ANDREW H. STAMP, P.C.
ATTORNEY AT LAW
Kruse-Mercantile Professional Offices, Suite 16
4248 Galewood St.
Lake Oswego, OR 97035

Admitted in Oregon.

Tele: 503.675.4318
Fax: 503.675.4319
andrew@stamplaw.com

---

24 August 2022

Alan Rappleyea
Hearings Officer
Multnomah County Department of Community Services
Land Use Planning Division
1600 SE 190th Avenue
Portland OR 97233
(503) 988-3043

Re: Appellants' First Open Record Period - Supplemental Submission
Appeal of Notice of Decision T2-2022-15537 dated June 30, 2022
For an EFU-zoned parcel located at 22140 NW Reeder Rd., Portland OR
(Map, Tax Lot 2N1W04-00900, property ID #R324793)

Dear Mr. Rappleyea,

This office represents the Applicants/Appellants, Angela Schillereff, Nick Rossi, and CS Reeder LLC. Thank you for the opportunity to supplement the Record. We understand that County staff may respond by August 31st, and then the Applicants will have until September 6th to offer final argument.

I. Introduction and Summary of Issues.

We have identified four issues that the Hearings Officer should address.

First, this case raises the question of whether a unit of land owned by a husband on February 20, 1990 must be "aggregated" for purposes of "development" with a contiguous unit of land owned by the wife.

Second, assuming the answer to the first question is "yes," this case raises the related question of whether a "farm use" as defined by ORS 215.203(2), including the construction of a "facility" used for farming can be conducted on TL 900, even though that parcel is "aggregated" for purposes of "development" with TL 400 (The 157-acre dairy farm currently in different ownership).

Third, to resolve this second question, it is critical to determine whether the requested barn is:

(1) a "Farm Use" as defined by ORS 215.203(2)(a); or

(2) a "other buildings customarily provided in conjunction with farm use" under ORS 215.283(1)(e).

Fourth, assuming the requested barn is a "Farm Use" as defined by ORS 215.203(2), does state law authorize the County to require non-discretionary (Type I) or discretionary (type II) land use permits prior to installation of such a "facility." As part of that discussion, we address LUBA's Order on the Motion to Dismiss in the case of *Bratton v. Washington County*, 65 Or LUBA 461 (2012).

II. Legal Analysis.

A. Application of the Lot Aggregation Provision.

The decision under appeal concludes that the subject property, TL 900, is not a "Lot of Record" due to the lot aggregation provisions set forth at MCZO §39.3070(A). The decision states the following:

> On February 20, 1990, the subject property was owned by Richard W & Evelyn S Vetsch (Exhibit B.4). Richard W Vetsch owned tax lot R971030130 which is immediately adjacent to the subject property to the east.
>
> * * * * *.
>
> Both tax lots are zoned Exclusive Farm Use (EFU). Based upon MCC 39.3070(A)(2)(b)2. It would appear that these two tax lots are aggregated by the Lot of Record provisions. At present they are in separate ownership (Exhibit B.1 & B.8). *Criterion not met.*

This is factually incorrect. On February 20, 1990, the subject property was owned by Evelyn S. Vetsch. *See* Bargain and Sale deed dated February 15, 1990, Book 2388, Pg 990, Recorded February 21, 1990. Evelyn's husband, Richard W. Vetsch, owned tax lot R971030130 which is immediately adjacent to the subject property to the east. On February 20, 1990, the definition of "Same Ownership" was as follows:

> ***Same Ownership refers to parcels in which greater than possessory interests held by the same person or persons, spouse, minor age single partnership or business entity, separately or in tenancy in common.***

It is unclear whether, under this definition, a parcel owned by a wife is in the "same

ownership" as a contiguous property owned by a husband. The decision under appeal does not address this issue.

B. A Barn is a "Farm Use" Within the Meaning of ORS 215.203(2).

The Applicants applied for approval of a "Ag Use Pole Barn." The Multnomah County Zoning Code (MCZC) refers to this type of structure as an "Agricultural Building," as follows:

> ***Agricultural Building – Pursuant to ORS 455.315 and any amendments made thereto, means a structure located on a farm and used in the operation of the farm for: (a) Storage, maintenance or repair of farm or forest machinery and equipment; (b) The raising, harvesting and selling of crops or forest products; (c) The feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees; (d) Dairying and the sale of dairy products; or (e) Any other agricultural, forestry or horticultural use or animal husbandry, or any combination thereof, including the preparation and storage of the produce raised on the farm for human use and animal use, the preparation and storage of forest products and the disposal by marketing or otherwise, of farm produce or forest products. (f) Agricultural and forest practice buildings do not include a dwelling, a structure used for a purpose other than growing plants in which 10 or more persons are present at any one time, a structure regulated by the State Fire Marshal pursuant to ORS chapter 476, a structure used by the public, or a structure subject to sections 4001 to 4127, title 42, United States Code (the National Flood Insurance Act of 1968) as amended, and regulations promulgated thereunder.***

Generally speaking, Agricultural Buildings do have to comply with zoning requirements. Typical standards that must be complied with include building setbacks from property lines, maximum height limitations, and vehicle access requirements (which is a separate permit). However, because Agricultural Buildings are a "farm use," no land use permitting is required. Rather, an Agricultural Building is a "use allowed by right" under both state and local law. *See* MCZO §39.4220(A) (listing "farm use as defined in ORS 215.203" as an allowed use).

This application is governed by ORS 215.203. ORS 215.203(2)(a) authorizes counties to adopt EFU zones. In those zones, land is to be used exclusively for farm uses "except as otherwise provided in ORS 215.213, 215.283 or 215.284." ORS 215.203(1). ORS 215.283(1) "uses as of right" are "subject to" other Oregon statutes and federal law, but not additional County code requirements. *Brentmar v. Jackson County,* 321 Or. 481, 496, 900 P.2d 1030 (1995).

ORS 215.203(2)(a) provides the state's definition of "farm use," as follows:

> ***215.203 Zoning ordinances establishing exclusive farm use zones; definitions.***
>
> *** * * * *.***
>
> ***(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. <u>"Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.</u> "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3).***

Cases that discuss what constitutes a "farm use" include:

- *Moody v. Deschutes County*, 22 Or LUBA 567 (1992). The breeding and raising of one's own horses is a "farm use."
- *Leabo v. Marion County*, 24 Or LUBA 495 (1993). "Pasture" is a farm use.
- *Lorenz v. Deschutes County*, 45 Or LUBA 635 (2003). A "wholesale nursery" consisting of 29ea 2000 s.f. greenhouses is properly viewed as an "agricultural use."
- *DLCD v. Wallowa County*, 37 Or LUBA 105 (1999) Pasturing livestock is a "farm use" as that term is defined in ORS 215.203(2), even though the owner's primary purpose in pasturing cattle on the property is to reduce fire potential by reducing ground cover. *See also Friends of Jefferson County v. Jefferson County*, 48 Or LUBA 107 (2004) (ORS 215.203(2)(a) provides that "feeding, breeding, management and sale of livestock" is a

farm use. A proposed use that will carry out fewer than all four of those activities may still qualify as a farm use, if it nevertheless constitutes "the produce of * * * livestock," which is also listed as a farm use under ORS 215.203(2)(a).).

As underlined above, ORS 215.203(2)(a) expressly defines "farm use" to include "on-site * * * equipment and facilities" used for "farm use." The term "facility" is defined by the dictionary as "something (as a hospital, machinery, plumbing) that is built, installed, or established to perform some particular function or to serve or facilitate some particular end." *See* Websters Third New International Dictionary (Unabridged) (2002), at p. 812-813. This language was added to the statute in 1997. *See* 1997 Or Laws Ch 862 §1 (SB 588). We have added the written legislative history from SB 588 into the record, but we did not see anything dispositive in those materials.

Nonetheless, it is clear that the new language has had an impact. For example, LUBA has acknowledged that facilities used for farm purposes constitute a "farm use," even if it is possible to locate such equipment and facilities on land outside the EFU zone. *Friends of the Creek v. Jackson County*, 36 Or LUBA 562, 578-9 (1999), *aff'd*, 165 Or App 138, 995 P2d 138 (2000). In that case, a "sludge lagoon" and "irrigation reservoir" were deemed to be farm uses.

In this case, the Applicants desire to build a pole barn agricultural building to support their ongoing farm uses, which includes the pasturing of cattle and tractor storage and maintenance. Tractors and harvesting equipment must be protected and maintained just like another other vehicular machinery used outdoors. Hay must be harvested and stored under cover to dry, as wet hay rots and becomes worthless.

The conclusion that a barn used for farming is itself a "farm use" which is allowed by right in the EFU zone is reinforced by OAR 660-033-0120. This rule, which is entitled "Uses Authorized on Agricultural Lands," states:

> ***The specific development and uses listed in the following table are allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the table shall have the following meanings:***
>
> ***(1) "A" Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130 and 660-033-0135. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.***

> ***(2) "R" Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.***

The accompanying table makes clear that both farm uses and "other buildings customarily provided in conjunction with farm use" are an allowed use that do not require "review" except to the extent that the use triggers discretionary standards that require decision-making that involves the use of discretion.

HV Farmland	All Other	Uses
		Farm/Forest Resource
A	A	Farm use as defined in ORS 215.203.
A	A	Other buildings customarily provided in conjunction with farm use.
A	A	Propagation or harvesting of a forest product.
R5,6	R5,6	A facility for the primary processing of forest products.
A28	A28	A facility for the processing of farm products with a processing area of less than 2,500 square feet.
R28	R28	A facility for the processing of farm products with a processing area of at least 2,500 square feet but less than 10,000 square feet.

C. The County Has No Authority to Prohibit a Landowner from Using EFU-Zoned Land for a "Farm Use," Even if the Property is Not A "Lot of Record."

The Applicants testified at the hearing that they wished to build a barn, and that they only submitted the "Lot of Record Verification" land use application because staff told them to do so. *See* Declaration of Nick Rossi, appended.

Staff's conclusion that the parcel is not a "lot of record" effectively precludes the use of the property. However, Oregon's entire land use system is set up to protect EFU land for farm uses. For example, Statewide Planning Goal 3 states:

> ***Goal 3: To preserve and maintain agricultural lands. Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.***

Similarly, ORS 215.243 sets forth Oregon's overarching policy for agricultural lands:

> ***215.243 Agricultural land use policy. The Legislative Assembly finds and declares that:***
> ***(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.***
> ***(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.***

In light of these policies, it seems improbable that a County would be seeking to take a property out of farm use on the basis of its unusual and ill-conceived lot aggregation provision. Nonetheless, the practical effect of the staff decision is that no "farm use" may occur on any land unless such land qualifies as a Lot of Record.

At the hearing, staff cited to MCZO §39.4215 to support its position that no "use" may be made of the property that is not a lot of record. This section of the code is applicable to EFU land and is entitled "Uses." It provides:

> ***§ 39.4215 USES. No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this base zone for the uses listed in MCC 39.4220 through 39.4230 when found to comply with MCC 39.4245 through 39.4260 provided such uses occur on a Lot of Record.***

The single sentence that comprises MCZO §39.4215 is grammatically incorrect and makes no sense. It starts out as a prohibition ("*no * * * land shall be used*," but ends as a statement of permission: "*provided such uses occur on a Lot of Record*."

Under staff's interpretation, MCZO §39.4215 prohibits any "use" of a property that is not a "Lot of Record." Read literally, a farmer cannot farm EFU land that is not a "Lot of Record." This seems a ridiculously harsh and untenable interpretation, since it would prohibit the property from being used for the listed use "farm use," as defined in ORS 215.203. Such an interpretation runs afoul of both state law, ORS 215.203, and MCZO §39.4200, which states that the purpose of the Lot of Record requirement is an implementing tool intended to preserve and maintain agricultural lands for farm use. Given this policy goal, the Applicants assert that this provision does not serve to limit the "use" of land which is not deemed to be a "Lot of Record," and does not limit the construction of Agricultural Buildings to land determined to not constitute a "Lot of

Record."

In informal conversation with staff prior to the hearing, staff suggested that "farming" would still be allowed on units of land that are not "lots of record," but agricultural buildings in support of such farming operations are not allowed. However, there is simply no way to read state law or the local code to arrive at that conclusion. "Farming" and its associated "facilities" are joined at the hip, and so there is no legal basis for concluding that farming can be allowed but farm facilities (a.k.a. barns) are not allowed.

This is the most critical issue presented in this case. The Hearing Officer should reject any interpretation of MCZO §39.4215 that prohibits a farmer from using his or her land for "farm use," including the "*on-site construction and maintenance of equipment and facilities used for the activities described in [ORS 215.203(2)(a)].*

D. In the Alternative to the Arguments Presented in Section II(B) & (C) above, a Barn at the very least is an "other buildings customarily provided in conjunction with farm use" under ORS 215.283(1)(e).

It is difficult to conceive how a pole barn used for storing hay and tractors is not considered a "farm use." But if it is not a "farm use," then, *as an alternative only*, it is a use allowed by right under ORS 215.283(1). ORS 215.283(1) lists 23 uses that counties must allow on EFU land, subject to state standards adopted by the Land Conservation and Development Commission (LCDC). The 23 uses listed in ORS 215.283(1) are authorized as of right, and counties may not restrict those uses through additional local standards. *See Brentmar v. Jackson County,* 321 Or. 481, 496, 900 P.2d 1030 (1995). *Brentmar* establishes that nonfarm uses in EFU zones permitted by ORS 215.283(1) are "uses as of right" that are not subject to county regulations that go beyond those set forth in the statutes.

In contrast, ORS 215.283(2) lists nonfarm uses and structures that are conditionally authorized and that must satisfy ORS 215.296(1). Practitioners refer to the 215.296(1) test as the "farm impacts" test. As summarized by former land use attorney Edward J. Sullivan and DLCD staff member Ron Eber:

> Authorized non-farm uses are subject to local land use approval. Between 1961 and 1973, no distinction was made between the type of review or the standards applicable to the approval of the allowed uses. But in 1973, the uses allowed were divided into two categories. The first category was the "permitted" uses that a county was required to authorize in its EFU zone without applying any additional review standards, other than those provided by statute. The second category included the larger and more intensive non-farm uses allowed through a discretionary process. Except for non-farm dwellings, local review and approval standards were left to the discretion of the local county planning authorities. (Emphasis added).

Edward Sullivan and Ronald Eber, "The Long Winding Road: Farmland Protection in Oregon 1961-2009," San Joaquin Ag. L. Rev. VOL 18, No. 1 (2008-2009).

One of the "Sub-1" uses is set forth at ORS 215.283(1)(e). This statute provides:

> **215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules.** (1) The following uses may be established in any area zoned for exclusive farm use:
>
> * * * * *.
>
> (e) Subject to ORS 215.279, primary or accessory dwellings <u>and other buildings customarily provided in conjunction with farm use.</u>

The county staff's position is that "other buildings customarily provided in conjunction with farm use" may only occur on a "Lot of Record." The County applies the lot aggregation provision to parcels less than 19 acres. However, by doing so, the County in essence adds a minimum lot size provision that is not found in ORS 215.283(1)(e) because it makes an otherwise lawfully-created unit of land into an illegal lot that cannot be used. As such, it constitutes an additional County restriction on farm uses allowed "as of right" on EFU land, and thus runs afoul of the *Brentmar* rule. In essence, the lot aggregation provision violates state law and must be discarded in this case.

***E. Bratton v. Washington County* Does Not Govern This Case.**

As the Hearings Officer is aware, *Bratton v. Washington County*, 65 Or LUBA 461 (2012) is a LUBA ruling that determined that LUBA had jurisdiction to hear a land use challenge to a County's decision to allow "accessory buildings" to be constructed in an EFU zone.

Bratton is distinguishable from the facts of this appeal. *Bratton* concerned the operator of a Washington County private use airport that, amongst other things, stored and operated aircraft used in connection with agricultural operations (*e.g.* crop-dusting). The airport faced a County code enforcement action based on the airport's storing of chemicals (including aviation fuel) within a floodplain, in violation of Washington County floodplain safety regulations and the airport's 2006 conditions of approval.

The code enforcement case was apparently resolved by the County accepting the airport's assertion (made by an engineer) that the relevant portions of the airport were, in fact, just outside the floodplain. Shortly thereafter, the airport applied for permission to construct two "accessory buildings" for the "storage, maintenance or repair of farm machinery and equipment." The applicant submitted site plans showing that the two buildings would be constructed on portions of the property outside the 100-year floodplain, as delineated on the site plans, and within the Airport Overlay zone. County staff approved the two applications. Aggrieved neighbors

appealed to LUBA, arguing these two "accessory buildings" were not related to farm uses, but rather they supported a non-farm use (the airport).

LUBA held that in the course of determining whether a proposed accessory building is "customarily provided in conjunction with farm use," a county should consider the possibility that the proposed building is intended to be used as an accessory building to a nonfarm (*e.g.* airport) use (subject to ORS 215.213(2)(h)), rather than as an accessory building to a legitimate farm use of the property under ORS 215.213(1)(e).

LUBA's *Bratton* decision turns on a close reading of Washington County's Community Development Code, which is substantially and materially different than Multnomah County's code. Both are "home rule" counties, and thus have unique provisions not found in state law (or most "general law" counties). One of the biggest problems facing Washington County in the *Bratton* case was it defined barns as "accessory structures" as opposed to a "farm use." CDC 430-1.5 provided that:

> "Agriculture and forestry accessory buildings and structures are located on a farm or tract used for the propagation or harvesting of a forest product and used in the operation of said farm or forest operation for such things as housing of farm animals, forest products or supplies, and storage, maintenance or repair of farm or forest machinery or equipment. Barns, sheds, commercial greenhouses and other farm or forest related accessory structures provided in conjunction with farm or forest uses are allowed [subject to setbacks and other standards]."

Thus, Washington County made the mistake of considering barns used for farming to be "accessory structures" to a farm operation. Perhaps that code language was written prior to 1997, *i.e.*, at a time when state law suggested that barns were only allowed under ORS 215.283(1)(f). As written in 1995, for example, ORS 215.283(1)(f) allowed "[t]he dwellings and other buildings customarily provided in conjunction with farm use."

Nonetheless, once LUBA established that it was dealing with an "accessory use," it led the County down the garden path to a remand. LUBA stated:

> The county cites nothing in the CDC or ORS 215.203(2)(a) that suggests an agricultural accessory building constitutes "farm use." We note that ORS 215.203(2)(a) goes on to include within the category of "farm use" the "on-site construction and maintenance of equipment and facilities used for the activities described in this subsection." It is not clear to us what is the dividing line between a "facility" used for the farm activities described in ORS 215.203(2)(a), that is itself part of "farm use," and the "buildings customarily provided in conjunction with farm use" separately

> allowed in the EFU zone under ORS 215.213(1)(e). The "buildings" referred to in ORS 215.213(1)(e) are clearly *accessory* to farm use, and do not themselves constitute farm uses. *See* OAR 660-033-0120, Table 1 (setting out separate categories for "farm use" and "other buildings customarily provided in conjunction with farm use"). However, we need not inquire further, because it is clear that the CDC categorizes the buildings applied for in the present case, to be used for "storage, maintenance or repair of farm or forest machinery or equipment," as accessory buildings allowed in the EFU under CDC 344-3.1 and 430-1.5, which implement ORS 215.213(1)(e) and which allow accessory agricultural buildings in the AF-20 zone under a Type I procedure. The CDC does not categorize the proposed buildings as farm use.

That fact differentiates this case. The applicant is not seeking an "agricultural *accessory* building." Rather, the applicant is seeking a farm use barn / facility. As a result of the 1997 changes to ORS 215.203(2)(a), a barn used for farming is *itself* a "farm use." It is not an "accessory use" to farming. The distinction is critically important.

An accessory use is, by its very definition, a separate land use from a primary use. An accessory use must be both "incidental" and "subordinate" to the primary use. Indeed, MCZO §39.2000 defines "Accessory Use" as a "lawful use that is customarily subordinate and incidental to a primary use on a lot."

Under general rules of statutory construction, a dictionary can be used to assist in determining the plain and ordinary meaning of the phrase "incidental and subordinate." Webster's Third Internat'l Dictionary 1981, 1142 defines "incidental" as:

> "1 : subordinate, nonessential, or attendant in significance."

Webster's Third Internat'l Dictionary 1981 at 2277 defines "subordinate" as:

> "1: to place in a lower order or class: make or consider as of less value or importance."

Thus, accessory structures are generally non-essential structures that are of lesser value than the primary structure or use. Determining the line between what is an integral part of a use and an accessory use is somewhat of an esoteric exercise. For example, a swimming pool, tennis court, or garden shed is likely going to be considered an accessory use to a residence, but a mailbox, an attached game room, guest room or attached garage are all considered an integral part of a residential use, even though they are non-essential. Similarly, in the commercial context, a manager's office is an integral part of a restaurant, whereas a video game room or playground may be an accessory use to that restaurant. An automated car wash facility, food market, or mechanic's shop may be an accessory use to a gas station, but self-serve air and water stations are an integral use to a gas station.

A barn used to store hay is an *integral* part of the primary use (cattle operation). It is not a *separate land use* that is "incidental and subordinate" to the primary use. Since a facility associated with farming is by definition a farm use, *See* ORS 215.203(2), there cannot question on this point. Moreover, *all* farm operations have barns, and therefore they are an *integral* part of any farm use. Barns are critical, for, amongst other uses, storing tractors and other farm machinery so they do not rust and become ruined by the elements.

In addition to the aforementioned problem, the *Bratton* case may also be distinguished by its bad facts. It seems the airport wanted to use the two "accessory buildings" as avgas tank and/or fuel truck storage and maintenance, and possibly as hangars, which are hardly the sort of classic "farm uses" contemplated by state law (and sought by these Applicants. Here, the landowner simply wants to build a typical barn, *not* an airport truck refueling depot). Determining whether any particular proposed structure is of a sort customarily operated in conjunction with farm use requires the use of discretion; a barn certainly qualifies, but a refueling truck depot may not.

Second, the storage of chemicals and high-octane petroleum products in an EFU-zoned floodplain area poses public safety concerns which simply do not exist with the Applicants' desired use (a pole barn).

Third, the *Bratton* property was in (or *extremely* near) a floodplain, which the subject property is not.

Fourth, it was not clear to LUBA that *any* farm use was occurring on the *Bratton* property ("No party cites anything in the record describing a farm use on the property, or explains what "farm equipment" intervenors propose to store, repair and maintain within the two proposed buildings, or how such equipment relates to any farm use of the property." *Id* at 477). Here, the Applicants are clearly farming the property, with ongoing hay and cattle operations. A photograph (above) shows the front yard of the property, with its tractor.

As this "Google Streetview" photograph of the subject property clearly shows, there is no place to store the tractor parked at lower left. Tractors are an integral and necessary part of farm operations. There is no garage, so all the other vehicles are parked outdoors.

There is also no place to store and dry hay, nor anywhere for the cattle to shelter while calving. *See* Declaration of Nick Rossi, appended.

III. Conclusion

In summary, agricultural buildings (like pole barns) are exempt from additional County building permit requirements under ORS 455.315, just as LUBA stated in *Bratton*. The County erred in denying the Applicants' application for a building permit for a barn. That permit is not (and cannot be) required, under state law. Whether or not the Applicants' parcel is a "lot of record" is immaterial. To rule otherwise is to condemn some EFU parcels to an eternal state of unjustified and unconscionable legal limbo, unable to be farmed, as no barns may be built on them. Such parcels would be rendered nearly worthless, with tax value drastically reduced. This hardly supports Oregon's state laws and Goal 3 policies promoting the productive use of the state's farm lands.

We reserve the right to present additional material in response to Staff's reply, with our last deadline being September 6th. Thank for your time and attention to this important matter, and please see that this letter is included in the Record of this appeal, case no. T2-2022-15537.

Sincerely,

ANDREW H. STAMP, P.C.

Andrew H. Stamp

Andrew H. Stamp

AHS/rs
Cc: Client

Attachments:

Declaration of Nick Rossi
Articles: "Farming in the 1940s – Barns, Functions and Forms"
Business Compiler; "Farm Buildings and Structures: Importance in Farm Enterprise"