

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/FLOODPLAIN CASE NO. 14-016**

APPLICATION: Application of Clifford and Avril Page for an administrative review and floodplain development permit to replace a mobile home on a 23.50 acre parcel in an EFU (Exclusive Farm Use) zone in the identified 100 year floodplain of the Willamette River located at 1858 Talbot Rd SE, Jefferson. (T10S; R3W; Section 02; Tax lot 1900).

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

EXPIRATION DATE: This decision is valid only when exercised by **January 1, 2024.**

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should check with 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 applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. **Within three months of occupancy of the replacement dwelling, the existing mobile home must be removed. In lieu of removal, the applicant may:**
 - (a) File a Declaratory Statement restricting use of the replaced dwelling for residential purposes; and
 - (b) Submit a site plan showing location of all structures on the property and identifying which structure is the replaced dwelling.
3. Prior to issuance of permits for the dwelling, the applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations of the new dwelling meets the requirements of Section 178.060(A)(B) or (C), where applicable, as follows:
 - (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).
4. Prior to issuance of permits for the dwelling, a registered civil engineer shall certify that the construction meets the standards in MCC 17.178.050(D) and 17.178.060(J). A no-rise certificate shall also be provided.
5. Prior to issuance of permits for the dwelling, a registered civil engineer or architect shall certify that the construction meets the standards in MCC 17.178.060(A)(1),(2) and (3), 17.178.060(D), 17.178.060(E), 17.178.060(F), and 17.178.060(J).
6. The top of the lowest floor, including basement, shall be elevated on a permanent foundation a minimum of two feet above base flood elevation to 218.3 feet MSL. The bottom of the lowest floor shall be constructed a minimum of one foot above the base flood elevation to 217.3 feet MSL. The area below the lowest floor shall remain open and unenclosed to allow the unrestricted flow of floodwaters beneath the structure.

7. Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated a minimum of one foot above the base flood elevation to 217.3 feet MSL.
8. Prior to issuance of any building permit for the 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.
9. Prior to issuance of any building permit, the applicant shall sign and submit a Replacement Residence Declaratory 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.
10. Prior to issuance of any building permit for the new dwelling, the applicants shall sign and submit a Floodplain Declaratory 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. 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:

11. The applicants should contact the Jefferson 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.
12. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited unless stored within a structure or on land elevated above the base flood level. 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 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 \$200.00 fee) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Appeals must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem by 4:00 p.m. on **June 23, 2014**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 24, 2014** 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 designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is located approximately 2,900 feet southwest of Talbot Road. The property contains a dwelling, accessory structures, well and septic system. The property is described in its current configuration by deed (Book 571, Page 750) as far back as May 6, 1963 and is considered a legal lot for land use purposes.
3. Surrounding property in all directions is zoned EFU and consists of properties in farm use.

4. The applicants are proposing to replace the 1973 manufactured home that is currently on the property with a new dwelling.
5. Soil Survey of Marion County Oregon indicates 100% of the subject property is high-value farm soils.
6. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file.

Marion County Building Inspection commented that building and septic permits will be required.

7. In 2013, the Oregon Legislature passed House Bill 2746, which amended ORS 215.283(1)(p) regarding replacement dwellings. The Land Conservation and Development Commission subsequently wrote rules to implement the legislation which are codified in Oregon Administrative Rule (OAR) 660-033-0130(8). These supersede county ordinance and the new laws must be applied directly by the county to this proposal.
8. OAR 660-033-0130(8)(a) establishes criteria regarding a replacement dwelling:

A lawfully established dwelling may be altered, restored or replaced under ORS 15.213(1)(q) or 215.283(1)(p) if, when an application for a permit is submitted, the permitting authority finds to its satisfaction, based on substantial evidence that:

An aerial photograph from 1976 indicates the dwelling was present on the property. Marion County Planning has a policy that since the dwelling was established prior to January 19, 1977, it is considered legally established. This criterion is met.

(A) The dwelling to be altered, restored or replaced has, or formerly had:

- (i) Intact exterior walls and roof structure;*
- (ii) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
- (iii) Interior wiring for interior lights; and*
- (iv) A heating system; and*

Manufactured dwellings constructed after June 15, 1976 are certified by the Department of Housing and Urban Development to contain the features described above. Because this dwelling was constructed in 1970, the applicant provided photographs as evidence that the dwelling contains the required features. This criterion is met.

(B) The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from that time; and

The property was assessed for a dwelling for at least the past five years. This criterion is met.

(C) Notwithstanding paragraph (B), if the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling was assessed as a dwelling until such time as the value of the dwelling was eliminated:

- (i) The destruction (i.e by fire or natural hazard), or demolition in the case of restoration, of the dwelling;*
or
- (ii) The applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll.*

The dwelling is still on the property. This criterion does not apply.

9. OAR 660-033-0130(8)(b) requires for a replacement dwelling:

For replacement of a lawfully established dwelling under ORS 215.213(1)(q) or 215.283(1)(p):

(A) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

- (i) Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or*
- (ii) If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive Item nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and*
- (iii) If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.*

This requirement can be made a condition of any approval.

(B) The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.

This requirement can be made a condition of any approval.

(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 is 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 2013 Oregon Laws, chapter 462, section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

The entire property is zoned EFU. This criterion does not apply.

(D) The county planning director, or the director's designee, shall maintain a record of:

- (i) The lots and parcels for which dwellings to be replaced have been removed, demolished or converted; and*
- (ii) The lots and parcels that do not qualify for the siting of a new dwelling under subsection (b) of this section, including a copy of the deed restrictions filed under paragraph (B) of this subsection.*

The issuance of a planning permit satisfies this criterion.

