

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
CONDITIONAL USE CASE NO. 24-006**

APPLICATION: Application of the Joy M Blackman Revocable Living Trust to establish a non-farm dwelling on a 5.97-acre parcel in the SA (Special Agriculture) zone located in the 3300 block of Little Haven Lane S, Salem (T8S; R3W; Section 7B; Tax lot 800).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to certain conditions. **PLEASE READ ALL CONDITIONS BELOW.**

EXPIRATION DATE: This conditional use permit is valid only when exercised by **March 30, 2028**. 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. **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposal. To ensure the subject property can accommodate the proposal the applicant should contact 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 applicant shall obtain approval for all permits, including subsurface sewage, as required by the Marion County Building Inspection Division.
2. The proposed dwelling and any future accessory structures shall maintain a **130-foot minimum setback** from the northern property line and a **100-foot minimum setback** from the western and southern property lines.
3. Prior to obtaining building permits, the 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 issuance of a building permit for the new dwelling, the applicants shall sign and submit a Farm/Forest & SGO & Geohazard Declaratory Statement (enclosed) 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. 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.
6. The dwelling shall be addressed **3308 Little Haven Ln S**, effective when building permits are applied for. This address is subject to change if the driveway location 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #7 under Findings and Conclusions below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. The applicants should contact the Salem Suburban 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 the Marion County Assessor's Office (503-588-5144) for additional information regarding the farm/forest disqualification process (please see #10(C) in the Findings and Conclusions below).

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Zoning Administrator. If there is any doubt that the application conforms with adopted land use policies and regulations the Zoning Administrator must condition or deny the application. Anyone who disagrees with the decision may request that the application be considered by a County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) based on new information subject to signing an extension of the 120-day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received in the Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **April 1, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 2, 2024**, unless further consideration is requested.

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

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan and correspondingly zoned SA (Special Agriculture). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations while also providing the opportunity for timber production and other uses that are compatible with agricultural activities.
2. The subject parcel consists of 5.97-acres of naturally forested hillside in the rural unincorporated area of south Salem. The forested area appears to consist of a mix of evergreen and deciduous trees. The slopes on this parcel are significant, and the geohazard overlay shows particularly steep slopes wrapping around the west, east, and south sides of the parcel. A south-pointing triangular section of the parcel based across the northern property line consists of relatively mild 2-point geohazard. The parcel is also within one of Marion County's SGO (Sensitive Ground Water) overlays indicating groundwater supply may be a concern now or in the future.

The access to the subject parcel is via an undeveloped easement that utilizes tax lots 2000, 2301, and 2300. Tax lot 2300 was partitioned twice, once in 2005 and again in 2008. Both new parcels had homes developed clustered together at the end of Little Haven Ln S. Tax lot 2000 was the subject of a measure 37/49 decision that has not been exercised, allowing that parcel to create two additional parcels and develop each with a dwelling.

Currently four parcels with dwellings are addressed off Little Haven Ln S, but the dwelling on tax lot 2000 has frontage on Viewcrest Rd S. Therefore, the limitation of a private lane to not serve more than four dwelling units has not yet been met by Little Haven Ln S and the proposed non-farm dwelling on the subject parcel would be the final dwelling developable without approval of a variance to MCC 17.110.800 - *Dwellings and all other buildings to be accessible to public street*.

3. The subject parcel was created in its current formation by partition in the fall of 1978 which legitimized the sale of this parcel and the description thereof which is included in the deed recorded in January 1978 on Reel 111 Page 1041 of the Marion County Book of Land Records and is therefore legal for land use purposes.

The Major Partition case (MJP78-078) divided a 10-acre parcel in the RA (Residential Agricultural) zone (a zone no longer existing in Marion County Code) into three parcels of approximately 2-acres, 2-acres, and 6-acres. At

the time of the partition the land was jointly owned, and the partition was to accomplish division of this ownership. The subject parcel at this time was separated as described by the deed referenced above and came solely under the ownership of the Blackman family. The other two parcels created by this partition are accessed off of Inland Dr S.

When Marion County adopted an updated Comprehensive Plan in 1982 the RA (Rural Agricultural) zone was removed, and the AR (Acreage Residential) zone was applied to these two smaller parcels. At this time the subject parcel in this case (CU24-006) was changed to SA (Special Agriculture).

