

County Commissioners

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MARION COUNTY PUBLIC WORKS

MEMORANDUM

TO: Marion County Planning Commission
FROM: Marion County Planning Division/George Brandt
DATE: April 15, 2026
SUBJECT: Conditional Use 26-005

FACTS:

1. Application of the Alma Ann Minten Revocable Living Trust to establish a non-farm dwelling on a 3.94-acre parcel in the SA (Special Agriculture) zone located in the 6,000 block of State Street SE, Salem (T7S; R2W; Section 33A; Tax lot 3200 & 3300).
2. The subject lot is located south of State Street SE approximately one mile east of the intersection of State St SE and Cordon Road NE in the 6000 block of State Street SE. The parcel consists of two tax lots that comprise one 7.92-acre parcel of land. The subject lot is currently vacant and is relatively flat with no known geohazards or FEMA floodplains. The proposed building site is located in the southern portion of the parcel on current tax lot 3300 (072W33A003300). The tax lot has access from State Street SE from the north. The northern boundary is State Street SE and to the west is the man-made Willa Lake, and further west is the Lakeshore Terraces subdivision along 59th Avenue SE. The land adjacent to the east is an agriculture parcel and to the immediate south is a small acreage farm with a dwelling.
3. The parcel is first described in a 1979 deed (Reel 197, Page 501; dated December 31, 1979). The parcel has remained in its current configuration until the present day. In August of 1996 the Marion County Planning Department approved an Administrative Review for a single "lot of record" dwelling on the 7.92 acres for Alma Minten. AR96-088 found that this was one parcel of land comprised of two tax accounts. This is supported by the most recent 2007 deed (Reel 2779, Page 237; January 23, 2007) that uses the same perimeter description. This dwelling was never built. Then in 2018, the same parcel was part of another administrative review land use case (AR-023) to establish a Lot of Record dwelling. This case was eventually denied by the Planning Department.
4. Staff was not able to locate any deeds or survey information from before December 31, 1979; evidence does exist that the western boundary of the subject parcel may have been created in 1967 by the creation of the Lakeshore Terraces subdivision. Per MCC 17.114.040(A), any lot created by deed, plat or subdivision prior to September 1, 1977, is considered legally created for

the purposes of applying the land use code.

Based on this code section, the Planning Director has the discretion to consider a lot legally created if it was done so by deed. Since Staff could not find any legal records of property line adjustments, partitions, subdivisions, or surveys indicating a method for which the subject lots were divided, it is applicable to apply this standard in this instance. The history of land and the land use cases for tax lots 3200 and 3300 (Tax Accounts 523741, 524537, Parcels 072W33A003200, 3300) and MCC 14.114 (A) taken together, is therefore sufficient to consider this a single parcel of land that is legal for land use purposes.

5. Properties directly surrounding the subject tax lots in all directions are similarly zoned Special Agriculture (SA). There is an area immediately north and across State Street SE that is zoned Industrial. Immediately west of the subject parcel is Willa Lake - a man-made lake. Across the lake is a subdivision on SA zoned land that contains single family detached dwellings. South of the subdivision is a collection of small acreage farms along with several larger acreage agricultural parcels – 10 to 20 acres. North of State Street SE are several 20 acre plus agriculture parcels including one that has a large solar panel array. To the northeast are other large acreage parcels zoned Exclusive Farm Use (EFU). North of these uses is a large area of Acreage Residential (AR) where the predominant use is primarily dwellings.
6. To the west along State Street SE are additional areas zoned Industrial. To the northwest of these is a large Public zoned area that contains a PGE electrical sub-station and a soccer club. South of State Street, moving westward, there are a mix of small acreage agriculture parcels that are in a mixed use of agriculture uses and small acreage homesites all similarly zoned SA until the Salem urban growth boundary along Cordon Rd. Further east and to the east of 62nd Avenue SE the zoning changes to EFU where the uses are a mixture of small acreage residential properties and larger acreage agricultural fields. Further to the southeast there is another enclave of AR parcels.
7. Marion County Soil Survey reports approximately 100% of the soils on the subject property as high value. However, the applicant has submitted a soil survey, approved by DLCD, stating that the soils are actually majority low value soils on the subject property. The Marion County analysis lists a breakdown of the soils as follows:

<u>Tax Lot</u>	<u>Soil Name</u>	<u>Soil Type</u>	<u>Soil Class</u>	<u>High Value</u>	<u>Soil Percent</u>	<u>Soil Acres</u>
3200	Amity silt loam	Am	2	Yes	49.40%	1.1
3200	Dayton silt loam	Da	4	Yes	1.8%	0
3200	Woodburn silt loam, 0 to 3 percent slopes	WuA	2	Yes	48.3%	1.1
3200	Woodburn silt loam, 3 to 12 percent slopes	WuC	2	Yes	0.6%	0
3300	Amity silt loam	Am	2	Yes	41.9%	1.4
3300	Dayton silt loam	Da	4	Yes	15.0%	0.5

3300	Woodburn silt loam, 0 to 3 percent slopes	WuA	2	Yes	43.1%	1.4
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8. The applicants provided a Soils Assessment Report by Andy V. Gallagher of Red Hills Soils, a soils specialist acknowledged by DLCD; the report concluded that the tax lot 072W33A003300 consists of predominantly class IV soils that are classified as non-high value. The analysis reached the conclusion that the tax lot is comprised of 51% non-high value farm soils. The analysis by Mr. Gallagher was reviewed by the Department of Land Conservation and Development (DLCD) and determined to be adequate; and Marion County Staff determined that the report was sufficient to support the conclusion that the proposed homesite met the criteria for non-high value farms soils

9. Agency Comments:

Marion County Land Development Engineering & Permits (LDEP) requested the following be included in the staff decision:

ENGINEERING REQUIREMENTS

- A. An Access Permit will be required for a driveway connection to State Street fronting adjacent TL 3200 under similar ownership. Access shall be established as shared. A 1973 survey on-file with Marion County indexed as MCSR #23322 depicts what appears as a 25-foot wide access easement across TL 3200 serving the subject parcel.
- B. Transportation System Development Charges (TSDCs) and Parks fee will be assessed at the time of application for building permits.
- C. Utility service extensions originating from within the State Street public right-of-way require utility permits from PW Engineering.

Marion County Building Inspection commented: Permit(s) are required to be obtained prior to the development of structure(s) and/or utilities installation on private property.

Marion County Septic Division commented:

Condition of Approval: A site evaluation is required to establish viability/minimum requirements for an Onsite Septic System.

Marion County Number 1 Fire Department provided information about site development including fire department access and water supply that will be required per the Oregon Fire Code at the time of development.

All other commenting agencies either failed to comment or stated no objection

STAFF FINDINGS AND ANALYSIS:

10. The applicant is proposing to establish a non-farm dwelling on a 7.92-acre parcel of land in a Special Agriculture (SA) zone and for an adjustment of the special setbacks.

1. Per *MCC 17.137.050(A)* a single-family dwelling or mobile home not in conjunction with farm uses, subject to the criteria and standards in *MCC 17.137.060(A)* and *(B)*, *17.137.070*, and *17.137.100*.

Per MCC 17.137.060(A) and (B) conditional use review criteria, the uses identified in MCC 17.137.050 shall satisfy the criteria in the applicable subsections below using OAR 660-033-0130.

- 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. *Will Not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm and forest use.*
- c. *For purposes of subsection (a) and (b), a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:*
 - i. *Identification and description of the surrounding lands, the farm and forest operations on those lands, and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;*
 - ii. *An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices. This assessment applies practice by practice and farm by farm; and*
 - iii. *An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.*
 - iv. *For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.*
 - v. *For purposes of this section, potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under this section.*
 - vi. *In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in this section.*

The subject parcel consists of 7.92-acres of land that has been demonstrated to be comprised of at least 51 percent non-high value farm soils. The existing uses adjacent to the subject parcel are dominated by housing and non-farm uses such as industrial uses and public uses. There is a 35-unit

subdivision and a man-made lake to the west. To the north are industrial zoned lands accommodating a sanitary service company with truck storage and shops, along with a plumbing company and a 19.23-acre business park. Behind the industrial park is a photovoltaic solar farm on a 13.17-acre SA zoned parcel as well as two EFU zoned parcels of 18.56 and 23.81 acres of sod grass and nursery stock. To the east of this is a 45.57-acre parcel that is divided by 63rd Avenue NE and is planted in nursery stock.

To the south is a 6.4-acre parcel zoned SA with a non-farm dwelling along with several accessory structures where the occupants process wood products in small batches. To the southwest of this parcel is a 11.9-acre nursery parcel which is accessed from Aetna ST SE. Southeast of the subject parcel are several parcels with small hobby farms with non-farm dwellings. These parcels are accessed via 62nd Avenue SE. Along 62nd Ave NE there is a 33.82-acre parcel that is planted with hazelnut trees and a 9.71-acre that is used for grazing livestock.

In the applicant's application their representative used a 1,500 foot buffer of the subject parcel for the analysis of the impact to farm and forest practices. Outside this 1,500 foot radius there are many areas already developed and zoned as non-resource lands. The majority of the area zoned as EFU is to the northeast, generally north of State Street where the land use pattern is large acreage agriculture. The area to the southeast is mainly SA and EFU with medium to large agriculture parcels in a mixture of uses including some smaller non-farm dwellings. Further out are several areas of acreage residential zoning. To the west of the subject parcel and outside the 1,500 analysis area the uses are agricultural, public and eventually run into the urban growth boundary of the City of Salem. The predominate land use is nursery, row crops and greenhouses with a few small acreage homesites. There is a 28.62 acre parcel of SA zoned land at the corner of State Street and Cordon RD SE that contains a local radio station transmission array. North of State Street near the urban growth boundary is an industrial area of about 19 acres. Adjacent to this is a 37.58-acre area zoned Public with a soccer club and facilities. To the east of this area is another public zoned area that contains a Portland General Electric facility on approximately 40 acres. To the south of the subject parcel and outside the 1,500 foot radius area the land use pattern is small acreage SA parcels with a mix of homesites and agricultural fields. This pattern continues until the southeastern City of Salem urban growth boundary. This area also contains additional AR parcels with homesites.

The principal active farm parcel is immediately adjacent to the subject parcel to the east. This parcel has its own distinct access, and the subject parcel will not depend on a shared access point. The applicants state that this parcel sees mainly 3 or 4 activity periods during the year; during planting, then during spraying, which is done by hand, then again at harvest, and mowing once harvest is completed.

One additional non-farm dwelling with separate access is not expected to significantly change the farm practices or increase the cost of acceptable farm practices on the neighboring parcel. All other farm operations within 1500 feet of subject property would have no impact due to their access locations and having small hobby farms between them and subject property. Outside this 1,500 foot area of analysis provided by the applicants, the addition of this non-farm dwelling is not expected to affect the surrounding farm and forest practices as the distances between are significant to isolate the impacts. This area also is along a major arterial and there are developed street grids around the area that act as de-facto barriers and keep uses separated. The nearby urban growth boundary introduces many non-farming uses, and the pre-existing subdivisions and Acreage Residential areas have introduced many non-agriculture uses to the area. Many of the residential uses in the SA lands that surround the subject parcel are generally small homesites on parcels as small as ½ acre (or smaller) and many more that are less than 5 acres. The criteria are met.

2. Adequate fire protection and other rural services are or will be available when the use is established.

The subject property is within the service areas of Marion County Fire District Number 1 and the Marion County Sheriff's Office. Marion County Land Development Engineering and Permits (LDEP) indicated that the applicants will need an access permit for driveway access off State Street. This would ensure compliance with site distance, design, and applicable safety standards. Water supply and wastewater disposal systems will be located on-site. A septic evaluation will be a condition of approval. The proposed locations for the driveway, septic system, primary and backup drainfield, and a domestic well are indicated on the applicant's site plan. Electrical service should be provided by local electrical utility and the service will come off State Street with all required permits. Taken together, these actions satisfy the criterion.

3. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

No significant adverse impact to the watershed is anticipated. Willa Lake is a man made private body of water that was constructed in 1974, with all associated water rights held by the applicants. These rights pertain solely to storage with no provision for the removal of water from the lake. Willa Lake is fed by an intermittent creek at its southern end. The Marion County Wetland Inventory indicates a possible wetland on the east bank of lake from high water mark towards lake where trees are located. There should only be minimal impact since all development would be about 70 feet from the edge of the lake and there would be a 30 foot required setback from nonaquatic vegetation, or the ordinary high water line. The criterion is met.

4. Any noise associated with the use will not have a significant adverse impact on nearby land uses.

The applicants state that one additional single family dwelling in an agricultural zone is not expected to generate any significant noise that might impact agricultural practices in the area. They also state that they will comply with Marion County noise ordinance. The criterion is met.

5. 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.

The subject parcel is not located in surface water critical area and the addition of a domestic well should not cause water issues for adjacent properties. Willa Lake is not a natural lake so there should be minimal impact to fish and aquatic wildlife habitat, and the dwelling will be kept away from the shoreline. The lake is not known to be in any fish and wildlife habitat area. Since the parcel is generally flat, there should be no issues with destabilizing the land around the dwelling site. There are no known mineral or aggregate sites as defined by the Marion County Comprehensive Plan on the subject property. The criterion is met.

11. Non-farm dwellings are subject to MCC Section 17.137.050(A). One of the requirements is that the proposed dwelling meet the provisions listed in 17.137.060(B), which reads as follows:

B. Non-Farm Dwellings. The following additional criteria apply to non-farm dwelling requests:

1. 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 MCC 17.137.120(B).

The applicants provided a Soils Assessment prepared by Andy Gallagher of Red Hills Soils and a Soils Assessment Completeness Review from the Department of Land Conservation and Development (DLCD). These reports show that the soils on the subject parcel are 51% non-high value soils Class IV and 49% of class II and III soils. The criterion is met.

2. 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 non-farm dwelling.

The subject parcel does not currently have a dwelling and is undeveloped. Staff has determined that the parcel was legally created and has existed in its current configuration since at least 1979. The parcel has no history of partitions or property line adjustments and has remained in the present configuration since before November 4, 1993. The criteria are met.

3. 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:

(A) Identify a study area for the cumulative impact analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 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;

(B) 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 MCC 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;

(C) 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. 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, or lease farmland, or acquire waste 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.

The applicants were provided a map and data required for a 2,000 acre study. The results were provided as part of the application materials. Because the study area overlaps with the urban growth boundary of the City of Salem and due to the proximity to the city, there are many areas that were not required to be studied. Significant portions designated as AR, P, and P-LU have been excluded from the analysis as stated in *MCC 17.137.060(A)(1)*. These areas are Salem's eastern neighborhoods along Condon Road and other areas that are zoned for residential uses, industrial uses, and public zoned areas. These general patterns were discussed in section 8.1 above. The applicants representative study area were the contiguous areas of EFU and SA zoned lands. EFU zoned properties extend east along State Street, while SA zoned lands stretch south to Macleay Rd SE, north to Fruitland Rd, and west to Cordon Rd SE.

Within the study area, there are 320 parcels zoned EFU or SA. This includes 126 parcels zoned EFU and 194 parcels zoned SA. The sizes of these parcels range between 0.2 acres and 150.27 acres. The analysis concludes that 73% of the parcels in the study area or 249 parcels are 10 acres or less. While 34 of the parcels in the study area are between 10 and 20 acres. Another 33 parcels are between 20 and 40 acres. Only 4 parcels are 40 acres or more, with only 2 of these parcels being larger than the 80 acres minimum parcel size for newly created parcels in SA or EFU zones.

In the study area there are 193 parcels with dwellings dated pre-January 1, 1993. Fifty-three of these parcels have dwellings constructed after January 1, 1993; these include newly established dwellings, replacement dwellings, hardship dwellings along with a non-farm dwelling. This leaves 75 parcels with no dwellings and out of that, there are 66 parcels that are not developable. The applicant's representative categorized twenty-four of those 75 as "Rural Restrictive." These 24 tax lots are mainly SA or EFU zoned land that are under 80 acres and have no dwellings or buildings. Others have accessory structures and some have evidence of "hobby" farm or non-farm uses on parcels attached to tax accounts that have dwellings or other structures. Others are tax lots that may be related to adjacent agricultural uses. Some appear to be tax lots that serve as access lots to adjacent tax lots from private or public roads. Several are tax lots inside of condominium complexes or are parts of rural subdivisions that are still undeveloped or serve as access tax lots to adjacent dwelling tax lots. A further 29 are rated high value farm soils with irrigation, another 13 parcels are contiguous with identical ownerships. That leaves 9 parcels, 4 of which are Measure 37/49 approved which might be developable with dwellings in the future. That leaves 5 parcels including the applicants' tax lots. That leaves at least three remaining parcels within the subject area that could establish a dwelling – depending on the ability to meet Marion County code requirements.

The applicable criteria require the applicant to identify the broad types of farms used within the study area. However, due to the number of smaller hobby farms within the study area, it becomes difficult to determine all the uses within the study area. The larger commercial farm operations are generally to the east and south of the subject property. To the south where a large parcel is located, the use is grass seed and grains, with some livestock such as cattle, and nursery operations. Further to the east within the study area is where most of the irrigated crops are grown. In these areas there is grass sod, nursery crops, hazelnut orchards, and a few cattle farms. In general, larger tracts simply do not exist within the study area, most of the smaller hobby farms are developed with homesites and have been for many years. While the AR zoned parcels inside the study area to the north have influence on the SA and EFU zoned lands within the study area, it cannot be ignored, and in many ways are representative of the land use pattern that has developed over the last 30 years.

In addition to above, of the total parcels in the study area, 246 are developed with at least one dwelling and some have 2 dwellings, and one property has 3 dwellings. That is approximately 77% of the parcels in the study area containing at least one dwelling. The applicants' representative's review of Marion County records indicates that most of these parcels were developed with dwellings prior to January 1, 1993. Resulting in over 60% of the parcels in the study area having had some type of residential structure on the properties for at least the past 30 years. There has been additional residential development since January 1, 1993, through to the present day, but most of the residential uses have been established, and have been the predominate use in the study area for decades. The applicants' proposed non-farm dwelling would be consistent with, and continue the development patten that has been established on the majority of parcels in the study area, even prior to 1993. It is not expected that the addition of one additional non-farm dwelling in the area will significantly or materially alter the land use stability of the area. 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 and satisfies the above criteria: A,B,C.

12. In addition, non-farm dwellings shall be subject to the following code as provided for in 17.137.070, Non-farm dwelling requirements:

(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 subsections (A)(1) and (2) of this section may be reduced if it is determined, concurrently with any land use application or as provided in Chapter 17.116 MCC, that a lesser setback will meet the following review criteria for alternative sites:*

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 forestlands used to site access roads, service corridors, the dwelling and structures is minimized.

d. The risks associated with wildfire are minimized.

The subject parcel is approximately 1,100 feet from north to south and 310 feet at the widest position at the far south. The applicants are proposing to reduce the setbacks from 200 feet to 120 feet for the eastern property line, and reducing the southern property line from 200 feet to 100 feet. Considering the dimensions of the property and the presence of Willa Lake and the required 30 foot setback from the lake, 200 foot setbacks would not allow for a suitable building site, nor the locating of septic systems or accessory structures.

Staff has determined that a reduced special setback of 120-feet from the eastern property line, and 100-feet from the southern property lines for the proposed dwelling and any future accessory structures would maintain the intent of the Special Setback Code and meet the criteria in subsection (A)(3)(a-d). The special setbacks do not apply to the western property line adjacent to Willa Lake and the non-farm dwellings in the existing subdivision on SA zoned lands, nor the northern boundary due also to non-farm uses in the SA zone. The criteria are met.

4. The special setback in subsection (A)(1) 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)(1) of this section prohibit a claimant's application for homesites under ORS 195.300 through 195.336.

This land use case is not being applied in a manner to cause conflict with section (4) above. The criterion is met.

(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.

The subject parcel is not in a forest zone nor are there any known forestry operations on the adjacent parcels. The criterion does not apply.

(C) Prior to issuance of any residential building permit for an approved non-farm dwelling under MCC 17.136.050(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 308A.724 or 321.359(1)(b), 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.

The criterion can be met with a condition of approval: the applicant shall submit evidence to Marion County Planning that the property has been disqualified from farm/forest deferral by the Marion County Tax Assessor's Office prior to the Planning Department's approval of a building permit. The criterion is met.

13. Finally, non-farm dwellings must also meet the standards in MCC 17.137.100, which are listed below:

(A) Maximum Height.

- 1. Dwellings: 35 feet.*
- 2. Farm-related structures on farm parcels: none.*
- 3. Nonresidential and non-farm structures: 35 feet unless they are in conjunction with conditional uses allowed in MCC 17.137.050, and a greater height is requested and approved as part of the conditional use permit.*

Compliance with this shall be verified at the time of building permits. The criteria are met.

(B) Minimum Setbacks. Except as required in MCC 17.137.070(A), the following setback requirements shall be implemented for all new structures other than farm-exempt buildings, signs and fences:

- 1. Rear Yard. A minimum of 20 feet.*
- 2. Side Yard. A minimum of 20 feet, except for lots or parcels of one-half acre or smaller created prior to January 1, 1994, in which case the side yard setback shall be five feet.*
- 3. Front Yard. A minimum of 20 feet. When by ordinance a greater setback or a front yard of greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply (See Chapter 17.112 MCC).*

The dwelling and any future accessory structures shall be subject to *MCC 17.137.070(A)*, and as adjusted in the conditions of approval. Therefore, the criteria are met.

- (C) *Declaratory Statement. For all dwellings, and other uses deemed appropriate, the property owner shall be required to sign and allow the entering of the following declaratory statement into the chain of title of the lot(s) or parcel(s):*

“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 that 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 and 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.

CONCLUSION:

14. In conclusion, Staff finds that with conditions of approval, the proposal can meet the criteria required for placing a non-farm dwelling on the parcel.
15. Marion County Planning Staff recommends **APPROVAL** of the proposal. Should the Planning Commission grant the applicant’s request for a conditional use home occupation the Planning Division recommends the following conditions be applied:
 - A. The applicant shall obtain approval for all permits, including subsurface sewage, as required by the Marion County Building Inspection Division.
 - B. A site evaluation is required to establish viability/minimum requirements for an Onsite Septic System.
 - C. The proposed dwelling (and any future accessory structures shall maintain) a 120-foot minimum setback from the eastern property line and a 100-foot minimum setback from the southern property lines.
 - D. 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*.
 - E. Prior to issuance of a building permit for the new dwelling, the applicants shall sign and submit a Farm/Forest 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.

- F. The dwelling shall be addressed **6020 State Street SE**, effective when building permits are applied for. This address is subject to change if the driveway location changes.

Advisories:

- A. The applicants should contact the Marion County #1 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.
- B. The applicants should contact the Marion County Assessor's Office (503-588-5144) for additional information regarding the farm/forest disqualification process.
- C. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories.