

**NOTICE OF DECISION
CONDITIONAL USE CASE NO. 19-029**

APPLICATION: Application of Frank M. Wuliger and Cynthia Wuliger, trustees of the Frank & Cynthia Wuliger 1994 Family Trust, for a conditional use to place a non-farm dwelling on a 1.522 acre parcel in an EFU (Exclusive Farm Use) zone located at 6551 Scism Road NE, Silverton. (T6S; R1W; Section 30C; tax lots 900 and 1000).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to certain conditions

EXPIRATION DATE: This conditional use permit is valid only when exercised by **October 9, 2023**. The effective period may be extended for two additional years subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

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 proposal. To ensure the subject property can accommodate the proposal the applicant should contact 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 applicant shall obtain approval for all permits required by the Marion County Building Inspection Division.
2. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
3. Prior to obtaining building permits, the applicant must provide evidence to the Planning Director that the county Assessor's Office has permanently disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or ORS 308A.724 or ORS 321.359(1)(b), ORS 321.842(1)(A) and 321.716.
4. Prior to issuance of any building permit for any new dwelling, 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.
5. The dwelling and any accessory structures shall maintain a 20 foot setback from all property lines.

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 thereon. It is recommended that the agencies mentioned in Finding #5 under Findings and Conclusions below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

6. 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.
7. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements 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 Zoning Administrator. If there is any doubt that the application conforms with adopted land use policies and

regulations the Zoning Administrator must condition or deny the application. Anyone who disagrees with the decision may request that the application be considered by a 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 120 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 Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **October 9, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 10, 2019** unless further consideration is requested.

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. The intent of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agriculture in the area.
2. The subject parcel is located in the 6500 block of Scism Road NE, Silverton. The subject property was determined to be a legal parcel as a result of Property Line Adjustment Case 18-017, which has not been completed. The property contains a structure built as a farm office in 1987 that the applicants propose to convert to a dwelling.
3. Nearby land consists of properties being farmed and rural homesites in an EFU zone.
4. The applicant submitted an alternative soil survey to the Oregon Department of Land Conservation and Development. The revised soil survey for the subject property indicates that 96% of the soils are Class IV through Class VIII soils, which are not high value farm soils.
5. The applicant proposes to convert an existing structure built as a farm office to a residence.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following requirements be included in the land use decision:
 - A. In accordance with Marion County Code (MCC) 11.10, driveways must meet sight distance, design, spacing, and safety standards. The following numbered sub-requirements are access related:
 - 1) At the time of application for building permits an Access Permit will be required to narrow the north access approach, which measures nearly 50 feet in width, to within MCPW standards. Access work must be completed prior to final building inspection.
 - 2) At the time of application for building permits for the proposed dwelling, and Access Permit will be required.
 - 3) The existing accesses shall also serve the proposed dwelling; no new access will be allowed.
 - B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation and Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.”

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

Marion County Onsite Wastewater Specialist commented that a septic authorization/alternation permit is required.

7. In order to approve a non-farm dwelling in an EFU zone, the applicant must demonstrate compliance with criteria identified in Sections 17.136.060(A), 17.136.060(B), 17.136.070 and 17.136.100. These include:

The following criteria apply to all conditional uses in the EFU zone under 17.136.060(A):

- (a) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not*

include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.

- (b) Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (c) The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
- (d) Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- (e) The use will not have a significant adverse impact on potential water impoundments identified in the comprehensive plan, and not create significant conflicts with operations included in the comprehensive plan inventory of significant mineral and aggregate sites.*

8. The subject property is bordered by roads and small acreage homesites. The dwelling would be in the center of a cluster of six dwellings. Any effect of using the structure as a residence on farming in the area would be a similar to the relatively minor effects other residences in the area have had on farming. The application meets #7(a).

The subject parcel is approved for a septic system for a farm office, has electrical service available, and a well is available to the property. The land is within the Silverton Fire District and served by the Marion County Sheriff. Approval of the dwelling may cause a small increase in traffic on Scism Road and so the applicant would have to comply with county road access standards. The proposal meets #7(b).

The property does not contain any identified groundwater, fish and wildlife habitat, air, and water quality resources. As described above, the proposal meets #7(c). It is expected that any noise generated by the dwelling will be confined to the property and will have little or no impact on surrounding lands. The proposal meets #7(d). The Marion County Comprehensive Plan identifies no potential water impoundments or mineral and aggregate sites. The proposal meets #7(e).

9. In addition to the standards in #7 above, non-farm dwellings shall be subject to the following criteria listed in 17.136.060(B) and include:

- (a) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in Section 17.136.130.
- (b) The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993 in any way that enables the lot or parcel to meet the criteria for a non-farm dwelling
- (c) The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings on other lots or parcels in the area similarly situated shall be considered. To address this standard, the following information shall be provided:
 - (1) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;
 - (2) Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm dwellings that could be approved under Section 17.136.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the

- distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;
- (3) Determine whether approval of the proposed non-farm dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

10. The applicant submitted a soil survey, prepared by a certified soil classifier, to the Oregon Department of Land Conservation and Development (DLCD), as required by OAR 660-033-0045. DLCD approved the report and released the information to Marion County. The classifier remapped the property using methods acceptable to DLCD. The survey concluded that the soils are reclassified as predominately (96%) class IV through VIII non-high value soils. Based on the soil reclassification, the proposal meets criteria listed in #9(a). As stated previously, the subject property is considered a legal parcel, and it is not evident that any changes occurred in the boundaries of the property since 1993. The request complies with the review criteria listed in #9(b).

The applicant submitted a Cumulative Impact Analysis Study to address requirements listed in 17.136.060(B)(3). A staff review of the information revealed that the data was adequate to make a decision on this application.

- A. The applicant has provided a study area which encompasses over 2000 acres surrounding the property. This study area included only properties zoned as farm use. Lands zoned for rural residential or other non-resource uses are not included in the study area. Information supplied by the applicant, and verified by staff, indicates that there is no non-resource zoned land applied to the study area and that the applicant's report meets the required 2000 acre resource zone analysis area.
- B. The applicant has indicated this study area was chosen as representative of the land use pattern surrounding the subject parcel and that updating the previous study provided sufficient information for use in this request. Properties within the study area are predominately farmed in grass seed and hay with some berries, vegetables, nursery stock, turf, pasture and nuts. Staff concludes that the area presented by the applicant is a fair representation of the surrounding area and is sufficient to arrive at a sampling of the land use pattern.
- C. The development trends in the study area have been identified in the applicant's statement and the overlay map. Since 1993, no non-farm dwelling approvals have occurred. The proposed dwelling would be consistent with the development pattern that has occurred on surrounding lands in the past.
- D. The applicant did not identify any parcels that would qualify for a non-farm dwelling, because of the predominance of high value soils in the study area, as the soils are currently mapped by the National Resource Conservation Service. More detailed soil mapping of an individual parcel may indicate the presence of non-farm soils; however, that information is not available at this time and would be prepared in the future on a parcel-by-parcel basis. The number of potential additional non-farm dwellings is restricted by the number of dwellings already in the study area. It appears that an insignificant percentage of the study area could include potential non-farm parcels.
- E. Resource land inside the study area as previously determined is zoned EFU. The commercial agriculture operations in the EFU zone are predominately in grass seed and hay with some berries, vegetables, nursery stock, turf, pasture and nuts. It appears that these crops and farming activities are impractical on the subject parcel because of the poorer soils and size of the property.

Based on the soils survey conducted on the property, the soils are not predominately high-value and are not suitable for most types of farming activity. Any proposal to add the property to an adjoining farm parcel would not provide any significant agricultural benefit to that parcel. According to these findings, the proposed dwelling would not make it more difficult for existing farming activities to continue and would not materially alter the land use stability of the area and meets the criteria in #9(c).

11. The following regulations apply to non-farm dwellings approved pursuant to Section 17.136.050(A) and meeting provisions listed in 17.136.070 as follows:
 - (a) *Special Setbacks:*
 - (1) *Dwellings. A special dwelling setback of 200 feet from any abutting parcel in farm use or timber production is required.*
 - (2) *Accessory buildings. A special setback of 100 feet is required for buildings accessory to a dwelling from any abutting parcel in farm use or timber production.*
 - (3) *Adjustments. The special setbacks in (1) and (2) may be reduced if it is determined that a lesser setback will prevent activities associated with the dwelling or accessory building from seriously interfering with farming or forest practices as provided in Section 17.110.680.*
 - (b) *Fire Hazard Reduction: As a condition of approval for any non-farm dwelling located closer than 200 feet to timber, the owner shall be required to provide continuing fire hazard management in accordance with Chapter 3 of "Fire Safety Consideration for Development in Forested Area", 1978, and any revisions thereto.*
 - (c) *Prior to issuance of any residential building permit for an approved non-farm dwelling under Section 17.137.050(A), evidence shall be provided that the County Assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or ORS 308A.724 or ORS 321.359 (1)(b), ORS 321.842(1)(A) and 321.716. A parcel that has been disqualified under this section shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.*
12. Due to the relative size and shape of the parcel, the presence of a pond on the parcel which limits areas where develop could occur, and the fact that an existing structure would be used as a dwelling, it would be difficult or unnecessary to develop the property and meet the special dwelling setbacks established in #11(a) above. Consequently, the setback adjustment provided in #11(a)(3) can be granted, and structures can be placed within the standard 20 foot property line setbacks allowed in the zone. The property is not located within 200 feet of timber and the fire hazard reduction is not applicable. It can be made a condition of approval that the property be disqualified from any special assessment prior to obtaining a building permit.
13. Chapter 17.136.100(C) requires that a declaratory statement acknowledging surrounding farm and forest uses be recorded for all newly approved dwellings. This can be made a condition of any approval.
14. Based on the above discussion, the applicant has adequately addressed all the applicable criteria for placing a non-farm dwelling on the property. Therefore, subject to meeting conditions of approval, the application for a non-farm dwelling is **APPROVED**.

Joe Fennimore
Planning Director

Date: September 24, 2019

If you have any questions regarding this decision contact Brandon Reich 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.