4. Properties directly surrounding the subject parcel to the north, west, and south are zoned SA, and parcels to the east are zoned AR. The adjacent AR parcel tract extends to the City of Salem UGB which is a half-mile to the east. The UGB is also a half-mile north of the subject parcel. Some of the SA parcels around the subject parcel have woodlots and most of those are simultaneously in use for rural residences. Many of the SA parcels around the subject parcel are solely in use for rural residences. A half-mile to the west is a large tract of AR zoned parcels that stretches to the Willamette River and western county line. Just over a half mile to the north of the subject parcel is the Illahe neighborhood within the City of Salem UGB. Between the subject parcel and Illahe are a couple SA zoned parcels under 10-acres with a couple acres each of personal orchards and/or fields for a few livestock animals. Half a mile to the south is another tract of AR zoned parcels that transitions into a few SA parcels in the same rural residential use off the same access road (Ballyntyne).

A quarter-mile west of the subject parcel is a 30-acre parcel with similar forest composition to the subject parcel. This 30-acre parcel had a wildlife habitat conservation plan approved in 2002 by AR02-055. The two parcels east of the habitat conservation area were both covered with timber forests up until 2016. Between 2016 and 2019 most of the trees (approx. 20 acres) were harvested on tax lot 100 which meets the subject parcel on its southwest corner. This area has been replanted but it is unclear from aerial photos if the replant was for Christmas tree or timber production. Between 2021 and 2023 about half of the trees (approximately 15-acres) were harvested on tax lot 1300, which is adjacent to the subject parcel on its southern property line. Based on aerial photos and the applicant statement, the clear-cut on tax lot 1300 has not been replanted. Due to the tree coverage and steep slopes on the subject parcel, the proposed homesite is screened and separated from these southern operations. North-adjacent to the subject parcel is a 10-acre stand of timber that may be harvested at a future date.

The most common agricultural use of the nearby SA parcels is production of Christmas trees. Just under a mile to the south of the subject parcel, on the other side of another tract of AR zoned parcels, is a nearly 200-acre parcel in use for grass seed or hay production. This is the closest parcel in commercial agriculture use. Farther to the south (2+ miles south of the subject parcel) are larger SA parcels in clear commercial agricultural use. The predominant land use around the subject parcel is for rural residences.

5. Marion County Soil Survey reports approximately 47.1% of the soils on the subject property as high value. The analysis lists a breakdown of the soils as follows:

<u>Soil Name</u>	<u>Soil Type</u>	<u>Soil Class</u>	<u>High Value</u>	<u>Soil Percent</u>	<u>Soil Acres</u>
Nekia silty clay loam 2-7% slopes	NeB	3	Yes	47.0%	2.8 acres
Nekia silty clay loam 20%-30% slopes	NeE	4	No	38.6%	2.3 acres
Nekia silty clay loam 30-50% slopes	NeF	6	No	14.3%	0.9 acres

6. The applicant proposes to establish a non-farm dwelling on the property.
7. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Land Development Engineering & Permits requested the following be included in the staff decision:

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits an Access Permit will be required for obtaining access at the private access easement Little Haven Lane connection to public road Viewcrest Road.
- B. The subject property will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits.
- C. Utility work in the public right-of-way requires separate PW Engineering permits.

ENGINEERING ADVISORY

- D. The applicant should coordinate with the local Fire Department to confirm any Emergency Vehicle Access requirements given the fact that Little Haven Lane is quite narrow.

Marion County Building Inspection 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.”

Marion County Septic Division commented: “A septic site evaluation is required to establish a viable initial and repair area. A site evaluation may be applied for at the Marion County Public Works campus building 1.”

City of Salem Fire Department commented: “Items including fire department access and water supply will be required per the Oregon Fire Code at the time of development.”

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

- 8. The following code, 17.137.060(A), applies to all conditional uses in the SA zone:

1. 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 access to, and location of, the proposed dwelling will cluster it with adjacent rural residential uses. The 130-foot setback from the northern property line will create a buffer between the proposed dwelling and the stand of timber to the north. The access to the subject parcel is achieved through an existing, although undeveloped, easement extending Little Haven Ln S across AR zoned parcels with dwellings. There are no adjacent agricultural uses that could be disturbed by the proposed placement of a non-farm dwelling.

A farm/forest declaratory statement will be a condition of approval to ensure the property owner, and future owners, of the subject parcel are aware that the priority of the SA zone is agricultural and/or timber uses, and that owners and inhabitants of the proposed non-farm dwelling shall not infringe, inhibit, or complain about the effects of these uses on the subject dwelling.

Considering the above factors staff has determined that the use of the subject parcel for siting a non-farm dwelling using the existing easement to access the proposed building area with the modified setbacks of 130-feet to the north and 100-feet to the east, west, and south, will not cause change in, or significantly increase the cost of, farm or forest uses on surrounding parcels in the area. The criterion is met.

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

The subject parcel is served by the Salem Suburban Fire District and the Marion County Sheriff's Department. As per comment from the Salem Fire Department, fire department access and water supply will be required prior to development. Electrical service, provided by PGE, is available on Little Haven Ln S and could be extended via the undeveloped easement that travels over parcels 083W07A002000, 083W07A002301, and 083W07A002300 to the subject parcel. Permits for a well will need to be filed for with the Oregon Water Resources Department. Permits related to a septic system will need to be filed with Marion County Septic Division. Staff has no reason to believe that all required rural services will not be able to be attained in order for the proposed dwelling to be established. The criterion is met.

3. 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 applicant attests that most of the parcel will be left wooded because harvesting the timber on this property is cost-prohibitive due to the slopes present. Development of access, and fuel breaks will require some timber be harvested. Due to those geohazards on this property, the site of the proposed dwelling is limited to an area in the middle northern section of the property. Sitting the proposed dwelling on this area of the property is not expected to have any deleterious effect on the soils or slope stability. The subject parcel is not within the Big Game Overlay. This property is within the Sensitive Groundwater Overlay and a Declaratory Statement acknowledging this will be a condition of approval. The criterion is met.

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

Any noise associated with the proposed development, post-construction, will be the normal noise of a dwelling in residential use. Based on the proposed site, the nearest dwellings will be over 500 feet away and shielded by trees. Any noise created by this dwelling will not have an adverse impact on the nearby land uses. The criterion is met.

5. 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 water impoundments on or near the subject property, nor are there any aggregate sites in the surrounding area. The criterion does not apply.

9. Non-farm dwellings are subject to MCC Section 17.137.050(A). One of the requirements is that the proposed dwelling meet the provisions listed in 17.137.060(B), which reads as follows:

B. Non-Farm Dwellings. The following additional criteria apply to non-farm dwelling requests:

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.

Marion County Soils Analysis, based on NRCS (Natural Resources Conservation Service) soil data, reports that the subject parcel is composed of 52.9% non-high value soils consisting of respectively 38.6% NeE (Nekia silty clay loam with 20%-30% slopes) which is a Class IV soil and 14.3% NeF (Nekia silty clay loam with 30%-50% slopes) which is a Class VI soil. Nekia silty clay loam classifications with slopes above 20% are not listed on the NRCS table of high value soils when irrigated in Marion County. 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 parcel was created by partition (MJP78-078) in 1978 to legitimize the description of the property as conveyed in a deed recorded earlier the same year on Reel 111 Page 1041 of the Marion County Book of Land Records and has existed in this configuration ever since then. The property does not contain a dwelling. The criterion is met.

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 parcels 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 non-resource uses shall not be included in the study area;

The applicant provided a study area encompassing 2,000-acres of surrounding land. This study area included only properties zoned for Farm Use. Lands zoned for rural residential or other non-resource uses were excluded. Information supplied by the applicant, and verified by staff, indicates that there is no non-resource zoned land applied to the study area and that the applicant's report meets the required area for resource zone analysis.

The applicant has indicated this study area is representative of the land use pattern surrounding the subject parcel. Uses within the study area include rural residences, timber lots, natural woods, Christmas tree lots, and fields of row crops. Staff concludes 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.

(b) Identify within the study area the broad types of farm uses (irrigated or non-irrigated 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 within an area near the edge of the City of Salem UGB, an area which contains several large tracts of Acreage Residential zoned parcels. As a result, the 2,000-acre study area creates a meandering shape that wraps around these tracts and extends around and above peninsulas of residential-neighborhoods. The largest contiguous space of the study area exists in the southern half.

The applicant noted that due to the steep slopes and low value soil, most of the parcels included in the 2,000-acre study area have woodlots and are not in agricultural use. Based on Marion County aerial photographs of the region, very few of the woodlots appear to be intentionally planted stands of timber. One of the stands is directly north adjacent to the subject parcel. South adjacent is a clearcut that occurred between 2021 and 2023. Southwest adjacent of the subject parcel was a clear cut from between 2016-2019 that has been replanted. It is unclear from aerial photographs if this parcel has been replanted with timber or with Christmas trees. Roughly half of the wooded areas within the study area are covered with deciduous trees and irregularly growing evergreen trees. These naturally wooded areas are not considered to be in timber use. The largest stands of timber range from 10-15 acres and are on properties that contain dwellings.

