

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 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. The decision in this case does not directly affect zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact staff listed at the end of this report.

**NOTICE OF DECISION
CONDITIONAL USE CASE NO. 19-025**

APPLICATION: Application of Edward and Dianne Ferschwiler and Troy Ferschweiler for a conditional use to operate a hemp processing facility as a commercial activity in conjunction with farm use on a 32.35 acre parcel in an EFU (Exclusive Farm Use) zone located at 13914 French Prairie Road NE, Woodburn. (T5S; R2W; Section 20; tax lot 1800).

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

EXPIRATION DATE: This permit is valid only when exercised by **August 27, 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 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:

1. The applicant shall obtain all required permits from the Marion County Building Inspection Division.
2. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition has been satisfied:

***Condition A** – Prior to establishment of the commercial activity, Applicant shall apply for and obtain an Access Permit and under the permit 1) permanently close the northern access to the property, 2) pave the access to be used by the commercial activity, and 3) establish the southern access as an exclusive farm access. Additional work may be required to bring the accesses in compliance with Marion County Standards.*

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

3. 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.
4. The industrial hemp processed at the facility must be grown in the state of Oregon.
5. 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:

6. 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.
7. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements, 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 **August 27, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 28, 2019** unless further consideration is requested.

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

1. The subject properties 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.
2. The property is located on the east side of French Prairie Road NE in the 13,900 block. The property contains an existing dwelling, farm structures, well and septic system. The property was the subject of a previous land use case, Conditional Use (CU80-22), which approved a temporary dwelling as a hardship and is considered a legal parcel for land use purposes.
3. 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 proposing to establish a hemp processing facility as a commercial activity in conjunction with farm use.
6. **Public Works Land Development and Engineering Permits (LDEP)** requested the following condition be included in the land use decision:

*“**Condition A** – Prior to establishment of the commercial activity, Applicant shall apply for and obtain an Access Permit and under the permit 1) permanently close the northern access to the property, 2) pave the access to be used by the commercial activity, and 3) establish the southern access as an exclusive farm access. Additional work may be required to bring the accesses in compliance with Marion County Standards.*”

Access is typically an Engineering Requirement but has been elevated to a Condition as a matter of timing. 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 (i.e. Residential to Commercial) to the public right-of-way. Per recent aerial photography it appears there are three accesses currently used to serve the subject property. We are unable to locate any permits or documentation for the creation of the northern and southern accesses. The southern access may remain as a Farming access (not to be used for any portion of the commercial activity), but the northern access does not serve any necessary function the other two accesses cannot. The center access, to be used for the commercial activity as shown on the Applicant's site plan, shall be paved from the edge of pavement to the

concrete on-site to support the additional commercial traffic and to prevent gravel from being pulled into the public roadway as a matter of public safety.”

LDEP also requested that the following requirement be included:

- 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. SDCs will also be evaluated for conversion of the current square footage of the personal shop to a commercial use. Credit may be given for previous SDCs paid.”

Marion County Building Inspection commented that a building permit, change of use or occupancy may be required.

Marion County Building Inspection Onsite Wastewater Specialist commented that septic authorization would be required.

All other commenting agencies stated no objection to the proposal.

7. In order to approve a commercial activity in conjunction with farm use, the applicant must demonstrate compliance with the specific criteria listed in Chapter 17.136.060(D) of the Marion County Code (MCC). 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. Hemp was approved to be grown as an agricultural crop by H.R. 525 during the 113th U.S. Congress in 2013. H.R. 525 defines "industrial hemp" to mean the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-nine tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. The Oregon Department of Agriculture regulates the growing of industrial hemp and handling of hemp seed in the state of Oregon and requires registration of businesses that grow and/or process industrial hemp as well as periodic testing of the crop to ensure that THC levels do not exceed 0.3%.
- The applicant is proposing to process industrial hemp for its oil. The hemp processed at the facility will be grown in Marion County and the state of Oregon. The proposal is for processing an agricultural crop grown in the state of Oregon, which is considered to be the local area and is essential to the practice of agriculture. The commercial activity meets the criteria for operating in conjunction with farm use.
9. 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.*

10. Since the use has been determined to be in conjunction with farm use, it is not expected to have a negative impact on nearby lands devoted to farm use. The proposal meets the criterion in #9(a). The Woodburn Fire District serves the parcel and all other needed services are currently available to the site. The proposal satisfies the criterion in #9(b). The property is not within a wildlife habitat area, groundwater limited area, or geologically hazardous area. There is no evidence of significant odors or noxious matter emitted from the premises that would affect air quality. The processing facility will not store or use any hazardous materials or farm chemicals. For this reason, the processing facility is not expected to have a significant adverse impact on water quality. Noise generated by the proposed activity should be comparable to agricultural activities. For these reasons, the proposal meets the criteria in #9(c) and (d). There are no potential water impoundments, identified wetlands, or significant mineral and aggregate sites identified by the Comprehensive Plan in the area. The criterion in #9(e) is met.
11. Based on the above findings it has been determined that the applicant's request meets all applicable criteria to establish a hemp processing facility as a commercial activity in conjunction with farm use and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: August 12, 2019

If you have any questions regarding this decision contact Seth Thompson 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.