



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: May 1, 2024

Department: Public Works

Title: Receive notice of Hearings Officer's decision approving Conditional Use 23-041/Frost

Management Update/Work Session Date: N/A Audio/Visual aids []

Time Required: 0 min Contact: Nicole Inman Phone: 503-566-4165

Requested Action: Receive notice of Hearings Officer's decision approving Conditional Use 23-041/Frost

Issue, Description & Background: The Marion County Hearings Officer issued a decision on April 18, 2024, approving Conditional Use 23-041. As part of the land use process, the Marion County Board of Commissioners must receive official notice of the recommendation.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Hearings Officer Decision

Presenter: Nicole Inman

Department Head Signature: For Brandon Resch

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of) Case No. 23-041
)
JUBAL FROST) **CONDITIONAL USE**

I. Nature of the Application

This matter before the Marion County Hearings Officer on the Application of Jubal Frost for a conditional use permit to place a non-farm dwelling on a 5.02 acre parcel in an SA (Special Agriculture Zone located in the 8000 block of Royer Road South, Salem, (T8S; R3W, Section 32D, Tax Lot 1000).

II. Relevant Criteria

Standards and criteria relevant to this Application are found in the Marion County Code (MCC), Title 17, especially Chapter 17.137 (Special Agriculture)

III. Public Hearing

A public hearing was held on this matter on March 7, 2024. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the Application:

- | | | |
|----|--------------|---------------------------------|
| 1. | Nicole Inman | Marion County Planning Division |
| 2. | Lindsay King | Representative for Applicant |

Appellants Anneliis Juurma and John Griesback, appeared at the hearing and provided written testimony but did not provide live testimony. No objections were raised as to notice, jurisdiction, conflicts of interest, or to the evidence or testimony presented at the Hearing. Appellants requested that the record remain open for additional written testimony, and the record remained open.

On March 11, 2024, Appellants submitted additional written testimony. Appellants reiterated that they are not opposed to granting a non-farm dwelling but address the siting of the dwelling. On March 19, 2024, Applicant’s Response was received and addressed the items addressed by Appellants. Both submissions are considered part of the record.

IV. Executive Summary

Applicant Jubal Frost seeks a conditional use permit to place a non-farm dwelling on a 5.02 acre parcel in an SA (Special Agriculture Zone located in the 8000 block of Royer Road South, Salem. Marion County Planning approved the Application. The Decision was appealed by Appellants who were not opposed to the approval of the non-farm dwelling but challenged the approval of the reduced setback of 20 feet. Appellants argue that the approved setback is not sufficient to allow normal forestry and agricultural practices. Applicant responds that Applicant

will sign a Declaratory Statement stating that Applicant and heirs accept the potential impacts of farm or forest practices. The Hearings Officers APPROVES the application.

V. Findings of Fact

The Hearings Officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan and is correspondingly zoned SA (Special Agriculture). The primary intent of both this designation and zone is to promote and protect small farm operations or areas with a mixture of good and poor farm soils.
2. The subject parcel is located at the end of Royer Rd S. The site is accessible from Royer Road South via Bunker Hill. The parcel is located approximately 3 miles from the nearest Urban Growth Boundary, and slightly over a mile from the Willamette River.
3. The property is undeveloped, is almost entirely covered in identified GeoHazard areas of various severity, and lays within the Sensitive Groundwater Overlay.
4. Tax lot 1000 was included in a Conditional Use case, 99-023, which was for a non-farm dwelling on tax lot 1100 and was approved by Planning. The dwelling was built on tax lot 1100. Per the Planning Director, as long as tax lot 1000 can be established as its own legal lot, a non-farm dwelling can be applied for and built if the applicable criteria is met.

The subject parcel, tax lot 1000, has existed in its current configuration since at least Vol. 595 Page 195 (recorded December 31, 1964). Since Staff found the subject parcel still uses the same legal description in the current deed as was recorded in 1964, and said legal description is separate of that for tax lot 1100, the subject parcel is deemed lawfully established and legal for land use purposes per MCC 17.110.315.

5. Properties in all directions are also zoned SA, with one parcel to the west appearing to be in active farm use.
6. Marion County Soil Survey reports 0% of the soils on the subject property as high value. The analysis lists 100% of the soils on the subject property as being classified as NeE (Nekia silty clay loam, 20-30% slopes), which is a Class IV soil.
7. The applicant proposes to establish a non-farm dwelling on the property.
8. The Marion County Planning Division requested comments on the application from various governmental agencies.

Public Works Land Development and Engineering Permits (LDEP) commented:

ENGINEERING REQUIREMENTS

- A. *An Access Permit will be required at the time of application for building permits.*
- B. *Transportation System Development Charges and Parks fee will be assessed at the time of application for building permits.*

C. *Utility permits are required for service extensions originating in the Royer Road public right-of-way.*

ENGINEERING ADVISORY

D. *Royer Road is a public Local Access Road not maintained by Marion County. Road maintenance defaults to property owner users of the Road.*

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

Salem Suburban Fire District commented “Fire department access and water supply will be required per the Oregon Fire Code at the time of development.”

Marion County Septic provided comments that an existing system evaluation and/or site evaluation is required.

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

VI. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria apply as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicants have not met their burden and the application must be denied. If the evidence for every criterion is even slightly in Applicants’ favor, the burden of proof is met and the application is approved.

2. Under MCC 17.119.100, the Planning Director has the power to decide applications for conditional uses. The Planning Director decided this matter on December 28, 2023.

Under MCC 17.119.140, after the Planning Director’s action on the application, interested person may appeal the decision no later than 15 days after the decision is mailed. The Planning Director’s approval was dated December 28, 2023. Applicants Anneliis Juurma and John Griesbach are interested persons and appealed the Planning Director’s decision on January 11, 2024. The appeal was timely.

Under MCC 17.119.150, on appeal of the Planning Director's decision, the hearings officer shall conduct a *de novo* public hearing on the decision. The hearings officer may hear and decide the matter.

3. Under MCC 17.119.020, a conditional use application may only be filed by certain people, including the owner of the property subject to the application. A deed recorded in the county records at Reel 2640, Page 130 shows Jubal Frost owns the subject property. The application was filed by appropriate persons. MCC 17.119.020 is satisfied.
4. Under MCC 17.119.025, a conditional use application shall include signatures of certain people, including all owners of the subject property. Jubal Frost owns the subject property and signed the application. MCC 17.119.025 is satisfied.
5. Under MCC 17.119.070, before granting a conditional use, the director, planning commission or hearings officer shall determine:
 - A. That it has the power to grant the conditional use;
 - B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
 - C. That any condition imposed is necessary for the public health, safety, or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.
6. Under MCC 17.119.030, the hearings officer may hear and decide only those applications for conditional uses listed in MCC title 17. In the conditional use application "request" section, Applicant states a request to place a non-farm dwelling.
7. MCC 17.137.050 provides for Conditional Uses in a Special Agriculture Zone. MCC 17.137.050(A) includes a single-family dwelling or mobile home not in conjunction with farm uses, subject to the criteria and standards in MCC 17.137.060(B), 17.137.070, and MCC 17.137.100. Applicant's application is for a single-family, nonfarm dwelling.
8. MCC 17.137.010 provides the SA purpose statement:

The SA (special agriculture) zone is applied in areas characterized by small farm operations or areas with a mixture of good and poor farm soils where the existing land use pattern is a mixture of large and small farm units and some acreage homesites. The farm operations range widely in size and include grazing of livestock, orchards, grains and grasses, Christmas trees and specialty crops. The range in size of management units present no significant conflicts and allow optimum resource production from areas with variable terrain and soils. It is not deemed practical or necessary to the continuation of the commercial agricultural enterprise that contiguous ownerships be consolidated into large parcels suitable for large scale management. Subdivision

and planned developments, however, are not consistent with the purpose of this zone and are prohibited.

This zone allows the flexibility in management needed to obtain maximum resource production from these lands. It emphasizes farm use but forest use is allowed and protected from conflicts. The SA zone is intended to be applied in areas designated special agriculture in the Marion County Comprehensive Plan.

The SA zone retains Class I through IV soils in commercial farm units comparable to those in the vicinity or in small scale or specialty commercial farms where the land is especially suited for such farming. The SA zone is intended to be a farm zone consistent with ORS 215.283.

