

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  
FLOODPLAIN DEVELOPMENT PERMIT CASE NO. 22-002**

**APPLICATION:** Application of Susanne White-Thorud for a floodplain development permit to place a dwelling in the identified 100-year floodplain of Mill Creek on a 26.99-acre parcel in a EFU (Exclusive Farm Use) zone located at 4772 Delaney Rd SE, Salem (T8S, R2W, Section 29CA, Tax Lot 2200).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Floodplain Development application subject to certain conditions.

**EXPIRATION DATE:** This Floodplain Development Permit is valid only when exercised by **April 6, 2024**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original 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 proposal the applicant should contact the Building Inspection Division, (503) 588-5147.

**All development in the floodplain is subject to federal, local, and state regulations and standards at the time development is begun. These regulations and standards are in the process of being revised and the development proposed in this application may be subject to additional regulations and standards at the time construction of structures or placement of fill on the property begins.**

**Based on preliminary information provided by the National Marine Fisheries Service on April 14, 2016, federal law might only recognize as legal under the county current floodplain ordinance building permits that are issued prior to September 15, 2016, and where the work is begun prior to March 15, 2017. Permits issued after September 15, 2016, or not begun until after March 15, 2017, may be in violation of federal law and thus invalidate this local permit.**

**Construction related to this permit is approved only within the existing developed area of the property. Construction of new structures, fill or other development of the property should not occur outside the existing developed area without prior consultation with the Marion County Planning Division. Federal regulations may require additional approvals for development outside the existing developed area of the property.**

**Applicants are further advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade).**

**This decision does not include approval of a building permit.**

**CONDITIONS:** The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. Prior to issuance of building permits, a registered civil engineer or architect shall certify the proposal meets the requirements of MCC 17.178.050(D), and MCC 17.178.060(A-F & H).

3. Prior to issuance of building permits, a registered civil engineer or architect shall provide a base flood elevation (BFE) for the development area per 17.178.060(G)(4).
4. An Elevation Certificate signed by a licensed surveyor or civil engineer shall be supplied at the following times during the permitting process:
  - (a) to Building Inspection prior to construction (based on construction drawings), and
  - (b) to the Planning Division once the floor elevation can be determined (based on the building under construction), and
  - (c) to the Planning Division prior to occupancy (based on finished construction).
5. Prior to construction of the project, the applicant shall sign and submit to the Planning Division a Declaratory Statement (enclosed) acknowledging that the property and the approved development are located within a floodplain. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
6. Prior to construction of the project, the applicant shall sign and submit to the Planning Division a Declaratory Statement (enclosed) acknowledging that the property and the approved development are located within a floodplain and shall adhere to floodplain standards and the non-conversion agreement. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
7. No development shall be located in the Floodway.

**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.

8. The applicants should contact Stayton Fire Department 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.
9. Materials that are buoyant, flammable, obnoxious, toxic, or otherwise injurious to persons or property, if transported by floodwaters, are prohibited unless stored within a structure or on land elevated above the base flood level. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) based on 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. Requests for reconsideration, or consideration by a hearings officer, must be in writing and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **April 6, 2022**. If you have any questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 7, 2022**, unless further consideration is requested.

**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 correspondingly zoned EFU (Exclusive Farm Use). It is also located entirely within the identified 100-year floodplain of the Mill Creek and McKinney Creek, FIRM ID: 41047C; Zone AE.
2. The subject property is located at 4772 Delaney Rd SE, approximately .40 miles from 3<sup>rd</sup> Street SE, Turner, 2.35 mile east of its intersection with Interstate-5. The property currently has several accessory structures or other farm related developments. The parcel was approved for a homesite as a primary farm dwelling through administrative review AR19-009; the parcel was also subject to Floodplain Development Permit FP19-004 and FP21-005 and is considered legal for land use purposes.
3. Surrounding lands to the south and west are all zoned EFU and in agricultural use with some dwellings. Land to the east and north are located within Turner City limits and zoned R-2 (Single-Family Residential) and developed with small homesites.
4. 

