



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Approved with Conditions

Permit Type: Dwelling in Conjunction with Farm Use

File No. Z0513-24

Applicant's Proposal: The applicant has proposed a dwelling in conjunction with a farm use on high-value soils.

Decision Date: February 26, 2025

Deadline for Filing Appeal: March 11, 2025, at 4:00 pm.

Issued By: Joy Fields, Principal Planner, jfields@clackamas.us, 503-742-4510

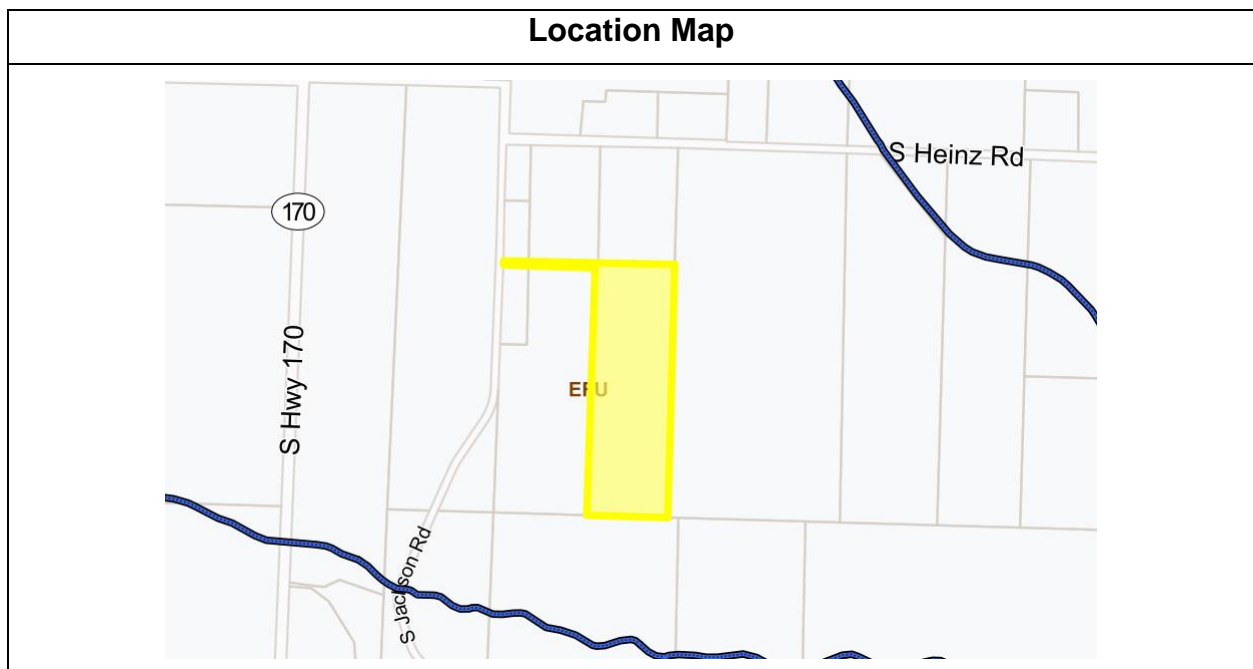
Applicant: Vasily Ovchinnikov

Owner of Property: Vasily Ovchinnikov

Zoning: EFU (Exclusive Farm Use)

Assessor's Map & Tax Lot(s): T04S R01E Section 27 Tax Lot 01600

Site Address: 28850 S Jackson Road Canby, OR 97013



Community Planning Organization (CPO) for Area:

South Canby INACTIVE

Community Planning Organizations (CPOs) are part of the county's community involvement program. They are advisory to the Board of County Commissioners, Planning Commission and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact Clackamas County Community Engagement at 503-655-8751.

Opportunity to Review the Record and Decision: The complete decision, including findings and conditions of approval, and the submitted application are available for review online at <https://accela.clackamas.us/citizenaccess/>. Select the **Planning** tab and enter the file number to search. Select **Record Info** and then select **Attachments** from the dropdown list, where you will find the submitted application. A copy of the decision, application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost by contacting the Planner listed above. Copies of all documents may be purchased at a cost established by the County fee schedule.

Appeal Rights: **This decision will not become final or effective until the period for filing an appeal with the County has expired without the filing of an appeal.** Any person who is adversely affected or aggrieved or who is entitled to written notice of the decision pursuant to Subsection 1307.09(C) of the Clackamas County Zoning and Development Ordinance may appeal this decision to the Clackamas County Land Use Hearings Officer by filing a written appeal. An appeal must include a completed Appeal Form available at www.clackamas.us/planning/supplemental.html and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified above.

Appeals may be submitted in person during office hours (8:00 am to 4:00 pm Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

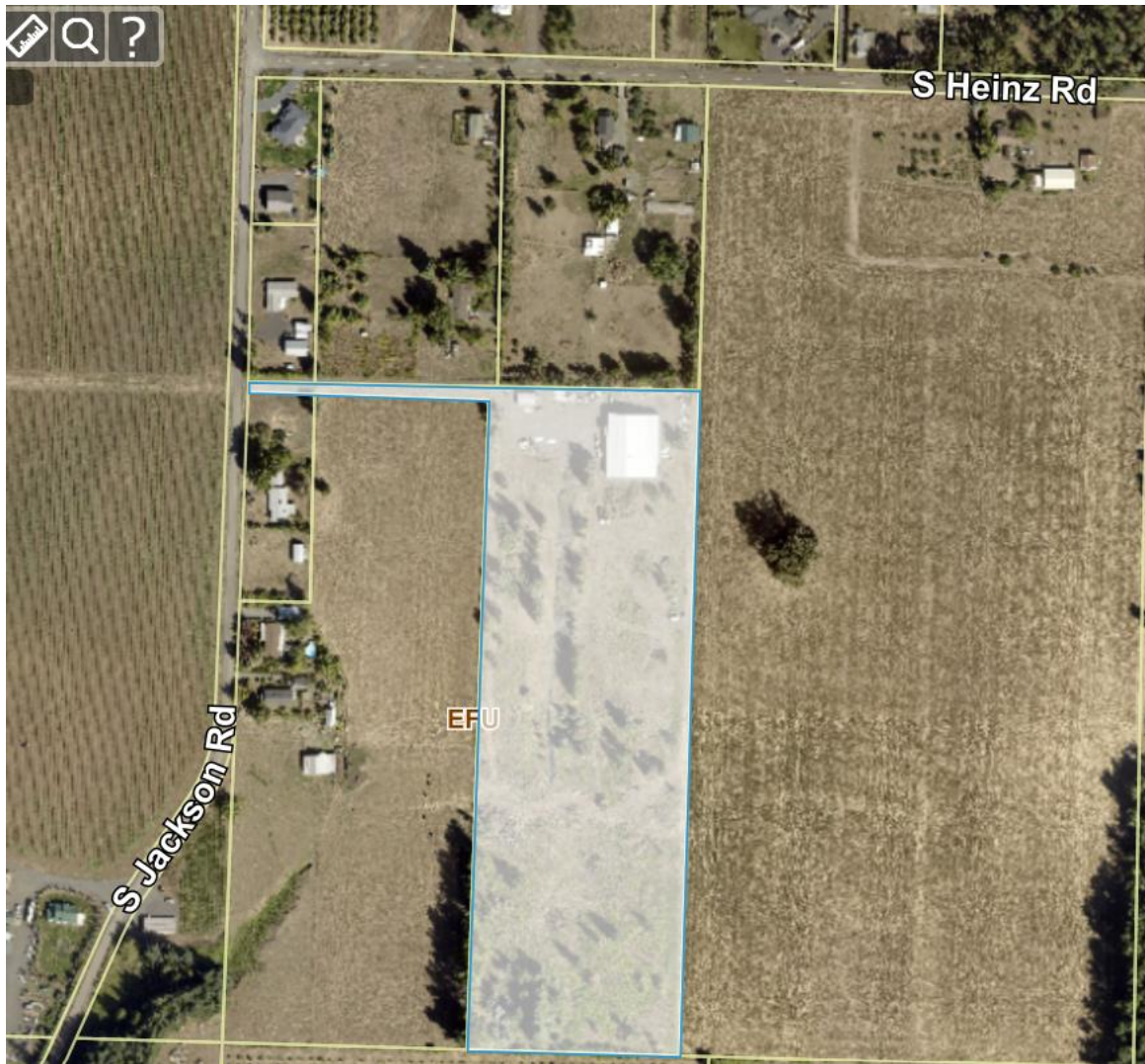
A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

