

**NOTICE OF DECISION
CONDITIONAL USE CASE NO. 18-042**

APPLICATION: Application of Thomas Pilcher for a conditional use to place a non-farm dwelling on a 1.84 acre parcel in an EFU (Exclusive Farm Use) zone located in the 12500 block of Twin Creeks Ln SE, Jefferson. (T9S; R3W; Section 23; tax lot 400).

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 **August 15, 2022**. The effective period may be extended for two additional years 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 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 required by the Marion County Building Inspection Division.
2. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
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 any building permit for any new dwelling, the applicants shall sign and submit a Declaratory/Farm-Forest/SGO 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. The dwelling and any accessory structures shall maintain setbacks from property lines as follows:

North property line: 50 feet
West property line: 125 feet
South property line: 100 feet

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 #5 under Findings and Conclusions below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

6. The applicants should contact the Jefferson 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.

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) on the basis of 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 **August 15, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 16, 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 Primary Agriculture in the Marion County Comprehensive Plan. The intent of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agriculture in the area. The property is also located in the Marion County Sensitive Groundwater Overlay Zone (SGO), an area with limited groundwater resources.
2. The subject parcel is located north of Wintercreek Road SE on the west side of Twin Creeks Lane SE in the 12,200 block. The property is developed with a well and septic system and was subject of NFD80-7, which approved a non-farm dwelling on the property that was never built. The property is considered to be legally created.
3. Nearby properties are medium to large sized farm or forest parcels with rural home sites and some smaller rural residential parcels. To the northwest and southeast, beyond a large farm/forest parcel are small AR (Acreage Residential) zoned properties predominantly in rural residential use.
4. The Marion County Soil Survey shows the entire property is composed of Class VI soils, which are not high value farm soils.
5. The applicant proposes to locate a non-farm dwelling on the 1.84 acre parcel.
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 an septic install permit will be required.
7. In order to approve a non-farm dwelling in an EFU zone, the applicant must demonstrate compliance with criteria identified in Sections 17.136.060(A), 17.136.060(B), 17.136.070 and 17.136.100. These include:

The following criteria apply to all conditional uses in the EFU zone under 17.136.060(A):

- (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.*
- (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
- (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- (e) *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.*

8. The subject property is located in a wooded area. Properties to the north are in a combination of farm and forest uses and are not commercially farmed within 600 feet of the subject parcel. A private drive and drainage way border the subject parcel on the east and serve as a buffer to any farm use on parcels to the east. A manufactured home lies to the south of the subject parcel and natural pasture and woodlot lie further to the south on the adjacent parcel. The application meets #7(a).

The subject parcel is already served by an existing electrical service, well and septic system. The land is within the Jefferson Fire District and served by the Marion County Sheriff. Approval of the dwelling may cause a small increase in traffic on Twin Creeks Lane SE, and so the applicant must comply with road access standards. The subject property is one of five dwellings addressed off of Twin Creeks Lane SE, but the dwelling to the south is on property with frontage on Winter Creek Road SE, and the number of dwellings served by this private easement does not exceed the limit set forth in MCC17.110.800. The proposal meets #7(b).

The property does not contain any identified groundwater, fish and wildlife habitat, air, and water quality resources. While the property is located in an SGO zone, siting a dwelling on an existing parcel does not trigger additional review to determine if adequate groundwater resources are available for the dwelling. As described above, the proposal meets #7(c). It is expected that any noise generated by the dwelling will be confined to the property and will have little or no impact on surrounding lands. The proposal meets #7(d). The Marion County Comprehensive Plan identifies no potential water impoundments or mineral and aggregate sites. The proposal meets #7(e).

9. In addition to the standards in #7 above, non-farm dwellings shall be subject to the following criteria listed in 17.136.060(B) and include:

- (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 Section 17.136.130.*
- (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 a non-farm dwelling*
- (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 parcels 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 impacts 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;*
 - (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 Section 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;*
 - (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 in the area. 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 water 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.

10. The Marion County Soil Survey shows the entire property is composed of Class VI soils and meets criterion listed in #9(a). As stated previously, the subject property is considered a legal parcel, and it is not evident that any changes occurred in the boundaries of the property since 1993. The request complies with the review criteria listed in #9(b).

The applicant submitted a Cumulative Impact Analysis Study to address requirements listed in 17.136.060(B)(3). A staff review of the information revealed that the data was adequate to make a decision on this application.

- A. Marion County Planning staff provided a map identifying the 2,000 acre study area to the applicant for the purposes of addressing the requirements in MCC17.136.060(B)(3). This study area included only properties zoned as farm use. Lands zoned for rural residential or other non-resource uses are not included in the study area. The applicant's report meets the required 2,000 acre resource zone analysis area.
- B. The applicant has indicated this study area was chosen as representative of the land use pattern surrounding the subject parcel. Properties within the study area and north of the property are generally steeply sloped with timber interspersed with large farm properties. There are blocks of rural residentially zoned land in the northwest and southeast quadrants of the study area. The applicant identified farming grass seed and grain predominating south of the subject parcel. 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.
- C. The development trends in the study area have been identified in the applicant's statement and the overlay map. The applicant stated that since 1993, two non-farm dwellings have been approved within the study area and two additional tracts could potentially qualify for a non-farm dwelling based on soils. In addition, the subject parcel qualified for a non-farm dwelling in 1980 (NFD80-7) and improvements were made to the property, but the dwelling was not constructed before the approval expired. The proposed dwelling would be consistent with the development pattern that has occurred on surrounding lands in the past.
- D. The applicant stated that two tracts may qualify for non-farm dwellings, because of the predominance of high value soils in the study area, as the soils are currently mapped by the National Resource Conservation Service. More detailed soil mapping of an individual parcel may indicate the presence of non-farm soils; however, that information is not available at this time and would be prepared in the future on a parcel-by-parcel basis. The number of potential additional non-farm dwellings is restricted by the number of dwellings already in the study area. It appears that an insignificant percentage of the study area could include potential non-farm parcels.
- E. Resource land inside the study area is zoned EFU and SA (Special Agriculture). The commercial agriculture operations in the EFU zone are predominately in grass seed/grain, and the SA zoned properties are predominantly in timber. It appears that commercial farming activities are impractical on the subject parcel because of the poorer soils and size of the property.

Based on the soils survey conducted on the property, the soils are not predominately high-value and are not suitable for most types of farming activity. Any proposal to add the property to an adjoining farm parcel would not provide any significant agricultural benefit to that parcel. According to these findings, the proposed dwelling would not make it more difficult for existing farming activities to continue and would not materially alter the land use stability of the area and meets the criteria in #9(c).

11. The following regulations apply to non-farm dwellings approved pursuant to Section 17.136.050(A) and meeting provisions listed in 17.136.070 as follows:

- (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 (1) and (2) may be reduced if it is determined that a lesser setback will prevent activities associated with the dwelling or accessory building from seriously interfering with farming or forest practices as provided in Section 17.110.680.*
- (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.*
- (c) *Prior to issuance of any residential building permit for an approved non-farm dwelling under Section 17.137.050(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 ORS 308A.724 or ORS 321.359 (1)(b), ORS 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.*

12. The subject parcel measures approximately 150 feet by 400 feet, and it would be difficult or impossible to develop the property and meet the special dwelling setbacks established in #11(a) above. There is an existing shop, well and septic system on the property and the applicant wishes to place the dwelling near these improvements, which is approximately 50 feet from the north property line. The previous approval for a non-farm dwelling in CU80-7 required a minimum 50 foot setback from the north property line and the applicants have stated that their intent is to continue managing the woodlot to the west of the proposed home site which would provide a buffer to farming activities on the adjacent parcel to the west and north of the subject parcel. An existing dwelling on the parcel to the south of the subject parcel is located near the common property line, providing a buffer from the farmed portion of that parcel. A 50 foot setback from the east property line would maintain a 100 foot separation from the farmed portion of the parcel to the east that is being commercially farmed. It appears that considering the setting of the subject parcel, adequate buffering is provided to prevent the proposed dwelling and accessory structures from seriously interfering with farming practices in the area. Subsequently, the setback adjustment provided in #11(a)(3) can be granted, and structures can be placed with reduced setbacks of 50 feet from the north property line, 125 from the west property line, 100 feet from the south property line and 50 feet from the east property line. However, a condition of approval shall be placed to disqualify the property from any special assessment prior to obtaining a building permit.
13. Chapter 17.136.100(C) requires that a declaratory statement acknowledging surrounding farm and forest uses be recorded for all newly approved dwellings. This can be made a condition of any approval.
14. Based on the above discussion, the applicant has adequately addressed all the applicable criteria for placing a non-farm dwelling on the property. Therefore, subject to meeting conditions of approval, the application for a non-farm dwelling is **APPROVED**.

Joe Fennimore
Planning Director

Date: July 31, 2018

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.