

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

NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-2017-7000

Permit: Significant Environmental Concern & Accessory Use Determination

Location: 14421 NW Springville Road, Portland
Tax Lot 200, 300, 400 & 500, Section 16B, Township 1 North, Range 1 West, W.M.
Tax Account #R961160020, R961160890, R961160260, & R961160950

Applicants: Curtis Fisher, Winterbrook Planning

Owners: Kathy & David Blumenkron

Base Zone: Exclusive Farm Use (EFU) & Commercial Forest Use – 2 (CFU-2)

Overlays: Significant Environmental Concern for wildlife habitat (SEC-h) and streams (SEC-s)

Summary: Applicant is requesting an Accessory Use Determination and Significant Environmental Concern permit for wildlife habitat to retroactively permit a 5,000 sq. ft. accessory building, a 1,160 sq. ft. addition to an existing 2,320 sq. ft. barn and a 263 sq. ft. garden shed in the Exclusive Farm Use zone in the West Hills Rural Area Plan. The Significant Environmental Concern permit will also cover the existing dwelling constructed without land use or building permits.

Decision: Approved with Conditions

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, November 16, 2017 at 4:00 pm.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by:



Lisa Estrin, Planner

For: Michael Cerbone, AICP
Planning Director

Date: Thursday, November 2, 2017

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-0167 or lisa.m.estrin@multco.us.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, November 16, 2017 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 33.0565 Condition of Approval – Accessory Structures, MCC 33.0570 Dark Sky Lighting Standards, MCC 33.2620(O) Allowed Uses – Accessory Structures..., MCC 33.2625(O) Review Uses – Structures or Uses Customarily Accessory..., MCC 33.2655 Single Family Dwellings condition of Approval – Prohibition on Claims Alleging Injury From Farm or Forest Practices, MCC 33.2660 Dimensional Requirements and Development Standards, MCC 33.2675 Lot of Record, MCC 33.4510 Uses; SEC Permit Required, MCC 33.4520 Application for SEC Permit, MCC 33.4570 Criteria for Approval of SEC-h Permit – Wildlife Habitat, and MCC 37.0560 Code Compliance and Applications.

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at www.multco.us/landuse/zoning-codes under the link *Chapter 33: West Hills Rural Plan Area* or *Chapter 37: Administration and Procedures*.

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. 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.
2. This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690(A) for the previously constructed single family dwelling and accessory buildings. The property owners shall obtain and finalize building permits for the single family dwelling within this two year time period. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.
3. This land use approval grants the property owners up to 3,500 sq. ft. of accessory uses for the subject Lot of Record. Prior to land use approval for building plan check for the dwelling, the property owners shall determine which of the buildings or portion of buildings they will maintain for their accessory uses and provide a modified site plan showing which buildings or portion of buildings are to remain and which are to be removed from the property.

a. Within one year of this permit becoming final, the property owners shall remove the buildings and or portion of buildings necessary from the site to bring it into compliance with the 3,500 sq. ft. of accessory uses allowed.

b. If the garden shed, the workshop or lean-to structures are to remain and are over 200 sq. ft. in size or ten feet in height, building permits shall be obtained and finalized within the one year of this permit becoming final.

-OR-

c. Within one year of this permit (T2-2017-7000) becoming final, if the property owners are able to obtain approval to convert the remaining building square footage to an Allowed, Review or Conditional Use within the EFU zone, the buildings may remain on the property provided the buildings are used solely for those uses. These buildings (in excess of 3,500 sq ft) cannot be used for accessory uses without further land use review. [MCC 37.0560]

4. Prior to land use approval for building plan check for the new single family dwelling, accessory building(s) or implementation of ground disturbing activities associated with the approved buildings, the property owners or their representative shall:

a. The property owners shall record the County's Notice of Zoning Compliance – Accessory Structure covenant with County Records that states that the owners understand and agree that all accessory structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. [MCC 33.0565 & MCC 33.2620(O)(3)]

b. The property owners shall sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or ORS 30.937. [MCC 33.2655]

b. The property owners or their representatives shall include a Lighting Plan in the building plan sets that includes all light locations and light fixture details on the single family dwelling and the accessory buildings that are in compliance with the County's Dark Sky Lighting Standards contained in MCC 33.0570.

