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**NOTICE OF DECISION  
ADMINISTRATIVE REVIEW CASE NO. 18-025**

**APPLICATION:** Application of Bruce and Paula Kaser for an administrative review to place a primary farm dwelling on a 245.5 acre parcel in an EFU (Exclusive Farm Use) zone located at 120 95<sup>th</sup> Avenue NE, Salem. (T7S; R1W; Section 30; tax lot 800).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Administrative Review, subject to certain conditions.

**EXPIRATION DATE:** This decision is valid only when exercised by **January 31, 2023** 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:** The following conditions must be met before a building permit can be obtained or the approved use established:

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 (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.
3. Prior to the final occupancy the applicant must provide evidence, to the satisfaction of the Planning Director, that the dwelling is, or will be, occupied by the owner or an employee of the current farm operation.

**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 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. The applicants should contact Marion County Fire District #1 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. Contact Paula Smith at MCFD#1 at (503) 588-6513 for more information.
5. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations, the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision

to a 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 **January 31, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **February 1, 2019** 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 on the northeast corner of 95<sup>th</sup> Av NE and State St. The property currently contains an existing shop. The parcel is considered legally created for land use purposes.
3. Surrounding uses in all directions consist of properties in farm use in an EFU zone.
4. The applicants are proposing to place a primary farm dwelling on the northwestern portion of the property.
5. Soil Survey of Marion County Oregon indicates 91% of the subject property is high-value farm soils.
6. Public Works Land Development and Engineering Permits commented as follows.

#### ENGINEERING REQUIREMENTS

“A. In accordance with Marion County Code (MCC) 11.10, driveways must meet sight distance, design, spacing, and safety standards. A driveway “Access Permit” for access to the public right-of-way will be required upon application for building permits due to the proposed change in use and previous work conducted without a permit. Access permit #D04-511 for a farm access was issued, but never finalized. Per aerial photographs, the access was widened without a permit sometime between 2014 and 2016. Please be advised that no new access will be allowed to State Street from the subject property.

B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.

C. If applicable, both a Marion County Work in Right-of-Way Permit and a Utility Permit are required in order to install utilities within County-controlled public right-of-ways. The Applicant shall be required to provide evidence of submission of plans to the applicable utilities before final approval is given. Early coordination is advisable to meet the utility providers’ construction schedules.”

#### ENGINEERING ADVISORIES

“D. 95th Avenue is classified as a Local Road per the Marion County Rural Transportation System Plan (RTSP). Per MCC 17.112.020 Local Roads have a special setback requirement of 30 feet measured from the centerline of the street right-of-way. Per Marion County records 95th Avenue has a 20-foot right-of-way half-width, so an additional 10 feet of setback applies. No structure will be allowed in the special setback area.

E. The applicant is advised that construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainageways in a negative manner. Per Marion County records it appears seasonal drainageways exist in the southwest corner of the subject property.”

Marion County Building Inspection commented that permits will be required.

Marion County Building Inspection Onsite Wastewater Specialist commented that septic permits are required.

Marion County Tax Office provided information regarding taxes on the subject properties.

All other contacted agencies either failed to respond, or stated no objections to the proposal.

7. Primary farm dwellings located on high-value farmland may be approved when the standards in Chapter 17.136.030(A)(1) of the Marion County Code (MCC) are satisfied. These standards include:
  - A. *There is no dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;*
  - B. *The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least \$80,000 in gross annual income from the sale of farm products. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;*
  - C. *The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;*
  - D. *The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section.*
8. This is the only property owned solely by Bruce and Paula Kaser; there are no existing dwellings on the subject property or other property located in a resource zone owned by Bruce and Paula Kaser. The criterion in #7(a) is met. The applicants provided evidence that in 2015, 2016 and 2017 the subject property produced farm income valued at more than \$80,000 in each of those years. The criterion in #7(b) is met. The property is currently being used to grow hazelnut trees. As the principal farm operator, the applicants intend to live in the dwelling once it is complete. The criterion in #7(c) and (d) are met.
9. Although the primary farm dwelling is approved, the applicants will be required to sign and record a Farm/Forest Declaratory Statement prior to placing a new dwelling on the property as a condition of approval. This acknowledges the impacts of farm and forest management practices conducted in the area.
10. Based on the above findings, it has been determined that the property meets the criteria for establishing a farm dwelling and the request, therefore, is **APPROVED**, subject to certain conditions.

Joe Fennimore  
Director-Planning Division

Date: January 16, 2019

If you have any questions regarding this decision contact Patty Dorr at (503) 588-5038.

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**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 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 (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.
3. Prior to the final occupancy the applicant must provide evidence, to the satisfaction of the Planning Director, that the dwelling is, or will be, occupied by the owner or an employee of the current farm operation.

**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 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

4. The applicants should contact Marion County Fire District #1 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. Contact Paula Smith at MCFD#1 at (503) 588-6513 for more information.
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**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 a 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 **January 31, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **February 1, 2019** 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 on the northeast corner of 95<sup>th</sup> Av NE and State St. The property currently contains an existing shop. The parcel is considered legally created for land use purposes.
3. Surrounding uses in all directions consist of properties in farm use in an EFU zone.
4. The applicants are proposing to place a primary farm dwelling on the northwestern portion of the property.
5. Soil Survey of Marion County Oregon indicates 91% of the subject property is high-value farm soils.
6. Public Works Land Development and Engineering Permits commented as follows.

#### ENGINEERING REQUIREMENTS

“A. In accordance with Marion County Code (MCC) 11.10, driveways must meet sight distance, design, spacing, and safety standards. A driveway “Access Permit” for access to the public right-of-way will be required upon application for building permits due to the proposed change in use and previous work conducted without a permit. Access permit #D04-511 for a farm access was issued, but never finalized. Per aerial photographs, the access was widened without a permit sometime between 2014 and 2016. Please be advised that no new access will be allowed to State Street from the subject property.

B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.

C. If applicable, both a Marion County Work in Right-of-Way Permit and a Utility Permit are required in order to install utilities within County-controlled public right-of-ways. The Applicant shall be required to provide evidence of submission of plans to the applicable utilities before final approval is given. Early coordination is advisable to meet the utility providers’ construction schedules.”

#### ENGINEERING ADVISORIES

“D. 95th Avenue is classified as a Local Road per the Marion County Rural Transportation System Plan (RTSP). Per MCC 17.112.020 Local Roads have a special setback requirement of 30 feet measured from the centerline of the street right-of-way. Per Marion County records 95th Avenue has a 20-foot right-of-way half-width, so an additional 10 feet of setback applies. No structure will be allowed in the special setback area.

E. The applicant is advised that construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainageways in a negative manner. Per Marion County records it appears seasonal drainageways exist in the southwest corner of the subject property.”

Marion County Building Inspection commented that permits will be required.

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Marion County Tax Office provided information regarding taxes on the subject properties.

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