

Notice of Hearings Officer Decision

This document provides notice of the Hearings Officer's decision in the matter of **T3-2025-0002**. The decision is effective on being mailed, and the mailing date is **January 9, 2026**. This notice is being mailed to those persons entitled to receive notice under MCC 39.1170(D).

This notice includes the signed Hearings Officer's decision which contains the following information: the name of the applicant or owner; the appellant's name; and the street address or location of the subject property along with a brief summary of the decision and the proposed use. For additional information, please visit our Land Use Planning website at <https://multco.us/departments/land-use-planning-division>.

The Planning Director has not appealed the Hearings Officer's decision. Therefore, the Hearings Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record.

Appeal instructions and forms are available from:

Land Use Board of Appeals
201 High St SE, Suite 600
Salem, Oregon 97301-3398

503-373-1265
LUBA.Support@luba.oregon.gov
www.oregon.gov/LUBA

For further information, call or email the Multnomah County Land Use Planning Division at: 503-988-3043 or LUP-Hearings@multco.us.

1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

DECISION OF THE HEARINGS OFFICER

**Application for a Lot of Record Determination, Accessory Use
Determination, Forest Development Review, Exception to the CFU-4 Safety
Zone and Variance**

Case File: T3-2025-0002

Applicants: Jim and Linda Gee

Proposal: Request for a Lot of Record Determination, Accessory Use Determination, Forest Development Review, Exception to the CFU-4 Safety Zone, and Variance for the retroactive approval of one agricultural building and eight accessory buildings.

Location: 38905 SE Gordon Creek Road, Corbett

Property ID # 341682

Map, Tax lot: S4E24B -00400

Alt. Acct. # 994100050

Base Zone: Commercial Forest Use (CFU-4)

Overlays: Geologic Hazard (GH)

Hearing Date, Time, & Place:

Friday, December 12, 2025 at 10:30 am. The hearing was conducted online.

Applicable Approval Criteria:

Multnomah County Code (MCC):

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 39.3050 Lot of Record – Lot of Record – Commercial Forest Use – 4 (CFU-4)

Commercial Forest Use (CFU-4): MCC 39.4070 Allowed Uses, MCC 39.4105 Building Height Requirements, MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones, MCC 39.4115 Development Standards for Dwellings and Structures, MCC 39.4155 Exceptions to Secondary Fire Safety Zones

Accessory Use Determination: MCC 39.4075 Review Uses, (L) Accessory Structures

Variance: MCC 39.8200 Adjustments and Variances; Generally, MCC 39.8205 Scope, MCC 39.8215

Variance Approval Criteria

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** and at <https://multco.us/landuse/comprehensive-plan> under the link **Multnomah County Comprehensive Plan**.

Decision:

The requested Accessory Use Determination, Lot of Record Determination, Forest Development Review, Exception to the CFU Safety Zone, and Variance are approved subject to the conditions of approval included in this Final Order..

Conditions of Approval:

1. Permit Expiration – This land use permit shall expire as follows:
 - a. This decision shall expire two (2) years after the date of the final decision, unless the use or development was established according to all specifications and conditions of approval in the land use approval. [MCC 39.1185(A)]
 - i. For the purposes of 1.a, expiration of an approval means that a new application is required for uses that are not established during the approval period.
 - ii. For purposes of 1.a, the property owner shall provide notification of the establishment of the use or development and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to LUP-submittals@multco.us with the case no. T3-2025 referenced in the subject line. [MCC 39.1185]

Note: The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

2. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein. [MCC 39.1170(B)]
3. Submit a request for a Zoning Plan Review to register the agricultural building.
4. Submit a Zoning Plan Review for all structures that require a building permit through the City of Gresham.

