

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. 22-026

APPLICATION: Application of Bill Gooding on behalf of William & Kaye Gooding for an administrative review to place a Secondary Farm dwelling on a 168.5-acre parcel in an EFU (Exclusive Farm Use) zone located at 5357 St Paul Highway NE, Saint Paul (T4S; R2W; Section 20; Tax Lot 100).

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 **October 5, 2026**, unless an extension is granted. The effective period may be extended 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 single-family farm dwelling, the applicants shall sign a Marion County Farm/Forest Declaratory Statement for the secondary single-family 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 single-family farm dwelling, the applicants shall sign a Marion County Secondary Farm Dwelling Removal Agreement for the secondary single-family dwelling. The applicants shall record the Statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
4. The secondary single-family dwelling shall be continuously occupied by a person working on the farm, as described in this decision.
5. The farm operator shall continue to play the predominant role in management and farm use of the farm.
6. Upon change of occupant the applicant shall submit a new application.
7. The secondary single-family dwelling will be addressed **5359 St. Paul Highway NE.**

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 St. Paul 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.
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) based on 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 **October 5, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 6, 2022**, 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 property is located at 5357 St. Paul Highway NE, near St. Paul. The parcel is approximately 0.63 miles from the intersection of St. Paul Highway NE and French Prairie Road NE. The parcel was the subject of three previous land use cases: Minor Partition 78-049, Administrative Review 05-029, and Property Line Adjustment 14-018; all three cases were approved. On July 20, 2015, a survey for Property Line Adjustment 14-018 was completed on the subject parcel. This resulted in a new, matching legal description for the subject parcel that can be found in Reel 4076, Page 245 and Reel 3725, Page 384. Therefore, this parcel is legal for land use purposes.
3. Surrounding properties in all directions are in farm use and in an EFU zone.
4. The applicants are proposing to place a secondary farm dwelling on the subject parcel Tax Account 512124 for the property owner's son, Nicholas (Nick) Gooding.
5. Soil Survey of Marion County Oregon indicates the subject property is composed of approximately 100% of high-value farm soils.
6. Marion County Building Inspection commented: Permit is required for the placement of the manufactured home. Additional permit(s) may be required for any plumbing or electrical installations beyond a 30 ft radius of the manufactured home.

Marion County Septic Division commented: A site evaluation approval and construction-installation permit are required for the proposed dwelling.

Marion County Land Development, Engineering, and Permits made the following comments:

ENGINEERING REQUIREMENTS

- A. Transportation System Development & Parks Charges (SDCs) will be assessed upon application for building permits.

All other contacted agencies either failed to comment or stated no objection to the proposal.

7. For the purposes of this land use application and application of the Marion County Code, the farm operator is synonymous with the owner of the subject parcel and Tax Accounts 512122, 512149, 512150, 512418, 512419, 511841, 510175, and 512124, which are being used to satisfy the income criteria. In this case, the farm operator and applicant are Bill (William) Gooding, with Kaye Gooding as the second owner of the subject parcel and shareholder of Gooding Farms, Incorporated. For context, Bill and Kaye Gooding, as proven by a Shareholder's Agreement submitted to staff, are the only members of Gooding Farms, Incorporated. It should be noted that Bill and Kaye Gooding are the owners of the subject parcel and Tax Account 510175 and that Gooding Farms, Incorporated owns Tax Accounts 512122, 512149, 512150, 512418, 512419, and 511841. Therefore, this establishes Bill and Kaye Gooding's ownership of the subject parcel and the previously mentioned Tax Accounts.

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:

1. *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 has stated that Nick Gooding will live in the secondary farm dwelling and work on the farm. Nick Gooding is the son of the applicant and his wife: Bill and Kaye Gooding. Nick's role on the farm will be, but is not limited to, driving a tractor for plowing, disking, leveling, flailing grass fields, and general field preparation. Additionally, Nick will also combine various seeds, spray, level, and harvest hazelnuts, and help with irrigation work when needed. The applicant has met the burden of proof and, therefore, this criterion is met.

2. *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 applicant has stated that Bill and Kaye Gooding are the owners and farm operators of the subject parcel. Additionally, the applicant submitted a Shareholder's Agreement that prove both Bill and Kaye Gooding are the shareholders of Gooding Farms, Incorporated. For the purposes of satisfying the income requirements, the applicant is using the income generated from Tax Lots 300, 400, and 500. All three tax lots are owned by Gooding Farms, Incorporated. Therefore, the criterion is satisfied.

representative has stated that Richard W. Olson is the farm operator for the subject parcel. The deed that was submitted by the applicant's representative states that Triple O, LLC is the owner of the subject parcel. Additionally, the applicant's representative submitted an Amended Operating Agreement of Triple O, LLC, which shows Richard W. Olson as being the sole member. Therefore, this criterion is met.

3. *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 will be a condition of approval.

4. *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 subject parcel and adjacent parcels are all considered high-value farmland and, therefore, are subject to the income criteria found in MCC 17.136.030(A)(1)(b). The income requirements for high-value farmland are \$80,000 in gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years. To prove the applicant has met the income criteria, they submitted tax documents from 2020 and 2021; these are the most current tax documents

available. The gross income from the sale of farm products in 2020 was \$819,000. For the following year, 2021, the gross income from the sale of farm products was \$1,022,672. Based on the tax documents submitted by the applicant, the income criteria are met.

Regarding the criterion requiring the dwelling to be contained on a parcel with a minimum of 80 acres, the applicant has proposed that the secondary single-family dwelling will be built on Tax Lot 100. The parcel containing the proposed dwelling is 168.50 acres in size. Therefore, based on the satisfaction of the income criteria and minimum parcel size criteria, this criterion is met.

5. *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.

This criterion will be made a condition of approval.

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.

Brandon Reich
Planning Director/Zoning Administrator

Date: September 20, 2022

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173.

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.