

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. 24-015**

APPLICATION: Application of Dennis and Sylvia Melcher for an administrative review to place a secondary farm dwelling on a 96.74-acre parcel in an EFU (Exclusive Farm Use) zone located at 8046 McKay Rd NE, St. Paul (T4S; R2W; Section 11; Tax lot 1200).

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 **July 25, 2028**, 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 dwelling shall be occupied by a person or persons who are primarily engaged in working on the farm.
3. A deed restriction filed with the county clerk requiring removal of the home or removal, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved will be required.
4. The applicants shall sign and record a Farm/Forest & Agricultural Land for Dwelling Qualification Declaratory Statement (enclosed). The applicants shall record the agreement with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director.
5. The dwelling shall be assigned the address of **8048 McKay Rd NE**.

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. The applicant is advised of the following:

6. The applicants should contact the St. Paul 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 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 25, 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 26, 2024**, 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 Exclusive Farm Use (EFU).
2. The subject property is located on the south side of McKay Rd NE, approximately 3-miles west of St. Paul and ¼ mile east of the intersection of McKay Rd and French Prairie Rd. The parcel contains an existing hazelnut farming operation, primary farm dwelling, and farm buildings associated with the farm operation.

The parcel also contains an existing secondary farm dwelling approved by AR10-031. As a condition of approval for AR10-031, tax lots 1100, 1200, and 1600 were combined into a single parcel. Having been a subject of a prior land use case, the parcel is considered legal for land use purposes.

3. Surrounding properties in all directions are zoned EFU and in farm use. The area is comprised of large commercial agriculture operations growing hazelnuts, grass seed, hay, and row crops.
4. The applicants are proposing to place a secondary farm dwelling for their daughter and son-in-law who also work on the farm. This would be the second secondary farm dwelling on the property. The first secondary farm dwelling was for another daughter and her husband.
5. According to Marion County Soil Survey, the subject parcel consists of 91.3% high value soils.

Soil Name	Soil Type	Soil Class	High Value	Soil percent	Soil Acres
Amity silt loam	Am	2	Yes	0.1%	0.0
Concord silt loam	Co	3	Yes	0.4%	0.4
Terrace escarpments	Te	6	No	8.7%	8.1
Wapato silty clay loam	Wc	3	Yes	21.1%	19.7
Woodburn silt loam, 0%-3% slopes	WuA	2	Yes	63.3%	59.1
Woodburn silt loam, 12%-20% slopes	WuD	3	Yes	5.6%	5.3
Woodburn silt loam, 3%-12% slopes	WuC	2	Yes	0.8%	0.8

6. Various agencies were contacted with request for comments:

Marion County Building Inspection commented: “No Building Inspection concerns. A manufactured home placement permit is required to be obtained prior to the placement of the home and installation of underground utilities within a 30 foot radius of the proposed home. If any utilities will be installed beyond this 30 foot radius, additional permits would be required for those specific utilities prior to installation.”

Marion County Septic commented: “A drainfield was installed in 2011 for the purpose to serve a secondary dwelling at 8046 McKay. An authorization to connect the new dwelling to the existing system is required.”

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

ENGINEERING REQUIREMENT

- A. Transportation System Development Charges (TSDCs) and Parks fee will be assessed at the time of application for building permits.
- B. Utility service extension work in the public R/W requires permitting from MCPW Engineering.

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

7. The criteria for approving a secondary farm dwelling on high value farmland is contained in MCC 17.136.030 (B) (1):

- 1. *The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.*

The primary dwelling is occupied by the owner of the farm who principally operates the farm. The existing secondary farm dwelling is occupied by an older daughter and son-in-law who work on the farm. The proposed additional secondary dwelling is to be occupied by the primary farm operator's younger daughter and son-in-law who also work on the farm and operate a value-added portion of the operation by roasting and packaging hazelnuts. The criterion is met.

- 2. *There is no other dwelling on lands in the EFU, SA or FT zone owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.*

The only other dwellings owned by the farm operator are the primary dwelling on the subject parcel which is being lived in by the applicant, and the existing secondary farm dwelling occupied by another daughter and son-in-law involved in the farm operation approved by AR10-031. The criterion is met.

- 3. *The proposed dwelling will be located:*

- a. *On the same lot or parcel as the primary farm dwelling; or*

- b. *On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or*

- c. *On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (B)(1) of this section; or*

- d. *On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable State Building Code or similar types of farm worker housing as that existing on farm operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or*

e. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (B)(4) of this section, whichever is applicable.

The proposed dwelling will be located on the same parcel as the primary dwelling. The criterion is met.

4. The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:

a. On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least \$40,000 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; or

b. On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least \$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 parcel consists of high value farmland. The applicant has submitted Schedule F tax forms for 2021 and 2022 showing income above the required amount for both years. The criterion is met.

c. The primary dwelling is located on a commercial dairy farm as defined in this chapter; and

i. The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

ii. The Oregon Department of Agriculture has approved a permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and

iii. The Oregon Department of Agriculture has approved a producer license for the sale of dairy products under ORS 621.072;

The applicant is not a commercial dairy farm and is not applying under this provision. The criterion does not apply.

d. In determining the gross income in subsections (B)(4)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

No livestock was included in these figures. The applicant operates a hazelnut farm. The criterion does not apply.

5. The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.

The dwelling is not located in a big game habitat area. The criterion does not apply.

6. A deed restriction filed with the county clerk requiring removal of the home or removal, demolition or conversion to a nonresidential use if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.

This shall be made a condition of approval.

8. 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:

“These covenants, conditions, and restrictions can be removed only and 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.”

This shall be made a condition of approval. The criterion is met.

9. In addition to the above criteria MCC 17.136.030 requires that a dwelling established in the EFU zone through this process shall comply with MCC 17.136.100(C), which reads as follows:

Declaratory Statement. For all dwellings, and other uses deemed appropriate, the property owner shall be required to sign and allow the entering of the following declaratory statement into the chain of title of the lot(s) or parcel(s):

“The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantors, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices, grantors will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.”

This shall be made a condition of approval. The criterion is met.

10. Based on the above findings, it has been determined that the request satisfies all applicable criteria and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: July 10, 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.