

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**  
**CONDITIONAL USE/FLOODPLAIN DEVELOPMENT CASE NO. 20-033**

**APPLICATION:** Application of Kenneth and Kathy Ramsay, Trustees of the Ramsey Family Trust for a conditional use and floodplain development permit to place a non-farm dwelling in the identified floodplain of Mill Creek on a 20.0 acre parcel in a EFU (Exclusive Farm Use) zone located in the 8000 block of Bishop Road SE, Aumsville (T8S; R1W; Section 31; tax lots 500).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application and Floodplain Development Permit subject to certain conditions

**EXPIRATION DATE:** This conditional use permit is valid only when exercised by **October 29, 2024**. The effective period may be extended one time, for two additional years subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

**WARNING:** A decision approving the proposed use 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 ensure the subject property can accommodate the proposal the applicant should contact Building Inspection Division, (503) 588-5147.

- All development in the floodplain is subject to federal, local and state regulations and standards at the time development is begun. These regulations and standards are in the process of being revised and the development proposed in this application may be subject to additional regulations and standards at the time construction of structures or placement of fill on the property begins.
- Based on preliminary information provided by the National Marine Fisheries Service on April 14, 2016, federal law might only recognize as legal under the county current floodplain ordinance building permits that are issued prior to September 15, 2016 and where the work is begun prior to March 15, 2017. Permits issued after September 15, 2016 or not begun until after March 15, 2017 may be in violation of federal law and thus invalidate this local permit.
- Construction related to this permit is approved only within the existing developed area of the property. Construction of new structures, fill or other development of the property should not occur outside the existing developed area without prior consultation with the Marion County Planning Division. Federal regulations may require additional approvals for development outside the existing developed area of the property.
- Applicants are further advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade).

**This decision does not include approval of a building permit.**

**CONDITIONS:** The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain approval for all permits required by the Marion County Building Inspection Division.
2. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
3. Prior to issuance of any building permit for an approved non-farm dwelling, the applicant shall provide evidence that the county assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or 308A.724 or 321.359(1)(b), 321.842(1)(A) and 321.716.
4. An Elevation Certificate signed by a licensed surveyor or civil engineer shall be supplied for the dwelling at the following times during the construction process:

- a. Prior to construction (based on construction drawings); and
  - b. Once the floor elevation can be determined (based on the building under construction); and
  - c. Prior to occupancy (based on finished construction).
5. Prior to issuance of building permits for or beginning work on the dwelling a registered civil engineer shall certify the following standard of Marion County Code is met: MCC 17.178.050(D).
  6. Prior to issuance of building permits for or beginning work on the dwelling, a registered civil engineer shall certify the following standards of Marion County Code are met: MCC 17.178.060(C)(3)(b)-(e), (D)(1), and (F).
  7. Prior to issuance of building permits for or beginning work on the dwelling, the applicant shall sign and submit to the Planning Division a Declaratory Statement (enclosed) acknowledging that the property and the approved development are located within a floodplain. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
  8. Prior to issuance of building permits for or beginning work on the dwelling, the applicant shall record a declaratory statement requiring compliance with the standards in subsections 17.178.060(C)(3)(c) through (g) of the Marion County Code.
  9. Prior to issuance of any building permit for any new dwelling, 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 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 under Findings and Conclusions below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

10. The applicants should contact the Aumsville 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 listed in Finding #6 below, that may be required.
12. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Zoning Administrator. If there is any doubt that the application conforms with adopted land use policies and regulations the Zoning Administrator must condition or deny the application. Anyone who disagrees with the decision may request that the application be considered by a County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 120 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received in the Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **October 29, 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 30, 2020** unless further consideration is requested.

**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. The intent of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agriculture in the area.

2. The subject parcel is located in the 8300 block of Bishop Rd SE, Aumsville. The subject property is undeveloped. The parcel has been described in its current configuration in deeds going back at least as far back as August 7, 1989 and is considered a legal lot for land use purposes.
3. Nearby land consists of properties being farmed and rural home sites in an EFU zone.
4. The applicant requested a custom soil resource report from the Natural Resource Conservation Service, which was determined to be more accurate than the Marion County mapping program for interpreting the Marion County Soil Survey for a specific parcel. The SCS soil report for the subject property indicates that the soils are predominantly Class IV soils, which are not high value farm soils.
5. The applicant proposes to establish a non-farm dwelling on the property located within the 100 year floodplain. The applicant is also applying for a Floodplain Development Permit to construct the non-farm dwelling if approved.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following requirements be included in the land use decision:
  - A. An Access Permit will be required upon application for building permits. It is anticipated that the access approach will need to be widened slightly to facilitate safe ingress/egress and straightened to meet the road perpendicularly along with some minor vegetation trimming to facilitate ease of vision in both directions.
  - B. Transportation & Parks System Development Charges (SDCs) will be assessed upon application for building permits.
  - C. Utility permits are required for utility work in the Bishop Road public right-of-way.

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

All other contacted agencies either failed to respond or stated no objection to the proposal.

7. In order to approve a non-farm dwelling in an EFU zone, the applicant must demonstrate compliance with criteria identified in Sections 17.136.060(A), 17.136.060(B), 17.136.070 and 17.136.100. These include:

The following criteria apply to all conditional uses in the EFU zone under 17.136.060(A):

- (a) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*
  - (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
  - (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
  - (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
  - (e) *The use will not have a significant adverse impact on potential water impoundments identified in the comprehensive plan, and not create significant conflicts with operations included in the comprehensive plan inventory of significant mineral and aggregate sites.*
8. The subject property is south of Mill Creek Rd SE that has developed properties with varying sized lots with dwellings. The dwelling would be located in close proximity to established dwellings and other structures on adjacent parcels. One additional dwelling in this area would not add significantly to the relatively minor effects other residences in the area have had on farming. The application meets #7(a).

The subject parcel will have a well and electrical service on the property. The land is within the Aumsville Fire District and served by the Marion County Sheriff. The proposal meets #7(b).

The property does not contain any identified groundwater, fish and wildlife habitat, air, and water quality resources; the dwelling would be located approximately 280 feet from the creek at the west end of the property and at least 120 feet from the wetland to the northeast. As described above, the proposal meets #7(c). It is

expected that any noise generated by the dwelling will be confined to the property and will have little or no impact on surrounding lands. The proposal meets #7(d). The Marion County Comprehensive Plan identifies no potential water impoundments or mineral and aggregate sites. The proposal meets #7(e).

9. In addition to the standards in #7 above, non-farm dwellings shall be subject to the following criteria listed in 17.136.060(B) and include:
- (a) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in Section 17.136.130.
  - (b) The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993 in any way that enables the lot or parcel to meet the criteria for a non-farm dwelling
  - (c) The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings on other lots or parcels in the area similarly situated shall be considered. To address this standard, the following information shall be provided:
    - (1) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;
    - (2) Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm dwellings that could be approved under Section 17.136.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;
    - (3) Determine whether approval of the proposed non-farm dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.
10. The applicant submitted a custom soil resource report prepared by the Soil Conservation Service and based on the Marion County Soil Survey that concluded that the soils are reclassified as predominately (69.9%) class IV through VIII non-high value soils. Therefore, the proposal meets criteria listed in #9(a). As stated previously, the subject property is considered a legal parcel, and it is not evident that any changes occurred in the boundaries of the property. The request complies with the review criteria listed in #9(b).

The applicant submitted a Cumulative Impact Analysis Study to address requirements listed in 17.136.060(B)(3). A staff review of the information revealed that the data was adequate to make a decision on this application.

- A. The applicant has provided a study area which encompasses over 2000 acres surrounding the property. This study area included only properties zoned as farm use. Lands zoned for rural residential or other non-resource uses are not included in the study area. Information supplied by the applicant, and verified by staff, indicates that there is no non-resource zoned land applied to the study area and that the applicant's report meets the required 2000 acre resource zone analysis area.

- B. Properties within the study area are predominately in rural residential use and hobby farms, along with larger farm operations. Staff concludes that the area presented by the applicant is a fair representation of the surrounding area and is sufficient to arrive at a sampling of the land use pattern.
- C. The development trends in the study area have been identified in the applicant's statement and the overlay map. No non-farm dwelling approvals have occurred. All of the existing dwellings on small lots were built prior to 1993. The proposed dwelling would be consistent with the development pattern that has occurred on surrounding lands in the past.
- D. The applicant identified no parcels that would qualify for a non-farm dwelling, because of the predominance of high value soils in the study area, as the soils are currently mapped by the National Resource Conservation Service. More detailed soil mapping of an individual parcel may indicate the presence of non-farm soils; however, that information is not available at this time and would be prepared in the future on a parcel-by-parcel basis. The number of potential additional non-farm dwellings is restricted by the number of dwellings already in the study area. It appears that an insignificant percentage of the study area could include potential non-farm parcels.
- E. Resource land inside the study area as previously determined is zoned EFU. The commercial agriculture operations in the EFU zone are crops and farming activities that are impractical on the subject parcel because of the poorer soils, slope of the land and size of the property.