<u>Soil #</u>	<u>% of Parcel</u>	<u>SCS Soil Class</u>	<u>High Value?</u>
Wapato silty clay loam	14.2%	3	Yes
Courtney gravelly silty clay loam	85.8%	4	Yes
5. The applicant(s) propose to replace an accessory structure within the 100-year floodplain of the Mill Creek and McKinney Creek. In the application an elevation certificate was provided based on construction drawings. Additional elevation certificates will be required.
6. Marion County Land Development and Engineering commented:

**ENGINEERING REQUIREMENTS**

- A. An Access Permit is required in conjunction with building permits. Any required work must be completed prior to issuance of a building certificate of occupancy.
- B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits per Marion County Ordinances.
- C. Utility work in Delaney Road requires permits from MCPW Engineering.

**ENGINEERING ADVISORY**

- A. McKinney Creek traversing the property is classified as Waters of the State. Improvements in and around the Creek may require permit or waiver from DSL/ACOE.

Marion County Building Inspection commented: “Permits are required for future development on private property. If development is within a floodplain or floodway, as determined by the Marion County Floodplain Administrator, then methods and materials for flood construction will be required and reviewed after permit application.”

Friends of Marion County made comments regarding the allowance to place a home on site. These comments can be found in the file.

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

7. The purpose of the Floodplain Overlay Zone is to promote public health, safety, and general welfare to minimize public and private losses due to flood conditions. The criteria and standards which must be satisfied are listed in Section 17.178.050 and 17.178.060 of the Marion County Code (MCC).
8. Flood Insurance Rate Map #41043C0677 J indicates that the development is within the floodplain of the Mill Creek in the AE zone where the base floodplain elevation has been determined. It appears based on FEMA FIRMette that the base flood elevation is approximately 297.8 feet to 280.1 feet on or around the proposed development site. An elevation certificate will confirm the base flood elevation.
9. MCC 17.178.050 (A) requires:  
*Except as provided in MCC [17.178.040](#) a conditional use permit (floodplain development permit) shall be obtained before construction or development begins within any area horizontally within the floodplain overlay zone (which includes the area of special flood hazard). The floodplain development permit shall be required for all structures, including manufactured dwellings, and for all other development, as defined in MCC [17.178.020](#). The conditional use permit shall include conditions ensuring that the flood protection standards in MCC [17.178.060](#) are met.*

This can be made a condition of any approval.

10. MCC 17.178.050 (B) requires:  
*When base flood elevation data and floodway data have not been provided in accordance with MCC [17.178.030](#), the applicant, with the assistance of the floodplain administrator, shall obtain and reasonably utilize any base flood elevation data or evidence available from a federal, state or other source in order to determine compliance with the flood protection standards. If data are insufficient, the floodplain administrator may require that the applicant provide data derived by standard engineering methods.*

Requiring the establishment of a Base Flood Elevation (BFE) can be made a condition of any approval.

11. MCC 17.178.050 (C) requires:  
*Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest, acknowledging that the property and the approved development are located in a floodplain.*

The recording of the declaratory statement can be made a condition of any approval. This criterion is met.

12. MCC 17.178.050 (D) requires:  
*Prior to obtaining a building permit, commencing development, or placing fill in the floodplain the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.*

The provision of this certification can be made a condition of any approval. This criterion is met.

13. MCC 17.178.050 (E) requires:  
*The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations (in relation to mean sea level) of the lowest floor (including basement) and all attendant utilities of all new or substantially improved residential structures including manufactured dwellings of MCC 17.178.060(A), (B) and (C), where applicable, as follows:*

1. *Prior to construction (based on construction drawings); and*
2. *Once the floor elevation can be determined (based on the building under construction); and*
3. *Prior to occupancy (based on finished construction).*

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

14. MCC 17.178.050 (G) requires:

*G. In addition to other information required in a conditional use application, the application shall include:*

- 1. Land elevation in mean sea level data at development site and topographic characteristics of the site.*
- 2. Base flood level expressed in mean sea level data on the site, if available.*
- 3. Plot plan showing property location, floodplain, and floodway boundaries where applicable, boundaries and the location and floor elevations of existing and proposed development, or the location of grading or filling where ground surface modifications are to be undertaken.*
- 4. Any additional statements and maps providing information demonstrating existing or historical flooding conditions or characteristics which may aid in determining compliance with the flood protection standards of this overlay zone.*
- 5. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed.*
- 6. Certification by a registered professional engineer or architect licensed in the state of Oregon that the floodproofing methods proposed for any nonresidential structure meet the floodproofing criteria for nonresidential structures in this chapter.*
- 7. A description of the extent to which any watercourse will be altered or relocated.*
- 8. Base flood elevation data for any subdivision proposals or other development when required per [MCC 17.178.060\(G\)](#).*
- 9. Substantial improvement calculation(s) for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.*
- 10. The amount and location of any fill or excavation activities proposed.*

This provision can be made a conditional of any approval.

