

June 11, 2021

**Garrett H. Stephenson**

Admitted in Oregon  
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**VIA E-MAIL AND VIA DELIVERY**

Ms. Carol Johnson, AICP  
Planning Director  
Multnomah County Land Use Planning Division  
1600 SE 190<sup>th</sup> Avenue  
Portland, OR 97233

RE: Appeal of a Director's Decision issued in June 4, 2021

Dear Ms. Johnson:

This office represents Scott Reed. Enclosed is a \$250 appeal fee, land use application form, and a notice of appeal of a Director's Decision, dated June 4, 2021. The Appeal is timely submitted within 14 days of the Director's Decision. Please confirm receipt of this appeal and include me on any correspondence related to the appeal.

Best regards,



Garrett H. Stephenson

GST/jmhi  
Enclosures

Cc: Mr. Scott Reed (*via email, via delivery*)  
PDX\131873\255993\GST\31046244.1



**Land Use Planning Division**  
 1600 SE 190<sup>th</sup> Ave  
 Portland OR 97233  
 Ph: 503-988-3043 Fax: 503-988-3389  
<https://multco.us/landuse/>

**GENERAL  
 APPLICATION  
 FORM**

**PROPERTY IDENTIFICATION**  
 Property Address 12424 NW Springville Road  
 State Identification R501639, R324300 Site Size 54.5 AC, 22.3 AC  
 A&T Alternate Account Number R# R961150770, R961160130

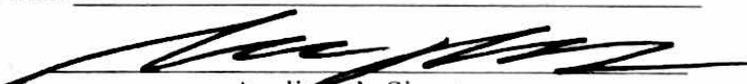
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**OTHER PARCEL (if applicable)**  
 Property Address Same.  
 State Identification R324339 Site Size 7.67  
 A&T Alternate Account Number R# R961160590

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**PROPERTY OWNER(S)  OR CONTRACT PURCHASER(S)**   
 Name Scott Reed and Stacey Reed  
 Mailing Address 1521 NW Springville Road  
 City Portland State OR Zip Code 97229 Phone# 914-391-6995  
 I authorize the applicant below to make this application.  
   
 Property Owner Signature #1 Property Owner Signature #2  
*NOTE: By signing this form, the property owner or property owner's agent is granting permission for Planning Staff to conduct site inspections on the property.*  
 If no owner signature above, a letter of authorization from the owner is required.

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**APPLICANT'S NAME AND SIGNATURE**  
 Applicant's Name Scott Reed  
 Mailing Address Same as above.  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Phone # \_\_\_\_\_  
 Fax \_\_\_\_\_ E-mail \_\_\_\_\_  
  
 Applicant's Signature

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**GENERAL DESCRIPTION OF APPLICATION (REQUIRED)**  
 Please provide a brief description of your project and permits you are seeking.  
Appeal of Staff Decision on expiration of T2-2014-3377.

**For Staff Use**

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**CASE NUMBER**

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**LAND USE PERMIT(S)**

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**DATE SUBMITTED**

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**RECEIVED BY**

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Compliance Related

Adjacent to Washington/  
 Clackamas/Columbia  
 County

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PF/PA No.

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Related Case No.

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Related Case No.

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**ZONING**

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Zoning District

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Zoning Overlay

BEFORE THE HEARINGS OFFICER FOR MULTNOMAH COUNTY

An Appeal of a Decision by the Multnomah County Planning Director that a land use permit (County case file T2-2014-3377) has Expired.

APPELLANT'S NOTICE OF APPEAL

**I. SUMMARY**

Scott L. Reed, the appellant ("Appellant") in this Appeal was the applicant for a land use permit for a "dwelling customarily provided in conjunction with a farm use on non-high value soils, capable of producing the medial level of annual gross sales" (Multnomah County Casefile T2-2014-3377) (the "Permit."). **Exhibit 1.** The Permit allowed a single family home, driveway, and related improvements, and staff has indicated that it was issued on September 11, 2015. Since that time, Appellant has made substantial improvements to his Property in accordance with the Permit, including grading and excavation for the home's foundation.

This is an appeal of a land use decision issued on June 04, 2021, by the Multnomah County Planning Director (the "Director"), which determined that the Permit expired (the challenged "Decision"). **Exhibit 2.** In so doing, the Director apparently relied upon MCC § 37.0690(C), "Expiration of Type II or Type III Decisions," which provides in relevant part:

"(C) A Type II or III decision approving residential development on land zoned for Exclusive Farm Use or Commercial Forest Use outside of an urban growth boundary is subject to the following provisions:

(1) The approval shall expire as described in (a) or (b) below:

(a) When construction has not commenced within four years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.

(b) When the structure has not been completed within four years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval."

Appellant is appealing a Type II Decision; therefore, Appellant requests a de-novo appeal before a Multnomah County Hearings Officer, as provided by Multnomah County Code ("MCC") §39.1140. Appellant's requested relief is a determination by the Hearings Officer that the above-identified Permit remains valid or alternatively, that Appellant has a vested right to complete the work authorized under the Permit.

**II. SATISFACTION OF APPEAL REQUIREMENTS**

**§ 39.1160 APPEALS. Appeals of any decisions of the county must comply with the requirements of this section.**

**(A) Appeals by applicants or opponents of an application.**

**(1) Type I decisions by the Planning Director are not appealable to any other decision maker within the county.**

RESPONSE: A determination that a permit has expired is not listed in the approval processes specified in MCC 39.1105. The Decision appears to be a Type II “zoning code interpretation” or analogous to an interpretation because it relied on MCC 37.0690 to find that the Permit has expired. Regardless, determination that an application is void requires the exercise of discretion and the application of facts and the County’s land use regulations, and consequently meets the definition of a “land use decision” under ORS 197.015. The Hearings Officer can find that the Decision is not a “Type I” decision.

**(2) A Notice of Appeal of a Type II decision by the Planning Director or Type IV decision by the Planning Commission must be received in writing by the Land Use Planning Division within 14 calendar days from the date notice of the challenged decision is provided to those entitled to notice. If the county's notice of decision is mailed, any appeal must be received by and at the Land Use Planning Division within 14 calendar days from the date of mailing. Late or improperly filed appeals shall be deemed a jurisdictional defect and will result in the automatic rejection of any appeal so filed.**

RESPONSE: The Decision is an email from the Director to Appellant on June 04, 2021. **Exhibit 2.** This appeal is submitted within 14 calendar days of the Decision.

**(3) The following must be included as part of the Notice of Appeal:**

**(a) The county’s case file number and date the decision to be appealed was rendered.**

RESPONSE: The case file number of the permit is T2-2014-3377. The challenged Decision is a finding that the permit is expired and does not have a separate case file number. The challenged Decision was rendered on June 4, 2021.

**(b) The name, mailing address and daytime telephone number for each appellant.**

RESPONSE: Appellant’s address is 12521 NW Springville Road, Portland, OR 97229. Appellant’s daytime phone number is 914-391-6995.

**(c) A statement of how each appellant has an interest in the matter and standing to appeal.**

RESPONSE: Appellant has interest in this matter and standing to appeal because he was the Applicant for the Permit which is the subject of the challenged Decision.

**(d) A statement of the specific grounds for the appeal.**

RESPONSE: There are three specific grounds for the Appeal.

1. The Decision failed to explain its application of MCC §37.0690(C).

As an initial matter, there is no explanation in the Decision of the facts relied upon to determine that the Permit had expired. The Decision merely states that the permit has expired due to a failure to “commence construction.” Given that a substantial amount of work had occurred under the Permit, including grading and foundation excavation, determination that the Permit expired is necessarily a factual analysis, but there is no explanation in the Decision of how the facts lead to a determination that the Permit has expired.

2. Evidence demonstrates that Appellant had perfected the Permit by substantially undertaking foundation construction.

MCC § 37.0690(C) provides that permits are expired “when construction has not commenced within four years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.” The evidence will show that Appellant had commenced “actual construction” of the foundation by digging the foundation. The Hearings Officer should note that the above provision does not require “completion” of the “foundation or frame of the approved structure.”

3. The Applicant has a vested right to complete construction authorized in the Permit.

Evidence will show that the Applicant has expended substantial sums on both soft and hard costs of construction under the Permit, and has done so in a good faith belief that such expenditures were sufficient to vest permit approval. *Clackamas County v. Holmes*, 265 Or 193, 197–198, 508 P2d 190 (1973). Evidence will show that other Holmes factors indicate that Applicant has a vested right to complete the work authorized in the Permit.

**(e) The appropriate appeal fee. Failure to include the appeal fee within appeal period is deemed to be a jurisdictional defect and will result in the automatic rejection of any appeal so filed.**

RESPONSE: The appeal fee was submitted with this Notice of Appeal.

**(4) Standing to Appeal. Those who are entitled to appeal a Type II or Type IV decision include those who are entitled to notice under MCC 39.1150.**

RESPONSE: Appellant has standing to appeal because Appellant was the Applicant for the Permit that is the subject of the challenged Decision.

### III. CONCLUSION

The Hearings Officer can find that this Appeal is properly made, as explained above. Additional argument and evidence shall be provided in writing prior to the Hearing on this Appeal.

## LAND USE PERMIT

**Case File:** T2-2014-3377

**Permits:** Dwelling in conjunction with farm use;  
Significant Environmental Concern for  
wildlife habitat; Hillside Development

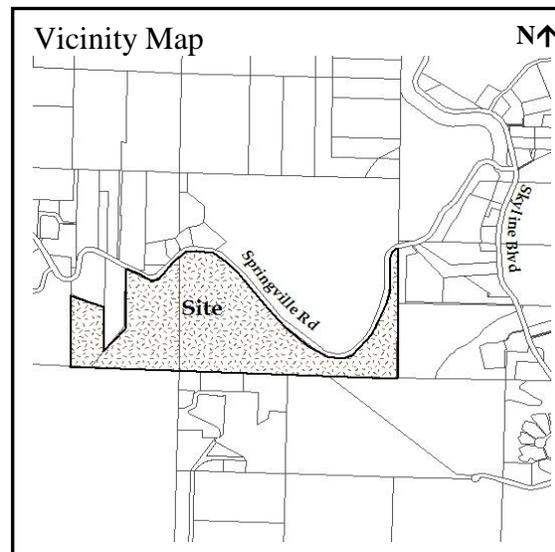
**Location:** 12460 NW Springville Road  
Tax Lots 2800 & 3100 , Section 16 and  
Tax Lot 600, Section 15,  
Township 1 North, Range 1 West, W.M.  
Tax Account #R961160130,  
R961160590 and R961150770

**Applicant:** Andrew Tull  
3J Consulting Inc.

**Owners:** Scott and Stacy Reed

**Base Zone:** Exclusive Farm Use (EFU) and Commercial Forest Use (CFU)

**Overlays:** Significant Environmental Concern for wildlife habitat and streams; Hillside  
Development



**Summary:** Permit application for a “dwelling customarily provided in conjunction with a farm use on not high-value farmland soils, capable of producing the median level of annual gross sales,” MCC 33.2625(D)(3), and for associated Significant Environmental Concern-Wildlife Habitat and Hillside Development Permits. The Owners are Scott and Stacey Reed (together, the “Owner”), represented by Andrew Tull (the “Applicant”) and the office of Perkins Coie, LLP.

**Decision:** Permits for the following are hereby approved (the “Permit”) for the subject property:

- A dwelling customarily provided in conjunction with a farm use on not high-value farmland soils, capable of producing the median level of annual gross sales. [MCC 33.2625(D)(3)]
- Significant Environmental Concern - Wildlife Habitat (SEC-h). [MCC 33.4570]
- Hillside Development Permit (HDP). [MCC 33.5505, *et seq.*]

All rights and responsibilities established in this Permit apply to the Owner, their successors in interest, and run with the land.

**This Permit is effective on September 11, 2015.**

**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 Lindsey Nesbitt, Senior Planner at 503-988-0213 or nesbittl@multco.us.

**Applicable Approval Criteria:** Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): MCC 33.2600- Purpose EFU, 33.2620- Allowed Uses for accessory structures, 33.2625(D)(3)- Non high value farmland soils, 33.2655 Single family dwellings conditions of approval prohibiting prohibitions on claims, 33.2660- Dimensional Requirements, 33.2675 Lots of record, 33.4500-Purpose of Significant Environmental Concern Overlay, 33.4515- Exceptions, 33.4520- Application, 33.4525- Applicable Approval Criteria, 33.4530- SEC permit required, 33.4550- Scope of Conditions, 33.4567- Clear and objective standards, 33.4570- Criteria for approval, 33.4575 Criteria for SEC Streams Permit, 33.550- Purpose Hillside Development and Erosion Control , 33.5505- Permits Required, 33.5510- Exempt Land Uses and Activities

Multnomah County Road Rules (MCRR) 4.00- Access to County Roads, 4.500- Sight Distance, 5.000 Transportation Impact, 9.000 Compliance Method

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) 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> or <http://web.multco.us/transportation-planning>.

## **CONDITIONS OF APPROVAL**

The following conditions of approval are necessary to ensure that approval criteria for this land use permit are satisfied. Citations to the Multnomah County Code (MCC) appearing in brackets indicate the standard(s) addressed by the associated.

After the effective date of this permit, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the Applicant/Owner shall call the Land Use Planning Staff 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/Owner submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. Additional fees may be required at time of land use sign-off of the building permit.

1. This permit approval is based on the record in this matter, which may be referred to for the purpose of resolving any ambiguity in the statements herein. The residential use approved through this Permit may occur only in the manner approved herein and the proposed single-family home and associated site improvements shall be constructed as shown on the Revised Site Plan (to be labeled Ex. A.41 when submitted), which must be submitted prior to building permit sign off. Subject to compliance with MCC 33.2625(D)(3)(c) and MCC 33.4500 through 33.4550 and MCC 33.4575, farm use activities may be changed as needed by the Owner. The Owner is responsible for compliance with the terms of approval of this Permit.
2. The rights and obligations established in this Permit run with the land.

3. Unless stated otherwise, all references herein to the Multnomah County Code are to the provisions in effect on March 21, 2014.
4. The Owner shall record with the Multnomah County Recorder pages 1–5 of this Permit as well as the Revised Site Plan (to be labeled Ex. A.41 when submitted). Recording shall be at the Owner’s expense. The Planning Director has no obligation to comply with any demand for building permit signoff or approval based on any right granted or obligation imposed in this Permit until such time as a copy of the recorded documents required by this paragraph has been filed with the Planning Director. [MCC 37.0670]
5. **This Permit EXPIRES as provided in MCC 37.0690.**
  - a. **A request for EXTENSION of the expiration deadline under MCC 37.0695 must be submitted prior to the expiration of the approval period.**
  - b. **Construction of any farm buildings that may be required to be constructed as a condition of this Permit, shall be sufficient grounds to justify at least one (1) extension period.**[MCC 37.0690; MCC 37.0695]
6. The dwelling use, including dwelling structures and associated accessory structures (collectively referred to hereinafter as “dwelling use”), approved through this Permit is a “dwelling customarily provided in conjunction with a farm use on not high-value farmland soils, capable of producing the median level of annual gross sales,” MCC 33.2625(D)(3). Any dwelling use of the Property pursuant to this Permit must be established and maintained in compliance with the criteria in MCC 33.2625(D)(3) and the other terms of approval of this Permit. Unless authorized by a separate permit, a dwelling use that is not established or maintained in compliance with the criteria in MCC 33.2625(D)(3) and the other terms of approval of this Permit is not allowed and all dwelling structures and accessory structures supporting such noncompliant dwelling use may be required to be removed from the Property. Upon request by the Planning Director, the Owner shall provide a report on the identity of the occupants of the dwelling approved through this permit and their relation to the farm use of the land as well as the annual gross sales for not more than a five year period prior to such request; the Planning Director shall not make such request without good reason nor make more than one such request within any three-year period. No such request shall be made earlier than one (1) year from final building inspection approval of the dwelling. The County shall provide the Owner a reasonable time to cure any violation. [MCC 33.2625(D)(3)]
7. Prior to the Planning Director’s signoff for any building permit for the dwelling use, the Owner shall submit evidence to the Planning Director demonstrating the establishment of the farm use required by MCC 33.2625(D)(3)(c). The Applicant/Owner has two options to comply with this Condition, either of which shall satisfy this condition:
  - Option 1: Given the Owner’s proposed Farm Plan (e.g., Exs. A-30, A-31, A-32, and A-35), the Owner must submit evidence demonstrating:
    - a. Lawful establishment of the replacement barn and milking parlor;
    - b. Lawful establishment of the 10-acre vineyard, field areas for crops, and herd grazing areas or preparation of each of these areas in accordance with industry standards in light of the time of year, maturity of the farm operation, and other industry-appropriate standards;
    - c. Lawful establishment of raw milk production from at least two cows; and
    - d. Lawful establishment of a herd of 8 beef cattle; or
  - Option 2: The Owner shall submit an IRS Schedule F form from 2014 or later year demonstrating that the farm activity on the property met or exceeded \$14,246.84 in gross farm sales (the median gross farm sales shown on the farm income table approved in conjunction with this permit).

As 33.2625(D)(3)(c) relates to gross farm sales, expenses shall not be considered in determining compliance with this option.

[MCC 33.2625(D)(3)(g)].

8. Prior to the Planning Director's signoff for any building permit for development on the Property, the Owner shall submit to the Planning Director a Revised Site Plan (to be labeled Ex. A.41 when submitted) at a standard architect or engineers scale on a sheet larger than 11x17 inches such that the Revised Site Plan clearly and accurately demonstrates existing and proposed attributes of the Property as follows:
  - a. Location and dimensions of all existing and proposed structures as well as the 10-acre vineyard, field areas and herd grazing areas. Subject to compliance with MCC 33.2625(D)(3)(c) and MCC 33.4500 through 33.4550 and MCC 33.4575, farm use activities may be changed as needed by the Owner;
  - b. Location of the Significant Environmental Concern for streams (SEC-s) overlay zone, the Significant Environmental Concern for wildlife habitat overlay zone (SEC-w), and the Hillside Development overlay zone for purposes of demonstrating that none of the attributes listed in subparagraph (a) of this Condition 8 shall occur within such zones. Notwithstanding the preceding sentence, grazing is allowed within the SEC-s subject to review and approval by the Oregon Department of Agriculture. Nothing in this Condition prohibits the Owner from requesting land use approval for a use, including development, in such overlay zones in the future;
  - c. Compliance of all structures with limitations on use, maximum height limitations, and all applicable yard setbacks and the SEC-s buffer. Because no SEC-s permit is requested or granted as part of this Permit, no structure may be established within 250-feet of the centerline of the stream (i.e., the SEC-s mapped feature) on the Property. Nothing in this Condition prohibits the Owner from requesting land use approval for a structure within the SEC-s buffer in the future; and
  - d. Location of the right-of-way for purposes of demonstrating compliance with the front yard setback.
9. The dwelling approved in this Permit is proposed to be sited quite close to the SEC-s 250-foot buffer. Encroachment of the foundation of the dwelling into the SEC-s buffer is prohibited. Encroachment of construction equipment and activities into the SEC-s buffer is prohibited. The buffer shall be marked during construction of the dwelling.
10. Prior to the Planning Director's signoff for any building permit for the dwelling use, the Owner shall file with the Planning Director documentation establishing that the sanitarian has approved the proposed on-site septic system.
11. The Owner shall record in the Multnomah County deed records a deed restriction prohibiting the land Owners and successors in interest from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. Prior to the Planning Director's signoff for any building permit for the dwelling use, the Owner shall file with the Planning Director a copy of the recorded deed restriction required in this Condition 11.
12. Any new fencing must comply with MCC 33.4567(B)(7).
13. Nuisance plants listed in the table of MMC Section 33.4567(B)(7) shall not be planted on the Property and any such plants currently established on the Property or that establish on the Property in the future shall be removed from the Property. [MCC 33.4570(B)(7)]
14. No earth disturbing activity is allowed under this permit without a Grading and Erosion Control permit for such activity.
15. The Fire Marshal has stated that the dwelling structure approved through this permit must include a sprinkler system; the dwelling structure must comply with applicable Fire Marshall and Fire Code requirements at the time of building permit review.

16. The Applicant/Owner shall acquire a driveway permit for the site's access onto Springville Road prior to building permit approval. As part of this, the Applicant/Owner shall demonstrate demolition that permanently closes the two access points southwest of the permanent driveway. [MCRR 4.200]
17. The Owner shall maintain vegetation to provide the sight distance required by MCRR 4.500 in the eastern direction. [MCRR 4.500]
18. The Owner shall record in the Multnomah County deed records a deed restriction committing the Owner and successors in interest to participate in future right-of-way improvements to the extent that such improvements are roughly proportional to the impact of the use of the property. The deed restriction shall not commit the Owner or successor in interest to contributing more than a reasonable fair share of the cost of future road improvements or to dedicate property without just compensation. Prior to the Planning Director's signoff for any building permit for the dwelling use, the Owner shall file with the Planning Director a copy of the recorded deed restriction required in this Condition 18. [MCRR 9.400]

**Note:** Once the decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the Applicant/Owner shall contact the Planning Director to schedule an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the Applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. Additional fees may be required at time of land use sign-off of the building permit.

**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 conclusory statement in *italics*.

### **1.00 Project Description:**

**Staff:** The Applicant/Owner is proposing to construct a new dwelling in conjunction with farm use on the subject 84.43 acre tract of land. The proposed development consists of a ten bedroom dwelling with a pool, attached decks/patio areas, a new gravel driveway and various related accessory improvements.

Current farm use includes the raising of approximately a dozen head of beef cattle, milking of four (4) dairy cows, and raising of 12 pigs. In May, 2015 the Applicant planted 20 acres of oats on the subject property to create feed for the livestock.

The Applicant/Owner proposes a Farm Plan that includes:

- Raw milk production and sales of approximately 1,825 gallons per cow per year (two cows total) of raw milk.
- Creation of a beef herd from dairy calves and market for beef sale.
- Vineyards growing high quality pinot noir grapes to be sold to Willamette Valley winemakers.
- Raising of chickens for the selling of eggs.
- Tree farm of approximately 1,600 pine trees.

### **2.00 Property Description & History:**

The subject tract consists of three tax lots (R324339, R324300 and R501639) of which 72.87 acres are zoned Exclusive Farm Use and 11.56 acres are zoned Commercial Forest Use – 2. The property includes three overlays: SEC-s for streams, SEC-w for wildlife habitat, and Hillside Development for steep slopes.



The map below identifies the SEC-s boundaries:



SEC-s Overlay Boundaries on Subject Tract

The map below shows that the Significant Environmental Concern for wildlife habitat overlay encompasses the entire tract.



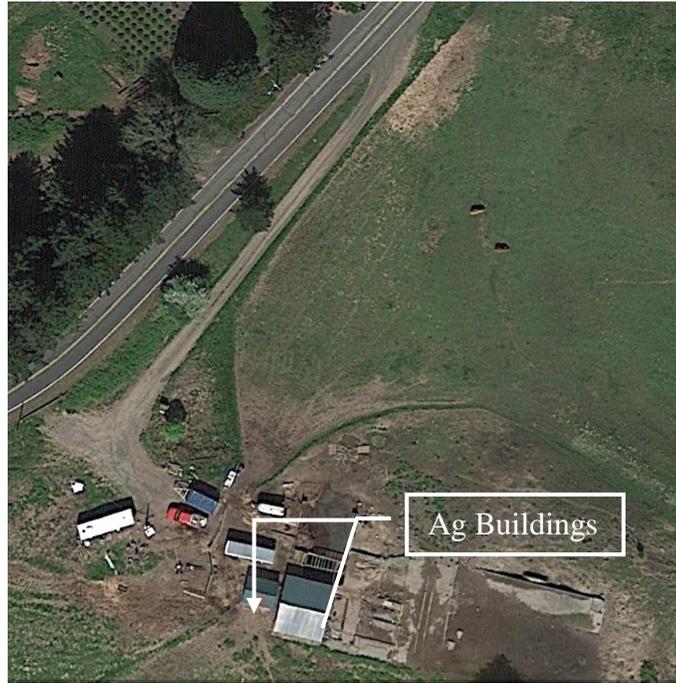
SEC-h Overlay Boundaries on Subject Tract

Areas of the property have a slope greater than 25%. Generally, as shown below, the eastern portion of the tract contains steeper terrain while the western portion has more gentle terrain. The County's Hillside Development ordinance is triggered when development occurs on areas with slopes 25% or more.



Topography of Tract

Per county tax records, the property is in two deferral programs: 51.43 acres in farm deferral; 33 acres in forest deferral. The tract currently contains two gravel access points off of NW Springville Road and an approximately 8-ft by 16-ft farm building and an approximately 24-ft by 24-ft milking parlor for two dairy cows (see below). These two buildings will be demolished for the construction of the dwelling. Two of the three access points will be decommissioned as part of the conditions of approval of this Permit.



### **3.00 Exclusive Farm Use Criteria:**

#### **MCC 33.2675 Lot of Record**

**(A) In addition to the Lot of Record definition standards in MCC 33.0005, 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.**

**3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record: [graphic omitted]**

**4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA- 20, RR, BRC, R-10), 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) Exception to the standards of (A)(2) above:**

**(a) 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.

**(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, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, Ord. 236 & 238;**
- (5) February 20, 1990, lot of record definition amended, Ord. 643;**
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;**
- (7) 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 33.2690 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 property consists of three parcels that are 7.67, 22.27, and 54.49 acres under the same ownership. The 7.67 acre parcel is aggregated with the other two acre parcel because it is less than 19 acres. Together, the three parcels aggregate into one single lot of record.

### **33.2620 Allowed Uses**

#### **33.2620(O)(2) and (3) Accessory Structures**

**(2) If the accessory structure is a building, then to be an “allowed use” the footprint of the building in combination with the footprint of all other accessory buildings on the property shall not exceed 2,500 square feet.**

**(3) If the accessory structure has a bathroom or kitchen facility, then prior to issuance of the building permit the property owner shall record a deed restriction with the County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling.**

**Staff:** The Applicant’s original site plan and narrative propose an accessory structure referred to as an in-law suite. The code permits one dwelling per tract. Kitchen and bathing facilities allow accessory structures to be utilized as dwelling units. Accessory structures are permitted, but may not contain elements that would qualify the structure as a dwelling.

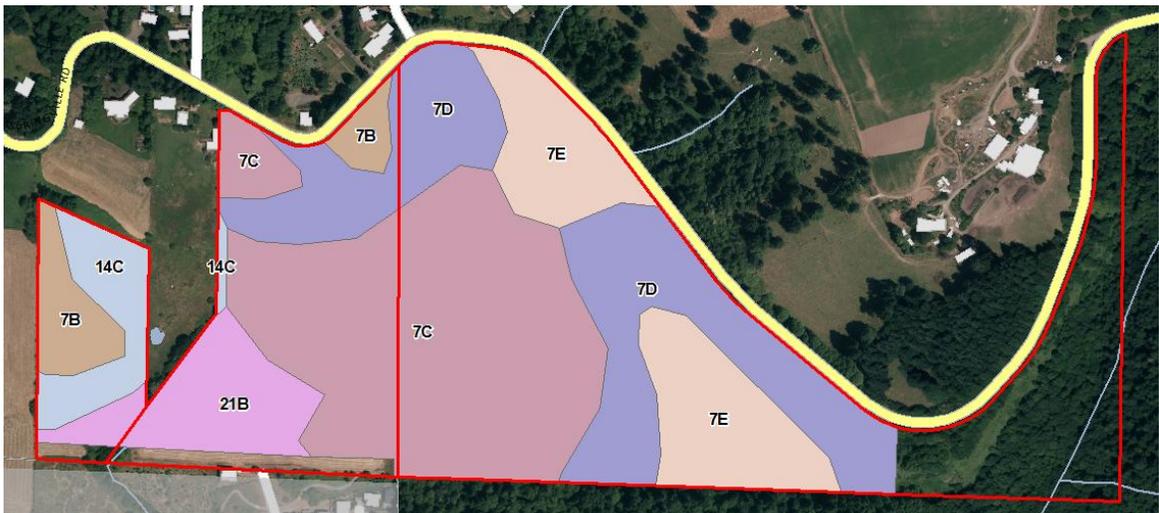
As a condition of approval of this permit, Applicant/Owner will submit a Revised Site Plan. If the Applicant/Owner proposes to retain an accessory structure, such as a pool house, the Applicant/Owner must demonstrate that the structure cannot be used as a separate dwelling unit, pursuant to MCC 33.2620(O).

### 33.2660 Dimensional Requirements

Requirement	Standards	Applicant's Proposal
<b>Minimum lots size</b>	80 Acres	84.43 Acres
<b>Setbacks:</b> <b>Front</b> <b>Side</b> <b>Street Side</b> <b>Rear</b>	30 feet 10 feet 30 feet 30 feet	The Applicant's narrative states that all required yard setbacks will be met. A condition of approval has been adopted requiring a revised site plan demonstrating setback requirements will be met.
<b>Maximum Structure Height</b>	35 feet	Elevation drawings of the proposed dwelling were not submitted.
<b>Minimum front lot line length</b>	50 feet	The property exceeds the minimum lot line length.

**Staff:** The original site plans submitted with the Application provided quite a bit of information, but not all of the information clearly demonstrates how each above standard will be met. Staff finds that that substantial evidence in the record demonstrates that meeting these standards and criteria is feasible. As a condition of approval of this permit, Applicant/Owner will submit a revised site plan that more clearly demonstrates compliance with standards such as setback dimensions, building elevations, etc. (see conditions of approval).

### 33.2625 Review Uses



Soil Map #2

### 33.2625 Review Uses

**(D) A dwelling, including a mobile or modular home, customarily provided in conjunction with a farm use:**

**(3) Not high-value farmland soils, capable of producing the median level of annual gross sales. On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:**

**(a) The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract [the median size of commercial farm and ranch tracts shall be determined pursuant to OAR 660-33-135(3)]; and**

**Staff:** The property is an 84.43-acre tract comprised of three tax lots. The term “tract” is defined as parcels under common ownership. In this case, one tax lot is split between the EFU and CFU zones. Approximately 11.56 acres of the tract are zoned CFU and 72.87 acres are zoned EFU. Because of the definition of tract, the wording of Multnomah County Code criteria in Chapter 33, and the ability to implement farming practices on the CFU portion of the tract, staff reviewed and calculated the soil classifications of the entire tract. The tract has a mixture of high-value and low-value soils with the majority of the soils classified as low-value, therefore, the subject tract is not high-value farmland soils.

Documentation submitted by the Applicant demonstrating the study area, qualifying tracts, and income table is provided in Exhibit A.31 and A.32. The Applicant provided a study and a map showing 7 tracts within a 1 mile study area that qualify as meeting the \$10,000 annual gross sales based on soil types. Staff reviewed the data and determined that two of the tracts are not eligible for use because the tracts (Springville Investors and Thompson) are in a forest deferral program only and are not being utilized for commercial farming purposes.

Staff has recalculated the data using the 5 qualified tracts as follows:

<b>Ownership</b>	<b>Size in Acres</b>	<b>Income</b>
Zahler	37.48	\$13,550.50
TriCounty Investors	38.23	\$14,943.18
Malinowski	33.03	\$12,786.38
Burnham	114.75	\$37,936.75
Beovich	93.48	\$26,249.83
<b>Median</b>	<b>63.39</b>	<b>\$14,246.84</b>

The subject tract is 84.43 acres, which exceeds the median size of those commercial farm or ranch tracts qualifying for analysis under this provision in this instance.

*Criterion met.*

**(b) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in subsection (a) of this section; and**

**Staff:** Per the table above, the County’s non-high value soil income report (Exhibit B.5), and the Applicant’s analysis (Exhibit A.32), the median level of annual gross sales applicable to this application is \$14,246.84. As explained in the June 5, 2015 memorandum from Andrew Tull, the Owner’s land use planning consultant (Exhibit A32), the subject tract is capable of producing at least \$23,397.32 of gross annual sales of county indicator crops based on soil type.

*Criterion met.*

**(c) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in subsection (b) of this section; and**

**Applicant:** The Applicant's full response is provided in Exhibits A.4, A.25, and A.29–A.40. The following provides a summary:

The Applicant's narrative cites the ORS, which state that a "farm use" is the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling of crops or the feeding, breeding, management and sale of, or the produce of livestock, poultry, fur-bearing animals or honey bees or for dairying and the sale of dairy products or any other agricultural or horticultural use of animal husbandry or any combination thereof.

The Applicant cited a LUBA case holding that "as long as the primary purpose of the listed activity is to obtain a profit in money, the activity is a farm use" and the "statute is silent as to the mechanism by which that profit in money may be realized." *Oregon Natural Desert Association v. Harney County*, 42 Or LUBA 149, 157 (2002).

The subject property is currently employed as a dairy; the primary purpose is to sell milk. Currently, the farm has 12 head of cattle in the beef herd, four milk cows, and 12 pigs. In May, 2015 the Owner planted 20 acres of oats on the subject property to create feed for the livestock.

This criterion does not require that the subject property currently produce the annual gross sales required, but requires that the farm use be capable of generating such annual gross sales. "At our current operating levels, we estimate we will have gross dairy income of approximately \$43,780 per year. Each cow produces 5 gallons of milk a day, we have six cows (only two can be wet at one time), which equates to about 10 gallons of milk per day. We sell the milk in ½ gallon reusable bottles for \$6 per ½ gallon or \$12 per gallon. If we sell all the milk produced, we would generate approximately \$840 in gross dairy income per week. Additionally, the pigs will produce additional income when they are ready to be processed. Currently, in the state of Oregon we are not required to have a dairy license because we produce raw milk with only two cows producing at once, we don't advertise, and we sell from the farm." Ex. A.30.

**Staff:** As explained above, the subject tract is currently employed for a farm use, including the raising of milk cows, beef cattle, pigs, and oats.

This criterion requires that the farm use of the property be capable of producing the median annual gross sales established under subsection (b), above, but does not require that the Owner actually produce the median annual gross sales. The Applicant/Owner submitted substantial evidence demonstrating that the farm use is capable of producing the annual gross sales required in subsection (b), including a proposed Farm Plan, photographs of existing farm uses, a IRS Schedule F showing \$12,840 of gross farm sales in 2013, a farm sales ledger showing gross farm sales of \$2,124 in May, 2015, an affidavit describing existing farm uses, and receipts for farm supplies and farm insurance. On the other hand, there is no substantial evidence indicating that the farm use, as it currently exists and as proposed in the Farm Plan, cannot achieve the median gross farm sales established under subsection (b).

The Owner's proposed Farm Plan includes the following elements:

- Raw milk production and sales of approximately 1,825 gallons per cow per year (two cows total) of raw milk. Only two cows are allowed to be used for raw milk at one time. The property owners sell the milk in half gallon increments for \$6.
- Creation of a beef herd from dairy calves and market for beef sale.
- Vineyards growing high quality pinot noir grapes to be sold to Willamette Valley winemakers.
- Raising of chickens for the selling of eggs.

- Tree farm of approximately 1,600 pine trees.

The subject tract is currently being used for a portion of the Owners' Farm Plan, however at this time, the full farming operation, as proposed in the Farm Plan, has not been implemented. The Farm Plan indicates that the proposed farming practices described in the Farm Plan can be implemented after the farm dwelling is constructed.

Staff finds that implementation of the Farm Plan is sufficient to demonstrate that the farm use is capable of producing the annual gross sales required in subsection (b). In addition, if the Applicant/Owner can demonstrate that the median annual gross sales has been met, such a demonstration would be conclusive evidence that this criterion is satisfied.

Section (g) below allows approval of the dwelling permit upon a demonstration that the farming operation is implemented prior to issuance of the building permit. Analysis and conditions required to ensure compliance with this section and section (g) are provided below.

*Staff finds that the subject tract is currently employed for a farm use. Staff finds that the Applicant/Owner can demonstrate that the proposed farm use is capable of producing the annual gross sales required by subsection (b) by satisfying Condition 7. This criterion is met with satisfaction of Condition 7.*

**(d) The subject lot or parcel on which the dwelling is proposed is not less than ten acres; and**

**Staff:** The subject tract is approximately 84.43 acres in area, exceeding the 10-acre requirement.

*Criterion met.*

**(e) except as permitted in ORS 215.283(1)(p) (1999 Edition)(i.e. seasonal farmworker housing), there is no other dwelling on the subject tract: and**

**Staff:** There are currently no dwellings located on the subject tract.

*Criterion met.*

**(f) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and**

**Applicant:** LUBA has construed the "principally engaged" requirement as requiring a demonstration that one or more persons in the home can devote the number of hours necessary to farm the land. *Alpin v. Deschutes County*, 2014 Or LUBA \_\_, (LUBA No. 2013-055 at 10) (3/12/2014). This is not a fixed amount of time and depends on the nature of the farm use. *Id.* Moreover, LUBA has stated that occupants of the home may be employed offsite so long as one or more occupants are able to devote the number of hours required for a farm use. *Id.*; *Oregon Natural Desert Association v. Harney County*, 65 Or LUBA 246, 262 (20 12). The Owner intends to commit to farm activities full-time once he is able to occupy the home, and several of the Owner's family members will also be "principally engaged" in operating the farm.

The property owner submitted documentation of the following persons currently engaged in farming practices, and future farming practices once the residence is established:

Current:

Scott Reed (property owner) 2 hours per day average.  
Gordon Welch (farm worker) 6 hours per day average.

Future, once residence is established:

Scott Reed (property owner) 8 hours per day average  
Gordon Welch (farm worker) 6 hours per day average

Family Members to be living in the residence:

Bruce Reed 8 hours per day average

Linda Hernandez 8 hours per day average

Barbara Rummonds 8 hours per day average

William Rummonds 4 hours per day average

Reed Children 1 hour per day for chores.

The farm use will include three primary aspects, as explained in the Farm Plan. The first is the dairy operation, which is currently underway. Activities will include raising milk cows and milking the cows. The milk generated will be sold commercially. The second aspect is raising the beef herd, which is already onsite and will be expanded from calves generated by the dairy herd. In support of these two farm uses will be the cultivation of grass and oats on the Property for livestock feed. Farming activities will include caring for livestock, planting/harvesting the oats, milking, bottling, and marketing the milk, and marketing the beef cattle and or meat. The third aspect of the farm operation will be the proposed vineyard. This will involve the planting, fertilizing, watering, pruning, and harvesting of grapes.

LUBA has expressly declined to define the meaning of “at a commercial scale.” *Oregon Natural Desert v. Harney County*, 42 Or 149, 173 (2002). The existing and proposed uses are at a commercial scale for two reasons. First, these uses represent utilization of the majority of the 84 acre subject property. At full utilization, farm uses will include 20 acres of oats, 20 acres of pastureland with associated farm buildings, including a milking parlor, and 10 acres of vineyard. Second, the products generated from these activities will be sold and are anticipated to generate a net annual income of \$43,650 after the vineyard reaches maturity. The combined dairy/beef farm operation is anticipated to generate in excess of \$80,000 in gross income.

In summary, the Owner and his family members, including his parents and his wife’s parents will occupy the dwelling. The property owner will be able to farm the property on average 8 hours per day and will be assisted by family members residing in the dwelling. The Owner’s family members currently live out of state and will be moving to the home to assist with farming once the home is constructed.

**Staff:** Consistent with LUBA case law identified by the Applicant, the requirement that an occupant of the home be principally engaged in the farm use is met if one or more persons in the home can devote the number of hours necessary to farm the land. The application materials demonstrate that property owner, Scott Reed, is farming at the site part time and a farm helper, Gordon Welch, has been farming the majority of the time in order to establish the farming practice. Application materials also indicate that once the dwelling is established, the property owner, Scott Reed, and his family members residing at the residence will be principally engaged in farming practices. A condition of approval has been adopted requiring that the proposed use satisfy all applicable requirements of MCC 33.2625(D)(3), which include a requirement that at least one occupant of the dwelling on site will be “principally engaged” in the farm use of the property.

*As conditioned, this criterion is met.*

**g. If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by subsection (c) of this section.**

**Staff:** Certain components of Owner’s proposed farm operation plan are already being implemented. This Permit is subject to a condition of approval designed to ensure full implementation of a farm operation at a level capable of producing the required annual gross sales of \$14,246.84 prior to issuance of any building permits. Per the conditions of approval, farm use activities may be changed as

needed by the Applicant as long as the farm use is capable of generating the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in subsection (a). Further, staff finds that the Farm Plan proposed by the Owner, described above and described further herein, is capable of meeting the annual gross sales requirement:

#### Raw Milk and Beef Production

Raw milk production from two cows producing approximately 5 gallons per day generating approximately 1,825 gallons per cow per year for a total production of 3,650 gallons of milk. The Owner proposes to sell the milk for \$12 per gallon. It is estimated that the raw milk sales will produce \$43,800 per year. Exhibit A.31 and A.32 provide the calculations of the median gross farm income within the study area determined pursuant to subsection (a).

The following raw milk sales documentation has been provided:

- 2013 Schedule F for the farm.
- Receipt for the purchase of 2,000 pounds of oats and 50 pounds of peas.
- May 2015 sales ledger of raw milk (but not for the entire year the application materials indicate the raw milk has been in production).
- Farm insurance policy.
- Signed affidavit from the property owner, Scott Reed, that he is the primary farmer.

In addition to raw milk production, the Owner also proposes to manage a herd of 8 beef cattle.

The Owner estimates a profit of \$15,140 per year with the milk and beef sales.

#### Vineyard for grape production

The plan also includes planting of 10 acres for growing of wine grapes to be sold to local wine makers. The original site plan submitted with the Application does not show the proposed location for the vineyard nor do the application materials present an implementation plan for the vineyard. Documentation was provided for estimated cost each year the vineyard will be in production, but timing for installation of the vineyard was not provided. The plan estimates the following profits:

Annual Revenue Year 1, \$0

Annual Revenue Year 2, \$0

Annual Revenue Year 3, \$27,000

Annual Revenue Year 4, \$67,500

Annual Revenue Year 5, (full production) \$52,490

Year 1 net operating income, \$52,490

Year 2 net operating income, \$52,490

Year 3 net operating income, \$25,490

Year 4 net operating income, \$15,010

Year 5 net operating income, \$28,510

#### Farm Structures

Currently, there is a temporary milking parlor and an accessory storage structure on site. However, these structures are in the location of the proposed dwelling and will be demolished to accommodate the dwelling construction. The Farm Plan calls for the construction of a new 24-foot by 40-foot permanent milking parlor and a 40-foot by 100-foot new feed barn. The Farm Plan does not define

when or where these structures will be built.

#### Supplemental/Secondary Income

- The Farm Plan includes supplemental income from the selling of eggs from the 50 plus chickens that are currently being raised on the farm. The property owner proposes to sell the eggs for \$5 per dozen. Egg sales information and documentation was not provided.
- The Owner indicated that a portion of the site has been planted with approximately 1,600 pine trees, which will be harvested and sold when ready at a future date.

Staff finds that implementation of the Farm Plan is sufficient to demonstrate that the farm use is capable of producing the annual gross sales required in subsection (b). Alternatively, if the Applicant/Owner can demonstrate that the median annual gross sales has been met, such a demonstration would be conclusive evidence that this criterion is satisfied. Staff therefore imposes Condition 7 to ensure that the farm use is capable of producing the annual gross sales required in subsection (b).

#### **MCC 33.2655 Single Family Dwelling Condition of Approval Prohibiting Prohibitions on Claims**

**As a condition of approval of a single family dwelling, the landowner for the dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.**

**Staff:** A condition of approval has been adopted requiring the property owner to sign and record the above-mentioned deed restriction.

#### **4.00 Significant Environmental Concern Criteria**

##### **33.4515 EXCEPTIONS**

**(A) Except as specified in (B) below, a SEC permit shall not be required for the following:**

**(1) Farm use, as defined in ORS 215.203 (2) (a), including buildings and structures accessory thereto on "converted wetlands" as defined by ORS 541.695 (9) or on upland areas.**

**Staff:** The subject tract is subject to the SEC-h (wildlife habitat) and the SEC-s (stream) overlays. In upland areas, farming practices and structures are exempt from SEC-h regulations. In contrast, not all farming practices are exempt from SEC-s regulations.

The Owner does not propose any farming practices in the SEC-s zone and a condition of approval of this Permit requires the filing of a Revised Site Plan demonstrating that neither farming practices nor structures will occur or be established in the SEC-s, except as otherwise permitted outright in the SEC-s zone.

##### **33.4567 SEC-h Clear and Objective Standards**

**At the time of submittal, the applicant shall provide the application materials listed in MCC 33.4520(A) and 33.4570(A). The application shall be reviewed through the Type I procedure and may not be authorized unless the standards in 33.4570(B)(1) through (4)(a)-(c) and (B)(5) through (7) are met. For development that fails to meet all of the criteria listed above, a separate land use application pursuant to MCC 33.4570 may be submitted.**

### **33.4570 Criteria for Approval of SEC-h Permit**

#### **(B) Development standards:**

**(1) Where a parcel contains any nonforested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.**

**Staff:** The proposed home will be located in an existing cleared portion of the site where a home was previously located.

*Criterion met.*

**(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**

**Staff:** The Applicant's site plan demonstrates that the single family home will be located within 200 feet of the road. However, the site plan submitted does not clearly demonstrate the location of the right-of-way or the accurate front yard setback. A condition has been adopted requiring submission of a revised scaled site plan prior to issuance of a building permit.

*As conditioned, the proposal complies with this criterion.*

**(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

**Staff:** The site plan demonstrates that the proposed driveway will not exceed 500 feet in length.

*Criterion met.*

**(4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:**

**(a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or**

**(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.**

**Staff:** The proposed driveway location will be located directly across from an access road, NW Rystadt Road, thereby satisfying subsection (b), above. Transportation Planning (the County Road Official) has reviewed the site plan and the proposed driveway location. There are currently three access points to the site. A condition has been adopted requiring two of the access points to be terminated prior to final occupancy of the dwelling. The proposed driveway location has been approved by transportation planning staff subject to the condition that the Applicant/Owner obtains an access permit at time of building permit submittal.

*The proposed driveway complies with this requirement.*

**(5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.**

**Staff:** The intent of this code section is to require developments to be clustered in order to create open space areas for wildlife habitat and to reduce potential human impact to the wildlife areas. The adjacent parcel to the west has a house located within 200 feet of the shared side property line. This is

the west side property line for the subject parcel. The proposed house is not within 300 feet of the shared side boundary line of the property to the west. However, staff believes the proposed location of the dwelling better meets the intent of the code language because the location will:

- Provide better clustering with the dwellings across Springville Road to the north of the property.
- Best maintains existing open space that provides access to an existing vegetative corridor across Springville Road (to the north). Access to the vegetative corridor on the north side of Springville Road would be blocked with the house sited within 300 feet of the west property line.
- The proposed location best accommodates competing code requirements and reduces the overall impacts associated with a residential development footprint. Driveway location, access spacing, and site distance standards only allow one location for the access drive to Springville Road for the subject property. In addition to driveway siting standards, the access drive for the property cannot be located elsewhere on site because of the SEC stream overlay and topography. Requiring the dwelling to be moved closer to the western property line would require the drive way length to be extended an additional 215 feet. The proposed driveway will be 450 feet in length. The clear and objective SEC criteria limit the driveway length to 500 feet. By requiring the house to be located within 300 feet of the western property line, the driveway length would have to be increased from 450 feet to approximately 615 feet, exceeding the allowed driveway length.
- The proposed location reduces the needed driveway length, creates a reduced residential development footprint on the site, and best clusters with the existing residential development on the north side of Springville Road.

*Criterion met.*

**(6) Fencing within a required setback from a public road shall meet the following criteria:**

**(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**

**(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**

**(c) Cyclone, woven wire, and chain link fences are prohibited.**

**(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**

**(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.**

**(f) Fencing standards do not apply where needed for security of utility facilities.**

**Staff:** The Applicant's narrative states that fencing is not proposed at this time. A condition of approval has been adopted requiring that any new fencing comply with these standards.

*Staff finds that it is feasible for future fencing on the property to meet the above standards.*

**(7) The nuisance plants listed in the table of this code section shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:**

**Staff:** The Applicant's narrative states that nuisance plants will be removed from the site and will not

be planted in the future. *As conditioned, the proposal complies with this requirement.*

*As conditioned, the proposed development can meet the standards of MCC 33.4570(B) and a Wildlife Conservation Plan is not required.*

### **33.4575 CRITERIA FOR APPROVAL OF SEC-S PERMIT –STREAMS**

**(B) Except for the exempt uses listed in MCC 33.4515, no development shall be allowed within a Stream Conservation Area unless approved by the Approval Authority pursuant to the provisions of MCC 33.4575 (C) through (F).**

**Staff:** See findings under MCC 34.4515(A)(1) above. *As conditioned, criterion met.*

## **5.00 Hillside Development Criteria**

### **33.5515 APPLICATION INFORMATION REQUIRED**

**An application for development subject to the requirements of this subdistrict shall include the following:**

**(A) A map showing the property line locations, roads and driveways, existing structures, trees with 8-inch or greater caliper or an outline of wooded areas, watercourses and include the location of the proposed development(s) and trees proposed for removal.**

**Staff:** The Applicant submitted a site plan showing some of the required features and, through the conditions of approval, is required to file a Revised Site Plan that satisfies this submittal requirement. In addition, the Applicant submitted a completed HDP-1 Form (Ex. A.9) and a geotechnical report (Ex. A.10) demonstrating that the site is suitable for construction of the proposed improvements provided that the recommendations identified in the report are followed.

*This Permit is subject to a condition requiring the Applicant/Owner to obtain a Grading and Erosion Control permit prior to any earth disturbing activities.*

**(B) An estimate of depths and the extent and location of all proposed cuts and fills.**

**Staff:** The estimated depths and extent of cuts and fills have been provided on the form HDP-1.

**(C) The location of planned and existing sanitary drainfields and drywells.**

**Staff:** The site plan demonstrates the proposed locations. Of note, a condition of approval has been adopted requiring the Applicant/Owner to obtain final septic system location and design approval from the Sanitarian prior to land use planning signing off on building permits.

**(D) Narrative, map or plan information necessary to demonstrate compliance with MCC 33.5520 (A). The application shall provide applicable supplemental reports, certifications, or plans relative to: engineering, soil characteristics, stormwater drainage, stream protection, erosion control, and/or replanting.**

**Applicant:** The Applicant has submitted a conceptual site plan showing the required components of MMC section 33.5520(A). This plan will be further refined at the time of submission for a Grading and Erosion Control Permit.

**Staff:** A Grading and Erosion Control permit must be obtained prior to commencement of earth disturbing activities.

*As conditioned, criterion met.*

**(E) A Hillside Development permit may be approved by the Director only after the applicant provides:**

**(1) Additional topographic information showing that the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a known landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or**

**(2) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,**

**(3) An HDP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with his/her stamp and signature affixed indicating that the site is suitable for the proposed development. (a) If the HDP Form– 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the HDP Form– 1, a geotechnical report as specified by the Director shall be prepared and submitted.**

**Applicant:** The Applicant has submitted a Geotechnical Report (Ex. A.10) and a site plan showing the areas of the site which contain slopes of 25% or more. The Geotechnical report has not documented any known landslide hazards on the site. The Applicant's Geotechnical report has provided several recommendations for site and building construction. These recommendations will be included within the design of the structures and site improvements.

**Staff:** The Applicant has submitted a completed HDP Form-1 (Ex. A.9) and a Geotechnical Report and Landslide Hazard Study (Ex. A.10), thereby satisfying subsections (E)(2) and (3). The reports state the subject site may be suitable for the proposed development if potential hazards are addressed as described in the report.

*This criterion is met. As noted above, final building design and site development must incorporate the recommendations identified in the Geotechnical Report to alleviate potential hazards (Exhibit A.10).*

#### **(F) Geotechnical Report Requirements**

**(1) A geotechnical investigation in preparation of a Report required by MCC 33.5515(E) (3) (a) shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The Report shall include specific investigations required by the Director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from earth movement hazards.**

**(2) Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the Geotechnical Report to ensure safety of the proposed development.**

**(3) Observation of work required by an approved Geotechnical Report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the Director prior to issuance of the Permit.**

**(4) The Director, at the applicant's expense, may require an evaluation of HDP Form– 1 or the Geotechnical Report by another Certified Engineering Geologist or Geotechnical Engineer.**

**Staff:** The Applicant submitted a stamped and signed HDP-1 Form and a Geotechnical Report and Landslide Hazard Study. The reports state the subject site may be suitable for the proposed development if potential hazards are addressed as described in the report (Exhibits A.9 and A.10).

*The Applicant's Geotechnical Report is consistent with the above requirements. Substantial evidence demonstrates that the Applicant will be able to comply with subsections (2) through (4), as applicable.*

*As noted above, final building design and site development must incorporate the recommendations identified in the Geotechnical Report to alleviate potential hazards (Exhibits A.9 and A.10).*

**(G) Development plans shall be subject to and consistent with the Design Standards For Grading and Erosion Control in MCC 33.5520 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.**

**Applicant:** The Applicant's proposed development will comply with MCC Section 33.5520. Compliance will be reviewed by the County upon receipt of the Applicant's submission for a Grading and Erosion Control Permit. The Applicant welcomes a condition of approval to obtain a Grading and Erosion Control Permit prior to the initiation of construction activities.

**Staff:** The Applicant has not yet submitted a grading and erosion control permit and has not provided application materials demonstrating compliance with applicable sections of MCC 33.5520. As set forth in the conditions of approval, Grading and Erosion Control permit must be obtained prior to commencement of earth disturbing activities.

*As conditioned, criterion met.*

**\*\*\* NOTE: FINAL BUILDING DESIGN AND SITE DEVELOPMENT MUST INCORPORATE THE RECOMMENDATIONS IDENTIFIED IN THE GEOTECHNICAL REPORT TO ALLEVIATE POTENTIAL HAZARDS (EXHIBITs A.9 and A.10).**

## **6.00 Transportation Standards**

### **MCRR 4.000 Access to County Roads**

**MCRR 4.100 Required Information:** Applicants for a new or reconfigured access onto a road under County Jurisdiction may be required to provide all of the following:

- A. Site Plan;**
- B. Traffic Study-completed by a registered traffic engineer;**
- C. Access Analysis-completed by a registered traffic engineer;**
- D. Sight Distance Certification from a registered traffic engineer; and**
- E. Other site-specific information requested by the County Engineer**

**Staff:** The Applicant proposes a new access onto *NW Springville Road* under County Jurisdiction. The road is classified as a *Rural Collector*. The new access is shown on the Applicant's site plan. All required information has been submitted.

**MCRR 4.200 Number:** Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property will be the standard for approval. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system.

**Staff:** The subject property is proposed to be served by one driveway. The site plan currently shows three access points, two of which are proposed to be demolished. A sight distance analysis has been conducted for the northern-most access, which is the proposed driveway.

*A condition has been added requiring demolition of the two access points southwest of the proposed permanent access point. An access permit will also be required. As conditioned, this standard is met.*

**MCCR 4.300 Location:** All new access points shall be located so as to meet the access spacing standards laid out in the Design and Construction Manual.

**Staff:** For a road classified as a *Rural Collector*, the spacing standard is 100 feet. The minimum distance is applied to both driveways on the same side of the street as well as driveways opposite to the site. The Applicant has submitted a site plan demonstrating that the proposed driveway can meet the spacing standard.

*This standard is met.*

**MCCR 4.400 Width:** Driveway and Accessway widths shall conform to the dimensions laid out in the Design and Construction Manual.

**Staff:** For a *Single Family Residential* use, a new or reconfigured driveway must be 12 to 25 feet wide. The Applicant's site plan demonstrates that the new driveway will be 20 feet wide.

*This standard is met.*

**MCCR 4.500 Sight Distance:** All new access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the Design and Construction Manual and AASHTO's A Policy on Geometric Design of Highways and Streets.

**Staff:** Multnomah County Road Rules Section 4.500 states that access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the County Design and Construction Manual or AASHTO's *A Policy on Geometric Design of Highway and Streets*. The Applicant has submitted for the review of the County Transportation Division a sight distance certification from a registered traffic engineer, which provides an assessment of sight distance at the intersection in question consistent with AASHTO standards. Per the submitted site distance analysis, sufficient site distance was found in both directions for safe and efficient operation of the site access. The study finds that vegetation near the access has to be cleared to provide a minimum of 350 feet of sight distance in the eastern direction. A condition has been added to reflect this.

*As conditioned, the standard is met.*

## **MCCR 5.000 Transportation Impact**

**MCCR 5.100** To determine if a Transportation Impact is caused by a proposed development, the County Engineer will determine the number of new trips generated by a site by one of the following methods:

- A. Calculations from the most recent edition of the Institute of Transportation Engineers' Trip Generation (ITE); or
- B. A site development transportation impact study conducted by a professional engineer registered in the State of Oregon and accepted by the County.

**MCCR 5.200** The County Engineer will use the information obtained pursuant to sub-section 5.100 and/or the frontage length of the subject property to determine the pro-rata share of the requirements set forth in Section 6.000.

**MCCR 5.300** Except where special circumstances require the County Engineer to make an alternate determination, any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than

**10 trips in the peak hour shall be found to have a *Transportation Impact*. A minimum increase of 10 new trips per day is required to find a transportation impact.**

**Staff:** The Multnomah County Road Rules defines a Transportation Impact as the affect of any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour [MCRR 3.000]. A minimum increase of 10 new trips per day is required to find a transportation impact.

According to the ITE Manual, 8<sup>th</sup> Edition, a single family dwelling generates 10 trips per day. The property is currently vacant. Therefore, a transportation impact will be caused by the proposed development since trips generated by the site will be increased by more than 20 percent.

### **MCRR 9.000 Compliance Method**

**MCRR 9.100 Once frontage or off-site improvement requirements have been established, one or any combination of the following methods must be used to satisfy those requirements::**

**9.400 Non-Remonstrance Agreement:** This agreement shall be recorded in the County’s Deed Records against the affected property and “runs with the land”, thereby obligating the property owner and any successors in interest to share in the cost of the necessary improvements and to not remonstrate (object) against a petition or resolution for necessary improvements. In approving this method, the County Engineer may require a temporary improvement appropriate to the circumstances.

**Staff:** A non-remonstrance agreement, or “deed restriction” will require that the property participate in standard rural collector road improvements along the site’s frontage that are not completed as a part of the site’s required interim improvements. The Applicant is not, at this time, required to construct improvements, therefore a deed restriction is required.

*A condition has been added to require the deed restriction. As conditioned, this standard is met.*

## **7.00 Conclusion**

Based on the foregoing findings and the record in this matter, the Applicant/Owner has demonstrated satisfaction of the standards and criteria, as proposed and with conditions of approval, for approval of a land use permit for a “dwelling customarily provided in conjunction with a farm use on not high-value farmland soils, capable of producing the median level of annual gross sales” pursuant to MCC 33.2625(D)(3), and for the associated Significant Environmental Concern-Wildlife Habitat and Hillside Development Permits.

## **8.00 Exhibits**

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural 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 T2-2014-3377 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	4/01/2014

A.2	13	Preliminary Title Report for Property Address 12535 NW Springville Road	4/01/2014
A.3	1	Site Plan – Sheet C2.1 a. Sheet C2.1 Site Plan	4/01/2014
A.4	12	Narrative for Non-High Value Soils Farm Dwelling	4/01/2014
A.5	16	Guidelines for Preparing Estimates of Potential Gross Sales for Farm Parcels by Oregon Counties dated August 15, 1996	4/01/2014
A.6	16	2012 Oregon County and State Agricultural Estimates dated May 2013	4/01/2014
A.7	1	2013 Farm Rates / SAV / MSAV	4/01/2014
A.8	7	Narrative for Significant Environmental Concern- Wildlife Habitat and Hillside Development criteria	4/01/2014
A.9	4	Hillside Development Permit Geotechnical Reconnaissance and Stability Preliminary Study [HDP Form 1]	4/01/2014
A.10.	18	Geotechnical Report & Landslide Hazard Study	4/01/2014
A.11	6	Fire Service Agency Review – 2 pages a. Email from Andrew Tull to Drew DeBois, TVFR – 1 page b. Letter from TVFR reviewing Access and Fire Flow – 2 page c. Site Plan attached to TVFR Review stamped by Fire Agency (Sheet C2.1) – 1 page	4/01/2014
A.12	1	On-Site Sewage Evaluation & Services Receipt	4/01/2014
A.13	3	Technical Memorandum regarding Sight Distance Evaluation	4/01/2014
A.14	6	Response to Incomplete Letter dated May 30, 2014	6/02/2014
A.15	8	Letter of Authorization from Dale Burger for Scott and Stacy Reed to submit the land use applications on the subject parcels dated May 11, 2014 a. Preliminary Title Report for Issuing Title Insurance	6/02/2014
A.16	1	Certification of Water Service	6/02/2014
A.17	1	Site Plan – Sheet C2.2	6/02/2014
A.18	1	Utility Plan – Sheet C3.0	6/02/2014
A.19	1	Grading Plan – Sheet C2.2	6/02/2014
A.20	1	Site Plan – Sheet C2.1	
A.21	1	New General Application Form due to the Reeds' purchasing property (new property owner)	7/15/2014
A.22	2	Statutory Warranty Deed transferring the property from Burger Farms, LLC to Scott and Stacy Reed on June 23, 2014 Recorded at 2014-061384	7/15/2014

A.23	4	Nationwide Agribusiness Farmowner Insurance Policy for Scott Reed	7/15/2014
A.24	1	PGE Bill for Stacy N. Reed at address 12534 NW Springville Road for May-June 2014	7/15/2014
A.25	6	Email from Scott Reed regarding incomplete application	7/15/2014
A.26	30	Photographs of cows, outbuildings, various equipment for milking cows	7/15/2014
A.27	5	Farm Agricultural Building Registration for two small buildings	8/25/2014
A.28	1	Letter from Michael Robinson, Perkins Coie regarding 60 day time extension dated September 25, 2014	9/26/2014
A.29	4	Response to Neighbors' Comments to Proposed Dwelling in Conjunction with Farm Use	10.15.2014
A.30	4	Letter from Garrett Stephenson regarding Scott Reed Application for a Farm Dwelling dated June 5, 2015	6/5/2015
A.31	1	Exhibit 1: Soil and Income Chart	6/5/2015
A.32	3	Exhibit 2: Undated Farm Income Tables	6/5/2015
A.33	21	Exhibit 3: Photos of Use	6/5/2015
A.34	6	Exhibit 4: Memo dated May 30, 2014 regarding Incomplete Letter	6/5/2015
A.35	10	Springwood Farm Business Plan	6/5/2015
A.36	1	2013 Schedule F	6/11/2015
A.37	1	May, 2015 Farm Sales Ledger	6/11/2015
A.38	1	Seed Purchase Receipt	6/11/2015
A.39	2	2015 Farm Insurance Coverage Summary	6/11/2015
A.40	1	Scott Reed Affidavit	6/11/2015
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1N1W16D – 02800	4/01/2014
B.2	2	A&T Property Information for 1N1W16D – 03100	
B.3	2	A&T Property Information for 1N1W15C – 00600	
B.4	1	DLCD Letter from Katherine Daniels, Farm and Forest Lands Specialist regarding Multnomah County's use of OAR 660-033-0135(2)	8/11/2014
B.5		Gross Sales Farm Income Report, Non-high Value Soils	
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	4/30/2014

C.2		Applicant's Acceptance of 180 Day Clock	
C.3	1	Complete Letter (Day 1 – August 13, 2014)	8/21/2014
C.4	8	Opportunity to Comment	8/25/2014
C.5		Administrative Decision	
'D'	#	Comments Received (if needed)	Date
D.1	1	Winkler Comments	8/28/2014
D.2	1	Plep Comments	9/4/2014
D.3	1	Cave Comments	9/4/2014
D.4	1	Goldfield Comments	9/8/2014
D.5	1	Goldfield Correction Email	9/8/2014

Name	R#	Address	Farm Tract Size	Deferral Program	Income
Malinowski	R324332, R324313, R504750	13130 NW Springville Rd	1.22 acres 9.35 acres 23.01 acres A&T 33.58 acres (Reed 33.02972)	Farm 7c & 10b Farm 7c, 10b & 7b Farm 7b, 14c, 21b, 43c	
Zahler	R324301, R324297	13937 & 14111 NW Springville Rd	20.07 acres 16.69 acres A&T 36.76 acres (Reed 37.47799)	Farm – (20)7b, 7c, 7d, & 14c Farm – 11.19 / Forest – 5.5 7b, 14c, 10b	
Tri-County Investments	R610456	14120 NW Springville Rd	A&T 38.32 acres (Reed 38.23117)	Farm 7b, 7c, 10b & 55	
Beovich	R324239	11525 NW Springville Rd	94.03 acres	Farm 7b, 7c, 7d, 7e, 7f	
Burnham	R324350 R324346, R324295, R324348, R324306, R324360	14419 & 14417 NW Springville Rd	2.18 acres 37.12 acres 34.05 acres 24.62 acres 15.38 acres 2.18 acres A&T 115.53 acres (Reed 114.7481)	Farm 7b, 7c, 10b Farm 30.12/Fort 7 [7b, 14c, 7c, 7d, 10b] Farm 28.05/Fort 6 [7b, 10b, 14c, 7c, 7d, 7e] Farm 7b, 7c, 7d Farm 7b, 7c, 7d, 7e Farm 7b, 7c, 14c	
Springville Investors	R324312	14425 NW Springville Rd	37.57 acres	Forest 24.57 acres NQ 13 acres	
Thomson	R106143, R106142	NW Old Germantown Rd	5.81 acres 29.72 acres A&T 35.53 acres	Forest	

(Reed 37.72158)

Description	Class	Percent of average of HV only	Combined weighted gross sales per acre	Estimated Potential Gross Sales Per Acre For Each Land Class
Dry	I	156%	\$ 432	<b>\$ 674.29</b>
Dry	II	112%	\$ 432	<b>\$ 484.11</b>
Dry	III	92%	\$ 432	<b>\$ 397.66</b>
Dry	IV	47%	\$ 432	<b>\$ 203.89</b>
Dry	V	24%	\$ 432	<b>\$ 103.74</b>
Irrigated	I	133%	\$ 2,282	<b>\$ 3,026.94</b>
Irrigated	II	86%	\$ 2,282	<b>\$ 1,960.31</b>
Irrigated	III	81%	\$ 2,282	<b>\$ 1,859.41</b>

## Stephenson, Garrett H.

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**From:** Carol Johnson <carol.johnson@multco.us>  
**Sent:** Friday, June 04, 2021 12:06 PM  
**To:** Stephenson, Garrett H.  
**Cc:** Katherine Thomas  
**Subject:** Case File T2-2014-3377

Hello Garrett,  
Please share the following with your client, Scott Reed.

Mr. Reed,

Your permit in Case File T2-2014-3377 has expired under the terms of the permit for failure to commence construction within the required time period.

The provision under which you originally obtained this permit remains available should you wish to file an application for a new permit. Alternatively, if you think you can meet the standards of one of the other customary farm dwelling provisions, you could make an application under one of those provisions.

Respectfully,  
Carol Johnson

### **Carol Johnson, AICP**

Land Use Planning Director  
*Multnomah County*  
Land Use Planning Division  
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pronouns: she/her/hers



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