9. MCC 17.137.060(A), applies to all conditional uses in the SA zone:

1. The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.

The subject property is not currently, nor has it ever been in farm or forest practice. The access road is already in place. The parcels surrounding the subject property are developed with single family dwellings, and some are in forest practice. Across Bunker Hill Rd. S. is a large AR zoned residential area with homesites on lots as small as 2.0 acres. Surrounding parcels to the north and northwest are small acreage homesites and not in farm/timber production. The parcel to the east is a non-farm dwelling, which leaves parcels to the south and southwest. These are being actively farmed. However, of the parcel to the south in farm production, only the southern half is being cultivated. The impact of an additional single-family home would be minimal and no more intense than farm or forest use.

Traditionally, a non-farm dwelling has special setbacks to protect farming practices on surrounding lands, and this would allow for no or minimal impact on the lands to the southwest of our subject parcel. The subject parcel's configuration prohibits the standard 200-foot setback, as the subject parcel's width is only 149 feet along the north property line; tapering to 142 feet in width along the south property line.

Since there is farming to the southwest of the subject parcel, and a standard 200-foot setback cannot physically be imposed without prohibiting development altogether, Planning Staff requested a condition of approval that the dwelling and any accessory structures must be built within the northern 675 feet of the parcel and a Farm/Forest Declaratory Statement shall be required. Planning staff conditioned setback due to the more intense commercial farming to the southwest. The commercial farming to the southwest includes a large vineyard, steep slopes, and heavy vegetation. Applicant and Appellants agree that there is no language in the zoning code to require the 675-foot southern parcel setback. Applicant requests that the 20-foot setback be applied in the case that the dwelling could be placed on the southern end of the property.

Appellants grow walnuts, and have 26 trees, the maximum number that could be planted and maintain the recommended planting grid. Appellants suggest that due to prevailing winds, drift from the walnut orchard will be heaviest to the northeast, and ask that the dwelling not be positioned between the two geohazard areas of lot 1000. However, the approval for the non-farm dwelling includes a condition that requires the property owner to sign and record a declaratory

statement stating that they are aware of the farm/forest practices in the vicinity and that there may be practices that produce noise, dust, smoke, and other impacts. This statement is to protect existing farm uses, and has been a common practice in Marion County for many years. Appellant posits that the statutes do not provide full protection for farm and forestry operations, but do not provide any further evidence in support of the statement or elaborate on any concerns regarding how the declaratory statement does not protect them.

There is no evidence submitted to the record that would indicate that one single-family dwelling with a 20-foot setback will have a negative impact on the walnut crop. This criterion is met.

2. Adequate fire protection and other rural services are or will be available when the use is established.

The subject parcel is served by the Salem Suburban Fire District and the Sheriff's Department. It will have a well and septic system. Electrical service is present on neighboring properties and staff has no reason to believe it could not be made available to the subject parcel. The criterion is met.

3. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

The parcel is not within the Big Game Overlay and staff foresees no impact on the local watershed. The soil quality will not be affected by the placement of a single-family home. The property is within the Sensitive Groundwater Overlay and the filing of a Sensitive Groundwater Overlay Declaratory Statement shall be made a condition of approval. Once building sites are selected the Planning and/or Building Divisions may require professional geologic analysis and may additionally require the analysis to be peer reviewed. Compliance with any such requests shall be made a condition of approval. The criterion is met.

4. Any noise associated with the use will not have a significant adverse impact on nearby land uses.

Surrounding parcels are developed with homesites and any noise associated with them is residential in nature. A non-farm dwelling is also residential in nature and is expected to be of a volume and type as to be either confined to subject property or have minimal impact to the local area. The criterion is met.

5. The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.

There are no water impoundments on or near the subject property nor any aggregate sites in the surrounding area. The criterion does not apply.

10. Non-farm dwellings are subject to MCC Section 17.137.050(A). One of its requirements includes that the proposed dwelling meet the provisions listed in 17.137.060(B). Marion County Code 17.137.060(B) reads as follows:

B. Non-Farm Dwellings. The following additional criteria apply to non-farm dwelling requests:

1. The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation

Service in its most recent publication, unless evidence is submitted as required in MCC 17.137.120(B).

Marion County Soils Analysis, based on NRCS (Natural Resources Conservation Service) soil data, reports that the subject parcel is 100% NeE (Nekia silty clay loam with a 20-30% slope), which is a Class IV soil, and according to Staff's table of soils it does not become Class I or Class II when irrigated. The property also has a 20-30% slope which precludes many farming operations. The criterion is met.

2. The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993, in a way that enables the lot or parcel to qualify for a non-farm dwelling.

The subject parcel does not and has never had a dwelling, or before January 1, 1993. The subject parcel was created prior to 1993, and the configuration of the parcel has not changed since at least 1964. The criterion is met.

3. The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated shall be considered. To address this standard, information outlined in MCC 17.137.030(D)(11)(a)(iii) shall be provided.

Applicant submitted a Cumulative Impact Analysis to address the requirements listed in 17.137.060(B)(3) which included sufficient information for an assessment to be made. MCC 17.137.030(D)(11)(a)(iii) reads:

iii. The dwelling will not materially alter the stability of the overall land use pattern in the area. To address this standard, the following information shall be provided:

- (A) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, and why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;*

Applicant has provided a study area which encompasses less than 2,000 acres of surrounding land. This study area included only properties zoned as farm use. Lands zoned for rural residential or other non-resource uses were excluded. Information supplied by Applicant, and verified by staff, indicates that there is no non-resource zoned land applied to the study area and that the applicant's report meets the required area for resource zone analysis. Marion County soils report indicates that the subject property is predominantly Class IV soils, and when irrigated would not classify as prime, unique, Class I or II soils.

Applicant has indicated this study area was chosen as representative of the land use pattern surrounding the subject parcel. Properties within the study area are a mix of farm use, small

acreage homesites within the resource zone, and scrub/vegetated areas. Farmed parcels have crops such as blueberries, Christmas trees and grass seed depending on the slope and soil types of the particular property. The area presented by the applicant is a fair representation of the surrounding area and is sufficient to arrive at a sampling of the land use pattern. Applicant meets this criterion.

(B) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm/lot-of-record dwellings that could be approved under subsection (D) of this section and MCC 17.137.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;

The development trends in the study area have been identified in the Applicant's statement. Based on the applicant's report, there are 75 dwellings within the study area, 31 of which are post 1993 development. Of the 31 dwellings, five are considered to be non-farm parcels, four are Measure 37/49 homes, and three are considered primary farm dwellings. Applicant states that the study area consists of low-quality soils and large swaths of steep terrain. Applicant contends that the number of dwellings in the study area is not a significant enough number to destabilize the overall character of the study area. The type of farm use in the area varies but are minimized due to the topography and poor soil. The proposed dwelling would be consistent with the development pattern that has occurred on surrounding lands in the past.

(C) Determine whether approval of the proposed non-farm/lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

Approval of this application would bring the total number of non-farm dwellings within the study area to six. The subject parcel of the proposed home is in an area of varied and often steep slopes, and with conditions of approval restricting the location of the proposed dwelling it will be built within an existing cluster of residences. As indicated, the soils are of poor quality and combined with the slope are not conducive to farming. Based on the above factors there would be little to no effect on the existing farming within the study area.

The Cumulative Impact Analysis study is acceptable and complete, and Applicant's conclusions based on the analysis are supported. Therefore, the criteria in MCC 17.137.030(D)(11)(a)(iii) is met.

11. In addition, non-farm dwellings shall be subject to the following code as provided for in 17.137.070:

(A) Special Setback.

1. Dwellings. A special dwelling setback of 200 feet from any abutting parcel in farm use or timber production is required.

2. Accessory Buildings. A special setback of 100 feet is required for buildings accessory to a dwelling from any abutting parcel in farm use or timber production.

3. Adjustments. The special setbacks in subsections (A)(1) and (2) of this section may be reduced if it is determined, concurrently with any land use application or as provided in Chapter 17.116 MCC, that a lesser setback will meet the following review criteria for alternative sites:

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 forestlands used to site access roads, service corridors, the dwelling and structures is minimized.

d. The risks associated with wildfire are minimized.

