

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. 22-028**

APPLICATION: Application of Perry & Cheryl Lucas for an administrative review to place a secondary farm dwelling on a 127.99-acre parcel in an EFU (Exclusive Farm Use) zone located at 13722 River Road NE, Gervais (T5S; R2W; Section 19; Tax Lot 1500).

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 **November 30, 2026**, 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 proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed use. 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, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. The original dwelling now qualified as a secondary farm dwelling shall be continuously occupied by a relative of the farm operator who will assist in the management or operation of the farm.
3. The farm operator shall continue to play the predominant role in management and farm use of the farm.
4. The applicants shall sign a Marion County Secondary Farm Dwelling Removal Agreement for the secondary single-family dwelling. The applicants shall record the Statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
5. The property will continue to be considered as one parcel for land use purposes in order to meet the criterion of MCC 17.136.110 and the prior Property Line Adjustment 11-009 case.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or another 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 the Findings and Conclusions section below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

6. The applicants should contact the Woodburn 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 condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) 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. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Road NE, Salem, by 5:00 p.m. on **November 30, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 1, 2022**, unless further consideration is requested.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The property is located approximately northwest of the intersection of River Road NE and French Prairie Road NE. The property is approximately 128 acres in size. The property spans both sides of River Road NE. Adjacent properties in all directions are zoned EFU (Exclusive Farm Use). Adjacent properties are also predominately in active farm use.
3. The property (tax lot 1500) consisted of legal parcels created before September 1, 1977, until 2011; in 2011 a property line adjustment was approved through case PLA11-009. PLA11-009 found the property to be considered one legal parcel for land use purposes. No further changes to the property were recorded by deed (or otherwise) since, and so the property has remained legal. **The property will continue to be considered a single parcel for land use.** The property is considered legal for the purposes of land use per Marion County Code 17.110.427.
4. The applicant is proposing to place a “secondary farm dwelling” on the property. Specifically, the applicant is requesting to “re-qualify” a site-built home as a secondary farm dwelling. Based on a review of previous land use cases, tax assessor data, and aerial images, the property currently contains the following dwellings.
 1. First, there is the oldest dwelling, a site-built home constructed around 1950. The parents of the applicants Perry and Cheryl originally built this dwelling and started the farm operation. This dwelling pre-dates zoning regulations and could be replaced.
 2. Next, there is another site-built home from approximately 1980. This dwelling was constructed for the applicants Perry and Cheryl, who also participate in the farm operation. This dwelling would have been permitted under the EFU and F1 zone code of the time as a “dwelling in conjunction with farm use.”
 3. There are two manufactured homes located on the property as well. These were permitted under previous allowances for seasonal farm dwellings (dwelling spaces occupied by seasonal workers). Conditional Use case 98-038 indicates that these dwellings are only permitted for that purpose and may only be occupied for 273 days in any calendar year.
5. Soil Survey of Marion County Oregon indicates that approximately 96.8% of the subject property soils are high value.
6. Marion County Building Inspection commented: permits are required for the construction or placement of a new home and/or utilities on private property.
7. Marion County LDEP Division commented:

ENGINEERING REQUIREMENT

- A. Access to the public road must meet MCPW design standards. No new access will be approved; it must be shared with one of the existing driveway approaches as indicated on the land use application site plan.
- B. Transportation System Development & Parks Charges (SDCs) will be assessed upon application for building permits.
- C. Utility work in the public right-of-way requires permits from MCPW Engineering.

ENGINEERING ADVISORY

- D. Internal access to the proposed secondary farm dwelling, as depicted on the land use application site plan, will involve a perennial stream crossing. The crossing width as measured using 2021 aerial imagery is roughly 10 feet. Furthermore, it is unknown if the stream crossing pipe can support the weight of a fire truck. Applicant is advised to coordinate with the local fire department as to their access requirements.
8. All other contacted agencies either failed to comment or stated they had no comments on the proposal.
9. Secondary farm dwellings can be permitted through two options provided in MCC 17.136.030. The first option is limited to a manufactured home only. A second option allows for site-built homes with slightly different requirements. In this case, because the applicant proposes to “re-qualify” an existing site-built home as a secondary farm dwelling, the applicant must meet the following criteria of 17.136.030(C):

C. A secondary single-family dwelling on real property used for farm use subject to the following standards:

- 1. A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, step-sibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use.*

The proposed dwelling is located on the same parcel as the other farm operation dwellings. The farm operator currently occupies two other dwellings (in particular, Perry Lucas and Jesse Lucas). The applicants state that Perry Lucas is the predominant manager of the farm operation. Son Jesse and daughter Rebecca are both involved in the farm operation as well. The dwelling subject to this application is for Rebecca. The applicants state that Rebecca works in sales for the farm operation. Given that she is the daughter of the manager and is involved in the farm operation, this criterion is met.

- 2. The farm operator shall continue to play the predominant role in management and use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding, and marketing.*

The applicants themselves (Perry and Cheryl) are the current farm operators. They will continue to play a predominant role in the management of the farm. The children (who will be occupying dwellings on the property) will also continue to play a role in the farm operation. The criterion is met.

- 3. A deed restriction is filed with the county clerk requiring removal of the dwelling when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved.*

This will be a condition of approval. The criterion is met.

4. For purposes of this subsection, a commercial farm operation is one that meets the income requirements for a primary farm dwelling identified in subsection (A)(1)(b) of this section, and the parcel where the dwelling is proposed contains a minimum of 80 acres.

The farm operation meets the definitions and income requirements as described. The applicant provided evidence of farm income including two years of tax documents for 2020 and 2021. The tax documents provided include IRS Form 1040 Schedule F (Profit or Loss From Farming) for Lucas & Son, Inc. The gross sales of livestock, produce, grains, and other products raised exceeds the \$80,000 per year requirement. The farm operation has been determined to be a single “parcel” for the purposes of land use per the previous decision in Property Line Adjustment 11-009. The parcel is greater than 80 acres. The criterion is met.

5. All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold, and conveyed subject to the following covenants, conditions and restrictions:

“It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling.”

These covenants, conditions, and restrictions can be removed only at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions, and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions, and restrictions is located executes and records a release of the covenants, conditions and restrictions consistent with OAR 660-006-0027.

All the property has been determined to be one parcel for land use purposes. Therefore, there is no tract to which this applies. This section does not apply.

10. Based on the above findings, it has determined that the proposed secondary farm dwelling satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: November 15, 2022

If you have any questions regarding this decision contact Daniel Jansen 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.