c. Demonstrate that the single family dwelling and accessory building(s) have been reviewed by Tualatin Valley Fire and Rescue (TVFR). If TVFR requires the dwelling to have a fire sprinkler system, the property owners or their representative shall include a fire sprinkler system plan that is designed to meet Section 903.1.3 (NFPA13D) of the Oregon Fire Code within the building permit plan sets for the single family dwelling. In addition, the plans shall show any other requirements by the fire agency. [MCC 29.003(B)]

d. The property owners or their representative shall demonstrate that the dwelling is in compliance with the 35-ft. height requirement listed in MCC 33.2260(C).

e. Demonstrate that the County Sanitarian has reviewed the construction plans for the on-site sewage disposal system and is ready to issue the on-site sewage disposal construction permit for the property.

5. By June, 2018, the property owners shall plant the seven (7) evergreen trees as shown on Exhibit A.8, page 38 and commence removal of the blackberries within the SEC-s overlay zone. Blackberry removal shall be by hand or via chemical spraying. No ground disturbing activities shall occur with machinery within the SEC-s overlay. Active replanting of exposed soils shall occur where blackberries are removed and shall utilize native vegetation or seeds.

6. The seven (7) evergreen trees shall be maintained in a living state. If they die, are damaged, removed or become diseased they shall be replanted by the next growing season with trees that are at least 5-gallons in size.

7. The nuisance plants listed in MCC 33.4570(B)(7) or its corresponding list in subsequent Multnomah County Codes shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property. [MCC 33.4570(B)(7)]

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, Lisa Estrin, at (503) 988-0167 or contact her at lisa.m.estrin@multco.us, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

