

County Commissioners

Kevin Cameron, Chair
Danielle Bethell
Colm Willis



Director
Brian Nicholas, PE

Deputy Director
Dennis Mansfield

Chief Administrative Officer

Jan Fritz

MARION COUNTY PUBLIC WORKS

MEMORANDUM

TO: Marion County Hearings Officer
FROM: Marion County Planning Division
DATE: June 26, 2024
SUBJECT: Administrative Review 24-012

The Marion County Planning Division has reviewed the above-referenced application and offers the following comments.

FACTS:

1. Application of the Glen W. & Marjorie Morley Revocable Trust for an administrative review to place a lot of record dwelling on a 4.66-acre parcel in a SA (Special Agriculture) zone located in the 2400 block of Everett Dr S, Salem (T8S; R3W; Section 20B; Tax lot 900).
2. The subject property is located on Everett Dr S. The property is entirely covered by a woodlot planted around 2010 that stretches across three other parcels to west of 1.5-acres each. The subject parcel is within the Sensitive Groundwater Overlay (SGO). There is a small section of the westernmost part of the subject parcel that is zoned AR (Acreage Residential).
3. Adjacent properties to the north and east are zoned SA and composed of small farms with rural homesites. The north adjacent parcel is itself north adjacent to the City of Salem Urban Growth Boundary (UGB) and a recently developed subdivision. Adjacent parcels to the west are zoned AR and contain extensions of the woodlot present on the subject parcel. On the other side of the woodlot are rural homesites. The south adjacent parcels are zoned AR and in use for rural homesites.
4. Marion County Soil Survey shows the subject parcel having 100% high value soils consisting of:
81% Jory silty clay loam 7-12% slopes (Class 2)
15.3% Nekia silty clay loam 2-7% slopes (Class 3)
3.7% Abiqua silty clay loam 0-3% slopes (Class 1)
5. The applicant is proposing to place a lot of record dwelling on the subject parcel.

COMMENTS:

6. Marion County Planning requested comments from various agencies, those that provided comments are:

Marion County Land Development, Engineering, and Permitting (LDEP) requested the following be included:

ENGINEERING REQUIREMENTS

- A. An Access Permit will be required at the time of application for building permits.
- B. The subject property will be assessed Transportation System Development Charges (TSDCs) and Parks fee upon application for building permits.
- C. Utility power main and service extensions in the public right-of-way require a permit from PW Engineering.

ENGINEERING ADVISORIES

- D. Everett Drive is a Local Access Road not maintained by Marion County.
- E. Everett Drive is of substandard width. The local fire department may place certain conditions on issuance of building permits due to potentially restricted access.

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

Marion County Septic Division commented: “A Site Evaluation is required to establish an initial and repair area prior to an installation-construction permit.”

Salem Fire Department commented: “Items including fire department access and water supply will be required per the Oregon Fire Code at the time of development.”

All other agencies either failed to comment or stated no comment on the proposal.

STAFF FINDINGS AND ANALYSIS:

6. In a land use action of this type, the applicant has the burden of proving compliance with all applicable criteria. This report will outline the criteria that must be satisfied for an approval to be granted. If the applicant supplied argument or evidence to address specific criteria, the response will be summarized.

LOT OF RECORD DWELLING CRITERIA FOR SPECIAL AGRICULTURE ZONE

7. Section 17.137.030(D) of the Marion County Code (MCC) allows a lot of record dwelling subject to meeting specific standards and criteria. These include:

- (1) *The lot or parcel on which the dwelling will be sited was lawfully created and acquired and owned continuously by the present owner:*
 - (a) *Since prior to January 1, 1985; or*
 - (b) *By devise or intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.*

- (c) *“Owner”, as the term is used in this section only, includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.*

The property was purchased by Glen and Margie Morley in 1973. The property remained in their ownership until they passed away, Glen in 2019 and Margie in 2023. Their daughter Linda Morley is now the trustee for the estate. Therefore both (b) and (c) of MCC 17.137.030(D)1 are satisfied and the criterion is met.

- (2) *The tract on which the dwelling will be sited does not include a dwelling.*

The subject parcel does not contain a dwelling. The criterion is met.

- (3) *The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, and no dwelling exists on another lot or parcel that was part of that tract.*

The subject parcel is contiguous with property in the same ownership, but zoned AR. Lot-of-record dwellings are not applicable to the AR zone. Therefore, for the purposes of this administrative review, the contiguously owned parcels are not considered a tract because they are not contiguously zoned. The criterion is met.

- (4) *When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.*

This criterion will not apply because the subject parcel is not a part of a tract of SA zoned parcels. The contiguously owned AR zoned parcels are legal lots and not considered as a part of the 2,000-acre study. The criterion does not apply.

- (5) *The request is not prohibited by, and complies with, the Comprehensive Plan and other provisions of this ordinance, including but not limited to floodplain, greenway, and big game habitat area restrictions.*

The subject property is not located within a floodplain, greenway, or big game habitat area. The subject property and proposed dwelling will comply with the provisions of the SA zone, which implement the standards of the Special Agriculture designation in the Marion County Comprehensive Plan. The criterion is met.

- (6) *The proposed dwelling will not:*

- (1) *Exceed the facilities and service capabilities of the area.*
(2) *Create conditions or circumstances contrary to the purpose of the Special Agriculture zone.*

The applicant recognizes that the proposed dwelling would rely upon a well and septic to provide water and sewer services. This will require permitting through Marion County Septic and the

Oregon Department of Water Resources. The property is within the Sensitive Groundwater Overlay which does not require review for lot-of-record dwellings. As a condition of approval, a declaratory statement will be required acknowledging the parcel is within the SGO zone and groundwater may be limited. Marion County is not responsible for deepening or replacing wells that fail to produce an adequate supply of groundwater.

The parcel is served by the Salem Suburban Fire Department and the Marion County Sheriff's Office. Everett Dr S is a non-county road within a public right of way. This is a local access of substandard width that is not maintained by Marion County. The development of this parcel will require adequate fire department access so as not to exceed the service capabilities of the area.

The purpose of the Special Agriculture zone is for preservation of farm and forestland in areas of mixed high and low value soils where the existing land use pattern is a mixture of large and small farm units and some acreage homesites. This is an accurate description of the area around the subject parcel.

Lot of record dwellings are a permitting use in the SA zone, subject to standards being addressed in these criteria. If all criteria of MCC 17.137.030(D) are met, the proposed lot of record dwelling would not create conditions or circumstances contrary to the purpose of SA zone. The criterion is met.

- (7) *A lot-of-record dwelling approval may be transferred by a person who has qualified under this section to any other person after the effective date of the land-use decision.*

The applicant's representative has acknowledged this criterion. The criterion is met.

- (8) *The County Assessor shall be notified that the county intends to allow the dwelling.*

The applicant's representative has acknowledged this criterion, and it shall be a condition of approval. The criterion is met.

- (9) *The lot or parcel on which the dwelling will be sited is not high-value farmland as defined in Section 137.130(D); or*

The subject parcel is located on high-value farmland. This criterion does not apply.

- (10) *The lot or parcel on which the dwelling will be sited is high-value farmland as defined in MCC 17.137.130(D)(2) or (3) and:*

The lot is predominantly Class 2 Jory high-value soil and is not listed in MCC 17.137.130(D)(2) or (3). This criterion does not apply.

