

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 CASE NO. 24-005

APPLICATION: Application of Hector Fregoso for a conditional use permit to establish a recreational vehicle park for farm worker housing as a commercial operation in conjunction with farm-use on a 4.43 and a 1.65-acre parcel in an EFU (Exclusive Farm Use) zone located at 13807 & 13817 Portland Rd NE, Woodburn (T5S; R1W; Section 19C; Tax Lots 1600 and 1700).

DECISION: The Planning Director for Marion County has **DENIED** the above-described Conditional Use application.

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 **March 29, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 30, 2024**, unless further consideration is requested.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the western side of HWY 99E, approximately 800 feet south of its intersection with Geschwill Ln NE and 1000 feet south of the Urban Growth Boundary (UGB) of the City of Woodburn. Both tax lots were involved in Lot Line Adjustment LLA00-025 which created their current configuration and calls them out as separate legal parcels. Tax lot 1700 contains a dwelling, accessory buildings and 15 RV's at the time of the 2023 Marion County aerial imagery. