

NOTICE OF DECISION



www.multco.us/landuse ▪ Email: land.use.planning@multco.us ▪ Phone: (503) 988-3043

Application for Verification of a Nonconforming Use

Case File: T2-2025-0031

Applicant: Sam Huck, 3J Consulting, Inc.

Proposal: Request for a Verification of a Nonconforming Use for an existing barn and pump house located within the required forest practices setbacks.

Location: 20300 NW Watson Rd, Scappoose

Property ID # R326136

Map, Tax lot: 3N2W25B -01500

Alt. Acct. # R982250020

Base Zone: Commercial Forest Use (CFU-2)

Overlays: Geologic Hazards (GH)
Significant Streams (SEC-s)
Significant Wildlife Habitats (SEC-h)

Decision: **Approved**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is April 30, 2026 at 4:00 pm.

Opportunity to Review the Record: The complete case file and all evidence associated with this application is available for review by contacting LUP-comments@multco.us. Paper copies of all documents are available at the rate of \$0.71/page.

Opportunity to Appeal: The appeal form is available at www.multco.us/landuse/application-materials-and-forms. Email the completed appeal form to LUP-submittals@multco.us. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted

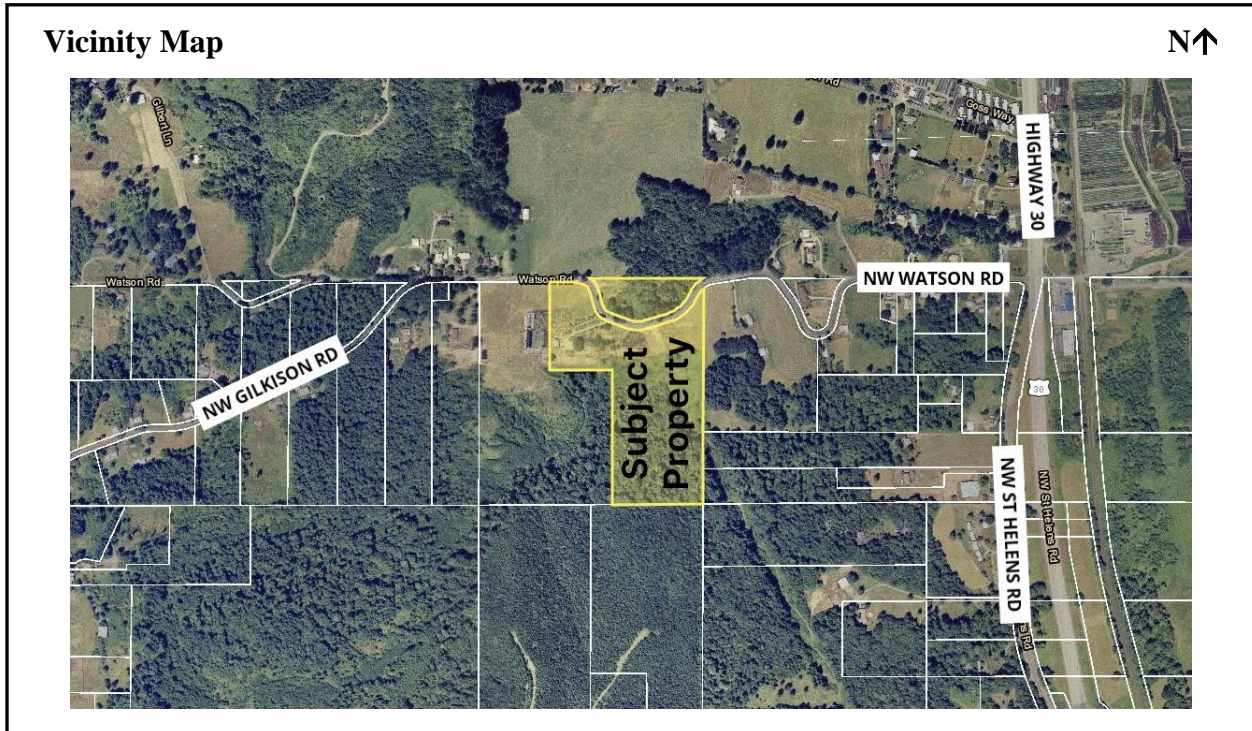
Issued by: _____
Anna Shank-Root, Planner

For: Megan Gibb,
Planning Director

Date: April 16, 2026

Vicinity Map

N↑



Applicable Approval Criteria:

Multnomah County Code (MCC): General Provisions: MCC 39.1250 Code Compliance and Applications, MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3030 Lot of Record – Commercial Forest Use – 2 (CFU-2)

Commercial Forest Use Districts (CFU): MCC 39.4070(C) Allowed Uses - Farm use, MCC 39.4105 Building Height Requirements, MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones, MCC 39.4115 Dimensional Standards and Development Requirements

Nonconforming Uses: MCC 39.8300 Nonconforming Uses, MCC 39.8305 Verification of Nonconforming Use Status

Copies of the referenced Multnomah County Code sections are available by visiting <https://www.multco.us/landuse/zoning-codes> under the link **Chapter 39: Multnomah County Zoning Code** or by contacting our office at (503) 988-3043.

Findings of Fact

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

1.0 Project Description:

Staff: Request for a Verification of a Nonconforming Use for an existing barn and pump house located within the required forest practices setbacks.

2.0 Property Description & History:

Staff: This application is for 20300 NW Watson Rd, Scappoose. The subject property is located on both the north and south sides of Watson Road in unincorporated west Multnomah County outside of Metro’s Urban Growth Boundary (UGB). The subject property is zoned Commercial Forest Use – 2 (CFU-2) and is located within the Significant Concern for Wildlife Habitat (SEC-h), Significant Streams (SEC-s) and Geologic Hazards (GH) overlays.

According to the County Assessor, the property contains a 1931 single-family dwelling, a 1,200 square foot farm building, and three greenhouses, and is approximately 19.46 acres. The most current aerial photo shows a single-family dwelling that appears to have been damaged, a barn, and a pump house.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties pursuant to MCC 39.1105 (Exhibit C.4). Staff did not receive public comments during the 14-day comment period.

4.0 Code Compliance and Applications Criteria:

4.1 § 39.1250 CODE COMPLIANCE AND APPLICATIONS.

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

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**

* * *

Staff: This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

A finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance.

This application has been submitted to address the presence of an existing barn and pump house within the 130-foot forest practices setback. Since this verification of a non-conforming use application has been approved, it results in the property coming into compliance with all applicable zoning code provisions. *This criterion is met.*

5.0 Lot of Record Criteria:

5.1 MCC 39.3005 - LOT OF RECORD – GENERALLY.

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

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

* * *

Staff: The County made a Lot of Record Determination for the subject property in land use case T2-2024-0034. Staff has confirmed that the property remains in its lawful configuration. *Criterion met.*

6.0 Commercial Forest Use 2 (CFU2) Criteria:

6.1 MCC 39.4070 ALLOWED USES.

(C) Farm use, as defined in ORS 215.203.

Staff: The applicant indicates that both the barn and pump house support an existing farm use on the subject property (Exhibits A.2 and A.12). The subject property is in a farm tax deferral program, indicating the existence of a farm operation. *The structures are an allowed use in the CFU2 base zone.*

6.2 MCC 39.4105 BUILDING HEIGHT REQUIREMENTS.

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: The exterior elevation drawings indicate that the height of the barn is 15’9.25” and the height of the pump house is 11’4,” both falling well below the maximum structure height of 35 feet (Exhibit A.12). *Criterion met.*

6.4 MCC 39.4110 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Table 1.

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Other Structures	N/A	30	130	Primary & Secondary required

* * *

Percent Slope	Distance in Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

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

(D) Fire Safety Zones on the Subject Tract.

(1) Primary Fire Safety Zone.

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended farther down the slope from a dwelling or structure as follows:

(c) The building site must have a slope less than 40 percent.

(2) Secondary Fire Safety Zone.

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary

fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 39.4155.

Staff: The barn and pump house are verified as non-conforming structures per section 7 of this report, and therefore are not subject to current setback requirements.

The subject property is adjacent to the right-of-way (ROW) of NW Watson Road, which is classified as a rural local. The ROW of NW Watson Road measures 60 feet, exceeding the minimum ROW width of 50 feet for a local rural road, and therefore no additional right-of way width is required and the setback does not need to be increased (Exhibit B.2).

Primary and secondary fire safety zones are not required for existing development. *Criteria met.*

(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

Staff: The applicant has not indicated that the subject property is subject to a forest management plan; therefore, this criterion is not applicable. *Criteria met.*

(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.

(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: Primary and secondary fire safety zones are not required for existing development. *Criteria met.*

6.5 MCC 39.4115 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES.

All dwellings and structures shall comply with the approval criteria in (B) through (E) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:

* * *

Staff: The barn and pump house are verified as non-conforming structures per section 7 of this report, and therefore are not subject to current development standards. *Criteria do not apply.*

7.0 Verification of a Non-Conforming Use Permit Criteria:

7.1 MCC 39.8305 VERIFICATION OF NONCONFORMING USE STATUS.

(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:

- (1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and**
- (2) Has not been abandoned or interrupted for a continuous two-year period.**

Staff: The applicant has provided aerial photographs of the barn and pump house existing on the subject property since 1936 (Exhibit A.8). Additionally, the applicant provided two affidavits from nearby neighbors who remember visiting the property in the 1950s and certify their recollections of the structures existing prior to zoning code enactment (Exhibit A.11). Additionally, the county's aerial photograph records consistently show the two structures in the same configuration in all available images. There is no evidence indicating that the structures have ever been abandoned since their establishment prior to 1936. *These criteria are met.*

- (B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:**
- (1) Description of the use;**
 - (2) The types and quantities of goods or services provided and activities conducted;**
 - (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**
 - (4) The number, location and size of physical improvements associated with the use;**
 - (5) The amount of land devoted to the use; and**
 - (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.**
 - (7) A reduction of scope or intensity of any part of the use as determined under this subsection (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.**

Staff: Aerial photographs provided by the applicant indicate that the barn and pump house have existed in their current configuration since at least 1936 (Exhibit A.8). The applicant indicates that both structures are agricultural structures, which are an allowed use in the CFU2 zone, and therefore the nature and extent of the use is not subject to review in this application, as that is allowed under current zoning provisions. The structures do not meet current forest practices setbacks, which has triggered the need for review as a non-conforming use, and therefore the nature and extent of the encroachment within the setback is what must be evaluated to establish the non-conforming use. Per aerial photographs provided by the applicant (Exhibit A.8), as well as those in county records, the barn and pumphouse do not appear to have increased or decreased in their nonconformity to the existing setback since their establishment. *These criteria are met.*

- (C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.**

Staff: Aerial photographs provided by the applicant (Exhibit A.8), indicate that the barn and pumphouse have been present on the subject property since at least 1936. In 1936, there were no zoning code provisions or land use procedures in place that would have restricted the placement of the structures on the subject property. *This criterion is met.*

- (D) Except for nonconforming uses considered under MCC 39.8315 (B), the Planning Director may impose conditions to any verification of nonconforming use status to ensure compliance with said verification.**

Staff: No conditions of approval are required to ensure compliance with this verification of a nonconforming use. *Criterion met.*

- (E) An applicant may prove the continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.**

- (F) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 20-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.**

Staff: Aerial photographs provided by the applicant as Exhibit A.8, as well as the county's records both indicate that the barn and pumphouse structures have existed to their current nature and extent for more than the 10-year period preceding the date of this application. While not required by the planning director, the applicant has indicated that they have voluntarily provided evidence that both structures have existed since 1936 (Exhibits. A.2 and A.8). *These criteria are met.*

8.0 Conclusion

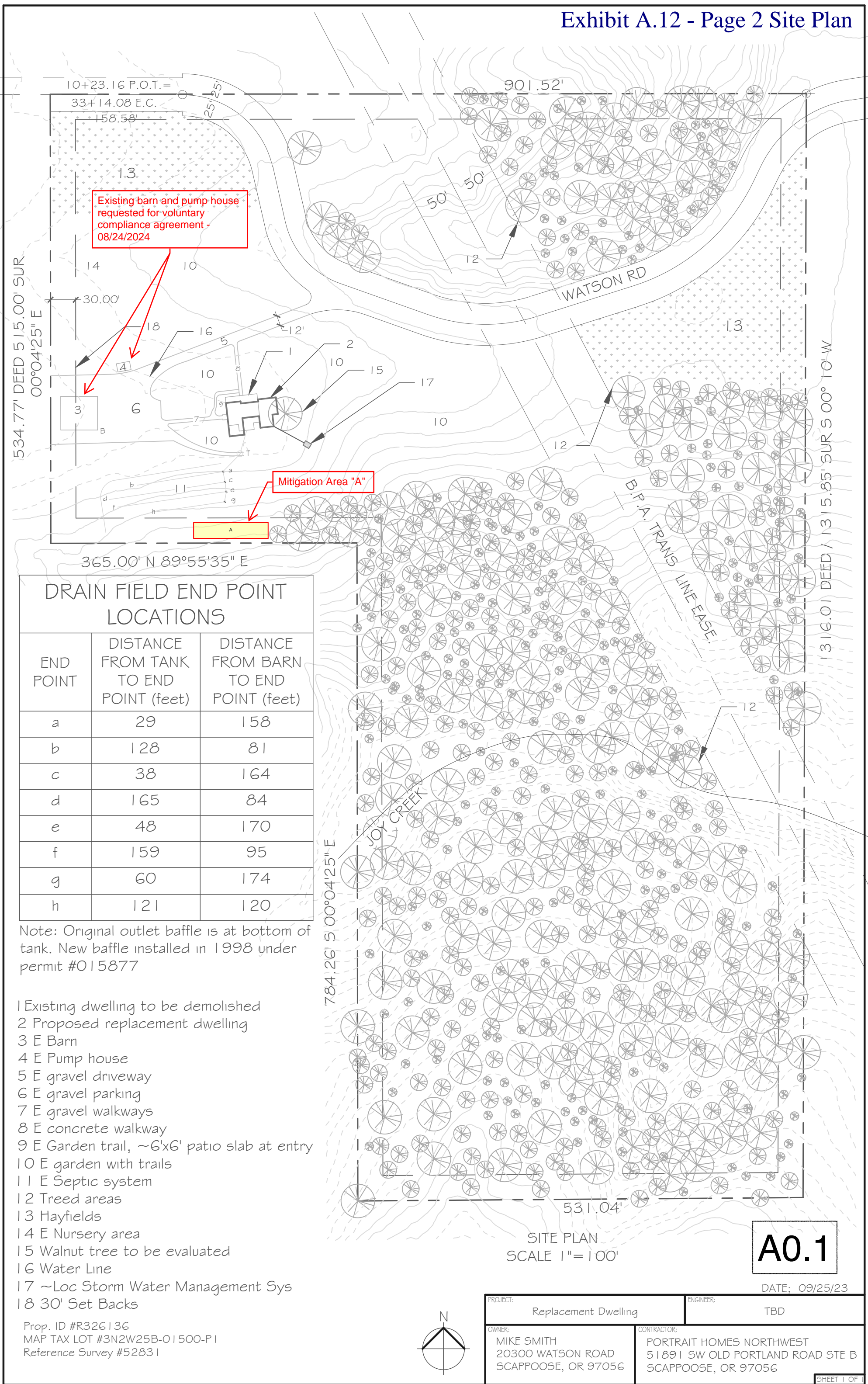
Based on the findings and other information provided above, the applicant has carried the burden necessary for the non-conforming use verification for a barn and well house in the CFU2 zone.

9.0 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits

Exhibits with an '*' have been reduced in size and included with the mailed decision. All exhibits are available for digital review by sending a request to LUP-comments@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	2	Application Form	07/02/2025
A.2	8	Narrative	07/02/2025
A.3	1	Appendix A – Land Use Application Lot of Record Cover Sheet	07/02/2025
A.4	12	Ticor Title Company Parcel Information Report – 2N2W25B - 01500	07/02/2025
A.5	12	Ticor Title Company Parcel Information Report – 2N2W25B - 01500P	07/02/2025
A.6	12	Ticor Title Company Parcel Information Report – 2N2W25B - 01600	07/02/2025
A.7	7	Appendix C – Copy of Executed Voluntary Compliance Agreement	07/02/2025
A.8	18	Appendix C – Aerial Photo of Barn and Pump House	07/02/2025
A.9	2	Case Status Letter Response	11/26/2025
A.10	8	Revised Narrative	11/26/2025
A.11	5	Appendix D – Affidavits of Barn and Pump House Existence	11/26/2025
A.12*	4	Appendix E – Site Plans and Building Plans	11/26/2025
‘B’	#	Staff Exhibits	Date
B.1	2	Assessment and Taxation Property Information for 3N2W25B - 01500 (Alt Acct # R982250020 / Property ID # R326136)	07/02/2025
B.2	1	Current Tax Map for 3N2W25B	07/02/2025
B.3	1	Survey 52831 filed on December 13, 1991	07/02/2025
B.4	1	Aerial Photo taken on August 20, 2025	01/22/2026
‘C’	#	Administration & Procedures	Date
C.1	4	Incomplete letter	07/31/2025
C.2	1	Applicant’s acceptance of 180-day clock	08/19/2025
C.3	2	Complete letter (day 1)	12/18/2025
C.4	7	Opportunity to Comment	01/22/2026
C.5	2	Short Decision	04/16/2026
C.6	9	Decision	04/16/2026



DRAIN FIELD END POINT LOCATIONS

END POINT	DISTANCE FROM TANK TO END POINT (feet)	DISTANCE FROM BARN TO END POINT (feet)
a	29	158
b	128	81
c	38	164
d	165	84
e	48	170
f	159	95
g	60	174
h	121	120

Note: Original outlet baffle is at bottom of tank. New baffle installed in 1998 under permit #015877

- 1 Existing dwelling to be demolished
- 2 Proposed replacement dwelling
- 3 E Barn
- 4 E Pump house
- 5 E gravel driveway
- 6 E gravel parking
- 7 E gravel walkways
- 8 E concrete walkway
- 9 E Garden trail, ~6'x6' patio slab at entry
- 10 E garden with trails
- 11 E Septic system
- 12 Treed areas
- 13 Hayfields
- 14 E Nursery area
- 15 Walnut tree to be evaluated
- 16 Water Line
- 17 ~Loc Storm Water Management Sys
- 18 30' Set Backs

Prop. ID #R326136
 MAP TAX LOT #3N2W25B-01500-P1
 Reference Survey #52831



SITE PLAN
 SCALE 1" = 100'

A0.1

DATE: 09/25/23

PROJECT: Replacement Dwelling	ENGINEER: TBD
OWNER: MIKE SMITH 20300 WATSON ROAD SCAPPOOSE, OR 97056	CONTRACTOR: PORTRAIT HOMES NORTHWEST 51891 SW OLD PORTLAND ROAD STE B SCAPPOOSE, OR 97056