

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. 24-029**

**APPLICATION:** Application of Timothy M. Herinckx and Karen A. Herinckx for an administrative review to establish up to two secondary farm dwellings on a total of 49.96 acres in an EFU (Exclusive Farm Use) zone located at 12239 Howell Prairie Rd NE, Gervais (T5S; R2W; Section 36A; Tax Lots 200 & 600).

**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 **January 8<sup>th</sup>, 2029**, 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 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. The dwellings shall be continually occupied by persons who are primarily engaged in working on the farm.
3. Prior to issuance of any permits, the applicants shall sign and record an Agricultural Land for Dwelling Qualification Declaratory Statement. The applicants shall record the agreement with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director. (Enclosed)
4. Prior to issuance of any permits, the applicants shall sign and record a Removal Agreement Secondary Farm Dwelling Declaratory Statement. The applicants shall record the agreement with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director. (Enclosed)
5. Prior to issuance of any permits, the applicants shall sign and record a Farm/Forest Declaratory Statement. The applicants shall record the agreement with the Marion County Clerk's Office after it has been reviewed and signed by the Planning Director. (Enclosed)
6. Prior to establishing the dwelling on tax lot 200, the applicants shall record a new deed with a single perimeter description of both parcels to combine them for the purposes of establishing secondary farm dwellings as per MCC 17.136.030 (B)(3)(b).
7. The secondary farm dwelling on Tax Lot 600 shall use the address of **12169 Howell Prairie Rd NE, Gervais, OR 97026 if the southern access is approved. It shall use 12249 if the dwellings must share the existing access.**
8. The secondary farm dwelling on TL 200 shall be assigned the address of **9063 Mt Angel Gervais Rd NE, Gervais, OR 97026.**

9. The secondary farm dwelling will be sited as indicated on the site plan with the application for this Administrative Review. Minor changes may be approved at the discretion of 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 another 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:

10. The applicants should contact the Woodburn 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.
11. 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 \$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 **January 8<sup>th</sup>, 2025**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 9<sup>th</sup>, 2025**, 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 correspondingly zoned Exclusive Farm Use (EFU). The primary intent of this designation and zone is to promote commercial agriculture.
2. The subject property is located near the junction of Mt. Angel-Gervis Rd NE and Howell Prairie Rd NE. Subject tax lot 600 is addressed off of Howell Prairie and is about one quarter of a mile north of the intersection of Mt. Angel-Gervis Rd NE and Howell Prairie Rd NE. Tax lot 200 is approximately 0.4 miles west of said intersection. Both properties share about 380 feet of common border along tax lot 600 western border. The subject property is made up of two parcels and totals 48.96-acres. Tax lot 200 currently has about 26 of its total 38.96 acres in use as arable farmland with the remaining trees and a riparian area along Sam Brown Creek.

Tax lot 600 contains the Herinckx primary farm dwelling and related agricultural buildings and including at least two barns and a shed. About 6.5 of the 10 acres are being farmed with the remaining being used for dwellings, accessory buildings, and some animal husbandry.

Deed research by staff was not able to clearly identify tax lot 200 by deed description. However, this parcel has been bought and sold using its current deed description since at least 1945 (Volume 321-126). Tax lot 600 has been described by deed in its current form since at least 1977 (Reel 90, Page 073). Therefore, both parcels are legal for land use purposes.

3. Adjacent surrounding uses are agricultural in all directions. The City of Gervais is about one mile to the northeast.
4. The applicants are proposing to establish two secondary farm dwellings for family members, one new dwelling on tax lot 200 and a secondary farm dwelling on tax lot 600 near the existing primary dwelling.
5. The subject property is composed of two parcels, all of which contain 100% high value soils.

6. Various agencies were contacted about the proposal and given an opportunity to comment.

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

**ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits an Access Permit will be required for each proposed dwelling, and the existing approach will be reviewed for conformance with PW Eng standards. Be advised per Marion County TSP, a secondary residential access on Howell Prairie Road may not be allowed since it is classified as a Major Collector.
- B. The subject property will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits.
- C. Utility service extensions in the public right-of-way requires separate PW Engineering permits.

Marion County Building Department commented:

*“No Building Inspection concerns with application. Permit(s) are required to be obtained prior to development and utilities installation on private property.”*

Marion County Septic commented:

*“Each additional dwelling will require a site evaluation to establish septic viability/minimum requirements prior to permit application.”*

The Woodburn Fire Department commented:

*“Woodburn Fire District will need to [sic] proposed new house locations, square footage, and access roads to each. This is needed to confirm compliance with water supply requirements for fire department needs and fire access, width, terrain, height, and turning radius requirements to all structures.”*

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. *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 existing primary dwelling (tax lot 600) is occupied by the farm operators and owners (applicants) of the Herinckx Nursery Company. The secondary dwelling is to be occupied by their daughter and son-in-law, Natali and Marcus Smith, who are currently and will continue to assist in the operations of the farm and nursery. The proposed second farm dwelling is to be located on TL 200 and will be occupied by the applicants’ other son, Colton Herinckx. The applicants attest that these individuals are each principally engaged in the farm use of the land. 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 lawfully established dwelling owned by the farm operator on resource zoned lands is the primary dwelling on the subject parcel, of tax lot 600, which is occupied by the applicants. 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 first proposed secondary farm dwelling will be located on the same parcel as the primary dwelling (tax lot 600) as per MCC 17.136.030(B)(3)(a).

The second proposed secondary farm dwelling will be located on a parcel (TL 200) with the same contiguous ownership as the primary dwelling. Per MCC 17.136.030(B)(3)(b), the secondary farm dwelling will be located on another parcel in contiguous ownership, therefore the applicants will be required to consolidate both parcels into a single parcel with all other contiguous lots and parcels in the same ownership. This shall be a condition of approval. 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 subject properties consist of high value farmland. The applicant has submitted tax returns showing the minimum gross annual farm income of \$80,000 from the sale of farm products has been met for at least three out of the last four years. At the time of this decision, the tax returns for 2024 were not available. Staff determined that the past financial records demonstrate the land's ability to generate the required annual gross income of \$80,000 a year. 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 involved in qualifying this nursery and farm operation. 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.*

As a condition of approval, the applicants shall record a deed restriction filed with the county clerk requiring the removal, demolition or conversion to nonresidential use if the occupants of the secondary dwellings cease to principally assist with the regular functions of the farming and nursery operation. 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: December 24<sup>th</sup>, 2024

If you have any questions regarding this decision contact George Brandt at (503) 566-3981

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):** 052W36A000200, 052W36A000600

**Owner Name:** HERINCKX LT & HERINCKX, TIMOTHY  
M TRE & HERINCKX, KAREN A TRE

**Situs Address:** 12239 HOWELL PRAIRIE RD NE

**City/State/Zip:** GERVAIS, OR, 97026


**Land Use Zone:** EFU

**School District:** GERVAIS

**Fire District:** WOODBURN

### Legend

 Input Taxlots

 Lakes & Rivers

 Highways

 Cities



scale: 1 in = 714 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.