- (11) *The lot or parcel on which the dwelling is to be sited is high-value farmland as defined in MCC [17.137.130\(D\)\(1\)](#) and:*

a. *The hearings officer determines that:*

- i. *The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the*

land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot or parcel cannot be practicably managed for farm use. Examples of extraordinary circumstances inherent in the land or its physical setting include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use; and

The subject parcel is currently entirely in use for timber production. There are no steep slopes or other specific extraordinary physical circumstances related to the land itself. The timber on the parcel could be harvested and replanted. The SA zone purpose explains that the “zone allows the flexibility in management needed to obtain maximum resource production from these lands. It emphasizes farm use, but forest use is allowed and protected from conflicts.” While the current use for timber is aligned with the goal of the SA zone, this criterion specifies “farm uses”.

The north and east adjacent SA parcels are in small farm and rural residential use. The subject parcel's size and the cost of returning from timber production to farm use create a situation where the economic potential is significantly limited. Staff agrees with the applicant that farm use is unlikely on this parcel. However, the criterion specifically requires that the subject parcel cannot be practicably managed for farm use and references extraordinary circumstances inherent in the land as reasons that make farming a parcel impracticable.

Staff requested a supplement from the applicant representative to address this criterion in more depth. The applicant representative supplied the addendum and addressed in more detail the impediments to agricultural use inherent in the subject parcel.

The subject parcel is within the Sensitive Groundwater Overlay and does not have water rights. The applicant attests that this precludes the option of farming any irrigated crops.

Equipment to facilitate farming this parcel would have to access it via a non-county road (Everett Dr S) or be housed in a storage facility on site. Storing equipment on site would further diminish the available land for farming on an already small parcel. The applicant attests that this roadway is a public gravel road. According to the Marion County GIS maps, the finished road surface is approximately 10 feet wide. A staff visit confirmed that Everett Dr S is extremely

narrow. It is not possible to turn around even a small vehicle without utilizing one of the driveways. Transporting tractors and other farm equipment would be difficult, cost-prohibitive, and the possibility of non-farm conflict is particularly high due to the narrow roadway and level of development in the area.

There are two homesites directly south of the subject parcel. One dwelling is less than 50-feet away, and the other is just under 110-feet away, from the southern property line. The applicant representative attests that this proximity would make for difficult management of commonly applied farm related chemicals such as pesticides, herbicides, fungicides, and fertilizers.

The applicant representative suggests the distance of the subject parcel from other commercial farm operations, the difficult access, and amount of the rural residential development in the area, make for a parcel that would not be considered for addition to any nearby farm operations.

This criterion is specific in stating that size and economic potential are not factors in determining impracticability of a parcel to be farmed. While none of the extraordinary physical limitations listed in the criterion are present on this parcel, there are physical barriers that separate the subject lot from agricultural land. The rural residential uses that surround the subject parcel separate it from nearby commercial agricultural uses. The unique combination of issues regarding access to water, access to the parcel itself by farm equipment, and rural residential development in this area create an undue hardship for this parcel to be managed for farm use.

Staff agrees with the applicant representative's assertion that the unique combination of factors inherent in the location of the parcel creates a physical barrier rendering farm use impracticable. The criterion is met.

- ii. *The use will not force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm or forest use; and*

There are no directly adjacent commercial agricultural parcels. There are small farms directly north (12-acres) and east (6-acres) of the subject parcel with pasture for livestock on the northern parcel. The primary use of surrounding parcels is for rural residential purposes. The existence of rural residences, and dense suburban development with the UGB, directly adjacent to these farm properties suggests that the proposed additional rural residence will not change or significantly increase the cost of the farm practices occurring.

The AR zoned parcels to the west, under the same ownership as the subject parcel, are in use for timber production in conjunction with the subject parcel. The AR allows for a single-family dwelling to be developed on each of the parcels. These parcels are 1.5-acres, and it is reasonable to assume that economic incentive will drive residential development after the timber is harvested. Therefore, it is not the development of the subject parcel that would force a

significant change in use, nor increase the cost of these forest practices, but the relative economic value of permitted uses for parcels sized and zoned as they are that will likely end the current forest use on this east-adjacent tract of AR zoned parcels in timber production. The criterion is met.

