

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of) Case No. 25-049
)
Brian and Stephanie Traeger) **ADMINISTRATIVE REVIEW**

ORDER

I. Nature of the Application

This matter came before the Marion County Hearings Officer on the Application of Brian and Stephanie Traeger for an administrative review to place a lot-of-record dwelling on a 5-acre parcel in an EFU (Exclusive Farm Use) zone located in the 9900 block of 114th Ave., Mt. Angel (T6S; R1W; Section 8DA; Tax lot 1100).

II. Relevant Criteria

The standards and criteria relevant to this Application are found in the Marion County Code (MCC), Title 17, especially MCC 17.136 (Exclusive Use Zone) and MCC 17.136.030(E) (Lot of Record Dwelling).

III. Hearing

A public hearing was held on this matter on February 19, 2026. At the hearing, the Planning Division file was made a part of the record. The following persons appeared and provided testimony:

- | | | |
|----|---------------|---------------------------------|
| 1. | John Speckman | Marion County Planning Division |
| 2. | Norm Bickell | Representative for Applicants |

No objections were raised to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing. No documents were entered into the record as exhibits.

IV. Executive Summary

Applicants request an administrative review to place a lot-of-record dwelling on a 5-acre parcel in an EFU (Exclusive Farm Use) zone located in Mt Angel. The property is buffered by from farm uses by roads and a river. The unique qualities of the parcel, including size, topography, utility easements, floodplains, right of ways, access to the parcel, and rural residential development create an undue hardship for this parcel to be managed for farm use and render farm use impracticable on the parcel.

The cumulative impact analysis indicates that this application is for what is likely the last dwelling that could possibly be approved outside of a farm-related dwelling in this 2,000-acre area, and therefore, could not materially alter the stability of the overall land use pattern.

Applicants have met the burden of satisfying the applicable standards and criteria to place a lot-of-record dwelling on a 5-acre parcel in an EFU zone located in the 9900 block of 114th Ave, Mt Angel, and the hearings officer GRANTS the application, subject to certain conditions of approval necessary for the public health, safety and welfare.

V. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. This matter is the Application of Brian and Stephanie Traeger for an administrative review to place a lot-of-record dwelling on a 5-acre parcel in an EFU (Exclusive Farm Use) zone located in the 9900 block of 114th Ave, Mt Angel (T6S; R1W; Section 8DA; Tax lot 1100.) Applicants is proposing to place a lot of record dwelling on the subject parcel.
2. The subject property is located at the corner of 114th Ave NE and Saratoga Dr NW, where Saratoga becomes Hook Rd NE to the Southeast. The property is bordered northwest by the Pudding River, and the 100-year floodplain of the river extends inland up to 75 feet from the water's edge. The Pudding River and the two roads shape this parcel into a triangular shape of approximately 5 acres. The parcel is currently vacant. The property was the subject of measure 37 claim M06-0325 that was reviewed under Measure 49 as E133717, and was ultimately denied. The parcel contains a large square pond and a utility easement for powerlines along its eastern side.
3. Adjacent properties in all directions are zoned EFU. Large scale, commercial agricultural operations with associated farm dwellings are located to the north, west, and south of the subject property. A 9-lot subdivision on the western edge of the Evergreen Golf Course is located to the east of the subject property. The subdivision and golf course predate land use planning. The City of Mt. Angel is approximately three-quarters of a mile east of the subject property.
4. Marion County Soil Survey shows that the soils on the subject parcel are 100% high value soils, but approximately 13% of the surface area is water which makes the total percent of the parcel with high value soils approximately 87%. The breakdown is as follows:

37.4% Woodburn silt loam, 0 to 3 percent slopes	(Class 2)
34.1% Newberg fine sandy loam	(Class 2)
13.5% Cloquato silt loam	(Class 2)
13.1% Water	
1.9% McBee silty clay loam	(Class 2)
5. Various agencies were contacted and given an opportunity to comment. The following comments were received:

Marion County Land Development, Engineering, and Permitting (LDEP) requested the following be included:

ENGINEERING REQUIREMENTS

- A. An Access Permit will be required. Selection of an acceptable driveway access location will need to be field-verified by MCPW Engineering that optimizes available intersection sight distance about the adjacent roadway horizontal curvature while also taking into account spacing from the intersection. It is recommended to apply for an Access Permit prior to application for building permits as this may have bearing on homesite layout.
- B. Transportation System Development Charges (TSDCs) and Parks fee will be assessed upon application for building permits.
- C. Utility service extensions from the public right-of-way require permits from PW Engineering.

Marion County Building Inspection commented: “No Building Inspection concerns. 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: “Conditions of approval: A Site Evaluation is required.”

All other contacted agencies either failed to comment or stated no comment.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicants must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely Applicants have not met their burden, and the application must be denied. If the evidence for every criterion is in Applicants’ favor, then the burden of proof is met.

2. Marion County Code (MCC)17.136.030(E) allows a lot of record dwelling subject to meeting specific standards and criteria. The lot of record dwelling criteria for the Exclusive Farm Use zone include:

- (1) *The lot or parcel on which the dwelling will be sited was lawfully created and acquired and owned continuously by the present owner:*
 - (a) *Since prior to January 1, 1985; or*
 - (b) *By devise or intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.*
 - (c) *“Owner”, as the term is used in this section only, includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.*

The property was purchased by Joseph J. and Gladys Traeger as evidenced by a 1952 deed recorded in Volume 440 on Page 321. The parcel has remained in the Traeger family continuously since 1952. The current owners are Brian and Stephanie Traeger. Brian Traeger is the grandson of Joseph Traeger. The parcel meets the standard set forth in MCC 17.136.030(E)(1)(b) and (c). The criterion is met

- (2) *The tract on which the dwelling will be sited does not include a dwelling.*

The subject parcel does not contain a dwelling. The criterion is met.

- (3) *The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, and no dwelling exists on another lot or parcel that was part of that tract.*

The subject parcel was not part of a tract on November 4, 1993. The criterion is met.

- (4) *When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.*

This parcel is not a part of a tract. The criterion does not apply.

- (5) *The request is not prohibited by, and complies with, the Comprehensive Plan and other provisions of this ordinance, including but not limited to floodplain, greenway, and big game habitat area restrictions.*

The northwestern boundary of the subject parcel is the Pudding River, and there is mapped 100-year floodplain along the southern bank of the pudding on this parcel. The Applicants do not propose any development within the floodplain, ample space for siting the proposed lot-of-record dwelling exists outside of the floodplain. There are no mapped wetlands, greenway, or big game habitat area on the parcel. The subject parcel and proposed dwelling will comply with the provisions of the EFU zone, which implement the standards of the Primary Agriculture designation in the Marion County Comprehensive Plan. The criterion is met.

(6) *The proposed dwelling will not:*

(1) *Exceed the facilities and service capabilities of the area.*

(2) *Create conditions or circumstances contrary to the purpose of the special agriculture zone.*

The proposed dwelling would rely upon a well and septic to provide water and sewer services. This will require permitting through Marion County Septic and the Oregon Department of Water Resources. The parcel is served by the Mt. Angel Fire Department and the Marion County Sheriff's Office. The parcel is bounded on two sides by public right of ways and has sufficient space from which to access the property. The proposed dwelling will not exceed the facilities and service capabilities of the area.

The purpose of the Exclusive Farm Use zone is for preservation of farmland areas of high value soils where the existing land use pattern is primarily devoted to agricultural use. This is an accurate description of the greater area around the subject parcel, but not necessarily the parcel itself, nor the residential neighborhood and golf course located directly east across 114th. The property is buffered by roads and a river from any farm uses.

Lot of record dwellings are a permitting use in the EFU zone, subject to standards being addressed in these criteria. If all criteria of MCC 17.136.030(D) are met, the proposed lot of record dwelling would not create conditions or circumstances contrary to the purpose of EFU zone. The criterion is met.

(7) *A lot-of-record dwelling approval may be transferred by a person who has qualified under this section to any other person after the effective date of the land-use decision.*

Applicants' representative has acknowledged this criterion. The criterion is met.

(8) *The County Assessor shall be notified that the county intends to allow the dwelling.*

Applicants' representative has acknowledged this criterion, and it shall be a condition of approval. The criterion is met.

- (9) *The lot or parcel on which the dwelling will be sited is not high-value farmland as defined in Section 137.130(D); or*

The subject parcel is located on high-value farmland. This criterion does not apply.

- (10) *The lot or parcel on which the dwelling will be sited is high-value farmland as defined in MCC 17.137.130(D)(2) or (3) and:*

The lot consists primarily of a mix of Class 2 soils (Woodburn silt loam, Newberg fine sandy loam, and Cloquato silt loam) and is not listed in MCC 17.137.130(D)(2) or (3). This criterion does not apply.

- (11) *The lot or parcel on which the dwelling is to be sited is high-value farmland as defined in MCC 17.137.130(D)(1) and:*

a. *The hearings officer determines that:*

- i. *The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot or parcel cannot be practicably managed for farm use. Examples of extraordinary circumstances inherent in the land or its physical setting include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use; and*

The subject parcel has relatively steep topography sloping north towards the river. The woods closest to the river are within the mapped 100-year floodplain. A large easement for power transmission, and a square pond almost a quarter-acre further restrict the use of the land for commercial agricultural purposes. These qualities are some of those listed in this criterion as the extraordinary circumstances inherent in the land that prevent that land from being practicably managed for farm use, either by itself or together with adjacent or nearby farms.

The subject parcel is isolated from other properties in farm use by the Pudding River, Saratoga Drive NE, and 114th Avenue NE. The southeastern corner of the property is the relatively busy intersection of 114th Avenue NE and Saratoga Drive NE. The topography under 114th Avenue NE obscures vision of the intersection at a distance when driving south, even though the road is straight along the eastern edge of the subject parcel.

Saratoga Drive on the other hand is curving to the south while driving east upon it over the bridge across the Pudding River and towards the intersection with 114th. This section of Saratoga Drive makes up the center portion of a long arc as Saratoga Drive becomes Hook Road NE, southeast of the intersection. Both Saratoga Drive and 114th Avenue are classified as “Minor Collector” roads and are relatively busy compared to a local road.

Across 114th Avenue NE are nine clustered parcels each with dwellings adjacent to the Evergreen Golf Course to the east of these dwellings. This rural neighborhood is unusually dense for the area and the zone, creating greater traffic than is typical for this zone which is primarily devoted to agricultural uses. The type of frequent access that would be required to farm the subject parcel in conjunction with some other separate lands would be hindered by these roads that border the parcel due to the existing traffic pattern, topography, and shape.

The unique combination of issues regarding topography, utility easements, floodplain, significant right of ways, access to the parcel itself by farm equipment, and rural residential development in this area creates an undue hardship for this parcel to be managed for farm use. The unique combination of factors inherent in the location of the parcel creates a physical barrier rendering farm use impracticable. The criterion is met.

- ii. *The use will not force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm or forest use; and*

The primary way this proposal could affect neighboring farms is by increasing traffic. The traffic increase, however, will be that of a single-family dwelling, in an area that already has a relatively dense residential development, which is along a Minor Collector Road that is more than sufficient to handle the additional trips per day made by a family living in the proposed dwelling.

The existing farm operations in the area are buffered from the subject parcel by the Pudding River and Saratoga Rd. The access to, and location of, a potential homesite on the subject parcel would be in the southeastern quadrant, directly across the street from the relatively dense development pattern adjacent to the golf course. Beyond the road and river buffer, the site plan shows that the dwelling will be more than 200 feet from any neighboring farm operation, as required for non-farm dwellings. This setback is greater than the distance between several neighboring non-farm dwellings and adjacent farmland. The existence of one more house along 114th Avenue, as proposed by this application, poses no risk of significantly changing or increasing the cost of farm or forest practices on the surrounding EFU zoned lands. The criterion is met.

- iii. *The dwelling will not materially alter the stability of the overall land use pattern in the area. To address this standard, the following information shall be provided:*
- (A) *Identify a study area for the cumulative impacts 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 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, and 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 nonirrigated 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/lot-of-record dwellings that could be approved under subsection (D) of this section and MCC 17.137.050(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/lot-of-record 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.*

Applicants submitted a cumulative impact analysis with a 2000-acre study area map that was initially provided by Marion County Planning. The purpose of the cumulative impact analysis is to determine whether the proposed dwelling would force a significant change in, or significantly increase the cost of, farm or forest practices on surrounding lands devoted to farm or forest use and materially alter the stability of the overall land use pattern in the area. The first portion of this is addressed in the previous criterion (MCC 17.136.030(E)(11)(a)(ii)) above.

Applicants' representative has defined, through the cumulative impacts analysis, what the broad types of farm uses are, the number, location, and type of existing dwellings, the dwelling development trends since 1993, and the potential future developments of lot-of-record and/or non-farm dwellings. The range of the study area is south and west of the Urban Growth Boundary (UGB) for the City of Mt. Angel. It encompasses an area entirely within the EFU zone.

Applicants produced the map with annotations of the locations of class IV – VI soils, as well as an annotated spreadsheet of parcels in the study area. Applicants' representative identified 74 parcels in the study area, and screened them for soil quality, dwellings present, contiguity to adjacent owned land containing a dwelling, and removed parcels inadvertently included in the study area. Many of these parcels in the study area are primarily devoted to agricultural use, with associated farm dwellings. A total of 46 of these parcels have dwellings. The primary crops produced on the large farm operations in the area are hazelnuts and grass seed.

Of the initially inventoried 28 vacant parcels, there were 4 in public ownership and 4 outside the actual study area, which were therefore removed from consideration. Of the 20 remaining, 7 were in contiguous ownership to a parcel with a dwelling which renders them ineligible for a lot-of-record dwelling. All the 13 remaining individual vacant parcels consist of high value soils, which makes them ineligible for a non-farm dwelling. Only three of these 13 parcels have been under the same ownership since prior to January 1, 1985, according to tax assessor data. Two of these three parcels are contiguous and could not both be approved for lot-of-record dwellings. Furthermore, these two parcels are in use for hazelnut orchards indicating that farm use is practicable upon them and that they would not be able to meet the criteria required for a lot-of-record dwelling on high value soils.

The final remaining parcel is the subject parcel, which appears to be the only parcel in the 2,000-acre study with potential to meet the criteria for either a non-farm or lot-of-record dwelling on high value soils. This application is for what is likely the last dwelling that could possibly be approved outside of a farm related dwelling in this 2,000-acre area. It, therefore, could not materially alter the stability of the overall land use pattern characterized by a mix of large and productive commercial farm operations, farm dwellings, and a rare and relatively dense neighborhood of dwellings around a golf course.

Applicants' representative posits that the proposed lot-of-record dwelling will not materially alter the stability of the land use pattern in the area and will not make it more difficult for 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. The development of all possible lot-of-record dwellings and non-farm dwellings appears to only include this proposal, and the single proposed dwelling would not alter the existing development pattern of the last 30-years, nor make

it more difficult for the operation of farms that exist within the study area. The criterion is met.

(b) *The county shall provide notice of the application for a dwelling allowed under this subsection to the Oregon Department of Agriculture.*

Marion County shall provide this notice. The criterion is met.

3. Marion County Planning Staff recommends approval of the proposal based on the existing record, and recommend certain conditions be applied if the Applicants' application is approved. Applicants' representative indicated that Applicants accept the proposed conditions of approval.
 - A. Applicants shall obtain all permits required by the Marion County Building Inspection Division.
 - B. A Site Evaluation from Marion County Septic is required.
 - C. Applicants shall meet the requirements of MCC 17.136 for the EFU (Exclusive Farm Use) zone.
 - D. The County Assessor shall be notified that the county intends to allow the dwelling.
 - E. Applicants will record a Farm/Forest Declaratory Statement acknowledging the need to avoid activities that conflict with nearby farm and forest uses and practices.

VII. Order

It is hereby found that Applicants have met their burden of providing the applicable standards and criteria for approval of an application for an administrative review to place a lot-of-record dwelling on a 5-acre parcel in an EFU (Exclusive Farm Use) zone located in the 9900 block of 114th Ave., Mt. Angel (T6S; R1W; Section 8DA; Tax lot 1100).

Therefore, the Administrative Review application is APPROVED subject to the following conditions subject to the following conditions which are necessary for the public health, safety and welfare.

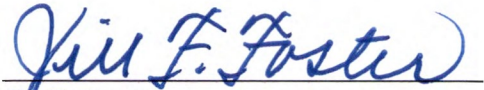
- A. Applicants shall obtain all permits required by the Marion County Building Inspection Division.
- B. A Site Evaluation from Marion County Septic is required.
- C. Applicants shall meet the requirements of MCC 17.136 for the EFU (Exclusive Farm Use) zone.

- D. The County Assessor shall be notified that the county intends to allow the dwelling.
- E. Applicants will record a Farm/Forest Declaratory Statement acknowledging the need to avoid activities that conflict with nearby farm and forest uses and practices.

VIII. Appeal Rights

An appeal of this decision may; be taken by anyone aggrieved or affected by this Order. An appeal must be filed with the Marion County Clerk (555 Court Str. NE, Suite 2130, Salem, Oregon by 5:00 p.m. on the 1st day of April, 2026. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to confirm to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon this 17th day of March, 2026.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Brian and Stephanie Traeger
9900 block of 14114th Avenue
Mt. Angel, OR 97362

Norman Bickell
Consultant
2232 42nd Avenue SE
Salem, OR 97317

City: Mt. Angel (via email)
5 N Garfield St.
Mount Angel, OR 97362

Area Advisory Committee 7:
ijsinn@gmail.com
James Sinn
3168 Cascade Hwy NE
Silverton, OR 97381

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

Aileen Kaye
10095 Parrish gap Rd. SE
Turner, OR 97392

1000 Friends of Oregon
133 SE 6th Avenue
Portland, OR 97214

Pudding River Watershed Council (via email)
anna@puddingriverwatershed.org
cleanpuddingriver@gmail.com

County Agencies Notified:

Assessor's Office (via email)
assessor@co.marion.or.us

Tax Collector (via email)
NMcVey@co.marion.or.us

Surveyor's Office (via email)
KInman@co.marion.or.us

Fire District: (via email)
Mt. Angel
mafd@mtangelfire.org

Planning Division (via email)
breich@co.marion.or.us
abarnes@co.marion.or.us
jspeckman@co.marion.or.us
ediaz@co.marion.or.us

Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
CTate@co.marion.or.us

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mcldep@co.marion.or.us
JShanahan@co.marion.or.us

Addressing:
Gillian Peden

School District: (via email)
Schmidt_gayle@mtangel.k12.or.us

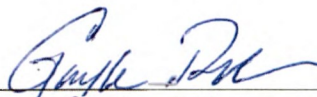
Code Enforcement (via email)

CGoffin@co.marion.or.us

State Agencies Notified:

hillary.foote@state.or.us

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 17th day of March, 2026 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer