



Date: August 12, 2022

To: Alan Rappelyea, Hearings Officer

From: Scott & Stacy Reed, Property Owners
12424 NW Springville Road, Portland, OR 97229

Re: Applicant’s Presentation
Public Hearing on Appeal of Notice of Decision (T2-2021-14981)

The purpose of this Type II appeal is to highlight an error in Multnomah County Department of Community Services Land Use Planning Division’s (“LUP”) review of the application for the proposed farm dwelling at 12424 NW Springville Road in Portland and to address code sections identified in the Notice of Decision (dated June 14, 2022) as “Criteria not met” or “Standard not met”. Below is an outline of the Multnomah County Code sections that will be covered in this presentation. Each code section or LUP staff comments will be included in this presentation and all comments within the code section or staff comments made by the Reeds will be in **bold**.

0.0 - Complete Application - Required Information	
	39.1135 Completeness Review and 150-Day Rule
4.0 - General Provisions	
4.3	39.6235 Stormwater Drainage Control
5.0 - Customary Farm Dwelling Criteria	
5.1	39.4225 Review Uses
5.3	39.4245 Dimensional Requirements and Development Standards (C) Maximum Structure Height
5.4	39.4245 Dimensional Requirements and Development Standards (D) ...Right-of-Way
5.5	39.4245 Dimensional Requirements and Development Standards (F)(1) ...On-site Sewage Disposal (F)(2) ...Storm Water/Drainage Control
5.8	39.4265 Standards for Specified Farm Dwelling (a) ...Farm Income Capable
5.9	39.4265 Standards for Specified Farm Dwelling (b) ...Capable of Producing Median Level of Annual Gross Sales
5.10	39.4265 Standards for Specified Farm Dwelling (c) ...Currently Employed for a Farm Use at Level Capable of Producing the Annual Gross Sales
5.12	39.4265 Standards for Specified Farm Dwelling (f) ...Dwelling Will be Occupied by Persons Principally Engaged in Farm Use

6.0 - Significant Environmental Concern for Wildlife Habitat Permit Criteria		
6.5	39.586	Criteria for Approval of SEC-H Permit
	(B)	Development Standards
	(3)	...Driveway Shall not Exceed 500 Feet in Length
6.9	39.586	Criteria for Approval of SEC-H Permit
	(C)(1&2)	Wildlife Conservation Plan
6.10	39.586	Criteria for Approval of SEC-H Permit
	(C)(3)	Wildlife Conservation Plan
6.12	39.586	Criteria for Approval of SEC-H Permit
	(C)(5)	Wildlife Conservation Plan
7.0 - Geologic Hazards Permit Exemption Criteria		
7.1	39.5075	Geologic Hazard Permit
7.2	39.5080	Geologic Hazard Permit Exemptions
8.0 - Erosion and Sediment Control Permit Criteria		
8.1	39.6210	Permits Required - Geologic Hazards Permit
	(A&B&C)	Geologic Hazard Permit
	(D)	Geologic Hazard Permit
8.2	39.6225	Erosion and Sediment Control Permit
	(A)	Application for an Erosion and Sediment Control Permit
	(4)	Sanitary Drain fields Have Been Reviewed by the City of Portland
8.3	39.6225	Erosion and Sediment Control Permit
	(B)	Application for an Erosion and Sediment Control Permit
	(1)	Total Cumulative Deposit of Fill
	(2)	Fill Shall be Comprised of Earth Material Only
	(3)	Cut and Fill Slopes Will Not Exceed 33 Percent Grade
	(4)	Unsupported Finished Cuts
	(5)	Fills Shall Not Encroach on Any Water Body
	(6)	Fill Generated by Dredging
	(7)	...Erosion, Sediment and Stormwater Drainage Control Measures Shall Satisfy City Standards
	(8)	Ground Disturbing Activity Shall be Done in a Manner Which Minimize Soil Erosion
	(9)	Development Plans Shall Minimize Cut or Fill
	(10)	Temporary Vegetation
	(13)	Provisions Shall be Made to Effectively Accommodate Increased Runoff
	(14)	Sediment in the Runoff Water Shall be Trapped
	(15)	Provisions Shall be Made to Prevent Surface Water from Damaging the Cut Face of Excavations
	(16)	All Drainage Measures Shall be Designed to Prevent Erosion
	(18)	...No Visible or Measurable Erosion or Sediment Shall Exit the Site
	(19)	Disposed Spoil Material or Stockpiled Topsoil Shall be Prevented from Eroding into Water Bodies
	(20)	...Non-Erosion Pollution Shall be Continuously Monitored
	(22)	Total Daily Number of Fill Trucks Shall Not Cause a Transportation Impact

0.0

§ 39.1135

COMPLETENESS REVIEW AND 150-DAY RULE

- (A) Upon submission of a Type II or Type III application, or a Type IV zone change application, the Planning Director shall date stamp the application form and verify that the appropriate application fee has been submitted. The Planning Director will then review the application and evaluate whether the application is complete. Within 30 days of receipt of the application, the Planning Director shall complete this initial review and issue to the applicant a completeness letter indicating whether the application is complete. If not complete, the Planning Director shall advise the applicant what information must be submitted to make the application complete.

The Type II application was submitted via email on August 17, 2021 and the application fee of \$4,582.00 was paid on August 18, 2021 (see Exhibit C-Application Fee Paid). An overview of dates can be found in Exhibit A – Timelines. Copies of both emails can be found in Exhibit B-Email Correspondence.

Planning Director (via Chris Liu) issued initial completeness letter (“deemed incomplete”) on September 8, 2021.

- (B) Upon receipt of a letter indicating the application is incomplete, the applicant has 180 days from the original application submittal date within which to submit the missing information, or the application shall be void and all materials returned to the applicant. If the applicant submits the requested information within the 180-day period, the Planning Director shall again verify whether the application, as augmented, is complete. Each such review and verification shall follow the procedure in subsection (A) of this section.

The 180-day deadline was set by LUP as February 14, 2022. The Reeds submitted additional information on February 14, 2022 addressing the items outlined in the “incomplete” letter from September 8, 2021 via email. LUP confirmed receipt of the Reed information on February 16, 2022.

In the February 16, 2022 email from Chris Liu, he stated to Scott Reed “I will send you a completeness letter as soon as I am able to.” On March 11, 2022, Scott Reed sends Chris Liu an email and asks, “Have you finished the 30-day completeness review of the application?”

March 16, 2022 was the 30-day deadline for LUP to provide the Reeds with a completeness letter regarding their February 14, 2022 submission of additional information and comments. LUP never provided the completeness letter. Copies of all emails on this topic can be found in Exhibit B-Email Correspondence.

Chris Liu also committed to provide a completeness review once we provided the information requested in his September 8, 2021 initial completeness letter. Chris Liu wrote “Upon receipt of your packet, I will conduct a new completeness review of your application.” In the same letter he also wrote “Since there are a number of outstanding items, we may identify additional missing information/permits when you resubmit.” A copy of the initial incomplete letter can be found in Exhibit I- Initial Incomplete Letter.

It appears Chris Liu was unaware that Multnomah County Code required him to submit a second completeness letter within 30-days of receiving the additional submission on February 14, 2022. On March 17, 2022, Chris Liu emailed Scott Reed and said “February 14, 2022 was the deadline for responding to the incomplete items. That date has passed. I am reviewing the information you have provided.”

- (C) An applicant shall file within 30 days of the mailing of the initial completeness letter, a statement accepting the 180-day time period to complete the application. Failure of an applicant to accept the time to complete the application within 30 days of the mailing of the completeness letter will constitute a refusal to complete the application.

The initial completeness letter was sent by LUP to the Reeds on September 8, 2021. On September 18, 2021, Scott Reed emailed LUP a signed “Applicant’s Response” (see Exhibit D-Applicant’s Response).

- (D) Once the Planning Director determines the application is complete, or the applicant refuses to submit any more information, the County shall declare the application complete and take final action on the application within 150 days of that date unless the applicant waives or extends the 150-day period. The 150-day period, however, does not apply in the following situations:

The Reeds never refused to submit more information. In fact, the Reeds reached out to Chris Liu via multiple emails and calls asking him if he needs any additional information. After the February 14, 2022 submission of additional information from the Reeds, Chris Liu never asked for any additional information or any clarifying questions. Not one question from Chris Liu or anyone else at LUP regarding the materials submitted for the proposed farm dwelling for over 120 days until the Notice of Decision was issued.

- (1) Any hearing continuance or other process delay requested by the applicant shall be deemed an extension or waiver, as appropriate, of the 150-day period.

Not applicable

- (2) The 150-day period shall be replaced with a 120-day period on all lands within an Urban Growth Boundary or applications involving mineral extraction.

Not applicable

- (3) The 150-day period does not apply to any application for an amendment to the County's comprehensive plan or land use regulations nor to any application for a permit, the approval of which depends upon a plan amendment.

Not applicable

- (4) The 150-day period may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days.

Not applicable

- (5) The 120-day period on all lands within an Urban Growth Boundary or for applications involving mineral extraction may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days.

Not applicable

- (E) The approval criteria and standards which control the County's review and decision on a complete application are those which were in effect on the date the application was first submitted.

Not applicable

4.3

§ 39.6235

Stormwater Drainage Control

Staff comments from June 14, 2022 Notice of Decision:

“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.”

LUP and Chris Liu did receive signed and stamped site plans and storm water plans on February 14, 2022. This fact can be confirmed three different ways.

- 1. The Gmail account of Springwood Acres Farm archived an email to Chris Liu with the signed plans on February 14, 2022. The email included seven attachments. The sixth attachment was “C-Site Plan_2-12-2022.pdf”. See Exhibit E-Stamped & Signed Plans for a screenshot of the site plan cover page with Erik Esparza’s stamp and signature (all other plan pages are stamped and signed as well).**
- 2. The LUP has all the exhibits for this application on the link <https://www.multco.us/landuse/12424-nw-springville-road-hearing-1>. LUP Exhibit A.16 – Site and Access Plan clearly shows the stamped and signed plans.**
- 3. In the June 14, 2022 Notice of Decision, on page 18 LUP shows a screenshot of one sheet the site plan. On the screenshot, the stamp and signature of Erik Esparza is clearly on the site plan.**

In case Chris Liu needs to see these documents again, all the referenced documents have been resent to LUP via a Dropbox link along with this appeal presentation.

If signatures were missing from any plans submitted on February 14, 2022, Chris Liu should have sent the Reeds an incomplete letter within 30 days of receiving the site plans or simply asked for revised plan to be send to him.

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.

The Reeds never “declined to submit a current Septic Review Certification.” Scott Reed asked Chris Liu over the phone and via email multiple times if LUP had reviewed the site plan. Scott Reed needed to make sure that LUP was comfortable with the site plan because the City of Portland’s Bureau of Development Services requires a site plan as part of the Septic Evaluation Application. Scott Reed requested Chris Liu’s feedback again on March 11, 2022 via email regarding the site plan asking, “could you look at the site plan and see if it looks good enough to send to the fire and septic folks?” Chris Liu never replied to the question. Scott Reed completed the septic application with the site plan provided to LUP. The new septic approval is included in Exhibit F-Approved Septic Plan.

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

All storm water documents are stamped and signed by a registered engineer (see Exhibit P-Stormwater Certification & Exhibit Q-Stormwater Calculations). A current Septic Review Certification is included in the record (see Exhibit F-Approved Septic Plan). Criteria are met.

5.3

§ 39.4245

Dimensional Requirements and Development Standards, (C) Maximum Structure Height – 35 feet

Staff comments from June 14, 2022 Notice of Decision:

“According to the preliminary building elevations (Exhibit A.7), the building is a stepped design. 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 Co 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.”

The Reeds hired local residential architect Zach Freund (ARI-11937) of Homegrown Architecture LLC to review the proposed building plans and give an opinion on whether the building height maximum of 35’ is exceeded. A copy of the complete letter is included in Exhibit G-Building Height Letter.

The analysis by the architect was “In conclusion, the Multnomah County Zoning Code path yields a maximum building height of 31’-4.75” (141’-1” minus 109’-8.25”) and the 2019 Oregon Structural Specialty Code yields a maximum building height of 31’-7” (141’-1” minus 109’-6”) for the proposed structure. In both scenarios, the proposed structure at 12424 NW Springville Road in Portland, Oregon does not exceed the building height limit of 35’. It is my understanding and interpretation that the design reviewed for Springwood Acres meets the zoning requirement for Building Height. “

The building does not exceed 35 feet. This standard is met.

5.4

§ 39.4245

Dimensional Requirements and Development Standards, (D) ...right-of-way

Staff comments from June 14, 2022 Notice of Decision:

“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.”

The Reeds never “declined to submit the requested review form.” Scott Reed asked Chris Liu over the phone and via email multiple times if LUP had reviewed the site plan. Scott Reed needed to make sure that LUP was comfortable with the site plan because the Multnomah County Transportation Division requires a site plan as part of the Transportation Planning Review Application. Scott Reed requested Chris Liu’s feedback again on March 11, 2022 via email regarding the site plan asking, “could you look at the site plan and see if it looks good enough to send to the fire and septic folks?” Chris Liu never replied to the question. Scott Reed completed the Transportation Planning Review application with the site plan provided to LUP and paid the fees.

The Reeds are willing to accept a condition of the farm dwelling to approval of a transportation access permit, as conditioned in the previous approval (T2-2014-3377) (see Exhibit S-2015 Land Use Approval).

On August 10, 2022 the Reeds received a memorandum from Multnomah County Transportation indicating that two existing farm access points required either closure, granting of a road rules variance, or granting of nonconforming access permits.

Scott Reed has been working with Multnomah County on this project since 2014. He has gone through multiple pre-filing conferences, received land use approval for a farm dwelling, and received transportation approval for a driveway on this property. He’s been communicating with the Transportation Department on renewing the driveway permit since November 2021. Not once during the last 8 years, or the last 8 months and half dozen emails between Scott Reed and the Transportation Department has the staff ever brought up the existing 86-year-old farm access points on the property (see Exhibit H-1936 Farm Aerial).

But without any warning, two days before this Hearing, the Transportation Division emailed Scott Reed and said, “I realize this is a matter that may be introduced as part of the record of the appeal hearing (T2-2021-14981) on Friday (August 12, 2022)” and then proceeded to make the 86-year-old farm success points a new issue. The farm driveways have been in place for over 10 years before Multnomah County even had a Planning Department (1947). Today the existing farm access points only provide access to agricultural activities and forest access as they have for over 80 years.

The Reeds have had no time or ability to respond to this never mentioned issue. The Reeds are willing to accept a condition of approval that these additional farm access roads be either approved through the Existing Non-Conforming Access process or eliminated prior to occupancy.

5.5

§ 39.4245

Dimensional Requirements and Development Standards, (F)(1) ...On-site Sewage Disposal

Staff comments from June 14, 2022 Notice of Decision:

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 STEP-5 Sign Off based on present knowledge of the area, and current regulations of the State of Oregon Department of Environmental Quality (DEQ).

The Reeds never “declined to submit the requested certification.” Scott Reed asked Chris Liu over the phone and via email multiple times if LUP had reviewed the site plan. Scott Reed needed to make sure that LUP was comfortable with the site plan because the City of Portland’s Bureau of Development Services requires a site plan as part of the Septic Evaluation Application. Scott Reed requested Chris Liu’s feedback again on March 11, 2022 via email regarding the site plan asking, “could you look at the site plan and see if it looks good enough to send to the fire and septic folks?” Chris Liu never replied to the question. Scott Reed completed the septic application with the site plan provided to LUP. The new septic approval is included in Exhibit F-Approved Septic Plan.

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.

The new septic approval is included in Exhibit F-Approved Septic Plan.

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

The project has a current, approved Septic Review Certification. Criteria are met.

5.5 (continued)

§ 39.4245

Dimensional Requirements and Development Standards, (F)(2) ...Storm Water/Drainage Control

Staff comments from June 14, 2022 Notice of Decision:

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.

LUP and Chris Liu did receive signed and stamped site plans and storm water plans on February 14, 2022. This fact can be confirmed three different ways.

- 1. The Gmail account of Springwood Acres Farm archived an email to Chris Liu with the signed plans on February 14, 2022. The email included seven attachments. The sixth attachment was "C-Site Plan_2-12-2022.pdf". See Exhibit E-Stamped & Signed Plans for a screenshot of the site plan cover page with Erik Esparza's stamp and signature (all other plan pages are stamped and signed as well).**
- 2. The LUP has all the exhibits for this application on the link <https://www.multco.us/landuse/12424-nw-springville-road-hearing-1>. LUP Exhibit A.16 – Site and Access Plan clearly shows the stamped and signed plans.**
- 3. In the June 14, 2022 Notice of Decision, on page 18 LUP shows a screenshot of one sheet of the site plan. On the screenshot, the stamp and signature of Erik Esparza is clearly on the site plan.**

In case Chris Liu needs to see these documents again, all the referenced documents have been included as Exhibits O, P, and Q.

If signatures were missing from any plans submitted on February 14, 2022, Chris Liu should have sent the Reeds an incomplete letter within 30 days of receiving the site plans or simply asked for revised plan to be send to him.

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

The completed Stormwater Certificate, site plan, storm water system details, and calculations are all stamped and signed by an Oregon Licensed Engineer. Criteria are met.

5.8

§ 39.4265

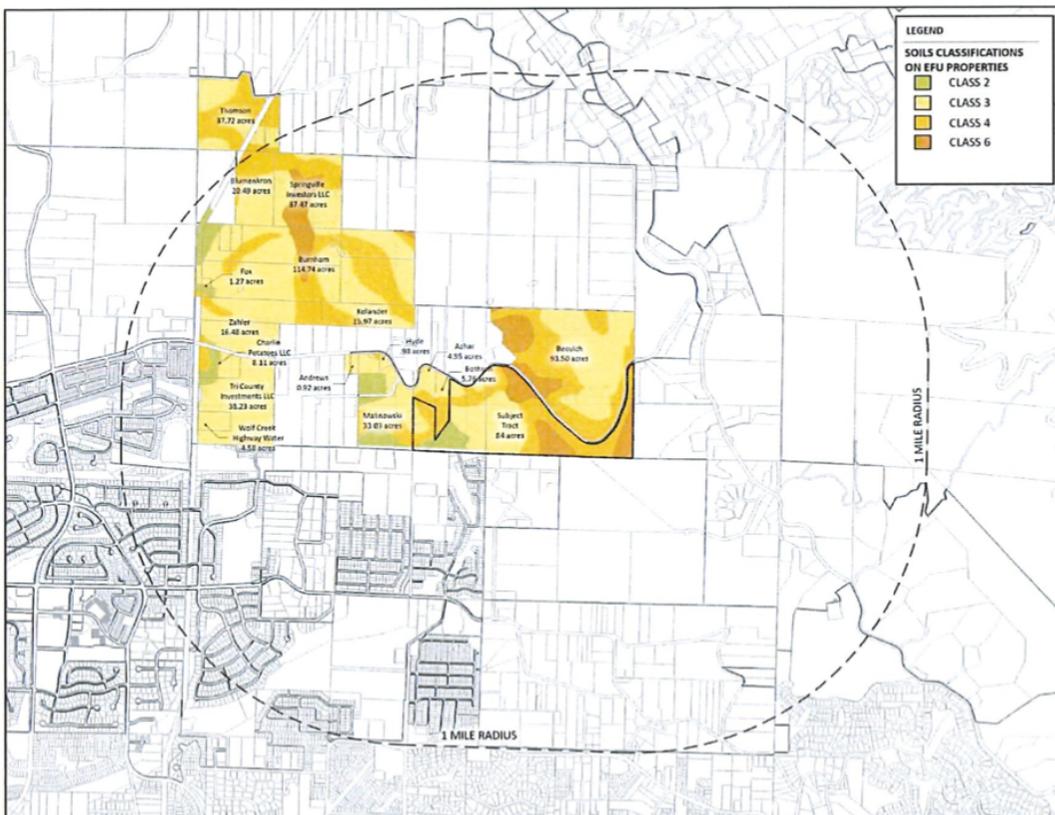
Standards for Specified Farm Dwelling, (a) ...Farm Income Capable

Staff comments from June 14, 2022 Notice of Decision:

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.

All the maps and tables below have already been shared with Multnomah County as part of this dwelling application.

The Reeds worked with 3J Consulting Inc. to produce a property map with a one-mile radius (see below). Then the team utilized RMLS property information, County zoning information, aerial photos, and soil maps to identify properties qualifying as a commercial farm.



Then we determined for each tract in the study area the number of acres in every land classification from the county assessor's data. Multnomah County hired CSA Planning Ltd .out of Medford, Oregon to produce estimated potential gross sales per acre for each land class (Exhibit T- Mult. Co. Potential Farm Income).

Taxlot Identification	Owners (2012 Data)	Acres	Tract Size	Capable of Generating at least \$10,000 in Annual Gross Sales (From Table 3)
1N1W16D -02300	ANDREWS	0.93244	0.93244	No
1N1W16D -03000	AZHAR	4.952087	4.952087	No
1N1W15C -00100	BEOVICH	93.49746	93.49746	Yes
1N1W16B -00200	BLUMENKRON	20.4861	20.4861	No
1N1W16D -02900	BOTHUM	5.757795	5.757795	No
1N1W16B -00800	BURNHAM	2.18639	114.7481	Yes
1N1W16B -01100	BURNHAM	36.7665		
1N1W16B -00700	BURNHAM	33.88826		
1N1W16A -00800	BURNHAM	24.72772		
1N1W16A -00700	BURNHAM	15.01256		
1N1W16B -00900	BURNHAM	2.166653		
1N1W16C -02500	CHARLIE POTATOES LLC	8.108644		
1N1W16B -01200	FOX	1.273808	1.273808	No

1N1W16D -02700	HYDE	0.975743	0.975743	No
1N1W16D -02100	KOLANDER	15.96546	15.96546	No
1N1W16D -03200	MALINOWSKI	22.69351	33.02972	Yes
1N1W16D -02600	MALINOWSKI	9.179862		
1N1W16D -02400	MALINOWSKI	1.156346		
1N1W16B -00100	SPRINGVILLE INVESTORS	37.47053	37.47053	Yes
1N1W09C -02500	THOMSON	32.25189	37.72158	Yes
1N1W09C -02400	THOMSON	5.469697		
1N1W16C -02301	TRI-COUNTY INVESTMENTS	38.23117	38.23117	Yes
1N1W16C -02302	WOLF CREEK	4.577849	4.577849	No
1N1W16C -00400	ZAHLER	16.4763	37.47799	Yes
1N1W16C -00100	ZAHLER	21.00169		

Based on the data above, the median tract size of properties capable of meeting the income threshold (\$10,000) is 37.97 acres. The farm is 84 acres, larger than the median size of the tracts within one mile, which are capable of generating at least \$10,000 in annual gross sales.

The following table has been prepared by calculating the earning potential for the tracts identified in Table 1 (above). The total potential gross sales figure has been updated with the only income study Multnomah County Land Use has provided to the Reeds (Exhibit T- Mult. Co. Potential Farm Income).

Table 2 - Potential Earning Capacity for Each Tract									
Tract Name	Acres in Each Land Class				Gross Sales Per Acre By Class				Potential Earning Capability
	Class 2	Class 3	Class 4	Class 6	Class 2	Class 3	Class 4	Class 6	
Andrews	0.01	0.93	0	0	\$570.88	\$468.94	\$203.89	\$122.33	\$441.82
Azhar	0	3.48	1.48	0	\$570.88	\$468.94	\$203.89	\$122.33	\$1,933.67
Beovich	0	43.81	36.7	12.97	\$570.88	\$468.94	\$203.89	\$122.33	\$29,613.64
Blumenkron	0	12.67	7.82	0	\$570.88	\$468.94	\$203.89	\$122.33	\$7,535.89
Bothum	0.27	2.38	3.11	0	\$570.88	\$468.94	\$203.89	\$122.33	\$1,904.31
Burnham	3.57	73.16	31.75	6.21	\$570.88	\$468.94	\$203.89	\$122.33	\$43,578.87
Charlie Potatoes LLC	2.99	3.51	1.6	0	\$570.88	\$468.94	\$203.89	\$122.33	\$3,679.13
Fox	0.7	0.44	0.14	0	\$570.88	\$468.94	\$203.89	\$122.33	\$634.49
Hyde	0	0.91	0.07	0	\$570.88	\$468.94	\$203.89	\$122.33	\$441.01
Kolander	0	8.85	7.11	0	\$570.88	\$468.94	\$203.89	\$122.33	\$5,599.78
Malinowski	12.13	13.62	7.35	0	\$570.88	\$468.94	\$203.89	\$122.33	\$14,810.33
Springville Investors LLC	0	17.75	10.19	9.53	\$570.88	\$468.94	\$203.89	\$122.33	\$11,567.13
Thompson	0.06	17.62	20.04	0	\$570.88	\$468.94	\$203.89	\$122.33	\$12,382.93
Tri-County	1.01	35.44	1.77	0	\$570.88	\$468.94	\$203.89	\$122.33	\$17,556.71
Wolf Creek Highway Water	0	4.58	0	0	\$570.88	\$468.94	\$203.89	\$122.33	\$2,147.75
Zahler	0.28	30.16	6.96	0	\$570.88	\$468.94	\$203.89	\$122.33	\$15,722.15
								Median:	\$15,722.15
Subject Tract	7.1	30.42	30.1	16.64	\$570.88	\$468.94	\$203.89	\$122.33	\$26,491.06

Based on the table above, the median annual gross sales figure for county indicator crops within the study area is \$15,722.15. The subject property is capable of earning \$26,491.06 based upon soil types and therefore exceeds the median annual production value for tracts within a one-mile radius.

