

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION
ADMINISTRATIVE REVIEW CASE NO. 24-004**

APPLICATION: Application of A Resource Corporation for an administrative review to replace a dwelling on a 35.30-acre parcel in a TC (Timber Conversation) zone located at 20727 Abiqua Rd NE, Silverton (T7S; R1E; Section 13B; Tax lot 200).

DECISION: The Planning Director for Marion County has determined that the dwelling was **legally established and may be altered, restored and/or replaced.**

EXPIRATION DATE: This decision is valid only when exercised by **March 9, 2028**, unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

WARNING: A decision approving the proposed uses is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposed activities. To ensure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS:

1. The applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permit, the applicants shall sign and submit a Replacement Residence & Farm-Forest Declaratory Statement (enclosed) to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
3. The owners shall maintain a fire hazard reduction plan as recommended by the Oregon Department of Forestry.
4. The proposed dwelling shall meet the fire protection and hazard reductions as listed in MCC 17.139.070.
5. The dwelling shall be replaced on the same location of the previous dwelling as indicated by the site plan, or the dwelling shall maintain a special setback from surrounding properties in farm or timber production of 200 feet. Accessory structures shall maintain a special setback from surrounding properties in farm or timber production of 100 feet. MCC17.138.060(A)(2) or (3)

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, state or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

6. The applicants should contact the Silverton Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
7. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a fee of \$200.00) on the basis of new information subject to signing an extension of the 150-day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **March 11, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 12, 2024**, unless appealed.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Forest in the Marion County Comprehensive Plan. The intent of this designation and the corresponding TC (Timber Conservation) zone is to promote the continuation of natural resource uses in the area.
2. The subject property is located at 20727 Abiqua Rd NE. It is mostly covered by a stand Douglas fir over 30-acres in size, with deciduous trees on the north, west, and south edges of this woodlot. A homesite on the southeastern corner occupies approximately 2-acres of lightly wooded area. Within this homesite area is the site of the former manufactured home, and an accessory structure which still exists. A perennial creek flows along the southern edge of the homesite towards Abiqua creek.

The subject parcel was described in a 1953 deed (Vol. 448 Page 23) and has been legally modified since. The alteration made was in the form of a property line adjustment. This adjustment was recorded in 1999 and was between the subject parcel and the larger adjacent parcel to the east (tax lot 100). No land use case was necessary as the adjustment was less than 10% of the smallest parcel, and neither property had ever been subject to land use up to that point. The new descriptions were recorded in Page 624 (Tax lot 200) and Page 625 (Tax lot 100) of Reel 1601. Therefore, this parcel is considered legal for land use purposes.

3. All directly adjacent properties are involved in some amount of forest resource production. To the east is another large parcel with a homesite as well as a large Douglas fir stand. Across Abiqua Rd from the subject parcel is Abiqua Creek. Nestled south of Abiqua Rd but north of Abiqua Creek are a couple smaller parcels in rural residential use.
4. The soils on the subject parcel consist of the following types which are approximately capable of producing the indicated cubic board feet of timber annually:

<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
MaB	2.7	184	496.8
NeE	23.8	163	3879.4
NkC	8.3	163	1352.9
5. The applicant is proposing to replace a dwelling that was burned/removed in 2023.
6. Various agencies were contacted for comment on the proposal.

Marion County Building Inspection

No Building Inspection concerns. Permits are required to be obtained prior to development and/or utilities installation on private property. Depending on new home location adjacent to slopes, geotechnical assessment may be required during plan review of construction documents for permit.

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits an Access Permit may required to document the existing approach connection to the public road since there is no such record currently on-file with MCPW Engineering.
- B. The subject property will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits. Credit may be given for replacement dwellings that are applied for within a year or so of the former dwelling having been removed.
- C. Utility service extensions within the public R/W requires utility permitting from MCPW Engineering.

Marion County Assessors Office provided information related to taxes.

All other commenting agencies stated no objection to the proposal.

- 7. Chapter 17.138.030(D) of the Marion County Code (MCC) allows the alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.138.060(B), other than as permitted in MCC 17.138.020(E), when the dwelling:
 - (a) *Has intact exterior walls and roof structure;*
 - (b) *Has indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;*
 - (c) *Has interior wiring for interior lights;*
 - (d) *Has a heating system; and*
 - (e) *In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable non-residential use within three months of the final inspection or occupancy of the replacement dwelling.*

The dwelling in question was a legally placed manufactured home from 1977, demolished in 2023, and meets all definitions of a dwelling. As per MCC 17.138.70 (C) the home may be replaced within one year without any land use action. The applicant anticipates waiting longer than one year to replace the dwelling and has applied for this administrative review in advance to essentially grant an extension to the time frame in which a replacement dwelling can be built or placed. The criteria is met.

- (f) *In the case of replacement, the replacement dwelling shall meet the siting requirements set forth in MCC17.138.060(A)(2) or (3), which states:*
 - 2. *Siting standards for dwellings and other buildings.*
 - a. *Dwellings shall be at least 200 feet from any abutting parcel in farm use or timber production. Buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production.*
 - b. *The special setback in subsection (A)(2)(a) of this section shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 to 195.336 nor should the special setback in subsection (A)(2)(a) of this section prohibit a claimant's application for homesites under ORS 195.300 to 195.336.*
 - c. *The dwelling or other building shall be located within 300 feet of the driveway entrance on an abutting public road; or, if the property does not abut a public road for a distance of at least 60 feet, the dwelling or other building shall be located within 300 feet of the point where the driveway enters the buildable portion of the property.*
 - 3. *Review criteria for alternative sites. Sites for dwellings or buildings that do not meet the siting requirements in subsection (A)(2) of this section may be approved if the proposed site will meet the following criteria:*
 - a. *The site will have the least impact on nearby or adjoining forest or agricultural lands;*
 - b. *The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*

- c. *The amount of agricultural and forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and*
- d. *The risks associated with wildfire are minimized.*

The siting requirements shall be made a condition of approval. The applicant shows the original location of the home on the submitted site plan. If they decide to change the location for the replacement then MCC 17.138.060 (A) (3) criteria shall be observed for a proposed alternative site. The criteria are met.

- (g) *A lawfully established dwelling that is destroyed by wildfire may be replaced within 60 months when the county finds, based on substantial evidence, that the dwelling to be replaced contained those items listed in subsections (D)(1) through (4) of this section[a-d]. For purposes of this subsection, substantial evidence includes, but is not limited to, county assessor data. The property owner of record at the time of the wildfire may reside on the subject property in an existing building, tent, travel trailer, yurt, recreational vehicle, or similar accommodation until replacement has been completed or the time for replacement has expired.*

The dwelling was not destroyed by wildfire. The criterion does not apply.

- 8. Based on the above findings, it has been determined that the existing dwelling was legally established and may be altered, restored and/or replaced.
- 9. Although the replacement dwelling is approved, the applicants will be required to sign and record a Replacement Dwelling and Farm/Forest Declaratory Statement as a condition of approval. This acknowledges the impacts of farm and forest management practices conducted in the area.

Brandon Reich
Planning Director/Zoning Administrator

Date: February 23, 2024

If you have any questions regarding this decision contact John Speckman at (503) 588-5038

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.