

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 CASE NO. 24-043**

APPLICATION: Application of the MKI Construction LLC to establish a non-farm dwelling on an 8.4-acre parcel in the EFU (Exclusive Farm Use) zone located in the 14400 block of Union School Road NE, Woodburn (T5S; R1W; Section 21; Tax lot 200).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to conditions.

EXPIRATION DATE: This Conditional Use Permit is valid only when exercised by **January 28th, 2027**. The effective period may be extended for an additional year 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.**

RENEWAL: This permit may be renewed for successive one year periods if the applicant submits to the Planning Division, **on an annual basis**, a new Primary Care Provider Certificate which indicates that the hardship situation continues. The Planning Division will mail renewal forms to the property owner approximately two months prior to permit expiration.

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 proposed use. 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: 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 required permits from the Marion County Building Inspection Division including septic permits.
2. The non-farm dwelling and any accessory structures shall maintain a 96-foot setback from the north property line and a 100-foot setback from the east property line unless:
 - A. Septic site evaluations of the site find that a septic system is not feasible on any part of the parcel other than in the area proposed in the applicant's site plan, forcing the home to be located closer than 100 feet to the eastern property line.
 - B. If there is no other feasible location on the parcel for a septic system other than the proposed area, the applicant shall maintain adjusted special setbacks of:
 - a. 96 feet from the north property line and 55 feet from the east property line for dwellings and;
 - b. 36 feet from the east property line for accessory structures
3. Prior to obtaining building permits, the applicant must provide evidence to the Planning Director that the county Assessor's Office has permanently 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.

4. Prior to obtaining building permits, the applicant shall sign and submit a Farm/Forest 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.

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

5. 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.
6. 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 condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion 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 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. Requests for reconsideration, or consideration by a hearings officer, 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 28th, 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 29th, 2025**, 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 major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the east side of Union School Rd NE, roughly 500 feet north of the intersection of Union School Rd and Wilco Hwy NE (Hwy 214). The property consists of three visibly distinct sections: The southern part consists of a sparsely forested area with overgrown underbrush; the middle section is dominated by an intermittent stream and the grassy riparian area sloping down to where the stream forms; finally, the northern section is a roughly 2-acre hazelnut orchard that appears unmaintained. The only structure on the property is a 1973 machine shed according to information available from the Marion County Tax Assessor. The property has been in its current configuration since at least April 4, 1974, when it was sold to Edwin A and Adeline V. Susa in the deed found on Reel 7 Page 220 in the book of land records, Marion County, OR, and is therefore legal for land use purposes.
3. Surrounding uses include mostly farm fields engaged in commercial agriculture activities in all directions, the most prominent types of agricultural uses being grass seed and hazelnuts. To the west on the other side of Union School Rd and the abutting parcel to the south are smaller parcels (3 acres or less in size) in use as homesites, one of which (14327 Union School Rd NE) was previously owned in conjunction with the subject parcel until they were sold off in 2017. Notable nearby features are Wilco Highway to the south, the Pudding River half a mile to the west, and Butte Creek just under a mile to the east.
4. Soil Survey of Marion County Oregon indicates 91.5% of the subject property is composed of high-value farm soils, however, the applicant has provided an independent soil assessment with their application to re-classify the

soils as an update to the NRCS soil information data. The assessment found that 75.7% of soils present on the parcel are non-high-value farm soils. Therefore the parcel may qualify for a non-farm dwelling.

5. The applicants are proposing to place a non-farm dwelling on the property and request an adjustment to the special setback requirements of 200 feet for non-farm dwellings and 100 feet for accessory structures from neighboring parcels in farm or forest use in order to site the proposed dwelling in the northern portion of the property. The applicant requests adjusted setbacks of 55 feet to the east property line and 96 feet from the north property line for the dwelling and 35 feet from the east property line for an accessory structure.
6. Various agencies were contacted about the proposal and given an opportunity to comment:

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Requirements:

- A. At the time of application for building permits an Access Permit will be required. An appropriately sized culvert for the seasonal creek crossing will likely be 24-inch diameter.
- B. Transportation System Development Charges (TSDCs) and Parks fee will be assessed at the time of application for building permits.
- C. Utility service extensions such as electric power originating from within the public right-of-way to the property require permits from MCPW Engineering.

Marion County Septic commented: “We have reviewed the proposal for CU 24-043 and our comments are as follows: A site evaluation is required.”

Marion County Building commented: “No Building Inspection concerns. Permit(s) are required to be obtained prior to development and/or utilities installation on private property.”

All other commenting agencies stated no objection to the proposal.

7. In order to approve a non-farm dwelling the applicant must demonstrate compliance with the specific criteria listed in MCC 17.136.060.B These include:

- (1) *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 MCC 17.136.130.*

According to the Marion County Soils Analysis tool, 91.5% of the soils on the subject property are high value farm soils, the majority being class II and III, with some class IV Terrace escarpments on the far northern point of the property. The applicants have submitted an updated soils assessment to challenge the NRCS data used by the Soils Analysis tool. A consideration of soil classification changes is allowed so long as the submitted evidence meets the requirements of MCC 17.136.130, which reads as follows:

17.136.130 Consideration of soil classification changes for non-farm dwellings.

For purposes of approving an application for a dwelling not in conjunction with farm use under MCC 17.136.050(A), the soil class, soil rating, or other soil designation of a specific lot or parcel may be changed if the property owner submits a soil assessment prepared by a professional soil classifier that has been reviewed and approved by the Department of Land Conservation and Development as meeting the requirements in OAR 660-033-0045.

The applicant's soils assessment was submitted to DLCD for review and a letter from DLCD was included with the review stating that they found the soils assessment is complete and consistent with reporting requirements. The applicant's soil assessment therefore meets the requirements set out in MCC 17.136.130 and a change in the soil classification can be considered. The soils assessment found that 75.7% of the soils on the subject parcel are comprised of non-high value farm soils, with a total of 6.36-acres of Class IV and Class VI soils. Therefore, the criterion is met.

- (2) *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 non-farm dwelling.*

Research into the deed history of the parcel found that it has been in its current configuration since at least April 4, 1974. The parcel also does not contain any dwellings. The criterion is met.

- (3) *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 parcel in the area similarly situated shall be considered. To address this standard, the following information shall be provided:*

a) Identify a study area for the cumulative impact analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 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 nonresource uses shall not be included in the study area;

The applicant provided a study area encompassing 2,000-acres of surrounding land. This study area included only properties zoned for Farm Use.

The applicant has indicated that this study area is representative of the land use pattern surrounding the subject parcel. Uses within the study area are traditional row crops (particularly grain and grass production), plant nursery fields and structures, and hazelnut orchards. 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.

b) Identify within the study area the broad types of farm uses (irrigated or nonirrigated 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 MCC 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;

The subject parcel is in a 1.3 mile stretch of land separating Butte Creek and the main stem of the Pudding River that has no other substantial active uses other than farming operations. The predominant farm uses in the study area identified by the applicant are row crops with a mixture of grasses and grain. Using available imagery from 2021 and 2023, staff also identified hazelnut orchards and nursery stock as the other major farm uses within the study area.

Within the study area there was a total of 112 whole and partial tax lots. All 112 lots included in the study area are zoned EFU. A significant majority of the lots within the study area are below 60-acres in size, with only 10 of the 112 tax lots containing more than 60-acres. The largest parcel within the study area is 243.33-acres and is predominantly planted in hops, however most of this parcel is located outside the study area and is on the other (west) side of the Pudding River from the subject parcel. Of note: 4 of the 10 tax lots over 60-acres are located west of the Pudding River.

In the findings of the 2000-acre study, it was found that out of the 112 full and partial tax lots 79 already contained a dwelling, leaving 33 vacant tax lots. 27 of the 33 vacant lots either contained high value soils or were in contiguous ownership with other parcels that already had dwellings, meaning they would not qualify for a non-farm dwelling. Of the remaining 6 vacant tax lots, 4 contained a majority high value soils and would not qualify for a lot-of-record due to the date of ownership transfer. This leaves one additional parcel within the study area that could be developed with a non-farm dwelling. In their analysis, the applicant addresses the fact that one of the study area parcels was under review for a Lot-of-Record dwelling (case AR24-019) and since a decision had not been made at the time of their analysis, it was inventoried as not having a dwelling.

In addition to describing the land use within the full study area, the applicant narrows down the focus and describes the immediate local land use pattern as a combination of the typical row crop farms and 3 smaller lots with dwellings that aren't acting as primary farm dwellings.

c) 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. 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, or lease farmland, or acquire waste 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.

The applicant contends that due to the drainage way bisecting the subject parcel, the soil reclassification report finding that the subject parcel is predominantly non-high value farm soils, and the size of the parcel (8.4-acres) all coalesce to limit the viability of the parcel to be commercially farmed. Additionally, they assert that permitting a non-farm dwelling on the subject parcel would be compatible with the smaller parcels containing dwellings located across Union School Rd to the west and adjacent to the south. Staff finds that these elements, in combination with aerial imagery dating back to the 1950's showing failed attempts to farm the southern 6-acres of the parcel, sufficiently demonstrate the unsuitability of the parcel for commercial agriculture on its own. They have also shown that a non-farm dwelling in the immediate local area is consistent with the existing land use pattern, as there are three neighboring parcels with dwellings not serving as primary farm dwellings, all predating the adoption of land use ordinances. Lastly, the applicant addresses the impact of the proposed non-farm dwelling and potential future non-farm dwellings together with the impact of existing non-farm dwellings in the area, showing through the 2000-acre study that there is only one other parcel capable of qualifying for a non-farm dwelling within the subject area. Staff finds that two potential new non-farm dwellings are unlikely to materially alter the stability of the existing land use pattern within the area, so long as the dwellings are sited away from neighboring farming operations and in locations that maintain as much historically farmed land as possible. Therefore, the criteria 3a-3c are met.

8. Since the property is located in an EFU zone, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:

(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.

The proposed non-farm dwelling is anticipated to bring impacts typical of residential use into the area. Residential uses from a single-family dwelling are not intense to a degree that their negative impacts on surrounding farming uses cannot be mitigated and are unlikely to force a significant alteration in the current land use pattern. Put plainly, row crops can still be farmed on the neighboring parcel even if a new house were placed on the subject parcel. The criterion is met.

(b) Adequate fire protection and other rural services are, or will be, available when the use is established.

The parcel is serviced by the Monitor fire district and the Marion County Sheriff. Other rural services such as a well, septic, and electricity can be established in the future to provide other services. Lastly, the parcel has direct access onto Union School Rd. Therefore, the criterion is met.

(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.*

The parcel contains an identified intermittent stream, which appears to eventually connect to the main body of the Pudding River about 2,700 feet northwest of the subject parcel. As such, there is potential for an impact on the watershed and water quality, but the proposed use of a residence is not likely to generate significant adverse impacts so long as development complies with applicable environmental and sanitation requirements. The criterion is met.

(d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

The proposed use of a non-farm dwelling is not expected to generate noises above normal residential levels, which are not likely to have significant adverse impacts on nearby farm uses. The criterion is met.

(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.*

There are no water impoundments identified by the comprehensive plan near the parcel. Therefore, the criterion is met.

9. In addition, non-farm dwellings shall be subject to the following code as provided for in 17.137.070, Non-farm dwelling requirements:

(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.*

The applicant is proposing to site the dwelling and an accessory structure towards the northeast corner of the parcel, in the location of the hazelnut orchard visible in the imagery. According to the applicant's site plan, the dwelling is proposed to be 55 feet from the east property line and 96 feet from the north property line. The new shop is proposed to be 36 feet from the east property line. As such the dwelling would not meet the special setback requirement of 200 feet from abutting parcels in farm use and the accessory structure would not meet the required 100-foot special setback. The applicant is requesting an adjustment to the special setback requirements. The Adjustment criteria are addressed below.

3. *Adjustments. The special setbacks in subsections (A)(1) and (2) of this section may be reduced if it is determined, concurrently with any land use application or as provided in Chapter 17.116 MCC, that a lesser setback will meet the following review criteria for alternative sites:*

a. *The site will have the least impact on nearby or adjoining forest or agricultural lands.*

The applicant's proposed location would site the dwelling and accessory structure near the north and east property lines. Along most of the property line with the farm parcel to the north is a woodlot that does not appear to be planted as part of a timber harvesting purpose. This provides adequate buffering from the main farm dwelling and structures on the bordering northern parcel. However, the woodlot does not extend the full distance of the northern property line. The eastern 130 feet of the northern property line is a field and the full extent of the east property line of the subject parcel is a commercial farm field planted in grass or grain. There are other locations

within the parcel that are farther away from neighboring farm parcels than the proposed location. Placing non-farm dwellings and accessory structures closer than 100 feet to neighboring farm fields impacts the farm operations through increased costs related to the application of chemical sprays and fertilizer—which is standard practice for commercial agriculture.

The applicant claims that their proposed location follows the soils patterns to allow for a septic system. The applicant currently has not obtained a septic site evaluation on the parcel with Marion County Septic, so there is no evidence to support the claim.

If the applicant's claim is true and the only viable location for a septic system on the parcel is the northeast corner proposed, the adjustment is justifiable as that location would technically have the least impact on nearby or adjoining forest or agricultural lands since there is no alternative site on the property. In addition, their proposal sites the dwelling farther from the property line than the accessory structure, an intentional orientation by the applicant to reduce the risks of potential conflicts with the neighboring farm. The applicant has also stated they will accept any conditions imposed to prevent wildfire danger on the neighboring tree lot. However, the applicant holds the burden of proof to show why the adjustment is necessary, which they have not yet sufficiently done. Staff finds the applicant's reasoning for an adjustment justifiable, however evidence is not readily available that the physical characteristics of the subject parcel preclude development outside of the proposed site.

b. The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.

The proposed location would site the dwelling will site it within the only portion of the property that is historically farmed. Siting the dwelling in that location would adversely impact the accepted farming practices on the parcel by forcing the removal of the orchard and removing that land from available farmland in the future. As stated previously, the applicant's claim is that the site is necessary for obtaining an approved septic system, and as of writing this decision, the applicant has not applied for or conducted an official septic site evaluation with Marion County Septic. Therefore, the applicant's claims are not substantiated. If, however, the developable area is restricted by the physical characteristics of the property to the proposed location, the site would meet the criterion because there is no alternative site that would minimize adverse impacts on forest operation and accepted farming practices on the subject tract.

c. The amount of agricultural and forestlands used to site access roads, service corridors, the dwelling and structures is minimized.

The proposed location of the dwelling, septic system, and accessory structures would site them within the only portion of the property historically shown to be viable for use in commercial agriculture. Visible in both historic imagery available on Google Earth, as well as in photographs submitted by the applicant that go back to the 1950's, there has been a hazelnut orchard located on the parcel that up until at least 2012. In images from Google Street View in May 2012 the orchard and access point to the hazelnut orchard are in good and maintained condition. In the July 2023 imagery from the same location the access point to the orchard is completely overgrown and similarly the orchard is in an overgrown condition from lack of maintenance. While the applicant argues this is due to the poor farming soils, the available photographic evidence does not support this assertion in the northern 2 acres. Any location outside of the northern 2 acres of the property would satisfy this criterion as it has been shown to not be viable for farming through the soil reclassification and is supported by the historic imagery available. Therefore, the criterion is not met based on the proposal by the applicant unless the septic site evaluations mentioned in the previous two sections find that a septic system is only feasible in the proposed area.

d. The risks associated with wildfire are minimized

The proposed location for the new dwelling is within 100 feet of a small, wooded portion of the neighboring farm parcel. Wildfires are not likely to be a significant risk in this area as most of the surrounding area is utilized as farmland, not timberland. That said, the applicant states they will comply with a wildfire mitigation plan and take steps to reduce the risk of the new residence starting a wildfire in the area. The criterion is met.

Ultimately, while the applicant's reasoning for an adjustment to the non-farm setbacks due to physical limitations for siting a septic system is justifiable, the applicant has no evidence to support these claims as there are no official septic site evaluations on the parcel. Marion County Septic has already stated in their comments that a septic site evaluation is required, so the applicant will obtain the necessary information to validate their claim. As such, it is appropriate that staff approve the request for adjustment on the condition that no other feasible location for a septic system is found on the parcel that would allow a dwelling to be sited such that it meets a 100-foot setback for dwellings and accessory structures from the north and east property lines. It shall be made a condition of approval for the adjustment that the applicant provide evidence that a septic system is not feasible outside of the proposed location.

(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 maintain a primary and secondary fuel-free break area in accordance with the provision in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.

There are no nearby parcels engaged in commercial timber operations within 200 feet of the subject parcel. The criterion does not apply.

(C) Prior to issuance of any residential building permit for an approved non-farm dwelling under MCC 17.136.050(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 308A.724 or 321.359(1)(b), 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.

This shall be made a condition of approval.

10. Based on the above discussion, the applicant has adequately addressed all applicable criteria for placing a non-farm dwelling on the parcel. Therefore, subject to meeting the conditions of approval, the application for a non-farm dwelling is **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: January 13th, 2025

If you have any questions regarding this decision contact Alexander Seifer 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.