

In the Matter of the Application of:	)	Case No. CU 24-043
	)	
MKI CONSTRUCTION, LLC	)	CONDITIONAL USE

CU 24-043 – ORDER
MKI CONSTRUCTION, LLC
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- Exhibit 3: Alternate Site Plans (#1 and #2) submitted by Donald Holt
Exhibit 4: Photograph of Farmland submitted by Patricia Hitz

The record was left open to allow additional submissions by the Applicant, Appellants, and Opponents. The following submittals were received:

- Open Record Submittal 1: March 10, 2025 submission from Donald Holt.
Open Record Submittal 2: March 12, 2025 submission from Mikel B. Hitz.
Open Record Submittal 3: March 27, 2025 submission from Applicant.

IV. Executive Summary

Applicant seeks a conditional use permit to place a non-farm dwelling on an 8.4 acre parcel in the EFU zone located in the 14400 block of Union School Road in Woodburn, Oregon. The Planning Director for Marion County approved the Conditional Use. Appellants/Opponents challenge the soil study and classification, and object to the setback variance. Opponents' testimony was in large part concerned with changing the zoning on the property and general protection of agricultural lands. However, Applicant does not seek to change the zoning but rather seeks a conditional use permit to allow a non-farm dwelling in the EFU zone. Applicant was able to establish that it is unlikely farming would be commercially viable because of the parcel's size and substandard soil. Applicant has demonstrated through substantial evidence in the records that the Application satisfies the applicable approval criteria with reasonable conditions of approval. The Hearings Officer APPROVES the application as modified by Applicant's updated site plan.

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. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the east side of Union School Rd NE, roughly 500 feet north of the intersection of Union School Rd and Wilco Hwy NE (Hwy 214). The property consists of three visibly distinct sections: The southern part consists of a sparsely forested area with overgrown underbrush; the middle section is dominated by an intermittent stream and the grassy riparian area sloping down to where the stream forms; finally, the northern section is a roughly 2-acre hazelnut orchard that appears unmaintained. The only structure on the property is a 1973 machine shed according to information available from the Marion County Tax Assessor. The property has been in its current configuration since at least April 4, 1974, when it was sold to Edwin A and Adeline V. Susa in the deed found on Reel 7 Page 220 in the book of land records, Marion County, OR, and is therefore legal for land use purposes.

3. Surrounding uses include mostly farm fields engaged in commercial agriculture activities in all directions, the most prominent types of agricultural uses being grass seed and hazelnuts. To the west on the other side of Union School Rd as well as the abutting parcel to the south are smaller parcels (3 acres or less in size) that are in use as homesites, one of which (14327 Union School Rd NE) was previously owned in conjunction with the subject parcel until it was sold off in 2017. Notable nearby features are Wilco Highway to the south, the Pudding River half a mile to the west, and Butte Creek just under a mile to the east.
4. Soil Survey of Marion County Oregon indicates 91.5% of the subject property is composed of high-value farm soils, however, Applicant has provided an independent soil assessment with their application to re-classify the soils as an update to the NRCS soil information data. The assessment found that 75.7% of soils present on the parcel are non-high-value farm soils. Therefore, the parcel may qualify for a non-farm dwelling.
5. Applicant is proposing to place a non-farm dwelling on the property and requests an adjustment to the special setback requirements of 200 feet for non-farm dwellings and 100 feet for accessory structures from neighboring parcels in farm or forest use in order to site the proposed dwelling in the northern portion of the property. Applicant requests adjusted setbacks of 55 feet to the east property line and 96 feet from the north property line for the dwelling and 35 feet from the east property line for an accessory structure.
6. Various agencies were contacted about the proposal and given an opportunity to comment:

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

Requirements:

- A. At the time of application for building permits an Access Permit will be required. An appropriately sized culvert for the seasonal creek crossing will likely be 24-inch diameter.
- B. Transportation System Development Charges (TSDCs) and Parks fee will be assessed at the time of application for building permits.
- C. Utility service extensions such as electric power originating from within the public right-of-way to the property require permits from MCPW Engineering.

Marion County Septic commented: "We have reviewed the proposal for CU 24-043 and our comments are as follows: A site evaluation is required."

Marion County Building commented: "No Building Inspection concerns. Permit(s) are required to be obtained prior to development and/or utilities installation on private property."

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

7. Alex Seifer, Marion County Planning, presented the Staff Report with approved the Application. Mr. Seifer stated that the Applicant presented evidence in support of the criteria and adjustment, addressed all criteria for a conditional use permit, and met such criteria, with conditions of approval.
8. Margaret Gander-Vo, attorney for Applicant, stated that Applicant has demonstrated through substantial evidence in the record that the Application satisfies the applicable approval criteria and that reasonable conditions of approval allow Applicant to comply with the criteria. Applicant also noted that the opposition does not address the applicable approval criteria or provide evidence into the record that rebuts the evidence provided by Applicant that it has satisfied applicable approval criteria.
9. Nancy J. Bowman Holt testified in opposition to the application. Ms. Bowman Holt testified that she supports maintaining the agricultural lands and soil of Willamette Valley. Ms. Bowman Holt testified that she also has a specific objection to the proposal, specifically, the reclassification of soils.
10. Don Holt testified at the hearing. Mr. Holt testified regarding his concerns about the soil study and revised classification. Mr. Holt also raised concerns about the size of the culvert and that there are other areas on the subject property that would be more suitable for improvements to maintain the historic use of the property.
11. Patricia Hitz testified at the hearing. Ms. Hitz testified that a non-farm dwelling should not dictate what is farmed on the subject property. Ms. Hitz testified that the EFU zone is dedicated to save farmable land, and that the former owner's hazelnut orchards were in production. Ms. Hitz stated that she disagrees with the propriety of a soil reclassification which she believes was completed solely for the purpose of attempting to get authority for a home to be placed on the property. Ms. Hitz testified that she disagrees with a variance to setbacks.
12. Bernhard Hitz testified at the hearing. Mr. Hitz stated that he challenges that the Applicant's soil that is just across the fence is of a different quality than the soil on his property. Mr. Hitz stated that the former owner produced hazelnuts and urged that the property be continued as an exclusive farm use zone.
13. In rebuttal on behalf of Applicant, Margaret Gander-Vo stated that the code allows for flexibility and that the Applicant does not seek to change the zoning from the EFU zone. Ms. Gander-Vo stated that the soil study was done by a professional and was DLCD approved. Ms. Gander-Vo stated that the non-farm dwelling would be placed where the weakest soils exist on the property. Ms. Gander-Vo confirmed that the study area was properly submitted into the record and establishes compliance with the applicable criteria. Ms. Gander-Vo also stated that the Applicant is willing to provide vegetative screening.
14. On March 10, 2025, a submission was received from Opponent Donald Holt. Mr. Holt indicates that he supports a setback of at least 100 feet, and challenges Applicant's position that the property could not be viable for agricultural use. Mr. Holt disagrees that the property is not usable for commercial agriculture based upon the soil classification because the property has historically been in agricultural production.

15. On March 12, 2025, Opponent Mikel B. Hitz submitted a statement in opposition to the Application during the first open record period. Mr. Hitz challenged the amount of usable farmland that would be destroyed by a gravel or paved driveway from Union School Road to the proposed dwelling site, and urged locating the dwelling at the southwest corner. Mr. Hitz also questioned the accuracy of the soil reclassification and questioned the ability to generate an accurate soil reclassification based upon the property condition.
16. On March 27, 2025, Applicant provided its final submittal into the record. Applicant's final submittal addressed the approval criteria and addressed opposition testimony regarding (1) questions regarding the soil assessment; (2) EFU zoning; (3) prior commercial farming; and (4) development of the proposed dwelling.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria apply as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395 (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 record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicants have not met their burden and the application must be denied. If the evidence for every criterion is even slightly in Applicants' favor, the burden of proof is met and the application is approved.

2. Under MCC 17.119.100, the Planning Director has the power to decide applications for conditional uses. The Planning Director decided this matter on January 13, 2025.

Under MCC 17.119.140, after the Planning Director's action on the application, interested persons may appeal the decision no later than 15 days after the decision is mailed. The Planning Director's approval was dated January 13, 2025. Bernhard and Patricia Hitz are interested persons and appealed the Planning Director's decision on January 27, 2025. The appeal objects to adjustment of the EFU setback guidelines and soil reclassification.

3. Applicant objected to the Appeal on a jurisdictional basis. Applicant argues that Appellant failed to raise any inaccuracies in the Application or Decision. The Hearings Officer determines that the appeal may proceed as the Appellants, who are self-represented parties, arguably challenge the soil reclassification as an inaccuracy in the Application addresses the setback determination in the Decision.
4. Under MCC 17.119.150, on appeal of the Planning Director's decision, the hearings officer shall conduct a *de novo* public hearing on the decision. The hearings officer may hear and decide the matter.

5. Under MCC 17.119.020, a conditional use application may only be filed by certain people, including the owner of the property subject to the application. Applicant's Statement states that MKI Construction, LLC owns the 8.40-acre parcel in the 14950 block of Union School Road NE. The application was filed by appropriate persons. MCC 17.119.020 is satisfied.
6. Under MCC 17.119.025, a conditional use application shall include signatures of certain people, including all owners of the subject property. Ivan Matveev, a member of MKI Construction, LLC, owns the subject property and signed the application. MCC 17.119.025 is satisfied.
7. Under MCC 17.119.070, before granting a conditional use, the director, planning commission or hearings officer shall determine:
 - A. *That is has the power to grant the conditional use;*
 - B. *That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;*
 - C. *That any condition imposed is necessary for the public health, safety, or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.*
8. Under MCC 17.119.030, the hearings officer may hear and decide only those applications for conditional uses listed in MCC Title 17. In the conditional use application "request" section, Applicant states a request to place a non-farm dwelling in the Exclusive Farm Use (EFU)
9. MCC 17.136.050 provides Conditional Uses in an Exclusive Farm Use Zone. MCC 17.136.050(A) includes a single-family dwelling or mobile home not in conjunction with farm uses, subject to the criteria and standards in MCC 17.136.060(B), 17.136.070, and MCC 17.136.100. Applicant's application is for a non-farm dwelling on land in the EFU zone.

MCC 17.136.060(A)

10. Because the subject property is located in an EFU zone, the proposal must satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:
 - (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.*

The subject 8.4-acre parcel is located in the slope of a drainage way with some bench land along its northern boundary. Properties to the north are in a combination of farmland with a

dwelling directly north of the subject property. Property to the south is a small lot of approximately three acres that contains a dwelling. To the east bordering the subject property is a 20-acre parcel containing a dwelling. While most of the property is in brush and grass (and is not considered non-high value soils), the bench where the dwelling, septic drain field and shop are being proposed is relatively dry land. The site where the improvements are being proposed should not negatively affect the adjoining farming practices.

The proposed non-farm dwelling is anticipated to bring impacts typical of residential use into the area. Residential uses from a single-family dwelling are not intense to the degree that their negative impacts on surrounding farming uses cannot be mitigated and are unlikely to force a significant alteration in the current land use pattern. Crops can still be farmed on the neighboring parcel even if a new house were placed on the subject parcel. The criterion is met.

(b) Adequate fire protection and other rural services are, or will be, available when the use is established.

The property is within the Woodburn Fire District and has direct access to Union School Road. The parcel is serviced by the Monitor Fire District and the Marion County Sheriff. Other rural services such as a well, septic, and electricity can be established in the future to provide other services. Therefore, the criterion is met.

(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.

The proposed dwelling will use an established driveway currently accessing the parcel off of Union School Road. The parcel contains an identified intermittent stream, which appears to eventually connect to the main body of the Pudding River about 2,700 feet northwest of the subject parcel. As such, there is potential for an impact on the watershed and water quality, but the proposed use of a residence is not likely to generate significant adverse impacts so long as development complies with applicable environmental and sanitation requirements. The Applicant will establish a domestic well and septic system located on the property in an area of slope stability. The criterion is met.

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

The proposed use of a single family, non-farm dwelling is not expected to generate noises above normal residential levels, which are not likely to have significant adverse impacts on nearby farm uses. The criterion is met.

(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.

There are no significant mineral and aggregate sites, or water impoundments identified by the comprehensive plan near the proposed dwelling. Therefore, the criterion is met.

MCC 17.136.060(B)

11. In order to approve a non-farm dwelling the applicant must demonstrate compliance with the specific criteria listed in MCC 17.136.060(B). These include:

- (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 17.136.130.*

According to the Marion County Soils Analysis tool, 91.5% of the soils on the subject property are high value farm soils, the majority being class II and III, with some class IV Terrace escarpments on the far northern point of the property. Applicants has submitted an updated soils assessment to challenge the NRCS data used by the Soils Analysis tool. A consideration of soil classification changes is allowed so long as the submitted evidence meets the requirements of MCC 17.136.130, which reads as follows:

*17.136.130 Consideration of soil classification changes for non-farm dwellings.
For purposes of approving an application for a dwelling not in conjunction with farm use under MCC 17.136.050(A), the soil class, soil rating, or other soil designation of a specific lot or parcel may be changed if the property owner submits a soil assessment prepared by a professional soil classifier that has been reviewed and approved by the Department of Land Conservation and Development as meeting the requirements in OAR 660-033-0045.*

Because of the challenges regarding soil quality brought by the Appellants and Opponents, it is reasonable to specifically address the soil reclassification and its compliance with the requirements of OAR 660-033-0045.

Applicant had a Soil Assessment Review done on the Property which has been submitted as Exhibit 101 to Applicant's response. The Soil Assessment Review process, as set forth in OAR 660-033-0045, requires the a person seeking a soils assessment to contact a "professional soil classifier," from a list of qualified individuals identified by Department of Land Conservation and Development ("DLCD") and, once the soil assessment has been completed, the assessment must be submitted to DLCD for confirmation by DLCD that the soil assessment is "soundly and scientifically based" and that the assessment meets DLCD's reporting requirements. OAR 660-033-0045(1)-(4).

Applicant followed the regulatory requirements for obtaining a soil assessment, as shown by the Applicant's Soil Assessment Completeness Review which was submitted to the County as part of the Application. Applicant hired Gary A. Kitzrow, CPSC (Certified Professional Soil Classifier)/CPSS (Certified Professional Soil Scientist) (the "Soil Classifier") certified by the Soil Science Society of America, to complete an analysis of the Property's soils. This certification requires (1) a bachelors' degree is soil science 4930-5505-5148, v. 3 or a related field having at least 15.0 semester credits of soils specific coursework and 45.0 semester credits of supporting coursework; (2) five years of post-baccalaureate experience or 3 years of experience post receipt of a Master's or PhD; (3) Credential forms approved by board of the Soil Science Society of America; and (4) passing a subject matter exam. The Soil Classifier's certifications are not the only items that establishes him as an expert in soils analysis and

classification, he has also been identified by DLCD as a “professional soil classifier” and is included on the list that DLCD is required to maintain to provide the public with options for well qualified individuals to perform soil assessments. The fact that he was paid by the Applicant to provide his professional services does not indicate that he is biased.

The Assessment was based on ten (10) excavations done using a backhoe and other field-testing equipment. (Exhibit 101 p. 2). The location of these soil samples is identified on a map that is included in the Assessment and which shows that the samples were taken at multiple points on the property, in varying locations in order to determine the makeup of the entirety of the Property. Id. at 22. The Assessment then provides an analysis of the soil typology as well as discussing the historic use of the Property, including expert testimony refuting the claims set forth in the Opposition Testimony. Specifically, in analyzing the aerial from 1970, the Soil Classifier notes that “[t]he lower valued Steiwer Variant soils along with Terrace Escarpment units (and floodway) shows inferior crop growing conditions with stunted tree crops and areas of no crops within these soil units.” Id. at 37.

The area that Applicant proposes for the construction of the dwelling is within the area mapped with these soils, and specifically in Steiwer Variant (SWB) portion of the Property where the aerial photographs depict “tonal pattern difference with tree drop-out and intrusion of unwanted bush species.” Id. at 38. The Assessment establishes that the Applicant has followed the regulatory process for establishing that the Property is not classified with high-value farm soils, allowing it to submit an application for a nonfarm dwelling.

Opponents argue that the previous owners had various farm uses on the Property. The Soil Classifier addresses the historical use of the Property in the Assessment and refutes the Opponent’s position regarding the viability of farming on the Property. The Soil Assessment process is established to ensure that a qualified professional is performing these types of assessments on a scientific basis. The soil assessment process has been done on a scientific basis and in compliance with the regulatory process.

Applicant’s soil assessment therefore meets the requirements set out in MCC 17.136.130 and a change in the soil classification can be considered. The soils assessment found that 75.7% of the soils on the subject parcel are comprised of non-high value farm soils, with a total of 6.36-acres of Class IV and Class VI soils. Therefore, 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 property does not include a dwelling and only has a small accessory building along its frontage on the road. Research into the deed history of the parcel found that it has been in its current configuration since at least April 4, 1974. The boundary of the parcel has not changed since January 1993, and the parcel meets the criterion.

- (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 parcel 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 nonresource uses shall not be included in the study area;

To address the standards of (A) above, Applicant applied to the Marion County Planning Division and requested a GIS map to be created that meets the standards stated herein. A 2,000-acre map was created that gave the soils, individual parcels, zoning, and land used cases within the study area. Applicant then provided a study area encompassing 2,000-acres of surrounding land. This study area included only properties zoned for Farm Use.

Applicant indicates that this study area is representative of the land use pattern surrounding the subject parcel. Uses within the study area are traditional row crops (particularly grain and grass production), plant nursery fields and structures, and hazelnut orchards. Staff concluded, and the hearings officer concurs, 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. By using the map, assessor's records, aerial photographs and the soils of each parcel, Applicant analyzed the impact of the proposed dwelling on other parcels in the study area. Within the study area, there were a total of 113 whole and partial tax lots. Of those 112 parcels, there were 79 parcels with existing dwellings. This leaves 33 vacant parcels, with 27 of these being contiguous to existing dwellings or on high value soils. Of the remaining parcels, only the subject parcel is on Class IV through VIII soils and would qualify for a nonfarm dwelling.

(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 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;

The subject parcel is in a 1.3 mile stretch of land separating Butte Creek and the main stem of the Pudding River that has no other substantial active uses other than farming operations. The predominant farm uses in the study area identified by the Applicant are row crops with a

mixture of grasses and grain. Using available imagery from 2021 and 2023, staff also identified hazelnut orchards and nursery stock as the other major farm uses within the study area.

Within the study area there were a total of 112 whole and partial tax lots. All 112 lots included in the study area are zoned EFU. A significant majority of the lots within the study area are below 60-acres in size, with only 10 of the 112 tax lots containing more than 60-acres. The largest parcel within the study area is 243.33-acres and is predominantly planted in hops, however most of this parcel is located outside the study area and is on the other (west) side of the Pudding River from the subject parcel.

In the findings of the 2000-acre study, Applicant found that out of the 112 full and partial tax lots 79 already contained a dwelling, leaving 33 vacant tax lots. 27 of the 33 vacant lots either contained high value soils or were in contiguous ownership with other parcels that already had dwellings, meaning that such parcels would not qualify for a non-farm dwelling. Of the remaining 6 vacant tax lots, 4 contained a majority high value soils and would not qualify for a lot-of-record due to the date of ownership transfer. This leaves one additional parcel within the study area that could be developed with a non-farm dwelling. In its analysis, Applicant addresses the fact that one of the study area parcels was under review for a Lot-of-Record dwelling (case AR24-019) and since a decision had not been made at the time of their analysis, it was inventoried as not having a dwelling.

In addition to describing the land use within the full study area, Applicant narrows down the focus and describes the immediate local land use pattern as a combination of the typical row crop farms and 3 smaller lots with dwellings that aren't acting as primary farm dwellings.

(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.

Applicant contends that due to the drainage way bisecting the subject parcel, the soil reclassification report finding that the subject parcel is predominantly non-high value farm soils, and the size of the parcel (8.4-acres) all coalesce to limit the viability of the parcel to be commercially farmed. Additionally, they assert that permitting a non-farm dwelling on the subject parcel would be compatible with the smaller parcels containing dwellings located across Union School Rd to the west and adjacent to the south. These elements, in combination with aerial imagery dating back to the 1950's showing failed attempts to farm the southern 6-acres of the parcel, sufficiently demonstrate the unsuitability of the parcel for commercial agriculture on its own.

Applicant has shown that a non-farm dwelling in the immediate local area is consistent with the existing land use pattern, as there are three neighboring parcels with dwellings not serving as primary farm dwellings, all predating the adoption of land use ordinances.

Applicant addresses the impact of the proposed non-farm dwelling and potential future non-farm dwellings together with the impact of existing non-farm dwellings in the area, showing through the 2000-acre study that there is only one other parcel capable of qualifying for a non-farm dwelling within the subject area. The two potential new non-farm dwellings are unlikely to materially alter the stability of the existing land use pattern within the area, so long as the dwellings are sited away from neighboring farming operations and in locations that maintain as much historically farmed land as possible.

This nonfarm dwelling would not significantly impact existing farming activities, and the criterion is stated in MCC 17.136.130(B)(3)(a) through MCC 17.136.130(B)(3)(c) are met.

MCC 17.136.070

12. MCC 17.136.070 provides requirements for non-farm dwellings. Non-farm dwellings shall be subject to the following code 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.

Applicant originally proposed to site the dwelling and an accessory structure towards the northeast corner of the parcel, in the location of the hazelnut orchard visible in the imagery. According to Applicant's site plan, the dwelling is proposed to be 55 feet from the east property line and 96 feet from the north property line. The new shop is proposed to be 36 feet from the east property line. As such the dwelling would not meet the special setback requirement of 200 feet from abutting parcels in farm use and the accessory structure would not meet the required 100-foot special setback. Applicant requests an adjustment to the special setback requirements. The Adjustment criteria are addressed below.

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.

Applicant states that the 8.4-acre parcel is heavily compromised by a stream draining way and wetlands. The shape of the subject property is generally narrow north to south and is only 345 feet wide. The drainageway and wet area compromises the western one-third of the parcel with the terrace soils impacting the development area.

Applicant states that the proposed location of the dwelling is governed by the area needed for a septic system and a replacement septic site, which limits the areas for the dwelling and shop.

Applicant's proposed location would site the dwelling and accessory structure near the north and east property lines. Along most of the property line with the farm parcel to the north is a woodlot that does not appear to be planted as part of a timber harvesting purpose. This provides adequate buffering from the main farm dwelling and structures on the bordering northern parcel. However, the woodlot does not extend the full distance of the northern property line. The eastern 130 feet of the northern property line is a field and the full extent of the east property line of the subject parcel is a commercial farm field planted in grass or grain. There are other locations within the parcel that are farther away from neighboring farm parcels than the proposed location. Placing non-farm dwellings and accessory structures closer than 100 feet to neighboring farm fields impacts the farm operations through increased costs related to the application of chemical sprays and fertilizer—which is standard practice for commercial agriculture.

Applicant originally proposed dwelling setback 96 feet from the northern property line and 55 feet from the eastern property line. Applicant originally proposed that the shop be placed 35 feet from the eastern property line and 96 feet from the northern property line.

Applicant provided an updated proposal and has reoriented the buildings so that the shop is located 96 feet from the northern property line and 100 feet from the eastern property line. Applicant now proposes that the dwelling be located more than 200 feet from the northern setback and approximately 100 feet from the eastern property line. Applicant's reconfiguration reduces the need for the adjustment to the setbacks to four (4) feet for the encroachment of the shop into the northern property line setback and to 100 feet for the dwelling from the eastern property line. There is no restriction on the placement of the septic systems or drainage fields within the setbacks, so the improvements will otherwise comply with the Code.

Applicant has cleared the Property of invasive species and cleaning up the derelict outbuildings. In the event that Applicant is not able to develop the property with the Improvements, this property does not have a viable use within the EFU zone. Applicant's proposal, as revised, places the maximum amount of space between the Improvements and the neighboring farm operations as is possible while also complying with the setbacks along the western property line and the constraints on the development of the septic system on this particular property.

Applicant's revised site places the least amount of impact on the adjacent farm operations possible given the area needed for the development of a septic system, the slopes, location of the creek and its associated setbacks, and neighboring land uses. The orientation of the buildings will provide some additional buffering for the residential use on the property and the Applicant is willing to install vegetative screening to the existing fencing to further buffer the dwelling from the adjacent farm uses.

Applicant indicates a willingness to comply with the County's requirement to develop a management plan for wildfire reduction, as a condition of approval. Because the subject property will be the Applicant's home, Applicant is incentivized to take actions that mitigate fire risk.

Finally, Oregon right to farm laws prevent the Applicant or future property owners from objecting to the impact that farming uses will have on the Property. As conditioned, Applicant has demonstrated that the Application meets the applicable approval criteria,

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.

As addressed in the Staff Decision and the Application, developing the Improvements in the SW portion of the Property would require locating the Improvements within the setback along Union School Road, the required setback from a neighbor's existing well and the required setback along the Creek. These constraints resulted in the Applicant's proposed location, which the Applicant has revised to the extent possible in a further attempt to comply with the special setbacks. Additionally, as stated above, only a small amount of the Property is comprised of high value soils according to the soil assessment performed for Applicant. As shown in the soil report, the available high value soils are approximately 1.58 acres of WuA Woodburn located in the southeast corner of the property and 0.68 acres of WuC Woodburn located in the northeast corner of the property.

Under the Appellant's suggested placement, Applicant would be moving the Improvements into the largest portion of the High Value Soils available on the Property. The Applicant considered the soil quality and capacity as well as the historic productivity on the Property when locating the dwelling and accessory building. Applicant has selected a site that minimizes impacts to accepted farming practices on the tract and minimized the amount of agricultural lands used to site the dwelling and structures.

Applicant's proposal is to preserve as much of the available high-class soils as possible in hopes that it will be able to utilize those soils for small scale agricultural uses. Applicant has demonstrated that the Application meets the applicable approval criteria

d. The risks associated with wildfire are minimized

The proposed location for the new dwelling is within 100 feet of a small, wooded portion of the neighboring farm parcel. Wildfires are not likely to be a significant risk in this area as most of the surrounding area is utilized as farmland, not timberland. Applicant states it will comply with a wildfire mitigation plan and take steps to reduce the risk of the new residence starting a wildfire in the area. 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 maintain a primary and secondary fuel-free break area in accordance with the provision in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.

There are no nearby parcels engaged in commercial timber operations within 200 feet of the subject parcel. 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.

This shall be made a condition of approval.

13. Based on the above discussion, Applicant has adequately addressed all applicable criteria for placing a non-farm dwelling on the parcel. Therefore, subject to meeting the conditions of approval, the application for a non-farm dwelling is **APPROVED**.

VII. ORDER

It is hereby found that Applicant has met the burden of proving applicable standards and criteria for approval of a conditional use application for a non-farm dwelling. Therefore, the conditional use application is **GRANTED**, subject to the conditions set forth below. The conditions are necessary for public health, safety, and welfare.

1. Applicant shall obtain approval for all required permits from the Marion County Building Inspection Division including septic permits.
2. The non-farm dwelling shall be located 200 feet from the northern setback and 100 feet from the eastern property line. Any accessory structures shall maintain a 96-foot setback from the north property line and a 100-foot setback from the east property line unless septic site evaluations find that a septic system is not feasible on any part of the parcel other than in the area proposed in the Applicant's site plan, forcing the home to be located closer than 100 feet to the eastern property line.
3. Prior to obtaining building permits, 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 obtaining building permits, the applicant shall sign and submit a Farm/Forest Declaratory Statement 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. Applicant shall also comply with the County's requirement to develop a management plan for wildfire reduction. Applicant should contact the Woodburn 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.
6. Applicant should contact Marion County Land Development and Engineering for additional engineering requirements and advisories that may be required.

VIII. Other Permits

Applicant herein is advised that the use of the property proposed in this application may require additional permits from other local, state, or federal agencies. The Marion County land use review and approval does not take the place of or relieve the Applicant of responsibility for acquiring such other permits or satisfy any restrictions or conditions thereon.

The land use permit approved herein does not remove, alter, or impair in any way any covenants or restrictions imposed on this property by deed or other instrument.

IX. Effective Date

The application approved herein shall become effective on the 15th day of May, 2025, unless the Marion County Board of Commissioners, on their own motion or by appeal timely filed, is asked to review this Order. In the event of Board review, this Order shall be stayed and shall be subject to such final action as is taken by the Board.

X. 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 Street NE, Salem, Oregon) by 5:00 on the 14th day of May, 2025. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500.00, and must state wherein this Order fails to conform to the provisions of the applicable code provision(s). If the Board denies the appeal, \$300.00 of the appeal fee will be refunded.

DATED this 29th day of April, 2025.



Jill F. Foster
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Margret Gander-Vo
250 Church Steet. #200
Salem, OR 97301

Nancy Bowman Holt
14817 Union School Rd. NE
Woodburn, OR 97071

Patricia Hitz
12503 Elliot Prairie Rd.
Woodburn, OR 97071

Bernhard Hitz
12503 Elliot Prairie Rd.
Woodburn, OR 97071

Area Advisory Committee #6: (via email)
Ben Williams
fofp99@gmail.com

Roger Kaye (via email)
Rkaye2@gmail.com
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

1000 Friends of Oregon
133 SW 2nd Ave
Portland, OR 97204-2597

County Agencies Notified:
Assessor's Office (via email)
assessor@co.marion.or.us

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

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

Fire District: (via email)
980@monitorfire.com
33881 S Meridian Rd.
Woodburn, OR 97071

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

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

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

School District: (via email)
sbishop@woodburnsd.org

State Agencies Notified: (via email)
DLCD hilary.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 29th day of April 2025 and that the postage thereon was prepaid.

A handwritten signature in black ink, appearing to read "Gayle R. M.", written over a horizontal line.

Administrative Assistant to the
Hearings Officer