

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. 20-017**

APPLICATION: Application of Marlene Cooke for an administrative review to replace a dwelling on a 21.10 acre parcel in an EFU (Exclusive Farm Use) zone located at 3871 Victor Point Rd NE, Silverton (T7S; R1W; Section 11A; tax lot 0800.

DECISION: The Planning Director for Marion County has determined that the residence is a legally established dwelling and can be replaced, subject to conditions.

EXPIRATION DATE: This decision is valid only when exercised by **July 28, 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 subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. If replaced, the existing dwelling must be removed, demolished, or converted to an allowable non-residential use within one year of occupancy of the replacement dwelling.
3. If the dwelling is not removed prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a Replacement Residence Declaratory Statement 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. (Declaratory Statement enclosed).
4. Prior to issuance of any building permit for a new dwelling, the applicants shall sign and submit a Declaratory/Farm-Forest Statement 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. (Declaratory Statement enclosed).
5. Prior to any issuance of building permit the applicant shall comply with any requirements of the Marion County Septic Division.

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.

6. The applicants should contact the Silverton Fire Department 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, 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 the 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 28, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 29, 2020** 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, zoned EFU (EXCLUSIVE FARM USE). The intent of both designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is located on Victor Point Road NE, approximately 1/2 mile southeast of its intersection with Sunset Lane NE. The property contains one dwelling. According to Marion County Assessor records the dwelling to be replaced was built in 1972.
3. Surrounding properties to the northwest, south, and east are zoned EFU and devoted to various types of farm use. Surrounding properties to the northeast are zoned Timber Conservation and are dedicated to residential and timber uses.
4. Soil Survey of Marion County Oregon indicates 50.90% of the subject property is comprised of high-value farm soils.
5. The applicant is proposing to replace the existing house on the property.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following requirements be included in the land use decision:

ENGINEERING REQUIREMENTS

- A. At the time of application for building permits, an Access Permit will be required to pave the shared graveled access approach that is serving five dwellings, with two out of three located on the subject property proposed for replacement. The approach shall be 20-24 feet wide not including flares. There was a quite a bit of gravel observed to be strewn on the paved shoulder that presents a safety concern for vehicles and bicyclists.
- B. Prior to issuance of building permits, and an Access Permit noted above, provide evidence of an access easement crossing the eastern terminus of the flag lot portion of TL 071W11B00300 addressed 3873-3875 Victor Point Road such that there is a total 20-foot width available.
- C. At the time of application for building permits for a dwelling, Transportation System Development and Parks charges will be assessed. Credit is given when a dwelling to be replaced is occupied at some point during the 12 months preceding application for building permits.

Silverton Fire District commented that applicants shall comply with the Building access and Premise Identification regulations and the Marion County Fire Code Applications Guide.

Marion County Septic Division commented that one or more Septic Authorizations may be required, and that a possible alteration may be required.

Marion County Building Division commented that a building permit shall be required for new construction or placement of a dwelling.

Various other governmental agencies were contacted and either failed to respond or stated no objections to the proposal.

7. The replacement dwelling criteria are listed in Section 17.136.030(D) of the Marion County Code (MCC). However, the 2019 Legislature, through House Bill 3024, amended the criteria and the County must apply those criteria directly until the zone can be amended. The criteria are:

1. *A lawfully established dwelling may be altered, restored or replaced under ORS 215.213(1)(q) or 215.283(1)(p) if the county determines that:*
 - (a) *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; and*
 - (D) *A heating system; and*

The dwelling currently contains all of the elements described in (a) above.

- (b)
 - (A) *If the dwelling was removed, destroyed or demolished:*
 - (i) *The dwelling's tax lot does not have a lien for delinquent and 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 the delinquent ad valorem taxes; or*
 - (C) *A dwelling not described in subparagraph (A) or (B) of this paragraph was assessed as a dwelling for purposes of ad valorem taxation:*
 - (i) *For the previous five property taxes; 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 has not been removed from the property and is not an attractive nuisance, (A) and (B) do not apply in this instance. The dwelling is currently on the tax rolls and has been for more than the five previous years, (C) above is satisfied.

2. *For replacement of a lawfully established dwelling under this section:*
 - (a) *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 county, 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 county that is not less than 90 days after the replacement permit is issued.*
 - (b) *The replacement dwelling:*
 - (A) *May be sited on any part of the same lot or parcel.*
 - (B) *Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.*
 - (c) *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 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 this section and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

The entire property is zoned EFU therefore, (c) does not apply. As outlined in (a) above, a condition of approval will require the dwelling to be removed, demolished or converted to an allowable nonresidential use within one year of its replacement. Any standards applied will 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. The standards will not be applied in a manner that would prohibit the siting of the replacement dwelling, (b) is satisfied.

3. *Notwithstanding subsection (2) (b) (A) of this section, a replacement dwelling under this section must be sited on the same lot or parcel:
 - (a) *Using all or part of the footprint of the replaced dwelling or near 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.**

These standards do not apply because the dwelling to be replaced is still located on the property.

8. Based on the above findings, it has been determined that the proposal complies, or can be conditioned to comply, with the criteria in the Marion County Code and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Division Director

Date: July 13, 2020

If you have any questions regarding this decision contact Alyssa Schrems 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.