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

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

GENERAL NOTES

1. THERE ARE NO KNOWN STORMWATER FACILITIES WITHIN 100' OF SEPTIC SYSTEM

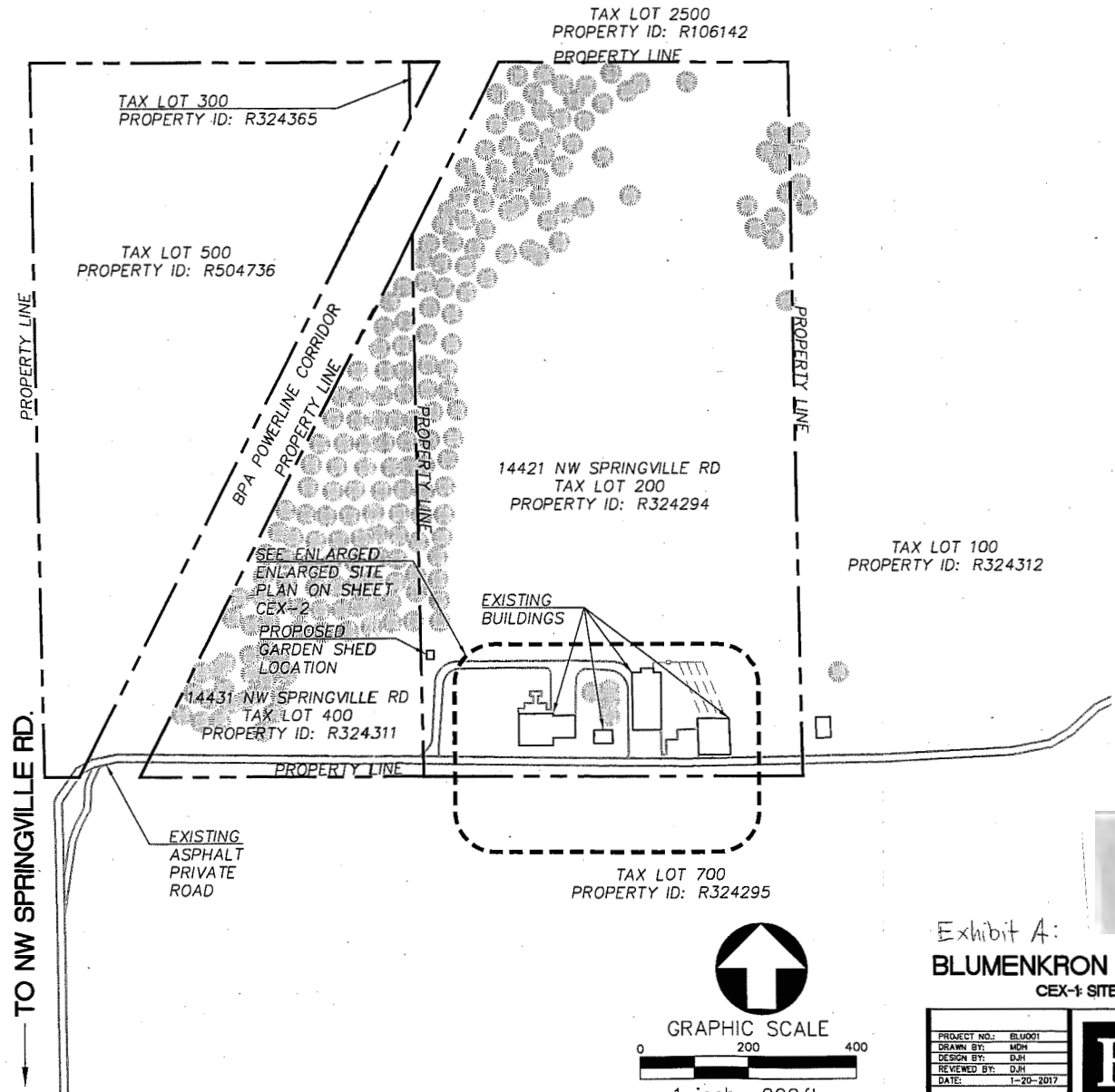


Exhibit A:
BLUMENKRON RESIDENCE
 CEX-1 SITE PLAN

PROJECT NO.:	BLU001
DRAWN BY:	MDH
DESIGN BY:	DJH
REVIEWED BY:	DJH
DATE:	1-20-2017

H
Humber Design Group, Inc.
 317 SE Taylor Street
 Suite 102
 Portland, OR 97214
 (503) 566-0600
 www.hdgpa.com

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*.

1.00 Project Description:

Staff: The applicant is requesting a Significant Environmental Concern permit for wildlife habitat to authorize the previous construction of a new single family dwelling and various outbuildings in the Exclusive Farm Use zone. In addition, the applicant has applied for an Accessory Use Determination to authorize an existing 5,000 sq. ft. (50-ft by 100-ft) accessory building, an existing addition of a lean-to (20-ft by 58-ft) to a 1940 barn (40-ft by 58-ft) and an existing small, 263 sq. ft. (15.16-ft by 17.33-ft) garden shed.

2.00 Property Description & History:

Staff: Beginning in the early 2000’s, the property owners demolished the original 1948 dwelling and constructed a replacement dwelling and a 5,000 sq. ft. accessory building with two apartments in it, all of this work was completed without land use approval and without building permits. The apartments have since been removed through the code compliance case (UR-06-053). The property owners also added a 1,160 sq. ft. addition to an existing 2,320 sq. ft. old barn without land use approval and without building permits. The total square footage of the old barn and lean-to building will be 3,480 sq. ft. Between 2012 and 2016, a small 263 sq. ft. garden shed was constructed near the garden area without land use approval and without building permits.

In land use decision, T2-2015-3993 the County’s Hearings Officer found that the original dwelling constructed in 1948 was lawfully established, met the habitability components and the property tax related provisions of the statute authorizing a replacement dwelling. In addition, Hearings Officer included the following conditions of approval:

1. The applicant shall obtain all additional required land use approvals, if any, to establish the replacement dwelling as an allowed use, and
2. The applicant must demonstrate to the satisfaction of the appropriate county official(s) that the replacement dwelling complies with all current applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety. It is understood that the relevant officials may be authorized to apply flexibility or discretion in applying the standards given that these permits are being obtained retroactively.

The submitted application is to correct the outstanding issues (UR-06-053) on the subject property and bring it in to compliance with Multnomah County’s zoning code and building code requirements as required by MCC 37.0560.

The subject property is 39.08 acres in size and is split zoned. The eastern tax lots are zoned Exclusive Farm Use (EFU). The western tax lots are zoned Commercial Forest Use – 2 (CFU-2). The existing development is located primarily on the EFU zoned portion. The small 263 sq. ft. garden shed will be moved from the CFU-2 zone to the EFU zoned portion of the land if approved.

3.00 Exclusive Farm Use Approval Criteria

3.01 § 33.2620 ALLOWED USES

(O) Accessory Structures:

(1) Structures or uses listed below when customarily accessory or incidental to

any use permitted or approved in this district;

- (a) Garages or carports;
- (b) Pump houses;
- (c) Garden sheds;
- (d) Workshops;
- (e) Storage sheds;
- (f) Greenhouses;
- (g) Woodsheds;
- (h) Shelter for pets, horses or live-stock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;
- (i) Swimming pools, pool houses, hot tubs, saunas, and changing rooms;
- (j) Sport courts;
- (k) Gazebos, pergolas, and detached decks;
- (l) Fences, gates, or gate support structures; and
- (m) Similar structures.

(2) If the accessory structure is a building, then to be an “allowed use” the foot print of the building in combination with the footprint of all other accessory buildings on the property shall not exceed 2500 square feet.

(3) If the accessory structure has a bathroom or kitchen facilities, then prior to issuance of the building permit the property owner shall record a deed restriction with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling.

(4) Buildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions.

Staff: The applicant states that the primary use of the property is residential. The property owners are requesting authorization to keep two existing accessory buildings and an addition to an older building. None of the buildings are used strictly for farm uses and therefore must qualify as accessory buildings to be permitted to remain.

5,000 sq. ft. Accessory Building (Workshop) – This building was constructed without land use approval and without building permits (UR 06-053). The applicant states that the “*building is in support of the owners’ lifestyle as hobby farmers, providing adequate workspace to store and protect equipment from the weather and also for equipment used to maintain their 39 acre property.*” Hobby farming or gardening is not a commercial farm activity. The property owners store tools, tractors and other equipment, use it for a vehicle repair area and storage building (Exhibit A.8, page 12 - 13). The building has an open floor plan with no permanent partitions proposed. A sink and toilet is located in the northeast corner of the building but is not enclosed in a room. Because of the bathroom facilities, if the building is to remain a condition of approval will require that a covenant be recorded indicating that the building cannot be used or occupied as a dwelling. The photos (Exhibit A.8, pages 14 & 15) and the floor plan (Exhibit A.11) submitted by the applicant for this building only show that the perimeter is used but the center of the building is empty and not fully utilized.

1940's Barn with Lean-To Addition (Old Barn) – The addition to the old barn was constructed without land use approval and without building permits (UR 06-053). The 1940's era barn is 2,320 sq. ft. A non-permitted 1,160 sq. ft. lean to structure was added to it to increase its size to 3,480 sq. ft. The applicant states that it currently houses the components of a large dismantled greenhouse, a trailer, salvaged building materials and trash. The lean-to is used for wood storage. (Exhibit A.8, pages 15 – 17)

Garden Shed – This small, 263+/- outbuilding was constructed without land use approval or building permits and is located in close proximity to the property owner's garden and fruit orchard. It is used to house garden tools, hoses, rototiller, garden staves, and other garden supplies readily accessible to the hobby use. (Exhibit A.8, pages 17 – 19).

The subject property as it exists now contains four outbuildings and one single family dwelling with an attached garage. The single family dwelling and attached garage is approximately 5,769 based on tax records. The subject property currently has approximately 9,618 sq ft of accessory structures on the property; 3,195 of which was lawfully permitted and the remaining 6,423 sq ft was not lawfully established. The square footage of all accessory buildings to be authorized by this application process far exceeds 2,500 sq. ft. and must be reviewed to determine if the buildings are “customarily accessory” to the residential use.

3.02 § 33.2625 REVIEW USES

(O) Structures or uses customarily accessory or incidental to any use permitted or approved in this district, which do not meet the “accessory structures” standard in MCC 33.2620, Allowed Uses.

Staff: The table below lists the square footage for all buildings on the subject property:

Use	Home Sq. Ft.	Acc Bldg Sq. Ft.
Dwelling & Attached Garage	5,769 sq. ft.	n/a
Older Detached Garage		875 sq. ft.
Workshop		5,000 sq. ft.
Old Barn		3,480 sq. ft.
Garden Shed		263 sq. ft.
Total Accessory Sq. Footage:		9,618 sq. ft.

The applicant is retroactively requesting approval of 9,618 sq. ft. of accessory use. To support the application they have provided outbuilding information for six properties located in the West Hills area. The graphic below shows five of the six properties:



The sixth property is located 1.6 miles (as the crow flies) from the northwest corner of the Blumenkron property so it will not fit within the area of the map.

