

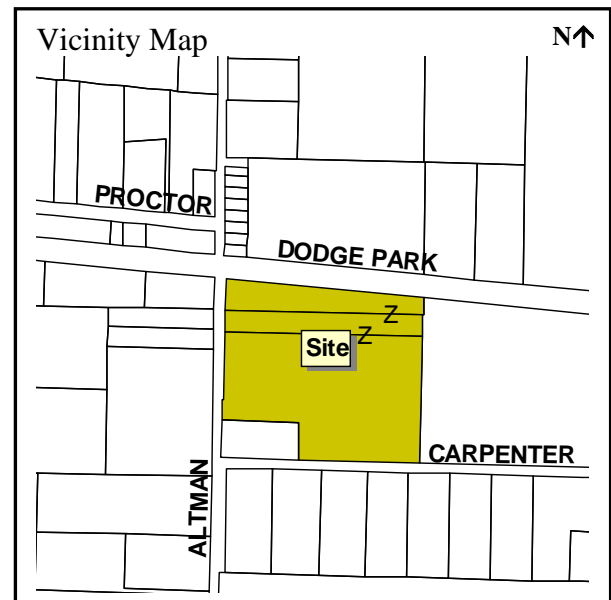


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

Case File: T2-08-029
Permit: Verification and Alteration of Nonconforming Use
Location: 7510 SE Altman Road
Tax Lot 100, 200 & 600,
Sec. 21CA/BD,
Township 1S, Range 4E, W.M.
Tax Account #R99421-0450, R99421-0520 & R67781-1700
Applicant: Garrett Stephenson
Group MacKenzie
Owner: Maridean Eisele
Scenic Fruit Co.
Base Zone: Multiple Use Agriculture – 20.



Summary: Applicant is requesting to construct a new 32,200 +/- square foot freezer building & to alter the layout of the northern parking lot to allow for truck movements to gain access to the new building. The freezer building will allow for additional storage of agricultural products on the subject site. A Verification and Alteration of a Nonconforming Use is required to be reviewed and approved.

Decision: Approved with Conditions.

Unless appealed, this decision is effective Thursday, November 6, 2008, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Thursday, October 23, 2008

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 Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-3043, 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 Thursday, November 6, 2008 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): *Multiple Use Agriculture – 20 (MUA-20)* - MCC 36.2855 Dimensional Standards and Development Requirements, MCC 36.2870 Lot of Record, MCC 36.2880 Off-Street Parking and Loading, MCC 36.2885 Access

Off-Street Parking and Loading - MCC 36.4100 - 36.4215

Nonconforming Uses - MCC 36.7200 Nonconforming Uses, MCC 36.7210 Alteration, Expansion or Replacement of Nonconforming Uses, MCC 36.7215 Verification of Nonconforming Use Status, MCC 36.7050 Design Review Criteria, MCC 36.7055 Required Minimum 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 or 37.0700, as applicable. 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 use or occupancy of the freezer building for cold storage of product, a landscape plan shall be submitted to break up the building elevations on all four sides. In addition, the landscape plan shall

demonstrate that the northern parking lot and truck movement areas are consistent with MCC36.7055(C)(3). Vegetation identified in this plan shall be planted by issuance of the final occupancy permit. [§ 36.7210(C)(I)]

2. Prior to use or occupancy of the freezer building for cold storage of product, the northern parking lot and loading area shall be surfaced with at least two (2) inches of blacktop on a four(4) inch crushed rock base or six (6) inches of portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds. The parking area shall be striped and drive aisles established in compliance with MCC 36.4175(A) & (B). The outer boundary of the northern parking lot and new loading areas shall be provided with curbing at least four inches in height. A parking lot striping plan shall be submitted to Land Use Planning prior to commencement of the striping work. [§ 36.7210(C) (2)]
3. Scenic Fruit shall hire a noise specialist to complete measurements to establish base hourly noise levels at a north, south, east and west property line for their site at night when the business is not operating. The noise study shall establish noise levels for the hours between 9 pm and 7 am. The noise study shall be submitted to the County by April 15, 2009.
4. Within 3 months following the issuance of the final occupancy permit, Scenic Fruit shall have a noise specialist complete a second noise measurement to document the noise levels at the same points on the various property lines and for the same hours that were tested before while the facility is operating at night. If the noise levels exceed the base hourly noise levels at the property lines, the noise specialist shall design mitigation measures for Scenic Fruit's operations to reduce the noise levels back down to the base hourly noise levels for the site. After the mitigation measures are installed, a third noise study shall be completed to verify that the mitigation measures have returned the noise level back to the base noise level. [MCC 36.36.7210(C)(2) & (6)]
5. During the construction of the freezer building, all existing trees and shrubs within landscape areas on the site shall be protected from damage. [§ 36.7050(A)(4)]
6. The stormwater for the northern parking lot shall be handled on-site for a 10-year, 24 hour storm event. The property owner shall provide documentation that the existing drainage pond can handle the additional water or that a new stormwater system will be created. [§ 36.7050(A)(6)]
7. The trash enclosure shall be relocated to the subject property as shown on Exhibit A.29. In addition, on the northern side of the enclosure two medium sized shrubs or a climbing vine shall be planted to buffer or screen the structure from Dodge Park Boulevard and the truck entrance. [§ 36.7050(A)(7)]
8. Prior to issuance of the final occupancy permit for the freezer building, the property owner shall remove the freestanding sign currently located within the Altman Road right-of-way. If the property owner wishes to relocate the sign onto the subject property, a Sign Permit will be required. Any new freestanding sign shall meet the County's sign code in MCC 36.7400 et al.
9. Prior to issuance of the final occupancy permit for the freezer building, a landscape planter shall be constructed at the northwest corner of the property in compliance with applicant's Attachment 10, page 15 (Exhibit A.22.o). [MCC 36.7050(A)(9) & MCC 37.0560]
10. All parking shall be located on the parcel. No off-site parking has been authorized by this permit. Any parking spaces located within the public right of way shall be relocated as part of the northern parking lot redesign. [MCC 37.0560 & MCC 36.4100 et al]
11. As part of the redesign of the northern parking lot, the property owner or their representative shall apply to the Transportation Department for a variance to allow the construction of a second driveway (located to the east of the main driveway) on Dodge Park Boulevard. In the alternative, this driveway must be closed and landscaped according to applicable code requirements. [MCC 36.0560 & Multnomah County Road Rules]

12. Prior to occupancy of the freezer building, the property owner shall complete the consolidation of Tax Lots 100 & 200, 1S4E21CA & Tax Lot 600, 1S4E21BD into a single parcel as proposed in the Lot Consolidation application, T1-08-044. **[MCC 36.2855(C)]**
13. The outdoor storage of equipment or materials that are reusable may be stored within the designated outdoor storage area as shown on Exhibit A.29. The storage of broken equipment and obsolete materials is not permitted on the site. **[MCC 36.7210(C)(4)]**

Note: Once this decision is final, application for building permits may be made with the City of Gresham. 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 Gresham. Three (3) 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 Description:

Applicant: Introduction: Scenic Fruit is an agricultural processing facility primarily involved in the packing and wholesale distribution of frozen and fresh fruits and vegetables. Scenic Fruit is located at 7510 SE Altman Road in unincorporated Multnomah County and is zoned MUA-20 (Multiple Use Agriculture). A fixture in the local community and regional agricultural economy for over 75 years, Scenic Fruit was founded in 1931 by Leonard and Vada Lauderback. It remains under family ownership and continues to operate at its original location. The Scenic Fruit plant is certified organic and can offer a full range of processing services, including sourcing, processing, freezing, packaging, and shipping. In recent years, Scenic Fruit has diversified its product lines and services to accommodate an ever more-competitive market.

A key element of Scenic Fruit’s operation is its freezer facilities, which not only allow product storage but also packing of frozen goods. The first cold-storage building (freezer) came online in the mid-1980’s, allowing year-round processing and packaging. This facility is now in need of considerable repair and updating, and the volume of product has necessitated the use of rented, off-site cold-storage. As such, Scenic Fruit plans to construct an additional freezer onsite, which in the short-term will accommodate the existing inventory while the older facility is repaired and updated. The necessity of this facility is clear and immediate; without the ability to quickly repair its existing freezer, Scenic Fruit could potentially see a severe disruption to existing and planned operations. After the older freezer has been updated, the proposed cold storage building is intended to accommodate the inventory currently being stored off-site.

Proposal The proposal is for a new 35-foot-tall cold storage building (freezer), consisting of approximately 32,200 gross square feet, to be constructed near the existing freezer. Although located within a building, this facility will be purely utilized for agricultural product cold-storage, similar in principle to smaller freezers. In addition to the cold-storage building itself, loading docks and a driveway extension will be constructed to allow freight access. Approximately 829 SF of the 32,200 SF will be dedicated to mechanical equipment. With the exception of a condenser, all mechanical equipment will be located indoors, minimizing exterior viewing and noise.

The building will be used for cold storage only, and will not feature any plumbing fixtures other than those necessary for fire sprinklers. No septic connection will be necessary. The building will not feature sinks or bathroom facilities. Storm drainage will be provided by an onsite system discharging into the existing detention pond. A complete site plan (Attachment 2) shows all existing and proposed improvements, including necessary public and private infrastructure. Additionally, a floor plan (Attachment 3) and building elevations (Attachment 4) are included in this application.

In the immediate term, the addition of this freezer will not result in an increase to the current number of employees. One to two additional employees may be hired in the future due to additional capacity. In no case will more than three additional employees be hired as a direct result of the proposed expansion. After the existing freezer is repaired, product currently stored off-site will be eventually moved into the two onsite cold-storage buildings, reducing the trips necessary to move product between locations. Thus, the proposed expansion will not increase the number of vehicle trips currently generated by the use in the short-term, and vehicle trips will actually decrease in the long-term.

Expansion of Nonconforming Uses

According to the Multnomah County Code (MCC), Scenic Fruit's operations are classified as "Commercial processing of agricultural products primarily raised or grown in the region." This use is considered to be conditional in the MUA-20 zone. However, as Scenic Fruit existed prior to the establishment of the MUA-20 district in 1977, it is now considered legally nonconforming. In fact, Scenic Fruit began business prior to the first Multnomah County zoning ordinance in the early 1950's. The Multnomah County Code allows expansion of nonconforming uses provided all of the applicable criteria of MCC 36.7200 are met (see Section IV). In order to permit the proposed expansion, the Planning Director must make a determination as to the nonconforming status of the facility, followed by a critical evaluation of the facility's impacts. This is discussed in Section III.

Although new agricultural processing facilities must undergo Conditional Use approval, this process seems less appropriate for the proposed expansion because of the long history of the use. Furthermore, the "Verification and Expansion of a Nonconforming Use" approval process appears to be uniquely tailored to situations similar to that of Scenic Fruit, and rigorously addresses the potential impacts of the proposed expansion. In summary, and as will be demonstrated by the responses below, the proposed expansion meets the threshold determination for a nonconforming use and all applicable criteria related to authorizing such expansion.

Staff: Applicant's Attachment 2 has been labeled Exhibit A.3 and was revised as Exhibit A.29. Attachment 3 may be found as Exhibit A.4 and Attachment 4 has been labeled as Exhibit A.5. The applicant is requesting to expand a nonconforming use of the subject site. In order to authorize the expansion, the County must first verify that the proposed use was lawfully established and has not ceased operation for 2 years or more. Authorization of expansion may only be permitted if no adverse impacts are created that can not be mitigated. The applicant's proposal to construct a 32,200+/- sq. ft freezer building will increase the on-site cold storage from 3 million pounds to approximately 13 million pounds. Currently, Scenic Fruit stores much of its product off-site in cold storage and then must truck it to the site for packaging and processing.

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 May 15, 2008 and was deemed complete as of July 31, 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. Written comments were received from nearby neighbors. The neighbors were concerned with truck traffic on Altman & Dodge Park Road, odor, water quality and noise being generated from the facility.

1.02 **Proof of Ownership**

MCC 37.0550 Initiation of Action

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

Staff: The proposed project is located on Tax Lots 100 & 200, 1S4E21CA and Tax Lot 600, 1S4E21BD. Assessment & Taxation records show that the land is owned by Scenic Fruit

Company. Garrett Stephenson, Group MacKenzie has been designated the applicant in this case and has signed the General Application Form (Exhibit A.1). *This criterion has been met.*

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

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

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

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

(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: At present, there appears to be a few code compliance issues with the site. The freestanding sign at the corner of Altman Road and Dodge Park Boulevard is located partially within the public right of way. The trash enclosure is also located within the public right-of-way adjacent to Dodge Park Boulevard. A landscape planter was to be constructed on the corner of the property pursuant DR 90-09-03. In addition, the proposed truck entrance was permitted as a 20 ft wide employee parking lot entrance. It was to be constructed 150 ft to the east of the existing truck entrance on Dodge Park Boulevard. In addition, outdoor storage appears to be occurring at various times within the employee parking lot to the north. Scenic Fruit will be correcting these issues as part of this permit.

2.00 ***Multiple Use Agriculture -20 Criteria***

2.01 **§ 36.2855 DIMENSIONAL STANDARDS AND DEVELOPMENT 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 proposed freezer building is located towards the middle of the subject property. After the aggregation of the three properties into one parcel, the building will meet the above setbacks (Exhibit A.29). The elevations show the building meeting the 35 ft maximum structure height (Exhibit A.5). MCC 36.0005 specifies “*Building Height*” as the vertical distance measured to the highest point of the coping of a flat roof to the highest adjoining sidewalk or ground surface within a 5-foot horizontal distance of the exterior wall of the building. The location of the freezer building will allow for the expansion of either Altman Road or Dodge Park Boulevard without the building becoming nonconforming. *These criteria have been met.*

- 2.02 **(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.**

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The Sanitarian has determined that the septic system is adequate to handle the improvements on the site. The stormwater from the building will be directed to the existing stormwater detention pond to the east of the proposed improvements. Parking and yard areas are provided on the site. *These criteria have been met.*

- 2.03 **(G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

Staff: The applicant has submitted in a Grading and Erosion Control (GEC) application, T1-08-019. The GEC plan shows sufficient measures to ensure no sediment leaves the site.

- 2.04 **§ 36.2870 LOT OF RECORD.**

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**
- (6) May 16, 2002, Lot of Record section amended, Ord. 982.**

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 36.2885, may be occupied by any allowed use, review use or

conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 36.2860, 36.2875, and 36.4300 through 36.4360, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be a lot of record:

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

(E) Issuance of building permit as verification of a Lot of Record.

(1) The issuance of a building permit de-scribed in this subsection for new development on a lot or parcel is considered verification of compliance with applicable zoning and land division regulations for the creation of a lawful lot or parcel. The lot or parcel described in the building permit is considered a Lot of Record if the building permit was issued prior to July 1, 1986 (date of intergovernmental agreement contracting for building permit services with other jurisdictions) and complies with all of the following:

- (a) There is a copy of the building permit in the Multnomah County or City of Portland permit records and the building permit indicates that the proposed development complied with zoning and land division requirements; and
- (b) The building permit was for a new principle use, such as a new dwelling, commercial, industrial, community service, or conditional use; and
- (c) There is a clear property description on the permit for the property for which the building or placement permit was issued. The description may be con-firmed by tax lot references, tax lot maps, site plans, or deeds recorded at the time.

(2) A request for verification that a lot or parcel is a Lot of Record under the provisions of this section (E) may be submitted to the Planning Director. A decision by the Planning Director is a ministerial action based upon the evidence described in this section. An appeal of the director's decision for verification of a Lot of Record shall be submitted under the provisions of MCC 37.0740.

Staff: Scenic Fruit owns three adjacent parcels. The proposed development will occur chiefly on Tax Lot 200, 1S4E21CA. The loading area crosses over onto Tax Lot 100, 1S4E21CA and trucks will access the freezer building through Tax Lot 600, 1S4E21BD. The County found Tax Lot 200 to be a legally created parcel in PLA 24-99 and allowed it to be adjusted to create the existing configuration in the year 2000 (Exhibit B.11). Tax Lot 100 was in existence in 1959 and was two acres in size (Exhibit A.7.a). The area in 1959 was zoned SR which allowed properties of less than 1 acre depending on available water and sewer service. Tax Lot 100 is a lawfully created parcel. Tax Lot 600 is in the same configuration as on the 1962 zoning maps. These maps have been deemed to show the parcels which were lawful as of that date. Tax Lot 600 is 2.04 acres in size and met the minimum lot size of the SR zone at the time. *All three tax lots are lots of record.*

The applicant has applied to consolidate the three lots of record into a single parcel. Once, Lot Consolidation, T1-08-044 is complete, the single 13.45 acre parcel will be a *Lot of Record*.

2.05 **§ 36.2880 OFF-STREET PARKING AND LOADING.**

Off-Street parking and loading shall be provided as required by MCC 36.4100 through 36.4215.

Staff: Please see findings under Section 4.03 & 4.04 below.

2.06 **§ 36.2885 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 36.2870(B).

Staff: The subject property fronts onto Altman Road and Dodge Park Boulevard. No modifications to the existing right of way or driveway access points are proposed. No dedication or improvements have been required by the Transportation Planning section. *This criterion has been met.*

3.00 ***Nonconforming Use Criteria***

3.01 **§ 36.0005 DEFINITIONS**

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

Nonconforming Use - A legally established use, structure or physical improvement in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the use regulations of the zoning district in which it is located.

Applicant: Scenic Fruit is no longer considered to be “in compliance with the use regulations of the zoning district,” as it was when it was established; therefore it is a nonconforming use according to the County’s definition. The considerations utilized to firmly establish this nonconforming status, set forth in MCC 36.7215, are detailed below, as is information supporting that determination.

3.02 **§ 36.7200 - NONCONFORMING USES.**

(B) Nonconforming uses shall be allowed to continue without additional permission, except that such uses may be replaced, altered or expanded only as provided in MCC 36.7205 or 36.7210

Staff: Scenic Fruit is proposing to add a freezer building to the subject property and has applied for a Verification and Alteration of Nonconforming Use permit pursuant to MCC 36.7210 & 36.7215.

3.03 **§ 36.7215 VERIFICATION OF NONCONFORMING USE STATUS.**

(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:

(I) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and

Applicant: The use was legally established and operating at the time of enactment of the

zoning district. Improvements on the site pre-date the beginning of Scenic Fruit's operation. According to Multnomah County Assessor's records, the primary building is the former Scenic railroad station which was constructed in 1927 (Attachment 5). Scenic Fruit has been in operation since 1931. County zoning of the site began in 1955, and records indicate the application of the M-3 (Light Industrial) zone across the northern parcel of the subject property in 1960, where most production facilities are located. The remainder of the site was zoned S-R (Suburban Residential).

This analysis is based on the zoning ordinance of 1955 and a 1962 zoning map which, according to Multnomah County shows the zoning districts that became effective between 1955 and 1958. The main processing facility was added in the mid-1960's and occupied a portion of the site zoned SR. Finally, in 1977, the entire site was zoned MUA-20 (Multiple Use Agriculture). Upon the enactment of that zone, agricultural processing transitioned from a permitted use (under the M-3 zone) affecting the northern portion of the site) to a conditional use, and thus became legally nonconforming on the subject property (Attachment 9).

Our research indicates that, although the existing freezer facility was issued a building permit in 1985, no conditional use process was completed, suggesting that previous nonconforming use expansions have occurred over the years with county approval. Two smaller buildings were subsequently added in the 1990's. Although building permits were issued for these structures, no related planning approvals appear to have been required, implying that the County has approved nonconforming expansions of this facility in the past.

In-depth, on location research in the jurisdictions of Multnomah County, City of Gresham, and City of Portland revealed a relatively well-documented building permit history for the site going back into the mid-1980's, as summarized in the table below:

Year	Permit/Action
1960	ZC-163-60 Applied M3 zoning on the northernmost portion of the property
1985	Existing Cold Storage Building, DR 85-14-04
1986	Permits for mechanical and electrical work, addition to compressor room, and shell-only warehouse
1988	Change of Use, addition of cold storage
1990	Building Permit for new lunchroom building
1996	Building Permit for new maintenance shop
1998	Zoning application for fruit processing

The citations for these permits and available permit copies have been included in this report as Attachment 10. Although a permit history is relatively clear beginning in 1985 and moving forward to the present day, no prior building or other associated permits were available from any of the three jurisdictions contacted as part of this project, despite in-person visits to each office and several information requests. We believe this is due to jurisdictional changes over the years which may have resulted in a loss of older building permits, as building permits are no longer issued or achieved by Multnomah County. This assumption is based on conversations with Multnomah County, City of Gresham, and City of Portland staff which indicate that some older planning and permitting records were lost in the transition from Multnomah County to respective Cities.

The fact that the current permitting jurisdiction, the City of Gresham, produced a different set of permits than the citations provided by Multnomah County is evidence that not all permitting

records for the site are readily available. Moreover, it is doubtful that building permit records could be obtained for the original structure given its age, even if more complete records were available. Furthermore, it is important to note that the second building, constructed in the 1960's, precedes the enactment of the MUA-20 zone district by as much as 10 years. As a building permit history of more than 20 years clearly shows the lawful establishment of all but the two oldest buildings, and reveals that all buildings built since the establishment of the MUA-20 zone district were legally established, the amount of provided documentation fulfills the burden of proof in this respect.

Staff: Attachment 5 has been labeled as Exhibit A.6, A.7 & A.8. Applicant's Attachment 9 can be found as Exhibits A.16 through A.21. Attachment 10 has been relabeled as Exhibits A.22.a through A.22.s. The County established zoning for this area in 1958 with interim zoning beginning in August 1955. A County Land Use Survey indicates that Scenic Fruit was occupying Tax Lot 600 as of 1960. The drawings of the buildings are consistent with the submitted 1956 aerial photograph (Exhibit A.35.c) for the site. The 1962 zoning map indicates that Tax Lots 600 & 100 were zoned M-3. A zone change was approved in 1960 to make the Scenic Fruit Company's use conforming (Exhibit A.16) The M-3 zoning district allowed the processing of food products except pickles, sauerkraut and vinegar (Exhibit A.20). Information supplied by the general manager (Exhibit A.14) indicates berries were their initial product. The processing building was added in the mid-1960s while the property was zoned M-3. On October 6, 1977 all three tax lots were rezoned to Multiple Use Agriculture – 20 (MUA-20). The MUA-20 zone required and still requires a conditional use permit to establish a new facility for the *Commercial processing of agricultural products, primarily raised or grown in the region*". On that date, Scenic Fruit became nonconforming as it has never received a conditional use permit to operate.

The aerial photograph for 1973 (Exhibit A.35.e) and 1980 (Exhibit A.35.f) show the existing dry storage building and processing building (Exhibit A.29). The truck loading areas from Altman Road and Dodge Park Blvd are paved. A gravel/dirt parking lot exists to the east of the two buildings.

In 1985, the County authorized the addition of a cold storage building to the site. In between the cold storage building and Altman Road, 11 paved parking spaces were to be striped. In addition, landscaping was to be added to the northwest corner of the property.

In 1990, Scenic Fruit requested to add a new office, lunchroom & employee lounge building. The proposed lunchroom/lounge is located 61 ft to the east of the dry storage and processing buildings. The plot plan (Exhibit B.12) and Design Review Decision DR 90-09-03 included an existing truck entrance off of Dodge Park Boulevard and 150 ft to the east, a proposed employee entrance to a employee parking lot. Both entrances were shown as being 35 ft wide. The employee parking lot was 200 ft deep by 150 ft wide. A number of pine trees were to be planted for screening. The outer boundary of the parking and loading area was to be defined by a curb or other barrier at least 4 inches in height. If the employee driveway access was not established in the correct location, it was not in compliance with DR 90-09-03 and would not be lawfully established.

In 1996, the County authorized a 30 ft by 40 ft maintenance shop to the south of the lunchroom/employee lounge. Planning staff found in Design Review 2-96 that Scenic Fruit completed the expansion of the parking lot and lunchroom/employee lounge and complied with the conditions of approval. The planner found the parking improvements from DR 85-12-04 and DR 90-09-03 had been completed. In addition, a small employee parking area was authorized south of the existing cold storage freezer. Outside storage was authorized in the area of the eleven parking spaces authorized as part of DR 85-12-04.

3.04 **(2) Has not been abandoned or interrupted for a continuous two year period.**

Applicant: The use has been active seasonally since 1931 and year-round since 1985. Based on information provided by the Scenic Fruit's general manager, there have been no long-term (two years or more) interruptions since the establishment of the first county zoning code in 1955, and no recorded gaps in operations since the company's founding. Scenic Fruit has operated in the same primary location since its inception. Evidence provided by the City of Gresham (Attachment 8) demonstrates that business license renewals have been renewed continuously for a permit of 27 years.

Staff: There has been no interruption to the operation of Scenic Fruit for over a two year period. See under Section 3.11 for staff discussion of discontinued physical improvement.

3.05 **(B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:**

(I) Description of the use;

Applicant: For over 77 years, Scenic Fruit has been an important part of Oregon's rural economy by purchasing fruit from farms, throughout the Willamette Valley for processing and packaging. As a full-service, vertically-integrated company, its activities include the processing of frozen fruits, retail fruit packaging, quality assurance and product reworking, as well as on-demand cold storage. Its products include locally grown strawberries, raspberries, blueberries, marionberries, boysenberries, blackberries, and rhubarb. These are available frozen, straight-packed, and pureed.

With the exception of some of some off-site cold storage, all processing and packaging activities occur onsite and indoors. Scenic Fruit's facilities include three main buildings, two of which are utilized for processing activities and one for cold storage. The northernmost two buildings are utilized for processing and packaging. The southernmost large building is an existing freezer facility. Two smaller ancillary structures – a maintenance shop and an employee lunch room – were added in the 1990's.

Scenic Fruit maintains high environmental sustainability standards and is committed to organic processing. Its operations have received certifications of environmental sustainability and awards for excellence including Oregon Tilth Certified Organic (OTCO), Food Alliance Certified Handler, and Business for an Environmentally Sustainable Tomorrow (BEST), and is certified Kosher by KOAOA Overseers.

Staff: Scenic Fruit is a commercial processor of agricultural products primarily raised or grown in the region. At the time the use became nonconforming in 1977, fruit processed included strawberries, red raspberries, black raspberries, marion blackberries, boysenberries, loganberries and blueberries from local farms. In 1977, marketing of fruit was sold primarily to food manufacturers in the confectionery industry.

