

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

NOTICE OF DECISION
ADMINISTRATIVE REVIEW CASE NO. 21-018

APPLICATION: Application of LKA 2, LLC for an administrative review to place a primary farm dwelling on an 80.08 acre parcel in an EFU (Exclusive Farm Use) zone located in the 9800 block of Liberty Rd S, Salem. (T9S; 3W; Section 30; Tax lot 500).

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 **August 24, 2025** 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. Prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a Use of Agriculture/Forest Land for Dwelling Qualification Declaratory 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.
4. Prior to the final occupancy, the applicant must provide evidence to the satisfaction of the Planning Director that the dwelling is, or will be, occupied by the owner or an employee of the current farm operation.

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:

5. The applicants should contact the Jefferson 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.
6. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements, 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 **August 24, 2021** If you have questions about this decision contact the Planning Division at (503) 588-5038 or visit the office. This decision is effective on **August 25, 2021** unless appealed.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan and zoned EFU (Exclusive Farm Use). The intent of both designation and zone is to promote and protect commercial agricultural operations. Dwellings in conjunction with farming may be approved subject to certain criteria.
2. The subject property is located west of Liberty Road S and approximately .75 miles west of Interstate 5 (I-5). The parcel is located in the middle of two large acre EFU properties which are owned by the applicant's spouse. According to the Marion County Tax Assessor records and aerial imagery, the property is currently undeveloped. According to the applicant statement, the property is being used to house and sell Gypsy Cob horses.
3. Properties to the south are part of multiple residential subdivisions, are zoned Acreage Residential, and are developed with single-family dwellings. The property to the east is developed with a single family home, multiple out buildings and is zoned Exclusive Farm Use. Properties to the north are mostly undeveloped, are zoned EFU and are currently being farmed.
4. The applicants are proposing to place a primary farm dwelling in the north-central portion of the property per site plan submitted.
5. Soil Survey of Marion County Oregon indicates the subject property is predominately high-value farm soils.

High Value Soils	71.2	88.5%
Non High Value Soils	9.2	11.5%
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. There is an existing gated access in the apex of the road curvature along the adjacent west parcel (TL 093W0300400) leading to an apparent internal semi-improved drive to the subject property. Evidence of an access easement will be required as a stipulation for Access Permit issuance. Otherwise, there is an unopened 20-foot wide public right-of-way located to the north connecting to the subject property; a PW Engineering permit would be required to open it in order to establish access from that point.
- B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits per Marion County Ordinances.
- C. Utility work in the public right-of-way requires separate PW Engineering permits.

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 the dwelling will need a septic site evaluation when applying for building permit

Salem Keizer School District made comments and are located in the file.

All other contacted agencies did not comment or stated no objections to the proposal.

7. Primary farm dwellings located on high-value farmland may be approved when the standards in Chapter 17.136.030(A)(1) of the Marion County Code (MCC) are satisfied. These standards include:

1. It is located on high-value farmland as defined in MCC 17.136.140(D) and satisfies the following standards:

- a. There is no dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;*
- b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least \$80,000 in gross annual income from the sale of farm products, not including marijuana. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;*
- c. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;*
- d. The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section;*

8. There is no existing dwelling on the subject parcel and the applicant statement indicates that LKA 2, LLC owns no other land in Marion County. The criterion in 7(a) is satisfied.

The parcel has been described in its current configuration since December 3, 1971 per Assessor records on Volume 717 Page 114 and is considered a legal lot.

The applicant narrative indicates that property is currently used to house and sell Gypsy Cob horses. The applicant states that the horses are bought in bulk and also sold in bulk from the property. Moreover, the application narrative indicates that the farm operator has earned annually in excess of \$80,000 gross income from these horses. The applicant has submitted a letter from a Certified Public Accountant verifying this income being met as well as supporting documents. The horses have all amenities needed for care, fresh water, food and shelter. There is a large area for them to safely roam that is fenced as well as a smaller penned area for them to stay. This use falls under farm-use as defined on ORS 215.203 and 7(c) is satisfied.

The applicant narrative indicates that the owner is the primary farm operator and will reside in the proposed residence. It is necessary for the operator to live on the property because the nature of horse care requires close monitoring to ensure the horses are properly cared for. The criterion in 7(d) is satisfied.

9. The applicants will be required to sign and record a Farm/Forest Declaratory Statement prior to placing a new dwelling on the property as a condition of approval. This acknowledges the impacts of farm and forest management practices conducted in the area.

10. The applicants will be required to sign and record a Use of Agriculture/Forest Land for Dwelling Qualification OAR 660-006-0027 Declaratory Statement prior to placing a new dwelling on the property as a condition of approval. This acknowledges that the land referenced in this decision cannot be used to justify a dwelling in conjunction with farm use on any other parcel.
11. Based on the above findings, it has been determined that the property meets the criteria for establishing a farm dwelling and the request, therefore, is **APPROVED**, subject to certain conditions.

Joe Fennimore
Director-Planning Division

Date: August 9, 2021

If you have any questions regarding this decision contact Lindsey King at (503) 588-5038.

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