

**NOTICE OF DECISION
FLOODPLAIN DEVELOPMENT PERMIT CASE NO. 19-004**

APPLICATION: Application of Douglas Thorud and Susanne White-Thorud for a floodplain permit to place a livestock feed barn in the 100-year floodplain of Mill Creek on a 26.99 acre parcel in an EFU (Exclusive Farm Use) zone located in the 4700 block of Delaney Road SE, Turner. (T8S; R2W; Section 29CA; tax lot 2200).

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

EXPIRATION DATE: This Floodplain Development Permit is valid only when exercised by **June 24, 2021**. 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 drain field replacement areas this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposal the applicant should contact the Building Inspection Division, (503) 588-5147.

All development in the floodplain is subject to federal, local and state regulations and standards at the time development is begun. These regulations and standards are in the process of being revised and the development proposed in this application may be subject to additional regulations and standards at the time construction of structures or placement of fill on the property begins.

Based on preliminary information provided by the National Marine Fisheries Service on April 14, 2016, federal law might only recognize as legal work on an existing permit that has begun prior to September 15, 2016 and is completed prior to March 15, 2017. Work begun after September 15, 2016 or completed after March 15, 2017 may be in violation of federal law and thus invalidate this local permit.

Construction related to this permit is approved only within the existing developed area of the property. Construction of new structures, fill or other development of the property should not occur outside the existing developed area without prior consultation with the Marion County Planning Division. Federal regulations may require additional approvals for development outside the existing developed area of the property.

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. Public Works Land Development Engineering indicates that the following condition is required for approval of this land use case:

Condition A – Prior to building permit issuance, Applicant shall make a good faith effort to obtain a Vision Easement from the parcel to the west (tax lot 082W29C00800) such that adequate sight distance for the access to the subject property is unobstructed by activities on the adjacent property.

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.

2. The applicants should contact the Turner Fire District to obtain a copy of the District's Recommended Building Access, water supply and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

3. 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 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) 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 and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **June 24, 2019**. If you have any questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 25, 2019** 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 and correspondingly zoned EFU (Exclusive Farm use). The property is located within the identified 100 year floodplain of McKinney Creek.
2. The subject property is located on the south side of Delaney Road SE approximately 700 feet east of 9th Court SE in Turner. The property contains an agricultural building.
3. Properties to the south and west are zoned EFU and developed with a mixture of farm use and rural homesites. Property to the northwest is zone SA (Special Agriculture) and contains an aggregate operation. Property to the north and east are residential within the city of Turner.
4. Soil Survey for Marion County, Oregon indicates 100% of the soils on the property are high-value farmland.
5. The applicant proposes to replace an agricultural building with a new agricultural building on the property within the 100 year floodplain of McKinney Creek. The applicant has previously constructed the building without obtaining a floodplain permit.
6. Public Works Land Development and Engineering Permits (LDEP) requested the following condition, requirements and advisory be included in the land use decision:

“Condition A – Prior to building permit issuance, Applicant shall make a good faith effort to obtain a Vision Easement from the parcel to the west (tax lot 082W29C00800) such that adequate sight distance for the access to the subject property is unobstructed by activities on the adjacent property.”

Nexus for the above condition is in accordance with Marion County Code 17.11.770 and 11.10, wherein vision clearance areas and intersection sight distance must be maintained at the intersection of driveways and public roadways in order to provide safe visibility for vehicular and pedestrian traffic.”

Requirements:

- “B. The subject property is within the unincorporated area of Marion County and may be assessed Transportation System Development Charges (SDCs) upon application for building permits, per Marion County Ordinance #00-10R.
- C. Both a Marion County Work in Right-of-Way Permit and a Utility Permit are required in order to install utilities within County-controlled public right-of-ways.
- D. In accordance with Marion County Code 11.10, if this land use action is approved, the applicant may be required to apply for a driveway “Access Review” and make changes, if necessary, to establish a safe and compliant access. If changes to access are deemed necessary by the County Inspector, 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. It was noted during an initial field inspection that vegetation to the west of the access is blocking vision.”

Advisory:

“E. Per the Marion County Rural Transportation System Plan, this section of Delaney Road SE is classified as an Arterial. Per Marion County Code 17.112.020 a Special Setback of 50 feet measured from the centerline of the street right-of-way applies on Arterials, and from which standard zoning setbacks are measured, if applicable. Please note County records indicate that the current right-of-way half-width is 35 feet.”

City of Turner commented on floodplain standards and development requirements. However, the applicant demonstrated that the building site is above the Base Flood Elevation and, therefore, no floodplain development standards apply to the proposal.

7. The purpose of the Floodplain Overlay Zone is to promote public health, safety and general welfare to minimize public and private losses due to flood conditions. In order to ensure that the development is reasonably safe from flooding, the County requires the development comply with the criteria and standards listed in Section 17.178.050 and 17.178.060 of the Marion County Code (MCC).
8. Marion County Flood Insurance Rate Map #41047C0677H indicates that the development site is in an AE zone. Based on information provided by the applicant’s surveyor, the Base Flood Elevation (BFE) at the development site is 277.6 feet mean sea level.
9. MCC 17.178.050 (C) requires:
“Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowners successors in interest acknowledging that the property and the approved development are located in a floodplain.”

The applicant has provided a recorded copy of this statement. This condition is met.

10. MCC 17.178.050 (E) requires:
“The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations of all new or substantially improved manufactured homes, dwellings and structures meet the requirements of MCC 17.178.060(A), (B) and (C), where applicable, as follows:
 1. *Prior to construction (based on construction drawings), and*
 2. *Once the floor elevation can be determined (based on the building under construction), and*
 3. *Prior to occupancy (based on finished construction).”*

The applicant has provided an elevation certificate based on finished construction. This condition is met.

11. The base flood elevation was determined to be 277.6 feet MSL. The lowest adjacent grade at the building site is 277.7 feet MSL. Because the lowest adjacent grade at the building site is above the base flood elevation, floodplain development standards do not apply to the development.
12. Based on the above findings, it has been determined that the proposal complies, or can be conditioned to comply, with the criteria in the Marion County Code and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: June 7, 2019

If you have any questions please 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.