variance requirements of Section 16.200 of these Rules, the applicant will be required to demonstrate that the proposed variance will not negatively impact the safety or capacity of the transportation system for a variance to be granted. The following are examples of variances that may be considered along with specific criteria that must be addressed before such a variance can be granted.

- A. **Multiple Access Points:** The County Engineer may allow multiple access points when all spacing standards can be met, or when the additional access(es) will not negatively impact the safety or functionality of the transportation system and a single access point cannot reasonably serve a site. Movement restrictions, such as right-in, right-out, may be placed on accesses to protect the safety and/or functionality of the transportation system.
- B. **Access Spacing:** If it is not feasible to access a site and meet the access spacing standards, access may be located so as to provide the best access spacing possible. The County Engineer may require additional measures to mitigate sub-standard access spacing, such as a median or other restrictions.
- C. **Sight Distance:** If it is not feasible to provide enough sight distance to meet County/AASHTO standards, the site's access must be located so as to provide the most sight distance possible. The County Engineer may require additional measures to mitigate sub-standard sight distance.

Applicant: Access spacing for the proposed second driveway is 175 ft to the west and 300 to the east on the south side of the roadway. Spacing from both of these driveways meets the County minimum spacing of 100 ft. For sight distance, Multnomah County Design Standards follow AASHTO recommendations. The sight distance from the proposed driveway location is over 500 ft in both directions which exceeds AASHTO recommends intersection sight distance be a minimum of 445 feet for left turns and 385 feet for right turns for a speed of 40 mph. The second access would not have a negative impact on safety or functionality of Gillihan Road. In fact, this location is safer than the existing east access, which is located on a curve. Lastly, there is no movement restrictions needed for the proposed access.

Staff: One of two access points subject to this variance request does not meet the 100 foot minimum private access driveway spacing standard as set forth in Section 1.2.5 of the County Design and Construction Manual (DCM). The minimum standard applies both to driveways on the same side of the street as well as driveways on opposite sides of the street. Access driveways on opposite sides of the street must be located directly opposite each other.

On the opposite side of NW Gillihan on Tax Lot 400, two driveways currently exist across from the residential driveway on Tax Lot 200. One provides access to a dwelling and farm structures located on Tax Lot 500 (not owned by the applicant). This driveway is located directly opposite from the residential driveway access point on Tax Lot 200. Approximately 50 ft to the northeast of Tax Lot 500 driveway access point is a second access point which provides access to Tax Lot 400 (owned by the applicant). The existing driveway access point on Tax Lot 400 is not located directly opposite from the residential driveway on Tax Lot 200. Therefore, the existing driveway access point on Tax Lot 200 does not meet spacing standards.

Intersection sight distance standards are set forth in Section 2.3.7 of the County Design and Construction Manual (DCM). One of two access points subject to this variance request does

not meet County/AASHTO standards for sight distance. The applicant's traffic engineer indicates that sight distance is adequate from the farm stand driveway access (Exhibit A.5, A.6, & A.10). He does not indicate whether sight distance is adequate from the residential driveway access. However, due to the curvature of NW Gillihan Road in close proximity to the residential driveway, intersection sight distance standards will not be met for that driveway.

Section 1.2.4 of the County Design and Construction Manual stipulates that "restrictions may be imposed when approving a variance request." Such restrictions may include limiting turning movements, requiring a shared access, and/or closing one or more existing driveways. Since the residential driveway access cannot meet spacing standards from all surrounding driveways, nor can it meet County/AASHTO standards for sight distance, it is not certain that the use of this access will not negatively impact the safety of NW Gillihan Road -- if there was a variance approved without restrictions.

If approved, the decision must be conditioned to restrict the use of the residential driveway access for residential purposes only. The use of this driveway in conjunction with the operation of the farm stand, and/or associated special events, will not be allowed. Limiting the use of the residential driveway access will ultimately reduce the number of vehicles entering and exiting the County right-of-way at this location, and will reduce the potential for adverse impacts to the safety of NW Gillihan Road due to the sub-standard sight distance which exists. This is an appropriate approach in this instance since opportunities to mitigate and improve sight distance by other means is limited (e.g. trimming vegetation, additional/enhanced signage, reconfigure geometry of roadway, etc.). The access shall be chained or gated at its entrance in order to prevent "U-Pick" and farm stand-related vehicles from using the driveway to gain access to and from the site.

If approved, the decision must also be conditioned to close and decommission the existing driveway which currently provides access to Tax Lot 400. The applicant has requested to close this driveway access and relocate a new driveway access point towards the center of the property. The existing driveway access point on Tax Lot 400 must be decommissioned. Decommissioning shall involve the restoration of the access point area and right of way to its original condition, at the property owner's expense. The closure of this driveway will ensure that 100 foot minimum private access driveway spacing standard will be met.

One driveway access per property is the standard for approval [MCRR 4.200]. As part of the decommissioning process and establishment of a new driveway access point on Tax Lot 400, the applicant will need to obtain an Access/Encroachment Permit from the Right-of-Way Permits Section. The new driveway access point will need to demonstrate compliance with the County standards at that time.

5.00 ***Conclusion***

Based on the findings and other information provided above, the applicant has carried the burden necessary for the approval of a Planning Director's Decision to establish a farm stand in the Exclusive Farm Use district and to be granted approval of a Transportation Variance for a second driveway on to Tax Lot 200, 2N1W22. This approval is subject to the conditions of approval established in this report.

6.00 ***Exhibits***

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Public Comments

Exhibit #	# of Pages	Description of Exhibit	Date Received
A.1	2	General Application Form	3/31/08
A.2	1	Site Plan – A.1	3/31/08
A.3	1	Partial Site Plan – A.2	3/31/08
A.4	2	Narrative	3/31/08
A.5	4	Traffic Analysis dated 3/19/08	3/31/08
A.6	5	Variance Request for Second Access	4/4/08
A.7	1	Site Plan	6/16/08
A.8	1	Conceptual 36-Space Parking Layout	6/16/08
A.9	1	Preliminary Crosswalk Layout	6/16/08
A.10	3	Response to Incompleteness Letter	6/16/08
A.11	7	Roadway Segment Crash Calculations	6/16/08
A.12	1	Revised Site Plan	7/31/08
A.13	1	Revised Crosswalk Location	8/11/08
A.14	1	Email on Relocation of Crosswalk	8/11/08
A.15	1	Floor Plan	10/15/08
A.16	2	Various Statements	10/15/08
A.17	1	Police Services Review	10/15/08
A.18	1	Fire District Review	10/15/08
‘B’		Staff Exhibits	Date
B.1	2	A&T Property Records for 2N1W22 - 00200	3/31/08
B.2	2	A&T Property Records for 2N1W22D - 00400	10/15/08
B.3	2	Transportation Memorandum	5/13/08
‘C’	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	4/29/08
C.2	1	180 Day Response Letter	5/29/08
C.3	1	Complete Letter – Day 1	6/25/08
C.4	3	Opportunity to Comment	8/1/08
C.5	17	Administrative Decision	10/17/08
‘D’	#	Public Comments	Date
D.1	2	Comments from Tim Machaness & Judith Ann Nylin	8/13/08