

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 NO. 23-029**

**APPLICATION:** Application of Terry Boggs for an administrative review to place a forest dwelling on a 7.51-acre parcel in an FT (Farm/Timber) zone located in the 20,300 block of Bridge Creek Road SE, Silverton (T7S; R1E; Section 35D; Tax lot 800).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Administrative Review, subject to certain conditions. **PLEASE READ ALL CONDITIONS.**

**EXPIRATION DATE:** This decision is valid only when exercised by **November 9, 2027** (four years), unless an extension is granted. The effective period may be extended once for two years, and then up to five more times for one year each, 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 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 Farm/Forest Declaratory Statement to the Planning Division. This Statement shall be recorded with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
3. The dwelling shall be addressed **20355 Bridge Creek Rd SE**, effective when building permits are applied for.
4. No structure shall be located within the Big Game Habitat.
5. The dwelling shall maintain a special 200-foot minimum setback from any property line when the neighboring property is in farm use and/or forest production. Accessory structures shall maintain a special setback of at least 100 feet from any abutting parcel in farm use and/or timber production.
6. 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). 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.
7. The applicant shall comply with the Fire Hazard Reduction Standards listed in MCC 17.139.070(G).
8. The applicant shall comply with the Road and Drainage Standards listed in MCC 17.139.070(H).

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

9. The applicants should contact the Drakes Crossing 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.
10. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for Engineering Requirements and Advisories, listed in Finding #7 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 **November 9, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **November 10, 2023**, 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 is correspondingly zoned FT (Farm Timber). The intent of both the designation and zone is to promote agricultural activities, protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources.
2. The subject property is located on the east side of Bridge Creek Rd SE, in the 20,300 block, near the city of Silverton. It is approximately 1.23 miles east of the intersection of Powers Creek LP NE and Bridge Creek Rd SE. The property is currently undeveloped. Roughly half of the parcel (the eastern half) is within the Big Game Overlay.
3. The parcel has been subject to a land use case, Administrative Review 15-043, which was approved. Therefore, per the definitions in Marion County Code 17.110.427 and 17.110.680, the subject parcel is considered legal for land use purposes.
4. Properties to the north, west (across Bridge Creek Rd SE), and south are also zoned FT and consist of small to medium sized parcels with a few homesites throughout. Property to the east is zoned Timber Conversation (TC) and is in active timber production.
5. Soil Survey of Marion County indicates that approximately 0.0% of the parcel's soils are classified as high-value.
6. The applicant is proposing to build a home on the subject property by qualifying for a Template Test Dwelling.
7. Various agencies were contacted about the proposal and given an opportunity to comment.

Public Works Land Development and Engineering Permits (LDEP) commented:

## ENGINEERING REQUIREMENTS

- A. An Access Permit will be required at the time of application for building permits to inspect and document an existing access approach for which MCPW Engineering has no records.
- B. Transportation System Development and Parks Charges will be assessed at the time of application for building permits.
- C. Utility service extension work in the public R/W requires permits from MCPW Engineering.

Marion County Building Division commented “No Building Inspection concerns. Permits are required to be obtained prior to development and/or utilities installation on private property.”

All other contacted agencies either failed to comment or stated no comment/objection to the proposal.

8. In order to place a dwelling within the FT zone it must first be determined that the subject property was predominately devoted to forest use on January 1, 1993. In this instance, aerial photographs from June 1983 (Marion County aerial photograph Flight 28 Tile 12), July 1988 (Marion County aerial photograph Flight 27 Tile 14), and August 1994 (Google Earth Pro) show a timeline of forest use. Aerial imagery depicts harvestable timber in 1983, a harvested and replanted clear cut in 1988, and a young stand of timber in 1994. Successive aerial imagery shows a continuously older timber stand on the subject property and the parcel is in Forest Deferral with the County Assessor. Taken together, the balance of the evidence indicates that the predominant use of the property was forest land on January 1, 1993.

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:

- (1) *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.*

The subject parcel is bare land and is not part of a tract. The criterion is met.

- (2) *If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract. 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.*

The parcel was not part of a tract on January 1, 2019. This criterion does not apply.

- (3) *The lot or parcel is:*
- a. *Predominantly composed of soils that are capable of producing zero to 49 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 three other lots or parcels that existed on January 1, 1993, and at least three dwellings that existed on January 1, 1993, on the lots or parcels, and continue to exist; or*
  - b. *Predominantly composed of soils that are capable of producing 50 to 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 seven other lots or parcels that existed on January 1, 1993, and at least three dwellings that existed on January 1, 1993, on the lots or parcels, and continue to exist; or*

- c. *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 11 other lots or parcels that existed on January 1, 1993, and at least three dwellings that existed on January 1, 1993, on the lots or parcels, and continue to exist; and*

The parcel's soil classes are capable of producing 171 cubic foot of wood fiber per acre per year according to the Department of Agriculture Woodland Table for Marion County. Therefore, subsection 3(a) and (b) do not apply, while subsection 3(c) does. According to Assessor taxation records and mylars, there were at least 11 tax lots and at least 3 dwellings within the Template Test area on January 1, 1993. Therefore, the criterion is met.

- d. *If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and if a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160-acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160-acre rectangle; or*

The subject parcel is less than 60 acres in size. Therefore, this criterion does not apply.

- e. *If the tract abuts a road that existed on January 1, 1993, and subsection (D) of this section does not apply, the measurements may be made using a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road;*

The property abuts Bridge Creek Rd SE, which existed prior to January 1, 1993, per Flight 12 Tile 10 of Marion County aerial imagery taken on May 15, 1976. Subsection (d) did not apply. Therefore, the applicant may use a rectangle one mile long and one-quarter mile wide, centered on the subject property and aligned to the maximum extent possible with the road. This is the Template Test method the applicant chose.

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

The Template Test area did not include any properties within an urban growth boundary. The criterion is met.

- g. *Any property line adjustment to the lot or parcel after January 1, 2019, did not have the effect of qualifying the lot or parcel for a dwelling under this section; and*

The subject parcel has existed in its current configuration since at least Reel 56 Page 802, recorded on September 9, 1976. Therefore, the criterion is met.

- h. *As used in this section, "centered on the subject tract" means the mathematical centroid of the tract.*

The applicant's used a template provided by Planning Staff and created via Marion County specialized GIS scripts which meet the criterion.

- (4) *The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including MCC 17.110.830 through 17.110.836.*

There is no evidence indicating that there will be a significant negative impact on water resources. There are not any identified aggregate sites within 1,500 feet of the subject property. Development of a homesite should not create significant stormwater issues nor excessively impact wildlife habitat. As a dwelling is a residential use it is not likely to create excessive noise in the area. The subject property has no historically identified structures or sites on or near it, nor any scenic and natural areas or trails. The criterion is met.

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

The dwelling will be situated on the western half of the property, outside of the big game habitat area. Therefore, this criterion does not apply.

9. Marion County Code 17.139.030 requires that any dwellings established in the FT zone must meet special use and siting requirements as given in MCC 17.139.070. These 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) of this section satisfies the criteria in (A)(3) of this section. Alternative sites that meet the criteria in subsection (A)(3) of this section may be approved concurrently with any land use application or as provided in Chapter 17.116 MCC.*

This application meets the criteria found in subsection (A)(2) per the below:

- (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.*

Properties to the east and northwest of the subject parcel are in farm/forest production. Special setbacks of 200 feet for the dwelling and 100 feet for accessory structures shall be required from any property line when the neighboring property is in farm use or forest production. This shall be a condition of approval, therefore, the criterion is met.

- (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 through 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 through 195.336.*

This dwelling is not a Measure 37/49 home, nor is it being granted via any other compensation program due to land use regulation. Therefore, the criterion does not apply.

- (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.*

Per the applicant's site plan the dwelling will be placed approximately 253 feet from Bridge Creek Rd SE, which has a public dedication width of 60 feet. Therefore, the criterion is met.

- (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 application meets subsection (A)(2). Therefore, subsection (A)(3) does not apply.

(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 grantors, 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 acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices, grantors 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 shall be made a condition of approval. The criterion is met.

(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 groundwater 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.*

Evidence demonstrating compliance with the criteria in section (C) shall be made a condition of approval. Therefore, the criteria 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 has direct access to Bridge Creek Rd SE. 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 subject property is less than 10 acres in size, therefore this criterion does not apply.

(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 Chapter 17.115 MCC, 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 firefighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.*

The property is located within the Drakes Crossing Fire District. Criterion (F)(1) is met. Criteria F(2) and (3) do not apply.

(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.*

These shall be made a condition of approval. The criteria 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 the Marion County Department of Public Works Engineering Standards applicable at the time the application was filed.*
- (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 comply with the Marion County Department of Public Works Engineering Standards, except that corrugated metal culverts of equivalent size and strength may be used.*

These shall be made a condition of approval. The criteria is met.

10. Based on the above findings, it has been determined that the property meets the criteria for establishing a template test dwelling and the request, therefore, is **APPROVED**, subject to certain conditions.

Brandon Reich  
Planning Director/Zoning Administrator

Date: October 25, 2023

If you have any questions regarding this decision contact Nicole Inman 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.