

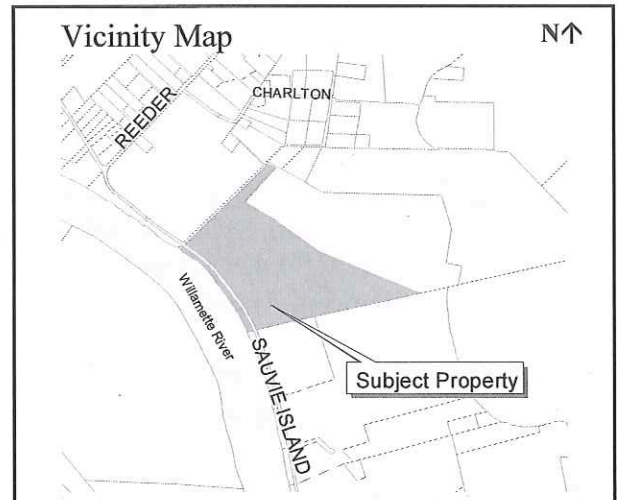


**MULTNOMAH COUNTY**  
**LAND USE AND TRANSPORTATION PROGRAM**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
<http://www.co.multnomah.or.us/landuse>

## NOTICE OF DECISION

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

**Case File:** T2-09-002  
**Permit:** Application for an Administrative Decision  
by the Planning Director for a Farm Stand  
**Location:** 13741 NW Charlton Road  
Portland, OR 97231  
Tax Lot 01800, Section 16  
Township 02 N, Range 01 W, W.M.  
R971160020  
**Applicant/  
Landowners:** Don and Sandra Kruger

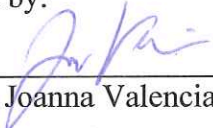


**Summary:** Application for an Administrative Decision by the Planning Director for a Farm Stand in the Exclusive Farm Use (EFU) zoning district. The applicant is proposing: expansion of the operation and structure used for the existing farm stand retail operation, addition of a gazebo to be used for flower sales, and inclusion of promotional activities and sale of incidental items. Promotional activities and incidental sales include: weekly harvest festivals, farm weddings, bike races, birthday parties, picnics, group gatherings, corn maze and sale of non-farm goods (i.e. baskets, ice cream, snacks, etc.).

**Decision:** Approve the expansion of the operation and structure used for the farm stand retail operation, the addition of the gazebo for flower sales, the sale of non-farm goods, and a portion of the proposed promotional activities subject to conditions of approval. The promotional fee-based activities for a corn maze and Thursday weekly harvest festivals held during the months of July and August were found to be consistent with code criteria. Weddings, bike races, birthday parties, corporate picnics, and group gatherings are not allowed as part of this decision.

Unless appealed, this decision is effective July 22, 2009, at 4:30 PM.

Issued by:

By:   
Joanna Valencia, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, July 8, 2009

Instrument Number for Recording Purposes: # 2008067400

T2-09-002

**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 Joanna Valencia, Staff Planner at 503-988-3043, ext. 29637.

**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.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is July 22, 2009 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 34.0005 (Lot of Record), MCC 34.2625(H) (Farm Stands), MCC 34.2660 (Dimensional Requirements), MCC 34.2675 (Lot of Record), MCC 34.4100 through MCC 34.4215 (Off-Street Parking and Loading), MCC 34.7055(C)(3) through (7) (Landscaping of Parking Areas), Chapter 37 (Administration and Procedures).

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 <http://www.co.multnomah.or.us/landuse>.

### **Scope of Approval**

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 2 years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owners may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 or 37.0700, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

### **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 brackets.

1. After the decision is final and prior to building permit sign-off, the property owner shall record the Notice of Decision cover sheet through the conditions of approval with the County Recorder along with a copy of the site plan (Exhibit A.10). The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and a copy filed with Land Use Planning. Recording shall be at the applicant's expense. [MCC 37.0670]
2. This farm stand approval is limited to those elements that have been identified herein as needing approval as a farm stand (as opposed to activities that constitute farm use) and that have been approved as meeting the definition of a farm stand. Those elements include: the farm stand, the gazebo, and

restrooms. Building permits shall be obtained for the expansion of the farm stand, the gazebo and the restrooms. [MCC 34.2625(H)]

3. The applicant shall provide an on-site subsurface sewage disposal system for use on-site that is appropriately permitted by the City of Portland Sanitation Department. Proof of permit and approval of the system shall be submitted to the county planning program prior to building plan sign-off. [Comprehensive Plan Policy 37, Utilities]
4. The farm stand is open from mid-April through the end of November. During the off-season, the farm stand shall not be used for any purposes other than administration of the farm. None of the other structures shall be used during the off-season for other than farm use. [MCC 34.2625(H)]
5. The corn-maze shall not be operated during hours when the market is not open to retail customers. [MCC 34.2625(H)]
6. The agricultural products sold in the farm stand are limited to "Farm crops or livestock" including both fresh and processed farm crops and livestock grown on the subject site or in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items. [MCC 34.2625(H)(3)]
7. All incidental sales, prepared food items and fee-based activities shall make up no more than 25% of the total sales from the farm stand. Processed products utilizing produce and fruit grown from outside the local agricultural area are also subject to the 25% of the total sales provision. Any produce sold from outside the local agricultural area (Oregon or an adjacent county in Washington that borders Multnomah County) shall count against the 25% annual sales limitation. Sales of prepared food from the farm stand may only occur when the stand is operating and may not operate independently during the off-season. The farm stand is open from mid-April through the end of November. [MCC 34.2625(H) & OAR 660-033-0130(23)(d)]
8. An annual report of fee-based activities proceeds and total farm stand sales, including incidentals and non-local products, shall be submitted for review for consistency with county code requirements to the county. [MCC 34.2625]
9. The use of any Exempt Farm Structures or Farm Stand by the public for seating, banquets, public gatherings or public entertainment is prohibited. [MCC 34.2625(H)(2)]
10. On-street parking for employees, suppliers and patrons of the Kruger Farm Stand or their leaseholder farms is prohibited. All parking spaces within the paved parking lot and the overflow parking area as shown on the submitted site plan (Exhibit A.10) shall be available for the parking of vehicles of customers, occupants and employees without charge or other consideration. Any changes to off-street parking will require new land use approval. [MCC 34.4125(A)]
11. A traffic management plan to address traffic circulation and on-site shall be in place to facilitate the safe operation of traffic flow in and out of the subject property. This shall include the incorporation of up to 10 staff members directing traffic to park in an efficient manner so as to prevent unnecessary spill back to NW Sauvie Island Road as identified in the Traffic Impact Analysis. [MCC 34.4205]
12. The property owner shall obtain appropriate building permits and obtain occupancy to use the building for the general public for the Restroom building, farm store, and gazebo. Plans shall be submitted to the county for building plan review prior to submittal to the city for building permit. The applicant shall obtain a building permit for this structure within 90 days of this decision being final.
13. The restroom facilities for U-Pick and Farm Stand customers is existing within the restroom building It shall connected to a subsurface sewage disposal system. Except during approved fee based promotional activity, no port-a-potties shall be used on the site. [Comprehensive Plan Policy 37 Utilities]

14. No fee based activities, other than the weekly harvest festivals and the corn maze, shall be allowed without the modification of this permit through a new land use application. No other fee based activities such as weddings, bike races, birthday parties, corporate picnics, etc. are allowed. [MCC 34.2625]
15. The fee based promotional activities are limited to the hours that the farm stand is operated (9:00 am to sunset) and shall not occur unless the farm stand is open to retail customers. The purpose of the special events shall be to promote the sale of farm crops or livestock grown on the farm operation and other farm operations in the local agricultural area. The fee based promotional activities of Weekly Harvest Festivals are limited to be held on Thursdays between July and the end of August each year. [MCC 34.2625(H)]
16. The overflow parking lot identified on the submitted site plan (Exhibit A.10) shall be surfaced with grass or gravel during the time of use. [MCC 34.4180(A)(2); MCRR 16.100]
17. The provision for and maintenance of off-street parking and loading facilities without charge to users shall be a continuing obligation of the property owner. [MCC 34.4115]
18. The farm dwelling at the north edge of tax lot 1800 (*i.e.*, the Charlton House) is not part of the farm stand. This structure may not be used in conjunction with fee-based activities approved in this decision. [MCC 34.2625(H)]
19. An approved access permit for access off of NW Sauvie Island road shall be obtained from the county prior to building plan review. [Comprehensive Plan Policy 36]
20. This permit approval amends and replaces the prior land use decision, Land Use Permit # LD 4-81/PRE 12-81 and Building Permit #821087.
21. All fee based activities not allowed by this decision shall cease [MCC 37.0560].

**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, Joanna Valencia, at (503) 988-3043 ext. 29637, 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 of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 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.

## **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:**

The applicant is proposing a farm stand in the Exclusive Farm Use (EFU) zone. The project includes: the expansion of the operation and structure used for the farm stand retail operation, the addition of a gazebo to be used for flower sales, and inclusion of promotional activities and sale of incidental items. Promotional activities and incidental sales include: weekly harvest festivals, farm weddings, bike races, birthday parties, picnics, group gatherings, corn maze and sale of non-farm goods (i.e. baskets, ice cream, snacks, etc.). The elements of the project are further addressed in detail in the following sections.

Previous land uses approvals (Land Use Permit # LD 4-81/PRE 12-81, Building Permit #821087) for the subject property allowed for a produce stand use to sell vegetable crops, berries, etc. on the subject property. The approval included an 18,000 square foot asphalt parking lot with twenty-five 9.5' by 20' parking spaces.

Changes to the farm stand have occurred over the years in regard to the farm stand and activities occurring on the property. U-pick operations have developed in addition to the retail and wholesale sale of crops, and various commercial activities have occurred on the site, which includes the proposed promotional activities listed in the submitted application. These activities include concerts, weddings, a corn maze, bike races, and birthday parties. The submitted application addresses the changes to the farm stand operation and promotional activities.

### **2.00 Base Zone Criteria: Exclusive Farm Use (EFU)**

#### **MCC 34.2625 REVIEW USES**

**A Farm Stand may be permitted as a Review Use in the Exclusive Farm Use subject to the following standards (MCC 34.2625(H)):**

- (1) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items, and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up no more than 25 percent of the total sales of the farm stand; and**

**Staff:** The applicant is proposing numerous fee-based activities to promote the sale of farm crops or live-stock sold at the farm stand with the application recognizing that the fees from the promotional activity does not make up more than 25% of the total sales of the farm stand. The application lists the following activities: 1. Weekly Harvest Festivals, 2. Farm Weddings, 3. Bike Races, 4. Birthday Parties, and 5. Corporate Events, Picnics, etc. Each of these five proposed fee-based activities are further addressed below and are reviewed for whether or not such activities are consistent with the code criteria. It should be noted, as submitted in the application, a corn maze is also included as a fee-based promotional activity but is referenced in under corporate events, picnics, etc. The findings below address the corn maze under a separate heading.

The applicant makes a case that the primary purpose of promotional activities is to attract people to the farm and to encourage them to purchase farm products, and that consideration for these activities should review: 1) is the activity occurring on the same site as the farm stand, 2) is the farm stand open during the promotional activity, 3) is the event fee based, 4) do the sales from the fee-based activities constitute less than 25% of total sales at the farm stand, and 5) whether direct or indirect promotion is occurring to promote the sale of the farm stand. Per the applicant narrative direct promotion may include a contractual requirement to purchase farm

products and demonstrate increased sales, or it may be indirect, such as exposing customers to the farm for potential future visits.

The purposes of the Exclusive Farm Use District are to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products, forests and open spaces; to conserve and protect scenic and wildlife resources, to maintain and improve the quality of the air, water and land resources of the County and to establish criteria and standards for farm uses and related and compatible uses which are deemed appropriate. Land within this district shall be used exclusively for farm uses as provided in the Oregon Revised Statutes Chapter 215 and the Oregon Administrative Rules Chapter 660, Division 33 as interpreted by this Exclusive Farm Use code section (MCC 34.2600). The EFU zone lists and categorizes land uses into three groups including: 1) Allowed Uses, 2) Review Uses, and 3) Conditional Uses. The EFU zone identifies Farm Stands as a Review Use (MCC 34.2625(H)). It should be noted that commercial activities that are in conjunction with a farm use, except for facilities for processing crops, are identified as a Conditional Use under Multnomah County Code (MCC) 34.2630(A).

Staff finds for the purpose of determining which activities promote sales of farm products that it is important to consider if the activity has a tie to the retail farm stand sales operation generally, in that the fee-based activity is physically present at the same time as the farm stand and is open only during the hours that the farm stand is operating to sell farm produce.

Although the open-ended nature of what may constitute an activity that promotes sale of farm products may be troublesome, the description of the activity is also self-limiting. It cannot exist independent of farm stand activity, and the proceeds of the promotional activity cannot exceed 25% of the farm stand sales.

The application includes the following five fee based activities:

#### 1. Weekly Harvest Festivals

The applicant is proposing 'Weekly Harvest Festivals' to be held weekly on Thursday evenings during the peak growing season from beginning of July to the end of August of each year. These festivals include activities such as live music, u-pick hayrides, a corn roaster, and 'Farmer Don Talks' that inform farm stand patrons of activities and crops at the farm. An admission fee of \$10.00 is charged for entry to the festival.

The applicant submitted revenue data and receipts specific to days when festivals were held and days when no festivals were held. Days not included in the festivals included weekends, which typically saw similar rise in sales due to the nature of weekends. Comments in support of the farm stand, especially recognizing the weekly harvest festival held on Thursday evenings were received.

Staff finds that the "Weekly Harvest Festivals" constitute a fee based activity that promotes the sale of farm crops or livestock sold at the farm. The "festivals" includes activities that expose patrons to the farm. Comments received indicate that patrons become repeat customers after this exposure, with many of them continuing to attend the "festivals" or returning to the farm to purchase farm crops. Comments included statements that the customers are able to learn more about the farm operation via activities that includes "Farmer Don" announcements about the farm and crops in season, farm implement being available for customers to touch and observe, a chicken coop and pig pen available for viewing and hay rides to the farm crops where various crops are available for u-pick. Farmer Don and farm staff is also available to field questions and assist customers as they participate in the activities and interact with the farm.

*As conditioned staff finds that the Weekly Harvest Festivals are consistent with code requirements and are a fee based promotional activity that promotes the sale of farm crops or livestock sold at the farm. These festivals are limited to Thursdays between the first of July and the end of August each year as stated in the applicant's*

*narrative. No other festivals and events are permitted without a revision to the approved permit and additional land use review. The corn maze is approved as part of this permit and is addressed in the section below.*

## 2. Farm Weddings

Per the applicant submittal, during warm weather months, Kruger Farm hosts a limited number of 'farm weddings' at the subject property for couples who want the agricultural setting to be an integral part of their wedding ceremony. The submittal states that the large acreage of land planted in flowers and flowering plants near the barn is a popular backdrop for weddings with weddings occurring in the grassy area northeast of the barn and/or near the oak tree on the northern portion of the property. Description of the operations of the farm wedding includes a contract requiring the payment of a site fee of \$700, and obligating the couple to purchase at least \$500 of flowers and \$300 of produce through the farm. The applicant states that the farm stand is open to wedding guests during the event, and a small increase in sales occurs during weddings. The applicant states that the wedding business at Kruger Farm grew out of the sale of site-grown flowers, and brides requesting use of the farm as an outdoor wedding site and that the potential to increase sales from the high-margin flower operation by providing a location for weddings drove the realization of providing for weddings on-site. The applicant states that due the limitations of weekends and weather, that the potential for wedding events are effectively maxed out at 40 weddings per year.

In reviewing the proposal to hold weddings on the farm, it is important to review the promotional nature of the event. As the applicant has stated, a site fee is being collected and contractual requirements obligate the wedding party to purchase at least \$500 of flowers and \$300 of produce through the farm, but the purpose of the event, as is the nature for other wedding venues in the county, is the draw and event itself. It is recognized that the wedding events do generate revenue; however, it is not an activity that promotes the sale of farm crops or livestock. Simply having the farm stand open during the event isn't sufficient to demonstrate promotion of the farm with attendees having the option of visiting the farm. The wedding event doesn't put the focus and purpose of the event to promote the sales of the farm crop, but instead provides a unique venue to hold a wedding and get married.

## 3. Bike Races

The third fee based activity proposed in the application is to host bike races on the farm site. These races have included the "Kruger's Crossing" cyclocross race, and two other races in 2008 with the events being held typically in the fall, with a race being held as late as November. A site fee is charged for the bike race organizers, and a \$5 per car admission fee is charged for the bike race events. The applicant states that a typical weekend day in November generates approximately \$800 in sales and that on a Saturday when a bike race is held at the farm, sales at the farm stand jump to approximately \$4,000, a five-fold increase. Staff recognizes the increases in revenue generated when the farm hosts the bike race, however, the nature of the bike race provides a venue and the farm serves as a host of the event instead of the event promoting the farm. Written comments received included statements that the location provides a unique venue for bike races that allows racers to race through the muddy fields of the farm and the corn maze. As noted by the applicant, the bike races occur on different routes on through the farm, and that the Cyclocross race courses are chosen to be outdoors, in a scenic setting, on unpaved paths making the site a perfect location for the event.

Staff finds that the bike races are inconsistent with the code criteria and are not an activity that promotes the sale of farm crops. The farm serves as providing a venue for a bike race event. The primary focus of the event is to host a bike race, and not to promote the farm.

## 4. Birthday Parties

The fourth fee based activity proposed to promote the farm is the hosting of birthday parties. As stated by the applicant these child birthday parties are marketed as "farm birthdays," and incorporate a hay ride and berry



picking. The birthday parties occur in the grassy area to the northeast of the farm stand, in the fields for u-pick, and throughout the farm. A \$125-\$150 fee is collected for use of the site for birthday parties, which includes reserved picnic tables for party use and pint boxes for children to pick berries to take home as party favors. Depending on age and interest children may also go on a tractor ride, sit on farm equipment, or visit with chickens.

The application provides that the farm stand is open during this activity and that sales increase from purchases made by parents of the children. Staff recognizes the increase in revenue, however, in reviewing the main purpose and draw of the event, providing a venue for a birthday party doesn't meet the criteria of fee-based activity to promote the sale of farm crops or livestock sold at the farm. Promotion of the farm is not the primary focus and purpose of the event, but instead the draw to the farm is for venue purposes and providing an area to host a birthday party.

#### 5. Corporate Events, Picnics Etc.

The final fee based promotional activity the applicant is proposing is to host group picnics and gatherings (i.e. family outings, church picnics, etc.). As provided in the narrative, these picnics and gatherings are small and irregularly scheduled throughout the summer, and have included times when the farm hosts groups requesting exclusive use of the corn maze for a block of time, or groups asking to use the picnic area for a larger family gathering. The farm stand is open during these activities, and as stated by the applicant sales generally increase because of incidental purchases made by the participants of the gatherings or picnics, and guests generally purchase produce from the farm stand to consume at picnics.

Staff recognizes the increase in revenue, however, in reviewing the main purpose and draws of the event, providing a venue for a picnic or hosting a corporate event, doesn't meet the criteria of fee-based activity to promote the sale of farm crops or livestock sold at the farm. The draw to the farm is for venue purposes and providing an area to host these activities. Promotion of the farm is not the primary focus and purpose of the event, but instead the farm serves as a venue and place to hold the events.

#### Corn Maze

The applicant has also included a corn maze as a fee based promotional activity. The corn maze activity is identified to be located on a portion of the subject property as identified in the submitted site plan. Staff finds that the corn maze activity cannot exist outside of the farm stand. The farm stand includes the sale of various farm crops including corn, with the application submitted identifying a corn roaster as a component of the farm stand.

*Staff finds that the corn maze constitutes a fee based activity that promotes the sale of farm crops or livestock sold at the farm. Crops sold and grown on the farm includes corn, and the corn maze cannot exist independent of the farm stand.*

In consideration of the analysis above, as conditioned staff finds that the Weekly Harvest Festival is consistent with code requirements and is a fee based promotional activity that promotes the sale of farm crops or livestock sold at the farm. In regards to the proposed farm weddings, bike races, birthday parties, and corporate events and picnics, staff finds that these events aren't consistent with county code and don't constitute a fee based promotional activity.

With the exception of the Weekly Harvest Festivals and the corn maze, as outlined in the section above, no other fee based activities shall be allowed without the modification of this permit through a new land use application. No non-farm activities such as weddings, bike races, birthday parties, corporate picnics, etc. are allowed regardless of whether a fee is charged. A condition has been included to reflect this. *As conditioned, this criterion is met.*



### Percentage of Incidental Sales/Fee-based Activity

The applicant submittal estimates for 2009 sales are shown in the following table along with the actual farm stand sales from the 2008 season. County staff requested the projection of future sales, based on the additional 60 acres in order to ensure consistency with the 75% to 25% requirements of county code. The 2009 sales figures take into consideration an additional 60 acres of land that will be leased by the Kruger Farm Stand that is abutting the subject property. The 60 acres of land abutting the Kruger property was leased beginning January 1, 2009 and is shown in the submitted site plan (Exhibit A.10).

Submitted numbers indicate that the sale of retail incidental items and fees from the promotional activity do not make up more than 25% of the total sales of the farm stand. Further supporting this, is the submittal of tally sheets and receipts from days throughout the 2008 season (Exhibits A.5 and A.13) and a letter from the applicants Certified Public Accountant stating that the total farm stands sales for 2008 reconciles with the financial information reported by the Kruger Family Farm, Inc. on their most recent tax returns (Exhibit A.22).

<b>CATEGORGY A: FARM GOODS</b>	<b>2008 Sales (Actual)</b>	<b>Percent of total</b>	<b>2009 Sales (Projected)</b>	<b>Percent of total</b>
Produce from Kruger Farm and Local Area	\$419,427	34%	\$430,000	31%
Wholesale Produce	\$34,252	3%	\$200,000	14%
Flowers - Farm-Grown	\$51,164	4%	\$40,000	3%
U-Pick Produce	\$281,536	23%	\$300,000	21%
Local Farm Products (jams, syrups, pickles, frozen berries, cider, nursery stock)	\$148,268	12%	\$150,000	11%
Corn Roaster - corn grown at Kruger Farm	\$20,055	2%	\$25,000	2%
<b>Total Farm Goods</b>	<b>\$954,702</b>	<b>78%</b>	<b>\$1,145,000</b>	<b>81%</b>
<b>CATEGORY B: NON-FARM GOODS</b>				
Non-Farm Goods (Sodas, ice cream, snacks, hats, etc.)	\$91,732	7%	\$92,000	7%
Non-Local Produce - (bananas, citrus, etc.)	\$64,414	5%	\$65,000	5%
Baskets	\$30,310	2%	\$30,000	2%
Caramel Apples	\$9,862	1%	\$10,000	1%
Corn maze	\$8,042	1%	\$10,000	1%
Kettle Corn	\$4,740	0%	\$5,000	0%
Event Fees (weddings, festivals, etc.)	\$60,402	5%	\$50,000	4%
<b>Total Non-Farm Goods</b>	<b>\$269,502</b>	<b>22%</b>	<b>\$262,000</b>	<b>19%</b>
<b>Total Farm Stand Sales</b>	<b>\$1,224,204</b>		<b>\$1,407,000</b>	

The total sales are broken out into two categories. Category A consists of:

- Farm crops or livestock sold at the farm stand. These may include both fresh and processed farm goods. These goods may have been grown on Kruger Farm, any other farm in Oregon, or any farm in Skamania and Clark Counties.

Category B consists of:

- Retail incidental items sold at the farm stand.

- Prepared food items.
- Fees from activities that promote the sale of farm crops.

The figures above demonstrate that both in 2008 and in projections for 2009, Kruger Farm meets the statutory standard that less than 25 percent of sales come from non-farm goods.

Based on the analysis found in this section, and the applicant's operations as documented in the submitted application and supplemental materials, staff finds that the Kruger Farm stand meets the definition of what constitutes a farm stand.

**(2) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.**

**Staff:** The following table combines information submitted from the applicant and staff findings to identify structures located on the subject property.

Structure	Est. Size	Year/ Permits	Use/Purpose
Farm Stand	9,950 square feet	Addition constructed 1982; construction date of original building uncertain. Established under permit LD 4-81. Building permit for expansion.	Retail operation, cold storage.
Barn	6,000 square feet	Construction date uncertain. Ag building exempt from building permits per ORS 455.315.	Storage for farm equipment, animal pens, materials, farm office.
Dwelling (Charlton House)	2,180 square feet (total for main, finished attic, and covered porch per County Assessors and Taxation Records)	Built in 1903. Moved to the site in 1946. Identified under permit PRE 12-81.	Single family dwelling
Restroom building	20' x 7'	Construction date uncertain. Permit needed.	Restroom for farm guests.
Greenhouses	15' x 90' and 25 x 15'	Ag building exempt from building permits per ORS 455.315.	Raising plants.
Storage shed	15' x 10'	Ag building exempt from building permits per ORS 455.315.	Storage of farm equipment.
Gazebo	15' diameter	Built 1995. Permit needed.	Flower sales and prep area.