The configuration of the parcel precludes applicant from meeting the setbacks. The property is a very narrow long parcel with steep slopes that limit the placement of a single-family home. Applicant requests standard 20-foot dwelling setbacks be required because 200-foot setbacks would prohibit any single family development. Setback standards as stated in subsection (A)(1) and (A)(2) are physically impossible or are impractical due to the configuration of the parcel. Instead of the traditional special setbacks, limiting the dwelling and associated accessory structures to the northern 675 feet of the property will maintain the intent of the Special Setback code and will meet the criteria found in subsection (A)(3)(a-c). The subject parcel is served by the Salem Suburban Fire District and is not located in a forest, meeting criterion (A)(3)(d). Therefore, the criteria are met.

4. The special setback in subsection (A)(1) of this section shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 through 195.336 nor should the special setback in subsection (A)(1) of this section prohibit a claimant's application for homesites under ORS 195.300 through 195.336.

The proposed dwelling is not subject to/a part of a Measure 37 or 49 claim. The criterion does not apply. Applicant notes that the 20-foot setback is the minimum necessary that will still allow for a dwelling to be constructed on site due to the narrow width of the parcel. Applicant states that using the County GIS measuring tool the width is currently 145 feet. Subtracting the 20 feet required on each side would only leave a 105-foot buildable area for a single-family home. If the 200-foot setback were to be implemented there could be no way for the property owner to build a home, thus prohibiting the allowed use which directly impacts the above code section. Applicant notes that the Appellants' homesite (Tax Lot 800) is closer to the forested tract than the Applicant's homesite would be if built directly east of Tax Lot 800's property line. Applicant states that there is nothing to indicate that the existing tree stand will be impacted by a single-family dwelling, even at a distance of over 170-feet (20-foot setback and distance, 150-feet from stand to property line). Applicant states that the 20-foot setback is the minimum necessary to allow for the use of the parcel.

Appellant argues that the northern portion of the property is very steep, and a second swath of geohazards lies halfway down the parcel. Appellants suggest that land south of the second swath is free of geohazards and is comprised of mature trees that would make an effective physical break between farming operations and the dwelling. Appellants do not dispute a 20-foot setback at that location.

Applicant states that he cannot only rely on the location of geohazards on the parcel to dictate the location of a dwelling. Applicant argues that septic, well, driveway, electrical and other utilities many require the home to be built in a specific location. Applicant asserts that restricting the location based upon one element is unnecessary and impractical.

(B) Fire Hazard Reduction. As a condition of approval for any non-farm dwelling located closer than 200 feet to timber, the owner shall be required to provide continuing fire hazard management in accordance with Chapter 3 of "Fire Safety Consideration for Development in Forested Area," 1978, and any revisions thereto.

The dwelling will not be located within 200 feet of commercial timber or forestland. The criterion does not apply or could be satisfied at the time of the building permits.

(C) Prior to issuance of any residential building permit for an approved non-farm dwelling under MCC 17.137.050(A), evidence shall be provided that the county assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or 308A.724 or 321.359(1)(b), 321.842(1)(A) and 321.716. A parcel that has been disqualified under this section shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.

The criterion can be met with a condition of approval: the applicant shall submit evidence to Marion County Planning that the property has been disqualified from farm/forest deferral by the Marion County Tax Assessor's Office prior to Planning approval of a building permit. The criterion is met.

12. Finally, non-farm dwellings must also meet the standards in MCC 17.137.100:

(A) Maximum Height.

- 1. Dwellings: 35 feet.*
- 2. Farm-related structures on farm parcels: none.*
- 3. Non residential and non-farm structures: 35 feet unless they are in conjunction with conditional uses allowed in MCC 17.137.050, and a greater height is requested and approved as part of the conditional use permit.*

(B) Minimum Setbacks. Except as required in MCC 17.137.070(A), the following setback requirements shall be implemented for all new structures other than farm-exempt buildings, signs and fences:

- 1. Rear Yard. A minimum of 20 feet.*
- 2. Side Yard. A minimum of 20 feet, except for lots or parcels of one-half acre or smaller created prior to January 1, 1994, in which case the side yard setback shall be five feet.*
- 3. Front Yard. A minimum of 20 feet. When by ordinance a greater setback or a front yard of greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply (See Chapter 17.112 MCC).*

Compliance with MCC 17.137.100 shall be verified at the time of building permits. Therefore, the criteria is met.