Based on the soils survey conducted on the property, the soils are not predominately high-value and are not suitable for most types of farming activity. Any proposal to add the property to an adjoining farm parcel would not provide any significant agricultural benefit to that parcel. According to these findings, the proposed dwelling would not make it more difficult for existing farming activities to continue and would not materially alter the land use stability of the area and meets the criteria in #9(c).

- 11. The following regulations apply to non-farm dwellings approved pursuant to Section 17.136.050(A) and meeting provisions listed in 17.136.070 as follows:
  - (a) *Special Setbacks:*
    - (1) *Dwellings. A special dwelling setback of 200 feet from any abutting parcel in farm use or timber production is required.*
    - (2) *Accessory buildings. A special setback of 100 feet is required for buildings accessory to a dwelling from any abutting parcel in farm use or timber production.*
    - (3) *Adjustments. The special setbacks in (1) and (2) may be reduced if it is determined that a lesser setback will prevent activities associated with the dwelling or accessory building from seriously interfering with farming or forest practices as provided in Section 17.110.680.*
  - (b) *Fire Hazard Reduction: As a condition of approval for any non-farm dwelling located closer than 200 feet to timber, the owner shall be required to provide continuing fire hazard management in accordance with Chapter 3 of "Fire Safety Consideration for Development in Forested Area", 1978, and any revisions thereto.*
  - (c) *Prior to issuance of any residential building permit for an approved non-farm dwelling under Section 17.137.050(A), evidence shall be provided that the County Assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or ORS 308A.724 or ORS 321.359 (1)(b), ORS 321.842(1)(A) and 321.716. A parcel that has been disqualified under this section shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.*
- 12. Due to the location of small parcels in residential use to the north, northwest and northeast, and the presence of a pond and creek along the west and east property line on the parcel which provides a buffer between the dwelling and adjacent farmed parcels it is unnecessary to require the special dwelling setbacks established in #11(a) above from the north, east, and west property lines. The site plan indicates a dwelling can be placed a minimum of 200 feet from the south and north property line. Consequently, the setback adjustment provided in #11(a)(3) can be granted for the west and east property lines, and structures can be placed within the standard 20 foot property line setbacks allowed in the zone. The property is not located within 200 feet of timber and the fire hazard reduction

is not applicable. It can be made a condition of approval that the property be disqualified from any special assessment prior to obtaining a building permit.

13. Chapter 17.136.100(C) requires that a declaratory statement acknowledging surrounding farm and forest uses be recorded for all newly approved dwellings.
14. The purpose of the Floodplain Overlay Zone is to promote public health, safety and general welfare to minimize public and private losses due to flood conditions. In order to ensure that the development is reasonably safe from flooding, the County requires the development comply with the criteria and standards listed in Section 17.178.050 and 17.178.060 of the Marion County Code (MCC).
15. Marion County Flood Insurance Rate Map #41047C0703G indicates that the development site is within the floodplain of the Mill Creek in an AE zone, an area of the floodplain where the Base Flood Elevation is approximately 376.6.
16. MCC 17.178.050 (C) requires:  
*Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest, acknowledging that the property and the approved development are located in a floodplain.*

The recording of the declaratory statement can be made a condition of any approval.

17. MCC 17.178.050 (D) requires:  
*Prior to obtaining a building permit, commencing development or placing fill in the floodplain the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.*

The provision of this certification can be made a condition of any approval.

18. MCC 17.178.050 (E) requires:  
*The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations (in relation to mean sea level) of the lowest floor (including basement) and all attendant utilities of all new or substantially improved residential structures including manufactured dwellings of MCC 17.178.060(A), (B) and (C), where applicable, as follows:*
  1. *Prior to construction (based on construction drawings); and*
  2. *Once the floor elevation can be determined (based on the building under construction); and*
  3. *Prior to occupancy (based on finished construction).*

The provision of this certification can be made a condition of any approval.

19. Prior to issuance of building permits for or beginning work on the dwelling, the applicant shall sign and submit to the Planning Division a Declaratory Statement (enclosed) acknowledging that the property and the approved development are located within a floodplain as well as a declaratory statement stating compliance with MCC 17.178.060(C)(3)(c) through (g). The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
20. Based on the above discussion, the applicant has adequately addressed all the applicable criteria for placing a non-farm dwelling on the property and for the development in a Special Flood Hazard Area. Therefore, subject to meeting conditions of approval, the application for a non-farm dwelling and floodplain permit are **APPROVED**, subject to conditions.

Joe Fennimore  
Planning Director

Date: October 14, 2020

If you have any questions regarding this decision contact Lindsey King 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.