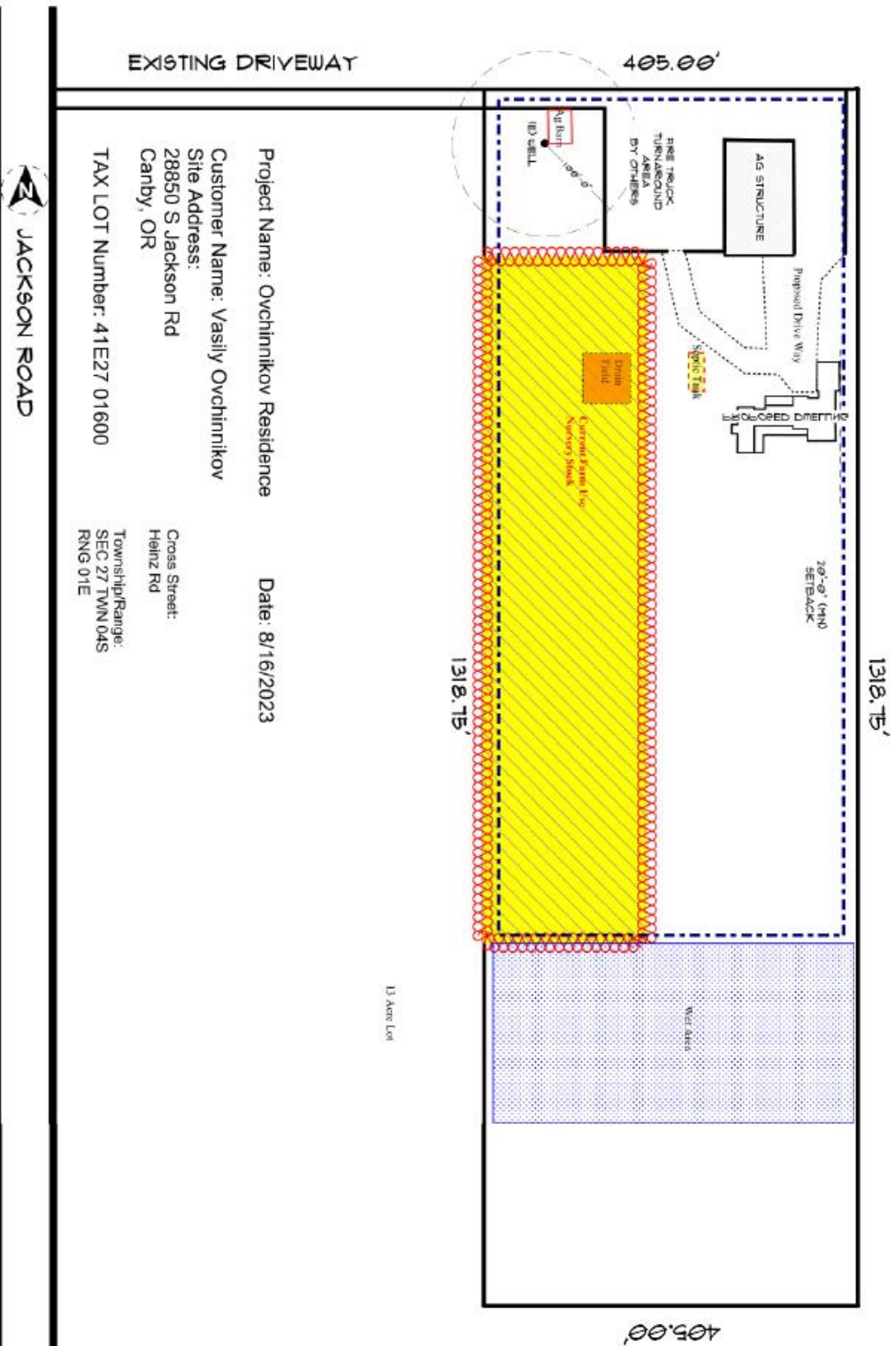
Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

503-742-4545: ¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통?

