

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. 19-002**

**APPLICATION:** Application of Peters and Son Farms Inc. for an administrative review to locate a secondary farm dwelling on a 543 acre parcel in an EFU (Exclusive Farm Use) zone located at 18472 Silver Falls Highway SE, Sublimity. (T8S; R1E; Section 21; tax lot 600 and Section 20; tax lot 500).

**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 **February 28, 2023** unless an extension is granted. The effective period may be extended one time 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. Prior to issuance of any building permit for the secondary farm dwelling, the applicants shall sign a Marion County Secondary Farm Dwelling Removal Agreement (enclosed) for the secondary farm dwelling. The applicants shall record the Statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
3. Prior to issuance of any building permit for the secondary farm dwelling, the applicants shall sign a Marion County Declaration of Covenants, Conditions and Restrictions (enclosed) for the secondary farm dwelling. The applicants shall record the Statement 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 the secondary farm dwelling, the applicants shall sign and submit a Marion County Declaratory/Farm-Forest Statement (enclosed) to the Planning Division. This Statement shall be recorded by the applicants with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
5. The secondary dwelling shall be continuously occupied by family members working on the farm, as described in this decision.
6. The family members shall continue to play the predominant role in management and farm use of the farm.
7. The property used for the purposes of establishing this secondary farm dwelling is a part of a tract that includes tax lots in Township 8 South and Range 1 East, in Section 20; tax lot 500 and Section 21; tax lot 600. Neither of these tax lots shall be used 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.

**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 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

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

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must deny the application. Anyone who disagrees with the Director's decision may appeal the decision to 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 **February 28, 2019.** If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March , 2019** 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 both sides of Silver Falls Highway SE and Jasper Lane SE. The 543 acre parcel identified as tax lot 600 contains three permanent dwellings constructed in 1925, 1927, and 1948, according to Tax Assessor records. The property also contains an existing secondary farm dwelling, which is a manufactured home placed on the property in 1981, farm structures, well and septic system. A 54 acre parcel identified as tax lot 500 is in the same ownership, farmed with the larger parcel, undeveloped, and contiguous to tax lot 600. A 78.34 acre parcel is located to the southeast of tax lot 600, is in the same ownership, but is not considered to be contiguous with or part of a tract with tax lot 600 because the two properties have only one point in common. The property was subject of Farm/Timber Dwelling case number FTQ81-24 and is considered a legal parcel for land use purposes.
3. Surrounding properties in all directions are in a mixture of farm and timber uses and in an EFU zone.
4. The applicants are proposing to locate a secondary farm dwelling to be occupied by a farm worker and family.
5. Soil Survey of Marion County Oregon indicates 43% of the subject property is high-value farm soils.
6. Public Works Land Development and Engineering Permits commented "Public Works Engineering Division Requirements and Advisories are given below:

#### **ENGINEERING REQUIREMENTS**

- A. In accordance with Marion County Code 11.10, driveways must meet sight distance, design, spacing, and safety standards. A driveway permit will be required for any new access or change in use of the existing access to the public right-of-way. Applicant will be required to apply for a driveway "Access Permit" and

construct any improvements required by the permit upon application for building permits. The proposed access to the dwelling appears to be derived off of Jasper Lane, which is Marion County maintained according to our records. The driveway should be positioned to grant the most vision possible.

- 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.

### **ENGINEERING ADVISORIES**

- C. Per Marion County Code 17.112 a special setback requirement of 30 feet from the centerline of the street right-of-way applies to Local roads, which Jasper Lane is classified as, in which no structure may be established, and from which required zoning setbacks are measured. According to Marion County records a 20-foot right-of-way half-width currently exists along the subject property frontage; therefore, it appears an additional 10-foot setback onto the property would apply.
- D. 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.”

Marion County Tax provided tax information concerning the parcel.

Marion County Building Inspection commented that a building permit is required for new construction or placement of a mobile home.

Marion County Building Inspection Onsite Wastewater Specialist commented that a septic evaluation is required.

7. Secondary farm dwellings customarily provided in conjunction with farm use may be approved when the standards in Chapter 17.136.030(C) of the Marion County Code (MCC) are satisfied. The applicable standards include:

- A. *A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, step-sibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use.*

The applicant states that all four of the existing dwellings on the subject property are occupied by family members who are actively engaged in the operation or management of the farm. The proposed secondary farm dwelling will also be occupied by a family member actively working on the farm. This criterion is met.

- B. *The farm operator shall continue to play the predominant role in management and use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding, and marketing.*

The proposed secondary farm dwelling will also be occupied by a family member actively working on the farm. This criterion is met.

- C. *A deed restriction is filed with the county clerk requiring removal of the dwelling when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved.*

This requirement can be made a condition of any approval.

- D. *For purposes of this subsection, a commercial farm operation is one that meets the income requirements for a primary farm dwelling identified in subsection (A)(1)(b) of this section, and the parcel where the dwelling is proposed contains a minimum of 80 acres.*

The applicant provided tax records showing that the farm operation grossed in excess of \$80,000 for at least three of the past five calendar years. The parcel on which the secondary farm dwelling is proposed is greater than 80 acres in size. This criterion is met.

*E. 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 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.*

There are two tax lots that make up the tract that includes the parcel on which the secondary farm dwelling has been proposed. A third lot is located to the southeast of the lot on which the secondary farm dwelling is proposed, but is not considered to be a part of the tract. Both contiguous tax lots have been included in the tract. A Marion County Secondary Farm Dwelling Removal Agreement will be required to be recorded for the secondary farm dwelling. Any approval will be conditioned on the above stated requirements.

8. Based on the above findings, it has been determined that the proposed secondary dwelling satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: February 13, 2019

If you have any questions regarding this decision contact Lisa Milliman 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.