

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own. 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. 19-005**

APPLICATION: Application of Terry Caster for an administrative review to place a forest template dwelling on a 5 acre parcel in a FT (Farm Timber) zone located in the 5600 block of Crooked Finger Road NE, Silverton. (T6S; R1E; Section 36B; tax lot 400).

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 **April 26, 2023** unless an extension is granted. The effective period may be extended for one year 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 check with 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 applicant shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition has been satisfied:

***Condition A** – Prior to building permit issuance, provide proof of a recorded easement across tax lot 061E36B00500 for use by tax lot 061E36B00400 for access.*

***Condition B** – Prior to building permit issuance, provide proof of a recorded Road Maintenance Agreement for the access easement as described in Condition A.*

3. Prior to issuance of any building permits, the applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division (enclosed). This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
4. The proposed dwelling shall be located substantially as indicated on the site plan submitted with the application. Minor variations may be allowed upon review and approval by the Planning Director.
5. The owners shall maintain a fire hazard reduction plan as recommended by the Oregon Department of Forestry.
6. The proposed dwelling shall meet the fire protection and hazard reductions as listed in MCC 17.139.070 (G).
7. The dwelling shall maintain a special 200 foot setback from properties to the north and east.
8. All structures, including the dwelling, shall be located within 300 feet, but no closer than 20 feet, of the west and south property line.

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:

9. The applicant should contact the Silverton 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. The Silverton Fire District contact person is Ron Parvin at (503) 873-5328.
10. 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 **April 26, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 27, 2019** unless appealed.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Farm Timber in the Marion County Comprehensive Plan and zoned FT (Farm/Timber). The purpose of the Farm/Timber zone is to maintain properties for farm and timber use. Dwellings may be approved subject to the criteria in the zone.
2. The subject property is located in the 5600 block of Crooked Finger Rd NE on the west side of the road, approximately 2500 feet north of its intersection with McKillop Lp NE west of the intersection of Desantis Lane SE and Silver Falls Drive SE. The property is undeveloped, has been logged and replanted in timber.
3. Surrounding properties to the north are zoned TC (Timber Conservation) and in timber production. Properties to the west, east, and south are zoned FT and either in farm use or timbered.
4. The applicant is proposing to place a forest template dwelling on the property.

5.	<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
	MCCULLY CLAY LOAM (McE)	5.1	171	855

6. Public Works Land Development and Engineering Permits commented:

Engineering Conditions:

“Condition A – Prior to building permit issuance, provide proof of a recorded easement across tax lot 061E36B00500 for use by tax lot 061E36B00400 for access.

Our concern is that we are unable to locate any documentation granting establishment of the existing access from tax lot 061E36B00500 to Crooked Finger Road.

Condition B – Prior to building permit issuance, provide proof of a recorded Road Maintenance Agreement for the access easement as described in Condition A.

Conditions A and B may be satisfied under the same document if the recorded easement addresses road maintenance in addition to granting access to tax lot 061E36B00400.

Engineering Requirements - Please note that the following Requirements will need to be addressed if the proposal is approved:

- C. 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. 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.
- D. In accordance with Marion County Code 11.10, driveway permits will be required for any new access or change in use of the existing access to the public right-of-way. The applicant shall be required to apply for a driveway "Access Permit" at the time of application for building permits, and prior to building final inspection, construct any improvements required by the permit. Driveways must meet sight distance, design, spacing, and safety standards."

Marion County Building Inspection commented that permits will be required.

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

- 7. In order to place a dwelling in the FT zone it must first be determined whether predominate use of the property on January 1, 1993 was for forest land or farm land. In this instance, aerial photographs indicate the predominant use of the property was forest land. According to Chapter 17.139.030(B) of the Marion County Code (MCC) a single family dwelling subject to the special use and siting requirements in MCC 17.139.070 may be allowed provided:

(a) *The tract on which the dwelling will be sited does not include a dwelling. "Tract" means all contiguous lands in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.*

Based on available information, there are no contiguous properties in the same sole ownership of Terry Caster. The applicant does have security interest in both the parcel to the south and west. Since both adjoining parcels are in a different name they are not a contiguous parcel. The applicant's proposal complies with this standard.

(b) *No dwellings are allowed on other lots or parcels that make up the tract, and the other lots or parcels in the tract cannot be used to justify another forest dwelling. Evidence must be provided that covenants, conditions and restrictions have been recorded with the county clerk of the county or counties where the property is located for any other lot or parcel within the subject tract.*

As mentioned above, the parcel is not part of a tract, and according to Marion County Assessor's information the property is not accessed for a residential structure. The applicant's proposal complies with this standard.

(c) *The lot or parcel is:*

- (1) *Predominantly composed of soils that are capable of producing zero to 49 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least three other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; or*
- (2) *Predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least seven other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; or*
- (3) *Predominantly composed of soils that are capable of producing more than 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least eleven other lots or parcels that existed on January 1, 1993,*

and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; and

- (4) *If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and
If a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160-acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160-acre rectangle; or*
- (5) *If the tract abuts a road that existed on January 1, 1993 and subsection (D) of this section does not apply, the measurements may be made using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road.*
- (6) *Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection.*

Oregon Department of Agriculture soil classifications indicate that soils on the property are capable of producing more than 85 cu ft/ac of wood fiber per year. Therefore, staff used the most restrictive template standard as listed in (C)(3) above and reviewed the proposal under those template provisions. Under these standards, there must be at least 11 other lots and three dwellings existing within the study area on January 1, 1993. The applicant indicates that there are 14 other parcels with at least five dwellings that have existed prior to 1993. The applicant's proposal complies with this standard.

- (d) *The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.836.*

MCC 17.110.830 through 17.110.836 provide protection for specific resources in the County. The parcel is not designated within an excessive slope area and not regulated under Chapter 17.182. There is no evidence to indicate that geologic hazards, water resources, mineral and aggregate resources, scenic and natural areas, historic sites and structures, will be adversely affected by the placement of a dwelling on the subject parcel as shown in the site plan. A residence would not create significant noise impacts. No historical structures are on the property. Any county requirements for stormwater runoff will be applied during the building permit process. The applicant's proposal complies with these standards.

- (e) *The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.*

The subject property is located within the designated major big game habitat areas as indicated on the Marion County Comprehensive Plan Fish & Wildlife Habitat Map. The applicant submitted findings from a qualified consultant that concluded that a dwelling could be placed on the property without significant impact to big game and in compliance with the density policy identified in the Marion County Comprehensive Plan, as long as the dwelling is located within 200 feet of the dwelling on the property to the west.

8. The special siting standards in MCC 17.139.070 include:

- (a) *Special Siting Requirements:*
 - (1) *Dwellings and structures shall comply with the special requirements in subsection (a)(2) or (3) of this section. Compliance with the provisions in subsection (a)(2) of this section and subsections (b), (f) and (g) satisfies the criteria in (a)(3) of this section. Alternative sites that meet the criteria in subsection (3) of this section and may be approved as provided in MCC 17.110.680.*
 - (2) *Siting Standards for Dwellings and Other Buildings.*
 - A. *Dwellings shall be at least 200 feet from any abutting parcel in farm use or timber production. Buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production.*
 - B. *The special setback in subsection (A)(2)(a) of this section shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 to 195.336 nor should the*

special setback in subsection (A)(2)(a) of this section prohibit a claimant's application for homesites under ORS 195.300 to 195.336.

C. The dwelling or other building shall be located within 300 feet of the driveway entrance on an abutting public road; or, if the property does not abut a public road for a distance of at least 60 feet, the dwelling or other building shall be located within 300 feet of the point where the driveway enters the buildable portion of the property.

(3) Review criteria for alternative sites. Sites for dwellings or buildings that do not meet the siting requirements in subsection (A)(2) of this section may be approved if the proposed site will meet the following criteria:

- 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 forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and
- D. The risks associated with wildfire are minimized.

The proposal can be conditioned to meet the special setbacks in #2C. above. The property is located more than 300 feet from Crooked Finger Rd NE, however the dwelling is proposed for a location within 300 feet of where the access road will enter the property. The proposal meets the special siting requirements.

(b) *Declaratory Statement.* The owner of property for which a dwelling, structure or other specified use has been approved shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the subject lots or parcels:

"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 subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, 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 I/We acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices I/We 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."

A Declaratory Statement shall be required as a condition of approval.

(c) *Domestic Water Supply.*

(1) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).

(2) Evidence of a domestic water supply means verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or a water use permit issued by the Water Resources Department for the use described in the application; or verification from the Water Resources Department that a water use permit is not required for the use.

(3) If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report upon completion of the well.

The site plan submitted with the application indicates that a well is intended to be drilled in the northwest corner of the property to supply the proposed dwelling. A domestic well is exempt from needing a water right as a water source.

(d) *Road Access.* As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Manage-

ment, or the U.S. Forest Service, the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

The applicant has access off an easement through a private property. This requirement can be made a condition of approval.

(e) *Tree Planting Requirements for Lots or Parcels over 10 Acres:*

(1) *Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in MCC 17.139.030(A), (B) or (C), on a tract of more than 10 acres in size, the landowner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.*

(2) *At the time required by the Department of Forestry rules the owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met.*

The parcel is less than 10 acres in size. This provision is does not apply.

(f) *Fire Protection.*

(1) *The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.*

(2) *If inclusion within a fire protection district or contracting for residential fire protection is impracticable, an alternative means for protecting the dwelling from fire hazards may be approved, pursuant to the procedures set forth in MCC 17.110.680, subject to the requirements of subsection (F)(3) of this section.*

(3) *Alternative means of fire protection may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions. The following requirements apply:*

A. *If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use.*

B. *Road access to the water supply required in subsection (F)(3)(A) of this section shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posed along the access route to indicate the location of the emergency water source.*

Fire protection is provided by the Silverton Fire District, and the applicant shall meet the District's access standards. Other provisions listed above should not apply unless required by the Fire District.

(g) *Fire Hazard Reduction.*

(1) *The owners of a dwelling, or structure occupying more than 200 square feet, shall maintain a primary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provision in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.*

(2) *The dwelling shall have a fire retardant roof.*

(3) *The dwelling shall not be sited on a slope of greater than 40 percent.*

(4) *If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.*

Compliance with the fire hazard reduction standards listed above shall be a condition of approval.

(h) *Road and Drainage Standards.*

(1) *Public road access to structures of more than 200 square feet in area or a dwelling shall comply with Section 4 of the Marion County Department of Public Works Engineering Standards adopted by the board of county commissioners April 11, 1990.*

(2) *Except for private roads and bridges accessing only commercial forest uses, private road or driveway access to structures of more than 200 square feet in area or a dwelling shall meet the requirements of the local fire protection district or forest protection district, except that the county maximum grade standard for a private road is 15 percent. A greater grade may be approved by the fire district or, if the site is not in a fire district, by the State Department of Forestry.*

(3) *Drainage standards for private roadways shall be those in Section 5 of the Public Works Engineering standards except that corrugated metal culverts of equivalent size and strength may be used.*

Road and drainage standards will be addressed as part of the building permit process. The applicant must obtain driveway access permits and meet engineering standards during construction.

9. Based on the above findings, it has been determined that the applicant's request meets all applicable criteria for a forest templet test dwelling on the property and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: April 11, 2019

If you have any questions regarding this decision contact Patty Dorr 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.