

## NOTICE OF POTENTIAL APPEAL HEARING

If an appeal of this decision is filed, a public hearing will be held Friday, July 08, 2022 at 10:30 AM or soon thereafter via virtual meeting.

Interested parties may contact our office to register for this event. Please provide your name, phone number, and email address either by phone to (503) 988-3043 or by email to [land.use.planning@multco.us](mailto:land.use.planning@multco.us) **no later than 12:00 PM on Thursday, July 07, 2022.**

Any issue that is intended to provide a basis for an appeal to the Land Use Board of Appeals (LUBA) must be raised prior the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the County and all parties an opportunity to respond to the issue.

### Applicable Approval Criteria [Multnomah County Code (MCC)]:

General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3070 Lot of Record – EFU, MCC 39.3030 Lot of Record – CFU-2, MCC 39.4210 Definitions – EFU, MCC 39.6235 Stormwater Drainage Control, MCC 39.6850 Dark Sky Lighting Standards

Dwelling Customarily Provided in Conjunction with a Farm Use: MCC 39.4225(C) Review Uses – Dwelling Customarily Provided in Conjunction with a Farm Use, MCC 39.4240 Single Family Dwelling – Condition of Approval, MCC 39.4245(C), (D), (F), (H) Dimensional Requirements and Development Standards, *Former* MCC 39.4265(B)(3) (2021), *repealed by* Ordinance 1304 (2022) Standards for Specified Farm Dwellings – Not high-value farmland soils, capable of producing the median level of annual gross sales

Significant Environmental Concern (SEC-h): MCC 39.5510 Uses; SEC Permit Required, MCC 39.5520 Application for SEC Permit, MCC 39.5580 Nuisance Plant List, MCC 39.5860 Criteria for Approval of SEC-h Permit

Erosion and Sediment Control: MCC 39.6210 Permits Required, MCC 39.6225 Erosion and Sediment Control Permit

Geologic Hazards Exemption: MCC 39.5075 Permits Required, MCC 39.5080 Exemptions

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:

**Chapter 39 - Zoning Code**

**Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### **1.0 Project Description:**

**Staff:** Application for Approval of a Dwelling Customarily Provided in Conjunction with a Farm Use, Significant Environmental Concern for wildlife habitat permit, and Erosion & Sediment Control permit. The request includes an exemption from the Geologic Hazards permit requirements. According to the proposed development plans, there will be no development within the CFU-2 zoned portion of TL 600 or the area(s) within the Significant Environmental concern for streams (SEC-s) overlay.

Proposed development includes a main building of [over] approximately 11,200 sq. ft. and multiple support structures. The support structures identified in the applicant’s development plans include a ‘water quality facility’, septic system, and access road / driveway / service corridor. The proposed development plans note that the total disturbance area is 2.44 acres, with approximately 16,860 sq. ft. (0.39 acres) of new impervious surface.

### **2.0 Property Description & History:**

**Staff:** The subject tract is located in rural west unincorporated Multnomah County. The majority of the subject tract is zoned Exclusive Farm Use (EFU), with a portion of TL 600 zoned Commercial Forest Use – 2 (CFU-2). A stream runs northeast from the southwest portion of TL 2800 to the northwest portion of TL 600, where the stream forks. At the fork, one prong runs northeast towards NW Springville Road and the other prong runs east towards NW Springville Road. According to County Aerial Imagery (2021), the subject tract contains two large outbuildings and a number of assorted smaller structures.

A previous land use case (case no. T2-2014-3377) for an approval of a Customary Farm Dwelling, Significant Environmental Concern for wildlife habitat permit, and Hillside Development [now referred to as ‘Geological Hazards’ (GH)] permit expired on September 11, 2017. Land use case no. T2-2021-14768 affirmed that case no. T2-2014-3377 expired on September 11, 2017.

### **3.0 Public Comment:**

**Staff:** Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 (Exhibit C.4). Staff received public comments, noted below, during the 14-day comment period.

#### **3.1 Christopher Foster, property owner located at 15400 NW McNamee Road, submitted a letter via email on April 15, 2022 (Exhibit D.1)**

**Staff:** Foster cites two Land Use Board of Appeals (LUBA) cases that address the “principally engaged test.” As Foster notes, one of the purposes of the principally engaged test is to distinguish between [a] dwelling occupied by those principally engaged in farm use and [a] dwelling primarily used as a rural residence. Foster states that the applicant does not appear to

pass the “principally engaged test” and that the proposed building with a permit value of several million dollars, dwarfs the proposed farm use plan or purported profit return. Foster then notes that most would conclude the principal [proposed] land use is residential.

Staff addresses the approval criteria related to Foster’s comments in section 5.12.

**3.2 Scott Reed submitted [via email] a letter from Louie Beovich, property owner located at 11525 NW Springville Road, on April 19, 2022 (Exhibit D.2)**

**Staff:** Beovich noted their support for the project. Beovich’s comments do not correspond to any applicable approval criteria. *Comments noted.*

**3.3 Joe Hazel, property owner located at 12535 NW Springville Road, submitted an email on April 19, 2022 (Exhibit D.3)**

**Staff:** Hazel noted their support for the project. Hazel’s comments do not correspond to any applicable approval criteria. *Comments noted.*

**3.4 Scott Reed submitted [via email] a letter from John and Linda Talbot, property owners located at 12421 NW Springville Road, on April 19, 2022 (Exhibit D.4).**

**Staff:** The Talbot’s noted their support for the project. Talbots’ comments do not correspond to any applicable approval criteria. *Comments noted.*

**3.5 Scott Reed submitted [via email] a letter from Daniel and Judi Douglas, property owners located at 12455 NW Springville Road, on April 20, 2022 (Exhibit D.5)**

**Staff:** The Douglas’ noted their support for the project. Douglas’ comments do not correspond to any applicable approval criteria. *Comments noted.*

**3.6 Carol Chesarek, property owner located at 13300 NW Germantown Road, submitted a letter via email on April 21, 2022 (Exhibit D.6)**

**Staff:** Chesarek questioned if the applicant followed the proper procedures [for calculating annual gross sales] set forth in OAR 660-033-0135. Chesarek noted that it is unclear what indicator crops were included in the valuation, how the applicant calculated the annual gross sales, and highlighted discrepancies in the applicant’s calculations.

Chesarek also questioned the legitimacy of the egg sales claimed by the applicant, given the lack of advertisement, and licensing required for commercial sales. Chesarek disagreed that the applicant is principally engaged in a farm use due to principal employment at a development company.

Staff addresses the approval criteria related to Chesarek’s comments in sections 5.8 – 5.10, and 5.12.

**3.7 Raj Chinnakonda, community member, submitted an email on April 21, 2022 (Exhibit D.7)**

**Staff:** Chinnakonda provided pictures of water and soil run-off from the subject tract. They noted that the run-off has been a problem since “landscaping work” was conducted on the subject tract.

Staff references Chinnakonda’s comments in section 4.1 of this decision.

**3.8 Jerry Grossnickle, chair of the Forest Park Neighborhood Association (FPNA), submitted a letter on behalf of the Forest Park Neighborhood Association via email on April 21, 2022 (Exhibit D.8)**

**Staff:** FPNA noted concerns that the proposal can meet the County’s requirements for farmland dwellings. FPNA suggested denial of the applicant’s request because the application fails the fundamental “principally engaged in the farm use of the land” requirement. FPNA notes that the applicant(s) have careers wholly unconnected with farming and their children are school-aged, so they cannot be “principally engaged in the farm use of the land”. FPNA notes that it appears that the [proposed] principal engagement with the land is developing a rural residence and that the primary purpose of the land does not meet the “farm use” definition of ORS 215.203.

Staff addressed the approval criteria related to FPNA’s comments in section 5.12 of this decision.

**3.9 Audrey Yoo, community member, provided an email on April 21, 2022 (Exhibit D.9)**

**Staff:** Yoo noted their concerns with the loss of wildlife habitat that would result from approving the application.

Staff addressed the applicable approval criteria for a Significant Environmental Concern for wildlife habitat permit in sections 6.1 – 6.13.

**4.0 General Provisions:**

**4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.**

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

\* \* \*

**Staff:** Public comments (Exhibit D.7) suggest potential code violations including, but not limited to, Erosion and Sediment Control requirements. In the September 8, 2021 Incomplete Letter (Exhibit C.1), staff identified potential code violations related to previous development within the Significant Environmental Concern for stream (SEC-s) overlay. However, as the County is unable to approve the requested development at this time, staff has not addressed potential code violations on the subject property. *Criterion met.*

**4.2 MCC 39.3005 LOT OF RECORD – GENERALLY**

**(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.**

**(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.**

\* \* \*

**MCC 39.3070 LOT OF RECORD – EXCLUSIVE FARM USE**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the EFU 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**

\* \* \*

**MCC 39.3030 LOT OF RECORD – COMMERCIAL FOREST USE – 2**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 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**

\* \* \*

**Staff:** The County made a Lot of Record Determination for the subject tract in land use case no. T2-2014-3377. In the determination, the County found that the three tax lots identified as 1N1W16D -02800, 1N1W16D -03100, and 1N1W15C -00600 form a single Lot of Record. Based on current deed information available at the County Dept. of Records, Assessment & Taxation, the subject tract remains in the same configuration. Therefore, the subject tract remains a single Lot of Record. *Criteria met.*

**4.3 MCC 39.6235 STORMWATER DRAINAGE CONTROL**

**(A) Persons creating new or replacing existing impervious surfaces exceeding 500 square feet shall install a stormwater drainage system as provided in this section. This subsection (A) does not apply to shingle or roof replacement on lawful structures.**

**(B) The provisions of this section are in addition to and not in lieu of any other provision of the code regulating stormwater or its drainage and other impacts and effects, including but not limited to regulation thereof in the SEC overlay.**

**(C) The provisions of this section are in addition to and not in lieu of stormwater and drainage requirements in the Multnomah County Road Rules and Design and Construction Manual, including those requirements relating to impervious surfaces and proposals to discharge stormwater onto a county right-of-way.**

**(D) The stormwater drainage system required in subsection (A) shall be designed to ensure that the rate of runoff for the 10-year 24-hour storm event is no greater than that which existed prior to development at the property line or point of discharge into a water body.**

**(E) At a minimum, to establish satisfaction of the standards in this section and all other applicable stormwater-related regulations in this code, the following information must be provided to the planning director:**

**(1) A site plan drawn to scale, showing the property line locations, ground topography (contours), boundaries of all ground disturbing activities, roads and driveways, existing and proposed structures and buildings, existing and proposed sanitary tank and drainfields (primary and reserve), location of stormwater disposal, trees and vegetation proposed for both removal and planting and an outline of wooded areas, water bodies and existing drywells;**

**(2) Documentation establishing approval of any new stormwater surcharges to a sanitary drainfield by the City of Portland Sanitarian and/or any other agency authorized to review waste disposal systems;**

**(3) Certified statement, and supporting information and documentation, by an Oregon licensed Professional Engineer that the proposed or existing stormwater drainage system satisfies all standards set forth in this section and all other stormwater drainage system standards in this code; and**

**(4) Any other report, information, plan, certification or documentation necessary to establish satisfaction of all standards set forth in this section and all other applicable stormwater-related regulations in this code, such as, but not limited to, analyses and explanations of soil characteristics, engineering solutions, and proposed stream and upland environmental protection measures.**

**Staff:** According to the Stormwater Certificate, which lists Erik Esparza as the Professional Engineer (Exhibit A.23), the proposal requires the construction of an on-site storm water drainage control system. However, Erik Esparza's signature is not included in the signature block and the applicant did not provide the supporting documents dated February 12, 2022 (signed site plan, signed storm water system details, or the stamped and signed calculations) referenced on the Stormwater Certificate.

As noted in section 5.3 below, the applicant declined to submit a current Septic Review Certification for the proposal. The 2017 Septic Review Certification (Exhibit A.4) shows the water quality (storm water) facility in a different location.

Based on the above, staff is unable to find that the proposal complies with MCC 39.6235. *Criteria not met.*

**5.0 Customary Farm Dwelling Criteria:**

**5.1 MCC 39.4225 REVIEW USES**

\* \* \*

**(C) A dwelling, including a mobile or modular home, customarily provided in conjunction with a farm use subject to the standards in MCC 39.4265(B).**

**Staff:** The application includes a request for an Approval of a Dwelling customarily provided in conjunction with a farm use. Staff addresses the standards in MCC 39.4265(B) in sections 5.7 – 5.13 below.

**5.2 MCC 39.4240 SINGLE FAMILY DWELLINGS CONDITION OF APPROVAL - PROHIBITION ON CLAIMS ALLEGING INJURY FROM FARM OR FOREST PRACTICES**

**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:** The above requirement can be met through a condition. *Through a condition, this criterion can be met.*

**5.3 MCC 39.4245 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS**

**(C) Minimum Yard Dimensions – Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

\* \* \*

**Staff:** According to the proposed site and access plan (Exhibit A.16), the proposed building would be located approximately 30 ft. from the front property line, over 10 ft. from the west-side property line, over 10 ft. from the east-side property line, and over 30 ft. from the rear property line. *Standard met.*

According to the preliminary building elevations (Exhibit A.7), the building is a stepped design. The definition of ‘Building Height’ [MCC 39.2000] states, “The height of a stepped or terraced building is the maximum of any segment of the building or as amended by the State of Oregon Structural Specialty Code and Fire and Life Safety Regulations”. The preliminary building elevations show the building has segments of approximately 39 ft. – 45 ft. that exceed the maximum structure height of 35 ft. *Standard not met.*

**5.4 (D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

**Staff:** In the September 08, 2021 Incomplete Letter (Exhibit C.1), staff requested the applicant submit a current Transportation Planning Review form completed by the County Right-of-way office (Road Official). In the February 14, 2022 Applicant Response Letter (Exhibit C.3), the applicant declined to submit the requested review form and directed staff to an expired June 2017 driveway access permit (Exhibit A.9). As there is no documentation in the record that demonstrates the Road Official reviewed the current proposal, staff is unable to find that this criterion is met. *Criterion not met.*

**5.5 (F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the Lot of Record.**

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

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

**Staff:** In the September 08, 2021 Incomplete Letter (Exhibit C.1), staff asked the applicant to submit a current Septic Review Certification. In the February 14, 2022 Applicant Response Letter (Exhibit C.3), the applicant declined to submit the requested certification and directed staff to an August 2017 Septic Certification (Exhibit A.4). The 2017 Septic Certification states under ‘STEP-5 – Sign Off...’ that the Sanitarian’s approval was based on present knowledge of the area, and current regulations of the State of Oregon Department of Environmental Quality (DEQ).

Since 2017, the applicant conducted extensive grading on the site and relocated the proposed water quality (storm water) facility (Exhibits A.12, A.13 and A.18). Further, on November 1, 2017, DEQ revised their regulations [OAR Chapter 340, Divisions 071 and 073]. Due to the

lack of a current Septic Review Certification, staff is unable to determine if the County Sanitarian can approve the proposed on-site sewage disposal system.

In the September 08, 2021 Incomplete Letter (Exhibit C.1), staff also asked for a current Stormwater Certificate and supporting documents from an Oregon Licensed Engineer completing the Stormwater Certificate. The applicant provided a Stormwater Certificate with Erik Esparza, PE listed as the licensed engineer (Exhibit A.23). However, Erik Esparza's signature is not included in the signature block and the applicant did not provide the signed site plan, signed storm water system details, or the stamped and signed calculations referenced on the Stormwater Certificate.

Based on the above, staff is unable to find that the proposal complies with MCC 39.4245(F). *Criteria not met.*

**5.6 (H) All exterior lighting shall comply with MCC 39.6850.**

**MCC 39.6850 Dark Sky Lighting Standards**

\* \* \*

**(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.**

**(1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding. Shielding must be permanently attached.**

**(2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.**

**Staff:** According to the applicant's narrative, the proposed building will have exterior lighting that complies with the County Dark Sky Lighting Standards. There is no documentation supporting the applicant's statement. However, the above requirement can be met through a condition. *Through a condition, the criteria can be met.*

**5.7 FORMER MCC 39.4265(B)(3) (2021), repealed by Ordinance 1304 (2022)**

**MCC 39.4265 STANDARDS FOR SPECIFIED FARM DWELLINGS**

\* \* \*

**(B) Customary Farm Dwelling: A dwelling, including a mobile or modular home customarily provided in conjunction with a farm use as provided in MCC 39.4225(C) is not allowed unless the following standards are met:**

\* \* \*

**(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:**

**Staff:** The applicant’s narrative (Exhibit A.3) notes that there is a mixture of high-value and not high-value soils on the property. Due to the majority of the soil classifications being not high-value, the applicant states that the subject tract is considered not high-value soils.

According to County soil maps (pictured below) the subject tract (one tax lot identified in red outline and the other two tax lots with black stars) contains soils with classification 7D, 7E, 14C, 21B, 7B, and 7C. Three of the classifications are high-value soils, with 21B referring to Helvetia Silt Loam and 7B / 7C referring to Cascade Silt Loam.



The County soil maps support the applicant’s stance that the subject tract should be considered not high-value soils for the purposes of this review. Therefore, staff addresses the standards of MCC 39.4265(B)(3) (2021) below.

- 5.8 (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:** According to the applicant’s narrative (Exhibit A.3), there are five commercial farm or ranch tracts within a one-mile study area capable of generating at least \$10,000 in annual gross sales. The tracts identified by the applicant have a median size of 38.23 acres and the subject tract is 84.43 acres. In their narrative, the applicant provides a table (“Table 1”) to support their findings. In the September 8, 2021 Incomplete Letter (Exhibit C.1), staff requested details as to how the applicant completed the required commercial farm study, how the identified properties qualify as a commercial farm, how the applicant determined the median size pursuant to OAR 660-33-135(3), how they calculated the annual gross sales of county indicator crops for commercial farms, etc.

In the February 14, 2022 Applicant Response Letter (Exhibit C.3), the applicant references an attachment provided for staff to review. The referenced attachment (Exhibit A.21) is a copy of a 2014 study completed by a consultant for a previous land use application associated with the subject tract. In the 2014 study, there were three additional parcels not included in Table 1 (AltAccount R961160270, owned by Springville Investors, 37.57 ac; AltAccount R026702500, owned by Gregory Thomson, 5.81 acres; and AltAccount R026701700, owned by Gregory Thomson, 29.72 acres) (see Exhibit A.21, Table 1, Page 5). One of these parcels (R961160270) is entirely within one mile from the perimeter of the subject property, while another (R026702500) is partially within one mile. In the 2014 study, both of these properties were identified as being capable of producing over \$10,000 in annual gross sales and should be included in new Table 1. There is no further explanation regarding how the applicant conducted the study to assert that the identified tracts in Table 1 satisfy the above requirements.

*Based on the above, staff is unable to find that this standard is met. Standard not met.*

**5.9 (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:** According to the applicant’s narrative (Exhibit A.3), the median level of annual gross sales of county indicator crops of the commercial farm and/or ranch tracts used in subsection (a) is \$14,942.91. The applicant notes that the subject tract makes \$23,397.32 in annual gross sales. In their narrative, the applicant provides a table (“Table 2”) to support their findings. There is no further explanation regarding how the applicant conducted the study to assert the median level of annual gross sales in Table 2. There is also no documentation supporting the purported gross sales that the applicant attests to for the subject tract.

In the September 8, 2021 Incomplete Letter (Exhibit C.1), staff requested details on how the applicant completed the required commercial farm study, how the identified properties qualify as a commercial farm, how the applicant determined the median size pursuant to OAR 660-33-135(3), how they calculated the annual gross sales of county indicator crops for commercial farms, etc. Staff also requested sales reports and certified Schedule F form(s) from the applicant’s federal tax return for the year(s) associated with the sales figures noted in their narrative

In the September 14, 2022 Applicant Response Letter (Exhibit C.3), the applicant references an attachment provided for staff to review. The referenced attachment (Exhibit A.21) was a copy of a 2014 study completed by a consultant for a previous land use application associated with the subject tract.

The 2014 study provided detailed calculations to document the methodology used to prepare the study. However, there are errors in the categorization of the Land Classification. Rather than Land Classification I through V, the study references Land Class 2 through 6 in Table 3 (Exhibit A.21, Page 8). The potential Gross Sales Per Acre per Class in Table 3 appear to be derived from Table 11 (Exhibit A.21, Page 12) which uses the correct classification of Land Classification I through V. However, the values in Table 11 are not consistent with the results of the County’s Potential Gross Farm Sales Study (Exhibit B.11). The different values are shown in the table below.

A	B	C	D	E	F
DESCRIPTION	CLASS	ESTIMATED POTENTIAL GROSS SALES PER ACRES PER LAND CLASS	POTENTIAL EARNING CAPABILITY (from Exhibit A.21, Table 11)	CLASS (from Exhibit A.3, Table 2 and Exhibit A.21, Table 3)	POTENTIAL EARNING CAPABILITY (from Exhibit A.3, Table 2)
Dry	I	\$ 795.16	\$ 1,124.82		
Dry	II	\$ 570.88	\$ 870.56	2	\$ 484.11
Dry	III	\$ 468.94	\$ 663.36	3	\$ 397.66
Dry	IV	\$ 203.89	\$ 288.42	4	\$ 203.89
Dry	V	\$ 122.33	\$ 173.05	6	\$ 103.74
Irrigated	I	\$ 3,109.08	-		-
Irrigated	II	\$ 1,955.21	-		-
Irrigated	III	\$ 1,854.58	-		-

The values in columns C and D are from 2014. The applicant has not provided any explanation or documentation to support the values shown in column F. The detailed data used by the County in 2014 to prepare its study is no longer being produced. However, the United States Department of Agriculture (USDA) conducts a Census of Agriculture every five years. The most current census data available is from 2017 (Exhibit B.12) and shows that the per farm market value of products sold in Multnomah County declined by 1% from 2012. The values in column F are approximately 15% less than column C, and approximately 40% less than the values in column D. The lower values in column F are not supported by data from the USDA and result in a lower potential earning capability that the subject farm must meet in order to allow the development of a customary farm dwelling.

In the February 14, 2022 Applicant Response Letter (Exhibit C.3), the applicant declined to submit the sales / income information requested by staff. As the applicant declined to provide such information, there is no evidence in the record that supports the purported income noted by the applicant.

*Based on the above, staff is unable to find that this standard is met. Standard not met.*

**5.10 (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**

**Staff:** According to the applicant’s narrative (Exhibit A.3), the subject tract currently has 133 Golden Bovan pasture raised layers [chickens] producing 40,000 eggs per year. The eggs are collected, cleaned, inspected, packaged, refrigerated, and then delivered to customers every week. Residential customers pay \$6 per dozen and commercial customers pay \$5 per dozen. As the applicant further notes, they also breed and sell Boer goats. The applicant calculated the annual gross sales in (b) above as \$14,942.91. According to the applicant’s narrative, the eggs produce over \$16,625 in annual gross sales.

In public comments (Exhibit D.6), a commenter noted that they were unable to find an Oregon Department of Agriculture (“ODA”) egg handling license for the subject tract or the applicant. Oregon requires egg handling licenses for commercial egg sales. The commenter also noted that they were unable to find any information advertising the residential egg sales on common advertising sites (i.e. Next Door, Craig’s List, etc.), Local Harvest sites, or the Multnomah County Farm Bureau. Staff conducted a search of the ODA Food Safety License database (Exhibit B.10) and did not find an Oregon egg handling license associated with the subject tract or the applicant.

The applicant did not provide any evidence of the farm use(s) / income they describe in their narrative. In the September 08, 2021 Incomplete Letter (Exhibit C.1), staff requested sales reports and certified Schedule F form(s) from the applicant’s federal tax return for the year(s) associated with the sales figures noted in their narrative. Staff referenced MCC 39.4265(B)(3)(c) as the code section related to the request.

In the February 14, 2022 Applicant Response Letter (Exhibit C.3), the applicant declined to provide the information requested by staff. As the applicant declined to provide evidence of the farm uses(s) / income, there is no evidence in the record that supports the purported farm uses(s) / income noted by the applicant in their narrative. In *Friends of Marion County vs. Marion County (2021) [LUBA No. 2021-088]*, LUBA found that an applicant simply testifying to their [farm use] production or sales is not substantial evidence to support a conclusion affirming the farm use.

*Based on the above, staff is unable to find that this standard is met. Standard not met.*

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

**(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:** Current tax records list the subject tract as 84.43 acres. According to the applicant’s proposed development plans (Exhibit A.11), the subject tract does not currently contain a dwelling. Available County aerial imagery from 2021 supports the applicant’s assertion that the subject tract does not currently contain a dwelling.

*Based on the above, staff finds that these standards are met.*

**5.12 (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**

**Staff:** According to the applicant’s narrative (Exhibit A.3), the applicant (Scott Reed) is principally engaged in the farm use currently tending to the layers and goats. Further, the narrative states that Scott Reed will be one of the family members occupying the proposed building. The applicant did not provide any documentation to support that they are principally engaged in a farm use of the land. The applicant also did not provide any evidence of the purported farm use on the subject tract.

Three public comments questioned the claim that Scott Reed is principally engaged in a farm use on the subject tract (Exhibits D.1, D.6, and D.8). All three commenters noted that Scott Reed and his spouse (Stacy Reed) have careers that are principally engaged in non-farm uses. Scott Reed is the principal at Reed Realty Advisors, LLC [dba Reed Community Partners] a development company focused on multi-family housing (Exhibits B.7 – B.8). Stacy Reed operates Reed Dermatology Northwest, LLC (Exhibit B.9).

In public comments (Exhibit D.1), a commenter cited two Land Use Board of Appeals (LUBA) cases that address the “principally engaged test”. In *Alpin v. Deschutes County 69 OR LUBA 174 (2014)*, LUBA found that one of the purposes of the principally engaged test is to “distinguish between dwellings occupied by those principally engaged in farm use and dwellings primarily used as a rural residence.” In *Alpin*, the applicant failed the test as they were primarily engaged as a truck driver off the farm.

In *ONDA v. Harney County 42 LUBA 149 (05/14/2002)*, LUBA found that if the land will be principally used for residential purposes rather than farm use, a dwelling is not permitted. As the commenter (Exhibit D.1) points out, the proposed building with a permit value of several million dollars dwarfs the proposed farm use plan or purported profit return. The commenter then notes that most would conclude the principal land use is residential.

Based on the information in the record, Scott Reed and Stacy Reed are principally engaged in employment outside of a farm use and the principle use of the subject tract will be for rural residential purposes.

*Based on the above, staff is unable to find that this standard is met. Standard not met.*

- 5.13 (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:** The applicant’s narrative (Exhibit A.3) states that subsection (g) above is not applicable to their proposal, as they stated they established farm use(s) on the subject tract. Staff addresses the applicant’s position regarding the purported farm use(s) in section 5.10 above.

*Based on the above, this standard is not applicable.*

## **6.0 Significant Environmental Concern for Wildlife Habitat Permit Criteria:**

### **6.1 MCC 39.5510 USES; SEC PERMIT REQUIRED**

**(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart**

**(B) Any excavation or any removal of materials of archaeological, historical, prehistorical or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.**

**Staff:** The application includes a request for a SEC for wildlife habitat permit. According to the proposed development plans (Exhibit A.11), no excavation or removal of materials of archaeological, historical, prehistorical or anthropological nature is included in the development proposal.

## **6.2 MCC 39.5520 APPLICATION FOR SEC PERMIT**

**An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 39.5540 through 39.5860. (A) An application for an SEC permit shall include the following:**

**(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 39.5540 through 39.5860.**

**(2) A map of the property showing:**

\* \* \*

**Staff:** The applicant provided the information responding to MCC 39.5520 in Exhibits A.3, A.6, and A.11 – A.19.

## **6.3 MCC 39.5860 CRITERIA FOR APPROVAL OF SEC-H PERMIT**

**(A) In addition to the information required by MCC 39.5520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:**

\* \* \*

**Staff:** The applicant provided the information responding to MCC 39.5860(A) in Exhibits A.3, A.6, and A.11 – A.19.

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

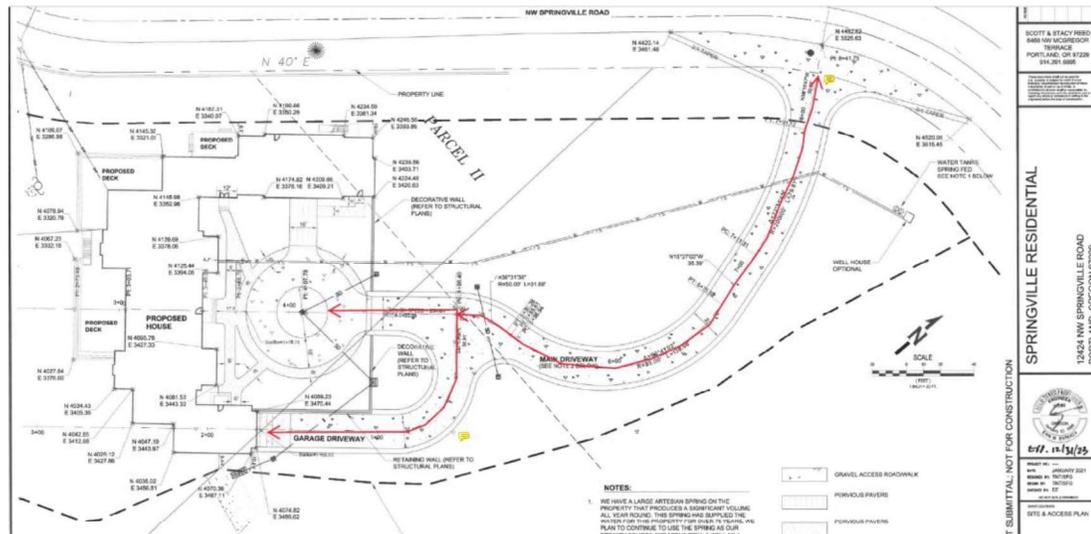
**(1) Where a parcel contains any nonforested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.**

**(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:** According to the applicant's narrative (Exhibit A.3), the project site is an existing cleared area. County GIS information supports the applicant's statement that the site is an existing cleared area. According to the proposed site and access plan (Exhibit A.16), the proposed development is approximately 30 ft. from NW Springville Road, a public road. *Standards met.*

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

**Staff:** According to the applicant, the road/driveway (not including the roundabout) is 466.97 ft. The proposed site and access plan (Exhibit A.16) shows the length of the access road/driveway and service corridor is approximately 589 ft. The image below is a copy of Exhibit A.16, which shows the access road/driveway and service corridor identified with red lines (with a portion of the roundabout not included for purposes of the illustration).



In the September 08, 2021 Incomplete Letter (Exhibit C.1), staff informed the applicant that the proposed access road/driveway and service corridor serving the development exceeds 500 feet. Staff noted that the applicant therefore needed to develop a Wildlife Conservation Plan that satisfies the requirements of MCC 39.5860(C). In the February 14, 2022 Applicant Response Letter (Exhibit C.3), the applicant declined to submit the requested Wildlife Conservation Plan. *Standard not met.*

**6.6 (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:** According to the proposed site and access plan (Exhibit A.16), the access road / driveway approach onto NW Springville Road, a public road, is directly across from the driveway approach on the opposite side of the road. *Standard met.*

**6.7 (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.**

**(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.**

\* \* \*

**Staff:** According to the proposed development plans (Exhibit A.11), the proposed development is within 300 ft. of the west-side property line. The proposed development plans (Exhibit A.11) do not show any proposed fencing. *Standard met.*

**6.8 (7) The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.**

**Staff:** The above standard can be met through a condition. *Through a condition, this standard can be met.*

**6.9 (C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.**

**(1) The applicant cannot meet the development standards of subsection (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or**

**(2) The applicant can meet the development standards of subsection (B), but demonstrates that the alternative conservation measures exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).**

**Staff:** There does not appear to be any physical characteristics unique to the property preventing the applicant from meeting the development standards of subsection (B). As the applicant could meet the development standards of subsection (B), but chose a design that does not comply with said standards, the applicant must demonstrate that the alternative conservation measures (wildlife conservation plan) satisfies (C)(2) above.

In the September 08, 2021 Incomplete Letter (Exhibit C.1), staff informed the applicant that the proposal did not satisfy MCC 39.5860(B)(3) and that the applicant needed to develop a Wildlife Conservation Plan that satisfies the requirements of MCC 39.5860(C). In the February 14, 2022 Applicant Response Letter (Exhibit C.3), the applicant declined to submit the requested Wildlife Conservation Plan.

As the applicant did not provide a wildlife conservation plan addressing MCC 39.5860(C), staff is unable to find that the proposal satisfies the above criteria. *Criteria not met.*

**6.10 (3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), the wildlife conservation plan must demonstrate the following:**

\* \* \*

**Staff:** The applicant did not provide a wildlife conservation plan addressing the criteria in (C)(5) or (C)(3). Therefore, staff is unable to find that the above criteria are met. *Criteria not met.*

**6.11 (4) For a property meeting subsection (C)(1) above, the applicant may utilize the following mitigation measures for additions instead of providing a separate wildlife conservation plan:**

\* \* \*

**Staff:** According to the proposed site and access plan (Exhibit A.16), the proposal does not involve an addition. Therefore, the above criteria are not applicable. *Criteria not applicable.*

**6.12 (5) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, the wildlife conservation plan must demonstrate the following:**

\* \* \*

**Staff:** The applicant did not provide a wildlife conservation plan addressing the criteria in (C)(3) or (C)(5). Therefore, staff is unable to find that the above criteria are met. *Criteria not met.*

**6.13 (6) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.**

**Staff:** The County's GIS information does not show the subject tract within a PAM Overlay. Therefore, this criterion is not applicable. *Criterion not applicable.*

**7.0 Geologic Hazards Permit Exemption Criteria:**

**7.1 MCC 39.5075 PERMITS REQUIRED**

**Unless exempt under this code or authorized pursuant to a Large Fill permit, no development, or ground disturbing activity shall occur: (1) on land located in hazard areas as identified on the Geologic Hazards Overlay map, or (2) where the disturbed area or the land on which the development will occur has average slopes of 25 percent or more, except pursuant to a Geological Hazards permit (GH).**

**Staff:** The subject tract contains areas within the mapped Geologic Hazards (GH) overlay [designated with an orange crosshatch], as shown in the image below. These areas within the GH overlay include a portion of the planned access road/driveway, which is marked with a

black star. The tract also contains areas with steeper slopes, as shown by the contour information in the image below. The image below is a screenshot of County GIS information.



In the September 08, 2021 Incomplete Letter (Exhibit C.1), staff informed the applicant that their narrative did not address which GH permit exemption(s) they believe applies to their project and does not describe or reference any supporting documents used to reach their conclusions. Staff further informed the applicant that because the subject tract is within the Tualatin River drainage basin, they do not qualify for the exemption listed in MCC 39.5080(N). Staff made a final note that the water quality (storm water) facility appeared to be on slopes exceeding 25%, based on contour information provided by the applicant.

In the February 14, 2022 Applicant Response Letter (Exhibit C.3), the applicant notes that they changed the proposed location for the water quality (storm water) facility to an area with an average slope less than 25%. The applicant then states, “None of the proposed sitework or construction is proposed on land located in hazard areas identified on the Geologic Hazards Overlay map or on land with an average slope of 25 percent or more. Therefore, we believe a Geological Hazard permit is not required”.

As shown in the image above, a portion of the proposed development (access road/driveway) is within the mapped GH overlay. The applicant provided a June 2018 Fire Service Agency Review form (Exhibit A.5). In the September 08, 2021 Incomplete Letter (Exhibit C.1), staff requested a current Fire Service Agency Review form completed by the applicant’s Fire Service Agency. The applicant declined staff’s request (Exhibit C.3). The 2019 Oregon Fire Code was effective November 15, 2019. Without a current fire agency review, the scope of ground disturbance needed to design an access road/driveway compliant with current fire code regulations is unknown at this time.

In the September 08, 2021 Incomplete Letter (Exhibit C.1), staff requested a current Transportation Planning Review form. The applicant declined (Exhibit C.3) and referenced an expired June 2017 access permit. The 2018 Multnomah County Road Rules (MCRR) were effective March 27, 2018. Due to the lack of a current review of the proposal by the County Right-of-way office, the scope of ground disturbance and materials needed to construct an access compliant with the current MCRR is unknown at this time

The applicant provided a survey of existing conditions as of November 11, 2021 (Exhibit A.11, p.3); which appears to support the applicant's statements regarding the slopes for the [relocated] water quality (storm water) facility. However, because there is development proposed within a portion of the GH overlay, a GH permit is required unless the applicant obtains an exemption under MCC 39.5080.

Staff addresses the Exemption criteria of MCC 39.5080 below.

## 7.2 MCC 39.5080 EXEMPTIONS

**Ground disturbing activity occurring in association with the following uses is exempt from GH permit requirements:**

**(A) An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation, nor exempt any excavation having an unsupported finished depth greater than four feet.**

\* \* \*

**(N) Uses not identified in subsections (A) through (M) that meet all of the following requirements:**

- (1) Natural and finished slopes will be less than 25 percent; and,**
- (2) The disturbed or filled area is 20,000 square feet or less; and,**
- (3) The volume of soil or earth materials to be stored is 50 cubic yards or less; and,**
- (4) Rainwater runoff is diverted, either during or after construction, from an area smaller than 10,000 square feet; and,**
- (5) Impervious surfaces, if any, of less than 10,000 square feet are to be created; and,**
- (6) No drainageway is to be blocked or have its stormwater carrying capacities or characteristics modified; and,**
- (7) The use will occur outside the Tualatin River and Balch Creek drainage basins.**

\* \* \*

**Staff:** In the September 08, 2021 Incomplete Letter (Exhibit C.1), staff informed the applicant that their narrative does not address which GH permit exemption(s) they believe applies to their project and does not describe or reference any supporting documents used to reach their conclusions. Staff further informed the applicant that because the subject tract is within the Tualatin River drainage basin, they do not qualify for the exemption listed in MCC 39.5080(N).

In the February 14, 2022 Applicant Response Letter (Exhibit C.3), the applicant states, "None of the proposed sitework or construction is proposed on land located in hazard areas identified on the Geologic Hazards Overlay map or on land with an average slope of 25 percent or more. Therefore, we believe a Geological Hazard permit is not required." The applicant, again, did not specifically address the GH permit exemption(s) criteria.

Based on the above, the applicant did not provide sufficient documentation for staff to find that the proposed ground disturbance activity is exempt from GH permit requirements. *Criteria not met.*

## **8.0 Erosion and Sediment Control Permit Criteria:**

### **8.1 MCC 39.6210 PERMITS REQUIRED**

**(A) Unless exempt under this Code, whether under MCC 39.6215, 39.5080, 38.5510 or otherwise, no ground disturbing activity shall occur except pursuant to one of the following permits: a Minimal Impact Project (MIP) permit, an Erosion and Sediment Control permit (ESC), an Agricultural Fill permit (AF), a Geologic Hazards permit (GH), or a Large Fill permit (LF).**

**(B) The permits referenced in subsection (A) are required in addition to and not in lieu of any other local, state or federal permit, including but not limited to permits required for ground disturbing activities within a water body regulated by the Oregon Department of State Lands, the U.S. Army Corps of Engineers or the Oregon Department of Fish and Wildlife.**

**(C) No ground disturbing activity shall occur except in support of a lawfully established use or in support of the lawful establishment of a use.**

**Staff:** As discussed in sections 7.1 – 7.2 above, the applicant did not demonstrate that the project is exempt from the Geologic Hazard (GH) permit requirements under MCC 39.5080. The applicant requested an Erosion and Sediment Control (ESC) permit as part of their application, and staff addresses the ESC permit standards below. *Criteria not met.*

**(D) No permit identified in subsection (A) shall be issued in any case where the planning director or a building official determines that the proposed ground disturbing activity will be hazardous by reason of flood, geological hazard, seismic hazard, or unstable soils; or is liable to endanger any other adjacent property; or result in the deposition of debris on any public right-of-way or property or water body; or otherwise create a nuisance.**

**Staff:** As discussed in sections 7.1 – 7.2 above, the applicant did not demonstrate that the project is exempt from the GH permit requirements under MCC 39.5080. Public comments (Exhibit D.7) noted the deposition of debris on a public trail adjacent to the subject tract. The commenter noted the debris appeared following ground disturbing activity conducted on the subject tract.

*Based on the above, staff is unable to determine that this criterion is met. Criterion not met.*

**(E) Responsibility. For any ground disturbing activity authorized under a permit listed in subsection (A):**

**(1) Whenever sedimentation is caused by ground disturbing activity, the person, corporation or other entity shall be responsible to remove that sedimentation from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project.**

**(2) It is the responsibility of any person, corporation or other entity doing ground disturbing activity on, in, under or around a water body, or the floodplain or right-of-way, to maintain as nearly as possible in its present state the water body, floodplain, or right-of-way during such activity, and to return the same to a functional condition equal to or better than the condition existing immediately prior to the ground disturbing activity.**

**(F) Implementation.**

\* \* \*

**Staff:** The requirements of (E) and (F) can be included as conditions. *Through conditions, these criteria can be met.*

**8.2 MCC 39.6225 EROSION AND SEDIMENT CONTROL PERMIT**

**(A) An application for an Erosion and Sediment Control permit shall include two copies of each of the following:**

**(1) A scaled site plan showing the following, both existing and proposed:**

- (a) Property lines;**
- (b) Buildings, structures, driveways, roads and right-of-way boundaries;**
- (c) Location of wells, utility lines, site drainage measures, stormwater disposal, sanitary tanks and drainfields (primary and reserve);**
- (d) Trees and vegetation proposed for removal and planting and an outline of wooded areas;**

\* \* \*

**(2) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20- year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). For purposes of this subsection, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area;**

**(3) A written description of the ground disturbing activity and any associated development, including:**

- (a) Specific timelines for all phases of work;**
- (b) With respect to fill:**
  - (i) Description of fill materials, compaction methods, and density specifications (with calculations). The planning director may require additional studies or information or work regarding fill materials and compaction.**
  - (ii) Statement of the total daily number of fill haul truck trips, loaded haul truck weight, and haul truck travel route(s) to be used from any fill source(s) to the fill deposit site.**
- (c) A description of the use that the ground disturbing activity will support or help facilitate.**

**Staff:** The applicant provided the information responding to MCC 39.6225(A) in Exhibits A.3, A.6, A.11 – A.19, and A.24

**(4) Surcharges to sanitary drainfields have been reviewed by the City of Portland Sanitarian or other agencies authorized to review waste disposal systems; and**

\* \* \*

**Staff:** The applicant declined to submit a current Septic Review Certification (Exhibit C.3). There is no documentation in the record demonstrating that the City of Portland Sanitarian reviewed any surcharges to sanitary drainfields. *Standard not met.*

**8.3 (B) An Erosion and Sediment Control (ESC) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:**

**(1) The total cumulative deposit of fill, excluding agricultural fill pursuant to an Agricultural Fill permit, on the site for the 20-year period preceding the date of the ESC permit application, and including the fill proposed in the ESC permit application, shall not exceed 5,000 cubic yards. For purposes of this section, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.**

**Staff:** According to the applicant’s ESC narrative (Exhibit A.24), the total cumulative deposit of fill, excluding agricultural fill is approximately 3,073 cubic yards. The development plans (Exhibit A.11, Page 1) state that the proposed “earthwork volume” is: a cut volume of 9330 cubic yards, a fill volume of 5220 cubic yards, and a net volume of 4110 cubic yards. The applicant did not provide any documentation to address the fill on the site for the 20-year period preceding the current application. Therefore, staff is unable to find that this standard is met. *Standard not met.*

**(2) Fill shall be composed of earth materials only.**

**Staff:** The applicant’s ESC narrative (Exhibit A.24) provided a one-word response of “Understood”. The applicant did not provide any information on the composition of the proposed fill materials. Therefore, staff is unable to find that this standard is met. *Standard not met.*

**(3) Cut and fill slopes shall not exceed 33 percent grade (3 Horizontal; 1 Vertical) unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in excess of 33 percent is safe (including, but not limited to, not endangering or disturbing adjoining property), and suitable for the proposed development.**

**(4) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts**

**or fill will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts and fills will not endanger or disturb adjoining property.**

**Staff:** According to the applicant's ESC narrative (Exhibit A.24), no slopes will be created that exceed 33 percent grade and the development does not propose any unsupported finished cuts or fill in or at a setback. As the applicant does not site any supporting documentation for their assertions, staff is unable to find that these standards are met. *Standards not met.*

**(5) Fills shall not encroach on any water body unless an Oregon licensed Professional Engineer certifies that the altered portion of the water body will continue to provide equal or greater flood carrying capacity for a storm of 10-year design frequency.**

**Staff:** According to the development plans (Exhibit A.11), the work boundary does not extend to the portion of the subject tract containing a stream. However, the applicant does not specifically address the fill location(s) in their ESC narrative, so staff is unable to find that this standard is met. *Standard not met.*

**(6) Fill generated by dredging may be deposited on Sauvie Island only to assist in flood control or to improve a farm's soils or productivity, except that it may not be deposited in any SEC overlay, WRG overlay, or designated wetland.**

**Staff:** According to the applicant's ESC narrative (Exhibit A.24), the proposal does not include fill from dredging. Again, the applicant did not provide specific documentation regarding the fill composition, so staff is unable to find that this standard is met. *Standard not met.*

**(7) On sites within the Tualatin River drainage basin, erosion, sediment and stormwater drainage control measures shall satisfy the requirements of OAR 340-041-0345(4) and shall be designed to perform as prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. Ground disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100 feet of a wetland: unless a mitigation plan consistent with OAR 340-041-0345(4) is approved for alterations within the buffer area.**

**Staff:** According to County GIS information, the subject tracts is within the Tualatin River Drainage basin. The applicant's ESC narrative (Exhibit A.24) notes that the project includes erosion, sediment, and stormwater drainage control measures, and includes a 200 ft. buffer from the top of bank of the stream located on the subject tract. As the applicant does not specifically address the requirements of OAR 340-041-0345(4), and the most recent edition of the City of Portland Erosion and Sediment Control Manual and City of Portland Stormwater Management Manual, staff is unable to find that this standard is met. *Standard not met.*

**(8) Ground disturbing activity shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction.**

**(9) Development plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff.**

**(10) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.**

**Staff:** The applicant's ESC narrative (Exhibit A.24) provided a one-word answer of "Understood" for the above standards. As the applicant did not specifically address how their proposal will meet the above standards, staff is unable to find that these standards are met. *Standards not met.*

**(11) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;**

**(a) A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100 feet of a wetland;**

**(b) The buffer required in subsection (11)(a) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041- 0345(4).**

**(12) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical.**

**Staff:** According to the development plans (Exhibit A.11), the proposal includes a 200 ft. buffer from the top of bank of the stream located on the subject tract. The requirements of (11)(b) and (12) can be met through conditions. *Through conditions, these standards can be met.*

**(13) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary.**

**Staff:** The applicant's ESC narrative (Exhibit A.24) provided a one-word response of "Understood". As the applicant did not provide specific information addressing the above requirements, staff is unable to find that this standard is met. *Standard not met.*

**(14) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized.**

**(15) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or**

**permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding.**

**Staff:** The applicant's ESC narrative (Exhibit A.24) provided a one-word response of "Understood". As the applicant did not provide specific information addressing the above requirements, staff is unable to find that this standard is met. *Standard not met.*

**(16) All drainage measures shall be designed to prevent erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system.**

**Staff:** The applicant's ESC narrative (Exhibit A.24) provided a one-word response of "Understood". The applicant provided a Stormwater Certificate with Erik Esparza as the listed Professional Engineer (Exhibit A.23). However, Erik Esparza's signature is not included in the signature block and the applicant did not provide the signed site plan, signed storm water system details, or the stamped and signed calculations referenced on the Stormwater Certificate.

As the applicant did not provide specific information addressing the above requirements, staff is unable to find that this standard is met. *Standard not met.*

**(17) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion.**

**Staff:** According to the proposed Erosion Control Plan & Details (Exhibit A.15), the project does not propose any drainage swales used to divert surface waters. *Standard met.*

**(18) Erosion and sediment control measures must be utilized such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to:**

**(a) Energy absorbing devices to reduce runoff water velocity;**

**(b) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;**

**(c) Dispersal of water runoff from developed areas over large undisturbed areas.**

**Staff:** The applicant's ESC narrative (Exhibit A.24) provided a one-word response of "Understood". The proposed Erosion Control Plan and Details (Exhibit A.15) does not address the above requirements. As the applicant did not provide specific information addressing the above requirements, staff is unable to find that this standard is met. *Standard not met.*

**(19) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient distance from water bodies or by other sediment reduction measures.**

**Staff:** The applicant’s ESC narrative (Exhibit A.24) provided a one-word response of “Understood”. As the applicant did not provide specific information addressing proposed spoil material or stockpiled topsoil associated with the project, staff is unable to find that this standard is met. *Standard not met.*

**(20) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.**

**Staff:** The applicant’s ESC narrative (Exhibit A.24) provided a one-word response of “Understood”. As the applicant did not provide specific information addressing the above requirements, staff is unable to find that this standard is met. *Standard not met.*

**(21) Ground disturbing activities within a water body shall use instream best management practices prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual.**

**Staff:** According to the proposed Erosion Control Plan & Details (Exhibit A.15), the project does not propose any ground disturbing activities within a water body. *Standard met.*

**(22) The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes.**

**Staff:** The applicant declined (Exhibit C.3) to submit a current Transportation Planning Review form completed by the County Right-of-way office. As a result, staff is unable to find that this standard is met. *Standard not met.*

**(23) Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way.**

**(24) No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill.**

**Staff:** The above standards can be met through conditions. *Through conditions, these standards can be met.*

## **9.0 Conclusion**

Based on the findings and other information provided above, the applicant has not carried the burden necessary for the Approval of a Dwelling Customarily Provided in Conjunction with a Farm Use, Significant Environmental Concern for wildlife habitat permit, Erosion & Sediment Control permit, and Geologic Hazards permit exemption to establish a Customary Farm Dwelling in the EFU zone. Therefore, the County is unable to approve the requested approval and permits.

## 10.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits
- ‘D’ Comments Received

Exhibits with a “\*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2021-14981.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	2	Application Forms	08.17.2021
A.2	1	Revised General Application Form	08.17.2021
A.3	22	Applicant Narrative	08.17.2021
A.4	7	August 2017 Septic Cert.	08.17.2021
A.5	7	June 2018 Fire Agency Review	08.17.2021
A.6	3	Preliminary Floor Plans [A-0.1, A-1.1, and A-2.1]	08.17.2021
A.7	3	Preliminary Elevation Drawings [A-4.1, A-4.2, and A-4.3]	08.17.2021
A.8	5	2017 Declaration of Deed Restriction	08.17.2021
A.9	11	2017 Driveway Access Permit	08.17.2021
A.10	4	2017 Recorded Waiver RE: Claims against farm or forestry practices	08.17.2021
A.11	14	Development Plans – Full Set	02.14.2022
A.12	1	2018 Survey of Existing Conditions	02.14.2022
A.13	1	2021 Existing Conditions Survey	02.14.2022
A.14	1	Demolition Plan [C-201]	02.14.2022
A.15	2	‘Erosion Control Plan’ and Details [C-301 & C-302]	02.14.2022
A.16	1	‘Site and Access Plan’ [C-401]	02.14.2022
A.17	2	Driveway and Garage Profile [C-501 & C-502]	02.14.2022
A.18	2	Grading Plans [C-601 & C-602]	02.14.2022
A.19	1	Drainage Details [C-603]	02.14.2022
A.20	1	Farm Use Plan [C-701]	02.14.2022
A.21	45	February 2014 Farm Income Study	02.14.2022
A.22	1	Certification of Water Service	02.14.2022

A.23	1	February 2022 Stormwater Drainage Control Certificate	02.14.2022
A.24	6	Erosion and Sediment Control Narrative	02.14.2022
A.25	5	Updated Farm Management Plan	02.14.2022
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1W16 – 02800 (Alt Acct# R961160130)	08.17.2021
B.2	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1W16D – 03100 (Alt Acct# R961160590)	08.17.2021
B.3	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1W15C – 00600 (Alt Acct# R961150770)	08.17.2021
B.4	1	Division of Assessment, Recording, and Taxation (DART): Map for 1N1W16D	02.14.2022
B.5	1	Division of Assessment, Recording, and Taxation (DART): Map for 1N1W15C	02.14.2022
B.6	1	Former MCC 39.4265(B) (2021)	04.07.2022
B.7	12	Copy of webpages from <a href="https://reedcommunity.com">https://reedcommunity.com</a>	05.11.2022
B.8	2	Copy of the Oregon State Business Registry for Reed Realty Advisors, LLC	05.11.2022
B.9	2	Copy of the Oregon State Business Registry for Reed Dermatology Northwest, LLC	05.11.2022
B.10	4	Copy of Oregon Dept. of Agriculture Food Safety License Search.	06.09.2022
B.11	4	Multnomah County Potential Gross Farm Sales Study	06.09.2022
B.12	2	USDA 2017 Census of Agriculture – Multnomah County	06.09.2022
<b>‘C’</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	5	Incomplete letter	09.08.2021
C.2	1	Applicant’s acceptance of 180 day clock	09.18.2021
C.3	4	Applicants response letter to County’s 09.08.2021 Incomplete Letter	02.14.2022
C.4	7	Opportunity to Comment	04.07.2022

C.5	12	Additional materials associated with the Opportunity to Comment as posted on the County's website	04.07.2022
C.6	32	Decision	06.14.2022
'D'	#	Comments	Date
D.1	2	Foster Letter	04.15.2022
D.2	2	Beovich Letter (provided by Scott Reed via email)	04.19.2022
D.3	1	Hazel Email	04.19.2022
D.4	2	Talbot Letter (provided by Scott Reed via email)	04.19.2022
D.5	2	Douglas Letter (provided by Scott Reed via email)	04.20.2022
D.6	12	Chesarek Letter	04.21.2022
D.7	5	Chinnakonda Email	04.21.2022
D.8	2	Forest Park Neighborhood Association Letter (provided by Chair Jerry Grossnickle via email)	04.21.2022
D.9	1	Yoo Email	04.21.2022