

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. 24-002**

**APPLICATION:** Application of Widgeon Prairie for an administrative review to place a primary farm dwelling on a 184.19-acre parcel in an EFU (Exclusive Farm Use) zone located in the 6200 block of Hunsaker Rd SE, Turner (T9S; R2W; Section16; Tax lots 100, 200).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Administrative Review, subject to certain conditions.

**EXPIRATION DATE:** This decision is valid only when exercised by **March 2, 2028**, unless an extension is granted. The effective period may be extended for one year 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 applicant shall obtain all permits, including subsurface sewage disposal, as required by the Marion County Building Inspection Division.
2. As per MCC 17.136.110, a new deed shall be recorded consolidating subject Tax lots 100 & 200 of this application prior to exercising the rights granted by this decision and obtaining building permits.
3. The applicants shall sign and submit a Declaratory Statement (Farm/Forest).
4. The applicants shall sign and submit a Declaratory Statement (Use of Agriculture Land for Dwelling Qualification OAR 660-033-0135).
5. Based on the proposed access, the address of the proposed farm dwelling will be: **5989 Hunsaker Rd SE**. This is subject to change if the location of the driveway changes.

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

5. The applicants should contact the Turner 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. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 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 a 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 **March 4, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 5, 2024**, 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 correspondingly zoned EFU (Exclusive Farming Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The subject properties are located in the 6200 – 6500 block of Hunsaker Rd SE, Turner. Both parcels are flat and contain wetlands and ponds for aquacultural production. Areas of grass cover are used seasonally for grazing. Apart from strictly agriculturally used spaces, the properties have both been involved in extensive habitat creation and restoration. The ponds and wetlands have been dug, nonnative plants and trees removed, and native species of flora reintroduced.

Tax lot 100 was described in its current configuration by deed in 1955 recorded in Volume 477 Page 162 of the Marion County book of land records. Tax lot 200 was described in its current configuration by deed in 1973 recorded in Volume 746 Page 201 of the Marion County book of land records. Having both maintained unchanged legal descriptions from a time prior to September 1, 1977, these parcels are considered legal for land use purposes.

3. All adjacent parcels are in agricultural use, and of these directly adjacent farms only the southern and one of the northern parcels contain dwellings and accessory farm structures. The subject parcels are part of a large tract of EFU zoned land Parcels extending from the southern edge of the county line along the North Santiam River, north to Turner and Aumsville, East to Stayton, and west to Parrish Gap Rd SE. From Parrish Gap Rd SE, east to I-5 is a mixed tract of SA and AR zoned parcels. The immediate parcels extending a mile and a half south of the subject parcels contain more of the same wetland and pond configurations and are in various agricultural and wildlife habitat uses.
4. The applicants are proposing to place a primary farm dwelling on the subject property.
5. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Building Inspection commented: No Building Inspection concerns. Permits are required to be obtained prior to any development and/or utilities installation on private property.

Marion County Septic Division commented: A site evaluation is required to establish an initial and repair area for the drain field. There are no septic records on the property, and it appears that no septic is present. Please let me know any additional questions or concerns.

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

### **ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits an Access Permit will be required for an approach connection to the public road. Depending on the location of the home relative to public road access point, issuance of

a Permit may be contingent upon providing evidence of sufficient coordination with Santiam Water Control District (SWCD); see Advisory, further below.

- B. The subject property will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits.
- C. Utility service extensions within the public R/W requires utility permitting from MCPW Engineering.

### **ENGINEERING ADVISORIES**

- D. The proposed private drive traverses the *Keech Lateral* irrigation canal controlled by SWCD. Placement of a culvert within their irrigation ditch or extension or replacement of an existing culvert will require authorization from them.
- E. Coordinate with the local fire district for EVA given the fact that there is an irrigation ditch crossing. Otherwise, consult with the Building Dept about alternate fire suppression method options.

Turner Fire District submitted comments regarding fire standards that are included in the case file.

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

- 6. Chapter 17.136.030(A) of the Marion County Code (MCC) allows for the construction of a single-family dwelling in conjunction with farm use with filing of the Declaratory Statement(s) in MCC 17.136.100(C). The dwelling will be considered customarily provided in conjunction with farm use when the following criteria are met.

- (a). *It is located on high-value farmland as defined in MCC 17.136.140(D) and satisfies the following standards:*

Both parcels consist of high-value farmland. Tax lot 100 is made up of 95.6% high value soils, and tax lot 200 is made up of 100% high value soils. The criterion is met.

*1. There is no dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;*

The is no dwelling on either of the subject parcels owned by Widgeon Prairie LLC. The criterion is met.

*2. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least \$80,000 in gross annual income from the sale of farm products, not including marijuana. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;*

Schedule Fs provided by the applicant show over \$80,000 gross income from the subject parcels under proprietor Luke Fitzpatrick in 2020 and 2021 as the Widgeon Prairie LLC, and again in 2022 as Santiam Valley Ranch Aquaculture. The property has remained under the Widgeon Prairie LLC ownership since 2020. The income is shown in Part 1 (1a) "sales of livestock and other resale items". The criterion is met.

*3. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;*

The applicant attests that the subject parcels are the source of the farm income recorded on the provided Schedule Fs and required by subsection (A)(1)(b). The criterion is met.

*4. The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section; or*

The applicant proposes a dwelling and shop to expand the aquaculture business and seasonal cattle grazing. The purpose of the dwelling is specifically related to the agricultural production generating the income on this property and will be occupied by the applicant and/or persons who will continue to produce the commodities which generate income on this farm. The criterion is met.

(b). *All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:*

*It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling. These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions is located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.*

A declaratory statement (Use of Agriculture Land for Dwelling Qualification) attaching these CCRs to the deed will be a condition of approval. The criterion is met.

7. The proposal is also subject to MCC 17.136.110 (A) Contiguous ownership. Which states:

*A. After June 29, 1994, it shall be a condition of approval that a new deed be recorded consolidating all contiguous lands in the same ownership when such contiguous lots or parcels are included in the application and must be considered in order for the application to meet the applicable criteria and standards. Consolidation shall be accomplished prior to exercising the rights granted in the land use decision and obtaining building permits, or concurrent with filing of a partitioning plat or property line adjustment survey.*

It shall be a condition of approval that a new deed be recorded consolidating all contiguous lands in the same ownership when such contiguous lots or parcels are included in the application and must be considered in order for the application to meet applicable criteria and standards.

8. Based on the above findings, it has been determined that the request satisfies all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: February 16, 2024

If you have any questions regarding this decision contact John Speckman 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.