15. MCC 17.178.060 (A-F and H) contains additional standards for development in the floodplain:

*A. Residential structures, including Manufactured Dwellings and Related Structures. New residential construction, substantial improvement of any residential structures, location of a manufactured dwelling on a lot or in a manufactured dwelling park or park expansion shall:*

- 1. Residential structures shall have the top of the lowest floor, including basement, elevated on a permanent foundation to two feet above base flood elevation and the bottom of the lowest floor constructed a minimum of one foot above the base flood elevation. Where the base flood elevation is not available, the top of the lowest floor including basement shall be elevated on a permanent foundation to two feet above the highest adjacent natural grade (within five feet) of the building site and the bottom of the lowest floor elevated to one foot above the highest adjacent natural grade (within five feet) of the building site;*

Requiring these certifications for the accessory structure can be made a condition of any approval.

- 2. Manufactured dwellings shall have the bottom of the longitudinal chassis frame beam, including basement, elevated on a permanent foundation to two feet above base flood elevation. Where the base flood elevation is not available, the finished floor, including basement, shall be elevated on a permanent foundation to two feet above highest adjacent natural grade (within five feet) of the building site;*

There is no proposal for a manufactured home or structure; this criterion is met.

- 3. Manufactured dwellings shall be anchored in accordance with subsection (D) of this section; and all electrical crossover connections shall be a minimum of one foot above the base flood elevation;*

There is no proposal for a manufactured home or structure; this criterion is met.

4. *No new residential structures, including manufactured dwellings, shall be placed in a floodway. An exception to this prohibition may be granted if a floodplain development permit and variance consistent with MCC [17.178.080](#) are obtained;*

No development is proposed within the regulatory floodway, this criterion is met.

5. *All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements. Enclosed areas below the base flood elevation, including crawlspaces shall:*
  - a. *Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters;*
  - b. *Be used solely for parking, storage, or building access;*
  - c. *Be certified by a registered professional engineer or architect to meet or exceed all of the following minimum criteria:*
    - 1) *A minimum of two openings*
    - 2) *The total net area of non-engineered openings shall be not less than one square inch for each square foot of enclosed area, where the enclosed area is measured on the exterior of the enclosed walls,*
    - 3) *The bottom of all openings shall be no higher than one foot above grade.*
    - 4) *Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they shall allow the automatic flow of floodwater into and out of the enclosed areas and shall be accounted for in the determination of the net open area.*

Requiring these certifications for an accessory structure can be made a condition of any approval.

6. *Construction where the crawlspace is below grade on all sides may be used. Designs for meeting these requirements must either be certified by a registered professional engineer or architect, or must meet the following standards, consistent with FEMA Technical Bulletin 11-01 for crawlspace construction:*
  - a. *A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;*
  - b. *The bottom of all openings shall be no higher than one foot above grade;*
  - c. *Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters;*
  - d. *Interior grade of the crawlspace shall not exceed two feet below the lowest adjacent exterior grade;*
  - e. *The height of the crawlspace when measured from the interior grade of the crawlspace (at any point on grade) to the bottom of the lowest horizontal structural member of the lowest floor shall not exceed four feet;*
  - f. *An adequate drainage system that removes floodwaters from the interior area of the crawlspace shall be provided;*
  - g. *The velocity of floodwaters at the site shall not exceed five feet per second for any crawlspace. For velocities in excess of five feet per second, other foundation types shall be used; and*
  - h. *Below-grade crawlspace construction in accordance with the requirements listed above will not be considered basements for flood insurance purposes. However, below-grade crawlspace construction in the special flood hazard area is not the recommended construction method because of the increased likelihood of problems with foundation damage, water accumulation, moisture damage, and drainage. Applicants shall be advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade);*

Requiring these certifications for an accessory structure can be made a condition of any approval.