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 (Alt Account R961160270, owned by Springville Investors, 37.57 ac; Alt Account R026702500, owned by Gregory Thomson, 5.81 acres; and Alt Account 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.

In the analysis on the previous page, the Springville Investors property and the Gregory Thomson property were added back into the sample.

The reason the Reeds originally removed those two properties for this 2021 application, is because Multnomah Planning previously asked that we remove those two properties (see page 12 of Exhibit R-Mult. Co. 2015 Finding of Fact). See request below from Planning in 2015.

“Staff reviewed the data and determined that two of the tracks are not eligible for the use because the tracts (Springville Investors and Thompson) are in a forest deferral program only and are not being utilized for commercial farming purposes.”

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

The Reed farm is 84 acres in size. Whether the two properties in question (Springville Investors and Thompson) are included or excluded from the analysis – resulting in a median tract size slightly higher than shown in the full analysis (38.2 acres vs 37.5 acres) it does not change the conclusion.

In any case, the farm sales analysis in Multnomah County Exhibit A.21 contains detailed methodology explaining every question raised in the incompleteness letter. The methodology and analysis presented in Multnomah County Exhibit A.21 are well-documented and the tables are consistent. It is unclear how staff continues to be unable to find the standard is met in 2021 when the Staff in 2015 was satisfied. The Reed farm at 84 acres is well above the median tract size of 37.5 acres identified in Multnomah County Exhibit A.21, Table 1, and potential farm income. Standard is met.

5.9

§ 39.4265

Standards for Specified Farm Dwelling, (b) ...Capable of Producing Median Level of Annual Gross Sales

Staff comments from June 14, 2022 Notice of Decision:

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.

Please refer to the response above in section 5.8 for a complete explanation regarding how the applicant conducted the study to assert the median level of annual gross sales in Table 2. The Reeds can provide the County access to past years federal income tax Schedule F, as they have done in the past for the County under separate cover. Below is a summary of 2020.

In 2020 schedule F, Springwood Acres Farm LLC produced \$44,511 of farm income from egg sales (\$43,386) and Boer goat sales (\$1,125). The total pasture raised eggs produced was 93,299 (86,769 usable, 6,530 cracked/thin shelled) resulting in 7,231 dozen eggs sold.

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.

Please refer to the response above in section 5.8 for a complete explanation regarding how the applicant conducted the study to assert the median level of annual gross sales in Table 2. The Reeds can provide the County access to past years federal income tax Schedule F, as they have done in the past for the County under separate cover.

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 land data from the 2014 study is still relevant because the commercial farmland has not moved or changed in size during the last 8 years.

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.

There are no farm tracts with Class 1 soil in the analysis area – soils are class 2, 3, 4, and 6. Class 6 soils were assigned Class 5 values because CSA Planning Ltd .out of Medford, Oregon did not produce values for Class 6 soils (Exhibit T- Mult. Co. Potential Farm Income). CSA Planning Ltd. is a consultant hired and directed by staff.

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 staff recent requested changes Table 2 has been updated below. Multnomah County is the party that provides the farm income data via their consultant CSA Planning Ltd. out of Medford, Oregon to produce estimated potential gross sales per acre for each land class (Exhibit T- Mult. Co. Potential Farm Income). If the staff orders updated farm income figures, then the Reeds will update the farm income study.

Table 2 - Potential Earning Capacity for Each Tract									
Tract Name	Acres in Each Land Class				Gross Sales Per Acre By Class				Potential Earning Capability
	Class 2	Class 3	Class 4	Class 6	Class 2	Class 3	Class 4	Class 6	
Andrews	0.01	0.93	0	0	\$570.88	\$468.94	\$203.89	\$122.33	\$441.82
Azhar	0	3.48	1.48	0	\$570.88	\$468.94	\$203.89	\$122.33	\$1,933.67
Beovich	0	43.81	36.7	12.97	\$570.88	\$468.94	\$203.89	\$122.33	\$29,613.64
Blumenkron	0	12.67	7.82	0	\$570.88	\$468.94	\$203.89	\$122.33	\$7,535.89
Bothum	0.27	2.38	3.11	0	\$570.88	\$468.94	\$203.89	\$122.33	\$1,904.31
Burnham	3.57	73.16	31.75	6.21	\$570.88	\$468.94	\$203.89	\$122.33	\$43,578.87
Charlie Potatoes LLC	2.99	3.51	1.6	0	\$570.88	\$468.94	\$203.89	\$122.33	\$3,679.13
Fox	0.7	0.44	0.14	0	\$570.88	\$468.94	\$203.89	\$122.33	\$634.49
Hyde	0	0.91	0.07	0	\$570.88	\$468.94	\$203.89	\$122.33	\$441.01
Kolander	0	8.85	7.11	0	\$570.88	\$468.94	\$203.89	\$122.33	\$5,599.78
Malinowski	12.13	13.62	7.35	0	\$570.88	\$468.94	\$203.89	\$122.33	\$14,810.33
Springville Investors LLC	0	17.75	10.19	9.53	\$570.88	\$468.94	\$203.89	\$122.33	\$11,567.13
Thompson	0.06	17.62	20.04	0	\$570.88	\$468.94	\$203.89	\$122.33	\$12,382.93
Tri-County	1.01	35.44	1.77	0	\$570.88	\$468.94	\$203.89	\$122.33	\$17,556.71
Wolf Creek Highway Water	0	4.58	0	0	\$570.88	\$468.94	\$203.89	\$122.33	\$2,147.75
Zahler	0.28	30.16	6.96	0	\$570.88	\$468.94	\$203.89	\$122.33	\$15,722.15
								Median:	\$15,722.15
Subject Tract	7.1	30.42	30.1	16.64	\$570.88	\$468.94	\$203.89	\$122.33	\$26,491.06

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

The Reed’s farm is significantly larger than the sample set and provides significantly higher income potential than the median tract in the study area, and the standard is relative to the median value. Exhibit A.21 shows the Reed farm has an income potential of \$37,474 – which is higher than the median income potential of \$23,540. Using staff values in the updated Table 2 (above), the Reed property would have an income potential of \$26,491.06 and the median tract would have an income potential of \$15,722.15. In every set of values, the Reed farm significantly exceeds the threshold to meet the standard. Standard is met.

5.10

§ 39.4265

Standards for Specified Farm Dwelling, (c) ...Currently Employed for a Farm Use at Level Capable of Producing the Annual Gross Sales

Staff comments from June 14, 2022 Notice of Decision:

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 \$14,942.91. According to the applicant's narrative, the eggs produce over \$16,625 in annual gross sales.

Original application was filed in August 2021 which was a slow year for the farm with the Covid-19 pandemic and the surging cases in the state. The prior year of 2020 was much better for the farm before the limits on contact hurt sales. As of August 2022, the farm has over 300 Golden Bovan capable of producing over 90,000 eggs per year and we are working to get back to 2020 egg sales levels.

In 2020 schedule F, Springwood Acres Farm LLC produced \$44,511 of farm income from egg sales (\$43,386) and Boer goat sales (\$1,125). The total pasture raised eggs produced was 93,299 (86,769 usable, 6,530 cracked/thin shelled) resulting in 7,231 dozen eggs sold.

In public comments (Exhibit D.6), a commenter noted that they were unable to find an Oregon Department of Agriculture 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 Oregon Department of Agriculture issues "Egg Handler" and "Egg Breaker" licenses for the state's egg industry. Below is a summary from their website. The highlighted section below shows that the Reed's method of production and sales does not require an egg handlers license because they are "selling and delivering" their "own eggs directly to an individual customer." All Springwood Acres Farm egg cartons are labeled.

<https://www.oregon.gov/oda/programs/foodsafety/fslicensing/pages/eggs.aspx>

Egg handler license

Producer is required to have an egg handler license for the following:

- **Selling or distributing eggs to consumers, retailers, cafes, bakeries, hospitals, schools, boarding houses or institutions.**

Producer is not required to have an egg handler license when the following applies:

- **Producer is selling and delivering their own eggs direct to an individual consumer (including farmers' market), but labeling is required.**
- **Producer sells only ungraded eggs to a dealer.**

Retailer is required to have an egg handler license in the following situations:

- **Retailer grades eggs.**
- **Retailer packages graded eggs in his own cartons.**

Retailer is not required to have an egg handler license in the following situation:

- **Retailer sells to the consumer, eggs that have been previously candled and graded by an egg handler in compliance with ORS 632.705 to 632.815.**

Egg breakers license

Required for any person engaging in the commercial breaking of eggs for the purpose of recovering whites, yolks, or whole eggs for human food.

Springwood Acres Farm has a waitlist of customers wanting pasture raised eggs delivered. Every week we sell all the eggs we produce. The farm will begin to advertise beyond the local St. Pius X community in Cedar Hills once a surplus of are eggs produced.

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 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 2020 schedule F, Springwood Acres Farm LLC produced \$44,511 of farm income from egg sales (\$43,386) and Boer goat sales (\$1,125). The total pasture raised eggs produced was 93,299 (86,769 usable, 6,530 cracked/thin shelled) resulting in 7,231 dozen eggs sold.

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.

The Reeds can provide the 2020 schedule F, Springwood Acres Farm LLC produced \$44,511 of farm income under separate cover. In the 2015 Land Use Permit (Case File: T2-2014-3377, page 17), staff gave condition approval on the farm income question (see below).

“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).”

5.12

§ 39.4265

Standards for Specified Farm Dwelling, (f) ...Dwelling Will be Occupied by Persons Principally Engaged in Farm Use

Staff comments from June 14, 2022 Notice of Decision:

(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.

Scott Reed runs the farm and is on the farm everyday he is in Portland, usually from sunup to sundown. Scott makes all the decisions on farm operations, planning, budget, breed selection, breeding schedule, feed mix/source and also raises the layer chicks, delivers newborn goats (“kids”), moves the chicken flocks to new pastures, collects/cleans/packages the eggs, delivers the eggs (with sons), seeds the fields, repairs the tractors/equipment, manages predatory wildlife, builds fences, installs water lines, provide first aid to livestock, and a lot of other farm activities. Some pictures of Scott Reed’s farm work are included in Exhibit U- Photo Proof of Farm Work.

In 2021, the farmers in Multnomah County nominated Scott Reed to become a Board Member of the Multnomah County Farm Bureau and to represents farmers in the county.

Scott Reed can also provide additional receipts, breeder contacts, hatchery contacts, and anything else the staff can think of to send as proof of principal engagement on the farm.

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).

Scott Reed is principally engaged in farm use on the subject tract (Springwood Acres Farm, LLC) and has been for over five years. Scott Reed works over 40 hours a week on the farm all year round. He works less than half time as a developer/investor of apartments. When Scott Reed moves into the proposed dwelling on the farm, he is going to ramp up the livestock on the farm and stop future apartments work.

Stacy Reed works approximately 10 hours a week on the farm. Stacy Reed works full-time as a Dermatologist.

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 residential.” In Alpin, the applicant failed the test as they were primarily engaged as a truck driver off the farm.

Scott Reed is working on the farm nearly every day and spends well over 40 hours a week at the farm working. Scott Reed is not a truck driver, and he is rarely 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.

Scott Reed has not met this “commenter” in person. But the actual farmers in Multnomah County nominated Scott Reed to represent them on the Multnomah County Farm Bureau as a Board Member in 2021.

The farm is 84 acres. Only 3 acres will be used to house the Reed family (Scott, Stacy, Taylor, Quade, Grant, Knox) and their aging parents (Barbara, Bill, Bruce, Linda). The rest of the farm is used for livestock. Every day the farm has hundreds of live farm animals to feed, protect, and shelter. Scott Reed buys feed by the truckload. This property is not a residential property, it is a farm.

Based on the information in the record, Scott Reed and Stacy Reed are principally engaged in employment outside of a farm use and the principal 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.

Scott Reed grew up going to his grandparents’ farms in Redmond, Oregon and Fresno, California. He has always wanted to be a farmer. At the University of California, Davis (“Aggies”) he studied poultry science in addition to his economic/political science majors. Scott Reed saved up for years to buy the long abandoned former dairy farm at 12424 NW Springville Road. The farm in 2014 had no electric power or functioning water system. The fences were broken, and the roads were mud. The pastures had been overgrown with hawthorn trees and blackberries. In 2014, before Scott Reed purchased the farm there were no livestock on the property.

After 8 years for non-stop work, Scott Reed has installed miles of new fences, thousands of tons of gravel to the roads, brought in permeant power to the upper and lower fields, built new barns, installed a water system to all areas of the pastures, increased the topsoil, raised over 20 shorthorn cattle, over 40 Tamworth hogs, over 1,000 chickens, over 40 goats, and a handful of other farm animals. A lot of work but a dream come true.

Scott Reed is principally engaged in the farm and will occupy the proposed dwelling. Standard met.

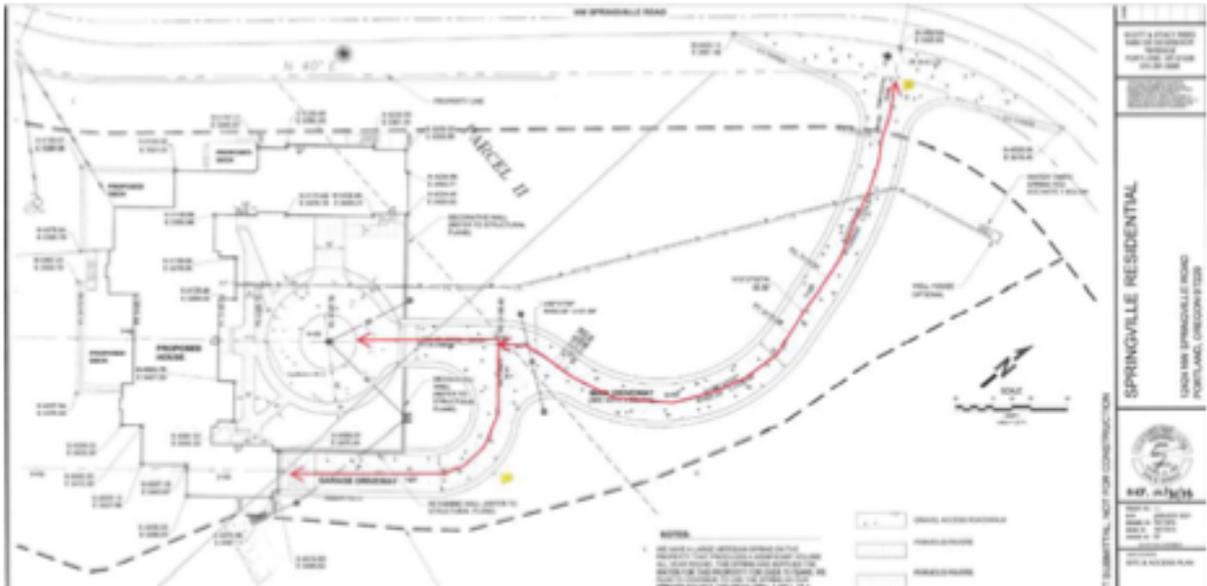
6.5

§ 39.586

Criteria for Approval of SEC-H Permit, (B) Development Standards (#) ...Driveway Shall Not Exceed 500 Feet in Length

Staff comments from June 14, 2022 Notice of Decision:

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.

The Reeds never “declined to submit the requested the requested Wildlife Conservation Plan.” The civil engineer of record measured the driveway utilizing a CAD program at 466.97 linear feet. The exact same proposed driveway and location was reviewed and approved by Multnomah County Land Use

Planning Division on September 11, 2015 (Case File: T2-2014-3377) as being less than 500'. Chris Liu measures the driveway length via a pdf copy as "approximately 589 ft." Therefore, we retained Winterbrook Planning to hire Anita Cate Smyth (SPWS) to complete a Wildlife Conservation Plan for our proposed farm dwelling (see Exhibit K-Wildlife Conservation Plan).

All development related to the farm dwelling completely avoids disturbing tree canopy or riparian areas on the site. No mitigation is necessary for the proposed development. However, the WCP proposes removal of existing invasive vegetation within the riparian area. If the Hearings Officer decides the length of the driveway exceeds 500 feet, with the proposed WCP, this standard is met.

6.9

§ 39.586

Criteria for Approval of SEC-H Permit, (C)(1&2) Wildlife Conservation Plan

Staff comments from June 14, 2022 Notice of Decision:

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.

The Reeds never “declined to submit the requested the requested Wildlife Conservation Plan.” The civil engineer of record measured the driveway utilizing a CAD program at 466.97 linear feet. The exact same proposed driveway and location was reviewed and approved by Multnomah County Land Use Planning Division on September 11, 2015 (Case File: T2-2014-3377) as being less than 500’. Chris Liu measures the driveway length via a pdf copy as “approximately 589 ft.” Therefore, we retained Winterbrook Planning to hire Anita Cate Smyth (SPWS) to complete a Wildlife Conservation Plan for our proposed farm dwelling (see Exhibit K-Wildlife Conservation Plan).

If the Hearings Officer decides the length of the driveway exceeds 500 feet, with the proposed WCP, this standard is met.

6.10

§ 39.586

Criteria for Approval of SEC-H Permit, (C)(3) Wildlife Conservation Plan

Staff comments from June 14, 2022 Notice of Decision:

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.

We retained Winterbrook Planning to hire Anita Cate Smyth (SPWS) to complete a Wildlife Conservation Plan for our proposed farm dwelling (see Exhibit K-Wildlife Conservation Plan). The WCP addresses (C)(3) criteria. If the Hearings Officer decides the length of the driveway exceeds 500 feet, with the proposed WCP, these criteria are met.

6.12

§ 39.586

Criteria for Approval of SEC-H Permit, (C)(5) Wildlife Conservation Plan

Staff comments from June 14, 2022 Notice of Decision:

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.

We retained Winterbrook Planning to hire Anita Cate Smyth (SPWS) to complete a Wildlife Conservation Plan for our proposed farm dwelling (see Exhibit K-Wildlife Conservation Plan). The WCP addresses (C)(3) criteria. If the Hearings Officer decides the length of the driveway exceeds 500 feet, with the proposed WCP, these criteria are met.

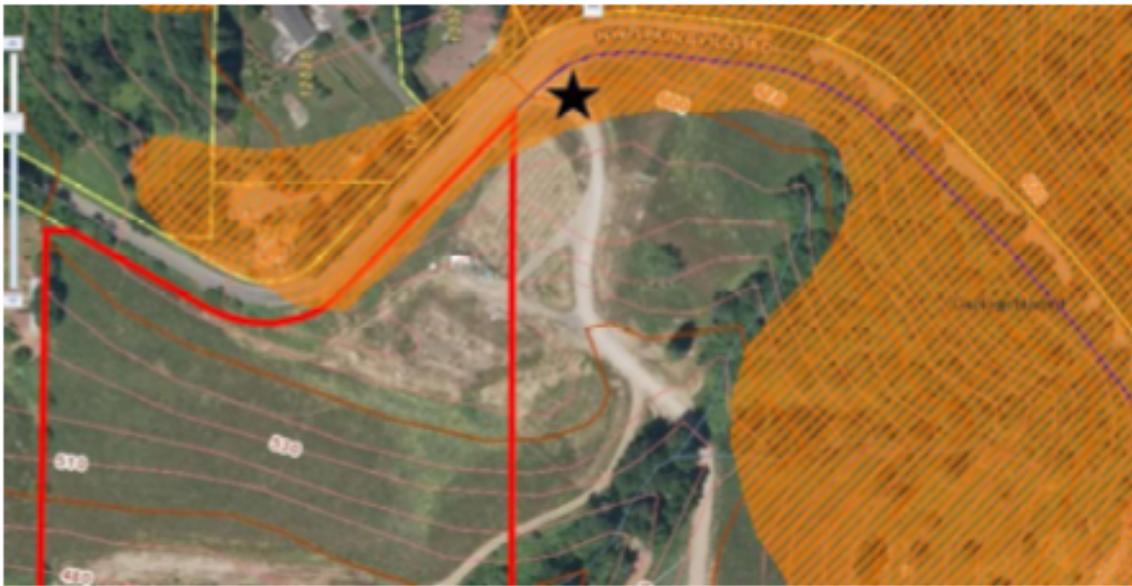
7.1

§ 39.5075

Geological Hazard Permit

Staff comments from June 14, 2022 Notice of Decision:

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.



The "access road/driveway" is not "planned" as it was completed over five years ago under driveway/ROW permit #80244 with the approval of Eileen Cunningham, Transportation Planner for the Multnomah County Transportation Program at the time of permit issuance (see Exhibit L-Original Driveway/ROW Permit). The driveway was built out according to the site plans that are incorporated into the driveway/ROW permit. Eileen Cunningham no longer works for Multnomah County.

On May 31, 2022, Graham Martin from Multnomah County Transportation Division sent an email explaining two main points.

1. Although the approved site plans that are part of the original driveway permit do not show any asphalt, the Transportation Division requires a driveway apron to be paved with asphalt 20 feet from the road surface.
2. The permit fee of \$1,870 will need to be paid again.

The Reeds paid the driveway/ROW permit fee so that the 20 feet of asphalt can be added to the existing gravel driveway. No “ground disturbing activity” is planned to pave the 20-foot asphalt apron on top of the compacted gravel. Below is a picture of the existing driveway.



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.

The Reeds hired a local Geotechnical Engineer to complete the Geologic Hazards Permit (GHP) Form 1 (see Exhibit M-Geologic Hazards Permit).

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.

The Reeds never “declined to staff’s request.” Scott Reed asked Chris Liu over the phone and via email multiple times if LUP had reviewed the site plan. Scott Reed needed to make sure that LUP was comfortable with the site plan because the Tualatin Valley Fire and Rescue requires a site plan as part

of the Fire Agency Review form. Scott Reed requested Chris Liu's feedback again on March 11, 2022 via email regarding the site plan asking, "could you look at the site plan and see if it looks good enough to send to the fire and septic folks?" Chris Liu never replied to the question. Scott Reed completed the Fire Service Agency Review application with the site plan provided to LUP. The new 2022 Fire Service Agency Review approval is included in Exhibit N-2022 Fire Agency Review Form.

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 Reeds never "declined" to produce a Transportation Planning Review form. Scott Reed asked Chris Liu over the phone and via email multiple times if LUP had reviewed the site plan. Scott Reed needed to make sure that LUP was comfortable with the site plan because the Multnomah County Transportation Division requires a site plan as part of the Transportation Planning Review Application. Scott Reed requested Chris Liu's feedback again on March 11, 2022 via email regarding the site plan asking, "could you look at the site plan and see if it looks good enough to send to the fire and septic folks?" Chris Liu never replied to the question. Scott Reed completed the Transportation Planning Review application with the site plan provided to LUP and paid the fees.

Scott Reed has been working with the Transportation Department on renewing the driveway permit since November 2021. The Reeds submitted the Transportation Planning Review forms and paid the fees to the Transportation Division on July 16, 2022 to renew the previous driveway/ROW permit.

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.

The Reeds hired a local Geotechnical Engineer to complete the Geologic Hazards Permit (GHP) Form 1 (see Exhibit M-Geologic Hazards Permit). Criteria met.

Staff addresses the Exemption criteria of MCC 39.5080 below.

7.2

§ 39.5080

Geological Hazard Permit Exemptions

Staff comments from June 14, 2022 Notice of Decision:

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.

The Reeds hired a local Geotechnical Engineer to complete the Geologic Hazards Permit (GHP) Form 1 (see Exhibit M-Geologic Hazards Permit). Criteria met.

8.1

§ 39.6210

Permits Required – Geologic Hazards Permit (A&B&C) Geologic Hazard Permit

Staff comments from June 14, 2022 Notice of Decision:

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.

The Reeds hired a local Geotechnical Engineer to complete the Geologic Hazards Permit (GHP) Form 1 (see Exhibit M-Geologic Hazards Permit). Criteria met.

8.1 (continued)

§ 39.6210

Permits Required – Geologic Hazards Permit (D) Geologic Hazard Permit

Staff comments from June 14, 2022 Notice of Decision:

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.

The Reeds hired a local Geotechnical Engineer to complete the Geologic Hazards Permit (GHP) Form 1 (see Exhibit M-Geologic Hazards Permit). Criteria met.

8.2

§ 39.6225

Erosion and Sediment Control Permit (4) Sanitary Drain Fields Have Been Reviewed by the City of Portland

Staff comments from June 14, 2022 Notice of Decision:

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 drain fields. Standard not met.

The Reeds never “declined to submit a current Septic Review Certification.” Scott Reed asked Chris Liu over the phone and via email multiple times if LUP had reviewed the site plan. Scott Reed needed to make sure that LUP was comfortable with the site plan because the City of Portland’s Bureau of Development Services requires a site plan as part of the Septic Evaluation Application. Scott Reed requested Chris Liu’s feedback again on March 11, 2022 via email regarding the site plan asking, “could you look at the site plan and see if it looks good enough to send to the fire and septic folks?” Chris Liu never replied to the question. Scott Reed completed the septic application with the site plan provided to LUP. The new septic approval is included in Exhibit F-Approved Septic Plan.

8.3

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

(1) Total Cumulative Deposit of Fill

Staff comments from June 14, 2022 Notice of Decision:

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 9,330 cubic yards, a fill volume of 5,220 cubic yards, and a net volume of 4,110 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.

The Reeds purchased the farm in June 2014 and have an accurate understanding of the cumulative deposits of fill since acquisition, excluding agricultural fill of approximately 3,073 cubic yards. But it is difficult/unreasonable to expect the Reeds to know about or be able to figure out the quantity of any fill brought onto an 84-acre property before they owned it, and before these regulations were established in 2019.

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, including fill proposed in the ESC permit application, does not exceed 5,000 cubic yards. The ESC permit that is the subject of this appeal only utilizes on site fill. Zero deposits of off-site fill will be utilized for this proposed development. Past cumulative deposit of fill only totaled 3,073 cubic yards. Standard met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

(2) Fill Shall be Comprised of Earth Materials Only

Staff comments from June 14, 2022 Notice of Decision:

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.

The site plans (Exhibit O- Site Plans) state that the proposed "earthwork volume" is a cut volume of 9,330 cubic yards, a fill volume of 5,220 cubic yards, and a net volume of 4,110 cubic yards. All the fill material is coming from the property and will be comprised of earth materials only. No fill is proposed to be brought on to the site for the proposed development. Standard met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

(3) Cut and Fill Slopes Will Not Exceed 33 Percent Grade

(4) Unsupported Finished Cuts

Staff comments from June 14, 2022 Notice of Decision:

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.

The site plan (Exhibit O- Site Plans) sheet C-301 shows that 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. The steepest slopes created on the site plan can be seen on Sheet C-301 to the south where the water retention feature will be built. That slope gets up to 24.4 percent grade. There are no unsupported finished cuts in the site plans. Standard met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

(5) Fills Shall Not Encroach on Any Water Body

Staff comments from June 14, 2022 Notice of Decision:

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.

The site plan (Exhibit O- Site Plans) sheet C-301 shows that no work will extent to the portion of the subject tract containing a stream. Sheet C-301 also shows that nearly all the fill will be located in the driveway turn around and in the backyard near the housing. No fill will be located within 250 feet of a water body (see sheet C-301 "Install Sediment Fence at 250' Buffer Limit"). As clearly shown, no fill or work is proposed beyond the sediment fence. It's difficult to provide more evidence of no work or fill beyond the fence, but the Reeds would be happy to accept a condition of approval to address this concern. Standard met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

(6) Fill Generated by Dredging may be deposited on Sauvie Island

Staff comments from June 14, 2022 Notice of Decision:

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.

The site plans (Exhibit O- Site Plans) state that the proposed "earthwork volume" is a cut volume of 9,330 cubic yards, a fill volume of 5,220 cubic yards, and a net volume of 4,110 cubic yards. All the fill material is coming from the property and will be comprised of earth materials only. As the fill is from the site and not imported, no fill from dredging could possibly be a part of this proposal. No fill from dredging is proposed. Standard is met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

(7) ...Erosion, Sediment and Stormwater Drainage Control Measures Shall Satisfy City Standards

Staff comments from June 14, 2022 Notice of Decision:

According to County GIS information, the subject tracts is within the Tualatin River Drainage basin. (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.

The Civil Engineer for the project has designed the site plans (Exhibit O- Site Plans) to incorporate the applicable erosion, sediment, and stormwater drainage control measures of OAR 340-041-0345(4), 2008 edition of the City of Portland Erosion and Sediment Control Manual and City of Portland Stormwater Management Manual. For example, site plan sheet C-302 shows inlet protection, gravel construction entrance, and sediment fence details that have been copied from the 2008 edition of the City of Portland Erosion and Sediment Control Manual.

Examples of erosion, sediment, and stormwater measures incorporated into the site plans

1. Sheet C-301, "Install Sediment Fence at 250' Buffer Limit"
2. Sheet C-301, "Construction Entrance" rock
3. Sheet C-301, "Outlet Protection (1.5 CY Class 1000 Riprap)"
4. Sheet C-301, "Inlet Protection"
5. Sheet C-302, "Temporary Sediment Fence" detail
6. Sheet C-302, "Gravel Construction Entrance" detail
7. Sheet C-302, "Filtration Bags, Socks, & Rolls for Temporary Inlet Protection" detail

The proposed development incorporates the applicable erosion, sediment, and stormwater drainage control measures of OAR 340-041-0345(4), 2008 edition of the City of Portland Erosion and Sediment Control Manual and City of Portland Stormwater Management Manual. The site plans show a 250' buffer which is in excess of the "100-foot undisturbed buffer" required in this code section. Standards met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

- (8) Ground Disturbing Activity Shall be Done in a Manner Which Minimize Soil Erosion**
- (9) Development Plans Shall Minimize Cut or Fill**
- (10) Temporary Vegetation**

Staff comments from June 14, 2022 Notice of Decision:

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.

The Civil Engineer for the project has designed the site plans (Exhibit O- Site Plans) to incorporate the applicable erosion, sediment, and stormwater drainage control measures of OAR 340-041-0345(4), 2008 edition of the City of Portland Erosion and Sediment Control Manual and City of Portland Stormwater Management Manual.

Ground disturbing activities will be coordinated to minimize soil erosion and stabilize the soil as quickly as practicable and expose the smallest practical area at one time during construction. For example, all new cut and fill around the site work will be seeded with rye grass seed and then have straw blown over the seeds by the end of each workday. Stockpiles will be covered with 6 mil plastic and weighted down by linked sandbags. Stockpiles will also be located in the driveway turn around because that area is level and will get less erosion pressure from driving rain. The foundation excavation and formwork will be covered with 6 mil plastic until the foundation concrete is poured.

The dwelling and driveway were sited on land contours that required the least amount of cut and fill. This siting always the development plan to conform with the topography and create the least potential successfully manage the volume and velocity of surface runoff. The proposed dwelling is in the same location as the previous barn and dwelling were located.

Temporary vegetation and straw mulching shall be used to protect exposed critical areas during development. The plan for temporary vegetation is rye grass. With the soils that are on the property, rye grass seed starts growing quickly and established itself well in new soils. Once rye grass is covered in blown straw, it is protected from the rain and grows well in that condition.

Standards met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

(13) Provisions Shall be Made to Prevent Surface Water from Damaging the Cut Face of Excavations

Staff comments from June 14, 2022 Notice of Decision:

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.

The Civil Engineer for the project has designed the site plans (Exhibit O- Site Plans) to incorporate the applicable erosion, sediment, and stormwater drainage control measures of OAR 340-041-0345(4), 2008 edition of the City of Portland Erosion and Sediment Control Manual and City of Portland Stormwater Management Manual.

The development area primarily slopes to the south and east. These are the directions that and run-off water with sediment will want to flow. Along the approximately 2,000 linear feet of the southern and eastern edge of the development a sediment fence will be installed per City of Portland Erosion and Sediment Control Manual. Details on the installation of the sediment fence installation can be found on site plan Sheet C-302. Additional sediment trapping measures for run-off water can be found on Sheet C-301, "Inlet Protection", Sheet C-302, "Gravel Construction Entrance" detail, and Sheet C-302, "Filtration Bags, Socks, & Rolls for Temporary Inlet Protection" detail. Standard met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

- (14) Sediment in the Runoff Water Shall be Trapped**
- (15) Provisions Shall be Made to Prevent Surface Water from Damaging the Cut Face of Excavations**

Staff comments from June 14, 2022 Notice of Decision:

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.

The Civil Engineer for the project has designed the site plans (Exhibit O- Site Plans) to incorporate the applicable erosion, sediment, and stormwater drainage control measures of OAR 340-041-0345(4), 2008 edition of the City of Portland Erosion and Sediment Control Manual and City of Portland Stormwater Management Manual.

The development area primarily slopes to the south and east. These are the directions that and run-off water with sediment will want to flow. Along the approximately 2,000 linear feet of the southern and eastern edge of the development a sediment fence will be installed per City of Portland Erosion and Sediment Control Manual. Details on the installation of the sediment fence installation can be found on site plan Sheet C-302. Additional sediment trapping measures for run-off water can be found on Sheet C-301, "Inlet Protection", Sheet C-302, "Gravel Construction Entrance" detail, and Sheet C-302, "Filtration Bags, Socks, & Rolls for Temporary Inlet Protection" detail.

The primary cut face of excavations on the project will be around the basement area and the water retention area. The water retention installation is a short 2–3-day build. During construction the exposed soils will be covered with a 6-mil plastic sheet to protect cut face. Once the water retention construction is complete, the area will be covered in rye grass seed and blown straw The foundation excavation and formwork will be covered with 6 mil plastic until the foundation concrete is poured in order to prevent surface water from damaging the cut face excavations.

Standard met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

(16) All Drainage Measures Shall be Designed to Prevent Erosion

Staff comments from June 14, 2022 Notice of Decision:

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.

The signed and stamped Stormwater Certificate are in Exhibit P- Stormwater Certificate and the calculation are in Exhibit Q- Stormwater Calculations. The drainage measures have been designed to prevent erosion and adequately carry existing and potential surface runoff to suitable drainageways such as natural bodies of water and existing farm drainage swales.

Examples of erosion, sediment, and stormwater measures incorporated into the site plans

- 1. Sheet C-301, "Install Sediment Fence at 250' Buffer Limit"**
- 2. Sheet C-301, "Construction Entrance" rock**
- 3. Sheet C-301, "Outlet Protection (1.5 CY Class 1000 Riprap)"**
- 4. Sheet C-301, "Inlet Protection"**
- 5. Sheet C-302, "Temporary Sediment Fence" detail**
- 6. Sheet C-302, "Gravel Construction Entrance" detail**
- 7. Sheet C-302, "Filtration Bags, Socks, & Rolls for Temporary Inlet Protection" detail**

Standard met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

18 ...No Visible or Measurable Erosion or Sediment Shall Exit the Site

Staff comments from June 14, 2022 Notice of Decision:

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.

The Civil Engineer for the project has designed the site plans (Exhibit O- Site Plans) to incorporate the applicable erosion, sediment, and stormwater drainage control measures of OAR 340-041-0345(4), 2008 edition of the City of Portland Erosion and Sediment Control Manual and City of Portland Stormwater Management Manual.

The development area primarily slopes to the south and east. These are the directions that and run-off water with sediment will want to flow. Along the approximately 2,000 linear feet of the southern and eastern edge of the development a sediment fence will be installed per City of Portland Erosion and Sediment Control Manual. Details on the installation of the sediment fence installation can be found on site plan Sheet C-302. Additional sediment trapping measures for run-off water can be found on Sheet C-301, "Inlet Protection", Sheet C-302, "Gravel Construction Entrance" detail, and Sheet C-302, "Filtration Bags, Socks, & Rolls for Temporary Inlet Protection" detail. These erosion and sediment control measures absorb and reduce the runoff water velocity and help the dispersal of water runoff from the developed area over large undisturbed pastureland on the farm.

The property owners and site work contractors will also monitor the erosion and sediment control measures to remove any trapped material and disposed of off-site.

Standard met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

19 Disposed Spoil Material or Stockpiled Topsoil Shall be Prevented from Eroding into Water Bodies

Staff comments from June 14, 2022 Notice of Decision:

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.

The Civil Engineer for the project has designed the site plans (Exhibit O- Site Plans) to incorporate the applicable erosion, sediment, and stormwater drainage control measures of OAR 340-041-0345(4), 2008 edition of the City of Portland Erosion and Sediment Control Manual and City of Portland Stormwater Management Manual.

Ground disturbing activities will be coordinated to minimize soil erosion and stabilize the soil as quickly as practicable and expose the smallest practical area at one time during construction. Stockpiles will be covered with 6 mil plastic and weighted down by linked sandbags. Stockpiles will also be located in the driveway turn around because that area is level and will get less erosion pressure from driving rain. The stockpile locations are over 300 feet from and water body.

The development area primarily slopes to the south and east. These are the directions that and run-off water with sediment will want to flow. Along the approximately 2,000 linear feet of the southern and eastern edge of the development a sediment fence will be installed per City of Portland Erosion and Sediment Control Manual. Details on the installation of the sediment fence installation can be found on site plan Sheet C-302. Additional sediment trapping measures for run-off water can be found on Sheet C-301, "Inlet Protection", Sheet C-302, "Gravel Construction Entrance" detail, and Sheet C-302, "Filtration Bags, Socks, & Rolls for Temporary Inlet Protection" detail. These erosion and sediment control measures absorb and reduce the runoff water velocity and help the dispersal of water runoff from the developed area over large undisturbed pastureland on the farm.

Standard met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

20...Non-Erosion Pollution Shall be Continuously Monitored

Staff comments from June 14, 2022 Notice of Decision:

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.

The farming operations at the property follow organic principals and does not utilize any chemical pesticides, fertilizers, or petrochemicals. The construction of the proposed dwelling will have some non-erosion pollution. The primary non-erosion pollution will be excess concrete, leftover paint, and general construction debris.

The concrete clean-up planned toward the north of the development area, approximately 50 feet from the construction entrance will capture the excess concrete from concrete delivery trucks cleaning out the hopper. The left-over paint will be stores in original containers and stored in the barn for future use. Dumpster locations on the south and north side of the construction site will collect general construction debris.

The owner and contractor will monitor non-erosion pollution throughout the project to make sure standards are kept up. Standard met.

8.3 (continued)

§ 39.6225

Erosion and Sediment Control Permit (B) Application for an Erosion and Sediment Control Permit

22 Total Daily Number of Fill Trucks Shall Not Cause a Transportation Impact

Staff comments from June 14, 2022 Notice of Decision:

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.

The Multnomah County Code section referenced above states “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.

According to the Multnomah County Road Rules (revised 3/2018) the definition of a Transportation Impact is below.

Transportation Impact: The effect 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 shall be found to have a Transportation Impact. A minimum increase of 10 new trips per day is required to find a Transportation Impact.

Multnomah County Transportation Division completed a Transportation Impact Review (Exhibit J-Traffic Impact Study) for the Multnomah County Land Use Planning Department recently for another Ag Fill Permit on the farm (March 12, 2021). The study produced the table below detailing existing trips.

TABLE 1 Number of new trips that constitute a twenty percent (20%) increase of trips between the applicant’s existing daily trips (low and high per season).

Season (trip range no.)	Existing daily trips	New daily trips (no.) required for a 20% increase
Fall-Winter (low)	28	5.6
Fall-Winter (high)	35	7
Spring-Summer (low)	56	11.2
Spring-Summer (high)	70	14

According to the Site Plans for the project, there will be 4,110 cubic yards of fill to remove from the property. The planned grading contractor (BDZE Developers, Inc., OR CCB# 220310) estimates the site work will be completed over 8 weeks and utilize a “pup dump” 21 cubic yard truck to dispose of the excess fill. Below is the estimate of new daily trips generated by the fill trucks for the proposed dwelling.

8 weeks x 5 days per week = 40 workdays

4,110 cubic yards removed over 40 workdays = 102.75 cubic yards of fill removed per day

102.75 cubic yards of fill removed per day / 21 cubic yard load of dump truck = 4.892 round to 5.0 new trips per day.

Now, the four standards from the Traffic Impact definition can be analyzed below.

1. Will increase the number of trips generated by a site by more than 20 percent? No, see Table 1 above from Multnomah County Transportation Division.
2. By more than 100 trips per day? No, 5 new trips per day.
3. By more than 10 trips in the peak hour? No, 5 new trips per day.
4. A minimum increase of 10 new trips per day is required to find a Transportation Impact. No, 5 new trips per day.

Therefore, the total daily number of fill haul truck trips will not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes. Standard Met.