- iii. *The dwelling will not materially alter the stability of the overall land use pattern in the area. To address this standard, the following information shall be provided:*
- (A) *Identify a study area for the cumulative impacts 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 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, and 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;*
 - (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/lot-of-record dwellings that could be approved under subsection (D) of this section and MCC [17.137.050\(A\)](#), 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;*
 - (C) *Determine whether approval of the proposed non-farm/lot-of-record 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.*

The applicant submitted a cumulative impact analysis with a 2000-acre study area map that was provided by Marion County Planning. The purpose of this analysis is to determine whether the proposed dwelling would force a significant change in, or significantly increase the cost of, farm or forest practices on surrounding lands devoted to farm or forest use and materially alter the

stability of the overall land use pattern in the area. The first portion of this is addressed in 17.137.030(D)(11)(a)(ii) above.

The applicant's representative has defined, through the cumulative impacts analysis, what the broad types of farm uses are, the number, location, and type of existing dwellings, the dwelling development trends since 1993, and the potential future developments of lot-of-record and/or non-farm dwellings. The range of the study area is south and east of the City of Salem UGB. It encompasses the SA, EFU, and FT zoned parcels south of Ballyntyne Rd S, and north of Cole Rd S. The study area extends east approximately 1.2 miles east of where the UGB intersects Skyline Rd S. The resource zoned parcels in this study area surround a large AR zoned tract adjacent to the subject parcel and south of Skyline Rd S, and abut two large AR zoned tracts on the northern and southern edges of the study area.

Within the study area are very few parcels at or above the minimum resource parcel size (80-acres). Those large farm parcels are in use for grass seed, grain and/or Christmas tree production. There are also several Christmas tree farms in the 10 to 60-acre size range. Many of the parcels within the study area are 1 to 10-acres in size and in use for hobby farms and rural residences.

The applicant returned the map with annotations of the locations of class IV – VI soils, as well as an annotated spreadsheet of parcels in the study area. The applicant representative identified 191 parcels in the study area, and screened them for soil quality, dwellings present, contiguity to adjacent owned land containing a dwelling, and removed parcels inadvertently included in the study area. Erroneous parcels included two AR parcels and two parcels in public ownership. Of the 70 vacant parcels, there were 41 in contiguous ownership to a parcel with a dwelling which disqualifies them from lot-of-record criteria 17.137.030D(3). Of the 29 individual vacant parcels, 25 primarily consist of high value soils and had been conveyed later than January 1, 1985, which disqualifies them from being approved for either lot-or-record or non-farm dwellings. Of the four parcels left, three could qualify for a lot of record dwelling based on length of ownership, and the other could qualify for a non-farm dwelling. Staff checked the analysis and found that is sound.

The applicant's representative concludes that the proposed lot-of-record dwelling will not materially alter the stability of the land use pattern in the area and will not make it more difficult for 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. The pattern of development in this area is primarily small farms and rural residential properties. The development of all possible lot-of-record dwellings and non-farm dwellings would not alter the existing development pattern of the last 30 years, nor make it more difficult for the operation of farms that exist within the study area. The criterion is met.

- (b) *The county shall provide notice of the application for a dwelling allowed under this subsection to the Oregon Department of Agriculture.*

The County shall provide this notice, the criterion is met.

CONCLUSION:

21. Marion County Planning Staff recommends approval of the proposal based on the existing record.
22. If applicant's request is approved, Planning recommends the following conditions be applied:
 - A. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
 - B. The applicant shall meet the requirements of MCC 17.137 for the SA (Special Agriculture) zone.
 - C. The County Assessor shall be notified that the county intends to allow the dwelling.
 - D. The applicant will record a Declaratory Statement acknowledging the subject parcel is within the Sensitive Groundwater Overlay.
 - E. The applicant will record a Farm/Forest Declaratory Statement acknowledging the need to avoid activities that conflict with nearby farm and forest uses and practices.