7. *A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, or a fully enclosed space beneath a residential structure that does not constitute a basement may be constructed to wet floodproofing standards; provided, that:*
  - a. *The garage or enclosed space shall be constructed with unfinished materials, acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;*
  - b. *The garage or enclosed space shall be designed and constructed with flood openings to automatically equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters, in full compliance with the standards in MCC 17.178.060(A)(5).*
  - c. *Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site;*
  - d. *The garage or enclosed space shall only be used for parking, storage, and building access, and for storage of items having low damage potential when submerged by water (no workshops, offices, recreation rooms, etc.);*
  - e. *The garage or enclosed space shall not be used for human habitation;*
  - f. *A declaratory statement is recorded requiring compliance with the standards in subsections (A)(7)(a) through (e) of this section;*
  - g. *The floors are at or above grade on not less than one side.*
  - h. *The garage or enclosed space must be constructed in compliance with section 17.178.060(D),(E), and (H).*

Based in limited information it is unclear if a garage attached to a residential structure is proposed. If there will be a proposed garage this criterion shall be met.

8. *A detached residential accessory structure may be constructed to wet floodproofing standards; with relief from elevation or floodproofing requirements for residential and non-residential structures in Riverine (Non-Coastal) flood zones provided that the following requirements are met:*
  - a. *Appurtenant structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in MCC 17.178.060(J).*
  - b. *Appurtenant structures must only be used for parking, access, and/or storage and shall not be used for human habitation;*
  - c. *In compliance with State of Oregon Specialty Codes, appurtenant structures on properties that are zoned residential are limited to one-story structures less than 200 square feet, or 400 square feet if the property is greater than two (2) acres in area and the proposed appurtenant structure will be located a minimum of 20 feet from all property lines. Appurtenant structures on properties that are zoned as non-residential are limited in size to 120 square feet.*
  - d. *The portions of the appurtenant structure located below two feet above the Base Flood Elevation, where no BFE has been established, below two feet above the highest adjacent grade shall be built using flood resistant materials;*
  - e. *The appurtenant structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.*
  - f. *The appurtenant structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in MCC 17.178.060(A);*
  - g. *Appurtenant structures shall be located and constructed to have low damage potential;*

- h. *Appurtenant structures shall not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed in compliance with MCC 17.178.060(L);*
- i. *Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site or shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood;*
- j. *A declaratory statement is recorded requiring compliance with the standards in subsections (A)(8)(b) through (j) of this section.*

Requiring these certifications, for any accessory structure and the recording of a declaratory statement, can be made a condition of any approval.

*D. Anchoring.*

- 1. *All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.*
- 2. *All manufactured dwellings must likewise be anchored to prevent flotation, collapse, or lateral movements, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. Anchoring methods shall be consistent with the standards contained in the Oregon Manufactured Dwelling Installation Specialty Code.*

*E. Construction Materials and Methods.*

- 1. *All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*
- 2. *All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.*

*F. Utilities.*

- 1. *All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system as approved by the State Health Division.*
- 2. *New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters in the systems and discharge from the systems into flood waters.*
- 3. *On-site waste disposal systems shall be designed and located to avoid impairment to them or contamination from them during flooding consistent with the requirements of the Oregon State Department of Environmental Quality.*
- 4. *Electrical, heating, ventilation, plumbing, duct systems, air-conditioning and other equipment and service facilities shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site. If replaced as part of a substantial improvement the utility equipment and service facilities shall meet all the requirements of this subsection.*

Requiring these certifications for any development can be made a condition of any approval; criterion for 17.178.060 (D), (E), and (F) are met.



*H. Storage of Materials and Equipment. Materials that are buoyant, flammable, obnoxious, toxic, or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.*

Compliance with this standard can be made a condition of any approval This criterion is met.

16. Based on the above findings, it has been determined that the proposal complies with the criteria in the Marion County Code and is, therefore, **APPROVED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: March 22, 2022

If you have any questions regarding this decision contact Lindsey King 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.