

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

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

<http://www.multco.us/landuse>

NOTICE OF DECISION

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

Case File: T2-2013-2808

Permit: Administrative Decision by the Planning Director; Verification of Non-Conforming Use

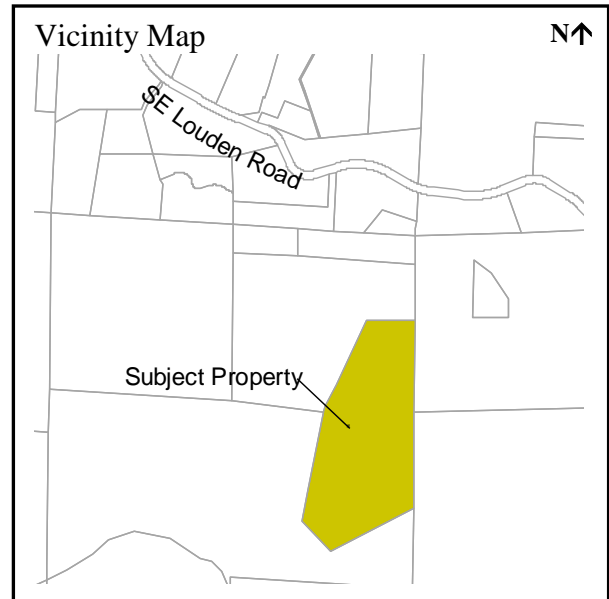
Location: 40174 SE Loudon Road
Tax Lot 400, Section 12
Township 1S, Range 4E, W.M.
Tax Account #R994120130

Applicants: Sarah Loveland

Owners: Sarah and Daniel Loveland

Base Zone: Commercial Forest Use-4 (CFU-4)

Overlays: Slope Hazard (HD)



Summary: Construct a 60 x 40 foot agricultural building in the Commercial Forest Use-4 zone

Decision: Approved with Conditions

Unless appealed, this decision is effective Monday, July 22, 2013, at 4:00 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Monday, July 8, 2013

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 Don Kienholz, Staff Planner at 503-988-3043, ext. 29270 or email don.d.kienholz@multco.us.

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 Monday, July 22, 2013 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): MCC 37.0560 Code Compliance, 35.0005 Lot of Record; 35.2220(C); 35.2250 Building Height; 35.2256 Forest Practice and Fire Safety Zones; 35.2261 Development Standards; 35.2275 Lot of Record; 35.7204 Verification of Non-Conforming Use.

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse>.

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690(B) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, 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.

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, Don Kienholz, at (503) 988-3043 ext. 29270 or email don.d.kienholz@multco.us, 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 with a fourth site plan showing erosion control measures. 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.

1. The property owner shall maintain a primary and a secondary fire safety zone on the subject tract as outlined below:

- **A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**
- **A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone on the subject property. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Maintenance of the secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the property owner.**
[MCC 35.2256].

2. The barn shall be built with a fire retardant roof [MCC 35.2261(C)(3)].

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 (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.00 Project and Property Description:

Staff: The applicant is seeking approval to place a 60-foot by 40-foot agricultural structure on property zoned Commercial Forest Use-4 with a Planning Director’s Determination since the property is not currently in farm deferral and the structure must satisfy the CFU-4 development standards.

The property is a landlocked parcel accessed by easement south of SE Loudon Road. The location of the structure is more than 100-feet from the existing dwelling on site and nearby an existing large barn structure that sits roughly 20-feet from the property line. The existing barn encroaches within the current CFU-4 development standards and is being reviewed for lawful establishment under the non-conforming criteria.

2.00 Code Compliance:

MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.

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

Staff: There are no active or listed code compliance issues known for the subject property. An existing barn is roughly 20-feet from a property line, its compliance is addressed in Finding #6.00. Lot of Record is discussed in Finding #3.

3.00 Lot of Record:

MCC 35.0005 Lot of Record

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 35.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

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

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

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

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

* * *

MCC 35.2275 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 35.0005, for the purposes of this district a Lot of Record is either:

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

(2) A group of contiguous parcels or lots:

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

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

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception, urban, or Columbia River Gorge National Scenic Area zones (e.g. MUA-20, RR, SRC, R-10, GGA-40), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

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

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot Size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(c) Disaggregation of a Lot of Record for consideration of a new template or heritage tract dwelling may be allowed subject to the standards in (E) below.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, F-2 zone applied;

(2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

(3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;

(4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;

(5) February 20, 1990, Lot of Record definition amended, Ord. 643;

(6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;

(7) August 8, 1998, CFU-4 zone applied, Ord. 916 (reenacted by Ord. 997);

(8) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 35.2273, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(D) The following shall not be deemed 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) A Mortgage Lot.**
- (4) An area of land created by court decree.**

Staff: The applicant submitted a contract recorded in Book 838, Pages 1559-1561, on February 8, 1972 that described the subject property (Exhibit A.14). The contract was in recordable form and thus is a recognized document under MCC 33.0005(B)(2) above. In 1972, the subject property was zoned F2 as seen on the County's zoning maps for 1962 (Exhibit B.4) and up to October 5, 1977 (Exhibit B.5).

In 1972, the F2 zone required a 2-acre minimum lot size. Road frontage and access to a public road were not required. Being over 22-acres in size, the subject property met the zoning laws in place at the time it was divided. Partition requirements were not implemented in the county until 1978; therefore, the subject property was not required to meet land division requirements.

Being larger than 19-acres in size and not adjacent to any other property less than 19-acres in size, the subject property is not aggregated to an adjacent parcel.

The subject property is a lot of record.

Criteria met.

4.00 Planning Director's Interpretation – Farm Use:

MCC 35.2220 Allowed Uses

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

Staff: The applicant is seeking a Planning Director's Interpretation that the proposed 84-foot by 40-foot structure is a Farm Use as defined in ORS 215.203 and allowed in the CFU-4 zone under MCC 35.2220(C).

While farm uses and farm structures are allowed outright in the zone, discretion and interpretation must be utilized if certain parameters are not in place or readily evident. Typically, the county uses the Farm Deferral program as one tool to ensure property is in farm use in conjunction with other non-discretionary evidence, such as air photos showing farming practices, farm website information, etc. In the subject application, the property is not enrolled in the farm deferral program; Air photos do not show an evident farm use on the subject property; and there is no other evidence provided of a farm use taking place. Therefore a discretionary interpretation must be provided.

The applicants have provided their plan for farm use to the County, which includes unnamed crops, poultry, livestock, and honeybees. The proposed structure would be used to support the proposed farm use. The applicant's are currently in a 'chicken and the egg' situation – Trying to establish a farm use but unable to obtain entry into the farm deferral program due to earned income and longevity requirements as well as needing a structure to support the proposed farm use while the zoning requirements require proof of an existing farm use.

To that end, the applicants have provided their farm proposal in their narrative (Exhibit A.2), floor plans of the proposed structure (Exhibit A.18), elevation drawings of the proposed structure (Exhibit A.9) and letters (Exhibits A.15 and A.19) from the Multnomah County Division of Assessment, Recording and Taxation stating that there is existing Christmas tree stock (600 new trees planted as of April 30, 2012) on the subject property that could qualify as a farm use and a history of farm use including pasture for raising cattle.

The proposed structure is empty of rooms on the interior, consistent with farm buildings utilized to store crops, animals and equipment for farm use. A lack of rooms also supports a finding that there are no commercial uses proposed that are not permitted in the zone. The elevation drawings of the proposed structure clearly show a barn being proposed, not a commercial structure that would be prohibited in the zone. Christmas trees, cattle, honeybees and other animals are listed as farm uses in ORS 215.203. The property has a history of farm use dating back to at least 1974.

Cumulatively, the known facts and evidence support the applicant's case that the proposed structure is a farm use by nature and would support other farm uses on the subject property. The design of the structure would not support many other uses other than a farm use with the lack of interior rooms, lack of plumbing other than hose bibs, and a lack of commercial design requirements.

The planting of Christmas trees is an existing farm use on the subject property and the proposed structure would support it. The addition of cattle and other animals, honey bees and pasture land would support the proposed structure. Assessment and Taxation has noted the property would qualify for farm deferral if not for the duration and past earned income requirements.

The property is engaged in a current farm use. The proposed uses are farm uses under ORS 215.203. Therefore the proposed structure is a farm use as defined and allowed in the CFU-4 zone.

5.00 Commercial Forest Use-4 Zoning Requirements:

A. MCC 35.2250 BUILDING HEIGHT REQUIREMENTS

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: The proposed structure is a barn and is proposed at 16-feet in height as noted on the elevation plans (Exhibit A.9).

Criterion met.

B. **MCC 35.2256 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES**

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Table 1

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Other Structures	N/A	30	130	Primary & Secondary required

Staff: As noted in the above table, the proposed barn needs to have a 130-foot Forest Practice setback from all property lines since the property does not front a County maintained road. As seen on the submitted site plan (Exhibit A.7 and A.8) the barn is proposed to be 130-feet from the closest property line.

The Fire Safety Zones are determined below.

Criterion met.

C. **MCC (D) Fire Safety Zones on the Subject Tract**

a. **(1) Primary Fire Safety Zone**

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

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

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

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

Staff: The slope on the development site is relatively flat and less than 10% (Exhibit A.6 and B.9). As such, the Primary fire safety zone is 30-feet.

Criterion met.

b. **(2) Secondary Fire Safety Zone**

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be re-moved to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of 35.2310.

Staff: The secondary fire safety zone is 100-feet. Combined with the primary fire safety zone above, the total fire safety zone setback is 130-feet. As seen on the site plan (Exhibit A.8 and A.9), the proposed barn satisfies the fire safety zones.

Criterion met.

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

Staff: The proposed barn is in a cleared pasture area and will not affect any forest management plan.

Criterion met.

d. **(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.**

Staff: A condition of approval will satisfy completion and maintenance of the fire safety zones.

Criterion met.

e. **(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).**

Staff: A condition of approval will satisfy completion and maintenance of the fire safety zones.

Criterion met.

D. **MCC 35.2261 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES**

All dwellings and structures shall comply with the approval criteria in (B) through (E) below except as provided in (A):

1. **(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):**

Staff: The proposed structure does not qualify under (1) because the structure is not within 300-feet of a frontage on a public road.

a. **(2) The structure shall satisfy the following requirements:**

1. **(a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 35.2256;**

Staff: The proposed structure is 130-feet from the closest property line and satisfies the requirements of MCC 35.2256. The proposed location is far enough from adjacent forest and farm uses to not cause issues with the felling of trees or from common agricultural practices such as spraying while at the same time meeting the CFU-4 development standards. The barn will not require adjacent property owners to alter their common farm and forest practices and thus will have no affect on them.

Criterion met.

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

Staff: The proposed structure is 130-feet from the closest property line. The location of the proposed barn is adjacent to the existing driveway and row of ornamental trees lining the driveway, requiring only a 60-foot spur off the driveway and preserving the area dedicated to farm use. Additionally, the barn is clustered near an existing barn and on the peripheral of the open pasture area. The location will allow the owners to continue their Christmas tree farm as well as permit animal husbandry to occur in the open portions of the property.

Criterion met.

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

Staff: The proposed barn is clustered around an existing barn, the existing driveway and is not within a 'forested' area. The location of the barn is a part of the property currently in pasture use. As such, the amount of forest

land dedicated to the barn is minimized while providing the necessary farm support.

Criterion met.

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

Staff: The existing driveway access serving the property is roughly 2,500-feet in length. The applicant has proposed a spur off the driveway to the north measuring roughly 60-feet to accommodate the barn without cutting down any trees lining the driveway, but it does not extend the overall length of the driveway.

Criterion met.

- b. **(3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

1. **(a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access.**

Staff: The applicant has submitted a completed Fire Agency Review Form demonstrating the access meets local fire standards.

Criterion met.

2. **(b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source.**

Staff: There is no perennial water source within 100-feet of the driveway.

Criterion met.

2. **(C) The dwelling or structure shall:**

- a. **(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

Staff: The applicant is not proposing a mobile home.

Criteria met.

- b. **(3) Have a fire retardant roof; and**

Staff: A condition of approval requires a fire retardant roof.

Criterion met.

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

Staff: No chimneys are proposed.

Criterion met.

6.00 Verification of a Non-Conforming Use:

Staff: As identified in Finding #2.00, an existing barn on the property is only 20-feet from a property line and does not conform to the current CFU-4 forest practice act and fire safety zone setbacks. As such, it must be verified as a non-conforming use.

A. MCC 35.7204 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:

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

Staff: The identified existing barn is roughly 20-feet from the east property line, which does not satisfy the CFU-4 development standards. Staff was unable to find any County approval of the structure or a past acknowledgement of the structure as an exempt farm structure provided for in ORS 215.203 to permit the structure within the current setback requirements found in MCC 35.2256.

The applicant has stated the building predates the CFU-4 zoning code setbacks; is an agricultural structure and therefore exempt from building permits; and as such the County would not have a record of the structure.

In general, buildings used exclusively for agricultural purposes are considered farm uses and exempt from the structural code section of the building code as provided for in Oregon statute. Evidence of the farm use on a property would be enrollment in the farm deferral program of the Division of Assessment, Records, and Taxation. However, the property is not currently in farm deferral which prevents staff from making a non-discretionary finding that the property is in farm use, the structure supports the farm use and the structure was exempt from the building code whenever it was established. Additionally, staff did not have any information on the date of establishment of the structure and could not reasonably and non-discretionarily determine the structure predated the CFU-4 requirements.