The most common agricultural use in the study area appears to be for the purpose of harvesting Christmas trees. The largest Christmas tree operation in the area is only partially within the study area. The entire operation consists of approximately 60-acres of Christmas trees planted across 3-parcels which total over 200-acres. This operation is on the southernmost edge of this 2000-acre study, and less than half of the total operation is within the study area.

The largest single parcel in agricultural use is also on the southernmost edge of the 2000-acre study. This parcel is almost 200-acres and has 127-acres devoted to grass seed or hay production, and 20-acres devoted to Christmas trees. It is worth noting that a few acres of the Christmas tree lot falls outside of the study area. The other two large parcels in agricultural use are both on the northernmost edge of the 2000-acre study area. These parcels are contiguous and along the Willamette River north of Illahe. One is 97-acres, and the other is 182-acres, both appear in use for row crops. The northernmost parts of the 182-acre parcel falls outside of the study area.

A total of 137 parcels were included in the study area. Of these included parcels, 124 are zoned SA and 13 are zoned EFU. Only five parcels in the study area are larger than the minimum 80-acres for SA and EFU zoned parcels. 60% of the parcels are under 10-acres in size.

Of the parcels included in the study area, 92 have at least one dwelling and there are a total of 101 dwellings on these 92 parcels. 84 of those parcels had a dwelling prior to 1993. A total of 8 parcels have been developed with homesites in the last 30 years. Since 1993, four non-farm dwellings have been approved within the study area. Three of these were approved in the 90s, and the fourth in 2004. Also, since 1993, three lot of record dwellings were approved, and three replacement dwellings were approved. While not permanent, four hardship dwellings have been approved in the study area since 1993.

Staff found seven parcels within the study area that have neither a dwelling nor predominantly high value soils. These parcels would therefore potentially be able to qualify for additional non-farm dwellings. However, five of these parcels were involved in Measure 37/49 claims. As a result, these parcels would develop single family dwellings as a result of their Measure 49 decisions, and not through application for non-farm dwellings. A total of seven dwellings may result from these Measure 49 orders. The remaining two parcels that could potentially qualify for non-farm dwellings are both of relatively large sizes and in timber use.

The applicant contends that the most common use of parcels within the study area is for rural residential purposes, and that allowing development of a single-family dwelling on the subject parcel would not destabilize the less common farm and timber uses in the area. The commercial agricultural uses within the study area are restricted to the northern and southern most parcels, all three of these operations are 0.7-0.9 miles from the subject parcel on the other side of rural residential clusters. The proposed dwelling would be consistent with the development pattern that has occurred on the SA and EFU parcels surrounding the subject parcel.

(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.

Approval of this application would bring the total number of post-1993 non-farm dwellings within the study area to five. The subject parcel is 5.97-acres and would fit within the current land use pattern of small acreage homesites scattered through the area. The subject parcel has never had a dwelling not been involved in agricultural use.

If the other two parcels that could potentially develop non-farm dwelling were able to do so, they would not be able to materially alter the land-use pattern in the area. The dominant land-use pattern in this area is for rural residential use and has been for more than 30 years.

The proposed dwelling would be built within an existing cluster of residences, accessed on private lane that serves adjacent AR zoned parcels. The proposed dwelling site would be shielded by trees and topography from adjacent SA zoned parcels. These adjacent parcels while involved in timber use, do not appear to be involved in agricultural uses. The access and isolation of the proposed dwelling shield it from the scattered agricultural use of Christmas tree production in the area. The parcels in the study area involved in row crop production are all on the other side of residential neighborhoods from the subject parcel, so it is unreasonable to say that the proposed dwelling will have any effect on those farming operations. It is staff's conclusion that based on the above factors, there would be little to no effect on existing farming in this area.

Staff deems the cumulative impact analysis submitted by the applicant as acceptable and complete and concludes that the applicant's conclusions based on the analysis are sound. Therefore, staff determines that the criteria of MCC 17.137.060(B)(3) are met.

10. In addition, non-farm dwellings shall be subject to the following code as provided for in 17.137.070, Non-farm dwelling 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.

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.

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.

d. The risks associated with wildfire are minimized.

The applicant has proposed reducing the setbacks from 200-feet to 100-feet considering the dimensions of the property (an imperfect square of approximately 500 by 500-feet) and the significant slopes which create geohazard areas across much of the eastern, western, and southern sides of the parcel. The most reasonable buildable area is the middle of the northernmost third of the parcel. This area is closest to where the easement enters the property and is the flattest area, though still within the geohazard 2-point overlay. This site would put the proposed dwelling potentially 100-feet from the timber lot directly north-adjacent to the subject property. The applicant would have to sign a farm/forest declaratory statement as a condition of approval, in which they would recognize these timber uses are a priority above a non-farm dwelling in this zone and shall not be interfered with or complained about.

