

**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 NO. 24-006**

**APPLICATION:** Application of Jerold Shetler for an administrative review to place a template dwelling on a 37.44-acre parcel in the FT (Farm/Timber) zone located in the 5000 block of Briar Knob Loop NE, Silverton (T6S; R1E; Section 35; Tax lot 1000).

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

**EXPIRATION DATE:** This decision is valid only when exercised by **April 4, 2028** (four years), unless an extension is granted. The effective period may be extended once for two years, and then up to five more times for one year each, subject to approval of an extension (form available from the Planning Division). Request for an extension must be submitted to the Planning Division prior to expiration of the approval.

**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:** The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Prior to the issuance of any building permit for a new dwelling the applicant shall either: provide valid evidence to the Marion County Planning and Building Divisions regarding the legality of the existing accessory structures/agriculture exempt buildings located on the subject property, or the applicant shall legalize the accessory structures/agriculture exempt buildings through the permitting process as necessary.
3. Prior to issuance of any building permit for a new dwelling, the applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division. This Statement shall be recorded with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
4. The dwelling shall be addressed when building permits are applied for and the driveway location is permitted.
5. The dwelling shall maintain a special 200-foot minimum setback from any property line when the neighboring property is in farm use and/or forest production. Accessory structures shall maintain a special setback of at least 100 feet from any abutting parcel in farm use and/or timber production.
6. The dwelling and any future accessory structures shall be built within 300 feet of the driveway's entrance to Briar Knob Lp NE.
7. The applicant shall provide evidence of a domestic water supply which complies with MCC 17.139.070(C).
8. The subject parcel shall continuously meet the Department of Forestry's minimum stocking requirements.
9. The applicant shall comply with the Fire Hazard Reduction Standards listed in MCC 17.139.070(G).

10. The applicant shall comply with the Road and Drainage Standards listed in MCC 17.139.070(H).

**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:

11. The applicants should contact the Silverton 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.

**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 **April 4, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **April 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 Farm/Timber in the Marion County Comprehensive Plan and is correspondingly zoned FT (Farm Timber). The intent of both the designation and zone is to promote agricultural activities, protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources.
2. The subject property is located on the east side of Briar Knob Lp NE, approximately 1,000 feet south of the intersection of McKillop Rd NE and Briar Knob Lp NE. The northeast corner of the parcel is directly south of McKillop Rd NE. The property has accessory structures/agriculture exempt buildings which are potentially unpermitted. With the exception of a small meadow, which the aforementioned structure(s) are located on the west edge of, almost the entire parcel is covered in vegetation/scrub/forest.

There is a swath of identified 3-point value Geo-Hazards covering the west to southwest portion of the property and a small amount in the northeast corner. Inside this 3-point value area is a small amount of 6-point value GeoHazard, which lays about halfway up the western property line. The eastern boundary of the subject parcel is the edge of the Peripheral Big Game Overlay. The property itself is not identified as Big Game Habitat of any level.

3. The subject property was described as part of a larger parcel in Vol. 436 Page 8, recorded January 16, 1952. On January 9, 1970, the southern section of this larger parcel was sold (Vol. 677 Page 59). The conveyance described a single property which encompassed current day map tax lot 06-1E-35-01100 and 07-1E-02-00100. As this division of land occurred prior to September 1, 1977, and there have been no alterations to the remnant since, Marion County Planning deems the subject parcel legal for land use purposes.
4. Surrounding properties in all directions are also zoned FT. These properties are small to medium sized parcels and most of them are developed with dwellings.
5. Soil Survey of Marion County indicates that approximately 19.8% of the parcel's soils are classified as high-value.

6. The applicant is proposing to build a home on the subject property by qualifying for a Template Dwelling under MCC 17.139.030(B).
7. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Building Division commented: “No Building Inspection concerns. Permits are required to be obtained prior to development and/or utilities installation on private property. Depending on site conditions and proposed home location, a geotechnical assessment of soils and slopes for adequate support of the home may be required during plan review.”

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

8. In order to place a dwelling within the FT zone it must first be determined that the subject property was predominately devoted to forest use on January 1, 1993. In this instance, aerial photographs from June 1983 (Marion County aerial photograph Flight 27 Tile 7), July 1988 (Marion County aerial photograph Flight 27 Tile 5), August 1994 (Google Earth Pro), and July of 2000 (Google Earth Pro) show a timeline of forest use.

Marion County aerial imagery depicts mature, harvestable timber in 1983 and a clear cut in 1988. Google Earth Pro imagery from 1993 is difficult to analyze. It appears to be either still be a clear cut or have very young/small plantings. To confirm that the subject property was replanted after the 1988 clear cut, and therefore still in forest use, Staff reviewed aerial imagery from July 2000 (Google Earth Pro). This imagery unquestionably showed timber having been re-established over the entire parcel. These successive aerial images show clear forest use over time. Therefore, Staff determines the predominant use of the property was forest land on January 1, 1993.

9. According to MCC 17.139.030(B) a single-family dwelling, subject to the special use and siting requirements in MCC 17.139.070, may be allowed provided:

(1) *The tract on which the dwelling will be sited does not include a dwelling. “Tract” means all contiguous lands in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.*

The subject parcel does not contain a dwelling and is not part of a tract. The criterion is met.

(2) *If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract. The other lots or parcels in the tract cannot be used to justify another forest dwelling. Evidence must be provided that covenants, conditions and restrictions have been recorded with the county clerk of the county or counties where the property is located for any other lot or parcel within the subject tract.*

The parcel was not part of a tract on January 1, 2019. This criterion does not apply.

(3) *The lot or parcel is:*

- a. *Predominantly composed of soils that are capable of producing zero to 49 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least three other lots or parcels that existed on January 1, 1993, and at least three dwellings that existed on January 1, 1993, on the lots or parcels, and continue to exist; or*
- b. *Predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least seven other lots or parcels that existed on January 1, 1993, and at least three dwellings that existed on January 1, 1993, on the lots or parcels, and continue to exist; or*

- c. *Predominantly composed of soils that are capable of producing more than 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least 11 other lots or parcels that existed on January 1, 1993, and at least three dwellings that existed on January 1, 1993, on the lots or parcels, and continue to exist; and*

Approximately 65.8% of the subject parcel is composed of soil class 7, McCully clay loam, with 50-70% slopes. This soil is capable of producing 171 cubic feet of wood fiber per acre per year according to the Department of Agriculture Woodland Table for Marion County. Therefore, subsection 3(a) and (b) do not apply, while subsection 3(c) does. According to Assessor taxation records and mylars, there were at least 11 tax lots and at least 3 dwellings within the Template Test area on January 1, 1993. Therefore, the criterion is met.

- d. *If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and if a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160-acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160-acre rectangle; or*

The subject parcel is less than 60 acres in size. Therefore, this criterion does not apply.

- e. *If the tract abuts a road that existed on January 1, 1993, and subsection (D) of this section does not apply, the measurements may be made using a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road;*

The property abuts both Briar Knob Lp NE and McKillop Rd NE, both of which existed prior to January 1, 1993. The criterion in Subsection (d) did not apply. Therefore, the applicant may use a rectangle one mile long and one-quarter mile wide, centered on the subject property and aligned to the maximum extent possible with the road if they so choose. The applicant chose to use the standard 160-acre square template.

- f. *Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection;*

The Template Test area did not include any properties within an urban growth boundary. The criterion is met.

- g. *Any property line adjustment to the lot or parcel after January 1, 2019, did not have the effect of qualifying the lot or parcel for a dwelling under this section; and*

The subject parcel has existed in its current configuration since 1970. Therefore, the criterion is met.

- h. *As used in this section, "centered on the subject tract" means the mathematical centroid of the tract.*

The applicant used a template provided by Planning Staff and created via Marion County GIS scripts, written specifically for MCC 17.139.030(B) analysis. The criterion is met.

- (4) *The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including MCC 17.110.830 through 17.110.836.*

There is no evidence indicating that there will be a significant negative impact on water resources. There are not any identified aggregate sites within 1,500 feet of the subject property. Development of a homesite should not create significant stormwater issues nor excessively impact wildlife habitat. As a dwelling is a residential use it is not likely to create excessive noise in the area. The subject property has no historically identified structures or sites on or near it, nor any scenic and natural areas or trails. The criterion is met.

- (5) *The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.*

The subject property is outside of any identified big game habitat. Therefore, this criterion does not apply.

10. Marion County Code 17.139.030 requires that any dwellings established in the FT zone must meet special use and siting requirements as given in MCC 17.139.070. These include:

- (A) *Special Siting Requirements.*

- (1) *Dwellings and structures shall comply with the special requirements in subsection (A)(2) or (3) of this section. Compliance with the provisions in subsection (A)(2) of this section and subsections (B), (F) and (G) of this section satisfies the criteria in (A)(3) of this section. Alternative sites that meet the criteria in subsection (A)(3) of this section may be approved concurrently with any land use application or as provided in Chapter 17.116 MCC.*

This application meets the criteria found in subsection (A)(2) per the below:

- (2) *Siting Standards for Dwellings and Other Buildings.*

- (a) *Dwellings shall be at least 200 feet from any abutting parcel in farm use or timber production. Buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production.*

With the exception of tax lot 1100, which lies roughly along the west half of the subject parcel's southern property line, all other surrounding properties are in farm/forest production according to aerial imagery and/or Assessor information on Farm/Forest Deferral or Special Assessment programs.

As a condition of approval special setbacks of 200 feet for the dwelling and 100 feet for accessory structures shall be required from any property line where the neighboring property is in farm use or forest production. Therefore, the criterion is met.

- (b) *The special setback in subsection (A)(2)(a) of this section shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 through 195.336 nor should the special setback in subsection (A)(2)(a) of this section prohibit a claimant's application for homesites under ORS 195.300 through 195.336.*

This dwelling is not a Measure 37/49 home, nor is it being granted via any other compensation program due to land use regulation. Therefore, the criterion does not apply.

- (c) *The dwelling or other building shall be located within 300 feet of the driveway entrance on an abutting public road; or, if the property does not abut a public road for a distance of at least 60 feet, the dwelling or other building shall be located within 300 feet of the point where the driveway enters the buildable portion of the property.*

It is unconfirmed from the applicant's site plan that the dwelling will be placed within 300 feet of Briar Knob Lp NE. A condition of approval shall be that the dwelling and any future accessory structures be within 300 feet of the driveway's entrance to Briar Knob Lp NE. Therefore, the criterion is met.

(3) *Review Criteria for Alternative Sites. Sites for dwellings or buildings that do not meet the siting requirements in subsection (A)(2) of this section may be approved if the proposed site will meet the following criteria:*

- (a) *The site will have the least impact on nearby or adjoining forest or agricultural lands.*
- (b) *The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.*
- (c) *The amount of agricultural and forest lands used to site access roads, service corridors, the dwelling and structures is minimized.*
- (d) *The risks associated with wildfire are minimized.*

The application meets the criteria of subsection (A)(2). Therefore, subsection (A)(3) does not apply.

(B) *Declaratory Statement. The owner of property for which a dwelling, structure or other specified use has been approved shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the subject lots or parcels:*

*“The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantors, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices, grantors will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.”*

This shall be made a condition of approval. The criterion is met.

(C) *Domestic Water Supply.*

- (1) *The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department’s administrative rules for the appropriation of groundwater or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).*
- (2) *Evidence of a domestic water supply means verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor’s rights to appropriate water; or a water use permit issued by the Water Resources Department for the use described in the application; or verification from the Water Resources Department that a water use permit is not required for the use.*
- (3) *If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor’s report upon completion of the well.*

Evidence demonstrating compliance with the criteria in Section (C) shall be made a condition of approval. Therefore, the criteria is met.

(D) *Road Access. As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the U.S. Forest Service, the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.*

The property has direct access to two separate county maintained roads; Briar Knob Lp NE and McKillop Rd NE. The criterion is met.

(E) *Tree Planting Requirements for Lots or Parcels Over 10 Acres.*

- (1) *Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in MCC 17.139.030(A), (B) or (C), on a tract of more than 10 acres in size, the landowner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.*
- (2) *At the time required by the Department of Forestry rules the owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met.*

The subject parcel is already stocked with established timber/forest use. Therefore, a condition of approval shall be continued compliance with the Department of Forestry minimum stocking requirements. The criterion is met.

(F) *Fire Protection.*

- (1) *The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.*
- (2) *If inclusion within a fire protection district or contracting for residential fire protection is impracticable, an alternative means for protecting the dwelling from fire hazards may be approved, pursuant to the procedures set forth in Chapter 17.115 MCC, subject to the requirements of subsection (F)(3) of this section.*
- (3) *Alternative means of fire protection may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions. The following requirements apply:*
  - (a) *If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year-round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use.*
  - (b) *Road access to the water supply required in subsection (F)(3)(a) of this section shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.*

The property is located within the Silverton Fire District; therefore criterion (F)(1) is met, and criteria F(2) and (3) do not apply.

(G) *Fire Hazard Reduction.*

- (1) *The owners of a dwelling, or structure occupying more than 200 square feet, shall maintain a primary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner 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.*

- (2) *The dwelling shall have a fire-retardant roof.*
- (3) *The dwelling shall not be sited on a slope of greater than 40 percent.*
- (4) *If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.*

These shall be made a condition of approval. Therefore, the criteria are met.

*(H) Road and Drainage Standards.*

- (1) *Public road access to structures of more than 200 square feet in area or a dwelling shall comply with the Marion County Department of Public Works Engineering Standards applicable at the time the application was filed.*
- (2) *Except for private roads and bridges accessing only commercial forest uses, private road or driveway access to structures of more than 200 square feet in area or a dwelling shall meet the requirements of the local fire protection district or forest protection district, except that the county maximum grade standard for a private road is 15 percent. A greater grade may be approved by the fire district or, if the site is not in a fire district, by the State Department of Forestry.*
- (3) *Drainage standards for private roadways shall comply with the Marion County Department of Public Works Engineering Standards, except that corrugated metal culverts of equivalent size and strength may be used.*

These shall be made a condition of approval. The criteria is met.

10. Based on the above findings, it has been determined that the property meets the criteria for establishing a template test dwelling and the request, therefore, is **APPROVED**, subject to certain conditions.

Brandon Reich  
Planning Director/Zoning Administrator

Date: March 20, 2024

If you have any questions regarding this decision contact Nicole Inman at (503) 588-5038.

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