



**MULTNOMAH COUNTY**  
**LAND USE PLANNING DIVISION**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
(503) 988-3043 FAX: (503) 988-3389  
[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use/](http://www.co.multnomah.or.us/dbcs/LUT/land_use/)

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## DECISION OF HEARINGS OFFICER

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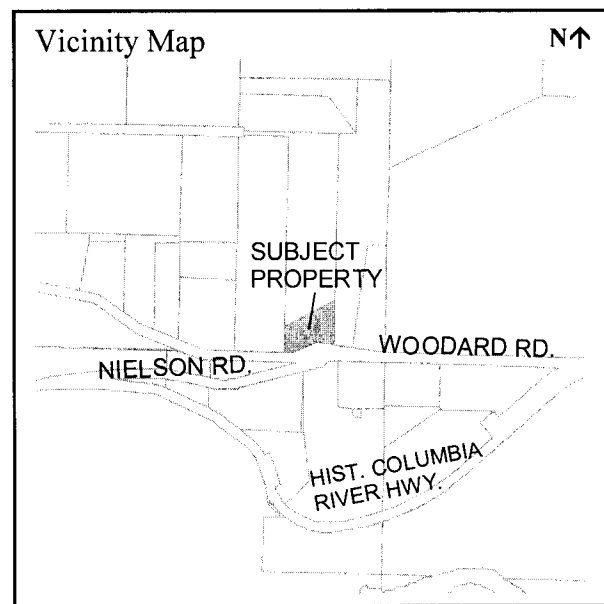
### Conditional Use Permit for a Type B Home Occupation

**Case File:** T3-05-004

**Hearings Officer:** Liz Fancher

**Hearing Date, Time, & Place:**

**Friday, May 13, 2005, at 1:00 PM** in the Columbia Room at the Land Use Planning Division office located at 1600 SE 190th Avenue, Portland, OR 97233



**Location:** 31105 E. Woodard Rd.  
TL 1900, Sec 32C, T1N, R4E, W.M.  
Tax Account #R05350-7130

**Applicant:** Starlena Simon  
PO Box 487  
Corbett, OR 97019

**Owner:** Starlena and Howard Simon  
31105 E. Woodard Rd.  
Troutdale, OR 97060

**Summary:** Conditional Use Permit for a Type B Home Occupation to use the existing garage for a small scale winery and honey/jam business. The Home Occupation includes production and will employ the residents of the home only.

**Zoning:** Multiple Use Agriculture (MUA-20)

**Site Size:** 1.41-acres

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## **Hearing Officer Decision:**

**Approval** of the request for a Conditional Use for a Type B Home Occupation to allow the use of the existing garage as a small-scale winery and jam/honey business. This will include production only. This decision is based on the revised findings provided below. This approval is granted subject to compliance with the conditions of approval listed below.

## **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.

### **ON-GOING CONDITIONS**

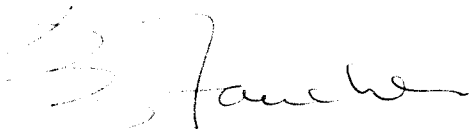
1. Pursuant to MCC 37.0700(B) and ORS 660-33-0140(5), this land use permit expires three years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0700. Such a request must be made prior to the expiration date of the permit.
2. The home occupation permit is valid for Starlena and Howard Simon to operate a small-scale winery, jam, and honey production facility as described in this decision. Starlena or Howard Simon must also reside in the residence while the business is being operated. If neither resides in the home, this permit shall become void. MCC 35.6660(J).
3. The home occupation shall involve no signage other than the street address sign. MCC 35.6660(F).
4. The home occupation shall involve no outdoor storage or display of materials. MCC 35.6660(E).
5. Deliveries associated with the home occupation shall be limited to the hours between 7:00 a.m. and 6:00 p.m. and shall not exceed 2 per day. MCC 35.6660(D).
6. The home occupation shall not involve the use, parking, storage or repair of any vehicle exceeding a gross vehicle weight of 11,000 pounds, except deliveries by parcel post, United Parcel Service, or similar in-town delivery service trucks. MCC 35.6660(D).
7. The applicant shall follow the septic system monitoring and testing recommendations of the City of Portland Sanitarian's office. The applicant shall submit proof to the Land Use Division that a lab sample of the wastewater generated by the Home Occupation was submitted to the City of Portland Sanitarian's Office after six months of operation. Proof of this submittal, such as a letter of receipt signed by a representative of the

**Sanitarian's Office, shall be submitted to the Land Use Planning Division within seven (7) months of commencing operation. MCC 35.6315(A)(6).**

- 8. At the time of zoning authorization of a building permit for the Phase One improvements, the applicant must present proof that she has obtained a driveway permit from the County Right-of-Way division for the existing driveway access from E. Woodard Road. MCC 35.6315(A)(6).**

**Note:** When the owner/applicant is ready to have building permits signed off, the applicant shall call Tammy Boren-King, Planner at (503)-988-3043, for an appointment for review of compliance with conditions and for zoning approval of the building permit plans. Multnomah County must review and sign off building permit applications before they are submitted to the City of Gresham. Four (4) sets each of the site plan and building plans are needed for building permit sign off.

**Dated** this 20<sup>th</sup> day of May 2005.

A handwritten signature in cursive script, appearing to read "Liz Fancher", written in dark ink.

