

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.21-034**

APPLICATION: Application of Kol Chaney LLC for an administrative review to place a template test dwelling on a 25.74 acre parcel in a Farm Timber (FT) zone located in the 5400 block of Spring Cliff Ln NE, Scotts Mills (T6S; R1E; Section 34A; Tax lot 400 & 101).

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 7, 2026** (four years) 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 ensure 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 required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permits, the applicants 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.
3. 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.
4. The owners shall maintain a fire hazard reduction plan as recommended by the Oregon Department of Forestry.
5. The proposed dwelling shall meet the fire protection and hazard reductions as listed in MCC 17.139.070.
6. 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. The dwelling shall have a fire retardant roof. The dwelling shall not be sited on a slope of greater than 40 percent. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.
7. The property address will be assigned as 5476 Spring Cliff Ln NE.

OTHER PERMITS, FEES AND RESTRICTIONS: This approval does not remove or affect 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. It is recommended that the agencies mentioned in Finding #8-9 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

8. 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.
9. 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 to 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 7, 2022**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 8, 2022** 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 FT 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 at the end of Spring Cliff Ln NE, approximately 1000 feet northeast of its intersection with Mckillop Rd NE. The property is currently contains an old farm building but is otherwise vacant. The parcel was the subject of LLA96-9 (tax lots 400 & 101) and is therefore considered one legal parcel for land use purposes.
3. All adjacent properties are zoned FT and consist of parcels in farm use and some developed with homesites.
4. The following table depicts the property’s soil composition and capacity to produce wood fiber.

Soil Type	Total Acres	CU.FT/AC/YR	Total CU. FT./YR
Hullt clay loam, 20%-30% slopes	4.2	171	718.2
Hullt clay loam, 7%-20% slopes	2.7	171	461.7
Hullt clay loam, 20%-30% slopes	17.4	171	2975.4
Hullt clay loam, 7%-20% slopes	0.4	171	68.4

5. The applicant is proposing to place a dwelling on the property using the template test.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Marion County Building Inspection commented: “No Building Inspection issues. Permits required for any proposed structures or utilities on private property. Geohazard location may impact review and/or construction of any proposed structures, depending on location.”

Marion County Septic Inspection commented: “The dwelling will require a septic site evaluation from Marion County.”

Various agencies were contacted about the proposal and given an opportunity to comment. All other contacted agencies either failed to comment or stated no objection to the proposal.

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 and Marion County Assessor records indicate the predominate use of the property on January 1, 1993 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.*

This land is not part of a tract and is uniquely owned by Kol Chaney LLC, with Kol L. Chaney being the sole member. The criterion is met.

- (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 discussed above, the land is not in a tract. The criterion is met.

- (c) *The lot or parcel is:*

- (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*

- (6) *Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection.*

Soil analysis found that the parcel can produce up to 163 cubic feet per acre of wood fiber and qualifies under 7(c)3 above. The criterion is met. The template test was run by positioning a 160-acre square in accordance with the requirements above. The test shows that at least 12 other parcels fall within the rectangle and that at least 7 have dwellings that were established prior to January 1, 1993. There are no lots or parcels being counted in an urban growth boundary. The criteria are satisfied.

- (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.*

The dwelling is permitted so as long as it meets all the criteria of the FT zone. The criterion is met.

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

The dwelling location does not sit in a big game habitat overlay. The criterion is met.

8. The special 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.*

The applicant states that the width of the parcel prevents the siting standards from being met. Applicant proposes to use the review criteria for alternative sites.

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.*
- d. *The risks associated with wildfire are minimized.*

The applicant's site plan meets these criteria. Proposed homesite location is set back over 100 feet from the neighboring parcel and is outside of the mapped geo-hazard area on the property. This siting is preferable due to its stability. This site will not impact nearby forest lands or agriculture practices. This site will also not require any trees to be cleared. The setbacks for the dwelling and accessory structures shall be 100 feet to property lines. The criterion is met.

- (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."

This can be made 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.*

Demonstrating compliance with the criteria in c(1), (2), and (3) prior to the issuance of any building permit for a dwelling can all be made a condition of approval. The criterion is met.

(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 Management, 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 property will have direct access to Spring Cliff Ln NE. The criterion is met.

(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 applicant states they will comply with this standard as the parcel is already forested with timber. The criterion is met.

(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. The applicant shall meet the District's access standards. Other provisions listed above should not apply unless required by the Fire District. The criterion is met.

(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 made a condition of approval. The criterion is met.

(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.*

The property owner will be required to obtain a driveway access permit from LDEP, which will ensure compliance with the above standards. The criterion is met.

9. Based on the above findings, it has been determined that subject to conditions the proposed dwelling request will comply with the standards for placement of a forest template dwelling in the FT zone and is **APPROVED**, subject to conditions

Brandon Reich
Planning Director

Date: December 23, 2021

If you have any questions regarding this decision contact Austin Barnes 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.