The proposed location would allow for the existing easement to be used, which would travel over AR zoned land that is not being used for agricultural or timber purposes. The subject parcel is served by the Salem Suburban Fire District and will comply with all relevant fire district code imposed by the SSFD.

It is generally considered prudent to have 2-acres to be able to site a dwelling, septic tank and drainfield, replacement drainfield area, and a well. If the 200-foot setbacks were imposed, the practical buildable area would be roughly a quarter of an acre. The buildable area increases to almost 1-acre with the proposed 100-foot setbacks. The prohibitive geohazard slopes present on the eastern, western, and southern portions of this property make the northern setback the primary variable in potentially developable space on this parcel.

The northern parcel has a 10-acre stand of timber directly adjacent to the subject parcel. Depending on how the applicant implements the fuel breaks imposed by 17.137.070(B), the effective setback from the northern parcel will end up being at least 130-feet. The primary safety zone is 30 feet around all structures, with some slope related extensions that may affect this property depending on the siting of the proposed dwelling. The secondary fuel break area is 100-feet around the primary safety zone. The secondary fuel break area requires pruned and spaced vegetation so that fire would not spread between the crowns of trees, or between trees via vegetation between them.

To reduce the setback on the northern parcel below 130ft would conflict with the criteria of 17.137.070(A)(3)(d) and 17.137.070(B)(3) due to the requirements to meet the primary and secondary fuel break areas.

Staff has determined that a reduced special setback of 130-feet from the northern property line, and 100-feet from the western and southern property lines for the proposed dwelling and any future accessory structures would maintain the intent of the Special Setback Code and meet the criteria in subsection (A)(3)(a-d). The special setbacks do not apply to the eastern property line adjacent to parcels in the AR zone. These criteria are met.

4. The special setback in subsection (A)(1) 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)(1) of this section prohibit a claimant's application for homesites under ORS 195.300 through 195.336.

The proposed dwelling is not subject to/a part of a Measure 37 or 49 claim. The criterion does not apply.

- (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 provide continuing fire hazard management in accordance with Chapter 3 of "Fire Safety Consideration for Development in Forested Area," 1978, and any revisions thereto.*

The updated version of the standards within the document above is referenced in the EFU-equivalent of this section of code: 17.136.070 (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."

The property north of the subject parcel has approximately 10-acres devoted to timber production directly adjacent to the subject parcel. The primary and secondary fuel-free break areas shall be conditions of approval. The criterion is met.

- (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.

The criterion can be met with a condition of approval: the applicant shall submit evidence to Marion County Planning that the property has been disqualified from farm/forest deferral by the Marion County Tax Assessor's Office prior to Planning approval of a building permit. The criterion is met.

11. Finally, non-farm dwellings must also meet the standards in MCC 17.137.100, which are listed below:

- (A) *Maximum Height.*
- 1. Dwellings: 35 feet.*
 - 2. Farm-related structures on farm parcels: none.*
 - 3. Nonresidential and non-farm structures: 35 feet unless they are in conjunction with conditional uses allowed in MCC 17.137.050, and a greater height is requested and approved as part of the conditional use permit.*

Compliance with this shall be verified at the time of building permits. The criteria are met.

- (B) *Minimum Setbacks. Except as required in MCC 17.137.070(A), the following setback requirements shall be implemented for all new structures other than farm-exempt buildings, signs and fences:*
- 1. Rear Yard. A minimum of 20 feet.*
 - 2. Side Yard. A minimum of 20 feet, except for lots or parcels of one-half acre or smaller created prior to January 1, 1994, in which case the side yard setback shall be five feet.*
 - 3. Front Yard. A minimum of 20 feet. When by ordinance a greater setback or a front yard of greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply (See Chapter 17.112 MCC).*

The dwelling and any future accessory structures shall be subject to MCC 17.137.070(A), as adjusted in the conditions of approval. Therefore, these criteria do not apply.

- (C) *Declaratory Statement. For all dwellings, and other uses deemed appropriate, the property owner shall be required to sign and allow the entering of the following declaratory statement into the chain of title of the lot(s) or parcel(s):*

"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 that 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 and 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.

12. Based on the above discussion, the 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**.

Brandon Reich
Planning Director/ Zoning Administrator

Date: March 15, 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.