

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. 23-002**

APPLICATION: Application of Hunsaker Development on behalf of Richard Mitchell and Diane Loflin-Pringle for an administrative review to replace a dwelling on a 3.60-acre parcel in an EFU (Exclusive Farm Use) zone located at 7966 Stayton Road SE, Turner (T9S; R2W; Section 26C; Tax Lot 1800).

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 **February 22, 2027**, 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. As a result of the subject property being in the 100-year Floodplain, prior to issuance of any building permits, the applicant must obtain a Floodplain Development Permit or a Letter of Map Amendment (LOMA).
3. 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. (Declaratory Statement enclosed).

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:

5. The applicants should contact the Stayton 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.
6. 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 **February 22, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 23, 2023**, 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. The subject property is located at 7966 Stayton Road SE. It is approximately 480 feet from the intersection of Stayton Road SE and Hilton Lane SE. The property previously contained dwelling which was destroyed by a fire December 25, 2020. The parcel has been the subject of one previous land use case, Floodplain 93-009, which was approved. The description from the deed (Reel: 862, Page: 43) from Floodplain 93-009, matches the description of the most current deed (Reel: 4530, Page: 171). Therefore, the property is considered legal for land use purposes.
3. Surrounding uses consist of properties that are zoned EFU in all directions and generally consist of large-scale farm operations with some smaller parcels developed with dwellings.
4. Soil Survey of Marion County Oregon indicates that approximately 67.4% of the subject property soils are high value, while 32.6% of the property soils are non-high value.
5. The applicant is proposing to replace a dwelling that was removed on December 25, 2020, with a new dwelling in a 100-year floodplain.
6. Marion County Land Development, Engineering, and Permits (LDEP) commented:

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits an Access Review will be conducted to inspect and verify if any remedial modifications are required to bring the private easement access approach connection at Stayton Road into compliance with MCPW Engineering standards.
- B. At the time of application for building permits Transportation & Parks System Development Charges (SDCs) will be assessed.

Marion County Building Inspection commented that there are no Building Inspection concerns. Permits are required for any new construction and/or utilities on private property.

Marion County Septic commented that there are no permits for a septic system in county records. There is record of a proposed investigation visit due to a complaint of the trailer's sewage not being attached to the septic system and there is a map dated later showing a proposed drainfield but not permit was issued.

All other commenting agencies stated no objection or declined to comment.

7. The replacement dwelling criteria are listed in Section 17.136.030(D) of the Marion County Code (MCC). However, the 2019 Legislature, through House Bill 3024, amended the criteria and the County must apply those criteria directly until the zone can be amended. Criteria are:

1. *A lawfully established dwelling may be altered, restored or replaced under ORS 215.213(1)(q) or 215.283(1)(p) if the county determines that:*
 - (a) *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*
 - (b)
 - (A) *If the dwelling was removed, destroyed or demolished:*
 - (i) *The dwelling's tax lot does not have a lien for delinquent and 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 the delinquent ad valorem taxes; or*
 - (C) *A dwelling not described in subparagraph (A) or (B) of this paragraph was assessed as a dwelling for purposes of ad valorem taxation:*
 - (i) *For the previous five property taxes; 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.*

As part of the application, the applicant's representative submitted variety of documents as proof that the former dwelling was a lawfully established dwelling. According to a Stayton Fire Department report, the manufactured dwelling was destroyed by a fire on December 25, 2020. The structure that was destroyed was a single-story, single-family dwelling that was 1,584 square feet in size and consisted of two bedrooms and one bathroom. Photographic evidence that was submitted by the applicant's representative show the dwelling intact before it was destroyed by fire. It clearly shows intact exterior walls and a roof structure, which is also corroborated by the fire report. Additionally, the fire report also confirms the existence of a heating system. Specifically, the former dwelling contained a baseboard heating system.

The applicant's representative also submitted an approved electrical permit that proves the dwelling had electricity. Furthermore, the applicant's representative also submitted an approved building permit that allowed for the replacement of the previous primary dwelling with the former dwelling that consisted of two bedrooms and one bathroom; specifically, the permit allowed a new mobile home to be sited in place of the previous primary home. In the aggregate, these two permits prove that the former dwelling did consist of indoor plumbing, a kitchen sink, toilet, and bathing facilities and interior lighting. However, per the Marion County Septic Division, there are no known permits for a septic system in the County's records. The photographic evidence submitted does show an existing septic tank, but no permit from the County for it. Based on all the submitted evidence, the former dwelling did have a waste disposal system, but appears to be unpermitted. This does not necessarily preclude the applicant from being approved from replacing the dwelling because the applicant will take corrective action when obtaining an approved septic permit.

Finally, the former dwelling was destroyed on December 25, 2020, then subsequently removed by the current owner, making the removal date after January 1, 1973. Additionally, based on all available evidence, the subject tax lot does not have a lien for delinquent and valorem taxes. Therefore, the criterion is met.

2. *For replacement of a lawfully established dwelling under this section:*
 - (a) *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 county, 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 county that is not less than 90 days after the replacement permit is issued.*
- (b) The replacement dwelling:*
- (A) May be sited on any part of the same lot or parcel.*
- (B) Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.*
- (c) 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 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 this section and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.*

The dwelling was removed on December 25, 2020. The entirety of the parcel is zoned EFU. The site of the replacement dwelling will comply with the siting standards. Therefore, the criterion is met.

3. *Notwithstanding subsection (2)(b)(A) of this section, a replacement dwelling under this section must be sited on the same lot or parcel:*
- (a) Using all or part of the footprint of the replaced dwelling or near 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 proposed new dwelling will be located on the same parcel, the subject parcel, will be located near Stayton Road SE, and will be located within 500 yards of an existing barn. The criterion is met.

8. 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.
9. 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/Zoning Administrator

Date: February 7, 2023

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173

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.