Address	Site Size	Land Use	Acc. Bldgs	Farm Bldgs
Blumenkron (Site)	39.08 ac.	Res/Farm	9,618 sq. ft.	n/a
14419 NW Springville (#1)	113.68 ac.	Res/Farm/Forest	882 sq. ft.	8,042 sq. ft.
14415 NW Springville (#2)	1.25 ac.	Res.	2,752 sq. ft.	n/a
14400 NW Old Germantown (#3)	35.53 ac.	Res./Forest	3,068 sq. ft. (7,200 sq. ft. dec. void)	n/a
14810 NW Old Germantown (#4)	39.10 ac.	Res./Farm	1,080 sq. ft.	3,840 sq. ft.
15007 NW Germantown (#5)	3.03 ac.	Res.	1500 sq. ft.	3,840 sq. ft.
9741 NW Kaiser (#6)	9.94 ac.	Res./Farm	1,998 sq. ft. (not permitted)	10,194 sq. ft.

Planning staff analyzed various County records for the six properties to determine which buildings were accessory buildings and which were farm buildings permitted in association with commercial farm operations. Agricultural exempt structures (farm buildings) are not regulated by this standard (MCC 3625(O), accordingly Staff's analysis of the request does not

include these structures as part of the consideration for the decision. Similarly, structures that were not lawfully established or are not currently lawful were excluded from Staff's analysis.

The 14419 NW Springville property (#1) is 113 acre in size and consists of farm and forest uses. Burnham Farms LLC is listed as the property owner and appears to be doing business as a farm. It contains one of the largest buildings on the list. The building appears on the 1977 and 1986 aerial photographs and was established as a farm building as staff has found no land use approval for an accessory building. The applicant states that the building is not being used for farm use. No evidence was provided that the building is not a farm building. Our records do not reflect that the building has been converted to a non-farm use. If the property owners have converted the building to another use it would not support the applicant's application for accessory buildings as the conversion from Farm Use was not lawfully completed.

The 14415 NW Springville property (#2) is a 1.25 acre parcel and is not currently in farm deferral. The site contains 2,752 sq. ft. of accessory building based on county records. In 1959, a permit was issued for a 14-ft by 30-ft utility building. The building was allowed to expand to 64 feet long (896 sq. ft.) in 1961 for use as a dog kennel. In July 2001, the County approved a land use permit (T2-01-012) to construct a 40-ft by 70-ft accessory building. It appears that the size of the building was reduced to approximately 34-ft by 45-ft (1,536 sq. ft.).

The largest accessory building is located at 14400 NW Old Germantown Road (#3) and is a 7,200 sq. ft. riding arena/barn for personal use only. A riding arena use requires significant area to accomplish the use and is different from a storage building or workshop. According to County records, this building was not lawfully established as the property owner has failed to obtain building permits as required by the land use decision (Exhibit B.3). Since the building was not lawfully established, it will not be considered as part of the "customarily accessory" discussion. Based on County records, the site contains 3,068 sq. ft. of accessory building.

The 14810 NW Old Germantown (#4) property is being used for residential and farm use. The property has two single family dwellings. One dwelling is for the farmer and the other is a relative farm dwelling. Assessment and taxation records show a 1,080 sq. ft. detached garage. Planning records show it is an exempt farm structure. It was authorized by Land Use Planning and rebuilt in 2008 as a storage building for farm equipment. There are at least four other buildings on the property. The largest of the buildings was identified in 2011 as an ag building by the property owner. The remaining buildings are located south of the creek and appear to be farm structures. They show up on aerial photographs in 1986. Staff was not able to determine their uses from County records. County staff will use the 1,080 sq. ft. of accessory building as part of this review since staff is unsure of the southern buildings exact uses.

The 15007 NW Germantown (#5) property is a 3.03 acre site that is used for residential purposes. The site contains a 3,840 sq. ft. agricultural building. CU 5-93 conditions that the building only be used for agricultural purposes. The 1,500 sq. ft. building was not identified as an agricultural building in conditional use and will be considered an accessory building for this application.

The 9741 NW Kaiser (#6) property appears to be used for horses or livestock. The 2006 permits for the replacement dwelling show horse pastures and list the building as a barn. Review of the historic 1977 and 1986 aerial photographs show the building with surrounding farm use. No land use sign off was found to establish an accessory building on the property from the 1960s onward. The large 10,194 sq. ft. building appears to be a farm building for the livestock use. These buildings are not comparable to the proposed accessory buildings to a

hobby farm/personal use. The applicant has not provided any evidence that the building is lawfully being used as an accessory building.