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Liz Fancher, Hearings Officer

**THIS IS THE COUNTY'S FINAL DECISION IN THIS CASE. YOU MAY  
APPEAL THIS DECISION TO THE OREGON LAND USE BOARD OF  
APPEALS IF YOU FILE A TIMELY, PROPERLY PERFECTED APPEAL.**

## **Findings of Fact**

(Formatting Note: Staff provides findings referenced here as necessary to address Multnomah County ordinance requirements. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Planning staff comments and analysis may follow applicant comments. Where this occurs, the notation “Staff” precedes these comments. Staff comments have been modified by the Hearings Officer and serve as the findings of the Hearings Officer.)

**Revision of Application:** The applicant withdrew her application for approval of the right to sell products in her home and to allow wine tasting on the property as Phase 2 of her home occupation. The Hearings Officer has stricken those parts of the applicant’s proposal that relate to Phase 2 using strikethrough text.

### 1. **Project Description**

**Applicant:** The applicant is proposing to operate a small-scale winery and jam making facility from the subject property within a portion of the existing structure, being the garage. The applicant plans to import local fruit and honey, to the site, for processing into wine and cider and jams. The applicant is currently planting fruit trees and bushes, that may be used in the future to supply or supplement fruit needs. The applicant also raises bees, which she plans to use for honey production. The applicant plans to focus on the sales of gift baskets in order to maximize the profits from the small-scale home business. The hours of production may involve any hour, any day of the week.

Phase 1: Not to include customer visits and not to include any employees. Work space will start as use of only the back portion of the garage (approximately 300 sq. ft. that will need modifying).

~~Phase 2: In 2-5 years, will include the option of having customer visits and/or hiring an employee and use the rest of the garage. The applicant plans to sell products from the property on a retail and wholesale basis. Initially, on average, there may be a maximum of 4-5 customers per day. The hours (customer visits) will be by appointment only.~~

**Staff:** The applicant originally proposed a phased approach to the implementation of her home occupation proposal. Phase 2 of the plan was, however, withdrawn by the applicant during the May 13, 2005 land use hearing regarding the application. The house has an attached garage that measures 19.5 feet wide by 34 feet deep. Phase One will include the use of the rear 15.5 feet of the attached garage.

The floor plan for Phase One is included as Exhibit G. This phase shows the conversion of the rear 15.5 feet of the garage into a production area with a freezer, sinks, a stove, shelving and tables. Activities will include fruit preparation and pressing, bottling activities, fermenting, storage and packaging. No employees or on-site sales will be involved with this phase. All products will be delivered to buyers.

2. **Site Vicinity and Characteristics**

**Staff:** The subject property is a 1.4-acre parcel in an area containing a mix of housing, farm land, open space and institutional uses. Two aerial photos are included as Exhibits J and K to this report. Exhibit J shows the subject parcel and surrounding lots for approximately one quarter mile in all directions. Exhibit K is zoomed in on the subject parcel to show the existing configuration of the improvements on the lot.

The surrounding area North of Woodard Road is predominately used for rural residential purposes. As can be seen on Exhibit J, there is one farm operation north of the Road with the remainder of the area north of Woodard consisting of wooded home sites. This farm operation is a “beef cattle farm.” The home sites north of Woodard Road range in size from the applicant’s 1.4-acre lot to approximately 10 acres, with most home sites being in the 2 acre size range.

The surrounding area South of Woodard Rd. is used for a variety of purposes. Abutting Woodard Rd are several wooded home sites ranging in size from 1.25 acres to 8.5 acres and an older Forest Service facility that was converted to the Reynolds School District Environmental Satellite School approved by a Hearing Officer in case T3-01-014. These home sites and the school are at approximately the same elevation as the applicant’s property. The topography slopes steeply south of Woodard down to the Historic Columbia River Highway. The properties within ¼ mile of the subject property that do not front onto Woodard are not easily accessed from the subject property.

Land south of the Historic Columbia River Highway that adjoins the Sandy River is owned by Metro and Oregon Parks and Recreation and is used as public recreation land. It is common to see members of the public using this area for fishing and water-based recreation during the nicer months of the year. Two lots on the eastern edge of the study area contain a large number of buildings and are used for institutional purposes. This complex is the Springdale Job Corps Center. Job Corps is a federal program that provides residential vocational training for low-income young Americans.

As seen in Exhibit J, the subject parcel takes direct access from E. Woodard Rd. via a driveway that is shared with property to the North. This driveway is directly opposite the intersection of Woodard Rd. and Neilson Rd. The site currently contains a home and an attached garage. The site is cleared surrounding the existing home and driveway with forest on the remainder of the site. The site is screened from the public road by mature vegetation. Photos of the subject site and adjacent properties are included as Exhibit L.

3. **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.**

**Staff:** County Assessment and Taxation records show Starlena and Howard Simon as the owners of the subject property (Exhibit B). Additionally, a copy of deed instrument 99119305

transferring ownership of the property to Howard and Starlena Simon is included as Exhibit C. Starlena Simon has signed the application form authorizing this application (Exhibit A)

*Criterion met.*

4. **Type III Case Procedures, Public Notice**

**MCC 37.0620:** At least 20 days prior to the hearing, the County shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any County-recognized neighborhood association or identified agency whose territory includes the subject property. The County shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The County shall also publish the notice in a newspaper of general circulation within the County at least 20 days prior to the hearing.

**Staff:** Notice of the hearing was provided to all property owners within 750 feet of the subject tract and recognized neighborhood organizations on April 21, 2004. The notice was posted in the Oregonian on April 22, 2005. A copy of both of these notices is included in the file. The applicant purchased and posted the signs required by MCC 37.0630 on April 29, 2005 as evidenced by the initialed receipt of materials included in the file.

*Criterion met.*

5. **The subject lot is a Lot of Record.**

**§ 35.0005 Definitions**

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

**§ 35.2870 Lot of Record**

**(A) In addition to the *Lot of Record* definition standards in MCC 35.0005, 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, reenacted by Ord. 997.**

**(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 35.2885, 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 35.2860, 35.2875, and 35.4300 through 35.4360, 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.**

**Staff:** The property was originally configured as a 165 foot wide by approximately 288-foot long rectangle as shown on Exhibit D. Exhibit D is a copy of the 1962 zoning map for the property. These maps are the oldest Multnomah County zoning maps and have been deemed to show the zoning in place when land use regulations were first enacted.

The current configuration of the property was approved by Multnomah County through an Exempt Minor Partition on November 10, 1982. A copy of this approval is included as Exhibit E. This approval certifies that the subject property was in compliance with the applicable regulations in place at the time. The property remains in the same configuration as approved in 1982. Since no subsequent modifications have been made, the property remains in compliance with the previous approval.

*The property is a Lot of Record.*

**6. The proposed use is a conditional use in the MUA-20 zoning district.**

**§ 35.2830 Conditional Uses**

**The following uses may be permitted when found by the approval authority to satisfy the applicable ordinance standards:**

**(D) Type B home occupation as provided for in MCC 35.6650 through 35.6660.**

**Staff:** The proposed Type B home occupation has been reviewed for compliance with the standards of MCC 35.6650 through 35.6660 in sections 7 and 8 of this report.

*Criterion met.*

7. **The proposal meets the approval criteria for a Type B Home Occupation contained in MCC 35.6650 through 35.6660.**

**§ 35.6660 Criteria for Approval**

**The approval authority shall find that the following standards are met:**

**(A) The standards found in MCC 35.6315.**

- 7.1 **Staff:** The standards of MCC 35.6315 are addressed in Section 8 of this report.

*Criterion met.*

**(B) The home occupation does not employ more than 5 employees.**

- 7.2 **Applicant:** The scale of the business is small. A realistic initial expectation is myself and husband. Within 5-10 years I would like to see the production ~~and sales~~ double. This may require some occasional hiring, expected in the 5-10 year time frame. Total employee headcount including owners not to exceed 5.

**Staff:** The applicant has proposed a phased approach to the proposed home occupation. In the first phase, the home occupation will be managed by herself and her husband and would be limited to production and off-site sales. If the production doubles, this may trigger the need for additional parking, production area, and storage space.

At this time, the approval is limited to the two adult residents of the home as that is the plan proposed by the applicant in Phase 1. If the home occupation grows as anticipated, the applicant may apply for a modification to allow additional employees.

*Criterion met with conditions.*

**(C) The site has on-site parking as per MCC 35.4100 to accommodate the total number of employees and customers.**

- 7.3 **Applicant:** ~~Current parking area is a paved parking space which is adequate for combination of owner and/or customer vehicles. As well, there is a graveled driveway that could be used for overflow. (See attached parking plan). Initially, on average, there may be a maximum of 4-5 customer visits per day. The hours (customer visits) will be by appointment only. Expectation is myself and husband with one added person and two or fewer vehicles at a time from customers. Total needed parking is 5 spaces. Will add gravel to accommodate 21 foot width.~~

**Staff:** Parking improvements are not required for Phase One. In Phase One, the home occupation is staffed only by the current occupants of the home and does not include visits by customers. The amount of parking required by Phase One is two spaces, one for the applicant



and one for her husband. This is the same number of parking spaces as required for a single family dwelling under MCC 35.4205(A)(1). The property currently has adequate on-site parking to serve the residents of the home in the form of a paved parking area measuring 18 feet in width and 45 feet in depth.

A code interpretation rendered by County staff on September 16, 1999 and attached as Exhibit M concluded that Type B Home Occupations do not need to comply with the surfacing requirements for paving, curbing, and landscaping of parking areas. This interpretation was based on the fact that the primary use of the site remains a single family dwelling, and single-family dwellings are exempt from the design standards of the parking requirements. Improvements such as paving can be required, but are not mandated. The code has been renumbered and reorganized since this interpretation was made. While the code section numbers have changed, the standards remain unchanged.

*Criterion met.*

**(D) No deliveries other than those normally associated with a single-family dwelling and between the hours of 7 a.m. – 6 p.m.**

#### **MCC 35.6650- Definitions**

**(C) Normal Deliveries - The home occupation shall not involve the use, parking, storage or repair of any vehicle exceeding a gross vehicle weight of 11,000 pounds, except deliveries by parcel post, United Parcel Service, or similar in-town delivery service trucks. These deliveries or pick-ups of supplies or products, associated with business activities, are allowed at the home only between 7:00 a.m. and 6:00 p.m.**

- 7.4 **Applicant:** The owners will use their personal vehicles for pick up of fruit and/or honey and bottling necessities. Owners' vehicles currently are a standard size pick up truck (i.e. Ford F150) and a "mini" pick-up truck (i.e. Ford Ranger). Of course, these vehicles may change in the future, but would continue to be of typical consumer size vehicles. These vehicles will be parked in the driveway when not in use. Deliveries of fruit and honey may happen 2-3 times weekly during peak season (i.e. summer). Deliveries will be of sizes to be able to be contained inside (i.e. 5-10 buckets of berries and/or honey or 20-40 boxes of fruit). Delivery of bottling necessities may occur one per week during peak bottling time. These deliveries will also be of sizes to be able to be contained inside. To start, the owners will also use their own vehicles to deliver products to some customers with expected change to UPS pick up or a comparable service as sales increase. Either way not expected to exceed 1-2 owner and/or UPS deliveries per day. All deliveries will occur only between the hours of 7am-6pm.

