



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: April 25, 2018

Department: Public Works Agenda Planning Date: April 19, 2018 Time required: 10 Min.

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature:

TITLE Receive and consider appeal of hearings officer's decision denying Conditional Use (CU) 18-002/Lind. Clerk's File #5742.

Issue, Description & Background The applicant applied for a conditional use permit to establish a hemp oil processing facility as a home occupation on a 6.72 acre parcel in a SA (Special Agriculture) zone. The Marion County Hearings Officer conducted a public hearing on January 31, 2018, and left the record open until February 14, 2018. On March 20, 2018, the hearings officer issued a decision denying the request. On April 3, 2018, the hearings officer's decision was appealed to the Marion County Board of Commissioners. In the denial the hearings officer found that one of the approval criterion requires a home occupation to be operated by the resident of the dwelling on the property in which the business is located. In this instance the hemp extraction business is L & L Extractions, LLC. and Martha Lind, who is the resident of the dwelling, is a paid employee not a member of the LLC. Since the resident of the dwelling is not the operator of the proposed home occupation this criterion is not satisfied. Since the hearings officer found that not all of the criteria were satisfied, it was concluded that the proposal does not meet the purpose and intent of the Special Agriculture zone. In the appeal, the applicant indicates that L & L Extractions, LLC. has amended its Articles of Incorporation to add Martha Lind as Secretary and retain equal and full operational control over L & L Extractions, LLC.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration: 1. Accept the appeal and remand the matter back to the hearings officer. 2. Accept the appeal and schedule a public hearing on the suggested hearing date of May 16, 2018. 3. Deny the appeal and uphold the hearing officer's decision denying the request.

Recommendation: Staff recommend the board of commissioners accept the appeal and schedule a public hearing on the suggested hearing date of May 16, 2018.

List of attachments: Appeal Hearings officer's decision

Presenter: Joe Fennimore



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

Joe Fennimore gfennimore@co.marion.or.us

The Marion County Hearings Officer

In the Matter of the)	Case No. CU 18-002
Application of:)	Clerk's File No.
Martha Lind)	Conditional Use

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LETTER APPEALING THE DENIAL OF CONDITIONAL USE PERMIT

In an effort to clarify our application and adequately address and appropriately respond to the Commission, it is important to briefly mention the history of our application.

The original application was denied due to the change of ownership on the subject property that occurred when the Commission was considering our first application. The original Home Occupant application was prepared on behalf of my Son, Steven "Matthew" Lind, who was then owner of subject property.

The property was already in process of being deeded back to Martha Lind, and the unanticipated consequence of this change resulted in your Commission DENYING our original Home Occupation Conditional Use permit, due to the change in underlying owner of the property.

Let it be known that I, Martha Jean Lind, am now sole owner and Grantee of the deed of subject property.

This change in ownership prompted the requirement of changing the application to include Martha Lind as the Home Occupant on our second application. Unfortunately, our second application inadequately and inaccurately addressed the Home Occupant/ Resident Operator requirements.

Thus, our current appeal contained herein addresses the Commissioner's criteria as detailed in your recent DENIAL Order.

We hereby appeal your recent decision and provide updated information and responses to the items you identified that we did not meet in the Marion County Code.

It appears that the two listed reasons for DENIAL were the following:

First you stated that MCC 17.119.070(B) is not met. Specifically that the described use by the applicant will not be in harmony with the purpose and intent of the SA Zone.

17.119.070 Findings of the director, planning commission or hearings officer.

Before granting a conditional use, the director, planning commission or hearings officer shall determine:

- A. That it has the power to grant the conditional use;
- B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
- C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1047 § 4, 1996; Ord. 516 § 2, 1978. RZ Ord. § 119.070.]

The SA ZONE description states:

17.137.010 Purpose of SA Zone.

The SA (special agriculture) zone is applied in areas characterized by small farm operations or areas with a mixture of good and poor farm soils where the existing land use pattern is a mixture of large and small farm units and some acreage homesites. The farm operations range widely in size and include grazing of livestock, orchards, grains and grasses, Christmas trees and specialty crops. The range in size of management units presents no significant conflicts and allows optimum resource production from areas with variable terrain and soils. It is not deemed practical or necessary to the continuation of the commercial agricultural enterprise that contiguous ownerships be consolidated into large parcels suitable for large-scale management. Subdivision and planned developments, however, are not consistent with the purpose of this zone and are prohibited.

This 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. The SA zone is intended to be applied in areas designated special agriculture in the Marion County Comprehensive Plan.

The SA zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources of the county.

The SA zone retains Class I through IV soils in commercial farm units comparable to those in the vicinity or in small-scale or specialty commercial farms where the land is especially suited for such farming. The SA zone is intended to be a farm zone consistent with ORS 215.283. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 9, 2000. RZ Ord. § 137.010.]

This code states that “This zone allows the flexibility in management needed to obtain maximum resource production from these lands.”

The code also states that “The SA zone is also intended to allow other uses that are compatible with agricultural activities .. and to maintain and improve ..land resources of the county.” (cited above).

As a Hemp processing facility, we are processing plant material that is locally grown and our operation is a vital step in the process of creating an agricultural product that is “compatible with agricultural activities” in and around Marion County, and this use of land on varied terrain with challenged soil and limited water “maintains and improves the land resources of the county” (cited above).

Hemp and CBD processing are important aspects of an emerging industry and farming operation in the Willamette Valley.

The subject property has varied terrain that is not suitable for other crop development.

The soil of subject property is not optimal for other agricultural production.

The proposed use does not require any water usage and is therefore a compatible use with the limited ground water resource available in this region.

Furthermore, this use is similar and compatible with other conditional uses already granted in and around Marion County. There appear to be various Marijuana / Cannabis facilities in operation within Marion County and the MCC addresses and allows these uses, so it is confusing and inconsistent with the current precedent that a Hemp facility would not qualify within an SA Zone. Especially considering that Hemp is not a cannabis product and does not contain THC.

This code provision is drafted to protect the property interests of the owner and facilitate the productive useage of this SA Zoned property.

For these reasons, the proposed use meets the SA Zone as detailed in MCC 17.137.010.

We respectfully ask the appropriate party to modify the finding under MCC 17.119.070(B) to accurately reflect the compatibility of the proposed use within the SA Zone.

The Second reason that was cited in your prior DENIAL draft was that MCC 17.137.060(C)(1) was not met.

MCC 17.137.060(c)(1) states "A home occupation or bed and breakfast shall be operated by a resident of the dwelling on the property on which the business is located."

We acknowledge that our previous application did not adequately address this consideration and we hereby update our appeal to include the following information:

L&L Extractions has amended their Articles of Incorporation to add Martha Lind as Secretary and retain equal and full operational and managerial control over L&L Extractions.

This business operation is conducted on property deeded to Martha Jean Lind; Martha Lind is involved in the complete daily operation of L&L Extractions.

Please refer to the Affidavit of Martha and Steve Lind, attached to this appeal for further clarification.

By law, we meet the requirements of Home Occupation as detailed in the code. For these reasons, MCC 17.137.060(C)(1) is met.

All other code was determined to be met as stipulated in your prior letter. Based on this updated information contained herein, we respectfully ask you to grant us Conditional Use status on our application.

Lastly, on the record we want to respond to the two listed OPPONENTS and state that we've specifically addressed their concerns.

In your letter, you mention that OPPONENT submitted information that "may be considered on appeal". We respectfully ask to have full opportunity to respond to this information and amend our Appeal, if the Commissioners determine that a further review of this information is warranted.

We further stipulate the following information that we believe significantly covers the main contentions detailed by the OPPONENTS:

Subject use has no signage required and will not change the visual appeal of the rural area or draw unnecessary attention to subject property.

Subject use does not receive increased traffic; this is not a retail operation and as such does not have drive-up customers or other increased traffic to property.

Subject use will typically have one person on site, and no more than 3 people on site; this falls well below the threshold of other permitted and conditional uses in SA Zone.

Subject use does not use water and is therefore a compatible use within the limited ground water zone; subject property will not adversely harm any neighboring property water usage.

Subject use is not a retail outlet and does not receive customer traffic.

Subject use has taken steps to suppress any noise from equipment in use and has successfully abated this issue.

Subject property is 7 acres and the operation is situated up a steep hill and is not completely visible from Orville Rd. so there is no adverse visual impact to the area.

Property values are not decreased but rather increased due to the fact that property owners in SA Zone have the ability to develop and create businesses compatible with SA Zoning requirements. This offers neighboring owners similar upside to developing SA compatible uses and thereby increases the property value.

Based on the information we share above, we respectfully ask you to grant our Conditional Use permit for a Hemp Processing Facility located at 6965 Orville Rd. Salem, Oregon 97306.

Sincerely,

 4/4/2018
Martha Jean Lind

AFFIDAVIT OF MARTHA AND STEVE LIND

To Whom it May Concern:

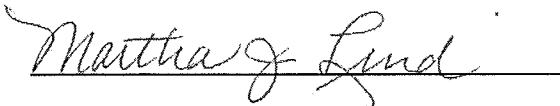
Please use this letter to further clarify the Appeal for Conditional Use approval in pending case CU 18-002.

