

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. 24-025**

APPLICATION: Application of Dan Westphal for an administrative review to replace a dwelling on a 2.65-acre parcel in an SA (Special Agriculture) zone located in the 7900 block of Marion Rd SE, Turner (T8S; R2W; Section 28CD; Tax lot 900).

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 29th, 2026**, unless an extension is granted. The effective period may be extended for two years subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to the 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 drain field 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. If replaced, the existing dwelling must be removed, demolished, or converted to allowable non-residential use within three months of occupancy of the replacement dwelling.
3. The applicants shall sign and submit a Replacement Residence Declaratory Statement acknowledging that the new residence is a replacement dwelling and agreeing that the existing structure, if not removed, will not be used for residential purposes.
4. The applicants shall sign and submit a Farm/Forest Declaratory Statement acknowledging that the new residence is being established in a resource zone where the customary practice of farming and agriculture are expected to occur.

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:

5. The applicants should contact the Turner 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 and Advisories, listed in Finding #8 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 \$250.00 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 **November 29th, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective, **December 2nd, 2024**, unless appealed.

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

1. The subject property is designated Special Agriculture in the Marion County Comprehensive Plan and correspondingly zoned SA (Special Agriculture). The primary intent of both this designation and zone is to promote and protect small farm operations or areas with a mixture of good and poor farm soils.
2. The subject property is located just outside the City of Turner's southeastern urban growth boundary, approximately 330 feet east of the intersection of Witzel Road SE and Marion Road SE. The property is set back approximately 150 feet north of Marion Rd SE and is accessed by an easement over tax lot 2600. This easement serves at least two other adjacent lots. Current aerial imagery suggests that the subject property is actively accessed using this easement. The property contains an old dwelling that is in disrepair and a barn.

The subject parcel is described in its present configuration in a February 19, 1959 deed (Volume 519, Page 733), and a November 20, 1959 deed (Volume 528, Page 887) and a subsequent November 21, 2013 deed (Reel 3562, Page 400) which also describes a parcel of land as a non-exclusive 20-foot easement on the eastern line. The lot is therefore considered legal for land use purposes.

3. Surrounding land uses consist mainly of small acreage residential properties with single family dwellings and related accessory buildings. To the immediate south of the subject property, one lot is currently operating as a religious organization. Across Marion Rd SE the uses are small acreage residential homesites in the SA zone and to the west is the City of Turner where the land is being utilized as single family residential and religious institution use. To the north and the east of the subject property the uses become increasing larger residential uses and evidence of farming and forestry related uses
4. The Soil Survey of Marion County Oregon tool indicates that approximately 100% of the subject property soils are high value soils.
5. The applicants are proposing to construct a replacement dwelling to replace the dilapidated dwelling and place the new dwelling outside the identified 100-year floodplain.
6. Various agencies were contacted about the proposal and given an opportunity to comment. All contacted agencies either failed to comment or stated no objection to the proposal.

Marion County Public Works Land Development, Engineering and Permits (LDEP) commented:

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits an Access Permit will be required to document the legal access location in PW Engineering access records.
- B. Transportation System Development Charges (TSDCs) and Parks fee will be assessed at the time of application for building permits.
- C. Utility service extensions such as electric power originating from within the public right-of-way require permits from MCPW Engineering.

Marion County Building Inspection commented:

“No Building Inspection concerns. Permit(s) are required to be obtained prior to development of structures and/or utilities installation on private property.”

Marion County Septic commented:

“An authorization is required to connect to the existing septic system.”

The Marion County Tax Accessors office had no comments.

All commenting agencies either stated no objection to the proposal or did not comment.

7. Chapter 17.137.030(E) 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 17.137.100(C), other than as permitted in MCC 17.137.020(D), when the dwelling:

1. The dwelling to be altered, restored or replaced has or formerly had:

- a. Intact exterior walls and roof structure;*
- b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
- c. Interior wiring for interior lights.*
- d. A heating system; and*

The evidence provided regarding the existence of a dwelling on the subject property is as follows:

Aerial photos from 1971 show a structure in the current location. Similar contemporary imaging such as satellite imagery available through Marion County land use mapping tools and commercially available imagery found on the internet provided by organizations such as Google Maps also indicate the presence of a building as far back as 2016. These images also show additional accessory buildings on the property and evidence of active land management and signs of vehicular access. The imagery also suggests that the building had an intact roof and exterior walls. The applicant also provided contemporary photographs of the dwelling showing standing walls and a partially collapsed timber and corrugated metal roof.

The applicant states that the dwelling has a kitchen area that had a cooking stove that has been relocated outside the dwelling. In addition, the house was heated by a woodburning stove that vented out the eastern wall. The applicant also provided photographic evidence of these items still on the property. The applicant states that the dwelling was serviced by an outhouse with a pit toilet and provided photos of the still standing outhouse.

The applicant stated that the dwelling had electrical service at one time and presently has the remanent of a nob and tube wiring system inside the house. Also provided with the application materials was photographic evidence of a still standing utility pole with a meter base and external power outlets. Additionally, the applicant provided images of the electrical mast and meter base attached to the dwelling and photographic evidence of a ceiling mounted electrical junction box and wiring.

Altogether, these pieces of evidence support the conclusion that there was a legitimate dwelling on the property that met the definition of a dwelling per Marion County code. Given that the dwelling existed prior to implementation of Marion County's comprehensive plan, the dwelling was therefore legally established.

2. In addition to the provisions of subsection (E)(1) of this section, the dwelling to be replaced meets one of the following conditions:

a. If the dwelling was removed, destroyed or demolished;

- i. The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and*
- ii. Any removal, destruction, or demolition occurred on or after January 1, 1973.*

b. 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

c. A dwelling not described in subsection (E)(2)(a) or (b) of this section was assessed as a dwelling for the purposes of ad valorem taxation:

i. For the previous five property tax years; or

ii. 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 the applicant is proposing to replace is still standing on the property and was not demolished or removed. The Marion County Tax Assessor's office provided no comments about the property. The applicant states that the dwelling is currently in a state of disrepair which is unsafe for occupants and does not have a lien for delinquent ad valorem taxes. The criterion is met.

3. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or

b. 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

c. 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 applicant states that the intention is to demolish and remove the current dwelling after a replacement dwelling is approved. The criterion is met.

4. 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 applicant shall record a Replacement Residence Declaratory Statement [per MCC 17.137.020 (D)(3)]. This shall be a condition of approval. The criterion is met.

5. 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 applicant's property is completely in the SA zone and plans to establish a replacement dwelling in a new location outside the 100-year floodplain. The criterion is met.

6. 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;

The applicant acknowledges that the replacement dwelling shall conform to contemporary building, plumbing, and sanitation codes and other requirements relating to health and safety or to siting at the time of construction. The criterion is met.

7. The replacement dwelling must be sited on the same lot or parcel consistent with the following:

- a. 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
- b. 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 applicant states that they plan to build a replacement dwelling approximately 135 feet north of the current dwelling to be out of the 100-year floodplain. They state that this would be ideal for mitigating adverse impacts on the land in the event of a flood and decrease the disturbance to the floodplain. The chosen location also keeps the replacement dwelling clustered within 500 yards of the surrounding dwellings and other buildings in the area. The criterion is met.

Within the floodplain overlay zone according to MCC 17.178.040 (C):

New residential structures and manufactured dwellings and replacement residential structures that are not being replaced in the same location as the original residential structure are prohibited in the floodplain if there is an area on the subject property that is located outside of the floodplain where the residential structure can be placed. An exception to this prohibition may be granted if a floodplain development permit and variance meeting the criteria in MCC 17.178.090 are obtained.

The application states that the applicant plans to build the replacement dwelling outside the identified 100-year floodplain and therefore will not be rebuilt in the original footprint. This satisfies MCC 17.137.030 (E)(7b) and MCC 17.178.040 (C). The criterion are met.

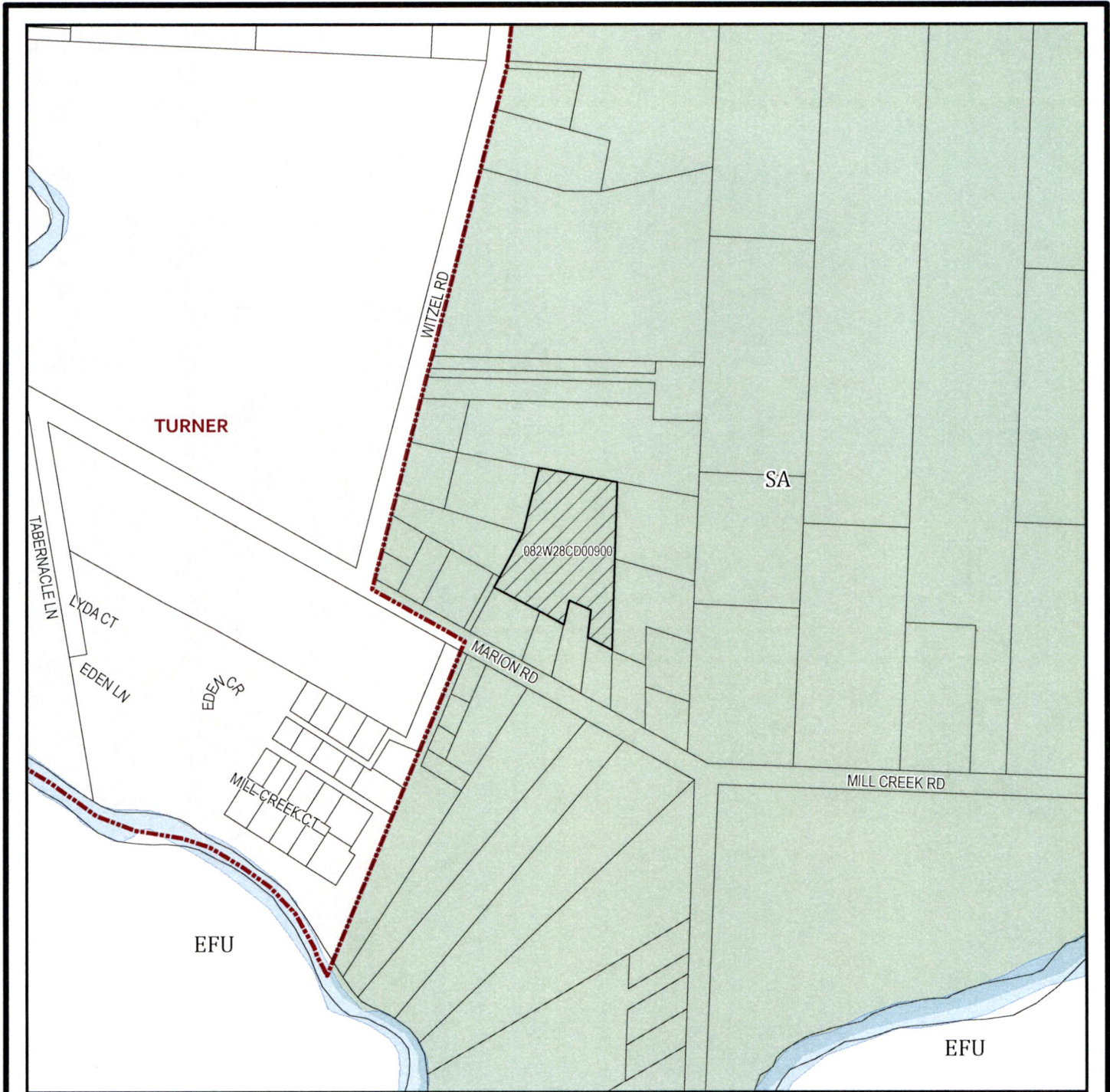
8. Based on the above findings, it has been determined that the existing dwelling was legally established and may be altered, restored and/or replaced.

Brandon Reich
Planning Director/Zoning Administrator

Date: November 14, 2024.

If you have any questions regarding this decision contact George Brandt 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.



ZONING MAP

Input Taxlot(s): 082W28CD00900

Owner Name: WESTPHAL, DANIEL

Situs Address: (No Situs Address)

City/State/Zip:


Land Use Zone: SA


School District: CASCADE

Fire District: TURNER

Legend

 Input Taxlots

 Lakes & Rivers

 Highways

 Cities



scale: 1 in = 404 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.