3.06 **(2) The types and quantities of goods or services provided and activities conducted;**

Applicant: Scenic Fruit's primary operations include the freezing, packaging, and distribution of Willamette Valley fruits. Oregon berry growers supply Scenic Fruit with 10 to 15 million pounds of fruit annually. Variable portions of this product volume are packaged, frozen, and distributed, depending on the need of the client or buyer. Most of these activities take place onsite; however, additional offsite cold-storage capacity is utilized, and freeze-drying of fruits is

done by a third-party processor.

Staff: In 1977, Scenic Fruit purchased and processed strawberries, red raspberries, black raspberries, marion blackberries, boysenberries, loganberries and blueberries from local farms for processing. The volume of fruit purchased was 7,600, 000 lbs. Product was stored off-site in freezers.

3.07 **(3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**

Applicant: Although Scenic Fruit's operations are conducted on a year-round basis, there are significant – though predictable – fluctuations in activity based on the growing and harvesting season. There are 17 full-time employees, who generally work from 8:00 a.m. to 5:00 p.m. during non-harvest months. During harvest, as many as 200 additional employees are active over a 24 hour-period, which is divided into three shifts.

Based on information provided by Scenic Fruit staff, some 15 million pounds of product are processed and stored annually. Scenic Fruit occupies a position near the middle of the food supply chain. It receives raw harvest materials, stores, processes and packages them for wholesalers and retailers. Given its function, the peak intensity is during the summer months, after which most activities are related to processing of product that is place in cold storage. Activities involve truck traffic for the disposition of harvested goods at the site, movement of such goods to onsite and offsite cold-storage locations, and final delivery to, or pickup by clients and customers. Based on information provided by the company, some 400 freight trips are generated in any given three-month period – approximately 4.5 per day. It is important to note, however, that a significant portion of these trips occur at harvest time, and are spread out over the course of a 24 hour workday during that period.

Staff: In 1977, Scenic Fruit operated 24 hours a day during the months of June, July and August. Production schedules varied with the harvesting of the crops. Scenic Fruit employed 12 full time employees and 500 production workers (average of 166 workers per shift) total during a 24 hour period. Volume of fruit processed was 7.6 million pounds. All product produced was frozen in the form of puree, individual quick frozen and straight pack. Packaging was different sizes ranging from 6 lbs tubs to 400 lbs drums.

3.08 **(4) The number, location and size of physical improvements associated with the use;**

Applicant: The existing improvements on the site include three main buildings and two ancillary structures, totaling approximately 48,677 SF. Gravel parking and circulation areas are present in the northern section of the site, and paved parking and loading area are located along Altman Road. Storm and processing drainage is handled by a water quality/detention pond. Where buildings have plumbing fixtures, they are currently connected to a public water system maintained by the Pleasant Home Water District. Finally, sewage discharge is accommodated by a septic drain field. Please see Attachment 2 for a complete site plan indicating all structures and improvements located on the property.

Staff: Since 1977, Scenic Fruit has undergone a number of additions through the County's Pre-Existing Conditional Use provisions. As currently permitted, the site has a 15,963 sq. ft. dry storage building, a 14,642 sq. ft. building which has 10,000 sq. ft of processing area and 4,642 sq. ft. office space, 13,600 sq. ft cold storage building, a 2,446 sq. ft. office, lunchroom & employee lounge building, a 1,234 sq. ft. maintenance building. A 120 ft driveway approach leading to the processing building's loading docks and a 35 ft wide truck entrance from Dodge Park Boulevard have existed prior to zoning and transportation regulations. The sizes of these approaches are based on the 1985 Site Plan (Exhibit A.22.o), 1990 Plot Plan (Exhibit B.12) and

1996 Design Review plans (Exhibit B.6). A 30 ft driveway access leading from Altman Road between the cold storage building and processing building and a 90 ft wide driveway approach in front of the cold storage building was authorized in 1985. While a 20 ft wide driveway approach to the employee parking lot was permitted in 1990, it was not constructed in its correct location and appears to have been abandoned for over two years based on aerial photographs (Exhibit A.35.h, A.35.i & B.15).

3.09 **(5) The amount of land devoted to the use; and**

Applicant: The subject property consists of approximately 13.5 acres within three tax lots. A current title report indicates these lots are identified by a “metes and bounds” description, indicating the subject property has not been platted. The majority of improvements are located near the north portion of the site, and the proposed building is to be located there as well.

Staff: Currently the physical improvements (buildings, loading area, parking areas and drainage pond) occupy approximately 6.27 acres (Exhibit B.16).

3.10 **(6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.**

Applicant: No other factors have been identified at this time. The applicant request that if the Director of Planning considers factors not addressed here that we be allowed to provide a response to such factors as an addendum to this application.

Staff: No other factors have been considered.

3.11 **(7) A reduction of scope or intensity of any part of the use as determined under MCC 36.7215 (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use be-came nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.**

Applicant: As demonstrated by Attachment 8, Scenic Fruit has been in continuous operation for at least 27 years. Since its inception, Scenic Fruits activities have only expanded; therefore, the right of use at and above current levels is secure.

Staff: Along Dodge Park Boulevard, the employee parking entrance appears to have been discontinued. The 1998 air photo show vegetation has been allowed to fill in the driveway access point. In addition, it appears that either the driveway access point was not established in the correct location or it has moved to be within 108 ft of the truck entrance. If the employee entrance has been moved for over a two year period its use would have been abandoned. It does not appear that this driveway access point may continue to be used without reauthorization by the Transportation Department.

3.12 **(C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.**

Staff: Staff has discussed the operation and physical improvements at the time the use became nonconforming use in 1977 and the permitted improvements authorized in 1985, 1990 & 1996.

- 3.13 **(D) Except for nonconforming uses considered under MCC 36.7210 (B), the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification.**

Staff: No conditions of approval have been included regarding the verification section of the nonconforming use application.

- 3.14 **(E) Any decision on verification of nonconforming use status shall be processed as a Type II permit as described in MCC Chapter 37.**

Staff: This application has been processed through the Type II application process. Please see the additional finding under Section 1.03 above.

- 3.15 **(F) An applicant may prove the existence, continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application.**

(G) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately proceeding the date of application.

Staff: Applicant has provided information from 1977 through present for the use.

- 4.00 **§ 36.7210 ALTERATION, EXPANSION OR REPLACEMENT OF NONCONFORMING USES.**

(A) Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements.

(B) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 36.7215, the Planning Director shall authorize alteration of a nonconforming use when it is demonstrated that:

(1) The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements, or

(2) The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity.

Staff: The proposed expansion of a freezer building is not required to comply with any State or County health or safety requirements. While the expansion of the freezer square footage will allow Scenic Fruit to repair their existing freezer unit, the building will stay to increase freezer capacity on the site. The proposed application must comply with (C) below.

- 4.01 **(C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 36.7215, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider all of the criteria listed below. Adverse impacts to one of the criterion may, but shall not automatically, constitute greater adverse impact on the neighborhood.**

(I) The character and history of the use and of development in the surrounding area;

Applicant: Scenic Fruit processing operations have been integral to the character of the area for some 77 years. While the original building is still used for storage and packaging, recent decades have seen a slow expansion of the plant's capacity, while never so increasing the intensity of the use so as to cause detrimental or negative affects to the neighborhood. The proposed expansion will follow this tradition. Located at the center of the property and directly adjacent to the existing mass of buildings, the new freezer facility will not noticeably change the character of the overall plant, nor will it be out of character with the existing buildings, given its clustered location. Furthermore, the proposed facility will not radically change the nature of Scenic Fruit's operations, as cold storage has been utilized on this site for over 20 years. In summary, there will be no change in the use of its intensity; rather, this expansion will add a moderate level of capacity to existing operations.

The area surrounding Scenic Fruit is a mix of agricultural production, processing, hobby farms and suburban residential development. In general, this area features a somewhat higher development density than other agricultural areas in the state due to its proximity to Gresham and the Metro region. As previously mentioned, the existing improvements on the subject property and Scenic Fruit's operations have been a long-term presence in the vicinity. In fact, other properties in the area feature improvements and buildings of a similar scale to the resultant site improvements on the Scenic Fruit property, after the proposed expansion is completed: a large agricultural operation is located .7 miles to the northeast along Lusted Road, and other agricultural processing facilities appear to be located just over one mile to the south (Attachment 11).

The proposed expansion will simply increase the capacity of similar onsite facilities. In terms of the wider vicinity, site improvements of this scale are not unprecedented, nor do they significantly conflict with the character of the vicinity. For these reasons, the proposal satisfies this consideration.

Staff: Applicant's Attachment 11 can be found as Exhibits A.23 through A.26. Properties within a ¼ & ½ mile of the subject site are a mixture of residential on rural lots and agricultural uses. Agricultural uses include nursery stock, greenhouses, pasture, and berries (Exhibit B.17). The zoning for this area is Multiple Use Agriculture. A nursery facility with green houses and two large farm buildings are within a ½ mile of the site. The buildings are 6,720 sq ft & 11,832 sq. ft in size. Total farm building square footage is 19,692 sq. ft. The applicant also has identified a second property approximately 4,263 ft (0.80 of a mile) to the northeast of the site with 45,832 sq. ft of farm buildings. The farmer on this site processes nursery stock and seedlings for the nursery stock industry. This property is within the Exclusive Farm Use zone which establishes different permit requirements for agricultural processors. A third property is identified to the south in Clackamas County. Staff does not have zoning or use information available for this site.