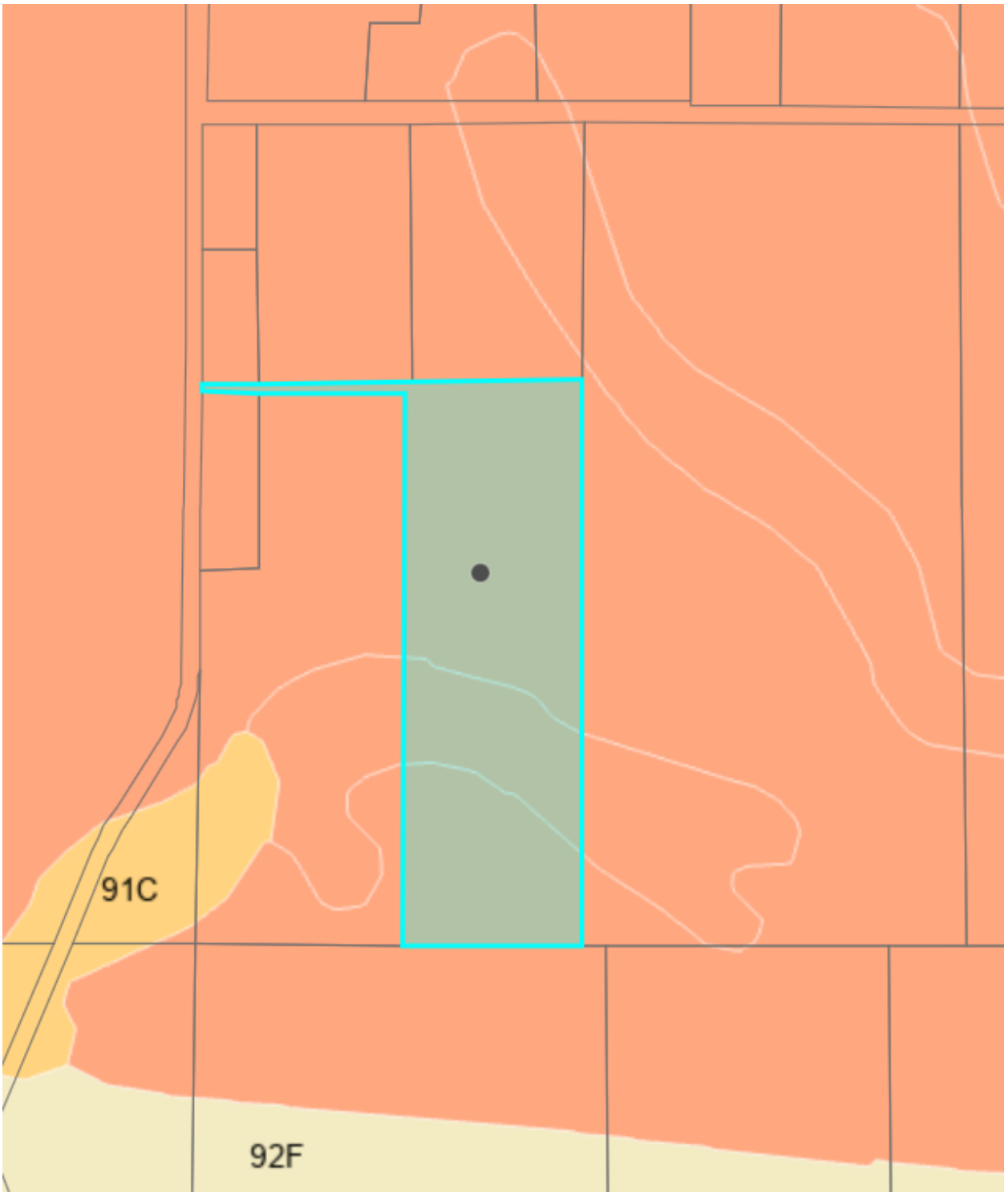
Location Map with 2023 Aerial Image



Site Plan



Soils Map



Map Symbol	Soil Name	Farm Value	Shape Area
1A	Aloha silt loam	High	10.57
41	Huberly silt loam	High	2.36

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 parentheses.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on 12/19/2024 and additional documents submitted on 02/19/2024. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with these documents and the limitation of any approval resulting from the decision described herein.
2. Prior to Planning and Zoning approval of an onsite wastewater treatment, building, or manufactured dwelling placement permit for the dwelling authorized by this land use permit, the landowner for the dwelling shall sign and record in the deed records for Clackamas 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 30.937. A sample of the required document may be obtained from Planning and Zoning. A copy of the recorded document shall be submitted to Planning and Zoning. (ZDO 401.05.A.3)
3. Prior to Planning and Zoning approval of an onsite wastewater treatment, building, or manufactured dwelling placement permit for the dwelling authorized by this land use permit, the applicant shall execute and cause to be recorded in the deed records of Clackamas County a deed restriction prohibiting the use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary dwelling. ZDO 401.05(C)(5)(j).
4. This approval is to establish a primary farm operator dwelling in conjunction with a commercial horticultural operation. (ZDO 401.05(C)(5)(a)).
5. The permit for the dwelling shall only be issued to the farm operator, Vasily Ovchinnikov, and the residence shall be occupied by Vasily and Claudia Ovchinnikov or a subsequent farm operator. (ZDO 401.05(C)(5)(e)).

6. All development of the property shall meet the development standards of the EFU zoning district. (*ZDO 401.07*).
7. Approval Period: This approval is valid for four years from the date of the final written decision. Since the County's final written decision was appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented. "Implemented" means:
 - a. A building permit for the dwelling or manufactured dwelling placement permit shall be obtained and maintained.
 - b. If the approval is not implemented within the initial approval period established by Subsection 401.11(A), a two-year time extension may be approved pursuant to Section 1310. (*ZDO 401.10*).

FINDINGS

The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

1. **PROJECT OVERVIEW:** The subject site is located on the east side of S Jackson Road, approximately 650 feet south of its intersection with Heinz Road. The property is approximately 13 acres in size and is zoned EFU, Exclusive Farm Use. The subject site is developed with two existing nonresidential buildings. The statewide wetlands inventory identifies a wetland on the northeastern part of the property, however, no development is proposed in this portion of the site. The site is flat, and trees and other vegetation onsite are generally sparse but they are concentrated on the southern portion of the site.

Through land use file Z0513-24, the applicant has proposed a dwelling in conjunction with a farm use to be located near the center of the property. The proposed dwelling location is away from the wetland identified on the statewide wetlands inventory and in an area that is free of existing vegetation. However, the dwelling will need to be moved slightly from what is shown in the site plan to meet the 30' rear setback from the eastern property boundary. Building permit #AG003722 for the new agricultural building established that the western property boundary was the front pursuant to the exception for flag lots allowed by ZDO 903.08.

The applicant previously applied for a dwelling in conjunction with farm use through land use file Z0342-23. The previous application was denied due to insufficient evidence of meeting the income requirements for 2021 and 2022 through the sale of farm products grown on the subject site in 2021 and 2022. Staff reviewed the current application, Z0513-24, and found "changes in circumstances resulting in new facts material to the application" because the

current application was using income from the sale of farm products grown on site during the years 2023 and 2024. Farm use evidence was based on the aerial images, and the income evidence was provided through invoices and the Schedule F tax form for 2023. Therefore, the application was accepted and reviewed pursuant to ZDO 1307 procedures.

2. ZDO SECTION 401: EXCLUSIVE FARM USE DISTRICT

401.05(A)(3): *The landowner for the dwelling 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 30.937.*

Finding: There is no evidence that a deed restriction as mentioned in the criterion has been recorded and submitted to this file. If approved, a condition of approval would be needed to ensure compliance with this standard. **This criterion is met as conditioned.**

401.05(C)(5): *Dwelling in conjunction with a farm use on High Value Farm Land: A primary farm dwelling for the farm operator may be allowed subject to the following criteria:*

Finding: Staff confirmed the predominant soil types of the subject property by using the Clackamas County High Value and Low Value Farmland Soils mapping system by ArcGIS, where data is provided by the Web Soil Survey produced by the Natural Resources Conservation Service. As shown above in the Soils Map, the subject property contains a mix of soils, predominantly Aloha Silt Loam and Huberly Silt Loam, identified as High Value soils. Predominantly, the subject property contains high value farmland based on soils data.

401.05(C)(5)(a): *The subject tract is currently employed in farm use on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years.*

Finding: The application materials identify Vasily Ovchinnikov as the farm operator, and state "The attached Articles of Organization and Agricultural License demonstrate that the applicant has operated a wholesale nursery on the subject site under the business name "B and C Family Farms LLC since 2021 (see Exhibits 3 and 4). The submitted Paid Invoices for B and C Family Farms indicate that sales in 2023 totaled \$81,095 (see applicant's Exhibit 6). In 2024, Paid Invoices for B and C Family Farms indicate that \$100,978.12 of wholesale landscape product was sold by the business (see applicant's Exhibit 7).

While most of the plants and shrubs that were sold were grown in containers on the subject site between 2022 and 2024, the parcel also contains larger trees that were planted when a previous nursery wholesaler owned the property. The growing medium for the potted plants consists of topsoil from the subject parcel, compost, and pumice rock. Bareroot seedlings and rooted liners are planted into

1, 2, 3, and 5 gallon nursery containers. The attached List of Nursery Stock indicates that the business grows northwest native plants, ornamental shrubs, and trees (see Exhibit 8). The nursery stock takes 6-12 months to be established, after which the company either sells or transfers the plants to larger containers every 12 or 18 months.”

According to assessment and taxation records, the applicant acquired the property on March 30, 2021. Staff finds that the applicant has provided sufficient evidence demonstrating that the subject site is currently employed in farm use on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two years. Application materials included aerial images, images taken by drones and invoices demonstrating the income was produced by B and C Family Farms LLC on the subject site.

Materials provided by a concerned neighbor contain information by Mark Halcomb and Donna Fare who are experts in the horticulture industry. The experts indicate that a container nursery can grow about 20,000 one gallon pots on one acre and that a container nursery needs one employee continually on site for each acre of material grown. Measurements provided by the concerned neighbor show about 2.86 acres proposed by the applicant for the growth of nursery stock. That is smaller than a small container operation that averages 10 acres, but would support the amount of plant growth grown and sold by B and C Family Farms LLC as shown by the invoices provided in the application and discussed below.

The applicant submitted photographs of nursery stock grown on a property that was indicated to be the subject site. Aerial photos from May 2023 and November 2024 confirm that nursery stock was present on the subject and supports that there is a current farm use of the subject site. The concerned neighbor provided additional images of nursery stock from 2023, 2024, and January 2025.

May 2023 Aerial Photograph – Overall Site



November 2024 Drone Photograph



The applicant submitted four invoices for the B and C Family Farms demonstrating the following nursery stock, comprised of 9,505 items were sold from B and C Family Farms to The Nursery Outlet and to SNO Landscapes in 2023:

Invoice 41 Total = \$21,325.0

14 Acer Rubrum (2 inch caliper)
11 Carpinus Betulus (2 inch cal.)
63 Celtis Occidentalis (2 inch cal.)
27 Ostrya Virginiana (2 inch cal.)
17 Acer Rubrum (1.5 inch caliper)

Invoice 42 Total = \$19,106.0

83 Cupressus Sempervirens
160 Ligustrum Texanum (5 Gal.)
217 Cornus Kelseii (1 Gallon)
41 Evergreen Shrub (2 Gallon)
327 Evergreen Dwarf Shrub (2 Gallon)
39 Hemerocallis
31 Evergreen (1 Gallon)

Invoice 43 Total = \$23,426.0

261 Hydrangea
116 Ilex Cornuta (2 Gallon)
265 Mahonia Aquifolium
626 Pennisetum (1 Gallon)
9 Evergreen Shrub (2 Gallon)
9 Pinus Mugo
258 Rhapsiolepi
884 Arctostaphylos uvaursi
4,882 Junncus Patens (1 Gallon)

Invoice 44 Total = \$17,238.00

57 Myrica California (5 Gallon)
91 Cistus 'Blanche' (5 Gallon)
101 Syringa Patula (5 Gallon)
83 Viburnum Tinus
170 Weigela Florida (5 Gallon)
581 Abelia Grandflora (2 Gallon)
82 Mahonia Aquifolium

2023 Invoice 41, 42, 43, and 44 Total = \$81,095.00. This income earned is supported by the 2023 IRS Schedule F form that shows farm income for Vasily in the amount of \$81,095.00

The applicant submitted eight invoices for the B and C Family Farms demonstrating the following nursery stock, of almost 20,300 plants were sold from B and C Family Farms to SNO Landscapes in 2024:

Invoice 58 Total = \$19,648.00

1,228 Black Cottonwood (1 Gallon)
1,228 Douglas Spirea (1 Gallon)
1,228 Pacific Willow (1 Gallon)
1,228 Scouler Willow (1 Gallon)

Invoice 59 Total = \$27,040.00

218 Vine Maple (2 Gallon)
218 Bitter Cherry (2 Gallon)
210 Low Oregon Grape (1 Gallon)
910 Twinberry (1 Gallon)
910 Indian Plum (1 Gallon)
910 Pacific Ninebark (1 Gallon)
910 Clustered Rose (1 Gallon)
910 Douglas Spirea (1 Gallon)
910 Snowberry (1 Gallon)

Invoice 59-1 Total = \$21,025.00

10 Acer Rubrum (10' Ht or 2 inch Caliper)
27 Cornus (10' Ht or 2 inch Caliper)
44 Pyrus Calleryana (10' Ht or 2 inch Caliper)
19 Acer Rubrum (10' Ht or 2 inch Caliper)
18 Acer Rubrum (10' Ht or 2 inch Caliper)
15 Quercus Rubrum (10' Ht or 2 inch Caliper)
7 Nyssa Sylvatica (10' Ht or 2 inch Caliper)
17 Calocedrus Decurrens (5' Ht)
12 Pseudotsuga Mensiezii (5' Ht)

Invoice 60 Total = \$3,250.00

11 Red Sunset Maples (1.75 Gallon)
16 Big Leaf Maple (2 Gallon)

Invoice 60-1 Total = \$1,933.80

879 Carex Rosii (6" plug)
879 Carex Obnupta (6" plug)
879 Eleocharis Microcarpus (6" plug)
879 Scirpus Microcarpus (6" plug)

Invoice 60-2 Total = \$7,323.00

4,882 Carex Obnupta (1 Gallon)

Invoice 60-3 Total = \$2,768.32

358 Cotoneaster Dammeri (1 Gallon)
195 Pennsittum Alopecuroides (1 Gallon)

Invoice 60-4 Total = \$17,990.00

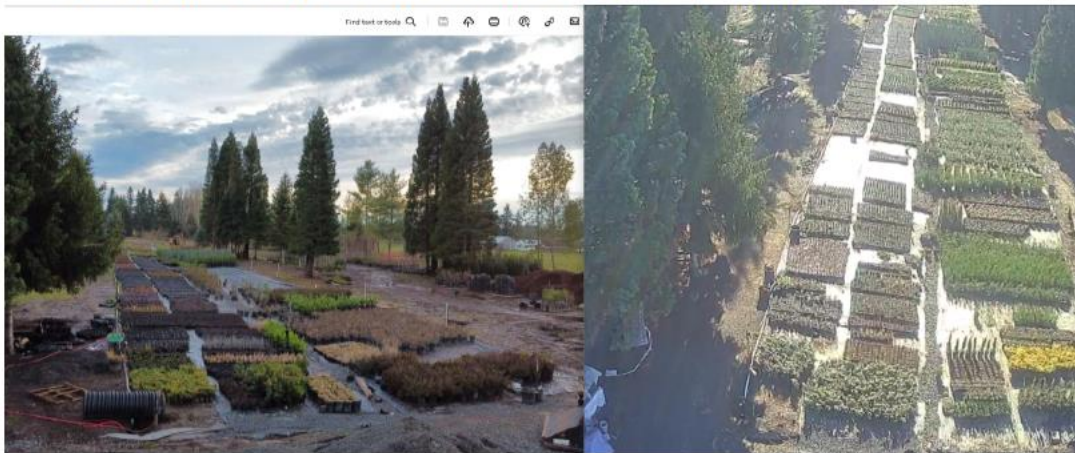
37 Carpinus Beulus (2" Caliper)
38 Parrotia Perica
12 Parrotia Perica (2" Caliper)
43 Tilia Cordata (2" Caliper)

The 2024 invoices originally submitted for the B and C Family Farms application showed that some, but not all of the invoices had been paid. The applicant reconciled the account and provided updated invoices on February 19, 2025 showing that the invoices provided originally in the application had all been paid by 12/2/24. The total gross income from the 2024 invoices paid in 2024 is \$100,978.12.

Aerial images from 2023 show nursery stock in pots located on the property. The pictures from the drone flights submitted by the applicant for 2024 also show nursery stock located on the property. Pictures from a concerned neighbor also show nursery stock located on the property with the amounts increasing in 2024 and January 2025 compared to 2023. Unfortunately, the neighbor is receiving runoff from the farm operation and has concerns about the container nursery operation.

Exhibit 1

Side by side comparison December 2023 – January 2025



The invoice provides an address of 336 Acacia Avenue in Woodburn for the B and C Family Farms. A member of the public provided annual reports from the Oregon Secretary of State for B&C Family Farms LLC that indicate the mailing address and primary place of business is 336 Acacia Ave. Street view in Google for 336 Acacia Avenue indicate that the property is in a neighborhood setting and the street view shows no nursery stock in the front yard. The aerial images provided by the public of Acacia Ave. also show no nursery stock. To produce the volume of plant material included in the invoices, additional land is needed beyond what could be grown on a neighborhood lot on Acacia Avenue. The applicant and the agricultural license provided in the application indicate that the subject site is the location the nursery stock is grown on.

Therefore, staff conclude that the 336 Acacia Avenue is the location of the office, as indicated on the Articles of Incorporation for the registration of a limited liability company from the Secretary of State. The subject site is the location for the

production of the nursery stock as shown by the B and C Family Farms Agricultural license from the Oregon Department of Agriculture. The Agricultural license lists the subject site as the business location for B and C Family Farms, and was issued on October 28, 2021. A review of licenses with the Oregon Department of Agriculture showed that the B and C Family Farms LLC license is still active and valid through June of 2025. The ODA website showed the mailing address as Woodburn and the DBA as Canby. The applicant's narrative states the required income was produced on the subject site in 2023 and 2024 after the property was purchased in 2021 and after the issuance of the 2021 agricultural license. **This criterion is met.**

401.05(C)(5)(b): *Lots of record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.*

Finding: A review of the application materials finds that none of the property is located in Eastern Oregon. **This criterion is met.**

401.05(C)(5)(c): *Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on lands designated for exclusive farm use or for mixed farm/forest use owned by the farm or ranch operator or on the farm or ranch operation.*

Finding: The subject property does not include any dwellings. The applicant has stated "The applicant does not own other land designated for exclusive farm use and there is no dwelling located on the subject site. The applicant currently lives on residential zoned property within the city limits of Woodburn." Staff research of County Tax Assessment information found no evidence of another dwelling on lands designated for exclusive farm use or mixed farm/forest owned by the farm operator. **This criterion is met.**

401.05(C)(5)(d): *The lot of record on which the dwelling will be sited was lawfully created.*

Finding: The subject site is a lot of record created by deed in September of 1976, and was in compliance with the planning and zoning requirements in effect at the time it was created. **This criterion is met.**

401.05(C)(5)(e): *The dwelling will be occupied by a person or persons who produced the commodities which generated the income.*

Finding: The applicant states that the dwelling will be occupied by Vasily, the property owner and farm operator, along with his wife Claudia. As the farm operator Vasily is responsible for producing the income generated by the farm operation, and his family. As discussed in the findings above, the applicant demonstrated that they established a farm use for the growing of nursery stock on the subject site. The invoices, Agricultural License, articles of incorporation, and an IRS Schedule F

document that the gross income was generated by the farm operator, who owns B and C Family Farms. Therefore, the dwelling will be occupied by a person who produced the commodities that generated the income. **The criterion can be met as conditioned.**

401.05(C)(5)(f): *In determining the gross income requirement, the cost of purchased livestock shall be deducted from the total gross annual income attributed to the tract.*

Finding: The gross income requirement did not include the cost of purchased livestock. As stated by the applicant "The gross annual income generated by a farm use in 2023 and 2024 was not from livestock or ranching activities." **This criterion is met.**

401.05(C)(5)(g): *Only gross income from land owned, not leased or rented, shall be counted.*

Finding: The subject property is the only land with farm income claimed by the applicant. The Assessment and Taxation Department shows the subject property has been owned by the applicant since 2021. The applicant provided a copy of the Property Deed that indicates the applicant owns the subject property. The applicant also submitted Articles of Organization and Agricultural License for B and C Family Farms LLC demonstrating that the wholesale nursery that operates on the subject site is also owned by the applicant. Therefore, the income claimed by the applicant was gross income from land owned and not rented or leased. **This criterion is met.**

401.05(C)(5)(h): *Gross farm income earned from a lot of record which has been used previously to qualify another lot of record for the construction or siting of a primary farm dwelling may not be used.*

Finding: The applicant demonstrated that nursery stock was grown on the site in 2023 and 2024 and the invoices for the B and C family Farm indicate that gross farm income was earned from the sale of the nursery stock grown on site. The applicant indicated in the application that income provided by the applicant involved property was not previously used to qualify another lot of record for a primary farm dwelling. **This criterion is met.**

401.05(C)(5)(i): *Only a lot of record zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.*

Finding: The lot of record (subject site) is located within Clackamas County and is zoned Exclusive Farm Use (EFU), zoned for farm use as defined in ORS 215.203. As stated by the applicant "The attached Agricultural License for B and C Family Farms LLC indicates that the place of business is 28850 S Jackson Road, which is located in Clackamas County (see applicant's Exhibit 4). As discussed above, the applicant does not own other land zoned for farm use." The applicant provided photos, aerial images to demonstrate that the subject site was used to grow/produce the nursery stock that generated the income. **This criterion is**

met.

401.05(C)(5)(j): *An irrevocable deed restriction shall be recorded in the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used again to qualify another parcel for a primary farm dwelling.*

Finding: Currently, there is no evidence of a deed restriction of this nature existing on the subject property. **As conditioned this criterion can be met.**