

Attention Property Owner: A land use proposal has been submitted for property near where you live or property you own elsewhere. State law requires the county notify property owners within a certain distance from this property. The proposal and address of the property is described in "Application" section. 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. 19-010**

**APPLICATION:** Application of Erin Nugent for an administrative review to replace a dwelling on a 1.0 acre parcel in a TC (Timber Conservation) zone located at 13313 Schroeder Road SE, Gates (T9S; R3E; Section 26; tax lot 600).

**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 **July 8, 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 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.
3. The applicants shall continuously meet the following Fire Hazard Reduction standards:
  - a. 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.
  - b. The dwelling shall have a fire-retardant roof.
  - c. The dwelling shall not be sited on a slope of greater than 40 percent.
  - d. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

**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:

4. The applicant should contact the Mill City 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.

5. 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 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 **July 8, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 9, 2019** 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 zoned TC (Timber Conservation). The purpose of the Timber Conservation zone is to maintain properties for timber use and commercial agriculture. Dwellings may be approved subject to the criteria in the zone.
2. The subject property is located on the west side of Schroeder Road SE approximately 300 feet north of its intersection with North Santiam Highway. The property is developed with a manufactured home, accessory buildings, well and septic system. The property was approved in its current configuration by Major Partition case number MP79-116, which may not have been completed, but the other parcel created through this partition was legalized through foreclosure and the subject parcel is therefore considered a legal lot for land use purposes.
3. Surrounding properties in all directions are zoned TC and devoted primarily to timber.
4. The applicant is proposing to replace the dwelling on the property with a new dwelling.
5. 

| <u>Soil Name</u>               | <u>Total Acreage</u> | <u>CU.FT/AC/YR</u> | <u>Total Cu. FT./YR</u> |
|--------------------------------|----------------------|--------------------|-------------------------|
| Horeb gravelly silt loam (HSC) | 1.0                  | 195                | 195                     |
6. Marion County Public Works Land Development and Engineering Permits requested that the following Engineering Advisories be included in the decision:
  - A. Per Marion County records Schroeder Road SE is a private road that takes access from OR22, which is under ODOT maintenance and access jurisdiction. Applicant should contact ODOT to ensure access from OR22 is safe and compliant with their standards.
  - B. System Development Charges (SDCs) will not apply to the replacement dwelling if the existing dwelling has been inhabited within 12 months of the building permit application for the replacement dwelling. Outside of that 12 month window, Transportation & Parks System Development Charges (SDCs) will apply upon application for building permits, per Marion County Ordinances #00-10R and #98-40R, respectively.

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

Marion County Building Inspection Onsite Wastewater Specialist commented that connection of a new dwelling requires septic authorization.

All other commenting agencies stated no objection to the proposal.

7. Chapter 17.138.020(E) 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 17.138.100(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;*

A manufactured home on the property is assessed as a dwelling. A review of the information submitted in the application, tax records, and building records demonstrates that it was lawfully established on the property. 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*

Marion County Assessor records indicate that the manufactured dwelling has been on the tax roll since at least 2009. 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 manufactured dwelling on the property is currently on the tax roll. This criterion does not apply.

- 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 TC, 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;*

There is an existing dwelling on the property. This criterion does not apply.

*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 an existing dwelling on the property. This criterion is met.

8. Any dwelling approved in the TC zone must also meet certain standards for development in MCC 17.138.060:

*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 subsections (A)(2) and (B), (F) and (G) of this section satisfies the criteria in subsection (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.*
- 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.*
  - 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.*
  - 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.*

Due to the small size of the subject property, the replacement dwelling cannot be sited 200 feet from all property lines. All buildings will be located within 300 feet of Schroeder Road, a private road providing access to this property and several large parcels to the north. Not all of these criteria are met, therefore the alternative siting criteria must be addressed.

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; and*
  - d. *The risks associated with wildfire are minimized.*

The property is surrounded on three sides by parcels that are large enough to be in commercial timber production. The property to the south is 1.19 acres in size, and is too small to be used for commercial timber production. The west property line follows Roland Creek, which provides a small buffer between the property and timber activities on the adjacent parcel. Schroeder Road provides a narrow buffer to the east. The existing home site is located in the southeast corner of the property and this location is as far from timber activities as possible. The applicant's statement indicates the replacement dwelling will be placed at the same location as the existing dwelling. The property is located within 275 feet of North Santiam Highway. Due to the size of the property, timber production taking place to the north, east and west, the North Santiam Highway to the south, and the presence of a dwelling on the small adjacent parcel, the special setback need not be applied in this case in order to reduce conflicts with agricultural or timber operations. The proposal meets the special siting standards above.

- B. **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 for 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 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.*

Recording of this declaratory statement can be made a condition of any approval.

- 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.*

The existing dwelling is served by a well on the property. The well location is shown on the site plan. This criterion 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, then 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 access to Schroeder Lane, a private easement that was created by deed (Volume 404; Page 633-4) in 1948, prior to adoption of this criterion. This condition is met.

E. Tree Planting.

1. *Prior to issuance of a building or siting permit for the dwelling 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 property is less than 10 acres in size. This criterion does not apply.

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 subsections (F)(3) of this subsection.*
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.*
  - 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 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 fire fighting 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 within the Mill City Fire District. This criterion is met.

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 standards can be made a condition of any approval.

H. Road and Drainage Standards.

1. *Public road access to structures of more than 200 square feet in area or dwellings 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 dwellings 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 standards will be applied at the time the dwelling is constructed through the development review process. This criterion is met.

8. 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: June 21, 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.