After review of your recent denial, and further research, we have reorganized this business to meet the Resident Operator / Home Occupant Requirements under the code.

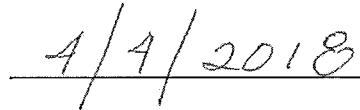
L&L Extractions Inc. has amended the Articles of Incorporation to include Martha Lind as Secretary of this entity and grant banking privileges, signing authorization, and equal control and involvement with the day to day operation and management of the business conducted at 6965 Orville Rd Salem, Oregon 97306.

Furthermore, this property is solely owned and deeded to Martha Jean Lind.

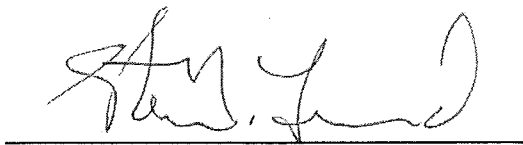
By law, this meets the burden of proof in detailing her status as a Resident Operator under the code.



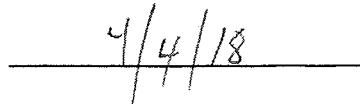
Martha J. Lind, Secretary of L&L Extractions Inc.



Date



Steven N. Lind, President of L&L Extractions Inc.



Date

THE MARION COUNTY HEARINGS OFFICER

In the Matter of the)	Case No. CU 18-002
)	
Application of:)	Clerk's File No.
)	
MARTHA LIND)	Conditional Use

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Martha Lind for a conditional use permit for a hemp oil processing facility as a home occupation on a 6.72-acre parcel in an SA (SPECIAL AGRICULTURE) zone at 6965 Orville Road S, Salem, Marion County, Oregon (T8S, R4W, S23D, tax lot 1201).

II. Relevant Criteria

Standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and Marion County Code (MCC), title 17, especially chapters 17.119 and 17.137.

III. Public Hearing

A public hearing was held on this matter on January 31, 2018. The Planning Division file was made part of the record. The file in CU 17-033 was also made a part of the record in this case. The following persons appeared and provided testimony on the application:

- | | | |
|----|--------------------|-------------------|
| 1. | Brandon Reich | Planning Division |
| 2. | Steven N. Lind | Proponent |
| 3. | Perry Quiring | Opponent |
| 4. | Marralene Oullette | Opponent |

(Applicant Martha Lind did not appear at hearing. Steven N. Lind spoke for applicant Martha Lind.)

The record was left open for opponents until February 7, 2018, and until February 14, 2018 for applicant to submit additional documents to the record. The following documents were entered into the record as exhibits:

- | | |
|-------|--|
| Ex. 1 | February 5, 2018 comments from Perry and Diane Quiring |
| Ex. 2 | February 7, 2018 comments from Marralene and Rodney Oullette with 12 photographs and two annotated site plans attached |

Applicant submitted no additional documents to the record. No objections were raised to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at hearing. A submission from Marralene Mennis Oullette was received after 5:00 p.m. on February 7, 2018, was placed in an envelope, sealed

and marked: after close of open record period. The sealed envelope is in the case file but its enclosure was not considered in making this decision. On acceptance of any appeal of this matter, the Marion County Board of Commissioners may, at their discretion, unseal the envelope and consider its contents.

IV. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Special Agriculture in the MCCP and is zoned SA. The property is in a Sensitive Groundwater Overlay (SGO) zone and a Geologically Hazardous Areas Overlay Zone. The purpose of the Special Agriculture designation and SA zoning is to promote and protect commercial agricultural operations. Non-farm uses, such as home occupations, can be approved where they have no significant adverse impact on farming operations and other uses in the area.
2. The subject property is on the west side of Orville Road S, about 3,600' north of its intersection with River Road S. The property contains an approved non-farm dwelling, accessory buildings, well and septic system. The property was subject to Lot Line Adjustment LLA 93-8 and Conditional Use CU 17-033 and is considered a legal land unit for land use purposes.
3. All surrounding properties are zoned SA, contain dwellings and are mostly wooded.
4. A hemp oil extraction facility is proposed as a home occupation on the subject property. The processing facility was requested by a different applicant in CU 17-033, and was approved by the Planning Director subject to conditions. The approval was appealed. At sometime between the Planning Director's approval and the appeal hearing, the property changed hands. The hearings officer dismissed the application for lack of a current valid owner signature. The new property owner now requests the conditional use to establish a hemp processing facility as a home occupation.
5. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

Marion County Public Works Land Development and Engineering Permits (MCPW LDEP) commented on engineering requirements:

- A. In accordance with Marion County Driveway Ordinance 651, driveways must meet sight distance, design, spacing, and safety standards. Prior to establishment of the proposed business and/or in conjunction with issuance of building permits, it is required to obtain an Access Permit to remove a large oak tree situated adjacent to the south side of the shared access approach to Orville Road in order to facilitate adequate Intersection Sight Distance.

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 and/or establishment of the proposed use, per Marion County Ordinance #00-10R. The land use application states intent to utilize an existing 600 square-foot metal building as a commercial kitchen to extract hemp oil. No customers are anticipated.

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

Marion County Code Enforcement stated there are no code enforcement issues on the property.

All other agencies contacted failed to respond or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicant must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If evidence for any criterion is equal or less, applicant's burden is not met and the application shall be denied. If evidence for every criterion is in applicant's favor, the burden is met and the application shall be approved.

MCC CHAPTER 119

2. Under MCC 17.119.100, the Planning Director has the power to forward conditional use applications to the hearings officer for initial decision. The Planning Director forwarded the application to the hearings officer for initial decision. The hearings officer may hear and decide this matter.
3. Under MCC 17.119.020, an application for a conditional use may only be filed by certain people, including the owner of the property that is the subject of the application. Martha Lind owns the subject property and could file the application. MCC 17.119.020 is satisfied.

4. Under MCC 17.119.025, conditional use applications must be signed by certain people, including all owners of the subject property. Property owner Martha Lind signed the application. MCC 17.119.025 is satisfied.
5. Under MCC 17.119.070, before granting a conditional use, the hearings officer shall determine:
 - (A) That the hearings officer has the power to grant the conditional use;
 - (B) That the conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
 - (C) That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.
6. Under MCC 17.119.030, the hearings officer may hear and decide only those applications for conditional uses listed in MCC title 17. Applicant asks for a conditional use permit to establish a hemp oil extraction facility and related office use on the subject property as a home occupation in the SA zone. MCC 17.137.050(D)(1) lists home occupations, subject to the criteria in MCC 17.137.060(C) with the filing of a declaratory statement in MCC 17.137.100(C), as a conditional use in the SA zone.

Under MCC 17.110.270, home occupation means any business or professional activity engaged in the production of income by a resident of a dwelling or dwelling unit as a subordinate use of the building and its premises, and in conformance with the provisions of this title. A home occupation may include a limited home occupation, conditional home occupation or a home occupation in a resource zone. Such term does not include the lease or rental of a dwelling unit or the rooming or boarding of persons on the same premises nor does it include a use meeting the standards of a home office in MCC chapter 17.125 or a marijuana business licensed pursuant to applicable law.

L&L Extractions, LLC is the business operating on Martha Lind's property. Ms. Lind will be a paid contract worker of the LLC. The business activity will not be a subordinate use of the production and office buildings, but will be subordinate to Ms. Lind's residential use of the property.

Home office standards are found in MCC chapter 17.126 rather than chapter 17.125. Under 17.126.020(A)(21), home offices are allowed provided:

- a. The home office shall be carried on solely by the resident or residents of a dwelling on the subject property as an accessory use. No other persons shall be employed by the business.
- b. The home office shall be continuously conducted in such a manner as not to create any public or private nuisance, including, but not limited to, offensive noise, odors, vibration, fumes, smoke, fire

hazard, or electronic, electrical, or electromagnetic interference. In a residential zone noise associated with the home office shall not violate Department of Environmental Quality or Chapter 8.45 MCC, Noise.

- c. No sign or display on the premises is allowed that will indicate the presence of the home office.
- d. The home office shall be conducted entirely within the dwelling or attached garage. There shall be no outside storage or display of materials, equipment, or merchandise used in, or produced in connection with, the home office.
- e. No structural alterations shall be made to the dwelling or garage that would be inconsistent with future use of the building exclusively as a dwelling.
- f. No visits by suppliers shall occur.
- g. No customers or clients shall visit the property in the course of doing business.

The office portion of the use will not be carried out solely by Ms. Lind, and will not be conducted in the dwelling or a garage. The office portion of the application does not meet the standards of an MCC 17.126 home office and can be evaluated as a home occupation use.

Marijuana is defined in ORS 475B.015(17):

- (a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and marijuana seeds.
- (b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

Under ORS 571.300(5), industrial hemp:

- (a) Means all nonseed parts and varieties of the Cannabis plant, whether growing or not, that contain an average tetrahydrocannabinol [THC] concentration that does not exceed 0.3 percent on a dry weight basis.
- (b) Means any Cannabis seed:
 - (A) That is part of a crop;
 - (B) That is retained by a grower for future planting;
 - (C) That is agricultural hemp seed;
 - (D) That is for processing into or for use as agricultural hemp seed; or

(E) That has been processed in a manner or to an extent that the Cannabis seed is incapable of germination.

(c) Does not mean industrial hemp commodities or products.

Application support materials state that hemp is an agricultural product, that outside THC-level testing is required before any hemp oil sales are allowed, and that there will be no THC processing at the facility. The facility will process hemp flowers, not seeds. Applicant does not propose a marijuana business, and a condition of approval can make it clear that none is allowed. Applicant must meet all state requirements, including maintaining acceptable levels of THC concentration to ensure the facility will not be or evolve into a marijuana business. The processing portion of the business can be evaluated as a home occupation use.

Whether the proposal will conform to the provisions of MCC title 17 and can qualify as a home occupation will depend on whether all applicable criteria are met. Consistent with MCC 17.119.070(A), the hearings officer may hear and determine whether MCC title 17 criteria are met.

7. MCC 17.137.010 contains the SA zone purpose statement:

The SA (special agriculture) zone is applied in areas characterized by small farm operations or areas with a mixture of good and poor farm soils where the existing land use pattern is a mixture of large and small farm units and some acreage homesites. The farm operations range widely in size and include grazing of livestock, orchards, grains and grasses, Christmas trees and specialty crops. The range in size of management units presents no significant conflicts and allows optimum resource production from areas with variable terrain and soils. It is not deemed practical or necessary to the continuation of the commercial agricultural enterprise that contiguous ownerships be consolidated into large parcels suitable for large-scale management. Subdivision and planned developments, however, are not consistent with the purpose of this zone and are prohibited.

This 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. The SA zone is intended to be applied in areas designated special agriculture in the Marion County Comprehensive Plan.

The SA zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain

and improve the quality of air, water and land resources of the county.

The SA zone retains Class I through IV soils in commercial farm units comparable to those in the vicinity or in small-scale or specialty commercial farms where the land is especially suited for such farming. The SA zone is intended to be a farm zone consistent with ORS 215.283.

MCC 17.137 provisions are intended to carry out the purpose and intent of the SA zone. If applicable MCC 17.137 criteria are met, the proposed use will be in harmony with the purpose and intent of the zone. MCC 17.137 criteria are discussed below and are not met and, as such, the proposed use is not in harmony with the purpose and intent of the SA zone. **MCC 17.119.070(B) is not met.**

8. The conditional use application is not granted. MCC 17.119.070(C) is not applicable.

MCC 17.137.060(C)

9. Under MCC 17.137.060(C), notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including parking vehicles in conjunction with the home occupation are subject to the following criteria:
 1. A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation ("person" includes volunteer, nonresident employee, partner or any other person).
 2. It shall be operated substantially in:
 - a. The dwelling; or
 - b. Other buildings normally associated with uses permitted in the zone in which the property is located.
 3. It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.
 4. A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.
 5. A sign shall meet the standards in chapter 17.191 MCC.
 6. The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.

7. Retail and wholesale sales that do not involve customers coming to the property, such as internet, telephone or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.
10. *Operated by a resident of the dwelling/number of employees.* Martha Lind, sole property owner, is a resident of the dwelling on the subject property. L&L Extractions, Inc. is the business located on the subject property. L&L Extractions, Inc. is seeking Oregon Liquor Control Commission (OLCC) and Oregon Health Authority (OHA) approval for the hemp processing facility. L&L has two business partners, Steven N. Lind and Danny Lancaster. Neither partner lives on the subject property.

In her statement in support of the application, Ms. Lind wrote:

MCC.17.110.270 I hereby stipulate that I am the resident and I will from this date forward be directly involved. Specifically in packaging and shipping of products produced under the home occupation and have changed the relationship with L&L Extractions to share income based on my involvement and not solely as a rental of the building involved.

In a January 25, 2018 letter, Ms. Lind advised she would not be able to attend the hearing but stated, "I am in favor of the proposed use of my building to have the operation of a hemp processing operation." At hearing, when asked about the relationship between Ms. Lind and L&L Extractions, Steven N. Lind of L&L Extractions stated that L&L originally had a lease with Ms. Lind for use of the outbuildings where office and extraction operations take place, but found out that a resident of the property needed to be directly involved in the business. He said "we are allowing this" because it allows Ms. Lind some modest income from the property and allows her to continue living there. Mr. Lind said they arranged a simple contract between Martha Lind and L&L Extractions, and Martha Lind will be doing specific tasks with the business on a daily basis. The hearings officer asked Mr. Lind if Martha Lind is now a member of the LLC. Mr. Lind responded that Ms. Lind is not a part of L&L Extractions but she will be a compensated employee of the LLC, and will provide hands-on work at various tasks in the business.

Under ORS 215.448(1)(a), a home occupation "shall be operated by a resident or employee of a resident of the property on which the business is located" and the same wording is found in OAR 660-033-0130(14). The MCC 17.137.060(C)(1) phrasing is somewhat different, requiring that a home occupation "shall be operated by a resident of the dwelling on the property on which the business is located." The "employee of a resident" language is not in the MCC, but for an ORS 215.283(2) use, a county may have stricter requirements than the state. Even if the state language is applied, the record shows that Ms. Lind does not employ anyone to operate

L&L Extractions, and is an employee of the LLC herself. Ms. Lind must operate the business to meet the MCC criterion.

Operate is not defined in statute, OAR or MCC. *Webster's Third New International Dictionary of the English Language*, unabridged (2002) (the dictionary available to the hearings officer) has many listings for operate, operation, and operator. The listings that appear to most nearly reflect the law involved here are:

Operate - to cause to function usually by direct personal effort; to manage and put or keep in operation whether by direct personal effort or not

Operation - the whole process of planning for and operating a business or other organized unit

Operator - a person that actively operates a business (as a mine, a farm, or a store) whether as owner, lessor, or employee

Mr. Lind is an LLC member and stated at hearing, "I'm L&L Extractions." Mr. Lind prepared the home occupation applications for his son, Steven Matthew Lind, and for Martha Lind. Mr. Lind presented both applications at hearings where no applicant was present. LLC members Steven N. Lind and Danny Lancaster operate the business-related equipment. Mr. Lind causes the business to function by direct personal effort, planning for, managing and putting it in operation. Ms. Lind will be an L&L Extractions paid employee. Ms. Lind does not cause the business to function, manage and put or keep it in operation, or actively operate the business. Martha Lind has not proven by substantial evidence in the whole record that the proposed home occupation is operated by a resident of the dwelling on the property on which the business is located. Applicant stipulated that no more than three employees will be at the site. A condition consistent with the stipulation will keep the number of employees within the allowed limit, but based on the lack of a residential operator, **MCC 17.137.060(C) (1) is not met.**

11. *Within buildings.* Using the dwelling for the home occupation is not proposed. The proposal is to use a 600 square foot accessory building and an adjacent tin shed to house the processing equipment, and to use a separate shop, with shower and restroom facilities, as an office. Shops and similar out buildings are common in the SA zone. With a condition restricting the use to the two existing buildings on the subject property, MCC 17.137.060(C) (2) is met.
12. *Interference with other uses.* MCC 17.137.020, .030, .040 and .050 list uses allowed, allowed-subject-to-standards, and conditionally permitted in the SA zone. Surrounding properties are wooded and mostly in residential use. Farm and forest uses are discussed in V(18) below and no interference is found. Residential dwellings are sensitive uses. Some neighboring property owners are concerned about water use, septic system adequacy, safety of buildings placed without permits, use of flammable substances in a wooded

area with only rural fire protection services, noise from equipment running into nighttime hours, byproduct and garbage disposal, parking and odors. Neighbors suggest conditions of approval including operating hour limits, on-site supervision of running machinery, obtaining all required permits prior to operation, including Oregon Liquor Control Commission (OLCC), Oregon Department of Agriculture (ODOA), structural, electrical, plumbing, septic, change of occupancy and any other applicable permits), and a one-year trial run.

Water is not used in the extraction process but is used for the restroom in the office and for cleaning and hand washing in the processing building's commercial kitchen. Water use will be light, but wastewater disposal permitting review will be required for both buildings. Some electrical and other inspections have been conducted by Marion County but final inspection and permitting will be required before the use may take place. (The use was in operation prior to land use application but is now suspended pending land use approval.) A condition of approval can require acquisition of state and county permits prior to resuming operations.

According to Steven Lind, little garbage beyond some paper towels is produced and he takes that garbage home with him for disposal. The operation processes about three five-pound units of chopped hemp flours per day, producing ten to 15 pounds of spent hemp per day as byproduct or about 5,000 pounds per year. Mr. Lind takes by product from the site to use as compost at his home, said the hemp byproduct could be spread on the subject 6.72-acre property as compost as well, or it could be taken to a disposal site. With proof from the Department of Agriculture or Environmental Quality that on-site byproduct disposal is allowed or exempt from regulation, byproduct land application would be an appropriate disposal method.

Noise was addressed at the first hearing and it was found that improvements were made and sound was not an issue. At this hearing, the neighbor across Orville Road stated he could still hear air compressor noise but it was not bad. During the open record period, the neighbor expressed concern about nighttime noise, pointing out that in good weather windows may be left open and, even though their home is 600' from the proposed facility, noise is reflected toward their property by the hill behind the processing building. Equipment is housed inside, but applicant did not address the neighbor's new concern about nighttime noise, and the burden is on applicant to prove all criteria are met. Without additional information, the hearings officer cannot say it is more likely than not that nighttime noise has been adequately addressed. Hours of operation can be limited to 7:00 a.m. to 10:00 p.m. to address the issue. Mr. Lind objected to limiting hours of operation, but neither he nor Ms. Lind addressed open record submissions.