5. **Prior to submitting Building Plans for Zoning Review**, the property owner(s) or their representatives shall:
 - a. Acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement has been provided to assist you. The signed document shall be submitted and uploaded when submitting Building Plans for Zoning Review and Review of Conditions of Approval. [MCC 39.1170(A) & (B)]
6. **When submitting Building Plans for Zoning Review**, the property owner(s) or their representatives shall:
 - a. Provide a Letter of Acknowledgement as required in Condition 3.a. [MCC 39.1170(A) & (B)]
 - b. Request a ground disturbance permit for the proposed driveway modification required by the Oregon Fire Code. [MCC 39.4115(B)(3)]
 - c. The required Primary Fire Safety Zones shall be established within the subject tract in compliance with the criteria listed under MCC 39.4110(D)(1). Identify the Primary Fire Safety Zone around each structure on a site plan. On the plans, include the existing vegetation and/or the vegetation to be removed within the fire safety zone. 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. [MCC 39.4110(D)(4)]
 - d. All accessory structures within the fire safety zone setbacks required by MCC 39.4110 (the chicken house, pump house, and two pigeon pens) shall have a central monitored alarm system. [MCC 39.4155(B)(6)]
 - e. The barn, chicken house, pump house, and two pigeon pens shall have exterior walls constructed with materials approved for a minimum of one-hour rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior. In the alternative, these structures may be relocated so that they are more than 50 feet from any building. [MCC 39.4155(B)(7)]
7. **As an on-going condition**, the property owner(s) shall:
 - a. Maintain the Primary Fire Safety Zone around each accessory structure. [MCC 39.4110(D)(5)]

Dated this 6th day of January 2026



Joe Turner, Esq., AICP
Multnomah County Land Use Hearings Officer

This Decision is final when mailed. Appeals may be filed with the Oregon Land Use Board of Appeals within the time frames allowed by State law.

A. HEARING AND RECORD HIGHLIGHTS

1. Multnomah County Land Use Hearings Officer Joe Turner received testimony at the duly noticed online public hearing about this application on December 12, 2025. At the hearing, the hearings officer received into the record and inspected electronic copies of the file maintained by the Department of Community Services Land Use and Transportation Planning Program regarding the application. The hearings officer made the declarations required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts and any bias or conflicts of interest.

2. County planner Izzie Lieu summarized the Staff Report and the applicable approval criteria. She noted that the applicants is seeking: lot of record approval, accessory use determination, forest development review, exception to the CFU safety zone, retroactive approval of one agricultural building and eight accessory buildings, and a variance to the forest practice setback for buildings that are more than 100 feet from the dwelling on the site (the agricultural building and chicken house on the north and the pump house and two pigeon coops on the south). The variance is warranted based on the width of the lot and location of existing improvements on the site. She recommended the hearings officer approve the application subject to the recommended conditions in the Staff Report.

a. She noted that the adjustment and variance provisions of the Code only allow for modifications to dimensional standards. The Code does not provide for exceptions to the alarm and other fire safety standards.

3. Attorney Mike Connors appeared on behalf of the applicants, Jim and Linda Gee, summarized the proposed development, and responded to the Staff Report.

a. The five acre site is a long and narrow rectangular shape, roughly 200 feet wide. The site is bisected by two steep gullies, in the central and north portions of the site, which separate the developable portions of the site.

b. The site was created be deed in 1975 when the site and surrounding properties were zoned F2. There was no minimum lot size for the F2 zone at that time. The applicants have owned the site since 1976.

c. There are three categories of uses on the site. The barn, which is permitted in the CFU-4 zone as an auxiliary forest or agriculture building; accessory structures located within 100 feet of the dwelling, which are permitted uses; and accessory structures located more than 100 feet from the dwelling, which are allowed as review uses.

d. The applicants are requesting exceptions to the forest safety zone for structures located more than 100 feet from the dwelling.

e. The applicants are requesting a variance to the forest practice setback for structures located more than 100 feet from the dwelling. It is impossible to comply with the 130-foot setback requirement on this 200-foot wide parcel. The applicant cannot relocate the structures to be closer to the dwelling due to the location of the existing septic system, the gully, and other existing improvements on the site.

f. The County allowed similar approvals for other properties in the area, including a horse arena on the Sorenson property east of the site.

g. He accepted the findings and conditions in the Staff Report two exceptions:

i. The central monitored alarm system required by condition 6.d is not needed, given the small size of these structures. The pump house is four feet by four feet, the pigeon pens are eight feet by twelve feet, and the chicken house is an open sided structure where it may be impossible to install an alarm system. Therefore, this condition should be deleted. If it is retained, he requested the hearings officer clarify the condition to note that it only applies to the chicken house, pump house, and pigeon pens that are located more than 100 feet from the residence. Modification to this requirement falls within scope of the applicant's variance request.

ii. The fire-resistive construction requirement of MCC 39.4155(B)(7) should not apply to the open wall of the chicken house. Condition 6.e should be modified to that effect.