Multnomah County Code (MCC) 34.0005 defines a structure as that which is built or constructed. An edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

The proposed farm stand use includes a 9,950 square foot building for the sale of crops and retail incidental items, a gazebo for preparation and sales of flowers, and a 140 square foot restroom building. The restroom building is used by farm staff and guests during normal farm operation, and is equipped with two toilets and

sinks. The facility is proposed to be used by guests during weddings. The approximately 177 square foot gazebo is used by farm stand staff during the summer operations for flower sales because of its close location to the flower fields (Exhibit A.10). A staff member is often posted at the gazebo to assist customers with arranging and purchasing flowers. The other structures located on the subject property are identified for agriculture exempt farm activity use. The uses include a barn, greenhouses, a chicken coop, and storage shed.

Staff finds that the structures located on the subject property are consistent with the proposed farm stand use or are exempt for agricultural use.

Comments were received regarding the use of the single family dwelling located on the subject property, also known as the 'Charlton House.' Concerns have been raised regarding the use of the dwelling related to wedding activities inconsistent with a residential use. It is recognized that the dwelling at the north edge of tax lot 1800 (i.e., the Charlton House) is not part of the farm stand. This structure may not be used in conjunction with fee-based activities approved in this decision. The use of the single family dwelling is to be residential in nature and a condition requiring such has been included to ensure that the use remains residential.

The farm stand as proposed does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock, and does not include structures for banquets, public gatherings, or public entertainment. A condition has been included requiring that the structures are consistent with this criterion. *As conditioned this criterion is met.*

**(3) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.**

**(4) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington that borders Multnomah County.**

**Staff:** The farm stand is open from mid-April through the end of November. The applicant indicated the following crops were grown on the subject property in 2008: berries (strawberries, blueberries, marionberries, raspberries, boysenberries, blackberries), beans, pickling cucumbers, herbs, corn, tomatoes, peppers, squash, pumpkins and gourds. These crops were both for sale at the farm stand and wholesale. In addition, the stand sells farm goods from within the code-defined "local agricultural area" which includes items such as apples from Hood River County or honey from elsewhere on Sauvie Island. A small proportion of sales at the farm stand are "retail incidental items," or items from outside the local area. This would include, for example, bottled water, crafts, or avocados.

It should be noted that the applicant plans to expand their farming operation by leasing an additional 60 acres of land north of the subject property.

Conditions of approval have been included with this decision to ensure that the proposed operation will stay within the code requirements of a farm stand. *As conditioned, these criteria will be met.*

## **MCC 34.2660 DIMENSIONAL REQUIREMENTS**

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### **(C) Minimum Yard Dimensions - Feet**

Front (feet)	Side (feet)	Street Side (feet)	Rear (feet)
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30	10	30	30
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**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 in-sufficient 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.**

**(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

**Staff:** The submitted site plan shows that the structures of the farm stand meet the above dimensional requirements. No additional right-of-way width is required for NW Sauvie Island Road. *This criterion is met.*

### **§ 34.2690 ACCESS**

**All lots and parcels in this district shall abut a street, or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles, except as provided for Lots of Record at MCC 34.2675(C).**

**Staff:** The subject property is accessed off of NW Sauvie Island Road. The project has been reviewed by County Transportation Planning Staff, which includes review of a submitted Traffic Impact Analysis (TIA) (Exhibits A.21 and B.6). The access is found to be safe and convenient for pedestrians and for passenger and emergency vehicles. This criterion is met.

### **3.00 Off-Street Parking and Loading Criteria**

#### **MCC 34.4105 General Provisions.**

**In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section.**

**Staff:** The submitted application results in an intensified use by customers, occupants, employees and other persons, and therefore off-street parking and loading shall be provided according to the requirements of this Section. *This criterion is applicable.*

#### **MCC 34.4120 Plan Required**

**A plot plan showing the dimensions, legal description, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit, or for a change of classification to O-P.**

**Staff:** A site plan has been submitted showing the plan requirements as identified above (Exhibit A.10).

#### **MCC 34.4115 Continuing Obligation**

**The provision for and maintenance of off-street parking and loading facilities without charge to users shall be a continuing obligation of the property owner. No building or any other required permit for a structure or use under this or any other applicable rule, ordinance or regulation shall be issued until satisfactory evidence in the form of a site development plan, plans of existing parking and loading improvements, a deed, lease, contract or similar document is presented demonstrating that the property is and will remain available for the designated use as a parking or loading facility.**

**Staff:** A condition of approval has been included to ensure that the maintenance of off-street parking is a continuing obligation of the property owner. *As conditioned this criterion is met.*