(C) *Declaratory Statement. For all dwellings, and other uses deemed appropriate, the property owner shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the lot(s) or parcel(s):*

“The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subject to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantors, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices, grantors will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.”

This shall be made a condition of approval. The criterion is met.

VII. ORDER

It is hereby found that Applicant has met the burden of proving applicable standards and criteria for approval of a conditional use application for a non-farm dwelling. Therefore, the conditional use application is **GRANTED**, subject to the conditions set forth below. The conditions are necessary for the public health, safety, and welfare.

1. The applicant shall obtain approval for all permits, including subsurface sewage, as required by the Marion County Building Inspection Division.
2. The proposed dwelling and all accessory structures shall maintain a 20-foot setback from all property lines.
3. Prior to obtaining building permits, the applicant must provide evidence to the Planning Director that the county Assessor’s Office has permanently disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or ORS 308A.724 or ORS 321.359(1)(b), ORS 321.842(1)(A) and 321.716.
4. Prior to issuance of a building permit for the new dwelling, the applicants shall sign and submit a combination Farm/Forest and Sensitive Groundwater Overlay 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.
5. Once building locations are selected, Applicant shall comply with any applicable provisions of MCC 17.182, Geologically Hazardous Areas Overlay Zone, prior to issuance of a building permit.

6. The dwelling shall be addressed 8705 Royer Road S, effective upon application for building permits.

VIII. Other Permits

Applicant herein is advised that the use of the property proposed in this application may require additional permits from other local, state, or federal agencies. The Marion County land use review and approval does not take the place of or relieve the Applicant of responsibility for acquiring such other permits, or satisfy any restrictions or conditions thereon. The land use permit approved herein does not remove, alter, or impair in any way any covenants or restrictions imposed on this property by deed or other instrument.


IX. Effective Date

The application approved herein shall become effective on the 4th day of May, 2024, unless the Marion County Board of Commissioners, on their own motion or by appeal timely filed, is asked to review this Order. In the event of Board review, this Order shall be stayed and shall be subject to such final action as is taken by the Board.

X. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court Street NE, Salem, Oregon) by 5:00 on the 3rd day of May, 2024. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500.00, and must state wherein this Order fails to conform to the provisions of the applicable code provision(s). If the Board denies the appeal, \$300.00 of the appeal fee will be refunded.

DATED this 18th day of April, 2024.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Jubal Frost
8950 Royer Rd. S.
Salem, OR 97306

Lindsey King
1720 Liberty St. SE
Salem, OR 97302

Anne Juurma
2590 Bunker Hill Rd. S
Salem, OR 97306

Area Advisory Committee #1:
laulehines@gmail.com
arkaye@gmail.com

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

1000 Friends of Oregon
133 SW 2nd Ave
Portland, OR 97204-2597

County Agencies Notified:
Assessor's Office (via email)
assessor@co.marion.or.us

Tax Collector (via email)
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us

Surveyor's Office (via email)
KInman@co.marion.or.us

Fire District: (via email)
City of Salem
salemfire@cityofsalem.com

CU 23-041 – ORDER
JUBAL FROST
Page 13

Planning Division (via email)
breich@co.marion.or.us
abarnes@co.marion.or.us
ANajeraSanchez@co.marion.or.us

Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
ABammes@co.marion.or.us
CTate@co.marion.or.us

Building Inspection Septic (via email)
KAldrich@co.marion.or.us
ABammes@co.marion.or.us

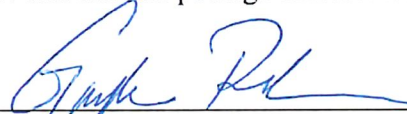
Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mclddep@co.marion.or.us

School District: (via email)
fridenmaker_david@salkeiz.k12.or.us
webmaster@jefferson.k12.or.us

Code Enforcement (via email)
CGoffin@co.marion.or.us
JTaylor@co.marion.or.us
ccaballero@co.marion.or.us

Special Agencies Notified: (via email)
DLCD
hilary.foote@state.or.us

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 18th day of April 2024 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer