

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.20-026**

**APPLICATION:** Application of LDW Investments LLC an administrative review to replace a dwelling previously removed from a property on a 5.98 acre parcel in an Exclusive Farm Use (EFU) zone located at 12822 Jefferson Hwy., Jefferson (T9S, R3W, Section 23C, Tax lot 900).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Administrative Review.

**EXPIRATION DATE:** This decision is valid only when exercised by **October 19, 2024** (four years) unless an extension is granted. The effective period may be extended, subject to approval of an extension (form available from the Planning Division). Request for an extension must be submitted to the Planning Division prior to expiration of the approval.

**WARNING:** A decision approving the proposed uses is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposed activities. To ensure 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 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 three months of occupancy of the replacement dwelling.
3. Prior to issuance of any building permit, the applicants shall sign and submit a Declaratory/Farm-Forest 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.

**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. The applicant is advised of the following:

4. 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 fee of \$200.00) 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 be received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **October 19, 2020**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 20, 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 and zoned EFU (Exclusive Farm Use). The intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is located on the east side of Jefferson Highway SE, approximately 375 feet southwest of its intersection with Wintercreek Road SE. The property is developed with one outbuilding, a septic tank and drainfield, and a well. The subject property is described by deed recorded on December 31, 1974 (Reel 6, page 1179). The property is considered a legal parcel for land use purposes.
3. Properties in all directions consist of various sized farming operations and acreage home sites in the EFU zone.
4. The applicants are proposing to replace a dwelling previously removed from a property.
5. Soil Survey of Marion County Oregon indicates 50.30% of the subject property is composed of high-value farm soils.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

**ENGINEERING REQUIREMENTS**

- A. At the time of application for building permits an Access Permit will be required for access to Wintercreek Road. A Speed Limit sign and power anchor pole both front the flag portion of the property; one or both may need to be relocated to accommodate driveway installation. Relocating the power anchor pole also requires a Utility Permit from MCPW Engineering, and the onus would be on the Applicant to initiate that with the power company. Applicant is also responsible for meeting ODOT access requirements on Jefferson Hwy that could potentially include permanent closure.
- B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits per Marion County Ordinances.
- C. Utility work such as electrical, gas and communication services in the Winter Creek Road public right-of-way requires Utility Permits from MCPW Engineering.

**ENGINEERING ADVISORIES**

- D. Utility work in Jefferson Hwy must be permitted through ODOT.
- E. A mapped seasonal drainage tributary having upstream origins on the west side of Jefferson Hwy traverses the flag portion of the lot. Natural drainage patterns should not be impeded. A drainage culvert may be necessary to cross it. Applicant should consult with their construction or engineering professional in that regard.

Marion County Building Department commented that a building permit is required for construction or placement of a new home.

All other commenting agencies stated no objection 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 that was located on the property until it was moved to Linn County, had the attributes identified above, according to a previous Marion County Planning ruling (AR04-056). It appeared to have all the above attributes based on the findings in the previous case. These criteria are met.**

- (b)
  - (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 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.*

**Based on information provided by the applicant, as well as aerial photos, the house was removed from the property in 2001 and moved to Linn County. The previous land use case found that the dwelling was established on the property around 1974 and replaced with a newer dwelling in 1985. The Marion County Tax Assessor's office was notified of this proposed land use action and did not identify any liens for delinquent ad valorem taxes. Based on these facts, the criteria in b(A) are met. The dwelling was previously removed from the property; therefore criterion b (B) does not apply. As the dwelling to be replaced is described in subparagraph (A), criterion b(C) does not apply.**

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 applicant has submitted evidence to show that the previously established dwelling is no longer present on the property. Based on this fact, criterion 2(a) is met. As a condition of approval, the location of the dwelling shall significantly conform to the site plan submitted as part of the application. Minor variances due to development or siting standards are allowed. Based on these facts and permit conditions, criterion 2(b) is met. The entire property is zoned Special Agriculture, so criterion 2(c) is not applicable.**

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.*

**The location of the proposed dwelling is near the road and property line and minimizes the risk to resource land. As a condition of approval, the location of the dwelling shall significantly conform to the site plan submitted with the application. Minor variances due to development or siting standards are allowed. Based on these facts, as well as the conditions of approval, this criterion is met.**

8. Although the replacement dwelling is approved, the applicants will be required to sign and record a Farm/Forest Declaratory Statement as a condition of approval. This acknowledges the impacts of farm and forest management practices conducted in the area.
9. Based on the above findings, it has been determined that the proposal complies, with the criteria in the Marion County Code and is therefore, **APPROVED**, subject to conditions.

Joe Fennimore  
Planning Director

Date: October 2, 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.