

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. 24-005**

APPLICATION: Application of Josh Wells on behalf of the Ditchen Land Company LLC for an administrative review to replace a dwelling on a 123.72-acre parcel in the EFU (Exclusive Farm Use) zone located at 7198 River Rd NE, Salem (T6S; R3W; Section 25; Tax lot 2600).

DECISION: The Planning Director for Marion County has determined that the residence was legally established and can be replaced.

EXPIRATION DATE: This decision is valid only when exercised by **March 21, 2028** (four years) unless an extension is granted. The effective period may be extended for two years 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 proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure 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, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a Declaratory/Farm-Forest Statement 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. Prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a Replacement Residence Declaratory Statement 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.

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 #5 & #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. In the District Info section of the subject property, it lists that there are two fire districts for the property. The applicants should contact both the Keizer and Marion County No. 1 Fire (Paula Smith at MCFD#1/(503) 588-6513) Districts to determine which is the appropriate district for the new proposed dwelling and obtain a copy of the appropriate 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.

5. 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 the Marion County Hearings Officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) 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 21, 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 22, 2024**, unless appealed.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (EXCLUSIVE FARM USE). The intent of both designation and zone is to promote and protect commercial agricultural operations.
2. Tax lot 2600 is located on the Southeast side of River Rd NE, between the intersections of River Rd with Meadowridge St NE and Parkmeadow Dr NE. A railroad line forms the East boundary of the property. Most of the property consists of agricultural fields, with forested areas in the southeastern area of the lot and in the riparian area of an intermittent stream that runs north to south through the entire lot. A quarter mile long driveway runs through the lot to the area of the lot where the previous homesite and accessory buildings existed. The lot is split in service by the Salem-Keizer and Gervais School Districts and the Marion County No.1 and Keizer Fire Districts. The subject property is described in case AR93-007 and the findings include a description of one dwelling and several accessory farm structures. It is considered legal for land use purposes.
3. Surrounding uses consist of EFU (Exclusive Farm Use) zoned lots to the North, East, and part of the Southern and West property boundaries which are engaged in agriculture. The properties bordering the remaining parts of the Western and Southern property boundaries are part of the City of Keizer.
4. Soil Survey of Marion County Oregon indicates that tax lot 2600 is 100% high values soils.
5. The applicant is proposing to replace a dwelling that was removed by the previous owner in 2020 with a new manufactured home.
6. Several agencies were contacted about the proposal and given the opportunity to comment.

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

Requirements: "The subject property will be assessed Transportation System Development Charges (TSDCs) & Parks fee upon application for building permits. Credit is not able to be given for the prior dwelling since it had been removed several years ago."

Advisories: "Property access to River Road NE is under City of Keizer jurisdiction."

Marion County Building Inspection commented: "Permits are required to be obtained prior to development and/or utilities installation on private property."

All other agencies either failed to comment or stated no objection to the proposal.

7. The replacement dwelling criteria are listed in Section 17.136.030(D) of the Marion County Code (MCC). The criteria are:

D. Dwelling Alteration and Replacement. Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC [17.136.100\(C\)](#), other than as permitted in MCC [17.136.020\(D\)](#), when:

- 1. The dwelling to be altered, restored or replaced has or formerly had:*
 - a. Intact exterior walls and roof structure;*
 - b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
 - c. Interior wiring for interior lights; and*
 - d. A heating system; and*

The applicant provided evidence in the form of photographs of the removed dwelling and a septic tank abandonment document from 2020. The pictures show intact exterior walls and roof structure and a septic tank abandonment document for the previous septic system for the dwelling is sufficient to address the criteria of indoor plumbing in the previous dwelling. The applicant acknowledged in their statement that there is “no proof that the dwelling had interior wiring and heating” but contend that the many years of occupancy of the dwelling is enough evidence to reasonably assume the dwelling previously had indoor wiring and heating.

Closer inspection of the provided photographs show that there was an electrical line running to the dwelling and there is still a line of electric power poles running along the driveway to the former house site. Additionally, there appears to be either an electrical meter or natural gas meter on the side of the dwelling, further supporting that the house previously had electricity and potentially a heating source. This evidence is sufficient to meet criteria c and d. The criterion is met.

- 2. In addition to the provisions of subsection (D)(1) of this section, the dwelling to be replaced meets one of the following conditions:*
 - a. If the dwelling was removed, destroyed or demolished:*
 - i. The dwelling’s tax lot does not have a lien for delinquent ad valorem taxes; and*
 - ii. Any removal, destruction, or demolition occurred on or after January 1, 1973.*
 - b. If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling’s tax lot does not have a lien for delinquent ad valorem taxes; or*
 - c. A dwelling not described in subsection (D)(2)(a) or (b) of this section was assessed as a dwelling for the purposes of ad valorem taxation:*
 - i. For the previous five property tax years; or*
 - ii. From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS [307.010](#);*

The dwelling to be replaced was removed from the property in 2020, after January 1, 1973. The applicants have stated that there is not a tax lien on the property and the Marion County Tax Office provided no comment. This addresses the conditions in section a. The criterion is met.

- 3. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:*
 - a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS [455.055](#); or*
 - b. If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and*
 - c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location;*

The dwelling was demolished and removed from the property. The criterion does not apply.

4. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted;

This will be made a condition of approval.

5. As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, Chapter 462, Section 2 and either ORS [215.213](#) or [215.283](#) regarding replacement dwellings have changed to allow the lawful siting of another dwelling;

The entire area of the parcel is zoned EFU, therefore the criterion does not apply.

6. A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling;

This shall be made a condition of approval.

7. The replacement dwelling must be sited on the same lot or parcel consistent with the following:
a. Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and
b. If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.

The applicant states that they intend to site the replacement dwelling within or as close to the original footprint of the previously existing dwelling. The intent behind this is to disrupt the current resource use of grass seed farming as little as possible. The proposed site for the replacement dwelling currently has an existing gravel driveway access to River Road and is surrounded by a buffer section of yard from the active grass seed fields. The criterion is met.

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. At the time of replacement, the applicant will be required to sign and record a Farm/Forest Declaratory Statement as a condition of approval. This acknowledges that farm and forest practices conducted in the area may have an adverse impact on a residence.
10. Based on the above findings, it has been determined that the proposal complies, or can be conditioned to comply, with the criteria in the Marion County Code and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Division Director

Date: March 6, 2024

If you have any questions regarding this decision contact Alexander Seifer 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.