

NOTICE OF DECISION
ADMINISTRATIVE REVIEW CASE NO. 18-020

APPLICATION: Application of Ditchen Land Company for an administrative review to replace a dwelling previously removed from a 47 acre parcel in an EFU (Exclusive Farm Use) zone located at 7091 Howell Prairie Rd NE, Silverton. (T6S; R2W; Section 25; tax lot 900).

DECISION: The Planning Director for Marion County has determined that the residence is a legally established dwelling and can be replaced, subject to conditions.

EXPIRATION DATE: This decision is valid only when exercised by **January 1, 2024**, unless an extension is granted. The effective period may be extended for two years 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 check with 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. **Within three months of occupancy of the replacement dwelling, the existing dwelling must be removed, demolished, or converted to an allowable non-residential. In lieu of removal, the applicant may:**
 - (a) File a Declaratory Statement restricting use of the replaced dwelling for residential purposes; and
 - (b) Submit a site plan showing location of all structures on the property and identifying which structure is the replaced dwelling.
3. Prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a Declaratory/Farm-Forest 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.
4. 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.

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:

5. The applicant should contact Marion County Fire District #1 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. Contact Paula Smith, Marion County Fire District #1, at (503) 588-6513 for more information.

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 regula-

tions 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 **November 19, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 20, 2018** 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 subject property is located on the west side of Howell Prairie Road NE in the 7000 block. The property was the subject of a previous land use case, Administrative Review 94-83, an application to replace a dwelling on the property, which was denied under a different set of criteria than exists today. The property contains an existing well and was described by a deed Volume 444, Page 222 recorded in 1952. At that time there were no requirements for this kind of land division; therefore, the property was legally created.
3. Surrounding properties in all directions are zoned EFU and devoted to various types of farm use.
4. The applicant is proposing to replace a dwelling that previously existed on the property with a new dwelling. Both a site built and a manufactured dwelling have previously existed on the property.
5. Soil Survey of Marion County Oregon indicates 100% of the subject property is high-value farm soils.
6. Public Works Land Development and Engineering Permits commented:

Engineering Requirements:

- A. Driveway permits will be required for any new access or change in use of the existing access to the public right-of-way. The Applicant shall be required to apply for a driveway "Access Permit" and construct any improvements required by the permit. Driveways must meet sight distance, design, spacing, and safety standards [MCC 11.10, Access Ordinance #651].
- B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively. Replacement dwellings are subject to SDC assessment when the prior dwelling has been removed or legally uninhabited for more than 12 months.

Applicant should also be aware of the following:

- C. The applicant is advised that construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner.
- D. Applicant is advised of a 40-foot special setback per MCC 17.112.020 that applies from the centerline of Howell Prairie Road NE due to its functional classification as a Major Collector."

Marion County Building Inspection commented that permits will be required for new construction.

Marion County Building Inspection Onsite Wastewater Specialist commented that authorization permit is required to connect to septic or a site evaluation is required to install a new system.

7. Chapter 17.136.030(D) of the Marion County Code (MCC) allows the alteration, restoration, or replacement of a lawfully established dwelling, with filing of the declaratory statement in MCC 17.136.100(C), when the dwelling:

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

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

The applicant supplied pictures that the site-built home previously on the property was being lived in and had these components. This criterion is met.

B. *The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from the time the dwelling was established; and*

The applicant provided evidence of three years of taxes for the manufactured dwelling that was previously on the property. According to the information supplied, the taxes represent all of the taxing years available up until the dwelling was destroyed. This criterion is met.

C. *If the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling had to have been assessed as a dwelling until such time as the value of the dwelling was eliminated:*

1. *The destruction (i.e., by fire or natural hazard), or demolition in the case of restoration, of the dwelling; or*
2. *The applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll;*

The dwelling was intentionally removed with the intention of replacing the dwelling. Since the dwelling was intended to be replaced, it was not intended to be permanently removed from the tax rolls. This criterion is met.

D. *The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:*

- a. *Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or*
- b. *If the dwelling to be replaced is in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and*
- c. *If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.*

This criterion can be made a condition of any approval.

E.. *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 to a non-residential use.*

This criterion can be made a condition of any approval.

F. 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 2013 Oregon Laws, Chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling;

The entire property is zoned EFU, therefore this criterion does not apply.

G. 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. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling;

Any standards applied will 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. The standards will not be applied in a manner that would prohibit the siting of the replacement dwelling. This criterion is met.

H. When a dwelling formerly had the features described in subsection (7)(A) of this section or was removed from the tax roll as described in subsection (7)(C)(b) of this section, then the replacement dwelling must be sited on the same lot or parcel consistent with the following:

- a. Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and*
- b. If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure;*

The applicant intends to place the new dwelling on the previous dwelling footprint. This criterion is met.

I. Replacement dwellings that currently have the features described in subsection (7)(A) of this section and that have been on the tax roll as described in subsection (7)(B) of this section may be sited on any part of the same lot or parcel;

There is no existing dwelling on the subject property. This criterion does not apply.

8. If approved, the applicants will be required to sign and record a Farm/Forest Declaratory Statement prior to placing a new dwelling on the property as a condition of approval. This acknowledges the impacts of farm and forest management practices conducted in the area.
9. Based on the above findings, it has been determined that the dwelling was legally established and may be replaced, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: November 2, 2018

If you have any questions regarding this decision contact Brandon Reich 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.