**Staff:** The applicant has stated that the primary way materials will be delivered onto the site is through the use of their private passenger vehicles. Finished products will leave the site either in the personal vehicles or through a parcel delivery service such as UPS. The definition of "normal deliveries" contained in the Type B Home Occupation definition section includes the use of vehicles up to 11,000 pounds and parcel services. The applicant has stated the larger vehicle they currently use is a Ford F-150. Staff checked Ford vehicle specifications for the current model year. A printout of these specifications is included in the file. According to the information provided by Ford Motor Company at [www.fordvehicles.com](http://www.fordvehicles.com), the gross vehicle

weight of a Ford F150 varies between 6,650 pounds and 8,200 pounds depending on the options packages selected. This is well under the 11,000 pound limits.

The use of personal passenger vehicles and parcel delivery services at this level of service is consistent with the definition of normal deliveries associated with Type B Home Occupations.

Staff recommends a condition of approval be applied that limits the Home Occupation to two deliveries per day to occur between the hours of 7:00 a.m. and 6:00 p.m. Additionally a condition of approval is suggested that states the home occupation shall not involve the use, parking, storage or repair of any vehicle exceeding a gross vehicle weight of 11,000 pounds, except deliveries by parcel post, United Parcel Service, or similar in-town delivery service trucks.

*Criterion met with conditions.*

**(E) No outdoor storage or display.**

7.5 **Applicant:** All material related to the business will be stored inside.

**Staff:** The applicant has stated all materials will be stored inside.

A condition of approval requires that the home occupation shall involve no outdoor storage or display of materials.

*Criterion met with conditions.*

**(F) No signage (including temporary signage and those exempted under MCC 35.7420) with the exception of those required under the applicable street naming and property numbering provisions in Multnomah County Code.**

7.6 **Applicant:** There will be no signage other than the street address.

**Staff:** The applicant has stated there will be no signage associated with the business use of the property.

A condition of approval requires that the home occupation shall involve no signage other than the street address sign.

*Criterion met with condition.*

**(G) No noise above 50 dba at the property lines.**

7.7 **Applicant:** Within the business, the only equipment that will generate noise will be a fruit grinder and a heat gun. Neither of these can be heard at the property line, so are well below the 50 dba level.

**Staff:** The applicant has stated that the only noise-generating equipment used by the business will not generate enough noise to be heard at the property line.

*Criterion met.*

**(H) No repair or assembly of any *motor vehicles* or *motors*.**

- 7.8 **Applicant:** There will be no repair of the vehicles used as part of the business or motors on site.

**Staff:** The applicant states that no motor vehicles, even the personal vehicles used as part of the business, will be repaired on site.

*Criterion met.*

**(I) The application has been noticed to and reviewed by the Small Business Section of the Department of Environmental Quality.**

- 7.9 **Applicant:** DEQ has been notified, see above D2 and attached DEQ comments.

**Staff:** The applicant contacted Anne Cox at DEQ and provided Ms. Cox with a written description of the proposed use. Ms. Cox responded in writing. A copy of this response is included as Exhibit N.

Ms. Cox noted that DEQ will not require an industrial water quality permit for the amount of waste water generated by the proposed use. Ms. Cox did note that coordination is required with the City of Portland Sanitarian's office. See finding 8.6 for information regarding the City of Portland Sanitarian's review of the proposal.

*Criterion met.*

**(J) Each approval issued by a hearings officer shall be specific for the particular home occupation and reference the number of *employees* allowed, the hours of operation, frequency and type of *deliveries*, the type of business and any other specific information for the particular application.**

- 7.10 **Staff:** The staff report presented to the Hearing Officer includes findings and conditions of approval related to each of these issues throughout this report. They have all been assembled below, divided into headings matching the requirements of the above criterion. These findings are adopted, as modified, as findings of the hearings officer.

**THE PARTICULAR HOME OCCUPATION/ TYPE OF BUSINESS**

**Applicant:** The applicant is proposing to operate a small-scale winery and jam making facility from the subject property within a portion of the existing structure, being the garage. The applicant plans to import local fruit and honey, to the site, for processing into wine and cider and jams. The applicant is currently planting fruit trees and bushes, that may be used in the future to supply or supplement fruit needs. The applicant also raises bees, which she plans to use for honey production. The applicant plans to focus on the sales of gift baskets in order to maximize the profits from the small-scale home business. The hours of production may involve any hour, any day of the week.

**Staff:** The applicant has proposed a phased approach to the implementation of her home occupation proposal. The house has an attached garage that measures 19.5 feet wide by 34 feet deep. Phase One will include the use of the rear 15.5 feet of the attached garage. Phase Two will include the use of the entire attached garage.

The floor plan for Phase One is included as Exhibit G. This phase shows the conversion of the rear 15.5 feet of the garage into a production area with a freezer, sinks, a stove, shelving and tables. Activities will include fruit preparation and pressing, bottling activities, fermenting, storage and packaging. The employees will be limited to Starlena Simon and Howard Simon, who are residents of the home. No on-site sales will be involved with this phase. All products will be delivered to buyers.

#### NUMBER OF EMPLOYEES

**Staff:** Phase One, the only phase approved by this application, will employ only Starlena Simon and Howard Simon, both of whom live in the home.

