

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. 21-039**

APPLICATION: Application of Maria Reyes Corral for an administrative review to replace a dwelling on an 8.99 acre parcel in an Exclusive Farm Use (EFU) zone located at 5082 Silverton Road NE, Salem. (T7S, R2E, Section 8D, Tax Lot 2400).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Administrative Review.

EXPIRATION DATE: This decision is valid only when exercised by **February 3, 2026** unless an extension is granted. The effective period may be extended once for two years, and then up to five more times for one year each, subject to approval of an extension (form available from the Planning Division). Request for an extension must be submitted to the Planning Division prior to expiration of the approval.

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well, and drain field 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. This permit does not establish the legal status of the other dwelling on the property. Before remodeling or removing the other dwelling (5092 Silverton Road NE), the applicant is advised to contact the Marion County Planning Office regarding regulations in effect at the time of proposed work.

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. The applicant is advised of the following:

4. The applicants shall contact Paula Smith at Marion County Fire District #1 (503-588-6513) 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.
5. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional engineering requirements and advisories that may be required; see Finding #6 below.

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 3, 2022**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **February 4, 2022** 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 the intersection of Silverton Road NE (HWY 214) and Cordon Road NE. The property is developed with two homesites, one built in 1941 and the other built in 1950, and two outbuildings. The legal status of the 1941 dwelling is not reviewed as part of this decision. The parcel was originally described as part of a larger parcel by Volume 402, Page 297, recorded on March 29, 1949. The parcel is a remnant and has been in its current configuration since November 20, 1964, when a portion of the original parcel was sold off via deed recorded as Volume 594, Page 156. The parcel is considered legal for the purposes of land use pursuant to MCC 17.114.040(A).
3. Surrounding properties in all directions are zoned EFU and are in farm use. Properties to the northwest across Cordon Road NE are zoned Single Family Residential (RS) and inside the City of Salem Urban Growth Boundary (UGB). The property to the southwest across Cordon Road NE is zoned Public (P), inside the City of Salem UGB.
4. Soil Survey of Marion County Oregon indicates 99.9% of the property's soils are High-Value Soils.
5. The applicant is proposing to replace or remodel a dwelling that has not met the definition of a dwelling in HB 3024 for more than a year.
6. Marion County Land Development and Engineering (LDEP) provided the following engineering requirements:

ENGINEERING REQUIREMENTS

- A. Transportation System Development & Parks Charges (SDCs) will be assessed at the time of application for building permits.
- B. Utility work in the public right-of-way requires Utility Permits from PW Engineering.

Marion County Building Inspection commented that permits are required for new construction or placement of a manufactured home.

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

The dwelling that the applicant proposes to replace, built in 1950, has been gutted and has not met the qualifications of a replaceable dwelling for more than a year. The applicant provided photo evidence to demonstrate that the structure had all of the elements described in #7(1) (a).

The permit to move the manufactured home and the tax records from the Marion County Tax Assessor's Office demonstrate that the home was on the property as recently as 2019 and removed from the property that year. There is no evidence that the property has a lien for delinquent ad valorem taxes. These findings satisfy the criteria in 7(1) (b)(C).

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 applicant proposes to replace/remodel the dwelling in the same location as the existing structure. The criteria in # 7(2) are satisfied.

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.*

As mentioned, the replacement dwelling will be located on the footprint of the former dwelling. The dwelling will be located near the existing structures on the property, minimizing the impact to resource use of land in the area. The criteria in #7(3) are satisfied.

8. If they have not already, the applicant will be required to sign and record a Farm/Forest Declaratory Statement as a condition of approval for a building permit. 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

Date: January 19, 2022

If you have any questions regarding this decision contact Alyssa Schrems 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.