

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 - CORRECTED
ADMINISTRATIVE REVIEW/PROPERTY LINE ADJUSTMENT CASE NO. 24-013

APPLICATION: Application of Diane M. Crisell for an administrative review to replace a dwelling on a 2.87-acre parcel and adjust the property line of the 2.87-acre parcel and a 24.74-acre parcel to create a 4.89-acre parcel and 22.72-acre parcel in a EFU (Exclusive Farm Use) zone located at 9763 Nusom Rd NE, Silverton (T6S; R1W; Section 19; Tax lot 1000 & 1100).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Administrative Review & Property Line Adjustment, subject to certain conditions.

EXPIRATION DATE: This decision is valid only when exercised by **July 3, 2026**, unless an extension is granted. The effective period may be extended for one year subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to expiration of the approval (form available from the Planning Division).

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:

1. The applicant shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. The applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
3. Property line adjustment deeds shall be recorded with the county clerk meeting requirements identified in ORS 92.190(4).
4. The applicants shall have parcels of 10 acres or less surveyed per ORS 92.060 (7). No survey is required for abutting properties greater than ten acres per ORS 92.060(8). The survey shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Administrative Review/Property Line Adjustment Case 24-001 (or AR/PLA24-001).
5. All surveys shall be submitted for review by the Marion County Surveyor, and checking fees will be required at the time of review.
6. After the property line adjustment has been completed, no alteration of property lines shall be permitted without first obtaining approval from 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 restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding # below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

7. Prior to recording the deed all taxes due must be paid to the Marion County Assessor Tax Section (contact them at (503) 588-5215 for verification of payments).
8. The applicants should contact the Mt. Angel Fire Department 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.
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) 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 **July 3, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 4, 2024**, unless appealed.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject properties are designated EFU (Exclusive Farm Use) in the Marion County Comprehensive Plan and correspondingly zoned EFU. The purpose of this zone is to provide areas for continued practice of commercial agriculture.
2. The subject properties are located at 9763 Nusom Rd Ne, Silverton, Oregon. Subject tax lot 1000 is 24.74 acres and almost entirely in agricultural use for grass seed in conjunction with portions of the other subject tax lot to the south, and a north adjacent parcel in the same ownership. A 0.4-acre portion of tax lot 1000 exists approximately 500-feet to the east along Howell Prairie Creek. This portion of the parcel is a remnant from a previous division of land along Nusom road.

Subject tax lot 1100 is 2.87-acres and primarily devoted to the agricultural use in conjunction with the other parcels mentioned, with an approximately half-acre area that includes an accessory structure, landscaping, a driveway, and the bare earth where a previous manufactured home was placed. The manufactured home is visible as recently as in Marion County's 2021 aerial images and was removed by the time of the 2023 aerial images.

Subject tax lot 1000 was described in its current configuration in 1976, recorded in Reel 66 Page 1692. Subject tax lot 1100 is described in its current configuration in 1968 in Volume 650 Page 474. Both subject parcels were described by deed prior to September 1st, 1977, and are therefore considered legal lots for land use purposes.

3. Surrounding uses are predominantly commercial agricultural and farm dwellings.
4. Soil Survey for Marion County, Oregon, indicates approximately 98.9% of the soils on the subject tax lot 1000, and 99.9% of the soils on tax lot 1100 are classified as high value.
5. The applicants are proposing to replace a dwelling on a 2.87-acre parcel (TL 1100) that was removed sometime between 2021 and 2023. The applicants are also proposing to adjust the property line of the 2.87-acre parcel and a 24.74-acre parcel (TL 1000) to create a 4.89-acre parcel and 22.72-acre parcel. The purpose of the property line adjustment is to change the shape of the smaller parcel that formerly had a dwelling to accommodate a replacement dwelling further back from Nusom Rd NE.
6. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Surveyor's Office commented:

- No survey required for abutting properties greater than ten acres per ORS 92.060(8).
- Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review.
- Survey checking fee required at the time of review.
- Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4).

Marion County Building commented: "No Building Inspection concerns with proposed property line adjustment or replacement dwelling applications. Prior to development and/or utilities installation on private property, permit(s) are required to be obtained."

Marion County Septic commented: "A Septic authorization is required to connect to the existing septic system. If a new onsite septic system is proposed for the proposed parcel 1, a new site evaluation will be required."

Marion County Tax Assessor's office provided tax related information on the subject parcels.

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

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

7. Chapter 17.136.030(D) of the Marion County Code (MCC) allows the alteration, restoration, or replacement of a lawfully established dwelling with filing of the Declaratory Statement in MCC 17.136.100(C), other than as permitted in MCC 17.136.020(D), when the dwelling:

- (a). *The dwelling to be altered, restored or replaced has or formerly had:*
1. *Intact exterior walls and roof structure;*
 2. *Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
 3. *Interior wiring for interior lights; and*
 4. *A heating system; and*

A review of aerial photographs, building permits, and tax assessor data indicate the existence of a dwelling on parcel 061W190001100 up until sometime between 2021 and 2023. The applicant provided pictures of the dwelling, tax information showing the dwelling being assessed, and testimony as to the state of the dwelling and its removal. Also supplied was the Marion County Building Inspection permit dated 1986 showing that the dwelling placed was itself a replacement for a prior dwelling. Marion County Tax Assessor had in their records an image dated 1965 of the original dwelling, indicating that the original dwelling was legally placed. We can see that the dwelling had intact exterior walls and a roof structure. The well and septic on the property support the applicant's assertion that the dwelling had functional plumbing. In the pictures we can see a power pole on the road next to the dwelling which supports the applicants assertion that the dwelling had electricity. A visible chimney shows that the dwelling had at least the heating system of a fireplace. Furthermore, a vehicle in the driveway in the 2021 aerial image suggests that the dwelling was habitable and likely had all the above required aspects of a dwelling. The criterion is met.

- (b). *In addition to the provisions of subsection (D)(1) of this section, the dwelling to be replaced meets one of the following conditions:*
1. *If the dwelling was removed, destroyed or demolished:*
 - a. *The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and*
 - b. *Any removal, destruction, or demolition occurred on or after January 1, 1973.*
 2. *If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or*

3. *A dwelling not described in subsection (D)(2)(a) or (b) of this section was assessed as a dwelling for the purposes of ad valorem taxation:*
 - a. *For the previous five property tax years; or*
 - b. *From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010;*

The dwelling was removed sometime between 2021 and 2023. Comments from the Marion County Tax Assessor satisfy the criterion that the tax lot does not have a lien for delinquent ad valorem taxes. The criterion of (D)(2)(a) of MCC 17.136.020 is therefore satisfied.

- (c). *The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:*
1. *Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or*
 2. *If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and*
 3. *If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location;*

The dwelling has already been removed, the criterion does not apply.

- (d). *The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted;*

The dwelling has already been removed, the criterion does not apply.

- (e). *As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, Chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling;*

The entire property is zoned EFU, this criterion does not apply.

- (f). *A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling;*

Applicable requirements shall be conditions of approval. The criterion is met.

- (g). *The replacement dwelling must be sited on the same lot or parcel consistent with the following:*
1. *Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and*
 2. *If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.*

The proposed replacement dwelling location would not use any part of the footprint of the previous dwelling. The proposed new location would be at the northern edge of the proposed new property lines, in a shape and configuration that moves the home back from the road. The proposed homesite would be within 500 yards of homesites agricultural structures across Nusom Rd NE. The criterion is met.

8. The criteria for reviewing property line adjustments within an EFU zone are listed in Chapter 17.136.090(C)

MCC. These criteria are as follows:

(a) *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to MCC 17.136.090(A)(1), the same number of lots or parcels shall be as large or larger than the minimum parcel size after the adjustment. When all lots or parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no lot or parcel shall be reduced below the applicable minimum parcel size. If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.*

All parcels are smaller than the minimum parcel size, criterion does not apply.

(b) *If the minimum parcel size in MCC 17.136.090(A)(1) is larger than 80 acres, and a lot or parcel subject to property line adjustment is smaller than the minimum parcel size but larger than 80 acres, the lot or parcel shall not be reduced in size through property line adjustment to less than 80 acres.*

Criterion does not apply.

(c) *Any property line adjustment shall result in a configuration of lots or parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.*

The proposed property adjustment is to facilitate movement of the homesite further back from Nusom Rd. The existing configuration accommodates agricultural use across both parcels around the 0.5-acres dedicated to the residential use. The proposed configuration would not interfere with the ability for the existing agricultural use to continue. If the proposed 4.89-acre parcel with the replacement dwelling sold into different ownership it may remove approximately 3-acres from the current agricultural use. This would not significantly affect the overall agricultural operation. Therefore, the proposed configuration will be at least as suitable for commercial agriculture as the existing configuration. The criterion is met.

(d) *A property line adjustment may not be used to:*

1. *Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;*
2. *Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or*
3. *Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.*

The result of this property line adjustment will be 2 parcels, one with a dwelling. The proposed replacement dwelling is legal based on original residential establishment predating zoning ordinances. The dwelling was not qualified under primary farm dwelling requirements. The resulting 22.72-acre lot may in the future qualify for a primary farm dwelling. It will not qualify based on an acreage standard, or land that was previously used to justify a primary farm dwelling. The criterion is met.

(e) *Any property line adjustment that results in an existing dwelling being located on a different parcel shall not be subject to the standards in MCC 17.136.030(A) so long as the adjustment:*

1. *Does not increase any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and*

2. *Does not increase the potential number of dwellings on the resulting parcels.*

The property line adjustment will not result in a dwelling being located on a different parcel. The new shape of the smaller parcel will better accommodate a dwelling and not significantly affect the continued agricultural use of the subject parcels. The potential number of dwellings will not be increased by approval of this property line adjustment. The criterion does not apply.

9. The resulting lots shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
10. Based on the above findings, it has been determined that the proposal for a replacement dwelling, and a property line adjustment in an EFU zone both satisfy all applicable criteria and are, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: June 18, 2024

If you have any questions regarding this decision contact John Speckman 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.