

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**  
**CONDITIONAL USE CASE NO.21-035**

**APPLICATION:** Application of the Susan Maginnis Living Trust for a conditional use to place a non-farm dwelling on a 10.5 acre property in an EFU (Exclusive Farm Use) zone located at 17950 Hazelnut Ridge Road NE, Silverton. (T6S, R1E, Section 28, Tax Lot 300).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to certain conditions. The Planning Director has also found that Tax Lot 401 is not a legal lot.

**EXPIRATION DATE:** This conditional use permit is valid only when exercised by **September 3, 2025**. 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. **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 **amended** site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
3. A special setback of 200 feet for the dwelling and 100 feet for accessory structures shall be required from the north, east and south property lines. A special setback of 60 feet from the west property line is approved.
4. The row of trees along the west property line shall be maintained to provide a buffer between the dwelling and the adjacent property in farm use. If any trees are removed they shall be replaced.
4. 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.
5. 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.
6. Prior to issuance of any building permits for any new dwelling, the applicant shall describe tax lots 300 and 401 as one property via perimeter description. **Property line adjustment deeds shall be recorded with the county clerk meeting requirements identified in ORS 92.190(4).** The deeds shall contain the names of the parties, the description of the adjusted lines, references to original recorded documents and signatures of all parties with proper acknowledgment. The deeds shall include a perimeter description of each resulting parcel. **This property**

**line adjustment is not complete until the title transfer instruments accomplishing the property adjustments is recorded by the applicants with the Marion County Clerk.**

**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 #6 under Findings and Conclusions below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. The applicants should contact the Jefferson 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.
8. 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 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 **September 3, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 4, 2021** 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 major purpose of this designation and the corresponding Exclusive Farm Use zone is to promote the continuation of commercial agricultural operations.
2. The subject parcel is located on the south side of Hazelnut Ridge Road NE, approximately 0.38 miles west of the intersection of Hazelnut Ridge Road and Heinz Road NE. The subject property is developed with seven farm related structures. The property was first described in its current configuration on October 17, 1961 via a warranty deed recorded as Volume 551, pages 839 and 840. The property is considered legal for the purposes of land use. Applicant states that tax lot 401 located to the west was created as part of an unfinished property line adjustment with tax lot 400 to the west. Tax lot 401 is not a legal property for the purposes of land use and must either be consolidated with tax lot 400 or tax lot 300.
3. Nearby land consists of small farm operations and rural home sites in an EFU zone.
4. 

Soil Name	% of Parcel	SCS Soil Class	High Value?
Nekia Silty Clay (2-7%)	24.4	3	Yes
Nekia Stony Silty Clay Loam	75.6	6	No
5. The applicant proposes to establish a non-farm dwelling on the property.
6. Marion County Building Inspection commented that a building permit is required for new construction or placement of a manufactured home.

Marion County Septic commented that a septic Site Evaluation is required for the dwelling.

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

### **ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits, an Access Permit may be required to inspect any required remedial work to the driveway approach.
- B. Credit for Transportation System Development Charges are able to be given for a period of up to one (1) year from date of last occupation and application for building permits. Beyond the one-year grace period, there may be an assessment.
- C. Utility work in the public right-of-way requires separate permitting from PW Engineering. It is noted that an Application is currently on-file for installation of Fiber Optic Cable.

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

7. The following regulations apply to non-farm dwellings approved pursuant to Section 17.137.060(A) and meeting provisions listed in 17.137.060 as follows:

The following criteria apply to all conditional uses in the SA zone under 17.137.060(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 on the south side of Hazelnut Ridge Road, which has developed properties with varying sized lots with dwellings. The dwelling would be located at minimum of 60 feet from the nearest property line (west) and 200 from all other property lines. One additional dwelling in this area would not add significantly to the relatively minor effects other residences in the area have had on farming. The application meets #7(a).

The subject parcel will have a well, septic, and electrical service on the property. The land is within the Silverton Fire District and served by the Marion County Sheriff. The proposal meets #7(b).

The property does not contain any identified groundwater, fish and wildlife habitat, air, or water quality resources; there is a man-made pond on the north section of the property, the location the applicant proposes will be approximately 200 feet from the edge of the pond. 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 17.137.060(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 soils report from NRCS, determined that 75.6% of the soils on the property are Class 6 soils. The proposal meets criteria listed in #9(a). As stated previously, the subject property is considered a legal parcel. The applicant notes that an incomplete property line adjustment has occurred, however the area that was adjusted is 100% class 6 soils. The original parcel is comprised of 75.3% class 6 soils. Based on these facts, the property line adjustment did not adjust the boundaries of the property in a way that would enable the property to qualify for a non-farm dwelling as the original property consists of over 50% class 4 or worse soils on its own. 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. Properties within the study area are predominately in farm use, including grass and pasture land, as well as wood lots. 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. Based on the applicants report, there are 93 parcels in the study area, and of these 93 lots, 56 are developed with dwellings. This leaves 34 lots for further study. Of the remaining lots, 26 are located on high value soils, so they are not available for consideration, leaving eight parcels. Of the eight parcels, three are located in the FT zone and may be eligible for a dwelling allowed in the forest zone. The applicant states that the remaining three parcels are of low quality soils and isn't a significant enough number to destabilize the overall character of the study area. The proposed dwelling would be consistent with the development pattern that has occurred on surrounding lands in the past.
- D. As stated above, the applicant identified three 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.

The site specific soils survey conducted on the property determined 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. The amended site plan submitted with the application shows that a dwelling can be located on the property to meet the special setbacks from the north, east, and south property lines. The applicant states that a setback of 60 feet from the west property line is sufficient to buffer the adjoining properties in farm use as there is a row of trees as well as a driveway between the dwelling and the west property line. As a condition of approval, the applicant will be required to maintain the row of trees along the west property line to provide a buffer to the farm parcel.

The applicant notes that this proposed location allows them to continue to farm 5 acres of blueberries and that this location is in a relatively flat location on the sloped property. This location will also allow the applicant to establish a fire protection zone around the dwelling. Based on these facts, it is found that the lesser setback in conjunction with the buffer provided by the trees will prevent serious interference with adjacent farming and foresting practices.

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**, subject to conditions.

Joe Fennimore  
Planning Director

Date: August 19, 2021

If you have any questions regarding this decision contact Alyssa Schrems 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.