

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 NO. 23-001

APPLICATION: Application of William and Janet Predeek, Trustees of the William & Janet Predeek Trust for an administrative review to place a template test dwelling on a 5.00-acre tract in a FT (Farm/Timber) zone located in the 20000 block of El Romar Drive NE, Scotts Mills (T7S; R1E; Section 11A; Tax Lot 1300).

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 **February 22, 2027**, unless an extension is granted. The effective period may be extended once for two years, and then up to five more times for one year each, 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 contact 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 dwelling shall be addressed **20345 El Romar Drive NE**.
4. Dwellings shall be at least 140 feet from any abutting parcel in farm use or timber production on the west and east property lines. A 200-foot minimum setback will be maintained from the northern property line. Buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production.
5. 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 ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629). 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.
6. 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. 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.

7. The applicant shall comply with the Fire Hazard Reduction Standards listed in MCC 17.139.070(g).
8. The applicant shall comply with the Road and Drainage Standards listed in MCC 17.139.070(h).

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:

9. The applicants 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.
10. 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) 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 **February 22, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **February 23, 2023**, 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 FT (Farm Timber). The intent of both designation and zone is to promote and protect commercial agricultural and timber operations.
2. The subject property is located on the 20,000 block of El Romar Drive NE near the city of Silverton and is approximately 0.27 miles from the corner of El Romar Drive NE and Abiqua Road NE. The property is currently undeveloped and has not been the subject of any previous land use cases. Additionally, the subject parcel is Parcel 2 of the El Romar Estates Subdivision which was founded in 1970. Therefore, the parcel is legal for land use purposes.
3. The parcels surrounding the subject parcel are zoned FT and consist of small to large acreage farm and timber operations with dwellings.
4. The applicant is proposing to build a dwelling on Tax Lot 1400 by qualifying for a Template Test Dwelling.
5. Soil Survey of Marion County Oregon indicates the subject property is approximately 99.1% high-value farm soils.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following Requirements be included in the land use decision:

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits an Access Permit will be required to inspect and direct any required modifications necessary to bring the access approach into compliance with MCPW Engineering standards.
- B. The subject property will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits.
- C. Utility work in the public right-of-way requires separate PW Engineering permits.

Marion County Building & Planning Division commented: permits are required for development and/or utilities on private property.

Marion County Septic Division commented: this lot has a site evaluation approval from 1982 (82-215) and 1990 (26422). A construction-installation permit is required prior to building permit issuance. Due to the lack of measurements recorded to the approved areas for the septic system, test holes will need to be evaluated at the time of the septic permit application.

Silverton Fire District commented: the dwelling will need to meet the Oregon Fire Code as it relates to access and water supply. If the conditions cannot be met, the building official, in accordance with OAR 918-480-0125, will need to apply Uniform Alternative Construction Standards (UACS) to the new dwelling.

All other contacted agencies stated no objections to the proposal.

7. For approval for siting fire station, the criteria are as follows. 17.136.040 Uses permitted subject to standards. The following uses may be permitted in the EFU zone subject to approval of the request by the planning director, based on satisfaction of the standards and criteria specified for each use, pursuant to Chapter 17.115 MCC:

K. Fire service facilities providing rural fire protection services.

According to the applicant's statement, the proposed fire station, operated by the Silverton Fire District, would be used to serve the surrounding rural areas and parts of the City of Silverton. Therefore, the criterion is met.

8. In order to place a dwelling in the FT zone it must first be determined whether predominate use of the property on January 1, 1993, was for forest land or farmland. In this instance, aerial photographs indicate the predominant use of the property was forest land.

According to Chapter 17.139.030(B) of the Marion County Code (MCC) a single-family dwelling subject to the special use and siting requirements in MCC 17.139.070 may be allowed provided:

- (a) *The tract on which the dwelling will be sited does not include a dwelling. "Tract" means all contiguous lands in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.*

Based on all available information, the subject parcel is a single tract and contains no dwelling. The criterion is met.

- (b) *No dwellings are allowed on other lots or parcels that make up the tract, and the other lots or parcels in the tract cannot be used to justify another forest dwelling. Evidence must be provided that covenants, conditions and restrictions have been recorded with the county clerk of the county or counties where the property is located for any other lot or parcel within the subject tract.*

As mentioned above, the subject parcel is one single parcel, and according to Marion County Assessor's information, the property is not assessed for a residential structure. The criterion is met, subject to a condition of approval limiting the property consisting of both tax lots to a single dwelling.

