

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.

**RE-NOTICE OF DECISION
ADMINISTRATIVE REVIEW CASE NO.21-037**

APPLICATION: Application of Michael Nyman for an administrative review to replace a dwelling on 5 acres in a TC (Timber Conservation) zone located at 9910 North Fork Lane SE, Lyons (T09S; R3E; Section 1; Tax lots 700 and 701).

DECISION: The Planning Director for Marion County has determined that the residence was legally established and can be replaced.

EXPIRATION DATE: This decision is valid only when exercised by **January 7, 2026** 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 proposed uses is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposed activities. 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:

1. The applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permit, 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 issuance of any building permit, the applicants shall sign and submit a Replacement Residence Declaratory 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.
4. The proposed dwelling shall be located as indicated on the site plan submitted with the application. Minor variations may be allowed upon review and approval of 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.

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

7. The applicants should contact the Stayton Fire District to obtain a copy of the Stayton Fire 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 hearings officer. The applicant may also request reconsideration (one time only and a fee of \$250.00) 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 Forest in the Marion County Comprehensive Plan. The intent of this designation and the corresponding TC (Timber Conservation) zone is to promote the continuation of resource uses in the area.
2. The subject property is located along North Fork Ln SE, 0.82 miles north east of its intersection with North Fork Rd SE. The property is now vacant due to the 2020 Labor Day Wild Fires. The property was the subject of P92-60 and CU87-6 and is therefore considered legal for land use purposes.
3. Properties in all directions are zoned TC and consist of small acreage home sites and timberland.
4.

<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
Camas gravelly sandy loam	1	N/A	N/Q
Horeb gravelly silt loam	3.9	195	760.5
5. The applicant is proposing to replace a dwelling destroyed by the 2020 Beachie Creek fire.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING REQUIREMENT

A. The subject property is within the unincorporated area of Marion County and may be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits. However, commencing as of May 2021, a 5-year grace period has been administratively instituted for post-Canyon Fire re-building in which assessment will be waived for prior approved uses.

Marion County Septic Inspection commented: "Either an authorization notice and/or a major/minor repair permit approval is required to replace the dwelling."

Marion County Building Inspection commented: "Permits are required for any future structures or utilities."

All other commenting agencies stated no objection to the proposal.

7. Chapter 17.138.030(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 17.138.060(B), other than as permitted in MCC 17.138.020(E), when the dwelling:
 - (a) *Has intact exterior walls and roof structure;*
 - (b) *Has indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;*
 - (c) *Has interior wiring for interior lights;*

- (d) *Has a heating system; and*
- (e) *In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable non-residential use within three months of the occupancy of the replacement dwelling.*
- (f) *In the case of replacement, the replacement dwelling shall meet the siting requirements set forth in MCC17.138.060(A)(2) or (3), which states:*
 - 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.*
- (g) *For the case in which the applicant has requested a deferred replacement permit, the dwelling to be replaced shall be removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The 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 consideration. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.*

8. A review of building permit records and aerial photographs of the area indicate that the home was legally placed on the subject property. Therefore, the criterion in 7(a) is satisfied.

Based on previous information gathered from the subject property, the dwelling had intact exterior walls and roof structure. It also appears the residence contained the necessary kitchen and bathroom facilities. In addition, the dwelling had indoor electricity and a heating system. The proposal meets the standards outlined in 7(b), (c), (d) and (e) above.

The applicant's site plan indicates the placement of the new dwelling will be located closer than 200 feet to adjacent property in resource use. This is the location of the prior home burnt by fire and the applicant is requesting to replace the home in the same location. The home had already existed here for over 60 years. Any impacts on adjacent timber lands would have already been realized on this site. The alternative siting requirements in MCC17.138.060(3) and the criterion in 5(f) are satisfied.

The applicant did not request a deferred replacement; therefore, the criterion in 5(g) is not applicable.

9. Based on the above findings, it has been determined that the existing dwelling was legally established and may be altered, restored and/or replaced.

10. Although the replacement dwelling is approved, the applicants will be required to sign and record a Farm/Forest Declaratory Statement as a condition of approval. This acknowledges the impacts of farm and forest management practices conducted in the area.

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.