4. County deputy planning director Alexa Howard noted that Section 39.4155(B)(1) and (2) of the Multnomah County Code ("MCC") may allow variation from the alarm requirement for structures that are constructed in a fire resistant manner.

5. The hearings officer closed the record at the end of the hearing and announced his intention to approve the application, subject to the conditions in the Staff Report. The hearings officer took under advisement the issue of whether the Code allows an exception or variance from the alarm and fire resistive exterior walls.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as "Staff:" and address the applicable criteria. Staff comments may include a conclusory statement in *italic*. **The hearings officer accepted Staff findings, with minor editorial corrections, except where noted otherwise.** Additional findings written by the hearings officer are preceded by the words "**Hearings Officer:**"

1.0 Project Description:

Staff: The applicant requests the retroactive approval of one agricultural building and eight accessory structures through a Lot of Record Determination, Accessory Use Determination, Forest Development Review, Exception to the CFU Safety Zone and Variance.

2.0 Property Description & History:

Staff: The subject property is zoned Commercial Forest Use (CFU-4) and located within the East of Sandy River Rural Plan Area. The Geologic Hazard overlay zone is located on the northern portion of the subject property but all existing structures are located outside of the environmental overlay zone. The subject property contains a single-family dwelling, an agricultural building and eight accessory structures.

3.0 Public Comment:

Staff: Staff mailed a Notice of Public Hearing regarding the proposed application to the required parties pursuant to MCC 39.1105 (Exhibit C.4). Staff did not receive public comments before this report was issued seven days prior to the Hearing.

4.0 Code Compliance and Applications Criteria:

4.1 MCC 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**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property; or**
- (4) It brings a non-conforming structure or non-conforming use into compliance with current regulations; or**
- (5) The Planning Director determines the development qualifies as a minor project. For purposes of this provision, a minor project is defined as small in scale, located outside a Flood Hazard zone or Geologic Hazard overlay, intended for the primary benefit of the residents, farm uses, or natural habitat on the subject property and will meet all other applicable zoning and building regulations. A minor project shall qualify under at least one of the following categories:**
 - (a) Request for trade permits (such as electrical, mechanical and/or plumbing) that does not change the use of a structure or property; or**
 - (b) Accessory structure(s) with an individual footprint(s) up to 200 square feet. This includes a structural addition(s) or modification(s); or**
 - (c) Free standing renewable energy and heating systems up to 400 square feet ground coverage including, but not limited to solar (including solar panels), geothermal and wind generated systems; or**
 - (d) Roof mounted solar renewable (including solar panels) and solar heating systems not exceeding the size of a structure's roof area, or roof height; or**

- (e) Mechanical equipment such as heating and air conditioning units, heat pumps, ventilation and air filtration systems, electrical boxes, back-up power generators, energy storage systems, water pumps, and similar equipment; or
- (f) Heating oil, propane and similar tanks; or
- (g) Development requests to protect or enhance natural resources, such as but not limited to water quality or wildlife habitat.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

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.

Permits were not obtained for the existing agricultural building and eight other accessory structures on the subject property. Through this land use application, the property owner is requesting retroactive approval of these structures to bring the property into full compliance.

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.

(1) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements. (2) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

- (a) By a subdivision plat under the applicable subdivision requirements in effect at the time; or
- (b) By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
- (c) By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

* * *

Staff: To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the CFU-4 zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The Lot of Record standards set forth in the CFU district establish additional requirements unique to the district, which are evaluated in Section 5.2 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided a deed to support the Lot of Record request (Exhibit A.12). The earliest deed provided was recorded in 1975 and contains a legal description matching the current configuration of the subject property. In 1975, the subject property was zoned F2 per historical County zoning maps (Exhibit B.3).

The F2 zone had a minimum lot size of 2 acres (Exhibit B.4). There was no requirement for road frontage or minimum front lot line length or lot width requirements.

The subject property complied with all applicable zoning laws at the time of its creation or reconfiguration.

In 1975, the process to create or divide a parcel required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the 1975 deed, the applicable land division laws were satisfied (Exhibit A.12).

5.2 MCC 39.3050 Lot of Record Commercial Forest Use – 4 (CFU-4)

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-4 district a Lot of Record is either:

- (1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

- (a) Which were held under the same ownership on February 20, 1990; and**
- (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.**
 - 1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.**
 - 2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.**

* * *

Staff: The subject property was created through a Real Estate Contract on August 20, 1975. On February 20, 1990, the current owners (James & Linda Gee) owned the subject property. The Gees were not listed as property owners of any contiguous properties per Multnomah County tax records. Therefore, the subject property satisfies (A)(1) above. *Criteria met.*

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

* * *

Staff: Section (B) is for information purposes.

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4135, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: The subject property is less than the minimum lot size for new parcels in the CFU-4 zone and is subject to (C) above.

(D) The following shall not be deemed a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes.**
- (2) An area of land created by the foreclosure of a security interest.**

(3) A Mortgage Lot.

(4) An area of land created by court decree.

Staff: As discussed above under Section 5.1, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject property is not an area of land created by the foreclosure of a security interest, a mortgage lot, or created by court decree. *Criteria met.*

Based on the findings in 5.1 & 5.2 above, the subject property is a single Lot of Record in its current configuration.

6.0 Commercial Forest Use - 4 Criteria:

6.1 MCC 39.4070 Allowed Uses

The following uses and their accessory uses are allowed, subject to all applicable supplementary regulations contained in MCC Chapter 39.

(A) The following uses pursuant to the Forest Practices Act and Statewide Planning Goal 4:

- (1) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash;**
- (2) Temporary or permanent on site structures which are auxiliary to and used during a particular forest operation per ORS 215 and 455.315. Conversion of these structures is subject to any applicable land use and building permit review procedures; or**
- (3) Physical alterations to the land auxiliary to forest practices including, but not limited to, those for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities.**

* * *

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

Staff: The applicant is requesting the retroactive approval of a barn which was constructed and is currently used for agricultural uses such as storing farm animals, hay, and related farm equipment (Exhibit A.2). In addition, the barn is used as an auxiliary forest building to store wood that is cut from the timber located on the subject property. According to the County Assessor's data, the subject property is in forestland tax deferral (Exhibit B.2).

* * *

(T) Accessory Structures subject to the following:

(1) The accessory structure is customarily accessory or incidental to any use permitted or approved in this base zone, is located within 100 feet of the dwelling and is a structure identified in the following list:

- (a) Garages or carports;**
- (b) Pump houses;**
- (c) Garden sheds;**
- (d) Workshops;**
- (e) Storage sheds, including shipping containers used for storage only;**
- (f) Greenhouses;**
- (g) Woodsheds;**
- (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;**
- (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;**
- (j) Sport courts;**
- (k) Gazebos, pergolas, and detached decks;**
- (l) Fences, gates, or gate support structures; and**
- (m) Mechanical equipment such as air conditioning unites, heat pumps and electrical boxes; and**
- (n) Similar structures.**

(2) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.

(3) The Accessory Structure may contain one sink.

(4) The Accessory Structure shall not contain:

- (a) More than one story;**
- (b) Cooking Facilities;**
- (c) A toilet;**

(d) Bathing facilities such as a shower or bathing tub;

(e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or

(f) A closet built into a wall. (5) Compliance with MCC 39.8860 is required.

(6) The combined footprints of all Accessory Buildings on a Lot of Record shall not exceed 2,500 square feet.

(7) An Accessory Building exceeding any of the Allowed Use provisions above shall be considered through the Review Use provisions.

(8) Buildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions. Such buildings shall be used for their allowed farm purposes only and, unless so authorized, shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.

Staff: In addition to the barn, the property owner is requesting the retroactive approval of eight accessory structures which includes a detached deck, above ground pool, garage/workshop, storage shed, chicken house, pump house, and two pigeon pens (Exhibit A.2). The detached deck, above ground pool, garage/workshop and storage shed are located within 100 feet of the dwelling. The chicken house, pump house, and two pigeon pens are located more than 100 feet from the dwelling so these structures must adhere to the Review Use standards under MCC 39.4075(L). None of the accessory structures contain a sink or have features listed under subsection (T)(4), and the total square footage of the accessory buildings is 1,854 square feet (Exhibits A.4 – 7, A.16, A.17).

6.2 MCC 39.4075 Review Uses

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

* * *

(L) Structures or uses customarily accessory or incidental to any use permitted or approved in the CFU, which do not meet the “accessory structures” standard in MCC 39.4070 Allowed Uses, but which meet the following provisions:

(1) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential unit.

(2) The Accessory Structure shall not contain a bathing tub.

(3) Any toilet or bathing facilities, such as a shower, shall be located on the ground floor of any multi-story building.

(4) An Accessory Structure containing a toilet or bathing facilities shall not contain Cooking Facilities.

(5) The Accessory Structure shall not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage.

(6) The applicant must show that building features or combined building footprints exceeding the Allowed Use provisions are the minimum possible departure from the Allowed Use standards to accommodate the use.

(7) Compliance with MCC 39.8860 is required.

Staff: The chicken house, pump house, and two pigeon pens are located more than 100 feet from the dwelling. These buildings do not contain a bathroom, bedroom or cooking facilities (Exhibits A.4 – 7, A.16, A.17). Since these buildings meet all of the Allowed Use standards except for the distance from the dwelling, staff finds that the buildings are the minimum possible departure from the Allowed Use standards to accommodate the use.

6.3 MCC 39.4105 Building Height Requirements

(A) Maximum structure height – 35 feet.

Staff: All of the existing accessory structures are less than 35 feet in height (Exhibits A.2 & A.18).

6.4 MCC 39.4110 Forest Practice Setbacks and Fire Safety Zones

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)
Accessory structures within 100 ft. of the dwelling	N/A	30	30	Primary Required
Accessory structures located more than 100 ft. from the dwelling	N/A	30	130	Primary & Secondary Required
Other Structures	N/A	30	130	Primary & Secondary Required

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Staff: The detached deck, above ground pool, garage/workshop and storage shed are located within 100 feet of the dwelling and meet the forest practice setbacks from all property boundaries (Exhibit A.15). The barn, chicken house, pump house, and two pigeon pens are located more than 100 feet from the dwelling and do not meet all of the required forest practices setbacks which is addressed further below. In addition, the applicant has requested an Exception to the Secondary Fire Safety Zone for those structures located more than 100 feet from the dwelling. In regards to the Primary Fire Safety Zone, the applicant did not identify any vegetation within 30 feet of each structure on the site plan but aerial images of the property show vegetation surrounding these structures. Staff recommends a Condition of Approval requiring the applicant to identify any existing vegetation and/or the vegetation to be removed within the Primary Fire Safety Zone.

- (A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.**
- (B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 39.4155 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.**

Staff: The accessory structures that are located more than 100 feet from the dwelling must be setback 130 feet from the eastern, western, and northern property boundaries. The applicant has requested a Variance for the Forest Practices Setbacks and an exception to the Secondary Fire Safety Zone for the accessory structures that are located more than 100 feet from the dwelling. Those standards are addressed further below.

- (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.**

Staff: The subject property abuts Gordon Creek Road which is a rural collector requiring at least a 60-foot right-of-way width based on the Multnomah County Transportation Design Standards. The width of the Gordon Creek Road right-of-way is 60 feet, therefore, the forest practices setbacks do not need to be increased.

(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.**

* * *

Staff: The applicant states that the Primary Fire Safety Zones have been met but did not provide a site plan that identifies the Primary Fire Safety Zones around each structure. Existing vegetation or vegetation

to be removed within this safety zone have not been identified. Staff recommends a Condition of Approval requiring the applicant to provide a revised site plan to identify the Primary Fire Safety zones around each structure, and for trees within the primary fire safety zone(s) to meet the requirements of MCC 39.4110(D)(1)(a) above.

(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.

