

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.23-003**

APPLICATION: Application of Joshua Fogarty for a conditional use permit to establish a non-farm dwelling on a 13.53-acre parcel in an EFU (Exclusive Farm Use) zone located in the 14400 block of Evans Valley Rd NE, Silverton (T6S; R1W; Section 35D; Tax lots 1400 & 1600).

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 **February 28, 2027**. 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. A special setback of 75 feet for the dwelling and accessory structures shall be required from all property lines.
4. The property owner shall include both tax lots (1400 & 1600) in the following condition.
5. 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.
6. 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:

7. 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.
8. 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.
9. This approval is for one single family home, no other homesite approval shall allow additional dwellings.

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 **February 28, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 1, 2023**, 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 south side of Evans Valley Road NE, approximately 0.08 miles east of its intersection with Steelhammer Road. The subject property is developed with one accessor structure and heavily wooded. The property was described in its current configuration on May 10, 1979, by deed, and via Measure 37/49 Claim (E133582). The property is considered legal for land use purposes pursuant to MCC 17.114.040(A).
3. Properties to the north, across Evans Valley Rd. and to the south are zoned Urban Transition 5 (UT-5) and within the Silverton Urban Growth Boundary (UGB). The parcels in all other directions are zoned EFU. The properties to the north and south are in commercial farm production, while properties to the west and east are less than 5 acres in size and developed with homesites.
4. The applicant submitted a site-specific soil survey to the Oregon Department of Land Conservation and Development, which determined that 86.2% of the soils on the property are Class 5 soils that are not high value for agriculture. The soils mapped are as follows:

Soil Name	% of Parcel	SCS Soil Class	High Value?
Nekia silty clay loam (NeB)	13.9	3	Yes
Nekia very stony silty clay loam (NsE)	59.0	6	No
Nekia very stony silty clay loam (NsB)	27.2	6	No

5. The applicant proposes to establish a non-farm dwelling on the property.
6. Marion County Building Inspection commented “no building permit concerns. Permits are required to be obtained prior to any development and/or utilities on private property.

Marion County Septic commented that “A certificate of satisfactory completion was issued for a septic system to serve a 4-bedroom dwelling and personal shop (555-19-004990-PRMT) on 8/30/2019, the shop has been connected to the system however a dwelling has not been. This certificate is valid for 5 years, until 8/30/2024. After 8/30/2024, an authorization notice is required for connection of the dwelling to the septic system.”

Marion County Code Enforcement commented that there was an open case on the property but has since been taken care of and the parcel in in compliance.

Public Works Land Development and Engineering Permits (LDEP) mad ethe following comments:

ENGINEERING REQUIREMENTS

- A. An Access Permit will be required at the time of application for building permits. Furthermore, permit records indicate remedial access-related work had been required as part of prior reviews, but not completed.
- B. Transportation System Development & Parks Charges will be assessed at the time of application for building permits.
- C. Utility service extension work in the Evans Valley public right-of-way requires separate PW Engineering permits.

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.*
- (2) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (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.*
- (4) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- (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.*

8. The subject property is on the south side of Evans Valley Road NE and is surrounded by developed properties to the east and west and has commercial farm properties to the north and south. The dwelling would be located 75 feet from all property lines. The parcel to the north is in commercial farm production and across Evans Valley Rd. NE. The parcel to the south is in what appears to have planted trees, although it is unclear if it is a commercial farm operation. One additional dwelling in this area would not add significantly to the relatively minor effects other residences in the area have had on farming and the minimum 75-foot buffer between the dwelling and the farm use will protect the farmland from significant conflicts. Based on these facts, the criterion in MCC 17.136.060(A)(1) is met.

The subject parcel will have a well, septic, and electrical service on the property. The land is within the Silverton Fire District and served by the Marion County Sheriff. Based on these facts, the criterion in MCC 17.136.060(A)(2) is met.

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. The applicant states that the dwelling will be located on relatively flat land, and as such will not create any slope stability issues. Based on these facts, the criterion in MCC 17.136.060(A)(3) is met.

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 in MCC 17.136.060(A)(4) is met.

The Marion County Comprehensive Plan identifies no potential water impoundments within 2 miles of the subject property. The location of the proposed dwelling is clustered with existing development and there are no significant mineral and aggregate sites. Based on these facts, the criterion in MCC 17.136.060(A)(5).

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:
- (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.*
 - (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*
 - (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.*
10. The applicant submitted a soils review that shows that the soils on the subject property are 86.2% Class IV or worse. The soils review submitted complies with MCC 17.136.130. Based on these facts, the criterion in MCC 17.136.060(B)(1) is met.

The property was described in its current configuration on May 10, 1979, by deed, and via Measure 37/49 Claim (E133582). There have been no adjustments of the boundary of the parcel in any way that would enable the lot or parcel to meet the criteria for a non-farm dwelling. Based on these facts, the criterion in MCC 17.136.060(B)(2) is met.

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 only properties zoned as farm use. Lands zoned for rural residential or other non-resource uses are not included in the study area. 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 small to medium sized farm parcels, with intrusions of smaller non-farm parcels. There are few forest parcels in the EFU zone. Of all parcels in the study area only two are above the minimum parcel size. The applicant states that crops are mostly low intensity, such as grass seed. 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 168 parcels in the study area, and of these 168 lots, 147 are developed with dwellings. Residential development from January 1, 1993, through today has been slow—the land use pattern of the Study Area has not drastically changed, although development along Silverton's UGB has increased. Forty-six (46) of the one hundred sixty-eight (168) parcels in the Study Area have Class IV or worse soil classifications; thirty-four (34) of these parcels have dwellings, leaving only twelve (12) parcels that are eligible based on soil classifications alone. Nine (9) of these vacant parcels may qualify for template dwellings in the FT zone, leaving three (3) parcels eligible for non-farm dwellings. The applicant states that there are 3 undeveloped parcels that are predominately Class IV or worse soils, therefore 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 3 parcels that would qualify for a non-farm dwelling because of the predominance of high value soils and template test eligible parcels 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.

The site-specific soils survey conducted on the property determined the soils are not predominately high-value and are not suitable for most types of farming activity. The subject property is bordered on the east and west by other EFU parcels that are approximately one to 5 acres in size, with the subject property being 13.53 acres and the only undeveloped parcel of that size. 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 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.*
- (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 parcel is not abutting any farm or forest uses. Therefore criteria 3(a) is not applicable. The applicant is proposing a minimum of a 75-foot setback from all property lines for the proposed dwelling and any future accessory structures.

The applicant states that the proposed site is located far from any farm uses and with a minimum of 75 feet for all structures the impact will be little to none. Based on these facts, criterion 3(b) is met through compliance with the conditions of approval.

The applicant states that the property is approximately one acre in size and bracketed on the east and west by other small acreage homesites. The site of the proposed non-farm dwelling minimizes the amount of forestland used because the area is already cleared of trees and the driveway access is already in place. The site of the non-farm dwelling will minimize risks to wildfire because the site already provides a fuel break between the proposed site and the tree line. There will be no significant farm or forest lands on the subject property and access will be provided directly from Evans Valley Road. Based on these facts, criterion 3(c) is met.

The proposed dwelling will be located within a cluster of other small acreage homesites. There are no significant stands of timber on adjacent lands. The property is served by the Silverton Fire District. The risk of wildfire does not appear to be significant for this property. Based on these facts, criterion 3(d) is met.

The property is not located within 200 feet of any timber land. Based on this fact, criterion b does not apply.

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 c is met.

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**, subject to conditions.

Brandon Reich
Planning Director/ Zoning Administrator

Date: February 13, 2023

If you have any questions regarding this decision contact Lindsey King 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.