With a limit of three persons working on the site as stipulated to by applicant, adequate parking will be available in the area of the use. Odor is unlikely to be a problem. According to Mr. Lind, industrial hemp is less pungent than marijuana, extraction is via a closed-loop process that

captures and recycles CO₂, and the process occurs indoors, lessening the probability that odors or fumes will be released during the process.

Opponents point out that the area is wooded and terrain is steep and difficult for fire fighting. Mr. Lind testified that carbon dioxide (CO₂) rather than flammable butane or ethanol is used in the extraction process. Still, CO₂ must be stored, handled and used in accordance with safety rules. (See generally, OAR 437-002-2101.) And, any local fire and life safety rules must also be followed. Salem Suburban Fire District provides fire protection services for the subject property. The fire district was notified of the proposed use but provided no comments for the record. To ensure public safety, a condition of any approval will require submission of proof from the fire district that the proposal meets all fire department access, premises identification and other fire and life safety requirements.

Mr. Lind stated that a one-year test run was okay with him, and any issues arising during the year would be addressed. With conditions of approval discussed here, it is more likely than not that the proposed use will not unreasonably interfere with other SA zone uses, and MCC 17.137.060(C)(3) will be satisfied.

13. *Structures accessory to resource use.* The subject property is in an SA zone but the dwelling on the property was approved as a nonfarm dwelling. Associated outbuildings are in conjunction with residential rather than resource use. MCC 17.137.060(C)(4) is met.
14. *Signs.* Any business-related sign added to the property must comply with MCC chapter 17.191 standards. This requirement can be made a condition of approval. As conditioned, MCC 17.137.060(C)(5) will be met.
15. *Assembly and dispatch.* Assembly and dispatch of employees is not proposed, and a condition of approval could prohibit employee assembly and dispatch. As conditioned, MCC 17.137.060(C)(6) will be met.
16. *Sales.* No retail sales to on-site customers are planned. A condition of approval could prohibit on-site retail sales. As conditioned, MCC 17.137.060(C)(7) will be met.

MCC 17.137.060(A)

17. According to MCC 17.119.010, a conditional use is an activity that is similar to other uses permitted in the zone, but due to some of its characteristics that are not entirely compatible with the zone could not otherwise be permitted. The following MCC 17.137.060(A) criteria are reviewed for all conditional uses in the SA zone:

1. 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.

2. Adequate fire protection and other rural services are, or will be, available when the use is established.
 3. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.
 4. Any noise associated with the use will not have a significant adverse impact on nearby land uses.
 5. 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.
18. *Farm and forest practices.* Under *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991), a three-part analysis is required to determine whether a use will force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm use. First, the county must identify the accepted farm and forest practices occurring on surrounding farmland and forestland. The second and third parts of the analysis require the county to consider whether the proposed use will force a significant change in the identified accepted farm and forest practices, or significantly increase the cost of those practices.

Applicant did not address specific farm or forest uses or practices on surrounding lands devoted to resource use in the new application, but testimony from the prior hearing indicated that agricultural uses do not exist in the immediate vicinity of the subject property, but are farther away on River and Vitae Springs Roads. Many surrounding parcels are wooded, but no current timber operations were cited. Given the lack of farm and forest uses in the vicinity of the subject property, and with signing and recording a farm/forest declaratory statement, it is more likely than not that there will be no interference with farm or forest practices. MCC 17.137.060(A) (1) is met.

19. *Adequate fire protection and other rural services.* Utilities, such as electric and telephone services are currently available to the site. On-site water and septic services are also in place, but wastewater disposal evaluation will be required for the proposed use. Police services are provided by Marion County. Opponents are concerned about flammables used in the extraction process and point out that the area is steep and wooded, making it difficult for firefighting should a fire erupt. Mr. Lind testified that carbon dioxide (CO₂) rather than more flammable butane or ethanol is used in the extraction process. Still, CO₂ must be stored,

handled and used in accordance with safety rules. (See generally, OAR 437-002-2101.) And, any local fire and life safety rules must be followed. Salem Suburban Fire District provides fire protection services for the subject property. The fire district was notified of the proposed use but provided no comments for the record. To ensure public safety, a condition of any approval will require submission of proof from the fire district that the proposal meets all fire department access, premises identification and other fire and life safety requirements.

Traffic was previously cited as an issue by opponents due to dangerous conditions on Vitae Springs and Orville Roads. Both roads are winding and sloped but according to the MCCP Rural Transportation System Plan (RSTP), Appendix B (2012 update), Orville Road and Vitae Springs Road are major collector roads in good condition and operating at a level of service B. LOS E or better is considered acceptable for unsignalized rural intersections. And, traffic to the site is limited by limiting the use to three on-site employees. MCPW will require removal of a tree that restricts sight distance during driveway permitting. Conditions limiting the people associated with the on-site use to three, and allowing no on-site retail sales will help limit traffic generation.

With conditions, fire, transportation and other services are or will be adequate when the use begins, and MCC 17.137.060(A)(2) will be met. .

20. *Significant adverse impact.* The subject property is within identified groundwater limited and geologic hazard overlay zones. However, water use will be limited and not significantly exceed current uses in the existing buildings. Requiring septic and building permit review will help ensure water use, slope stability and groundwater contamination are not issues. The site is not in an MCCP identified floodplain, wildlife or big game habitat area. No alteration of topography will occur. There will be no significant threat to watersheds, groundwater, fish and wildlife habitat, or soil and slope stability. Application materials describe the proposed use as a closed loop system that will recapture CO2 and not create air emissions. With conditions, MCC 17.137.060(A)(3) can be met.
21. *Noise.* Applicant proposes a manufacturing use as a home occupation. The business operated for some time and neighbors complained about the noise. Additional insulation work was done on the operations building and shed to dampen equipment noise and at that time it was not a big concern. At this hearing, that neighbor across Orville Road said he could still hear an air compressor operating but it was not bad. During the open record period, these neighbors expressed concern about nighttime noise, pointing out that in good weather windows may be left open and, even though their home is 600' from the proposed facility, noise is reflected toward their property by the hill behind the processing building. Although equipment is housed inside and additional insulation was installed prior to the October hearing, the neighbors raised a new concern that applicant did not address. The burden is on applicant to prove all criteria are met, and without additional information, such as a baseline noise study, the hearings

officer cannot say that nighttime noise has been adequately addressed. Hours of operation can be limited to 7:00 a.m. to 10:00 p.m. to address the issue. Mr. Lind objected to limiting hours of operation, stating that he needs the flexibility to operate equipment as necessary, but neither he nor Ms. Lind addressed the open record submissions. With a condition limiting hours of operation, MCC 17.137.060(A)(4) can be met.

22. *Water impounds/mineral and aggregate sites.* No MCCP identified mineral and aggregate sites or potential water impounds are on or near the subject property. MCC 17.137.060(A)(5) is met.

MCC 17.137.100(C)

23. Under MCC 17.137.100(C), for all dwellings, and other uses deemed appropriate, the property owner shall be required to sign and allow the entering of the following declaratory statement into the chain of title of the lot(s) or parcel(s):

The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantors, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices, grantors will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.

The declaratory statement would be required as a condition of any approval of this application. As conditioned, MCC 17.137.100(C) would be satisfied.

VI. Order

It is hereby found that applicant has not met the burden of proving applicable standards and criteria for approval of a conditional use application to establish a hemp oil processing facility on a 6.72-acre parcel in an SA zone have been met. Therefore, the conditional use application is **DENIED**.

VII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court Street NE, Salem) by 5:00 p.m. on the 4th day of April 2018. The

appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon, this 20th day of March 2018.

A handwritten signature in black ink, appearing to read 'Ann M. Gasser', followed by a horizontal line extending to the right.

Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Agencies Notified

Martha Lind
6965 Orville Rd S
Salem, OR 97306

Planning Division (via email: gfennimore@co.marion.or.us)
(via email: lmilliman@co.marion.or.us)

Steven Norman Lind
L & L Extractions
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Salem, OR 97306

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Building Inspection (via email: twheeler@co.marion.or.us)
(via email: deubanks@co.marion.or.us)
Assessor's Office (via email: assessor@co.marion.or.us)
Tax Office (via email: adhillon@co.marion.or.us)
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AAC Member No. 1

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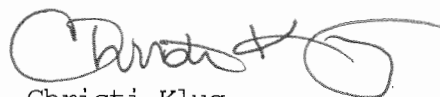
Aileen Kaye
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Turner, OR 97392

Perry & Diane Quiring
6904 Orville Rd S
Salem, OR 97306

Laurel Hines
10371 Lake Dr SE
Salem, OR 97306

1000 Friends of Oregon
meriel@friends.org

by mailing to them copies thereof, except as specified above. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 20th day of March 2018, and that the postage thereon was prepaid.



Christi Klug
Secretary to Hearings Officer