

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. 22-024

APPLICATION: Application of Mark C. Hoyt on behalf of Triple O, LLC for an administrative review to place a Secondary Farm dwelling on a 57.14-acre parcel in an EFU (Exclusive Farm Use) zone located at 11474 Sunnyview Road NE, Salem (T7S; R1W; Section 21; Tax Lots 100, 300, and 1700).

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 **November 8, 2026**, unless an extension is granted. The effective period may be extended for two years 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 check with 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 the secondary single-family farm dwelling, the applicants shall sign a Marion County Farm/Forest Declaratory Statement for the secondary single-family dwelling. The applicants shall record the Statement 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 the secondary single-family farm dwelling, the applicants shall sign a Marion County Secondary Farm Dwelling Removal Agreement for the secondary single-family dwelling. The applicants shall record the Statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
4. The secondary single-family dwelling shall be continuously occupied by a relative working on the farm, James Mitchell father-in-law to Richard Olson and father to Julie Arlene Swanson, as described in this decision and be removed when no longer occupied by James Mitchell, working on the farm.
5. The farm operator, Ricard Olson, shall continue to play the predominant role in management and farm use of the farm.
6. No separate driveway approach to Sunnyview Road will be authorized. Access must be shared with the existing driveway. An Access Permit may be required for the secondary dwelling to establish a record for addressing, although no actual physical access approach work may be necessary.
7. Applicant shall adhere to all conditions from previous land use case Administrative Review 21-033.

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:

8. 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.
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) based on 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 **November 8, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 9, 2022**, 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.
2. The property is located on Sunnyview Road NE. The parcel is approximately 985 feet from the intersection of Sunnyview Road NE and Hibbard Road NE. The parcel was the subject of one previous land use case, Administrative Review 21-033, which was approved and is two separate parcels. A deed from the previous land use case matches the deed submitted for the current case (Reel 4430, Page 114). To meet the criteria as discussed, below, the applicant combined both parcels into a single parcel. This was recorded on September 20, 2022, and is found in Reel 4659, Page 298. Therefore, this property is one single parcel and is legal for the purposes of land use.
3. Surrounding properties in all directions are in farm use and in an EFU zone.
4. The applicants are proposing to place a secondary farm dwelling on Tax Lot 100. The home on Tax Lot 1700 will become the primary farm dwelling once it is built, with the existing manufactured home on Tax Lot 100 becoming the secondary farm dwelling.
5. Soil Survey of Marion County Oregon indicates the subject property is composed of approximately 73% of high-value farm soils and approximately 26% non-high-value farm soils.
6. Marion County Building Inspection commented: permit(s) are required for the unpermitted tiny home. Applicants are encouraged to discuss the requirements with s Building Inspection plans examiner. Structural engineering may be needed depending on the design when reviewed to the 2021 Oregon Residential Specialty Code (ORSC).

Marion County Septic Division commented: a site evaluation and construction/installation permit is required for the proposed single-family dwelling. The site evaluation application has been received by this office.

Marion County Land Development, Engineering, and Permits made the following comments:

ENGINEERING REQUIREMENTS

- A. No separate driveway approach to Sunnyview Road will be authorized. Access must be shared with the existing driveway. An Access Permit may be required for the secondary dwelling to establish a record for addressing, although no actual physical access approach work may be necessary.
- B. Transportation System Development & Parks Charges (SDCs) will be assessed upon application for building permits.
- C. Utility work in the public right-of-way requires permits from MCPW Engineering.

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

- 7. For the purposes of this land use application and application of the Marion County Code, the farm operator is synonymous with the owner of the subject parcels. In this case, the farm operator and applicant are Richard Olson. For context, Richard Olson, as proven by two operating agreements submitted to staff, is the sole member of Triple O, LLC and Alliance Seed Farms, LLC. It should be noted that Triple O, LLC is the owner of both tax lots and that Alliance Seed Farms, LLC is responsible for the revenues of the farm. Therefore, this establishes Richard Olson's ownership of Tax Lots 100 and 1700, allowing for a land use action under his name to occur.

Secondary farm dwellings customarily provided in conjunction with farm use may be approved when the standards in Chapter 17.136.030(C) of the Marion County Code (MCC) are satisfied. The applicable standards include:

- 1. *A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, step-sibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use.*

The applicant's representative has stated that James Mitchell will live in the secondary farm dwelling and work as in general grounds maintenance and delivery coordinator for estate work. Mitchell will oversee the use of vineyard equipment and operation of the equipment by the vineyard workers. Mitchell's relationship is with Richard Olson's partner, Julie Arlene Swanson. Specifically, Mitchell is the father of Swanson. Additionally, the primary farm dwelling is occupied by Richard Olson, and it is not to be used for the proposed winery as approved by AR21-033. The applicant has met the burden of proof and, therefore, this criterion is met.

- 2. *The farm operator shall continue to play the predominant role in management and use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding, and marketing.*

The applicant representative has stated that Richard W. Olson is the farm operator for the subject parcel. The deed that was submitted by the applicant's representative states that Triple O, LLC is the owner of the subject parcel. Additionally, the applicant's representative submitted an Amended Operating Agreement of Triple O, LLC, which shows Richard W. Olson as being the sole member. Therefore, this criterion is met.

- 3. *A deed restriction is filed with the county clerk requiring removal of the dwelling when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved*

The applicant's representative acknowledges that the dwelling will need to be removed when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved. This will be a condition of approval.

4. *For purposes of this subsection, a commercial farm operation is one that meets the income requirements for a primary farm dwelling identified in subsection (A)(1)(b) of this section, and the parcel where the dwelling is proposed contains a minimum of 80 acres.*

As stated by the applicant's representative's statement, the subject parcel, and the adjacent parcel (Tax Lot 300), are considered high-value farmland and subject to the income requirement found in subsection (A)(1)(b). The income requirements for high-value farmland are \$80,000 in gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years. The applicant's representative has submitted a letter from the applicant's Certified Public Accountant, Stephen P. Joyce of Fischer, Hayes, Joye, and Allen, LLC, stating the income the applicant made, through Alliance Seed Farms, LLC, was sufficient to meet the previously stated income criteria. Specifically, the letter, and subsequent sales records, states that Alliance Seed Farms, LLC made \$130,425 in agricultural sales in 2021 and \$195,128 in agricultural sales in the first six months of 2022 (January through June). A follow-up email exchange with Stephen P. Joyce confirmed that the source of the information came from "the client's books". Based on the attestation of the applicant's CPA, the applicant does meet the income requirements.

Regarding the criterion requiring the dwelling to be contained on a parcel with a minimum of 80 acres, the applicant's representative has stated that the subject parcel is 80 acres in total. However, upon further staff review, it was concluded that the subject parcel is not one legal parcel. In fact, Tax Lot 1700 is 24.94 acres and Tax Lot 100 is 57.14 acres and are considered separate parcels. However, the applicant combined the two separate parcels on September 20, 2022, totaling 82.08 acres, to create one single parcel. Therefore, this criterion is met.

5. *All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:*

It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling.

These covenants, conditions, and restrictions can be removed only at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions is located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.

The applicant's representative has acknowledged this criterion. This criterion will be made a condition of approval.

8. Based on the above findings, it has been determined that the proposed secondary dwelling satisfies all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: October 24, 2022

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

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.