#### **MCC 34.4205 Minimum Required Off-Street Parking Spaces.**

##### **(C) Retail and Office Uses**

**(1) Store, Supermarket, and Personal Service Shop – One space for each 400 square feet of gross floor area.**

**(E) Unspecified Uses - Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.**

**Staff:** The application is proposing 43 paved parking spaces adjacent to the farm stand building and a grassy field to be used as an overflow parking area located north of the barn and east of the greenhouses. The square footage of the farm stand is approximately 9,950 square feet. This structure includes both the retail and wholesale operations and includes cold storage for perishable goods. The structure is also adjacent to the loading dock. In recent farm stand cases, Land Use Planning determined that 1 parking space per approximately 100 sq ft of farm stand was a sufficient amount of parking for these types of facilities. Retail uses occur within the defined structure. The proposed farm stand does not have a set occupancy load or boundaries and do not accurately reflect actual area utilized for the different operations. If the nearest applicable category is “store”, then the minimum requirement would be for 25 spaces with 1 space being required for each 400 square feet of gross floor area. Staff has reviewed the submitted plan, the traffic impact analysis and conducted a site visit. With the structure containing both retail and wholesale operations, and the use being with the amount of parking being historically adequate to serve the farm stand, staff finds that 43 paved spaces are sufficient to serve the farm stand for permanent parking facilities.

Per the submitted Traffic Impact Analysis (Exhibit A.21), an overflow parking area is available to accommodate additional parking. A traffic management plan to address traffic circulation is included and involves strategies to facilitate the safe operation of traffic flow in and out of the subject property. Strategies consists of up to 10 staff members directing traffic to park in an efficient manner so as to prevent unnecessary spill back to NW Sauvie Island Road. A condition has been included to address this. *As conditioned this criterion is met.*

#### **4.00 Comprehensive Plan Policies**

##### **Policy 36 – Transportation System Development Requirements**

(The portions of this policy applicable to the subject request are the following excerpted policies)

**The County’s policy is to increase the efficiency and aesthetic quality of the Trafficways and public transportation by requiring:**

- A. The dedication of additional right-of-way appropriate to the functional classification of the street given in Policy 34 and chapter 11.60.**
- B. The number of ingress and egress points be consolidated through joint use agreements;**
- C. Vehicular and truck off-street parking and loading areas;**

**Staff:** Staff finds that by their terms, Policies 36A, 36B and 36C are mandatory criteria that are directly applicable to the approval of individual permits. Findings showing compliance with Policy 36C are addressed above in the section regarding off-street parking. Findings showing compliance with Policy 36A is addressed above in the section addressing dimensional standards. Additional dedication of right-of-way for NW Sauvie Island Road was determined not to be required. Staff finds that the project is in compliance with Policy 36A.

Policy 36B triggers the requirement for application for an access permit in compliance with the Multnomah County Road Rules (MCRR). Those road rules are authorized under MCC 29.500 and are intended to implement applicable policies of the Multnomah County Comprehensive Framework Plan, including policies 33 – 36 [MCRR 2.00]. In addition, the purpose of the rules is to provide a link between the County's ordinance provisions authorizing road rules and the County's Design and Construction Manual adopted under the provisions of the road rules [MCRR 2.00]. Furthermore, the street standards are noted as being the street standard rules referenced in the Land Division Code chapters of the County's zoning ordinance [MCRR 2.00]. The access requirements are authorized pursuant to Statewide Planning Goal 12 and are intended to implement the requirements of the Transportation Planning Rule (TPR). As set forth above, the TPR includes a mandate to protect the capacity of the transportation facilities by appropriate access restrictions.

MCRR allows the County to require applicants for a new or reconfigured access onto a road under County jurisdiction to provide a plot plan, complete a traffic study, provide an access analysis and a sight distance certification from a registered traffic engineer and to provide such other site-specific information as may be requested by the County Engineer [MCRR 4.000]. This section must be read in conjunction with MCRR 18.250, relating to Access Permits, which defines an "altered" access to be one where a change in the development it serves has a Transportation Impact as defined in Section 6.000 of the road rules [MCRR 18.250(A)(1)]. Under Section 5.000, a transportation impact occurs when any new construction or alteration would increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or more than 10 trips in the peak hour [MCRR 5.300].

MCRR 4.200 restricts access to arterials and collectors to one driveway access per property. The applicant has shown on the submitted site plan one access to service the property off of NW Sauvie Island Road, which is identified as Rural Collector for this portion of the right-of-way. The access has been reviewed by the local fire district as well as the county transportation department through review and assessment of the access in the submitted Traffic Impact Analysis (Exhibit A.21). Although existing, an access permit was not found on-file with the county transportation department. An access permit will need to be obtained prior to building plan approval. *As conditioned, this Comprehensive Plan Policy 36 has been met.*

### **Policy 37 – Utilities**

(The portion of this policy applicable to the subject request is under the heading "Water and Disposal System")

#### **Water and Disposal System**

- A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or**
- B. Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
- C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**
- D. Shall have an adequate private water system and a public sewer with adequate capacity.**

**Staff:** A private well system will be used to provide water for the farm stand operation. The applicant is proposing the use of a restroom building equipped with two toilets and sink for the farm stand. This addresses the provision of providing a subsurface sewage disposal system. A condition of approval has been included requiring that the applicant provides an on-site subsurface sewage disposal system for use on-site that is appropriately permitted. *Comprehensive Plan Policy 37 has been met through a condition of approval.*

### **Policy 38 – Facilities**

**It is the County's policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:**

#### **Fire Protection**

**B. There is adequate water pressure and flow for fire fighting purposes; and**

**C. The appropriate fire district has had an opportunity to review and comment on the proposal.**

**Staff:** The farm stands are within the boundary of and are served by the Sauvie Island Rural Fire Protection District. The applicant has submitted a service provider form from the Fire District signed by a representative of the Sauvie Island Rural Fire Protection District stating that the farm stands are exempt farm structures and exempt from the fire flow processes. Additionally, Fire District review finds that the existing access is adequate. The appropriate fire district has had an opportunity to review and comment on the proposal (Exhibits A.17 and A.18). *Comprehensive Plan Policy 38 has been met.*

#### **Police Protection**

**D. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.**

**Staff:** Multnomah County Sheriff Department has indicated that they can provide adequate police protection for the proposed operation (Exhibit A.16). *Comprehensive Plan Policy 38 has been met.*

#### **5.00 Code Compliance**

##### **MCC 37.0560 Code Compliance and Applications.**

**Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use 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 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.**

**(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:** There is currently an open code compliance case (Case No. UR-08-039) concerning non-permitted commercial activities occurring on the property (i.e. wedding events, commercial use of the dwelling on the property) and construction of structures without building permits. The applicant has signed a Voluntary Compliance Agreement (VCA) with county code compliance. In order to address the code compliance violation, the applicant has entered into a VCA and is required to obtain a farm stand permit and building permits. The applicant has submitted the necessary materials for the County to process this request.

#### **6.00 Conclusion**

An Administrative Decision has been made to approve the expansion of the operation and structure used for the farm stand retail operation, the addition of the gazebo for flower sales, the sale of non-farm goods, and a portion of the proposed promotional activities subject to conditions of approval. The promotional fee-based activities for a corn maze and Thursday weekly harvest festivals held during the months of July and August were found to be consistent with code criteria. Weddings, bike races, birthday parties, corporate picnics, and



group gatherings are not allowed as part of this decision. All non-permitted fee based activities not allowed by this decision shall cease.

Based on the findings, other information provided above, and the information provided in the applicant's application, the applicant has carried the burden necessary for the approval of a Planning Director's Decision to establish a Farm Stand in the Exclusive Farm Use zone. This approval is subject to the conditions of approval and limitations established in this report.

## 7.00 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Comments Received

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 T2-09-002 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	1/23/09
A.2	36	Project Narrative	1/23/09
A.3	1	Site Plan	1/23/09
A.4	1	Site Survey (Case No. T2-07-017)	1/23/09
A.5	1	Table: 2008 Farm Stand Sales	1/23/09
A.6	2	Lease Agreement for Adjoining 60 acres	1/23/09
A.7	2	Sample Farm Wedding Contracts	1/23/09
A.8	3	Initial Transportation Analysis by Lancaster Engineering	1/23/09
A.9	20	Memo: Completeness Response addressing February 20 letter of incomplete application	4/17/09
A.10	1	Revised Site Plan	4/17/09
A.11	1	Site Plan (by Aleks Kruger, age 7)	4/17/09
A.12	8	Building Description/Plan Sheets	4/17/09
A.13	21	Sales Information (summary sheets and sales receipts)	4/17/09
A.14	1	Birthday Party Confirmation Letter	4/17/09
A.15	4	Agricultural Building Exemption Forms	4/17/09
A.16	1	Police Services Review	4/17/09
A.17	1	Fire District Review: Access	4/17/09
A.18	1	Fire District Review: Fire Flow Requirements	4/17/09
A.19	1	Certificate of Water Service	4/17/09
A.20	10	Certification of On-Site Sewage Disposal with attachments	4/17/09
A.21	17	Transportation Impact Analysis	5/1/09

A.22	1	Letter from Simpson and Company, A Profession Corporation Certified Public Accountants	6/10/09
A.23	5	Memorandum: Comment Response	6/16/09
'B'	#	Staff Exhibits	
B.1	2	A&T Property Information	
B.2	1	A&T Tax Map with Property Highlighted	
B.3	3	Property Survey per T2-07-017	
B.4	11	Notice of Corrected Decision for Property Line Adjustment involving subject property (Case No. T2-07-017)	
B.5	5	Voluntary Compliance Agreement	
B.6	3	Correspondence from Brian Vincent, County Engineer, RE: submitted Traffic Impact Analysis	
B.7	3	Memo from Ken Born, Transportation Planner, RE: Retroactive Approval for existing Kruger Farm Stand Operation (EP2008103)	
'C'	#	Administration & Procedures	
C.1	4	Incomplete Letter issued February 20, 2009	
C.2	1	Applicant's Acceptance of 180 Day Clock	
C.3	1	Complete Letter (Day 1) issued on May 26, 2009	
C.4	6	Opportunity to Comment issued on May 27, 2009	
'D'	#	Comments Received	
		Due to number of comments received. See case file for list of comments received (Case No. T2-09-002	

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Portland, Oregon 97231

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EXHIBIT  
A. 10

