

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION  
ADMINISTRATIVE REVIEW CASE NO. 25-006**

**APPLICATION:** Application of Andrey and Claudia Kaya for an administrative review to replace a dwelling on a 19.44-acre parcel in an EFU (Exclusive Farm Use) zone located at 18936 Butteville Rd NE, Aurora (T4S; R1W; Section 30C; Tax lot 100.)

**DECISION:** The Planning Director for Marion County has determined that the residence was legally established and can be replaced.

**EXPIRATION DATE:** This decision is valid only when exercised by **May 19<sup>th</sup>, 2029 (4 years)** unless an extension is granted. The effective period may be extended for two years subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

**WARNING:** A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

**This decision does not include approval of a building permit.**

**CONDITIONS:**

1. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. If replaced, the existing dwelling must be removed, demolished, or converted to an allowable non-residential use within three months of occupancy of the replacement dwelling.
3. The replacement dwelling shall be located within the 15.56-acre parcel created by case P24-004.
4. The replacement residence shall be assigned the address 18936 Butteville Rd NE.
5. Prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a Replacement Residence 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.
6. Prior to issuance of any building permit for a new dwelling, the applicants 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.

**OTHER PERMITS, FEES AND RESTRICTIONS:** This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, state or federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. The applicants 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.

8. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to the Marion County Hearings Officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) on the basis of new information subject to signing an extension of the 150-day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 5:00 p.m. on **May 19<sup>th</sup>, 2025**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 20<sup>th</sup>, 2025**, unless appealed.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which the decision was based are noted below.

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use). The intent of both designation and zone is to promote and protect commercial agricultural operations.
2. The property is located on the east side of Butteville Rd Ne approximately 500 feet south of the intersection with St. Paul Highway. The 19.44-acre parcel contains a dwelling built in 1915, several farm structures, well and septic system. Aerial imagery shows a structure in the same location near the southern property line as a mobile home established as part of a temporary medical hardship by case CU11-009, which is no longer an active hardship. The parcel was most recently the subject of partition case P24-004, which executed the Measure 37/49 claim on the property, allowing the creation of 2 additional lots or parcels.

During the writing of this case, the partition plat for case P24-004 was approved and the legal configuration of the subject property changed. The subject parcel is now the 15.56 acre parcel created as a result of this partition. The parcel is legal for land use purposes.

3. While all but one of the surrounding parcels are zoned EFU, the uses on these surrounding parcels are diverse and unique compared to similar areas in the county. To the south there are several smaller parcels, some in use as small field farm sites, but the majority are acting as large acreage home sites and do not appear to be engaged in commercial agriculture. Additionally, there is a convenience store at the Broadacres and Butteville road intersection that pre-dates the adoption of planning and zoning ordinances. To the north are some larger properties engaged in commercial agriculture but also several smaller lots only acting as home sites not engaged in agriculture. On a parcel directly to the east, there is a 2-acre photovoltaic solar power generation facility and an approved site for a commercial seed cleaning plant (CU/P22-035). Just beyond that developed area flows the Senecal Creek, a significant perennial creek in the area. Finally, immediately to the west of the parcel are Butteville Rd and a railway line, with a road crossing of the railway line roughly 40-feet from the current driveway access to the parcel. On the other side of Butteville Rd is a large commercial and industrial complex that is the site of Marion Ag Service Inc.
4. Soil Survey of Marion County Oregon indicates 100% of the soils are considered high value for farm use.
5. The applicant is proposing to replace a stick-built dwelling that currently exists on the property with a new dwelling.
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. One-time Transportation System Development Charges (TSDCs) and Parks fee are assessed at the time of application for building permits for replacement dwellings in which the dwelling to be replaced had not been legally inhabited at some point within a 12-month period prior to the date of application for building permits.

Marion County Septic commented: “A septic authorization is required to connect the proposed replacement dwelling to the existing septic system.”

Marion County Building Inspection commented: “No Building Inspection concerns. Permit(s) are required to be obtained prior to the construction of a replacement home and utilities installation on private property.”

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

7. The replacement dwelling criteria are being applied directly from state law, ORS 215.291, it reads as follows:

1. *The dwelling to be altered, restored or replaced has, or formerly had:*

- a. *Intact exterior walls and roof structure;*
- b. *Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
- c. *Interior wiring for interior lights; and*
- d. *A heating system;*

Aerial imagery of the property shows the dwelling has an intact roof structure while Google street view imagery from May 2019 shows intact walls and that the dwelling was inhabited at that time. The dwelling also had a working septic system for the interior bathrooms and kitchen. Electrical wiring to the house is visible in available imagery of the property, so while specific evidence wasn’t supplied, it can be reasonably assumed the dwelling had interior wiring. Finally, for heating the applicant states that the home was heated using portable heaters. The applicant is a recent purchaser of the property and lives elsewhere, however they state that the previous owners lived in the dwelling prior to the sale. Ultimately, the available evidence is sufficient to demonstrate that the dwelling possesses or formerly possessed all features described in *a-d* above. The criterion is met.

2. *An application under this section must be filed within three years following the date that the dwelling last possessed all the features listed above.*

According to the applicant, the dwelling was occupied up until they purchased the property from the previous owner on February 29<sup>th</sup>, 2024, so it is reasonable to assume the structure possessed all of the features listed in the previous section. Additionally, aerial imagery shows the dwelling to still be on the property and appear intact. This combination of factors, combined with the fact that the dwelling is still assessed on the Tax Assessor’s data is sufficient to demonstrate the dwelling possessed all the requisite features within the past 3 years. The criterion is met.

3. *Construction of a replacement dwelling approved under this section must commence no later than four years after the approval of the application under this section becomes final.*

This section sets a timeline for reconstruction which is enforced through the expiration date of this case.

4. *The dwelling to be replaced shall meet one of the following conditions;*

- a. *If the value of the dwelling to be replaced was eliminated as a result of destruction or demolition, the dwelling was assessed as a dwelling for purposes of ad valorem taxation prior to the destruction, or demolition and since the later of:*
  - i. *Five years before the date of the destruction*
  - ii. *The date that the dwelling was erected upon or fixed to the land became subject to property tax assessment; or*

- b. *The value of dwelling to be replaced has not been eliminated due to destruction or demolition, and the dwelling was assessed as a dwelling for the purposes of ad valorem taxation since the later of:*
- i. *Five years before the date of the application; or*
  - ii. *The date that the dwelling was erected upon or affixed to the land and became subject to property tax assessment.*

The dwelling to be replaced still exists on the property and the value has not been eliminated due to destruction or demolition. The criterion is met.

5. *For replacement of a lawfully established dwelling under this section:*

- a. *The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use within three months after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055.*
- b. *The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.*
- c. *As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of ORS 215.291 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.*

There is no portion of the subject property that is zoned anything other than EFU, however this shall still be made a condition of approval.

- d. *A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction.*
- e. *The replacement dwelling must comply with the construction provisions of section R327 of the Oregon Residential Specialty Code, if the dwelling is in an area identified as extreme or high wildfire risk on the statewide map of wildfire risk described in ORS 477.490; or if no statewide map of wildfire risk has been adopted.*

This shall be made a condition of approval to comply with both this section and the comments by Marion County Building.

- 8. At the time of replacement, the applicant will be required to sign and record a Farm/Forest Declaratory Statement as a condition of approval. This acknowledges that farm and forest practices conducted in the area may have an adverse impact on a residence.
- 9. Based on the above findings, it has been determined that the proposal complies, or can be conditioned to comply, with the criteria in the Marion County Code and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich  
Planning Director/Zoning Administrator

Date: May 2<sup>nd</sup>, 2025

If you have any questions regarding this decision contact Alexander Seifer at (503) 588-5038

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.



## ZONING MAP

**Input Taxlot(s):** 041W30C000100

**Owner Name:** KAYA, ANDREY KAYA, CLAUDIA

**Situs Address:** 18936 BUTTEVILLE RD NE

**City/State/Zip:** AURORA, OR, 97002


**Land Use Zone:** EFU

**School District:** NORTH MARION

**Fire District:** WOODBURN

### Legend

 Input Taxlots

 Lakes & Rivers

 Highways

 Cities



scale: 1 in = 634 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.