(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

(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: The applicant is requesting an exception to the secondary fire safety zone for the structures that are located more than 100 feet from the existing dwelling (Exhibit A.2). If the exception is approved, staff recommends a Condition of Approval that requires the primary fire safety zone to be established and maintained.

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:

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

* * *

(3) Accessory buildings shall meet the development standards of MCC 39.4115(E).

(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 39.4115 (C) and (E);

Staff: The detached deck, above ground pool, garage/workshop and storage shed are located within 100 feet of the dwelling (Exhibit A.15). The standards of MCC 39.4115(C) and (E) are addressed below.

(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B), (C) and (E);

Staff: The chicken house, pump house, and two pigeon pens are located more than 100 feet from the dwelling (Exhibit A.15). The standards of MCC 39.4115(B), (C) and (E) are addressed below.

(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):

* * *

(2) The structure shall satisfy the following requirements:

(a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 39.4110;

(b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

Staff: The applicant states that the surrounding properties are developed with residential uses. The chicken house, pump house, and two pigeon pens are considered accessory to the existing residential use on the subject property, and these uses will not impede or prohibit forest or agricultural practices on nearby or adjoining properties (Exhibit A.2). The barn supports forestry and farming operations on the subject property which includes the storage of firewood, farm animals, hay, and related farm equipment.

(c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;

Staff: The applicant states that the structures are the minimum size to support the uses described above (Exhibit A.2). The access road is also the minimum length necessary to provide access from Gordon Creek Road to the northern portion of the property. The applicant states that the barn and chicken houses cannot be relocated closer to the existing dwelling on the southern portion of the property because it would require a redesign of the driveway, turnaround area, and landscaping for the dwelling. In addition, relocating the structures to the southern portion of the property would increase the impacts on the forest operations because it would require the removal of 37 mature trees and 75 immature western red cedar trees located in this area of the property (Exhibit A.2). The pigeon pens and pump house are located toward the southern portion of the property and are each less than 200 square feet in size (Exhibits A.6 & A.18).

(d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and

Staff: The gravel access road that serves the northern portion of the property is in excess of 500 feet in length (Exhibit A.2). The applicant states that the access road is the minimum length required and is necessary due to the physical limitations of the property. The northern and southern portions of the

property are split by a gully and the access road is necessary to be able to use the northern portion of the property (Exhibit A.2).

(3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

(a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access;

(b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source;

Staff: Staff recommends a Condition of Approval requiring the applicant to adhere to the Oregon Fire Code for the access roadway per the Fire Agency Review form (Exhibit A.9).

(C) The dwelling or structure shall:

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

Staff: The applicant is not proposing a mobile home. *These criteria are not applicable.*

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

Staff: The applicant states the accessory structures were constructed with a fire retardant roof and there are no chimneys on any of the structures (Exhibit A.2).

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

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

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

Staff: The applicant submitted a Septic Certification Form stating that the structures do not pose a concern to the existing septic system and drainfield (Exhibit A.10). The applicant also provided a Stormwater Certificate signed by a Registered Professional Engineer (Exhibit A.8). The stormwater certificate states an on-site stormwater drainage control system is not required as the rate of stormwater runoff attributed to the development will be no greater than that which existed prior to the development.

6.6 MCC 39.4155 Exceptions to Secondary Fire Safety Zones

(A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of MCC 39.4155 (B) when:

- (1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or**
- (2) The dwelling or structure will be located within 130 feet of the centerline of a public or private road serving two or more properties including the subject site; or**
- (3) The proposed dwelling or structure will be clustered with a legally existing dwelling or structure.**

Staff: The chicken house, pigeon pens, pump house and barn require a secondary fire safety zone but the width of the property is approximately 200 feet in width (Exhibit B.2).

(B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:

- (1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or**
- (2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and**

Staff: The secondary fire safety zone for the chicken house, pigeon pens, pump house and the barn are less than 50 feet. The applicant states that the structures were constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction (Exhibit A.2). Staff recommends a Condition of Approval that requires the applicant to obtain all of the necessary permits through the City of Gresham's Building Division.

(3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and

Staff: There are no combustible fences within 12 feet of the structures.

(4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of subsection (B) (1) above are utilized, or

(5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of subsection (B) (2) above are utilized. Expansions of existing single family dwellings as allowed by MCC 39.4075 (A) shall not be required to meet this standard, but shall satisfy the standard of MCC 39.4115(C)(3) and (E).

Staff: The applicant is not proposing a dwelling. *These criteria are not applicable.*

(6) All accessory structures within the fire safety zone setbacks required by MCC 39.4110, and all accessory structures within 50 feet of a dwelling, shall have a central monitored alarm system.

Staff: Staff recommends a Condition of Approval to ensure compliance.

Hearings Officer: At the hearing the applicant requested an exception to the centralized alarm requirement for the chicken house, pump house, and two pigeon pens. (Connors testimony). However, the Code only allows adjustments and variances to dimensional standards. (MCC 39.8200). The alarm requirement is not a dimensional standard for which the Code provides for an exception. The Code contains no other provisions allowing for exceptions to this requirement, which is only required when the County approves an exception to the secondary fire safety zone.

This requirement only applies to the chicken house, pump house, and two pigeon pens. Condition 6.d should be modified to clearly note that limitation.

(7) All accessory structures within 50 feet of a building shall have exterior walls constructed with materials approved for a minimum of one-hour rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.

Staff: The barn, chicken house, pump house, and two pigeon pens are located within 50 feet of a building (Exhibit A.16). Staff recommends a Condition of Approval to ensure compliance.

Hearings Officer: At the hearing the applicant requested an exception to this requirement for the open wall of the chicken house. (Connors testimony). However, as noted above, the Code only allows adjustments and variances to dimensional standards. (MCC 39.8200). The fire-resistive construction requirement is not a dimensional standard for which the Code provides for an exception. The Code contains no provisions allowing for exceptions to the fire-resistive construction requirement, which is only required when the County approves an exception to the secondary fire safety zone.

The hearings officer understands that there is no exterior wall on the northern section of the chicken house (Exhibit A.17). It could be argued that the fire-resistive construction requirement MCC 39.4155(B)(7) only applies where a structure has walls. However, the hearings officer finds that this provision is intended to reduce the risk of fire spreading from one structure to another, given that the fire safety zone requirements are intended to reduce the risk of fire and this provision only applies to structures located within 50 feet of another structure. Chicken coops generally contain nesting and other potentially flammable materials that could be readily ignited by sparks generated by a fire in another nearby structure. Fire-resistive walls would limit the potential for sparks entering the chicken house and causing a fire, consistent with the intent of the fire safety zone setbacks. Therefore, the hearings officer finds that

the applicant is required to either modify the chicken house to comply with MCC 39.4155(B)(7) or relocate the structure so it is more than 50 feet from any other building. Condition 6.e should be modified to that effect.

(8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban-Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication.

Staff: None of the accessory structures project over a descending slope surface greater than 10 percent (Exhibit A.16).

7.0 Variance Criteria:

7.1 MCC 39.8215 Variance Approval Criteria

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (G) are met:

(A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or base zone. The circumstance or condition may relate to:

(1) The size, shape, natural features and topography of the property, or

(2) The location or size of existing physical improvements on the site, or

(3) The nature of the use compared to surrounding uses, or

(4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or base zone, or

(5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.

(6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

Staff: The applicant is requesting a forest practice setback Variance for the barn, chicken house, pump house, and two pigeon pens that are located more than 100 feet from the existing dwelling. As stated in earlier findings, the subject property was lawfully created in its current size and configuration which is less than the current minimum size in the Commercial Forest Use zone, and the width of the property is approximately 200 feet which makes it impossible to meet the 130-foot forest practice setback. The applicant references a Hearing Officer Decision (case no. T3-08-001) which was a request for a similar

setback Variance for the neighboring property to the east. In that decision the Hearing Officer recognized the challenge of meeting the increased forest practice setback as the property was smaller and narrower than most lots in the surrounding area. The subject property is 0.5 acres smaller than the property that was granted the Variance (Exhibits A.2 & A.13). In addition, the structures cannot be relocated closer to the existing dwelling due to the location of existing physical improvements such as the septic system and driveway on the southern portion of the property where the dwelling is located.