In their application, the applicant submitted a letter from the Division of Assessment, Records and Taxation (Exhibit A.19) noting the property had historically been enrolled in the farm deferral program – as far back as 1974. The dwelling on the subject property was approved by the County under a forest management plan in 1982 under PRE 28-82 (Exhibit B.6) and built in 1987-1988. It is reasonable to believe that with the dwelling established in 1988 and the property in the deferral program since 1974, that the barn was established around the same time as the dwelling.

When the home was established in 1987-1988, the zone was MUF-38 as noted on the land use decision (Exhibit B.6) and building permit application (Exhibit B.7). The MUF-38 zoning district had a 10-foot side yard setback (Page 6, Exhibit B.8).

Based on the information in the record, staff makes the findings that:

1. The property was historically in farm deferral beginning in 1974 through the time the dwelling was approved in 1982 and established in 1988.
2. Farm deferral on the property lasted until the year 2000 (Exhibit B.1)
3. The existing barn on the property was established around the same time as the dwelling in 1988 when the property was zoned MUF-38
4. At the time the barn was established, there was only a 10-foot setback and the barn satisfied that setback requirement.
5. The barn was lawfully established when the zoning changed from MUF-38 to CFU in 1993 and the setbacks were increased to 130-feet.

The barn was lawfully established and the existing setbacks are a lawfully established non-conforming use. Criterion met.

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

Staff: The lawfully established barn has not been removed from the property. The applicant provided an air photo from 1993 demonstrating the barn was on the property when zoned MUF-38 and the air photos available from Google Earth demonstrate the same building is on the property over the last 15 years. The building has never been removed and as such, the non-conforming setbacks have not been abandoned or interrupted for a continuous two year period.

Criterion met.

B. (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:

- (1) Description of the use;**
- (2) The types and quantities of goods or services provided and activities conducted;**
- (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**

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

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

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

(7) A reduction of scope or intensity of any part of the use as determined under this subsection (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 became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

Staff: Since the non-conformity is the setback of the barn structure, the review of the nature and extent of the non-conformity is very limited. The majority of the criteria above deal with intensity of a use rather than a distance of a setback. Evidence in the record shows the structure was established with a 20-foot setback and the building has continuously existed since at least 1993. The barn did not expand towards the property line nor did it recess away from the setback. As such, staff finds the nonconformity of the setback has not altered, changed, or been modified in any way since establishment.

Criterion met.

7.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Administrative Decision by the Planning Director to establish an agricultural building in the CFU-4 zone and verify a non-conforming setback on an existing barn. This approval is subject to the conditions of approval established in this report.

8.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2013-2808 at the Land Use Planning office.

Exhibit #	# of Pages	Applicant Exhibits
A.1	1	General Application Form
A.2	2	March 21, 2013 Narrative
A.3	1	Applicant’s 1993 Air Photo Showing Existing Barn
A.4	2	Photos Showing Dwelling and Habitability
A.5	2	Photos Showing Existing Farm Use and Proposed Building Site
A.6	1	Applicant’s Topography Map
A.7*	1	Applicant’s Overall Site Plan

A.8*	1	Applicant's Close Up Site Plan
A.9*	2	Barn Elevation Drawings
A.10	1	Stormwater Certificate
A.11	2	Fire Agency Review
A.12	4	Incomplete On-Site Sewage Disposal Form And Portland Application Materials
A.13	1	Parcel Card for Property
A.14	3	Contract of Sale Recorded February 8, 1972 in Book 838, Pages 1559-1561 Creating the Subject Property
A.15	1	March 26, 2013 Letter from Division of Assessment, Records and Taxation Noting Christmas Trees on Property
A.16	9	Completed On-Site Sewage Disposal Form, Site Plans Reviewed by Sanitarian, Email from Applicant to Sanitarian, and City of Portland Application Sheet
A.17	1	Existing Barn Floor Plan
A.18*	1	Proposed Barn Floor Plan
A.19	1	June 17, 2013 Letter from Division of Assessment, Records and Taxation Noting the Proposed and Existing Farm Uses on the Property Would Qualify for the Farm Deferral Program Except for the Time Requirements
'B'	#	Staff Exhibits
B.1	2	A&T Property Information
B.2	2	June 4, 2013 Complete Letter
B.3	8	June 5, 2013 Opportunity to Comment and Mailing List
B.4	1	1962 Zoning Map
B.5	1	Zoning on October 5, 1977 Placed on 1966 Tax Lot Map
B.6	4	PRE 28-82 Approving Resource Related Dwelling
B.7	1	1987 Building Permit for Dwelling
B.8	11	Multiple Use Forest Zoning District Adopted March 23, 1982
B.9	2	Multnomah County's Slope Percentage Maps