

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/ADMINISTRATIVE REVIEW CASE NO. 19-002

APPLICATION: Application of Schreiner's Gardens, Inc. for a conditional use hold up to 6 agri-tourism events, for an administrative review for a farm stand, and to determine which uses are permitted farm uses on a 17.13 acres in an EFU (Exclusive Farm Use) zone located at 3625 Quinaby Rd NE, Salem. (T6S; R2W; Section 19B; tax lots 1100 & 1200).

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

EXPIRATION DATE: The agri-tourism portion of this permit is approved, assuming no appeal is filed, beginning **April 3, 2019**. The approval shall be valid for two years and may be renewed for an additional two years subject to a Planning Director review that the use continues to meet all applicable criteria and standards.

The farm stand portion of this permit is valid only when exercised by **April 2, 2020**. 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.

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well, and drainfield replacement areas, these parcels may not be able to support the proposal. To be sure 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:

Conditions related to Agri-tourism:

1. The applicant shall obtain all required permits from the Marion County Building Inspection Division.
2. The applicant shall follow the parking and internal traffic plan approved by Marion County Land Development and Engineering Permits, or as amended as necessary through coordination with LDEP.
3. The applicant shall provide portable toilets and hand washing stations consistent with standards recommended by Marion County Environmental Health.
4. Food vendors shall obtain all necessary licenses from Marion County Environmental Health.
5. Alcohol vendors shall obtain all necessary licenses from the Oregon Liquor Control Commission.
6. Temporary structures must be removed at the end of the event or activity.
7. The approval for up to six agri-tourism events and activities annually is granted only for Shreiner's Gardens, Inc.
8. Prior to holding an agri-tourism event, the property owner shall submit and obtain approval of a parking/traffic circulation plan for the property and a traffic control plan for signing and potential flagging within the right-of-way at both the proposed entrance and exit.

9. Prior to holding an agri-tourism event, the applicant shall sign and submit a Declaratory Statement (form 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.

Conditions related to the Farm Stand:

10. The applicant shall obtain all required permits from the Marion County Building Inspection Division.
11. Annual sales of the incidental items and fees from promotional activity, sales of farm crops produced outside the state of Oregon, and sales of prepared food items together cannot make up more than 25 percent of the total annual sales of the farm stand (including internet sales from the property).
12. All egress and access points shall be clearly marked.
13. All outdoor light fixtures shall be directed downward, and have full cutoff and full shielding to preserve views of the night sky and to minimize excessive light spillover onto adjacent properties, roads and highways.
14. All required permits shall be obtained from the Marion County Environmental Health or the Department of Agriculture.
15. When requested by the Planning Director, the farm stand operator/landowner shall submit a statement demonstrating how the farm stand complies with this policy, certified by the landowner's/operator's accountant or attorney as being accurate and complete.
16. The farm stand may not be used for the sale of marijuana products or to promote the sale of marijuana products or extracts.
17. Prior to establishment of the farm stand, the property owner shall submit and obtain approval of a parking/traffic circulation plan for the property and a traffic control plan for signing and potential flagging within the right-of-way at both the proposed entrance and exit.

ADDITIONAL CONDITIONS: Once the approved use is established the following conditions must be continually satisfied:

18. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
19. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.

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 restrictions or conditions thereon. It is recommended that agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

20. The applicants should contact Marion County Fire District #1 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. The contact person Paula Smith at MCFD#1, (503) 588-6513.
21. The applicants should contact Marion County Land Development and Engineering for any required permits as noted in #6 below.

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 **April 2, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 3, 2019** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject parcels are 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. Agri-tourism events are permitted as a conditional use in the zone subject to certain criteria.
2. The property is located on the north side of Quinaby Road NE in the 3600 block. The property contains a residence and existing farm related structures.
3. Surrounding properties in all directions are zoned EFU and in farm use.
4. Soil Survey for Marion County, Oregon indicates 100% of the subject property soils are high-value farmland.
5. The applicant is requesting a conditional use permit to hold up to 6 agri-tourism events and for an administrative review for a farm stand and to determine which uses are permitted farm uses.
6. Marion County Building Inspection commented that a building permit is required for new construction and change in use or occupancy.

Marion County Onsite Wastewater Specialist commented that a septic authorization is required for change of use.

Marion County Tax Assessor provided information related to taxes on the subject property.

Marion County Fire District #1 commented on requirements related to access, signage, and fire suppression.

Marion County Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision:

Engineering Condition:

“Condition A – Prior to holding an agri-tourism event or establishment of the farm stand, receive approval of a Traffic Impact Analysis (TIA) / Traffic Assessment Letter that reasonably satisfies PW Engineering Transportation Planning Department.

Nexus for the above Condition A goes to the matter of public safety.”

Engineering Requirements:

“B. Driveways must meet sight distance, design, spacing, and safety standards. In accordance with MCC 11.10, if this land use action is approved, the applicant will need to make the following changes to access, for which a driveway “Access Permit” will be required, including the construction of any improvements required by the Permit:

- 1) Pave the west access in accordance with Marion County Engineering Standards.

- 2) Possible installation of a culvert in the west access. If applicable, culvert size will be determined in the Access Permit.
- 3) Vegetation trimming may be required to achieve proper Intersection Sight Distance in accordance with Mounty County Public Works Engineering Standards Table 4, and vision clearance areas in accordance with MCC 17.110.770, at both accesses.”

Engineering Advisory:

“C. Construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner.”

7. Marion County Code (MCC) 17.136.020 (A) permits farm use outright in the EFU zone. MCC 17.110.223 defines farm use:

“Farm use” means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, furbearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. “Farm use” includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. “Farm use” also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. “Farm use” also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the commission to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. “Farm use” includes the on-site construction and maintenance of equipment and facilities used for the activities described in this section. “Farm use” does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees as defined in ORS 215.203(3) or land described in ORS 321.267(3) or 321.824(3).

8. The applicant proposes to use the subject property for the sale of farm products, such as bulbs, cut flowers and potted plants. In addition, the applicant proposes to conduct catalogue sales and operate display gardens. These uses are consistent with the definition of farm use which permits the sale of and marketing of farm products. Therefore, these uses are permitted outright without any additional land use review.
9. The applicant is proposing promotional events on the property such as farm dinners, artist showcases, small gatherings and food sales by third party vendors which can be approved as agri-tourism events. Marion County Code (MCC) 17.136.050(D)(9) permits six agri-tourism events subject to the requirements of MCC 17.120.090(B):
 1. *The events or activities shall be incidental and subordinate to the existing farm use on the tract; and*
 2. *The duration of each event or activity shall not exceed 72 hours; and*
 3. *The events or activities shall not involve the construction or use of new permanent structures; and*
 4. *The events or activities shall not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern of the area; and*
 5. *The event or activity shall cause no alteration to land including, but not limited to, grading, filling or paving;*
 6. *Any approval shall be valid for two years and may be renewed subject to a review that the use continues to meet all applicable criteria and standards.*

Based on the application, it appears the primary use of the property is the production of farm products such as bulbs, flowers and potted plants. It appears the agri-tourism activities are relatively infrequent in nature and would be incidental and subordinate to the farm use on the tract. The applicant states that no event will exceed 72 hours. No construction of new or use of existing permanent structures is proposed by the applicant. There do not appear to be other agri-tourism event approvals in the area which, combined with this proposal, would materially alter the stability of the land use pattern of the area. Surrounding property is farmed by the applicant which helps to

minimize any impact events on the subject property would have on surrounding land. The applicants are not proposing any alternation to the land or additional gravel or paving. The approval requirements in 6 can be applied if the request is approved. The proposal meets the criteria in (C).

- D. *The events or activities in subsection (A), (B), or (C) of this section shall comply with conditions established for:*
1. *The types of events and activities authorized including the number of events or activities, duration of events or activities, attendance of events or activities, and hours of operation of events or activities; and*
 2. *The location of existing and proposed temporary structures used in conjunction with the events or activities. Temporary structures must be removed at end of the event or activity; and*
 3. *Location of access, egress, and parking facilities; and*
 4. *Traffic management including project number of anticipated vehicles; and*
 5. *Sanitation and solid waste;*
 6. *Notice of public hearing or any decision approving events under the provisions of this section shall be mailed to all owners of property, any portion of which is within 1,500 feet of the subject property.*

The applicant does not propose that a new or existing permanent structure be constructed for the proposed events and activities. Only temporary structures can be permitted and they must be removed at the end of the event or activity. This can be made a condition of approval. Marion County Land Development reviewed the location of access, egress, parking facilities and the traffic management plan and recommended conditions of approval to better ensure safe operation of the events. It can be made a condition of approval that adequate sanitation and solid waste facilities be provided during events. Marion County will provide notice as required above. As conditioned, the criteria in (D) are met.

- E. *Any approval for events or activities under subsection (A) or (B) of this section is for the applicant only and does not apply to the land.*

This can be made a condition of any approval.

- F. *The term “farm operation” means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.*

The applicant states that all parcels under the same ownership used for farm operations are considered as part of this application.

- G. *As used in this section, the term “agri-tourism” means a common, farm-dependent activity that promotes agriculture, any income from which is incidental and subordinate to the income of a working farm operation. Such activities may include hay rides, corn mazes and other similar uses that are directly related to on-site agriculture. Any assembly of persons shall be for the purpose of taking part in agriculturally based activities such as animal or crop care, tasting farm products or learning about farm or ranch operations. Agri-tourism may include farm-to-plate meals and similarly small, farm-themed parties. Regularly occurring celebratory gatherings, weddings, parties or similar uses that cause the property to act as an event center or that take place in structures specifically designed for such events are not agri-tourism.*

Based on the discussion above, the agri-tourism would be incidental and subordinate to the income of a working farm operation. It appears the activities would promote the farming that takes on the property. The proposal meets the definition of agri-tourism.

8. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in Marion County Code (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.*
- (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.*

9. The applicant states the events will have little impact on farm uses in the area. It can be made a condition of any approval that the property owner file a declaratory statement that serves to notify the applicant that there are farm or timber operations in the area which could have an impact on the proposed use. All vehicles visiting for events will be parked on private property. The roadway network is adequate to serve the proposed use without impacting neighboring properties or farmers in the area. The property is served by Marion County Fire District #1 and the Marion County Sheriff. Other rural services, such as well and septic are available to the property. The applicant submitted a traffic impact analysis detailing the amount of traffic that would be generated by the use. Marion County Land Development requested that the TIA be reviewed and approved prior to the farm stand being established. This can be made a condition of approval. There are no significant watersheds, groundwater, fish and wildlife habitat on the property or nearby. There are no anticipated negative impacts to soil and slope stability or air and water quality as a result of the proposed events. Noise seems adequately buffered from surrounding uses because nearby land is owned by the applicant. There are no identified water impoundments or significant mineral and aggregate sites on the property or nearby. As conditioned, the proposal meets the criteria in 8.

10. The applicant is proposing a seasonal gift shop which can be permitted as a farm stand. MCC 17.136.040 (A) permits a farm stand subject to the following standards:

- A. *The structures shall be designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the state of Oregon, including processed food items, and the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand; and*

The applicant proposes to conduct the seasonal gift sales in an existing agricultural building primarily used for farm operations. The applicant states that the building has no structural characteristics of a commercial/retail structure. This criterion is met.

- B. *Annual sales of the incidental items and fees from promotional activity, sales of farm crops produced outside the state of Oregon, and sales of prepared food items together cannot make up more than 25 percent of the total annual sales of the farm stand; and*

The applicant states that annual sales of incidental items and fees from promotional activities at the farm stand will not exceed 25 percent of the total annual sales from the farm stand including catalogue sales. It seems reasonable that catalogue sales would be included in farms stand sales because bulbs are often sold in farm catalogues since not all customers can come to the property. This criterion is met.

- C. *The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment;*

The applicant states that the farm stand use will be conducted within a structure not designed for occupancy as a residence, nor will banquets and other types of gatherings be held there. This criterion is met.

- D. *As used in this section, "processed food items" means farm crops and livestock that have been converted into other products through canning, drying, baking, freezing, pressing, butchering or other similar means of adding value to the farm product, such as jams, syrups, apple cider, and similar animal products, but not prepared food items;*
- E. *As used in this section, "prepared food items" means food products that are prepared for immediate consumption, such as pies, shortcake, milk shakes, smoothies, and baked goods;*

Although processed food items may be sold at the farm stand, prepared items cannot exceed 25 percent of the total sales from the farm stand. This can be made a condition of any approval.

- F. *Adequate off-street parking shall be provided and all vehicle maneuvering will be conducted on site. No vehicle backing or maneuvering shall occur within adjacent roads, streets or highways;*
- G. *No farm stand building or parking is permitted within the right-of-way;*
- H. *Roadways, driveway aprons, driveways and parking surfaces shall be surfaces that prevent dust, and may include paving, gravel, cinders, or bark/wood chips;*
- I. *Approval is required from the county public works department regarding adequate egress and access including compliance with vision clearance standards. All egress and access points shall be clearly marked;*

The applicant appears to have adequate off-street parking for the subject site and all vehicle maneuvering is conducted on-site as well. The applicant indicates that the parking area will be graveled to minimize dust. Land Development reviewed the proposal and has requested any conditions of approval to ensure safe access to the site. The applicant submitted a traffic impact analysis detailing the amount of traffic that would be generated by the use. Marion County Land Development requested that the TIA be reviewed and approved prior to the farm stand being established. This can be made a condition of approval. As conditioned, this criterion is met.

- J. *All outdoor light fixtures shall be directed downward, and have full cutoff and full shielding to preserve views of the night sky and to minimize excessive light spillover onto adjacent properties, roads and highways;*
- K. *Signs are permitted consistent with Chapter 17.191 MCC;*
- L. *All required permits shall be obtained from the Marion County health department or the Department of Agriculture, as required;*
- M. *When requested by the planning director, the farm stand operator/landowner shall submit a statement demonstrating how the farm stand complies with this policy, certified by the landowner's/operator's accountant or attorney as being accurate and complete;*
- N. *A farm stand may not be used for the sale of marijuana products or to promote the sale of marijuana products or extracts.*

These criteria can be made a condition of any approval.

- 11. Based on the above findings it has been determined that the applicant's request meets all applicable criteria to establish a farm stand and up to six agri-tourism events in an EFU zone and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: March 18, 2019

If you have any questions regarding this decision contact Brandon Reich 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.