10. OAR 660-033-0130(8)(c) further requires for a replacement dwelling:

A replacement dwelling under ORS 215.213(1)(q) or 215.283(1)(p) must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

Any standards applied will comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. The standards will not be applied in a manner that would prohibit the siting of the replacement dwelling. This criterion is met.

(A) The siting standards of paragraph (B) of this subsection apply when a dwelling under ORS 215.213(1)(q) or 215.213(1)(p) qualifies for replacement because the dwelling:

- (i) Formerly had the features described in paragraph (a)(A) of this section;*
- (ii) Was removed from the tax roll as described in paragraph (C) of subsection (a); or*
- (iii) Had a permit that expired as described under paragraph (d)(C) of this section.*

The dwelling is currently on the property, being taxed, and has the features identified in 8(A) above. The placement criteria in 10(B) do not apply.

(B) The replacement dwelling must be sited on the same lot or parcel:

(i) Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and

(ii) 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.

As described in 10(A) above, the placement criteria in 10(B) do not apply.

(C) Replacement dwellings that currently have the features described in paragraph (a)(A) of this subsection and that have been on the tax roll as described in paragraph (B) of [item 8 above] may be sited on any part of the same lot or parcel.

The proposal meets this criterion.

11. Based on the above findings, it has been determined that the dwelling was legally established and may be replaced, subject to conditions.
12. Although the replacement dwelling is approved, the applicants will be required to sign and record a Farm/Forest Declaratory Statement prior to placing a new dwelling on the property as a condition of approval. This acknowledges the impacts of farm and forest management practices conducted in the area.

FLOODPLAIN

13. Flood Insurance Rate Map # 41047C1000G indicates that the floodplain elevation is an “AE” zone and the floodway of the Santiam River. The base flood elevation was calculated to be 216.3 feet MSL.
14. The purpose of the Floodplain Overlay zone is to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions. The criteria and standards that must be satisfied are listed in the Marion County Code (MCC) Sections 17.178.050 and 17.178.060. The requirements in MCC 17.178.050 that apply to the request include:

MCC 17.178.050(C): 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.

This can be made a condition of any approval.

MCC 17.178.050(D): 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 the 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.

MCC 17.178.050(E): The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations of all new or substantially improved manufactured homes, dwellings and structures meet the requirements 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).*

A condition of approval will require the elevation certificates to be submitted at the appropriate times.

MCC 17.178.060(A) requires:

- 1. Dwellings and accessory structures, except as provided for in 7 and 8 of this subsection, shall have the top of the lowest floor, including basement, elevated on a permanent foundation to two feet above base flood elevation and the bottom of the lowest floor constructed a minimum of one foot above the base flood elevation. Where the base flood elevation is not available, the top of the lowest floor, including basement shall be elevated on a permanent foundation to two feet above the highest adjacent natural grade (within five feet) of the building site and the bottom of the lowest floor elevated to one foot above the highest adjacent natural grade (within five feet) of the building site; and*
- 2. Manufactured homes shall have the bottom of the longitudinal chassis frame beam, including basement, elevated on a permanent foundation to two feet above base flood elevation. Where the base flood elevation is not available, the finished floor, including basement shall be elevated on a permanent foundation to two feet above the highest adjacent natural grade (within five feet) of the building site; and*
- 3. Manufactured homes shall be anchored in accordance with subsection (D) of this section;*

MCC 17.178.060(D) requires:

- 1. All new construction and substantial improvements shall be anchored to prevent floatation, collapse or lateral movement of the structure.*
- 2. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movements, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. Anchoring methods shall be consistent with the standards contained in Section 308 (Flood Resistance) contained in the Oregon Manufactured Dwelling Standards Manual per ORS 446.062.*

MCC 17.178.060(E) requires:

- 1. All new construction and substantial improvements below base flood level shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*
- 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.*

MCC 17.178.060(F) requires:

- 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system as approved by the State Health Division.*
- 2. New and replacement sanitary sewage systems including on-site waste disposal systems shall be designed and located to minimize flood water contamination consistent with the requirements of the Oregon State Department of Environmental Quality.*
- 3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated to one (1) above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-condition equipment shall be elevated to one (1) foot above the highest adjacent natural grade (within 5 feet) of the building site.*

MCC 17.178.060(H) requires:

- 1. 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.*

MCC 17.178.060(J) Floodways. Located within areas of floodplain established in MCC 17.178.030 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters,

which carry debris, potential projectiles and erosion potential the following provisions shall apply in addition to the requirement in subsection (I) of this section:

1. *Prohibit encroachments, including fill, new construction, substantial improvements and other development unless a certified technical evaluation is provided by a registered professional engineer or architect demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. This evaluation may be submitted to the Federal Emergency Management Agency for technical review.*
2. *If subsection (J)(1) of this section is satisfied all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section.*
3. *The area below the lowest floor shall remain open and unenclosed to allow the unrestricted flow of floodwaters beneath the structure.*

It can be made a condition of any approval that a registered engineer or architect certify the development will meet these standards.

15. Based on the above findings, the proposal to address floodplain regulations for a new residence can be made to comply with the standards for development in the floodplain as stated in Marion County Code and is, therefore, **APPROVED**, subject to certain conditions.

Warren Jackson
Director-Planning Division

Date: June 6, 2014

If you have any questions regarding this decision contact Brandon Reich at (503) 588-5038