#### HOURS OF OPERATION

**Staff:** The hours of operation will be by appointment only.

#### FREQUENCY AND TYPE OF DELIVERIES

**Applicant:** The owners will use their personal vehicles for pick up of fruit and/or honey and bottling necessities. Owners' vehicles currently are a standard size pick up truck (i.e. Ford F150) and a "mini" pick-up truck (i.e. Ford Ranger). Of course, these vehicles may change in the future, but would continue to be of typical consumer size vehicles. These vehicles will be parked in the driveway when not in use. Deliveries of fruit and honey may happen 2-3 times weekly during peak season (i.e. summer). Deliveries will be of sizes to be able to be contained inside (i.e. 5-10 buckets of berries and/or honey or 20-40 boxes of fruit). Delivery of bottling necessities may occur one per week during peak bottling time. These deliveries will also be of sizes to be able to be contained inside. To start, the owners will also use their own vehicles to deliver products to some customers with expected change to UPS pick up or a comparable service as sales increase. Either way not expected to exceed 1-2 owner and/or UPS deliveries per day. All deliveries will occur only between the hours of 7am-6pm.

**Staff:** The applicant has stated that the primary way materials will be delivered onto the site is through the use of their private passenger vehicles. Finished products will leave the site either in the personal vehicles or through a parcel delivery service such as UPS. The definition of "normal deliveries" contained in the Type B Home Occupation definition section includes the use of vehicles up to 11,000 pounds and parcel services. The applicant has stated the larger vehicle they currently use is a Ford F-150. Staff checked Ford vehicle specifications for the current model year. A printout of these specifications is included in the file. According to the information provided by Ford Motor Company at [www.fordvehicles.com](http://www.fordvehicles.com), the gross vehicle weight of a Ford F150 varies between 6,650 pounds and 8,200 pounds depending on the options packages selected. This is well under the 11,000-pound limits.

The use of personal passenger vehicles and parcel delivery services at this level of service is consistent with the definition of normal deliveries associated with Type B Home Occupations.

Staff recommends a condition of approval be applied that limits the Home Occupation to two deliveries per day to occur between the hours of 7:00 a.m. and 6:00 p.m. Additionally a condition of approval is suggested that states the home occupation shall not involve the use, parking, storage or repair of any vehicle exceeding a gross vehicle weight of 11,000 pounds, except deliveries by parcel post, United Parcel Service, or similar in-town delivery service trucks.

*Criterion met.*

8. **The proposal meets the approval criteria for Conditional Use Permits contained in MCC 35.6315**

**§ 35.6315 Conditional Use Approval Criteria**

**(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:**

**(1) Is consistent with the character of the area;**

- 8.1 **Applicant:** The applicant is proposing to operate a small scale winery and jam making facility from the subject property within a portion of the existing structure, being the garage. The applicant plans to import local fruit and honey, to the site, for processing into wine and cider and jams. The applicant is currently planting fruit trees and bushes, that may be used in the future to supply or supplement fruit needs. The applicant also raises bees, which she plans to use for honey production.

The home business will be in the area “East of the Sandy River,” better known as the Corbett Springdale area. The more specific neighborhood is the area surrounding the proposed business within ¼ mile radius. This area was chosen because this is what I consider my immediate neighborhood and what I’m most familiar with.

The area East of the Sandy River as a whole is made up of mostly small farming and residential properties. Some people in the area have farm animals. Some people grow berries, and others have apples or pears, and still others flowers and nursery plants. Families in the area generally have one or more people in the family with a “day job.” Many people in the area have hobbies and skills that has developed into “their niche,” and products and services that have become marketable. For example, there are artists that paint, artistic framers, jewelry makers, people who make fruit jams, people that grow and sell flower arrangements. These are all people that have chosen to do/make things from home. I believe that the home occupation that I’m proposing will be much the same as that which is already in the area.

Neighbor concerns addressed:

1. Presence of intoxicated individuals. I will be operating within the rules of the OLCC which clearly defines sample serving size maximums, to prevent the chance of individuals becoming

intoxicated. As well, I will be attending the required OLCC training which addresses identifying signs of intoxication (for the case of “winery hoppers”).

2. Traffic and wear on the portion of the driveway that is shared. Traffic as indicated above will be minimal but the property owners will be seeking to pave the shared area in the 2-3 year time frame.

**Staff:** Exhibit J is an aerial photo showing all of the properties within ¼ mile of the subject site. This radius includes lands fronting on the Historic Columbia River Highway as well as land fronting on Woodard Rd. The land fronting on the Historic Columbia River Highway is separated from Woodard Rd. by an approximate 90-foot change in grade. This grade separation and the heavily wooded nature of the intervening slopes effectively separate the land fronting the HRCH from the land fronting on Woodard. The properties at the lower elevation can not be seen from the applicant’s property and do not have a strong physical connection to the properties fronting on Woodard Rd. Additionally, the properties along this stretch of the HRCH are primarily held in public ownership, making the use of the properties substantially different from the privately owned rural residential area fronting onto Woodard Road. As such, staff’s analysis of the “surrounding area” is limited to the properties fronting on Woodard Rd. within ¼ mile of the subject site.

The surrounding area North of Woodard Rd. is predominately used for rural residential purposes. As can be seen on Exhibit J, there is one farm operation north of the Road with the remainder of the area north of Woodard consisting of wooded home sites. These home sites range in size from the applicant’s 1.4-acre lot to approximately 10 acres, with most home sites being in the 2-acre range. The surrounding area South of Woodard Rd. is used also used primarily for rural residential purposes with wooded home sites ranging in size from 1.25 acres to 8.5 acres. The lot on the eastern edge of the study area contains an older Forest Service facility that was converted to the Reynolds School District Environmental Satellite School approved by a Hearing Officer in case T3-01-014.

Staff photos included as Exhibit L show the subject site as well as adjacent properties. The farm operation to the east is open and pastoral in nature while the subject site and all properties to the west have a wooded character composed primarily of deciduous trees. The existing home site blends with the physical character of the area. The house is modest in size and well screened by existing trees. The retention of the existing trees will serve to keep the property consistent with the wooded character of the rural residential properties in the area. As no expansion of the square footage of the house is proposed in either phase, the scale of the home will continue to be in character with the single family dwellings in the surrounding area.

Phase one of the proposal includes interior modifications to the existing structure only. The house is sited on the property in a manner that makes it difficult to view the garage from Woodard Road. Traveling west bound on Woodard Road, the rear of the house and the south elevation are visible from the road but are screened by existing trees as shown in Exhibit L. No exterior modifications are proposed on either of these facades. Traveling east bound on Woodard Rd. the front of the garage may be viewed in the winter, but as the photos in Exhibit L document, only the roof of the structure is easily seen from the road during the months of the year when deciduous trees have foliage on them.

The Phase One proposal will add very few auto trips to the site as the only people employed in the business will be the current residents of the home. Some additional auto trips will be needed to import supplies to the home occupation. The applicant has stated these will be done either through the use of the applicant's private vehicles or through a parcel service such as UPS and will not exceed 1 to 2 trips per day. Woodard Road is designated as Rural Collector in the County's Trafficways Policy (Policy 34 of the Comprehensive Plan.) The policy's description of Rural Collector reads as follows:

*Rural collector roads are well connected in rural communities to distribute automobile traffic over large areas and generally connect to urban streets or rural arterials. Where rural collector streets connect roads in adjacent counties, through traffic will occur with volumes greater than local rural roads. They may also provide for recreational trips by auto, bicycle and equestrian. Primary access is provided to land uses adjacent to the facility and over large rural districts. Rural collector roads provide for necessary truck transport of (agricultural, timber and minerals) out of rural districts.*

This description shows Woodard Rd. to be a main through street serving numerous types of users, not just local residents. The potential addition of trips due to the proposed home occupation is minimal and will have no significant impact on volume or flow of traffic on Woodard Rd.

The proposed wine, cider and jam production is in character with the rural area and the resource based economy promoted by the statewide land use planning system. The applicant will produce wine and jam from fruit grown in the local area or on her site. She will also be producing honey from local bee hives. The applicant currently is involved in raising bees for honey production. A photo of the existing bee hives is included in Exhibit L. The applicant intends to eventually supplement this production with fruit grown on site. No specific plans for planting fruit trees or bushes have been provided though the applicant has indicated a location for this activity on her site plan. This location is to the north of the house and would not impact the trees screening the property from view as seen from Woodard Road. While the addition of fruit trees may require the removal of the woods on the site, it will remain in character with the area as two of the nearby home sites contain small orchards as shown in the aerial photo included as Exhibit J. The proposal will add value to local agricultural products and support the rural resource based economy, which is in support of the character of the area.

The proposed use is consistent with the character of the surrounding area.

*Criterion met.*

## **(2) Will not adversely affect natural resources;**

- 8.2 **Applicant:** The proposed home business will not create any potential hazards to the natural resources in the area. This includes air, water, and soil. There is a small spring at the far end of the property. The spring will not be used in conjunction with or be negatively affected by the home business.

**Staff:** The subject site neither contains mapped streams, lakes or wetlands nor is within ¼ mile of a mapped stream, lake or wetland. The subject site is not mapped as being in an Elk Winter Range. The subject site is outside of any Significant Environmental Concern overlay district. No regulated natural resources are present on the subject site. No regulated natural resources are present on adjacent sites North of Woodard Road.

The properties South of Woodard Road extend down to the Historic Columbia River Highway, which is in close proximity to the Sandy River. The Sandy River and the surrounding uplands are a highly valuable natural resource used by a wide variety of fish and wildlife species. There is a grade change of approximately 90 feet between the subject site and the Historic Columbia River Highway, which is on a flat bench above the Sandy River. The subject property is well screened by existing vegetation and topographically separated from the Sandy River and its associated uplands.

The proposed home occupation will include the following activities:

- Use of sinks to wash and prepare fruit
- Indoor use of a fruit press and/or grinder to press juice from fruit
- Use of a stove to cook and can jam
- Use of storage vessels/jugs to allow the fermentation of juice into wine and/or cider
- Use of sinks to wash and sterilize bottles
- Use of equipment such as siphons, filters, and funnels to transfer wine and/or cider from fermentation vessels to individual bottles

All of these activities will occur inside the existing garage. None of these activities are of such a scale or nature that they will have an impact detectable outside the structure. Due to the substantial grade change, the intervening distance of over ¼ mile, and the lack of any hazardous activities associated with the proposed activity, there is very little potential for the proposal to have any affect on the Sandy River or its associated uplands.

The proposal will not have an adverse affect on natural resources.

*Criterion met.*

**(3) Will not conflict with farm or forest uses in the area:**

**(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and**

**(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

8.3 **Applicant:** There is a beef cattle farm ¼ mile east of the proposed home business at 31125 E Woodard Rd. The proposed home business will have no negative impact on this farm.

**Staff:** The proposed home occupation will include the following activities:

- Use of sinks to wash and prepare fruit
- Indoor use of a fruit press and/or grinder to press juice from fruit



- Use of a stove to cook and can jam
- Use of storage vessels/jugs to allow the fermentation of juice into wine and/or cider
- Use of sinks to wash and sterilize bottles
- Use of equipment such as siphons, filters, and funnels to transfer wine and/or cider from fermentation vessels to individual bottles

All of these activities will occur inside the existing garage. None of these activities are of such a scale or nature that they will have an impact detectable outside the structure.

The one reasonably foreseeable potential impact to surrounding properties would be the addition of vehicular traffic to the site. This impact has been discussed at length in Finding 8.1. This amount of additional vehicular traffic added to the roads surrounding site will be minimal. The auto trips to this site will not be of such a scale that they would block or reduce the ability of farm and forest operations to get equipment and people to their sites or products from the sites to market. The proposed activity will have no adverse impact on farm and forest activities in the surrounding area.

*Criteria met.*

**(4) Will not require public services other than those existing or programmed for the area;**

- 8.4 **Applicant:** The proposed home business will use electricity, water, and garbage. These services are already available and will not need to be modified for my use.

**Staff:** The proposed use will not require the extension of any new public services such as water, roads, or sewers. The existing road system is capable of handling the additional auto traffic proposed in Phase Two of the project. The Corbett Water district has certified that the six inch public water line located in Woodard Road is capable of providing water service to the proposed use (Exhibit O). The City of Portland Sanitarian has indicated the existing septic system is adequate to handle the wastewater flows from the proposed use. (Exhibit P)

The proposed use will not require public services other than those already servicing the site.

*Criterion met.*

**(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

- 8.5 **Applicant:** The property is not located within a Big Game Winter Habitat area as shown on the Multnomah County Big Game Habitat maps.

**Staff:** Multnomah County has maps showing the big game winter habitat area as defined by the Oregon Department of Fish and Wildlife by Township, Range and Section. The subject property is in Section 1N Range 4E Township 32, which contains no big game winter habitat as shown on these maps. A copy of the wildlife habitat map is included in the file

*Criterion met.*

**(6) Will not create hazardous conditions; and**

- 8.6 **Applicant:** Plans have been discussed with the Department of Agriculture, as well with the Department of Environmental Quality. The process has been discussed and it has been decided the necessary sinks (hand sink, utility sink, and equipment cleaning sink) will be hooked up to the on-site septic. The yeasts and leas and remaining fruit solids generated from the home occupation will not be put into the septic system. These will be composted on site (i.e. yeast and leas) and/or will be disposed of in the garbage (remaining fruit solids) for removal, then equipment will be rinsed and sterilized. Potassium and/or Sodium Sulfite and Chlorine bleach will be used in minimal amounts to sterilize the equipment and the work area. This will not generate a significant increase in current wastewater generation and will not create any issues concerning the on-site septic. The potassium and/or sodium sulfite will be stored in small dry amounts (i.e. <2 pound bags) and the chlorine bleach in liquid (1 gallon) jugs, so as not to create a hazard if there was to be a spill. For the bottling process, only new bottles will be used, so as not to affect wastewater generation. See attached documentation, "On-Site Sewage Disposal" and DEQ.

**Staff:** The proposal will involve the use of common household appliances such as a stove, a sink, and a freezer. Additionally, chemicals will be used to sterilize bottles. One reasonably foreseeable hazardous situation that could occur due to the use of such chemical would be the failure of the septic system. The applicant has identified chlorine bleach, potassium sulfite and sodium sulfite as the chemicals that may be used as part of the home occupation. Both the Department of Environmental Quality (DEQ) and the City of Portland Sanitarian reviewed the proposal to ensure the types and volumes of chemicals proposed for use will not jeopardize the septic system. The DEQ representative reviewing the proposal deferred to the City of Portland (Exhibit N). The City of Portland Sanitarian provided a tentative approval in Exhibit P stating, "The existing should be adequate but we would like a lab sample taken after six month's operation to determine the waste strength of the sewage." Staff suggests a condition of approval requiring the applicant to submit proof to the Land Use Division that such a lab sample was submitted to the City of Portland Sanitarian's Office after six months of operation. Proof, such as a letter of receipt signed by a representative of the Sanitarian's Office, shall be submitted to the Land Use Planning Division within seven (7) months of commencing operation.

County transportation staff reviewed the proposal and identified the need for a driveway permit for the site's access onto Woodard Road (Exhibit T). The driveway permit is to ensure the vehicular access meet the standards of the County's Road Rules including location, width and site distance. These rules are intended to reduce hazards related to turning movements onto and off of the public roads. Staff recommends the inclusion of a condition of approval requiring the applicant to obtain a driveway permit for the existing access prior to commencing operation of the home occupation.

*Criterion met as conditioned.*

**(7) Will satisfy the applicable policies of the Comprehensive Plan.**

8.7 **Applicant:** See below

**Staff:** The applicable policies of the comprehensive plan are Policy 37: Utilities and Policy 38: Facilities. Specific findings for each of these policies are included in Section 10 of this report.

*Criterion met.*

9. **The proposal is exempt from Design Review**

**§ 35.6325 Design Review**

**Uses authorized under this section shall be subject to design review approval under MCC 35.7000 through 35.7065.**

**§ 35.6330 Design Review Exemption**

**Exempted from the Design Review criteria of MCC 35.7000 through 35.7060 (A), include:**

**(A) Single family residences.**

**(B) Type B Home Occupations that require the addition of less than 400 square feet of ground coverage to the structure.**

**Staff:** The proposal is for a Type B Home Occupation which does not include the addition of any area to the home.

*The proposal is exempt from Design Review pursuant to MCC 35.6630(B).*

10. **The proposal is in compliance with the applicable Comprehensive Plan policies.**

**Policy 37: Utilities**

**Water and Disposal Systems**

- A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or**
- B. Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
- C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**
- D. Shall have an adequate private water system, and a public sewer with adequate capacity.**

- 10.1 **Staff:** The applicant has submitted multiple forms proving compliance with the section. The first is Exhibit O, which is the Certification of Water Service form signed by a representative of the Corbett Water District certifying that the proposed home occupation has access to public water. The second is Exhibit N, which is a letter from Anne Cox of DEQ stating that an industrial waste water permit is not required for the subject use but that the City of Portland Sanitarian will need to review the proposal. Finally, Exhibit P is a Certification of On-Site Sewage Disposal signed by Mike Ebling, the City of Portland Sanitarian. Mr. Ebling states that the existing system should be adequate but that his office would like to test the waste water after six months of business operations.

The applicant has provided sufficient information to document that the proposed use will be connected to an approved public water system and that the on-site sanitation is provisionally approved for use as part of the home occupation permit. Staff suggests a condition of approval requiring the applicant to submit proof to the Land Use Division that such a lab sample was submitted to the City of Portland Sanitarian's Office after six months of operation. Proof, such as a letter of receipt signed by a representative of the Sanitarian's Office, shall be submitted to the Land Use Planning Division within seven (7) months of commencing operation.

*Policy met with condition.*

#### **Drainage**

- E. Shall have adequate capacity in the storm water system to handle the run-off; or**
- F. The water run-off shall be handled on the site or adequate provisions shall be made; and**
- G. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.**

- 10.2 **Staff:** The proposed home occupation will be contained within an existing structure and does not include any new impervious surfaces. The proposal will not generate any storm water.

*Policy met.*

#### **Energy and Communications**

- H. There shall be an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**

- I. Communications facilities are available.**

- 10.3 **Applicant:** There is adequate energy supply to handle the needs of the proposal and the development level projected for the plan. Communication facilities are available.

**Staff:** The existing house has electric service and telephone service. The applicant has stated that the existing energy and communication facilities are adequate to handle the projected load from the home occupation.

*Policy met.*

### **Policy 38: Facilities**

**It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:**

#### **Fire Protection**

**B. There is adequate water pressure and flow for fire fighting purposes; and**

- 10.4 **Staff:** The applicant has submitted Exhibit Q, which is a Fire District Review- Fire Flow Requirements form. On this form, a representative of Multnomah County Rural Fire Protection District 14 has certified that 500 gallons per minute of fire-flow is available from public water lines. This is adequate to meet the fire flow requirements of the Multnomah County Building code contained in MCC 29.003(C).

*Policy met.*

**C. The appropriate fire district has had an opportunity to review and comment on the proposal.**

- 10.5 **Staff:** The applicant has submitted Exhibits Q and R, both of which are signed by a representative of Multnomah County Rural Fire Protection District 14. The appropriate fire district has had an opportunity to review and comment on the proposal

*Policy met.*

#### **Police Protection**

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

- 10.6 **Staff:** The applicant contacted the Multnomah County Sheriff's Office regarding her proposal. Exhibit S is a Police Services Review form on which a representative of the Sheriff's Office has indicated that the level of police service available to serve the proposed project is adequate.

*Policy met.*

### **Exhibits**

- A. Signed application form.
- B. Assessment information showing ownership
- C. Copy of deed instrument 99119305 (2 pages)
- D. 1962 zoning map showing previous configuration of subject lot
- E. 1982 Exempt Minor Partition approval for current configuration of lot (3 pages)
- F. Site Plan
- G. Phase One floor plan
- H. Phase Two floor plan

- I. Phase Two parking plan
- J. Aerial photo showing properties within ¼ mile of subject lot
- K. Aerial photo of subject site
- L. Staff photos of site and surrounding area (6 pages)
- M. Code Interpretation of parking standards (2 pages)
- N. Letter from Anne Cox of D.E.Q (2 pages)
- O. Certification of Water Service
- P. Certification of On-Site Sewage Disposal
- Q. Fire District Review of Fire Flow
- R. Fire District Review of Access
- S. Police Services Review
- T. Transportation planning memo regarding requirements for subject proposal

### **Hearings Exhibits**

- H-1 Aerial photograph of subject property and surrounding properties with ¼ mile radius area shown
- H-2 Photographs of the house on the subject property and area roadways
- H-3 G. Joseph and Margaret Gorciak letter dated April 28, 2005
- H-4 Memorandum from Alison Winter to Tammy Boren-King, et. al. re driveway permit
- H-5 Letter from Barbara Berney Goertz dated May 13, 2005
- H-6 Letter from Chris and Leanne Albright dated May 11, 2005
- H-7 Letter from Michael and Lorie Svesko dated May 12, 2005
- H-8 Sign-In Sheet for Hearings Officer Hearing dated May 13, 2005

### **Additional Exhibits**

- A.1 Notice of Public Hearing with Mailing List (8 pages)
- A.2 E-mails between Simons and Boren-King (3 pages)
- A.3 Application Burden of Proof Statement by Howard and Starlena Simon (9 pages)
- A.4 Letter dated April 12, 2005 from Tammy Boren-King to the Simons re hearing date (1 page)
- A.5 Specifications for a Ford F-150 Truck (7 pages)
- A.6 Tammy Boren-King's phone notes dated April 18, 2005 (1 page)
- A.7 Tammy Boren-King's office notes (4 pages)
- A.8 Tax Map (1 page)
- A.9 Legal Descriptions (4 pages)
- A.10 Liquor License Application (1 page)

**Note:** No post-hearings exhibits were filed with the County. The parties who requested that the record remain open all withdrew their requests. As a result, the record closed at the end of the May 13, 2005 hearing.