(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

Staff: The 130-foot forest practice setback cannot be met due to the width of the property. The subject property was lawfully created in its current size and configuration in 1975. At the time of the conveyance, the base zone did not require a 130-foot forest practice setback (Exhibit B.4).

(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

Staff: The 130-foot forest practice setback cannot be met due to the width of the property, and the relocation of the structures would be difficult or an unnecessary hardship as the location would impact the existing improvements which includes the septic system and driveway (Exhibit A.2).

(D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or base zone in which the property is located, or adversely affects the appropriate development of adjoining properties.

Staff: The development on the subject property is consistent with the development on adjacent properties which includes mostly residential development (Exhibit A.2). The structures on the subject property will continue to be used for residential, farming and forest purposes.

(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.

Staff: The width of the property does not allow structures more than 100 feet from the dwelling to be sited 130-feet from the eastern and western property boundaries as the width of the property is approximately 200 feet. In addition, the structures cannot be relocated closer to the dwelling as there are existing physical improvements on the southern portion of the property which includes the septic system and driveway. For these reasons, a Variance is recommended to be approved with conditions.

(F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

Staff: The applicant has not identified any specific impacts resulting from the approval of the Variance.

(G) The variance must be in support of a lawfully established use or in support of the lawful establishment of a use.

Staff: The approval of the Variance would support the lawful establishment of the accessory structures.

8.0 Conclusion:

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Lot of Record Determination, Accessory Use Determination, Forest Development Review, Exception to the CFU Safety Zone and Variance for the retroactive approval of an agricultural building and eight accessory structures in the CFU-4 zone. This approval is subject to the conditions of approval established in this report.

12.0 Exhibits

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

All exhibits listed below are available for review in by contacting Izze Liu via email at LUP-comments@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received/Submitted
A.1	2	Application Form	02.19.2025
A.2	19	Narrative	02.19.2025
A.3	1	Site Plan	02.19.2025
A.4	1	Barn Floor Plan	02.19.2025
A.5	1	Garage Floor Plan	02.19.2025
A.6	1	Pigeon Loft Floor Plans	02.19.2025
A.7	1	Storage Shed Floor Plan	02.19.2025
A.8	1	Stormwater Drainage Control Certificate	02.19.2025
A.9	3	Fire Service Agency Review	02.19.2025
A.10	1	Septic Review Certification	02.19.2025
A.11	1	Transportation Planning Review	02.19.2025
A.12	5	Deed History	02.19.2025
A.13	33	Multnomah County Hearing Officer Decision	02.19.2025
A.14	1	Supplemental Fire Review	07.16.2025
A.15	2	Supplemental Septic Review	07.16.2025
A.16	1	Revised Site Plan	07.16.2025

A.17	1	Chicken House Floor Plan	07.16.2025
A.18	1	Pump House Floor Plan	07.16.2025
A.19	5	Exterior Photographs	07.16.2025
A.1.20	17	Incomplete Letter Response & Correspondence	07.16.2025
'B'	#	Staff Exhibits	
B.1	2	Assessment and Taxation Property Information for 1S4E24B -00400 (Alt Acct# R994240140)	02.19.2025
B.2	1	Current Tax Map for 1S4E24B -00400	02.19.2025
B.3	1	1975 Historic Zoning Map	02.19.2025
B.4	2	1974 Historic Zoning Code	02.19.2025
B.5	1	1989 Ownership (subject property)	02.19.2025
B.6	1	1989 Ownership (TL 100)	02.19.2025
B.7	1	1989 Ownership (TL 300)	02.19.2025
B.8	1	1989 Ownership (TL 500)	02.19.2025
B.9	1	1990 Ownership (subject property)	02.19.2025
B.10	1	1990 Ownership (TL 100)	02.19.2025
B.11	1	1990 Ownership (TL 300)	02.19.2025
B.12	1	1990 Ownership (TL 500)	02.19.2025
'C'	#	Administration & Procedures	
C.1	3	Incomplete Letter	03.28.2025
C.2	1	Applicant Incomplete Response	04.15.2025
C.3	1	Complete Letter	08.22.2025
C.4	15	Hearing Notice	11.20.2025
C.5	1	Toll Request	11.25.2025
C.6	18	Staff Report	12.02.2025