

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. 18-037**

APPLICATION: Application of John and Miriam Rasmussen for a conditional use to place a non-farm dwelling on a 26.98 acre parcel in a FT (Farm Timber) zone located in the 2,500 block of Drift Creek Road NE, Silverton. (T7S; R1E; Section 7; tax lot 1000).

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

EXPIRATION DATE: This conditional use permit is valid only when exercised by **July 12, 2020**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **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 proposal is for land use purposes only. Due to septic, well, and drainfield replacement areas, these parcels may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division at (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 required by the Marion County Building Inspection Division.
2. Prior to obtaining building permits, the applicant must provide evidence to the Planning Director that the Marion 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.
3. Prior to obtaining any building permit, the applicant shall sign and submit a Declaratory/Farm-Forest 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.
4. A 200 foot dwelling setback and a 100 foot accessory structure setback shall be maintained from all property lines.
5. The following fire hazard reduction measures are required:
 - 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.*
6. Prior to issuance of any building permit for any new dwelling, the applicants shall provide evidence of domestic water supply for the subject property.

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 restrictions or conditions thereon. It is recommended that agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits.

7. The applicant should contact the Silverton Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards. The Silverton Fire District may be contacted at (503) 873-5328.

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 condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200.00) 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. Requests for reconsideration, or consideration by a hearings officer, 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 11, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the above address. This decision is effective **July 12, 2018** 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 Farm Timber in the Marion County Comprehensive Plan and zoned FT (Farm Timber).
2. The subject parcel is located approximately 1,900 feet south of the southern terminus of Huiras Lane on the west side of the Silverton Reservoir. The property was subject of Measure 37 #M06-195 which determined that the parcel is considered a legal parcel for land use purposes.
3. All surrounding properties are zoned FT and consist of land in timber or farm use.
4. A soil survey submitted with the application indicates that approximately 36.8% of the property consists of high-value farm land. Approximately 63% of the parcel consists of Class VI soils.
5. The applicant is requesting to establish a nonfarm dwelling on the property.
6. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

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

Silverton Fire District commented that the applicant must meet the requirements of the Oregon Fire Code in regards to access & water supply prior to any approvals for occupancy for the new dwelling from the Silverton Fire District.

7. The following criteria apply to all conditional uses in the FT zone:
 - a. *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 proposal will add a dwelling to the property. There is no evidence to indicate that the dwelling will have any adverse effect on surrounding properties in farm use. There are parcels developed with dwellings in the area. The proposed dwelling would not be expected to have an effect on neighboring farm uses. This criterion is met.

- b. *The use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.*

The property is served by the Silverton Fire District and will be subject to fire district requirements for identification, access and fire hazard reduction.

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

The property is in the Silverton Fire District and law enforcement is provided by Marion County. All other rural services are available to the site. This criterion is met.

- d. *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 dwelling is not expected to impact watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality. This criterion is met.

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

Any noise produced by the property would be consistent with the noise produced by other, similar residential uses in the area. This criterion is met.

- f. *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 identified significant mineral and aggregate sites on or near the property. The Silverton Municipal Reservoir is located approximately 320 feet from the northeast corner of the subject property and an additional 570 feet or more from the proposed home site. At this distance, a single dwelling and septic system is not expected to affect water quantity or quality in the reservoir. This criterion is met.

8. The following criteria in MCC 17.139.060(B) apply to non-farm dwelling requests:

- a. *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.*

The Marion County Soil Survey shows that the soils on the property are predominately class VI Nekia Silty Clay Loam soils. This criterion is met.

- b. *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 property does not contain a dwelling. The configuration of the parcel has not changed since at least 1945. This criterion is met.

- c. *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 parcel in the area similarly situated shall be considered. To address this standard, the following information shall be provided:*
1. *Identify a study area for the cumulative impact analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 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 has identified a study area encompassing approximately 2,000 acres. This study area included only farm zoned properties and lands zoned for rural residential or other non-resource uses are not included in the study area. Information supplied by the applicant supports that there are no non-resource zoned lands in the study area and that the applicant's report meets the required 2,000 acre resource zone analysis area. The applicant has indicated this study area was chosen as representative of the types of farming and the land use pattern surrounding the subject parcel. Staff concludes that the area presented by the applicant is a fair representative of the surrounding area and sufficient to arrive at a representative sampling of the land use pattern.

2. *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 applicant identified 81 dwellings in the study area. The applicant did not indicate how many of the dwellings were approved after 1993, but did find a potential for only one additional non-farm dwelling and no new Lot of Record dwellings possible in the study area. The potential development of a total of two new dwellings, including the dwelling proposed on the subject property, is not expected to have a significant effect on resource use of land in the study area. Staff finds that this analysis accurately describes the existing land use pattern and the land use pattern that could result from approval of possible non-farm dwellings.

3. *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, lease farmland, 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.*

The applicant has supplied an analysis of the existing dwelling pattern as well as general information regarding farm operations in the area. As discussed above, the existing and potential new non-farm dwellings will have an insignificant impact on farming operations in the area based on the topography, soils and the existence of dwellings already in the area. It does not appear that the placement of a dwelling on this parcel will diminish the opportunity for others to expand, purchase, or lease any land available for farming. Evidence submitted by the applicant indicates that the placement of a dwelling on the subject parcel will not destabilize the overall characteristics of the study area.

- d. *Disqualification. Prior to issuance of any residential building permit for an approved non-farm dwelling under MCC 17.139.050(A), the applicant shall provide evidence 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.

This requirement can be made a condition of approval.

9. Since the property is located in an FT zone, the proposal must also satisfy the special use and special siting criteria in MCC 17.139.070. Since the site of the proposed dwelling is over 300 feet from any property line, the alternative siting criteria apply. Those requirements are:

A. *Alternative Siting Criteria*

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

The proposed home site is located in the vicinity of an existing storage building that is served by an existing driveway. Due to the slope of the property, this location presents the fewest problems for constructing a dwelling and associated well and septic system. There is little farming or forestry conducted on the property due to the poor soils and topography and thus, little resource activity to disrupt by placement of a dwelling and non-farm uses at this location. The property is served by the Silverton Fire District and will be subject to fire district requirements for identification, access and fire hazard reduction.

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

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

This 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 applicant proposes to drill a well on the property to provide water to the dwelling in accordance with Oregon Water Resources Department standards for domestic wells. A condition of approval can require submission of a well log for the property to establish that an authorized source of water has been established for the dwelling.

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

The applicant intends to obtain access onto the public roadway through an existing easement. This provision does not apply.

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

This criterion does not apply to a nonfarm dwelling approved under MCC 139.050(A).

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

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.*

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

Road and drainage standards will be addressed as part of the building permit process. Prior to building permits, the applicant must obtain driveway access permits and meet engineering standards during construction.

10. Based on the above findings it has been determined that the applicant's request can meet all applicable criteria to establish a non-farm dwelling and is, therefore, **APPROVED** subject to conditions.

Joe Fennimore
Director-Planning Division

Date: June 26, 2018

If you have any questions please 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.