Planning staff considered the existing square footage of the accessory buildings for the 6 properties submitted. The average accessory use square footage is approximately 2,079 sq. ft. The property #3 has the second largest amount of authorized accessory use at 3,068 sq. ft. Staff does not know the exact use (workshop, storage, garage, etc.) of each of these buildings but storage and work shop are typical uses found in outbuildings.

The subject property has a 5,769 sq. ft. dwelling located on it. The applicant is requesting approval to expand the accessory uses to 9,618 sq. ft. The amount of accessory use requested is 1.6+ times the size of the dwelling on the site. Planning staff does not know if the detached garage is used for parking vehicles, storage or another type of use. Most of the proposed building space in the three buildings that did not receive land use approval or building permits is for storage of various equipment and tools (Exhibit A.8 and A.11). Garden tools appear to be stored in two buildings with space allocated in the 263 sq. ft. garden shed and in the 5,000 sq. ft. barn (Exhibit A.8 and A.11). The property owners do have a 12,000+/- garden and a quarter of an acre orchard. From the evidence provided by the applicant the small garden shed appears to provide storage for most of the hand tools needed for the applicant's garden. The applicant states that the old barn currently contains a disassembled greenhouse, salvage materials, a trailer, trash and fire wood (Exhibit A.8, Page 16). They indicate that this building is in disrepair and are requesting the addition (1,160 sq. ft.) that was constructed without land use and building permit approval be authorized.

The property owners currently have 3,195 sq. ft. of permitted accessory use on the property. At present, the property already has more accessory building square footage than the six other properties that the applicant submitted to support the application. Planning staff cannot find that the request for 9,618 sq. ft. of storage and workshop is customary for a single family dwelling use. The applicant has failed to carry the burden of proof necessary to justify the need for this much additional space. There is not sufficient evidence to support the need for the request based on the current activities of the property. In addition the request is not customary as it relates to existing development within the area. The proposed square footage of accessory structures far exceeds the square footage of the dwelling indicating that the outbuildings have become a use that is no longer accessory, incidental or subordinate to the dwelling. Based on Staff's analysis the average amount of accessory structure owned by the properties identified by the applicant is 2,079.5 sq. ft. The subject property already contains 3,195 sq. ft. of accessory buildings. The applicant's request for 9,618 sq. ft. of accessory buildings exceeds the average amount 2,079 sq. ft. by more than four times.

The location of the garden and orchard a minimum of 183 feet away from the dwelling warrant an outbuilding to be able to hold garden equipment and tools for those uses. The addition of a small garden shed (263 sq. ft.) falls within the threshold of customarily accessory for the area and allows for secure storage of garden tools. This shed would increase the accessory use to under 3,500 sq. ft.

Based upon the above analysis, the property owners may have up to 3,500 sq. ft. of accessory storage/workshop space for personal use only. It may be feasible for the property owners to keep additional square footage for agricultural purposes only. The use of a building by a commercial farmer leasing the fields or buildings for agricultural purposes only would be permissible in the EFU zone. Planning staff has taken this option into consideration while drafting the conditions of approval if the property owners wish to pursue this scenario. The

conditions are drafted to allow the property owners to determine which buildings will remain and which will be removed. *Conditions of approval have been included to implement the accessory use determination.*

3.03 § 33.2660 DIMENSIONAL REQUIREMENTS AND DEVELOPMENTAL STANDARDS

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

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

Staff: The subject property is accessed via a private easement. The property has no road frontage. Transportation Planning has indicated that no additional right-of-way is required. The height of the 5,000 sq. ft. barn is 18.08-ft. The small garden shed is 10.5-ft high. The old barn is 14.5-ft. No information has been provided on the height of the dwelling. A condition of approval has been included requiring that the applicant demonstrate compliance with the height requirement at time of building permit sign-off for the dwelling.

Based on Exhibit A.9 and A.10, the following table lists the setbacks for each of the buildings as they exist on tax lot 200, except for the garden shed which is proposed to be relocated.

