

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. 19-014**

APPLICATION: Application of Ditchen Berry Company LLC for an administrative review to replace a manufactured dwelling with a site built home and then convert the manufactured home to a secondary farm dwelling on a 24.41 acre parcel in an EFU (Exclusive Farm Use) zone located at 7001 Scism Road NE, Silverton. (T6S; R1W; Section 30B; tax lot 300).

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 24, 2023** unless an extension is granted. The effective period may be extended for two years 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 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 applicants 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 final plat for recordation until the following condition has been satisfied:

***Condition A** – Prior to building permit issuance, Applicant shall demonstrate a good faith effort to obtain and record a vision easement from the adjacent property to the south such that adequate sight distance can be obtained from the existing access to the subject property.*

3. The applicants shall sign a Mobile Home Removal Agreement (enclosed) for the secondary farm dwelling. The applicants shall record the Statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
4. The secondary dwelling shall be continuously occupied by persons working on the farm, as described in this decision.
5. The farm operators shall continue to play the predominant role in management and farm use of the farm.

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 Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

7. The applicants 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.

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 hearing 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 24, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 25, 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 west side of Scism Rd NE approximately 2700 feet south of its intersection with Nusom Rd NE. The property identified as tax lot 300 contains an existing 1973 manufactured home, well and septic system. The property was first the subject of Farm Dwelling 90-21 (FD90-21) which approved the placement of a farm related dwelling and later Administrative Review 08-17 (ADM08-17) approved the replacement of that farm related dwelling with a manufactured home and affirmed the legality of the parcel.
3. Surrounding properties in all directions are in farm use and in an EFU zone.
4. The applicants are proposing to replace a manufactured dwelling with a site built home and then convert the manufactured home to a secondary farm dwelling.
5. Soil Survey of Marion County Oregon indicates 99.8% of the subject property is high-value farm soils.
6. Public Works Land Development and Engineering Permits (LDEP) requested the following be included in the land use decision:

“Condition A – Prior to building permit issuance, Applicant shall demonstrate a good faith effort to obtain and record a vision easement from the adjacent property to the south such that adequate sight distance can be obtained from the existing access to the subject property.

It has been observed that the trees on the property to the south are inhibiting adequate sight distance from being obtained at the existing access to the subject property. Furthermore, there is concern over future placement of other vegetation and/or objects that could similarly impede adequate vision through the roadway horizontal curve. The aforementioned vision easement may potentially require the removal of trees and potential trimming to occur on private property as well as within the public right-of-way. If a vision easement can be obtained, it is the responsibility of the Applicant to engage a licensed Surveyor to prepare a sketch and legal description for PW Engineering review and approval.

Engineering Requirements:

- 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. Please note that secondary farm dwellings are not excluded from this assessment.
- C. In accordance with Marion County Driveway Code 11.10, a driveway “Access Permit” for access to the public right-of-way will be required upon application for a building permit for a new secondary dwelling. Driveways must meet sight distance, design, spacing, and safety standards. The Access Permit will address correction of the limited vision issues, as well as documenting the assigning of the secondary dwelling's unique numerical address.

Engineering Advisories:

- D. Per the Marion County Rural Transportation System Plan, this section of Scism Road is classified as a Local road. Per Marion County Code 17.112.020 a Special Setback of 30 feet measured from the centerline of the street right-of-way applies on Local roads, and from which standard zoning setbacks are measured. Please note county records indicate that the current right-of-way half-width is less than 30 feet.”

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

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

Marion County Tax provided tax information concerning the parcel.

All other contacted agencies either failed to respond or stated no objections to the proposal at time this decision was written.

7. Chapter 17.136.030(D) of the Marion County Code (MCC) allows the alteration, restoration, or replacement of a lawfully established dwelling, with filing of the declaratory statement in MCC 17.136.100(C), when the dwelling:

A. *The dwelling to be altered, restored or replaced has or formerly had:*

1. *Intact exterior walls and roof structure;*
2. *Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
3. *Interior wiring for interior lights; and*
4. *A heating system;*

The applicant supplied documentation that the manufactured dwelling has all the elements above and has the necessary kitchen and bathroom facilities, electricity and a heating system. This criterion is met.

B. *The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from the time the dwelling was established; and*

The manufactured dwelling is currently assessed as a dwelling and has been for at least the last five years. This criterion is met.

C. *If the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling had to have been assessed as a dwelling until such time as the value of the dwelling was eliminated:*

1. *The destruction (i.e., by fire or natural hazard), or demolition in the case of restoration, of the dwelling; or*
2. *The applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner. “Improperly removed” means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll;*

The manufactured dwelling is currently on the tax roll for the subject property. This criterion does not apply.

D. *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 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 permitting authority that is not less than 90 days after the replacement permit is issued; and*
- c. *If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.*

The applicants are proposing to replace the existing manufactured home with a stick built dwelling and converting the existing manufactured home to the secondary farm dwelling. This criterion can be satisfied with a condition of approval.

- E.. *The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted to a non-residential use.*

The applicants are proposing to replace the existing manufactured home with a stick built dwelling and converting the existing manufactured home to the secondary farm dwelling. This criterion can be satisfied with a condition of approval.

- F. *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 is 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 2013 Oregon Laws, Chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling;*

The entire property is zoned EFU, therefore this criterion does not apply.

- G. *A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling;*

Any standards applied will comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. The standards will not be applied in a manner that would prohibit the siting of the replacement dwelling. This criterion is met.

- H. *When a dwelling formerly had the features described in subsection (7)(A) of this section or was removed from the tax roll as described in subsection (7)(C)(b) of this section, then the replacement dwelling must be sited on the same lot or parcel consistent with the following:*
 - a. *Using all or part of the footprint of the replaced dwelling or near a 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;*

The existing manufactured dwelling is currently on the property, being taxed, and has the features identified in #7(A) above. The placement criteria in #7(H) do not apply. This criterion is met.

- I. *Replacement dwellings that currently have the features described in subsection (7)(A) of this section and that have been on the tax roll as described in subsection (7)(B) of this section may be sited on any part of the same lot or parcel;*

Based on the site plan submitted with the application, the replacement dwelling will be located on the southeastern portion of the property near the current manufactured dwelling which will be the second farm dwelling. This criterion is met.

- 8. Secondary farm dwellings customarily provided in conjunction with farm use may be approved when the standards in Chapter 17.136.030(B) of the Marion County Code (MCC) are satisfied. These standards include:

- (a) *The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year –round assistance in the management of the farm uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.*
- (b) *There is no other dwelling on lands in the EFU, SA or FT zone owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.*
- (c) *The proposed dwelling will be located:*
 - (1) *On the same lot or parcel as the primary farm dwelling; or*
 - (2) *On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or*
 - (3) *On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (a) of this section; or*
 - (4) *On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or*
 - (5) *On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (d) below, whichever is applicable.*
- (d) *The primary farm dwelling to which the proposed dwelling would be accessory satisfies the following criteria:*
 - (1) *On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and produced at least \$40,000 gross annual income from the sale of farm products in the last two or three of the last five years; or*
 - (2) *On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and produced at least \$80,000 in gross annual income from the sale of farm products in the last two or three of the last five years; or*
 - (3) *The primary dwelling is located on a commercial dairy farm as defined in this chapter; and*
 - i. *The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and*
 - ii. *The Oregon Department of Agriculture has approved a permit for a “confined animal feeding operation” under ORS 468B.050 and ORS 468B.200 to 468B.230; and*
 - iii. *Producer License for the sale of dairy products under ORS 621.072.*
 - (4) *In determining the gross income in subsections (B)(4)(a) and (b) of this subsection, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.*
- (e) *The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.*
- (f) *Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable state building code, and a deed restriction filed with the county clerk requiring removal of the manufactured home or removal, demolition or conversion to a non-residential use if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.*

9. The applicant states that the property is in blueberry production. The proposed replacement dwelling will be occupied by the farm operator and the secondary farm dwelling will be occupied by an employee of the farm. The criterion in #8(a) is met. The applicants own the adjacent parcel to the north which does not contain a dwelling.

The applicants are proposing to replace the existing manufactured home with a new stick built dwelling in the same vicinity as the existing manufactured home which will be used as the secondary farm dwelling. The criterion in #8(b) and (c) are met. The subject parcel received two previous approvals, one to place a primary farm dwelling, the other to replace a primary farm dwelling. The proposal meets the criteria in 8(d). The property is not located within a big game habitat area of the county. The dwelling is proposed to be a manufactured home. The criterion in 8(e) and (f) are met.

10. Based on the above findings, it has been determined that the dwelling was legally established and may be replaced and has also been determined that the proposed secondary dwelling satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: July 9, 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.