

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.20-011**

APPLICATION: Application of David Potter, for an administrative review to replace a dwelling on a 34.37 acre property in a FT (Farm/Timer) zone located at 158 Silver Falls Dr NE, Silverton. (T7S; R1E; Section 27D; tax lot 100).

DECISION: The Planning Director for Marion County has determined that the residence is legally established and can be repaired, altered or replaced.

EXPIRATION DATE: This decision is valid only when exercised by **April 20, 2024** unless an extension is granted. The effective period may be extended one time for two years 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 applicants shall obtain all permits, including building, septic evaluations and installation, required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permit for the new dwelling, the applicants shall sign and submit a Replacement Residence Declaratory Statement (enclosed) 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. The proposed dwelling shall be located within the indicated area on the site plan submitted with the application. Minor variations may be allowed upon review and approval by the Planning Director.
4. **Within three months of occupancy of the replacement dwelling, the existing mobile home must be removed. In lieu of removal, the applicant may:**
 - (a) File a Declaratory Statement restricting the use of the replaced dwelling for residential purposes; and
 - (b) Submit a site plan showing the location of all structures on the property and indentifying which structure is the replaced dwelling.

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 # 5 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

5. The applicants should contact the Drakes Crossing 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.

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 **April 20, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective on **April 21, 2020** unless appealed.

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

1. The subject property is designated Farm Timber in the Marion County Comprehensive Plan and zoned FT (Farm Timber).
2. The subject property is located directly northwest of the intersection of Loar Rd SE and Silver Falls Dr NE. The property contains a manufactured home, an attached garage, and two accessory structures. The property was the subject of planning case ZC/CU07-6, and is therefore considered a legal parcel for land use purposes.
3. Surrounding uses are all agricultural or forest, with the properties to the north, east, south and west zoned FT. One parcel to the southwest is zoned EFU (Exclusive Farm Use). In addition to agricultural uses, each of the parcels surrounding the subject property contains a dwelling except the parcel directly north of the subject property.

4.	<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
	McCully	34.6	171	5916.6

Soil Survey of Marion County Oregon indicates 31.5% of the subject property is composed of high-value farm soils.

5. The applicant is proposing to replace a dwelling on a 34.37 acre property in a FT (Farm/Timer) zone located at 158 Silver Falls Dr NE, Silverton.
6. All commenting agencies stated no objection to the proposal.
7. In order to replace a dwelling in the FT zone it must first be determined whether predominate use of the property on January 1, 1993, was forest land or farm land. In this instance, aerial photographs and Assessor records indicate predominate use was farm land.

Chapter 17.139.030(I) of the Marion County Code (MCC) allows the alteration, restoration, or replacement of a lawfully established dwelling that was predominately in forest use on January 1, 1993, with filing of the declaratory statement in MCC 17.139.060(B), when the dwelling:

- (a) *Has intact exterior walls and roof structure;*
- (b) *Has indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;*
- (c) *Has interior wiring for interior lights;*
- (d) *Has a heating system; and*
- (e) *In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable non-residential use within three months of the occupancy of the replacement dwelling.*
- (g) *For the case in which the applicant has requested a deferred replacement permit, the dwelling to be replaced shall be removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The 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 consideration. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

- (h) *If the dwelling to be replaced is located on a portion of the lot or parcel not zoned EFU, SA or FT the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting or another dwelling.*

8. A review of building permit records and aerial photographs of the area indicate that that home has intact exterior walls and a roof. Therefore, the criterion in 7(a) is satisfied.

Based on tax assessor records and photographs, the existing dwelling has intact exterior walls and roof structure. It also appears the residence contains the necessary kitchen and bathroom facilities. In addition, the dwelling has indoor electricity and a heating system. The proposal meets the standards outlined in 7(b), (c), (d) and (e) above.

The applicant did not request deferred replacement; therefore, the criterion in 7(g) is not applicable.

The dwelling to be replaced is not on a portion of the lot which is not zoned EFU, SA or FT, therefore the criterion in 7(h) do not apply.

9. At the time of replacement, the applicant will be required to sign and record a Farm/Forest Declaratory Statement as a condition of approval. This acknowledges that farm and forest practices conducted in the area may have an adverse impact on a residence.
10. Based on the above findings, it has been determined that the proposed dwelling satisfies all applicable criteria and may be altered, restored and/or replaced.

Joe Fennimore
Planning Division Director

Date: April 3, 2020

If you have any questions regarding this decision contact Austin Barnes 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.