(c) *The lot or parcel is:*

- (1) *Predominantly composed of soils that are capable of producing zero to 49 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least three other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; or*
- (2) *Predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least seven other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; or*
- (3) *Predominantly composed of soils that are capable of producing more than 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least eleven other lots or parcels that existed on January 1, 1993, and all or part of at least three dwellings that existed on January 1, 1993 and continue to exist; and*
- (4) *If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and*

If a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160-acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160-acre rectangle; or

- (5) *If the tract abuts a road that existed on January 1, 1993 and subsection (D) of this section does not apply, the measurements may be made using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road.*
- (6) *Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection.*

Oregon Department of Agriculture soil classifications indicate that soils on the property are capable of producing more than 85 cu ft/ac of wood fiber per year. Therefore, staff used the most restrictive template standard as listed in (C)(3) above and reviewed the proposal under those template provisions. Under these standards, there must be at least 11 other lots and three dwellings existing within the study area on January 1, 1993. According to a template test conducted by staff, within 160-acre square, 19 lots exist and at least three homes existed prior to January 1, 1993. Additionally, both parcels are not within an urban growth boundary. The criterion is met.

(d) *The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.836.*

MCC 17.110.830 through 17.110.836 provide protection for specific resources in the County. The parcel is not designated within an excessive slope area and not regulated under Chapter 17.182. There is no evidence to indicate that geologic hazards, water resources, mineral and aggregate resources, scenic and natural areas, historic sites, and structures, will be adversely affected by the placement of a dwelling on

the subject parcel as shown in the site plan. A residence would not create significant noise impacts. No historical structures are on the property. Any county requirements for stormwater runoff will be applied during the building permit process. The criterion is met.

- (e) *The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.*

The subject property is not located within the big game habitat area. Therefore, this criterion does not apply.

8. The special standards in MCC 17.139.070 include:

- (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 subsection (a)(2) of this section and subsections (b), (f) and (g) satisfies the criteria in (a)(3) of this section. Alternative sites that meet the criteria in subsection (3) of this section and may be approved as provided in MCC 17.110.680.*

- (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.

The surrounding properties are zoned Farm/Timber and, therefore, subject to the special setbacks. The parcel is approximately 345 feet in width. If the special setbacks were applied from the west and east property lines to the dwelling, the applicant would not be able to build a dwelling. As result, the applicant has requested that the proposed dwelling maintain a 140-foot minimum setback from the east and west property lines. Regarding the northern property line, the applicant is proposing a 250-foot setback, which would meet the required special setbacks. The east and west proposed minimum property line setbacks for the proposed dwelling will be a condition of approval. Therefore, this criterion is met.

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 to 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 to 195.336.

The special setback will prohibit approving the dwelling and prohibit the application for a homesite as stated above. The applicant has proposed to maintain the special setback for the proposed dwelling from the northern property line (200-foot minimum). However, to accommodate the proposed dwelling, the applicant is proposing to maintain a 140-foot minimum setback from the east and west property lines. Therefore, the criterion is met.

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.

As stated by the applicant, the proposed location of the dwelling will be 300 feet setback from El Romar Drive NE. The criterion is met.

- (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 grantees, 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 I/We acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices I/We 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 will be made a condition of 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 ground water 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.*

Demonstration of compliance with the criteria in c(1), (2), and (3) will be made a condition of approval.

- (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 subject property is accessed off El Romar Drive. The applicant has provided a Covenants, Conditions, and Restrictions document that shows the property owner as being partly responsible for the road maintenance of El Romar Drive NE. Therefore, the subject parcel has long-term road access to El Romar Drive NE, a private drive. The criterion is met.

- (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.*

Compliance with the Department of Forestry's stocking requirements will be a condition of approval.

(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 MCC 17.110.680, 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 posed along the access route to indicate the location of the emergency water source.*

Fire protection is provided by the Silverton Fire District, the applicant shall meet the District's access standards. Other provisions listed above should not apply unless required by the Fire District. The 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.*

Compliance with the fire hazard reduction standards listed above shall be a condition of 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 Section 4 of the Marion County Department of Public Works Engineering Standards adopted by the board of county commissioners April 11, 1990.*

(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 be those in Section 5 of the Public Works Engineering standards except that corrugated metal culverts of equivalent size and strength may be used.

This will be a condition of approval.

9. Although the dwelling is approved, the applicants will be required to sign and record a Farm/Forest Declaratory Statement prior to building a dwelling on the property as a condition of approval. This acknowledges the impacts of farm management practices conducted in the area.
11. Based on the above findings, it has been determined that the property does not meet the criteria for establishing a template test dwelling and the request, therefore, is **APPROVED**, subject to certain conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: February 7, 2023

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

Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.