Building	30-ft Front	10-ft Side (W/E)	30-ft Rear
House	56.5-ft	179-ft/418-ft	1,155-ft
Garage	60.1-ft	313-ft/352-ft	1,180-ft
5,000 sq. ft Barn	84.5-ft	389-ft / 259-ft	1,070-ft
Old Barn & Addition	38.9-ft	510-ft/136-ft	1,160-ft
Garden Shed	205-ft	10-ft / 674-ft	1,050-ft

Through a condition of approval, the height requirement will be met. All other criteria have been met.

3.04 (G) All exterior lighting shall comply with MCC 33.0570.

Staff: The plans do not show any exterior lighting. A condition of approval has been included that exterior lighting be added to building plans so that lighting details can be reviewed for compliance with MCC 33.0570. *Through a condition, criterion will be met.*

3.05 § 33.2675 LOT OF RECORD

(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.

...

Staff: In land use decision, T2-2015-3993, the Hearings Officer concurred with the Planning Director's findings that tax lots 1N1W16B -00500, -00400, -00300, -00200 combined are a single lot of record. *Criterion met.*

4.00 Significant Environmental Concern for Wildlife Habitat Criteria

4.01 § 33.4510 USES; SEC PERMIT REQUIRED

(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alteration of a use, except as provided in MCC 33.4515, shall be subject to an SEC permit.

Staff: The applicant has applied for a Significant Environmental Concern (SEC) permit for wildlife habitat.

4.02 § 33.4515 EXCEPTIONS

(A) Except as specified in (B) below, a SEC permit shall not be required for the following:

(8) With respect to a structure lawfully established on or before January 7, 2010; alteration or expansion of such structure that:

(b) For the SEC-h and SEC-s overlays, result in the alteration or expansion of 400 square feet or less of the structure's ground coverage. With respect to expansion, this exception does not apply on a project-by-project basis, but rather extends only to a maximum of 400 square feet of additional ground coverage as compared to the structure's ground coverage on the date above; and

(c) For the SEC-h overlay, alteration or expansion of 400 square feet or less of a driveway.

Staff: While the dwelling, 5,000 sq. ft. barn, and the old barn addition was completed prior to January 2010, the buildings did not obtain land use approval or building permits prior to their construction. To be lawfully established buildings or structures, the buildings would have needed to be constructed in compliance with the laws in effect at the time of establishment. The subject application is to authorize their construction and lawfully establish the various buildings. *The dwelling, two large outbuildings and garden shed are not exempt from obtaining a SEC permit.*

4.03 § 33.4520 APPLICATION FOR SEC PERMIT

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 33.4560 through 33.4575.

(A) An application for an SEC permit shall include the following:

(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 33.4560 through 33.4575.

(2) A map of the property showing:

- (a) Boundaries, dimensions, and size of the subject parcel;
- (b) Location and size of existing and proposed structures;
- (c) Contour lines and topographic features such as ravines or ridges;
- (d) Proposed fill, grading, site contouring or other landform changes;
- (e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;
- (f) Location and width of existing and proposed roads, driveways, and service corridors.

Staff: The applicant has provided the above information in Exhibits A.1 through A.13.
Criterion met.

4.04 § 33.4570 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT

(A) In addition to the information required by MCC 33.4520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

- (1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;**

For the purposes of this section, a forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.

- (2) Location of existing and proposed structures;**
- (3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;**
- (4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.**

Staff: The applicant has provided the above information in Exhibits A.1 through A.13.
Criterion met.

4.05 (B) Development standards:

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

Staff: Tax lot 1N1W16B – 00200 has significant non-forested cleared areas. The proposed improvements are located towards the southern boundary in a non-forested area. *Standard met.*

- 4.06 (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Staff: The subject dwelling is approximately 2,900 sq. ft. from Springville Road. The other barns are past the dwelling along the same accessway/easement from the public right-of-way. *Standard not met.*

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

Staff: The access road/driveways that service the property is approximately 3,339-ft in length. *Standard not met.*

- 4.08 (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

(a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or

(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

(c) Diagram showing the standards in (a) and (b) above.

For illustrative purposes only.

(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County "Design and Construction Manual," adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).

1. The modification shall be the minimum necessary to allow safe access onto the public road.

2. The County Road Official shall provide written findings supporting the modification.

Staff: The access road/driveway connection to Springville Road is approximately 63 feet to the east of a public road in Washington County. It is also about 25-ft to the west of a driveway leading to a farm (14120 NW Springville Road) and two water towers on properties south of Springville Road. *Standard met.*

- 4.09 (5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

Staff: The property to the east has an existing building within 200 feet of the common side property line, but planning staff does not see any land use approvals for the building. No other parcels have development within 200 feet of a common side property line. *Standard met.*

4.10 (6) Fencing within a required setback from a public road shall meet the following criteria:

(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.

(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.

(c) Cyclone, woven wire, and chain link fences are prohibited.

(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.

(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.

FIGURE 33.4570A FENCE

EXEMPTION AREA

(f) Fencing standards do not apply where needed for security of utility facilities.

Staff: The subject property does not front onto a public right-of-way. *Fencing standards are not applicable.*

4.11 (7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property: ...

Staff: The biologist only found Himalayan Blackberry within the SEC-s stream overlay zone and found none in the area of existing development. A condition of approval has been included advising future property owners that the nuisance species cannot be planted around the developed area. *As conditioned, standard can be met.*

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

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

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

Staff: The subject Lot of Record is not able to meet the basic development standards contained in (B) due to the property not fronting onto a public right-of-way. The wildlife conservation plan must result in the minimum departure from the standards required to allow the use.

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

(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

Staff: The subject property is zoned Exclusive Farm Use. The locations of the buildings are along the southern property line adjacent to the easement road. No forested areas were disturbed to construct the existing replacement dwelling or any of the existing outbuildings as proposed provided the buildings remain within 225 ft. from the south property line. *Through a condition, criterion met.*

- 4.14** **(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**

Staff: The dwelling and outbuildings were constructed in an area that has been used for buildings in the past.

- 4.15** **(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

Staff: The applicant has indicated that no fencing exists on the property and no new fencing is proposed.

- 4.16** **(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.**

Staff: No new cleared areas were created to construct the dwelling or outbuildings. No revegetation is required under this criterion.

- 4.17** **(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

Staff: The property owners will work to remove Himalayan blackberry colonies from throughout the SEC-s riparian stream area. The colonies removed from the meadow area (Exhibit A.8, page 37, A.2) and replanted with native grasses such as Sunmark Seeds Grassland Blend or similar product. In the riparian area, colonies will be removed and the riparian area will be allowed to repopulate the area naturally with natives. In addition to the blackberry removal, the property owners will plant seven new evergreen trees along the eastern edge of the riparian area in order to extend the existing forested area to the east (Exhibit A.8, page 38)

5.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern for wildlife habitat to replace a dwelling and 3,500 sq. ft. of accessory buildings in the EFU zone. This approval is subject to the conditions of

approval established in this report.

6.00 Exhibits

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Procedural Exhibits

Exhibits with a "*" after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2017-7000 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	General Application Form	2/15/2017
A.2	9	Winterbrook Memorandum between Curt Fisher and Anita Smyth	2/15/2017
A.3	9	Significant Environmental Concern for Wildlife Habitat (SEC-h) Worksheet	2/15/2017
A.4	24	Blumenkron Application for SEC-h Permit	2/15/2017
A.5	6	Voluntary Compliance Agreement UR 06-053	2/15/2017
A.6	1	Amended General Application Form	7/15/2017
A.7	2	Memo regarding Incomplete Response from Winterbrook Planning	7/15/2017
A.8	38	Application for Accessory Use Determination and SEC-h Permit	7/15/2017
A.9	1	Exhibit A: Blumenkron Residence Site Plan	7/15/2017
A.10	1	Exhibit B: Blumenkron Residence Enlarged Site Plan	7/15/2017
A.11	2	Exhibit C: Building Elevations and Floor Plans	7/15/2017
A.12	1	Exhibit D: Contours	7/15/2017
A.13	1	Exhibit E: Natural Areas	7/15/2017
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information Property Information	2/16/2017
B.2	12	T2-2015-3993 Hearings Officer Decision dated March 7, 2016	10/04/2017
B.3	21	T2-04-038 Planning Director's Decision for a Riding Arena effective September 3, 2004 (Void)	10/10/2017
B.4	1	Covenant - Notice of Zoning Compliance – Accessory Structure	10/17/2017
'C'	#	Administration & Procedures	Date
C.1	2	Incomplete Letter	3/16/2017
C.2	2	Applicant's Acceptance of 180 Day Clock	4/11/2017

C.3	5	Opportunity to Comment	8/25/2017
C.4	15	Administrative Decision	11/02/2017
		Application Complete	8/04/2017