

Attention Property Owner: A land use proposal has been submitted for property near where you live or property you own elsewhere. State law requires the county notify property owners within a certain distance from this property. The proposal and address 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. 19-015**

APPLICATION: Application of Crosby Land Company, LLC, for a conditional use to operate a brewery, tasting room and beer garden as a commercial activity in conjunction with farm use on a 41.34 acre property in an EFU (Exclusive Farm Use) and UT-20 (Urban Transition-20 acre min) zone located in the 16,900 block of Butteville Road NE, Woodburn (T5S; R2W; Section 01; tax lot 1200).

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

EXPIRATION DATE: This conditional use permit is valid only when exercised by **June 24, 2021**. 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 drain field 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:

1. The applicant shall obtain all required permits from the Marion County Building Inspection Division.
2. The applicant shall sign and submit a Farm/Forest 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.
3. The brewery shall be developed and operated as described in the application and as conditioned.
4. Prior to or in conjunction with issuance of any building permits, the applicants shall provide a detailed site plan demonstrating compliance with the parking requirements of Chapter 17.118 of the Marion County Code (MCC).
5. Parking must be provided on the same parcel as the proposed brewery.
6. All other structures and parking areas must be located a minimum of 20 feet from any property line.
7. Any light used to illuminate a parking or loading area shall be directed away from any abutting residential zone or public street.
8. The brewery building and beer garden area shall maintain a minimum 100 foot setback from all property lines.
9. The sale of beer brewed using hops grown on the property is permitted as part of this approval.
10. Prior to implementation of Phase 2 of development, the applicants shall provide a written statement prepared by a certified public accountant, of sales generated by Phase 1 of the development showing annual income from hops, beer and other agricultural products produced on the property or in the state of Oregon separately from annual income derived from sales of all other items, including but not limited to merchandise, food, and entertainment cover charges. Only retail sales of products at the Phase 1 bar shall be included. If annual sales for all years of

operation in Phase 1 do not show that a minimum of 75% of the gross income is generated by sales of hops, beer and other products grown on the property or produced entirely from products grown on the property, construction or implementation of Phase 2 is not permitted.

11. A limited service kitchen including limited food pairings with beer is permitted in Phase 2 of development. A permanent, full service restaurant or café is not permitted.
12. Upon construction of the brewery in Phase 2 of development, agri-tourism and other commercial events that have the primary purpose of promoting beer produced in conjunction with the brewery are approved for up to 18 days per calendar year.
13. Upon completion of construction of Phase 2, annual reports of income as required for Phase 1 must be maintained, and submitted for review by the Planning Director upon request.

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

14. 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.
15. Any sign placed on the property shall meet the standards in Chapter 17.191 MCC.
16. A minimum of 15 acres of hops must be maintained on the subject parcel.
17. Incidental sales (less than 25% of total gross sales) of other items directly related to the brewery, including serving glasses and other merchandise, food, and beer made from product not grown in the state of Oregon, are permitted as part of this approval.
18. No outdoor amplified music or voice is permitted during Phase 1, except as allowed with approval of an agri-tourism event.
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. The applicant is advised of the following:

20. 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. Contact Woodburn Fire District at (503)-982-2360.
21. 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 **June 24, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **June 25, 2019** unless further consideration is requested.

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

1. The subject parcel 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. A portion of the property not proposed for siting the brewery is located inside the city of Woodburn's Urban growth Boundary and is designated Low Density Residential.
2. The subject property is located on the northwest side of Butteville Road NE approximately 530 feet south of the intersection of Butteville Road NE and Crosby Road NE. The property is undeveloped. Most of the 41.34 acre property is planted with hops, along with several adjacent parcels. The property was subject of Administrative Review Case #ADM00-58, which approved a primary farm dwelling that was not built. A property line adjustment involving less than 10 percent of the smaller parcel was done in 2015 that resulted in transfer of 9,686 square feet of land from the subject parcel to tax lot 1300, which is not a part of this proposal. The property line adjustment did not require approval from Marion County Planning and the parcel in its current configuration is considered to be legal for land use purposes.
3. According to Soil Survey for Marion County Oregon, 100% of soils on the subject property are high-value soils.
4. Surrounding properties to the north, east, southeast, and west are zoned EFU and in farm use. Properties to the southwest are inside Woodburn's Urban Growth Boundary, zoned Urban Transition and designated Single Family Residential in the city of Woodburn Comprehensive Plan.
5. The applicants are proposing to operate a brewery and beer garden in conjunction with farm use. The proposal is to be developed in two phases. Phase 1 includes a small bar, merchandise store, occasional food cart, and patio seating that will total 880 square feet in size. Beer brewed off site from hops grown on the subject property will be sold during Phase 1. Phase 2 will expand on Phase 1 and include construction of a 10,000 square foot building that will house a brewery, kitchen, walk-in cooler, restrooms, and tasting room with seating.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following Requirements included:

"A. In accordance with Marion County Code 11.10, driveway permits will be required for any new access or change in use of the existing access to the public right-of-way. Driveways must meet sight distance, design, spacing, and safety standards. It is noted that the access from Butteville Road has been widened, including the installation of a non-permitted single-walled culvert, to the north without a permit. At the time of building permit issuance, Applicant will be required to apply for and obtain an Access Permit to permanently close the access to Butteville Road and establish an access from Crosby Road for the proposed commercial use. Prior to final building inspection, access work will need to be completed.

From a policy perspective, Marion County Rural Transportation System Plan (MCRTSP) Section 10.3.5, Policy #10a: The number of access points on Arterial and Major Collector roadways shall be kept to a minimum to reduce the interruption to traffic flow and to promote safety, and Policy #11b: When the option is available, access shall be derived from the roadway having the lower functional class, or if a similar class, from the road with lower traffic volume and/or fewer conflict points. Butteville Road is classified as a Major Collector, while Crosby Road is a Local road.

From a vehicular safety perspective, the existing Butteville Road access, while in part serving the existing commercial operation, is situated in a precarious location relative to reverse horizontal roadway curves that is exacerbated by the presence of a hop crop and supporting materials, which in combination infringe on necessary intersection sight distance to/from the north through those curves. From a vehicular safety perspective, we cannot condone intensifying use to that access location. It would appear from review of aerial imagery that the

outbuildings off Butteville Road can be accessed via Crosby Road. The applicant shall be required to apply for a driveway "Access Permit" and construct any improvements required by the permit.

B. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) upon application for building permits, per Marion County Ordinance #00-10R."

Marion County Building Inspection commented that permits will be required.

Marion County On-Site Sewage commented that septic Site Evaluation required for a commercial septic system.

7. In order to approve a commercial activity in conjunction with farm use the applicants must demonstrate compliance with the specific criteria listed in Marion County Code (MCC) 17.136.060(D). These include:
 - (a) *The commercial activity must be primarily a customer or supplier of farm uses.*
 - (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*
 - (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*
 - (d) *The products and services provided must be essential to the practice of agriculture.*
8. The hops grown on the farm operation would supply the hops for processing into beer. The processing of hops into beer and bottling it enhances the local agricultural community by adding value to a farm product locally. Beer produced from hops grown on site may be sold to retail and wholesale customers as other farm products are sold. The applicants are applying for a brewery, and tasting room as a commercial use in conjunction with farm use. Beer tasting is a customary practice in conjunction with the purchase of craft beer. Therefore, the operation of a brewery tasting room in addition to the brewery production facility can be permitted as a commercial use in conjunction with farm use. A kitchen is proposed in Phase 2 of the development in order to provide a limited selection of food items. The approval of a commercial use in conjunction with farm use allows other kinds of agri-tourism-type events as long as income generated from these events is incidental (not more than 25% of total sales) to sales of beer and the events are designed to promote sales of local agricultural products.
9. In addition to the specific criteria above, 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.*
 - (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.*
10. As described above, the use is a commercial use in conjunction with farm use and, due to the close connection between the proposed use and farm use it would not significantly increase the cost of farming in the area. The closest farm land to the proposed brewery site not owned by the applicant or relatives is at least 900 feet to the west. However, to ensure compatibility with surrounding uses, MCC 17.136.050(B) requires that a declaratory statement meeting the requirements of MCC 17.136.100(C) be filed and this serves to notify the applicants and subsequent owners that there are farm or timber operations in the area. Recording the declaratory statement can be made a condition of any approval. There appears to be adequate fire protection and other rural services to the property. Because the use will take place inside a building, there are no anticipated significant adverse impact on

watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality or noise in excess of what is usually found in rural agricultural settings. Also, there are no water impoundments or significant mineral and aggregate sites on the property or in the area that could be impacted by the proposed use.

The property is located adjacent to the city of Woodburn Urban Growth Boundary. The properties inside the UGB in this area are all designated Single Family Residential, which does not allow commercial uses. The parking area identified on the site plan is located approximately 150 feet from the nearest dwelling and the beer tasting structure proposed for Phase 1 is located approximately 215 feet from the nearest dwelling. Although the proposal is proposed for property located outside the UGB, it is likely that excessive noise and traffic would adversely impact permitted uses located inside the UGB. Therefore, conditions of approval must be imposed to limit the potential for noise and traffic occurring at levels that exceed that which is appropriate for single family residential zones. Outdoor amplified sound is expected to exceed appropriate sound levels and may be prohibited.

A brewery is a use that has similarities to both a farm stand and a conditionally approved winery. Therefore, sales of products not grown in the state of Oregon or produced on the property from local agricultural products are limited to 25% of gross annual sales at the brewery. Wineries are permitted to have up to 18 days of events designed to promote the sales of wine, which is also appropriate for breweries. Limited food service can be permitted in so far as it promotes sales of local agricultural products, but a full service restaurant cannot be permitted for a commercial activity in conjunction with farm use. Food intended to be consumed on the property is considered an incidental product and, together with sales of promotional merchandise and other products not classified as local agricultural products, must not exceed 25% of the total sales of the brewery development.

The proposal satisfies, or can be conditioned to satisfy, the general criteria for a conditional use for a commercial activity in conjunction with farm use in the EFU zone.

11. Based on the above findings, it has been determined that the applicants' request meets, or can be conditioned to meet, all applicable criteria to operate a brewery with a tasting room as a commercial activity in conjunction with farm and is, therefore, APPROVED, subject to conditions.

Joe Fennimore
Planning Director

Date: June 7, 2019

If you have any questions regarding this decision contact Lisa Milliman 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.