

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. 22-031**

**APPLICATION:** Application of Norman Bickell on behalf of the property owner Pavel and Paula Kutsev for a conditional use permit to place a non-farm dwelling on a 7.97-acre parcel in an EFU (Exclusive Farm Use) zone located in the 11300 block of Goudy Gardens Ln NE. (T5S, R1W, Section 05D, Tax Lot 100).

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

**EXPIRATION DATE:** This conditional use permit is valid only when exercised by **October 14, 2024**. 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. **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. The proposed dwelling shall maintain 200-foot setbacks from properties in farm production. Accessory structures shall maintain a 100-foot setback.
4. 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.
5. Prior to issuance of any building permit for any new dwelling, the applicants 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.

**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 #6 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 Woodburn 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.
7. 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 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) based on 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 **October 14, 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 15, 2022**, 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 major purpose of this designation and the corresponding Exclusive Farm Use zone is to promote the continuation of commercial agricultural operations.
2. The subject parcel is located on the north side of Goudy Gardens Ln, approximately 0.28 miles west of its intersection with HWY 99E. The property contains one farm structure. The property was created as a part of the Goudy Gardens Plat and is considered legal for land use purposes pursuant to MCC 17.114.040(A).
3. Properties in all directions are zoned EFU. The property to the north is an active nursery and the other surrounding properties all have single family homes and are engaged in various levels of farm use. Some appear to be hobby farms while some appear to be fully engaged in commercial agriculture practices.
4. Marion County Soil Survey Analysis shows the subject property is comprised of 99.9% high value soils; however, the applicant has submitted a soils assessment that was reviewed and approved by the Department of Land Conservation and Development (DLCD) which showed the subject property is predominately comprised of class 4-8 soils with Dayton and Escarpment units. The remainder is high value Woodburn and Amity soils. The full report can be reviewed in the case file.
5. The applicant proposes to establish a non-farm dwelling on the property.
6. Marion County Building Inspection commented that a building permit is required for new construction or placement of a manufactured home.

Marion County Septic commented that "A site evaluation will be required under OAR 340-071-0150. This must establish initial and repair area."

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

### **ENGINEERING REQUIREMENTS**

- A. *An access permit will be required at the time of application for building permits. Residential properties are typically only allowed one access to the public road. Access to the home and shop will need to be consolidated into one access and connected on private property.*

- B. *Transportation System Development & Parks Charges will be assessed upon application for building permits.*
- C. *Utility work such as electrical service extension from within the Goudy Gardens public right-of-way requires permitting through MCPW Engineering.*

**ENGINEERING ADVISORY**

- D. *Unmapped natural drainage flows northerly through a cross-culvert under Goudy Gardens Lane in an arc-shaped path toward a pond situated on adjacent property. Based on the land use application site plan, the homesite may be in the flow path. Development should not impede natural drainage patterns.*

Woodburn Fire District commented “Will need to see fire access plan with details of house square footage, fire lane width from road to house once this is approved. No issues.”

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

- 7. The following regulations apply to non-farm dwellings approved pursuant to Section 17.137.060(A) and meeting provisions listed in 17.137.060 as follows:

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

- (1) *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.*

In lands adjacent to the subject property, there is one established farm operation. The parcel to the north is a nursery that is currently in full production of various types of shrubs, trees, and plants. Across the road to the south, two parcels appear to be in farm production but not at a commercial level. Tax lot 1600 and 1400 are under 5 acres each but have farm uses occurring such as crop production and raising of farm animals. The 200-foot setback will control for any non-farm effects the house may have on these parcels. The nursery has been operating for years with the existing homes around it, and one additional home is not expected to affect their operations. This dwelling approval should not affect any farm practices described in this area. The criterion is met.

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

The subject parcel will have a well, septic, and electrical service on the property. The land is within the Woodburn Fire District and served by the Marion County Sheriff. Based on these facts, the criterion is met.

- (3) *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 property does not contain any identified groundwater, fish and wildlife habitat, air, or water quality resources, as inventoried by the Marion County Comprehensive Plan. Based on these facts, the criterion is met.

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

The applicant proposes to place a single-family residence on the subject property. Normal residential use does not create a significant adverse impact on nearby land. The applicant shall comply with Marion County’s noise ordinance. Based on these facts, the criterion is met.

- (5) *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 water impoundments or significant mineral aggregate sites on the property. There are ponds and streams located to the northwest that flow into Mill Creek. The dwelling will be served by a septic system and is not expected to affect the water quality. Based on these facts, the criterion is met.

8. 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:

- (1) *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.*

Marion County Soil Survey Analysis shows the subject property is comprised of 99.9% high value soils; however, the applicant has submitted a soils assessment that was reviewed and approved by the Department of Land Conservation and Development (DLCD) which showed the subject property is predominately comprised of class 4-8 soils with Dayton and Escarpment units. The remainder is high value Woodburn and Amity soils. The full report can be reviewed in the case file.

- (2) *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*

The property was described in its current configuration on April 4, 1943, via survey and deed for the Goudy Gardens Subdivision. The property is considered legal for land use purposes pursuant to MCC 17.114.040(A). The criterion is met.

- (3) *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:*

- (a) *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.*

- (b) *Identify within the study area the broad type 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.*

- (c) *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.*

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. The applicant has provided a study area which encompasses over 2000 acres surrounding the property. This study area included properties zoned as EFU, Public (P), Acreage Residential (AR), Urban Transition (UT) and Commercial General (CG). Lands zoned for rural residential or other non-resource uses are not included in the study area analysis. Information supplied by the applicant, and verified by staff, indicates that there is no non-resource zoned land applied to the study area and that the applicant's report meets the required 2000-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 are predominately large farm parcels, with intrusions of smaller non-farm parcels. Because this property is near the City of Woodburn, the farm parcels are not generally over 50 acres in size and have many smaller, fragmented pieces. The applicant states that the farmlands are primarily grass seed and grains with some pasture lands. There is a commercial nursery north of the subject property. The northern portion of the study area is home to the largest farm parcels, northwest and northeast parcels are mostly engaged in grass seed and hay production as is typical for the Willamette Valley. 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. Based on the applicant's report, there are 227 lots in the study area, and of these 227 lots, 190 are developed with dwellings. The applicant states that there were 0 new non-farm dwellings established after 1993. This leaves 81 lots for further study. Of the remaining lots, only 1 is located on class IV or worse soils, which is the subject property, this results in 1 total non-farm dwellings that could be approved. The applicant states that this isn't a significant enough number to destabilize the overall character of the study area. The proposed dwelling would be consistent with the development pattern that has occurred on surrounding lands in the past.
- D. As stated above, the applicant identified 1 parcel that would qualify for a non-farm dwelling 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.

The only new dwellings that have been built in the study area, on farm parcels, that are not farm dwellings since 1993, have been approved as replacement dwellings or medical hardships. Due to the development of the surrounding area and the size of the subject property, it is unlikely that allowing a dwelling on this parcel would diminish expansion opportunities for surrounding farm parcels. 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 #8(c).

9. 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 subsections (A)(1) and (2) of this section may be reduced if it is determined, concurrently with any land use application or as provided in Chapter 17.116 MCC, that a lesser setback will meet the following review criteria for alternative sites:*
- a. The site will have the least impact on nearby or adjoining forest or agricultural lands.*
  - b. The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.*
  - c. The amount of agricultural and forestlands used to site access roads, service corridors, the dwelling and structures is minimized.*
  - d. The risks associated with wildfire are minimized.*

The applicant has stated that they can meet the siting standards above. Based on these facts, criteria 9(a) is met.

- (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.*

The dwelling will not be located within 200 feet of timber. The criterion does not apply.

- (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.*

Prior to approval of a building permit, the applicant shall be required, as a condition of approval, to submit evidence to Marion County Planning to show that the property has been disqualified from farm and forest deferral by the Marion County Tax Assessor's Office. Based on compliance with the conditions of approval, criterion 9(c) is met.

10. 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.
11. 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 and adjustment is **APPROVED**, subject to conditions.

Brandon Reich  
Planning Director/ Zoning Administrator

Date: September 29, 2022

If you have any questions regarding this decision contact Austin Barnes 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.