Large commercial operations are not typical in this area. Scenic Fruit has been at this location since prior to zoning and has served many of the farmers in the area. The proposed 32,200+/- sq. ft freezer building will allow Scenic Fruit to keep more of its product on site. The size of the building is significantly larger than the next large farm building within a ½ mile of the site. The farm building at 33752 SE Lusted Road is only 11,832 sq. ft. The size of the building does not seem to fit within the area other than on the project site. The existing dry storage and processing buildings are connected by a covered walkway that makes the building look like a single building. If the proposed building elevations were broken up by tall trees, shrubs and possibly the use of vines to reduce the mass of the structure from the north, south, west and east,

it would help to mitigate the size of the structure in relation to other development in the area. Since no landscape area is immediately adjacent to the building elevation to the north, the landscaping within the front yard setback could be used for this purpose. Additional trees, shrubs and ground covers could be used to create a visual screen from a distance for the new freezer building.

In 1977, Scenic Fruit employed 12 full time employees and 500 seasonal employees (166+/- per shift). In 1996, George Perez, Scenic Fruit Co. indicated to planning staff that during peak seasonal activities, they employed 132 workers (including office staff) during any 8 hours of production (Exhibit B.5) for the year 1995 (396 total employees per 24 hour period). Mr. Perez indicates that the demand has been decreasing over the last four years during the peak seasonal activities. He also indicates the need for 61 parking spaces during peak operations for employee parking. Information provided by the Maridean Eisele, Owner & CFO of Scenic Fruit indicates that in 1996, 15 full time employees were employed (Exhibit A.30). If the full time employees were the same in 1995 & 1996, this would indicate 117 seasonal employees per 8 hour shift. A nonconforming use may be reduced in scope after a two year period of reduced operations or employment. Currently, the number of seasonal workers is listed at 200 additional employees over a 24 hour period (66+/- seasonal employees per shift). The number of full time employees has increased to a limited extent from 15 employees in 1996 & 1998 to 20 employees in 2004 through 2008. While the number seasonal employees have been reduced over the years, the length of time for 24 hour operations have been extended. Please see additional findings under Section 4.06 below.

4.02

(2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;

Applicant: The freezer facility is almost completely self-contained. It produces no smoke, fumes, dust, glare, or noticeable vibrations. While noise is generated by the compressor machinery related to the cooling system, this machinery is located inside of the building. The noise is therefore isolated and cannot be heard from outside the site. A new condenser shall also be installed as part of the building, which will not produce noticeable noise levels beyond that generated by the four existing condensers already operating. In summary, the expansion will not generate most of the nuisance elements identified in this criterion at all, and noise levels shall not be increased beyond current levels. For these reason, there will be no detectable increases in noise, vibration, dust, odor, fumes, glare or smoke within the neighborhood, as detailed in Attachment 7. The proposal there fore satisfies this consideration.

Staff: Trucks going to the new loading area for the proposed freezer building will travel over what is currently the gravel employee parking area per DR 90-09-03 & DR 2-96 (Exhibit B.6 & B.12). The trucks will pull onto the site from Dodge Park Boulevard via the paved truck entrance and then leave the paved truck path and travel over the graveled area. The trucks will then turn and back into the loading bays. Up to 4 trucks can be handled by the new loading zone at a time. The use of this graveled area by trucks on a regular basis will increase the year round use of this area and changes its use from parking to a vehicle movement area. The applicant has requested that they be allowed to maintain this area in gravel. Gravel is not a dust-free travel surface. The increased vehicle load traveling over this area will cause the movement of the gravel surface and increase dust levels. Staff is not able to find that the increase in vehicle trips and weight traveling over an untreated graveled surface will not have an adverse impact on adjacent farm and residential uses. To mitigate for this impact, a condition of approval has been included requiring that the northern parking lot and truck movement areas be paved or otherwise surfaced with dustless material to the standard listed in MCC 36.4180(A)(1). *As conditioned, the adverse impact has been mitigated.*

The neighbors who commented during the Opportunity to Comment were concerned about the noise levels coming from the site. The applicant has provided evidence that the fans to be installed on the new freezer building will have a sound level of 70 dBA at 50 ft. This reduction in sound level will only apply to the new freezer building. After the project is complete and the existing cold storage building is rebuilt, two freezer buildings will exist on site. Staff is not certain that the overall amount of noise generated from the site will not increase creating an adverse impact on the adjacent neighbors. The only way that staff can be sure that the noise level from the site does not increase due to this development is to require that prior to commencement of the proposed development, the applicant complete a noise study at the four property lines to establish an existing base level for the site. After the completion of the new freezer building and after 30 days of occupancy of the building, a second noise study will be required to verify that noise levels have not increased at the property line. If the study determines an increase in noise levels, the applicant will need to complete mitigation as specified by a noise specialist to return the site to the original noise level. *As conditioned, the adverse impact has been mitigated.*

4.03

(3) The comparative numbers and kinds of vehicular trips to the site;

Applicant: According to the ITE *Trip Generation Manual*, approximately 21 PM peak hour vehicular trips would typically be generated from facilities currently located on the site. The proposed expansion would add approximately 15 trips, based on an assumption of a Warehousing-Land Code 150, for an overall total of approximately 36 PM peak hour trips. Perhaps a more realistic measure of vehicle trips is ascertained by accounting for the commuting trips of the 17 full-time Scenic Fruit employees during the majority of the year, which is estimated to create 11 PM peak-hour trips. Only during peak season would trips significantly increase, with approximately 67 additional employees per eight-hour shift. This establishes a peak trip generation of 40 PM peak hour vehicle trips, considering a reduction for the higher car and vanpooling rates of agricultural workers. Assuming a maximum resultant increase of three employees from the proposed expansion, the peak season PM peak-hour trips may increase from 40 to 41 or 42. During the off-season, no additional trips are likely to be generated.

It is important to note that the commuting trip calculations based on the number of employees do not include trips related to freight movement. The heaviest transportation-related impact generated by Scenic Fruit is in the form of commercial truck traffic. Initially, the addition of square footage to the facility would suggest a net increase in trips resulting from the proposed expansion. This account fails, however, to consider the function of a large portion of these trips, a majority of which are necessary to move product between the onsite processing facilities and off-site cold-storage locations. According to Scenic Fruit staff, an average annual volume of 15 million pounds of product are moved in this way, equating to some 400 truck trips related to off-site cold storage in any given three-month period. They estimate that by constructing a new onsite cold-storage facility, these truck trips could be reduced by as much as 50%, to 200 freight trips in a three-month period, or a reduction of 1 to 2 PM peak-hour trips. This will significantly reduce the offsite impacts caused by freight traffic, belying the trip generation that the reduction in freight trips will result in a situation where the proposed buildings has “no significant affect” on the local transportation system during the PM peak-hour.

In summary, two to three employees will be eventually added as a result of the additional cold storage capacity provided by the proposed freezer facility. This would generate approximately 1 to 2 additional PM peak hour vehicle trips. Nevertheless, a potential reduction of 200 truck trips over each three-month period will mean a net reduction in overall trips to and from the site. Furthermore, as the reduction is in the form of truck trips, this trip reduction will better serve a net reduction of overall impact to the transportation system. The proposal satisfies this

consideration.

Staff: The statement that the number of truck trips to the site will be cut in half from 400 to 200 per a three month period is based on the assumption that the importation of product from off-site cold storage will be reduced. The applicant in their submittal (Exhibit A.2, page 5) has indicated that the use of off-site cold storage presently generates approximately 133 truck trips per month. The applicant indicates that a 50% reduction of truck trips will be generated by the construction of the new freezer building. Truck trips would be reduced to 66 truck trips a month. During a meeting between Scenic Fruit and their representatives and planning staff, it was indicated that off-site cold storage will continue in some amount. This calls into question the amount of truck traffic that will be reduced. At present, Scenic Fruit moves an annual volume of 15 million pounds of product between their Altman facility and off-site cold storage. Joe Michael, General Manager indicates that the new freezer unit will hold approximately 10 million pounds of product. The existing freezer unit handles roughly 3 million pounds. After renovation of the existing freezer unit, the site will be able to store up to 13 million pounds of product. It would appear the amount of on-site storage will be able to handle the cold storage needs for the business, thereby reducing the number of truck trips. Provided the amount of off-site cold storage is reduced commensurate with the new cold storage capacity being created on-site, the number of truck trips will be reduced. *No adverse impact has been identified provided there is a reduction in off-site storage.*

4.04

(4) The comparative amount and nature of outside storage, loading and parking;

Applicant: The subject property currently accommodates parking through onsite paved and graveled parking and loading areas. The main parking/loading area is located at the center-north of the site, and is generally screened from view by street trees along Dodge Park Boulevard and by the buildings to the south and along the west lot line. This area is partially paved and is not currently striped for parking spaces. A paved parking and loading area is located along Altman Road, which features eight striped parking stalls and two loading docks. A secondary paved parking area is also located along the west side, although no striping is present. In general, no changes are proposed to the existing parking and loading areas.

MCC 36.4140 requires expansions of existing development to provide parking and loading areas in proportion to the proposed expansion. To this end, the proposal includes seven new parking stalls with approximately 340 square feet of parking area landscaping. These areas will be paved, feature curbs, and be striped. The 7 additional parking spaces greatly exceed the minimum number of parking spaces based on two or three anticipated additional employees, or 2,752 SF of non-storage floor area, which suggest a requirement of 4 parking spaces. Interior landscaping shall be provided at more than 40 SF per space, thereby exceeding the minimum requirement of 25 SF per space. Finally, four new loading spaces shall be provided for access to the new cold-storage building, which shall measure 12 feet by 65 feet, thereby exceeding minimum loading area dimensional requirements. Located adjacent to the proposed parking, required landscaping has been provided for both the loading and parking areas in two landscaped areas, as shown on Attachment 2.

There is no formally designated outdoor storage area present on the site, although outdoor areas are obviously used for storage on an as-needed basis. Areas where outdoor storage is occurring are generally screened from public view by street trees, boundary landscaping and existing buildings. Nevertheless, this proposed expansion will not result in any additional outdoor storage areas as all related activities are to take place indoors.

As discussed above, required parking and loading areas will be included to serve the proposed development. No increases in off-street parking area or nonconforming parking areas are proposed; therefore, no discernable increase in any associated impacts from such

nonconforming development shall occur. As the conformance of the existing and proposed parking and loading areas is not affected by this proposal, and because there are no foreseeable negative impacts related to parking, loading, or outdoor storage areas that could be precipitated by the planned expansion, the proposal satisfies this consideration.

Staff: In DR 2-96, an outside storage area was designated and approved in front of the existing cold storage building and in an area previously permitted for eleven parking spaces in DR 85-12-04. No other outside storage areas have been identified over the years. On the proposed site plan (Exhibit A.29), a new outdoor storage area is shown in the northeast portion of the site. The previously approved outdoor storage area adjacent to the freezer building is not identified. It appears that the applicant wishes to relocate the outside storage area from near Altman Road to near Dodge Park Boulevard. The new outdoor storage area has proposed landscaping of trees and shrubs to screen the area. This would be an improvement to the site provided that no additional outdoor storage is used. The outdoor storage area should be used to store equipment or materials that are reusable by Scenic Fruit and not be used for the storage of broken machinery or broken equipment. A condition of approval has limited outdoor storage to the proposed 20 ft wide by 65 ft long area.

In 1996, Scenic Fruit completed a parking study during its 24 hour operation (Exhibit B.5) and found the need for 61 parking spaces for all full-time and seasonal employees. The land use planner for DR 2-96 found an adequate area for 71 parking spaces in the employee lot and 8 in the visitor lot off of Altman Road. MCC 36.4205(D) states “(D) Manufacturing and Storage (1) Manufacturing - One space for each two employee positions on the largest shift, or one space for each 800 square feet of non-storage gross floor area, whichever is greater. (2) Storage - 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. The applicant has indicated that the parking for the various buildings based on square footage is 50 parking spaces. The average number of seasonal employees presently on a shift is 67 plus 20 full time employees. That would be 87 employees divided by 2 for 47 spaces. The proposed 50 parking spaces will slightly exceed the minimum off-street parking requirements. On the prior site and plot plans, all parking is shown on the subject property. At present, the site plan (Exhibit A.29) shows six parking spaces chiefly located in the public right of way. All parking is required to be located on site pursuant to MCC 36.4170. There is adequate space to provide for truck movement and vehicle parking. Since the parking area will need to be redesigned to move the second driveway access point off of Dodge Park Boulevard and to meet the above code criteria, a condition of approval has been included requiring its redesign prior to occupancy of the freezer building. *As conditioned, no adverse impacts remain.*

4.05 (5) The comparative visual appearance;

Applicant: The proposed freezer facility will be similar in appearance to the existing facilities, as demonstrated by Attachments 3 and 4. Located near the center of the site, it will be somewhat obscured from Altman Road by existing buildings, and a line of trees along Dodge Park Boulevard will reduce its visual impact to that corridor. Built at a lower grade than Carpenter Lane to the south, its height appearance will be somewhat reduced. It will also be set back at least 100 feet from the nearest property line. Loading operations will face existing vehicle and truck maneuvering areas and will not result in a significant expansion of parking or loading area. In summary, there will be little comparative difference in the nature of Scenic Fruit’s visual appearance as a result of this proposal, and the expansion, while noticeable, will not in any way change the general character of the site or negatively impact surrounding properties. As the comparative visual appearance is substantially similar to facilities already on the site, the proposal satisfies this consideration.

Staff: The architectural design of the various buildings on the site is varied. Many of the older or smaller buildings have gable roofs, while the existing cold storage unit has a flat roof. The proposed freezer building will have a similar look to the existing cold storage building. It will have a metal exterior with a pre-painted off-white finish. To reduce the overall size of the new building, staff has conditioned that a landscape plan be submitted to reduce the overall massing of the 32,200+/- sq. ft. building as it is at the maximum height allowed in the zone and is larger than the combined dry storage & processing building. The addition of large trees and shrubs adjacent to the building and along the northern property line will help to reduce the building's visual impact on surrounding property owners. *As conditioned, the possible adverse impact has been mitigated.*

4.06 **(6) The comparative hours of operation;**

Applicant: Scenic Fruit operates at varying hours depending on seasonal requirements. There are 17 full-time employees, who generally work from 8:00 a.m. to 5:00 p.m. during non-harvest months. During harvest, as many as 200 additional employees are active over a 24-hour period, which is divided into three shifts. As the proposal is an expansion of an existing use and does not involve any changes in the nature of that use, there shall be no changes to business hours. This consideration does not apply.

Staff: In 1977, 24-hour operations occurred during the months of June, July & August, though production schedules varied with harvest cycles and weather conditions on a year to year basis. Since 1996, Scenic Fruit has operated 24 hours a day during the months of April through October (Exhibit A.30). In the prior land use decisions, DR 85-12-04, DR 90-09-03 & DR 2-96 no request for expansion to the number of months of 24 hour operations was requested or granted. This change would be an expansion of hours for the nonconforming use. The increase in the number of months utilized for 24 hour operations, would increase the noise levels in the area at night during the months of April, May, September & October. Neighbors have indicated an increase in the amount of noise generated from the facility. The increase in noise levels at night has a greater impact on nearby residential uses which are noise sensitive uses. At present, the County does not have baseline data for rural noise levels in the West of Sandy River to establish a maximum noise level at the property lines of Scenic Fruit. It is possible to establish this data for this neighborhood at night during non-24 hour operations and to then measure the sound levels for the site at the property line during 24 hour operations to determine if there is an increase in the noise level leaving the site. If the noise levels are increased at the property line, mitigation measures can be designed by a noise specialist to bring these levels back down to the original noise levels at the property lines. *As conditioned, the adverse impact of increased 24 hour operations can be mitigated through noise reduction methods. As conditioned, no adverse impact will be created.*

4.07 **(7) The comparative effect on existing flora;**

Applicant: Vegetation on the site is mainly grass, although there are some scattered trees and shrubs, and street trees. The proposed expansion is to be constructed in a portion of the field, where the only vegetation loss will be turf. No known natural hazards on the property would be exacerbated by the limited proposed loss of vegetation, as all stormwater runoff can be accommodated by the exiting water quality retention pond. Furthermore, the functional value of field grass as critical habitat areas is somewhat dubious, and no critical areas will be impacted by the proposal. Consequently, the expansion's comparative effect on existing flora will be light, and the proposal satisfies this consideration.

Staff: Staff concurs that the existing flora is chiefly turf on the 13 + acre site. A number of trees or large shrubs exist along Altman Road and Dodge Park Boulevard. These trees will be maintained as part of the development. In addition, a landscape plan is required to add to the

on-site landscaping to mitigate for the mass of the new freezer building and outdoor storage. *No adverse impacts have been identified.*

4.08 **(8) The comparative effect on water drainage or quality; and**

Applicant: Water runoff will be generated by the additional impermeable surface of the building's roof. Such runoff will be channeled to the existing stormwater quality/retention facility located onsite. As demonstrated by the attached stormwater certificate (Attachment 6), the amount of stormwater will be entirely within the capacity of this facility. As the water runoff from the new building will not be allowed to filter through any of the storage, the quality of the runoff itself should not be affected by the expansion. In summary, no increases in offsite drainage or decreases in the quality of such drainage will occur. The proposal therefore satisfies this consideration.

Staff: Staff concurs.

4.09 **(9) Other factors which impact the character or needs of the neighborhood.**

Applicant: No other factors have been identified at this time. The applicant requires that if the Director of Planning considers factors not addressed here that we be allowed to provide a response to such factors as an addendum to this application.

Staff: No other factors have been identified.

4.10 **(D) Any decision on alteration, expansion or replacement of a nonconforming use shall be processed as a Type II permit as described in MCC Chapter 37.**

Staff: This land use permit was processed via the Type II application process as specified in MCC Chapter 37. See finding 1.03 above for more procedural information.

5.00 **§ 36.7050 DESIGN REVIEW CRITERIA.**

(A) Approval of a final design review plan shall be based on the following criteria:

(I) Relation of Design Review Plan Elements to Environment.

(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.

Applicant: The proposed building will be similar in appearance to the existing buildings on the site, will be centrally-located, and will be integral to the overall site plan and configuration. Other sites in the vicinity also feature large agricultural buildings similar in scale to the one proposed. The existing natural environment around the site itself is pastoral, with few trees or large shrubs. In fact, no trees are anticipated to be removed as part of construction. Neither the natural environment nor the character of the site will be significantly affected by the proposal. This criterion is therefore satisfied.

Staff: The existing site is a combination of industrial buildings, parking lots, and turf. The proposed building will be placed towards the center of the 13 + acre site. Staff has conditioned, that additional landscaping be placed around the building and along the northern yard area adjacent to the Dodge Park Boulevard to help break up the mass of the 32,200+/- sq. ft., 35 ft tall freezer building. The additional landscaping will help to mute the overall metal massing of the building as it relates to the rural environment in which it is being placed. *As conditioned, this criterion has been met.*

5.01 **(b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise,**

and air pollution.

Applicant: The proposal is for a non-residential building that will be used for the storage of frozen goods; as such, human work areas within the building are minimal. Because it is designed to create an artificial environment, the building itself cannot be affected by climatic conditions, nor will the comfort of the individuals working inside be similarly affected. No air pollution will be generated by the building and emanating noises will be minimal given that all mechanical equipment (except for the condensers) is internally located. Although the proposed building will have relative high energy needs for cooling, it will meet or exceed industry energy standards for its type. On the other hand, the net energy usage of the business itself is likely to fall because of the decreased need for freight trips. In terms of the overall food supply chain, utilizing freezer buildings to preserve fruit throughout the year is potentially a savings in energy overall because less off-season fruit is imported. All tolled, the proposal will result in enhanced site functionality and efficiency, saving energy over the long term. Given the considerations illustrated above, the proposal satisfies this criterion.

Staff: By installing the proposed 32,200+/- sq. ft freezer building on site, the amount of on-site storage will be increased from 3 million pounds to approximately 13 million pounds. By increasing the amount of on-site storage, the number of truck trips will be reduced as currently off-site storage is being utilized. The addition of additional condenser units on the site and the extension of 24 hour operations from 3 months to 7 months in length can add to the noise levels generated by the site. A condition of approval has been included requiring a noise study and mitigation measures if noise levels are increased. *As conditioned, this criterion has been met.*

5.02

(c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.

Applicant: The proposed building will be well-integrated with the site and conform to the style of existing buildings. It will be a neutral earth-tone color and constructed of materials similar to those used on existing buildings. Given its substantial similarity with other Scenic Fruit facilities and because it will be located near the middle of the complex, it will “blend in” and be a logical addition to the site. In terms of circulation, a direct and delineated pedestrian path will connect the building entrance to the remainder of the site, ensuring a safe ingress and egress to and from the building while acknowledging the human form. Certain human-scale design elements – such as placing the building at the street right-of-way or including ground floor windows – have been avoided to ensure the safety of those working in and around the building as well as to preserve the maximum level of energy efficiency. Nevertheless, inasmuch as the proposed building and existing site create spatial order within the design confines of their purpose, and because the building will clearly relate to existing facilities, the applicable elements of this criterion (namely, that the building and related designs effectively and efficiently serve their function) are satisfied.

Staff: The proposed freezer building will have an off-white metal exterior. Landscaping will help to integrate the large building into its setting and provide a human scale to the large storage building.

5.03

(2) Safety and Privacy - The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.

Applicant: The proposed building will have a safe and well-defined pedestrian path leading to the main building, avoiding conflicts with trucks and other vehicles circulating throughout the site. A revised parking plan ensures that conflicts between cars and trucks will be minimized.

While privacy is not an essential concern of the development overall, the site plan ensures that the heavy-equipment-related activities which necessarily take place as part of an agricultural operation are located away from the public right-of-way and adjacent properties. The building itself will be located near the center of the site and will be separated from adjacent properties by existing buildings or landscaping, ensuring that pedestrian or passenger vehicles will not be adversely impacted by processing and storage activities. No retail sales occur onsite, and the business office is located directly adjacent to Altman Road, helping to keep passersby from entering areas of the site where they may cause a safety hazard. The proposal satisfies this criterion.

Staff: The subject site is industrial in nature. The location of the building towards the interior of the property will allow for adequate security by allowing existing employees to monitor access into and out of the building. *This criterion has been met.*

5.04 **(3) Special Needs of Handicapped - Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheel-chairs and Braille signs.**

Applicant: While the building must conform to the American with Disabilities Act (ADA) as part of building permit review, this criterion is not applicable to the proposal because activities within the building are inherently physical and would be quite challenging or even dangerous for physically disabled persons. According to the Uniform Federal Accessibility Standards, accessibility features for industrial uses are required in “all areas for which the intended use will require public access or which may result in the employment of physically handicapped persons.” As the proposed freezer building will not be open to the public and is not likely to employ physically disabled person, accessibility requirements do not apply. Therefore, accommodation of special needs users is not appropriate in this case.

Staff: Staff concurs.

5.05 **(4) Preservation of Natural Landscape - The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.**

Applicant: No trees or significant vegetation will be removed to accommodate the proposed building. Grading will be the minimum necessary to create a level and stable building site and will not significantly affect the site as a whole. The proposal thereby satisfies this criterion.

Staff: The only landscaping to be removed is turf. No trees have been proposed to be removed. A condition of approval has been included requiring the preservation of trees and shrubs on-site during the construction process (Exhibit A.29). *As conditioned, this criterion has been met.*

5.06 **(5) Pedestrian and Vehicular circulation and Parking - The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.**

Applicant: The existing parking area is not proposed to be changed, except that a revised parking layout has been provided as part of this application. As detailed on the revised site plan (Attachment 1), truck movements will not conflict with parking stalls. The proposal also includes improved parking and loading areas to accommodate potential increases in employment and loading activities. The proposal therefore satisfies this criterion.

Staff: The main pedestrian paths through the site are separate from the proposed truck routes through the northern parking lot. Only when individuals are going to their cars during shift changes or lunch time will pedestrians need to interact with a large number of vehicles. At present the northern parking lot has one legal truck entrance and a questionable second access point located in the wrong location and is larger than the permit authorizing it (Exhibit B.18). A condition of approval has been included requiring the redesign of the northern parking lot to bring it into compliance with MCC 36.4100 et al and Transportation Road Rules. Through the redesign, the parking lot will be designed for adequate access point spacing, parking and improvements. *As conditioned, this criterion has been met.*

- 5.07 **(6) Drainage - Surface drainage and storm-water systems shall be designed so as not to adversely affect neighboring properties or streets. Systems that insure that surface run-off volume after development is no greater than before development shall be provided on the lot.**

Applicant: There is an existing onsite detention pond of sufficient capacity to accommodate the increase in stormwater runoff generated by the proposed building. The proposal thereby satisfies this criterion.

Staff: All newly created impervious or semi-pervious surfaces must have its stormwater handled on-site for a 10 year, 24 hour storm event. A condition of approval has been included that the newly paved northern parking lot has its stormwater handled on site. *As conditioned, this criterion has been met.*

- 5.08 **(7) Buffering and Screening - Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.**

Applicant: Full screening of the entire site along the north property line is already in place, which obscures views of the existing parking area, trash enclosure, and outdoor storage area. Views from the south and west are obscured by the buildings themselves. The proposed outdoor storage area will be screened from the right-of-way by additional trees and landscaping to ensure that views of the storage area will not be apparent to passersby and surrounding residences. The end result of this project will be a site that better screens activities and storage from the surrounding areas; therefore the proposal satisfies this criterion.

Staff: The existing trash enclosure is located in the public right of way. The enclosure will be relocated onto the site. The new location is adjacent to the dry storage building. Shrubs or vines could be added on its northern side to buffer it from the driveway access point it is adjacent to. A condition of approval has been included. *As conditioned, this criterion has been met.*

- 5.09 **(8) Utilities - All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.**

Applicant: With the exception of potential power connections, there will be no aboveground utility installations as part of this project. Any such utility installations would be extended directly into the site, thereby avoiding adverse impacts on neighboring properties. All utility installations will respect the existing development of the site and not adversely impact onsite activities. The proposal therefore satisfies this criterion.

Staff: Staff concurs.

- 5.10 **(9) Signs and Graphics - The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.**

Applicant: No additional signs or graphics are proposed at this time. This criterion does not apply.

Staff: Presently, the Scenic Fruit freestanding sign is located in the public right of way at the corner of Altman Road and Dodge Park Boulevard. The sign was to be placed on the subject site, a condition of approval has been included requiring that this situation be corrected. *As conditioned, this criterion has been met.*

5.11 **§ 36.7055 REQUIRED MINIMUM STANDARDS.**

(C) Required Landscape Areas

The following landscape requirements are established for developments subject to design review plan approval:

- (1) A minimum of 15% of the lot area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.**

Staff: The subject property is 13 + acres in size. The proposed development will use more than eight acres leaving 5 acres in turf or agricultural use. *This criterion has been met.*

- 5.12 **(2) All areas subject to the final design review plan and not otherwise improved shall be landscaped.**

Staff: All areas not used for the Scenic Fruit operations will be placed in turf, landscaping or used for agricultural purposes. *This criterion has been met.*

- 5.13 **(3) The following landscape requirements shall apply to parking and loading areas:**

(a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totaling no less than 25 square feet per parking space.

(b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.

(c) A landscaped strip separating a parking or loading area from a street shall contain:

- 1. Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;**
- 2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and**
- 3. Vegetative ground cover.**

(d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.

(e) A parking landscape area shall have a width of not less than 5 feet.

(4) Provision shall be made for watering planting areas where such care is required.

(5) Required landscaping shall be continuously maintained.

(6) Maximum height of tree species shall be considered when planting under overhead utility lines.

(7) Landscaped means the improvement of land by means such as contouring, planting, and the location of outdoor structures, furniture, walkways and similar features.

Staff: The northern parking lot will need to be reworked to meet the above requirements. The site has adequate area to be brought into compliance if the parking and truck movement area is not currently in compliance. *As conditioned, this criterion has been met.*

6.00 **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Verification and Alteration of a Nonconforming Use in the Multiple Use Agriculture – 20 zone. This approval is subject to the conditions of approval established in this report.

7.00 **Exhibits**

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	5/15/08
A.2	11	Narrative	5/15/08
A.3	1	Site Plan – A-1.0	5/15/08
A.4	1	First Floor Plan – A.2.0	5/15/08
A.5	1	Building Elevations – A.3.0	5/15/08
A.6	10	Title Report Legal Description & Assessor’s Data	5/15/08
A.7	27	Deeds a. Bargain & Sales Deed recorded 4/22/1959 in Book 1953, Page 360 b. Warranty Deed recorded 10/17/1972 in Book 888, Pages 447 & 448 c. Bargain & Sales Deed recorded 11/16/1972 in Book 894, Page 653 d. Warranty Deed recorded 3/2/1964 in Book 2210, Pages 61 & 62 e. Quit Claim Deed recorded 4/18/1985 in	5/15/08

		<p>Book 1817, Page 2257</p> <p>f. Declaration of Deed Restrictions recorded 3/18/1986 in Book 1892, Pages 1007 – 1010</p> <p>g. Declaration of Deed Restrictions recorded 3/18/1986 in Book 1892, Pages 1011 – 1013</p> <p>h. Order Accepting Deed to Property for County Road Purposes recorded 4/9/1986 in Book 1897, Pages 1287 – 1288</p> <p>i. Deed for Road Purposes – Corporation recorded 4/9/1986 in Book 1897, Page 1289 – 1290</p> <p>j. Statutory Warranty Deed recorded 9/26/1986 in Book 1941, Page 1211</p> <p>k. Statutory Warranty Deed recorded 9/16/1986 in Book 1941, Page 1212</p> <p>l. Statutory Bargain & Sale Deed recorded 04/05/2000 in Book 2000-046827</p> <p>m. Bargain and Sale Deed recorded 07/17/2000 in Book 2000-098152</p>	
A.8	8	A&T Property Information & Maps	5/15/08
A.9	4	Certification of On-Site Sewage Disposal	5/15/08
A.10	1	Fire District Review (Non-Residential)	5/15/08
A.11	3	<p>Certification of Water Service</p> <p>1. Pleasant Home Water District Letter</p>	5/15/08
A.12	1	Storm Water Certificate	5/15/08
A.13	1	Police Services Review	5/15/08
A.14	1	Letter from Scenic Fruit General Manager	5/15/08
A.15	2	Letter from City of Gresham regarding Business License from 1981	5/15/08
A.16	1	Zoning Map 1955 – 1958 (Map 1962)	5/15/08
A.17	2	Zoning Map – October 5, 1977	5/15/08
A.18	1	Zoning Map – October 6, 1977	5/15/08
A.19	6	Suburban Residential District – SR (1960 version)	5/15/08
A.20	3	Light Manufacturing District – M-3 (1960 version)	5/15/08
A.21	6	Multiple Use Agriculture – 20 (1977 version)	5/15/08

A.22	19	<p>Building Permit Cards & Plans</p> <ul style="list-style-type: none"> a. Maintenance Shop Card 4/16/96 & Construct Access Bldg/Warehouse 12/10/85 b. Addition of Cold Storage 10/20/1989, Zoning Approval for Process of Fruits 12/21/98 & Lunch Room & Office 10/20/1990 c. Freezer Storage 4/7/86, Addition to Compressor Rm 2/19/86 & Addition to Compressor 3/6/86 d. Warehouse Shell 1/2/86, Addition of cold storage area 10/20/89 & Electrical feeder and service 5/14/86 e. TP 2-90 8'x20' trailer to be used for an office on a temporary basis 5/25/90, DR 2-96 Maintenance Shop for Fabrication and Equipment Repair 4/5/1996 f. ZC 163-60 SR to M-3 Zoning 10/18/60, DR 90-09-03 Office and Lunch Room, & DR 85-12-04 Cold Storage g. Records Request from City of Gresham Building Department 4/10/2008 h. Inspection Card for 6/11/90 i. Inspection Card for Lunch Room & Office Space & Inspection Card for Addition to Cold Storage Area j. Plumbing Permit Application k. Inspection Record for Mobile Home l. Cross Section for MC 738 Permit m. Plot Plan for MC 738 n. Plan for Improvement o. Site Plan for MC 86-0474 p. Cross Section for MC 96-2914 q. Site Plan for MC 86-0474 r. Plan for Cold Storage Addition dated 10/18/89 s. Site Plan for MC 601 	5/15/08
A.23	1	2007 Air Photo of Scenic Fruit Site	5/15/08
A.24	1	Scenic Fruit Vicinity and Properties with	5/15/08

		Similar Improvements	
A.25	1	Scenic Fruit Zoning and Vicinity Map	5/15/08
A.26	1	West of Sandy River Rural Area Plan Figure 4 Current Zoning	5/15/08
A.27	1	Material Sample of Outside of Proposed Storage Building	5/15/08
A.28	9	Additional Narrative	7/11/08
A.29	1	Revised Site Plan	7/11/08
A.30	5	Letter from Scenic Fruit Owner & CFO answering scope questions for nonconforming use permit	7/11/08
A.31	2	Emails regarding noise levels from condenser units/equipment dated July 10, 2008	7/11/08
A.32	3	Certification of On-Site Sewage Disposal revision	7/11/08
A.33	1	Fire District Review (Non-Residential)	7/11/08
A.34	2	Emails between Garrett Stephenson, Group MacKenzie and Ken Born, Transportation Planning	7/11/08
A.35	10	Historical Aerial Photos a. 1935 b. 1948 c. 1956 d. 1964 e. 1973 f. 1980 g. 1990 h. 1998 i. 2006	7/11/08
A.36		Emails from Joe McMichael, General Manager, Scenic Fruit	10/21/08
'B'		Staff Exhibits	Date
B.1	2	A&T Property Information For 1S4E21BD – 00600	5/15/08
B.2	2	A&T Property Information For 1S4E21CA – 00100	5/15/08
B.3	2	A&T Property Information For 1S4E21CA - 00200	5/15/08
B.4	3	Transportation Planning Memo	6/23/08
B.5	1	Letter from George Perez, Scenic Fruit Co. to Barry Manning dated 4/4/96	

B.6	8	DR 2-96	
B.7	1	Parking Notes from DR 2-96	
B.8	1	1998 Aerial Photo of Site	
B.9	1	2002 Aerial Photo of Site	
B.10	1	2005 Aerial Photo of Site	
B.11	1	Survey 57219 – filed 6/9/2000	10/20/08
B.12		DR 90-09-03 Plot Plan	10/21/08
B.13		DR 90-09-03 Decision	10/21/08
B.14		DR 85-12-04	10/21/08
B.15	1	Google Air Photo	10/21/08
B.16	1	Area being used 2004	10/21/08
B.17	1	Uses within ¼ Mile & ½ Mile of Subject Property	10/21/08
B.18	2	Road Approach Permits 1985 & 1991	10/21/08
‘C’		Administration & Procedures	Date
C.1	1	Incomplete Letter	6/13/08
C.2	2	Acceptance of the 180 day timeline to make application complete	6/17/08
C.3	1	Complete Letter	7/31/08
C.4	3	Opportunity to Comment	8/1/08
‘D’	#	Public Comments	Date
D.1	1	Letter from Cartisser	8/12/08
D.2	1	Letter from Young	8/15/08
D.3	2	Email from Meyers	8/18/08