

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. 19-009**

APPLICATION: Application of Douglas Thorud and Susanne White-Thorud for an administrative review to place a primary farm dwelling on a 26.99 acre parcel in an EFU (Exclusive Farm Use) zone located in the 4700 block of Delaney Road SE, Turner. (T8S; R2W; Section 29CA; tax lot 2200).

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 **July 17, 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.
4. Prior to issuance of any building permit, the applicant shall obtain a floodplain development permit for the dwelling from Marion County Planning.
5. Public Works Land Development and Engineering Permits (LDEP) will not approve the use until the following condition has been satisfied:

Condition A - Prior to building permit issuance, Applicant shall make a good faith effort to obtain a Vision Easement from the parcel to the west (tax lot 082W29C00800) such that adequate sight distance remains ad infinitum for the access to the subject property.

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:

6. The applicants should contact Turner 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.
7. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Conditions, 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 **July 17, 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 **July 18, 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. Dwellings in conjunction with farming may be approved subject to certain criteria.
2. The subject property is located on the south side of Delaney Road SE. The property currently contains a livestock feed barn. The property was the subject of a previous land use case, Floodplain Development Permit Case #98-12 (FP98-12) and is considered a legal lot for land use purposes. The property was also the subject of Floodplain Development Permit Case #19-04 (FP19-04), which approved the placement of a livestock feed barn in the 100-year floodplain.

The majority of the property is within the 100-year floodplain of McKinney Creek. The development site proposed for the dwelling is in the floodplain. Though this case may approve a dwelling, the property owner will have to obtain a floodplain permit prior to placing a dwelling on the property. This can be made a condition of any approval.

3. Surrounding properties in all directions are zoned EFU and devoted to various types of farm use.
4. The applicants are proposing to place a primary farm dwelling on the western portion of the property.
5. Soil Survey of Marion County Oregon indicates 100% of the subject property is high-value farm soils.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following condition be included in the land use decision:

*“**Condition A** - Prior to building permit issuance, Applicant shall make a good faith effort to obtain a Vision Easement from the parcel to the west (tax lot 082W29C00800) such that adequate sight distance remains ad infinitum for the access to the subject property.*”

Nexus for the above condition is in accordance with Marion County Code 17.11.770 and 11.10, wherein vision clearance areas and intersection sight distance must be maintained at the intersection of driveways and public roadways in order to provide safe visibility for vehicular and pedestrian traffic.”

LDEP also requested that the following Requirements be included in the decision:

- 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. 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.
- 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 (in this case from Farm use to Residential) to the public right-of-way. The applicant shall be required to apply for a driveway "Access Permit" and construct any improvements required by the permit. Driveways must meet sight distance, design, spacing, and safety standards. It was noted during an initial field inspection that vegetation to the west of the access is blocking vision."

LDEP also requested the following Advisory be included:

- E. "Per the Marion County Rural Transportation System Plan, this section of Delaney Road SE is classified as an Arterial. Per Marion County Code 17.112.020 a Special Setback of 50 feet measured from the centerline of the street right-of-way applies on Arterials, and from which standard zoning setbacks are measured. Please note County records indicate that the current right-of-way half-width is 35 feet."

Marion County Building Inspection commented that a building permit is required for new construction or placement of a manufactured home.

Marion County Building Inspection Onsite Wastewater Specialist commented that site evaluation is required to establish area for septic.

Marion County Code Enforcement commented that there have been annual complaints about fill in the floodplain on this property since 2016. Those concerns have never been proven due to the location of work and the inability to see the area from the roadway on Delaney Road.

All other contacted agencies 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 by Douglas Thorud and Susanne White-Thorud that produced the farm income required in criterion #7(b). There is no existing dwelling on the subject property. The criterion in #7(a) is met. The applicants provided evidence that in 2017 and 2018 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 in use for cattle, hay and timber production. As the principal farm operators, 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: July 2, 2019

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

Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.