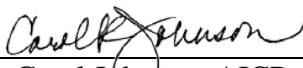


This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is **WEDNESDAY, DECEMBER 2, 2020, at 4:00 pm.**

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact Carol Johnson, Planning Director at 971-2803743 or carol.johnson@multco.us.

Opportunity to Appeal: 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 office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Columbia River Gorge Commission until all local appeals are exhausted.

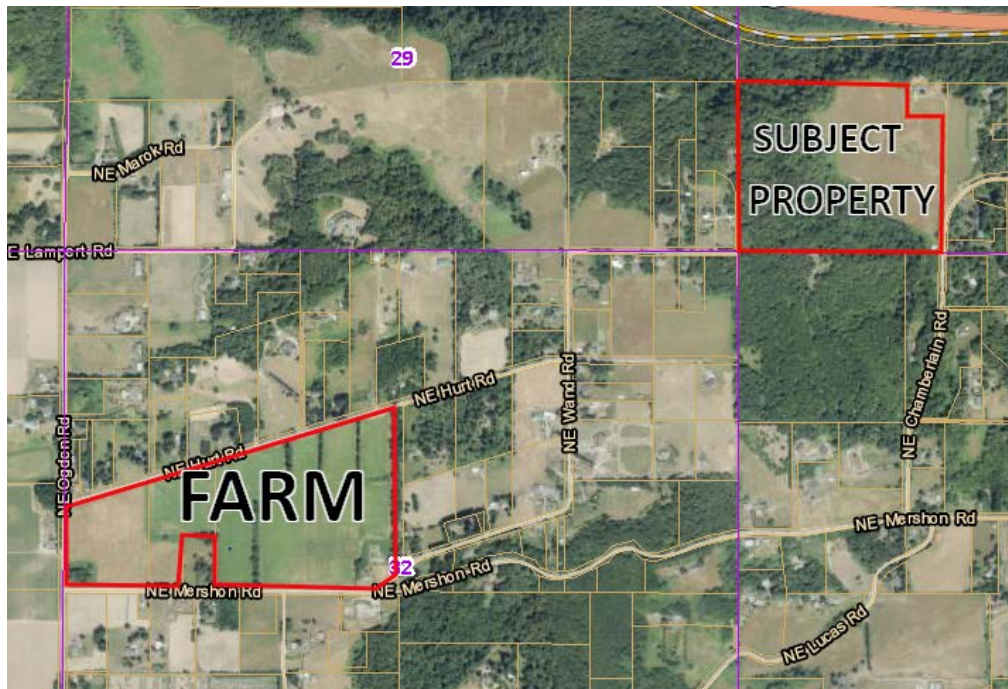
Issued By: 

Carol Johnson, AICP
Planning Director

Date: November 18, 2020

Figure 1: Vicinity Map

N↑



Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet the applicable approval criteria below:

Multnomah County Code (MCC):

General Provisions: MCC 38.0015 – Definitions, including Agricultural use and Parcel; MCC 38.0030 - Existing Uses and Discontinued Uses; MCC 38.0207 - Authority, (D) Multnomah County; and MCC 38.0740 – Interpretations.

Gorge Special Agriculture – 40: MCC 38.2200 Purpose; MCC 38.2225(B)(3) - Review Uses, Single Family Dwelling necessary and accessory to an agricultural use; and MCC 38.2225(A)(8)(a), (b) and (c) Approval Criteria; and

Columbia River Gorge National Scenic Area Management Plan, and the Columbia River Gorge National Scenic Area Act.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office or by visiting our website at <http://multco.us/landuse/zoning-codes/> under the link **Chapter 38 – Columbia River Gorge National Scenic Area**. The Management Plan and Scenic Area Act can be found at www.gorgecommission.org.

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:'**

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. and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

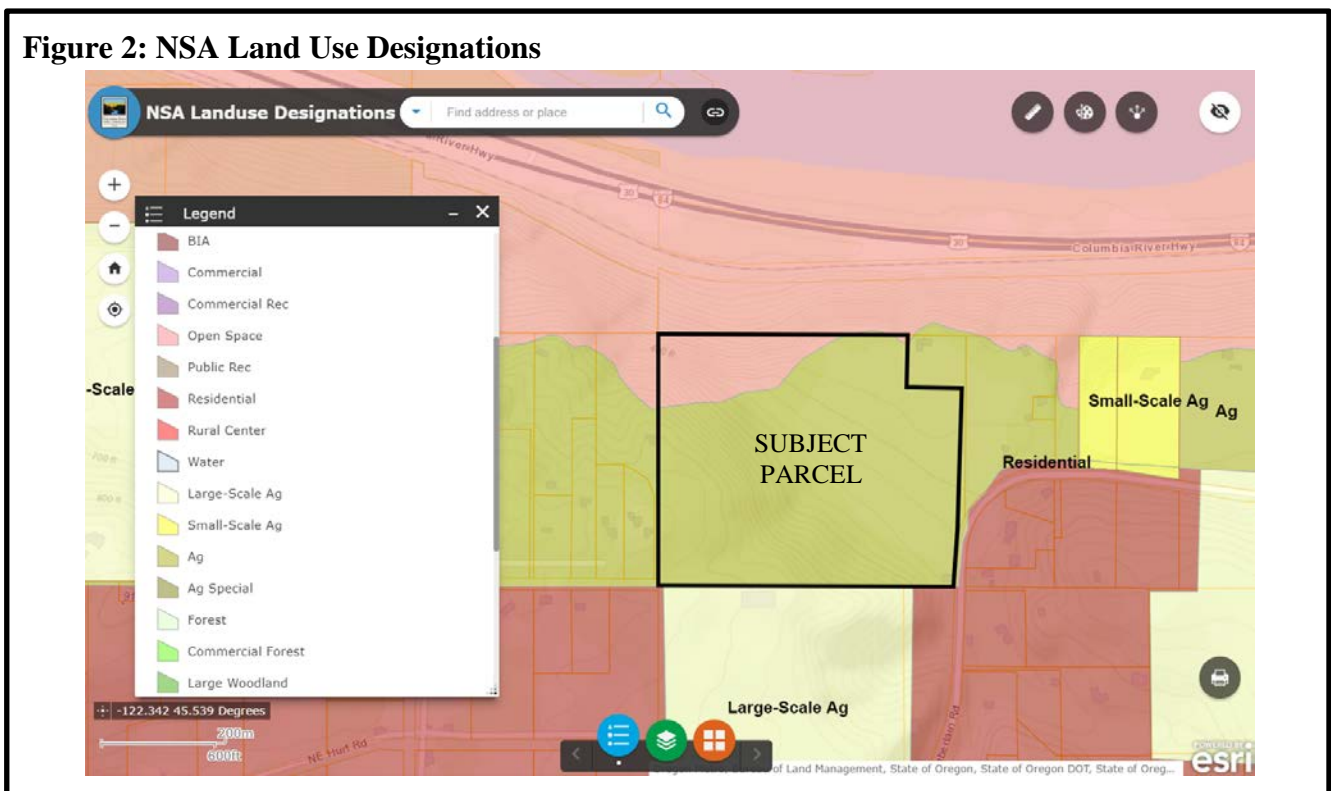
1.0 PROPOSAL:

Staff: The applicant is requesting a Zoning Code Interpretation regarding the term “subject farm” in relation to the approval criteria listed in MCC 38.2225(A)(8)(a) through (c) for the approval of a new single family dwelling necessary and accessory to an agricultural use as allowed in MCC 38.2225(B)(3). In addition, the applicant is requesting a Parcel Determination that the subject property is lawfully established.

2.0 PROPERTY DESCRIPTION:

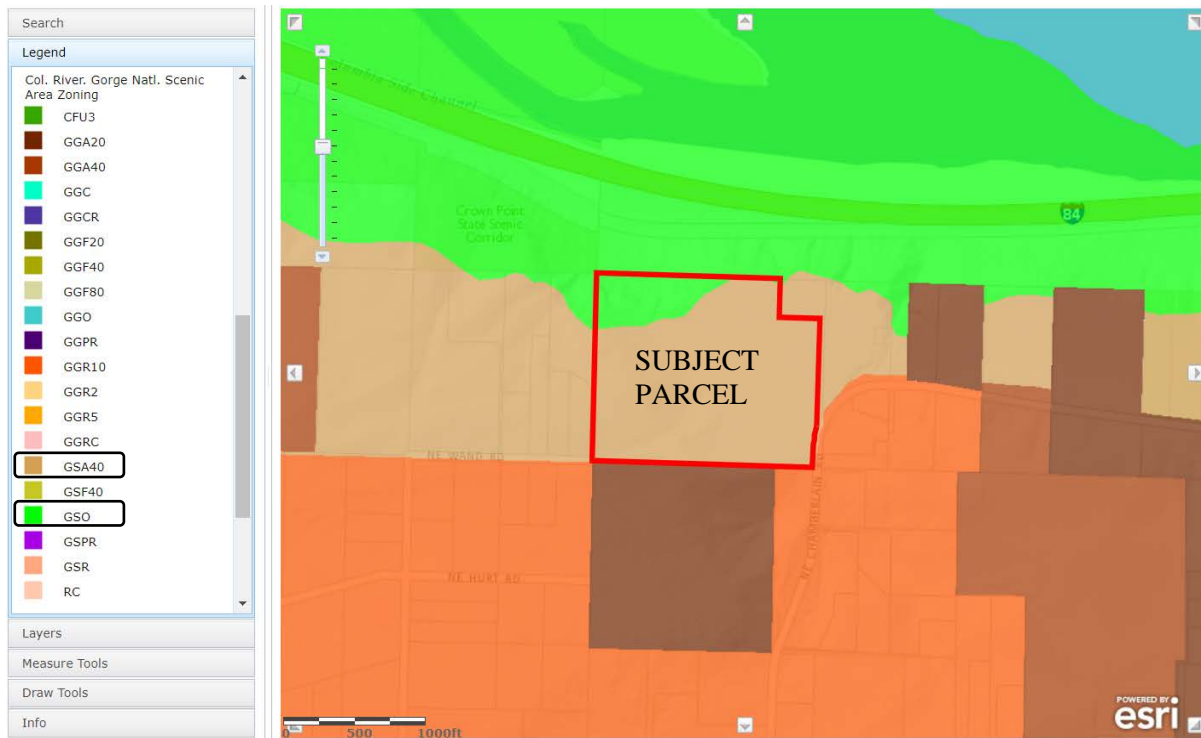
Staff: The application is for a property addressed as 32203 NE Wand Road, Troutdale, Oregon (also known as map tax lot 1N4E28C -01000). The property is 46.65 acres in area and is located between the termination of NE Wand Road and NE Chamberlain Road. Located within the Columbia River Gorge National Scenic Area (CRGNSA), and more specifically the Special Management Area (SMA), the land use designations are Agriculture and Open Space, as shown below.

Figure 2: NSA Land Use Designations



The property is zoned Gorge Special Open Space (GSO) and Gorge Special Agriculture-40 (GSA-40), as shown below.

Figure 3: NSA Zoning



Multnomah County Department of Assessment, Records, and Taxation (DART) data indicates that the subject property is owned by Jay R. Wells et al. Aerial photographs and street view imagery confirm DART data which indicates that there is a one-story farm structure located at the southeast corner of the parcel.

Figure 4: Existing Agricultural Building



3.0 PUBLIC COMMENTS:

Staff: Staff mailed a notice of application and invitation to comment for the proposed application to the required parties per MCC 38.0530(A)(2) (Exhibit C.4). Staff received the following comments which are summarized below, and found in full in Exhibit D.1

Letter from Bonnie and Ron Vaughn, dated April 20, 2020.

Staff: Bonnie and Ron Vaughn submitted a letter stating that they have lived on Wand Road for over 34 years, and had reviewed the materials pertaining to the application. They see no compelling reason to allow the request as it is not in alignment with the spirit of the National Scenic Area Act.

Letter from Friends of the Columbia Gorge via email, dated April 21, 2020.

Staff: Steven D. McCoy, Staff Attorney, on behalf of Friends of the Columbia Gorge submitted a letter stating that the invitation to comment was not clear whether the application was only for a code interpretation and parcel determination, or if it also included approval of an agricultural dwelling. The letter also provides comments pertaining to the interpretation of “farm;” reiterates application requirements; reviews allowed uses in the GSA zone; restates resource impact review requirements for the protection of scenic resources, natural resources, and cultural resources; and advises that all conditions of approval must be entered into the deed of the affected parcels and registered with the county.

Email from Kathleen Persons, dated April 24, 2020.

Staff: Kathleen Persons submitted an email requesting to be informed of the decision.

4.0 GENERAL PROVISIONS:

4.1 MCC 38.0207 Authority

(D) Multnomah County:

(1) Multnomah County has the authority to implement the Management Plan for Scenic Area lands within its jurisdiction.

(2) Multnomah County has authority from the Act to adopt ordinances with provisions that vary from the policies and guidelines in the Management Plan as long as the ordinances provide greater protection for the scenic, cultural, natural, and recreation resources of the Scenic Area (with concurrence by the Gorge Commission and by the Secretary of Agriculture in the Special Management Area).

Staff: *This is for information only and is not a criteria for approval.*

4.2 MCC 38.0740 Interpretations

(A) The Planning Director shall have the authority to decide all questions of interpretation or applicability to specific properties within Multnomah County of any provision of the Management Plan for the Columbia River Gorge National Scenic Area (Management Plan), rural area plan, or other land use code. Any interpretation of a provision of the Management Plan, rural area plan or other land use code shall consider applicable provisions of the Management Plan, rural area plan, and the purpose and intent of the ordinance adopting the particular code section in question. The Planning Director shall strive to apply the land use code in a uniform manner and interpret the

code and the Management Plan in a way that is consistent with how the language is applied throughout the National Scenic Area, except when the County has adopted more restrictive provisions. A request for an interpretation shall be processed as a Type II application.

(B) The Planning Director may refuse to accept an application for an interpretation if:

(1) The Planning Director determines that the question presented can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director's judgment the requested determination should be made as part of a decision on an application for a quasi-judicial land use or zone change permit not yet filed; or

(2) The Planning Director determines that there is an enforcement case pending in which the same issue necessarily will be decided.

(C) The Planning Director determination to not accept an application under this section is not a land use decision and shall be the county's final decision.

Staff: This is for information only and is not a criteria for approval.

5.0 PARCEL DETERMINATION:

5.1 MCC 38.0015 Definitions

Parcel:

(a) Any unit of land legally created by a short division, partition, or subdivision, that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, or sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the U.S. Forest Service Office prior to the Final Interim Guidelines.

(d) A unit of land shall not be considered a separate parcel simply because it:

- 1. Is a unit of land created solely to establish a separate tax account;**
- 2. Lies in different counties;**
- 3. Lies in different sections or government lots;**
- 4. Lies in different zoning designations; or**
- 5. Is dissected by a public or private road.**

Staff: To qualify as a Parcel, the subject property, when created or reconfigured, must have (a) satisfied all applicable zoning ordinances or regulations and (b) satisfied all applicable land division laws.

The applicant has submitted a Bargain and Sale Deed with a legal description dividing a 2.52 acre parcel from the subject property (Exhibit A.7). The subject property was not re-described at that time, but was a remainder piece after the land division (Exhibit A.6). The Bargain and Sale Deed was recorded on July 22, 1968. The subject property is 46.65 acres in size. In 1968, the subject property was zoned F-2 (Agricultural Districts). The F-2 zone had a minimum lot size of 2 acres. It did not have a minimum front lot line length or the requirement for street frontage. *The subject property met all applicable zoning laws at the time it was created.*

In 1968, one process to divide a property was to record a deed or sales contract with a new legal description describing the parcel to be created. The remainder piece of property was reconfigured by the recording of the new deed. The reconfiguring of the property complied with all land division regulations at the time. Partition Plats were not required for partitions until after 1989 under State law. *Based upon the evidence in the record as Exhibit A.6 & A.7, the subject property met the land division requirements at the time.*

The subject property is a legally reconfigured parcel as discussed above. It is not a tax lot for taxation purposes only. It is located only within Multnomah County and is located in Section 28 of Township 1 North, Range 4 East. It is zoned Gorge Special Agriculture – 40 (GSA-40) and is not dissected by the public road known as NE Chamberlain Road.

The subject property meets the definition of a “Parcel” pursuant to MCC 38.0015.

6.0 ZONING CODE INTERPRETATION:

6.1 MCC 38.2200 Purposes (GGA and GSA zone)

The purposes of the Gorge General Agriculture and Gorge Special Agriculture districts are to protect and enhance agricultural land within the Columbia River Gorge National Scenic Area for agricultural uses. Agricultural lands are those lands which are used for or suitable for agricultural use.

MCC 38.0015 Definitions

Agricultural use: The current employment of land for the primary purpose of obtaining a profit in money by the raising, harvesting and selling of crops, or by the feeding, breeding, management and sale of livestock, poultry, furbearing animals or honeybees, or dairying and the sale of dairy products, or any other agricultural or horticultural use including Christmas trees. Agricultural use does not include livestock feedlots, the boarding of horses or nonprofit horse rescue facility and their accessory uses. Current employment of land for agricultural use includes:

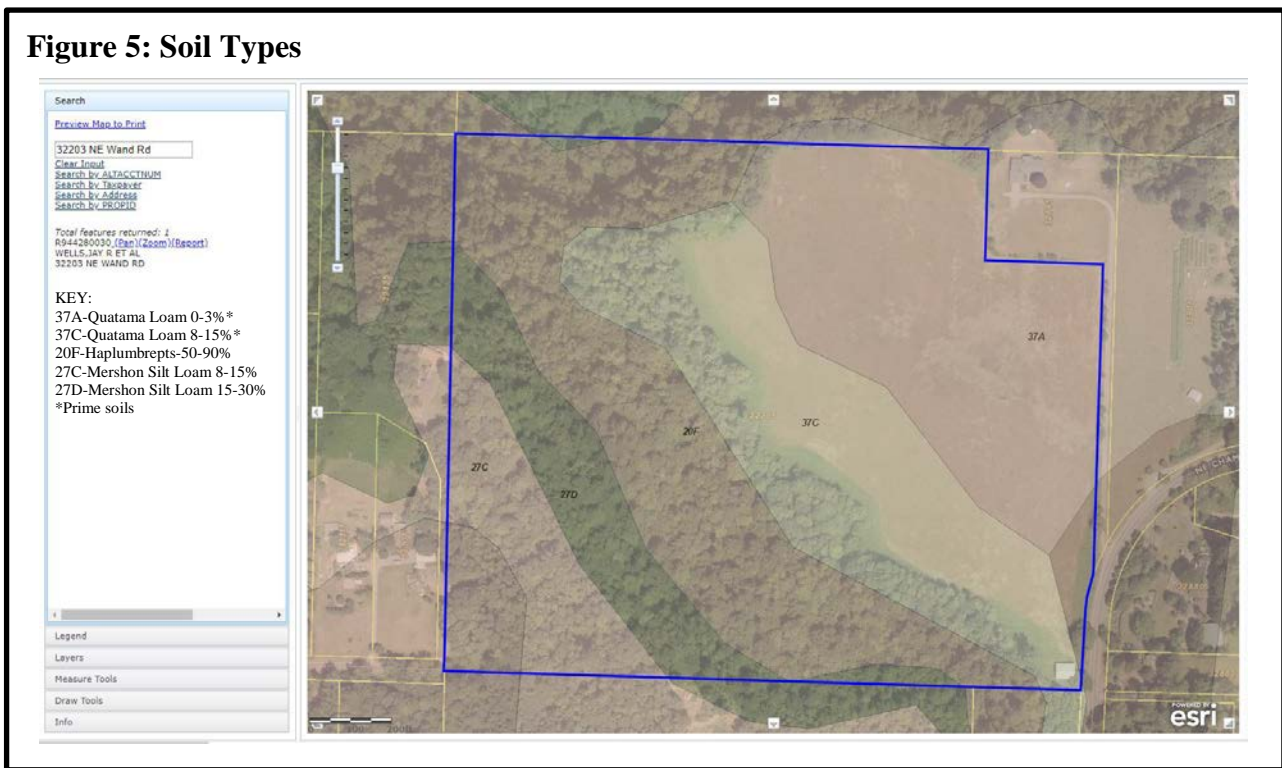
- (a) The operation or use of farmland subject to any government agricultural program;**
- (b) Land lying fallow for one year as a normal and regular requirement of good agricultural management;**

**(c) Land planted to orchards or to other perennial crops prior to maturity;
and**

(d) Land under buildings supporting accepted agricultural practices.

Staff: The subject parcel is comprised of five soil types shown on the map (Figure 5) below. Of these five, two are considered to be prime farmland – Quatama Loam 0-3% (37A) and Quatama Loam 8-15% (37C). As a result, the property is suitable for agricultural use, as reflected on the NSA Land Use Designations Map (Figure 2) and the NSA Zoning Map (Figure 3). The applicant has not presented any information regarding the current status of any agricultural use of the property, nor has a farm management plan been submitted with any proposal for a future agricultural use. This request seeks clarification regarding the definition of “subject farm” in the context of obtaining approval for a new dwelling necessary for and accessory to an agricultural use, but does not seek approval of any new development at this time. *As a result, no determination will be made regarding conformance with the definition of agricultural use until such time as a request for development is submitted.*

Figure 5: Soil Types



6.2 MCC 38.2225 Review Uses (GSA zone)

(B) The following uses may be allowed on lands designated GSA– 40 pursuant to MCC 38.0530 (B), provided that the use or development will be sited to minimize the loss of land suitable for the production of agricultural crops or livestock and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(3) A single-family dwelling on a parcel of 40 or more contiguous acres when necessary for and accessory to agricultural use as determined by MCC 38.2225 (A) (8) (a) through (c).

MCC 38.2225 Review Uses (GGA zone)

(A) The following uses may be allowed on lands designated GGA pursuant to the provisions of MCC 38.0530 (B) and upon findings that the NSA Site Review standards of MCC 38.7000 through 38.7085 have been satisfied:

(8) On lands designated GGA– 40, a single family dwelling in conjunction with agricultural use, upon a demonstration that:

(a) No other dwellings exist on the subject farm or ranch, including all of its constituent parcels, contiguous or otherwise, which are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and which could be used as the principal agricultural dwelling;

(b) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, as defined in MCC 38.0015, where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. Current use includes a minimum area which would satisfy subsection (8) (c) 4. below; and

(c) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:

1. Size of the entire farm or ranch, including all land in the same ownership;

2. Type(s) of agricultural uses (crops, livestock) and acreage;

3. Operational requirements for the particular agricultural use common to area agricultural operations; and

4. The farm or ranch, and all its constituent parcels, is capable of producing at least \$40,000 in gross annual income. This determination shall be made using the following formula:

$$(A)(B)(C) = I$$

A = Average yield of the commodity per acre, or unit of production

B = Average price of the commodity

C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch

I = Income Capability

Staff: The term “subject farm” appears approximately 13 times in the *Management Plan for the Columbia River Gorge National Scenic Area* (NSA Management Plan); however, the plan does not define the term. Similarly, the term appears throughout MCC Chapter 38 – Columbia River Gorge National Scenic Area, but is not defined.

The term “subject farm or ranch” as it appears in MCC 38.2225 (A) (8) (a) is used in conjunction with the qualifying phrase “including all of its constituent parcels, contiguous or otherwise;” while the associated policy in the NSA Management Plan uses the qualifier “including contiguous lots/parcels.¹” A thorough review of the NSA Management Plan and MCC Chapter 38 revealed no provisions, either in policy or regulation, which establish a date of creation for the subject farm or ranch or expressly identify all of its constituent parcels. This review also failed to discover any policy or regulation that would require the constituent parcels of a subject farm or ranch to be aggregated and/or bound together in some fashion for any specified duration of time. *With no date of creation or requirement for aggregation, constituent parcels of a subject farm or ranch may be sold separately.*

Upon being separated from the subject farm or ranch through transfer to a different ownership, the property in question is eligible for consideration for a review use for a single-family dwelling when necessary for and accessory to an agricultural use based on the specific facts. *The property would be evaluated for its ability to meet the minimum area threshold of 40 contiguous acres, as well as the approval criteria set forth in MCC 38.2225 (A) (8) (a) through (c), and the NSA Site Review standards of MCC 38.7000 through 38.7085 based on the specific facts and conditions present at the time such development application is submitted.*

7.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary to make a parcel determination in the Gorge Special Agriculture – 40 (GSA-40) and Gorge Special Open Space (GSO) GSA-40 zones. In addition, the Planning Director has made the interpretation that there is no prohibition against selling constituent parcels of a subject farm or ranch, and that subsequent applications for new development are reviewed based on the specific facts and conditions present at the time such development application is submitted. This approval is subject to the conditions of approval established in this report.

8.0 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

¹ Columbia River Gorge Commission and USDA Forest Service, National Scenic Area. *Management Plan for the Columbia River Gorge National Scenic Area*, as amended through August 2016, Chapter 1-Agricultural Land, Page II-1-22, Paragraph C(1).

'C' Procedural Exhibits
 'D' Comments Received

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 T2-2020-12840 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	NSA Application form	1/2/2020
A.2	1	Type 1 Application form for Property Owner and Applicant's Signatures	1/2/2020
A.3	3	Narrative Regarding Zoning Code Interpretation	1/2/2020
A.4	5	Narrative Regarding Legal Lot Determination	1/2/2020
A.5	21	Copy of Notice of NSA Decision for T2-2018-10407	1/2/2020
A.6	3	Exhibit A – Deed recorded in Book 832, Page 582 dated April 22, 1944	1/2/2020
A.7	2	Exhibit B - Bargain and Sale Deed recorded in Book 631, Page 131 on July 22, 1968 and related Information	1/2/2020
A.8	1	Tax Map for 1N4E28C – 00900 from Chicago Title Co.	1/2/2020
A.9	1	Exhibit C – Board of Adjustment Card 186-68 for a 6.25-ft Rear Yard Variance for tax lot 1N4E28C- 00900	1/2/2020
A.10	2	Board of Adjustment Application filed on July 15, 1968	1/2/2020
A.11	1	Letter from the Multnomah County Planning Commission on the BA 186-68	1/2/2020
A.12	1	Case File Cover for BA 186-68	1/2/2020
A.13	1	Board of Adjustment Card 186-68 for a 6.25-ft Rear Yard Variance for tax lot 1N4E28C- 00900 (Duplicate)	1/2/2020
A.14	2	Tax Lot Information for 32203 NE Wand Rd (R322325)	1/2/2020
A.15	2	Exhibit D – Warranty Deed recorded in Book 1026, Page 1841 & 1842 on February 7, 1975	1/2/2020
A.16	3	Personal Representative's Deed recorded in Book 1373, Page 2395 - 2397 on August 8, 1979	1/2/2020
A.17	3	Quit Claim Deed recorded in Book 1813, Page 867 - 869 on March 29, 1985	1/2/2020
A.18	2	Bargain and Sale Deed recorded in Book 2556, Page 360 & 361 on June 9, 1992	1/2/2020
A.19	2	Bargain and Sale Deed recorded at Instrument #2001-168584 on October 23, 2001	1/2/2020
A.20	2	Warranty Deed recorded at Instrument #2007-115648 on June 27, 2007 [Labeled Exhibit “D-1”]	1/2/2020
A.21	2	Exhibit “E” – Warranty Deed recorded at Instrument #2009-064301 on June 8, 2009	1/2/2020
A.22	2	Warranty Deed recorded at Instrument #2011-098078 on September 6, 2011	1/2/2020

A.23	3	Bargain and Sale Deed recorded at Instrument #2013-109610 on August 9, 2013	1/2/2020
A.24	2	Exhibit "G" – Bargain and Sale Deed recorded at Instrument #2013-109609 on August 9, 2013	1/2/2020
A.25	2	H" – Personal Representative's Deed recorded at Instrument #2014-068759 on July 16, 2014	1/2/2020
A.26	2	I" – Bargain and Sale Deed recorded at Instrument #2015-158147 on December 18, 2015	
A.27	1	Revised General Description on the NSA Application Form	2/14/2020
	1	Response to the Public Comments Regarding Case File T2-2020-128540 dated May 12, 2020	
		Toll #1	
		Toll #2	
'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records, and Taxation (DART) Property Information for 1N4E23C-01000 (R944280030)	
B.2	1	Department of Assessment, Records, and Taxation (DART) Property Information Map with State ID and Taxlot (#R R944280030) highlighted	
'C'	#	Administration & Procedures	Date
C.1		Incomplete Letter	
C.2		Applicant's Acceptance of 180 Day Clock	
C.3		Complete Letter (Day 1)	
C.4		Opportunity to Comment	
C.5		Administrative Decision	
'D'	#	Comments Received	Date
D.1	1	Bonnie and Ron Vaughn letter	April 20, 2020
	7	Friends of the Columbia Gorge letter	April 21, 2020
	1	Kathleen Persons email	April 24, 2020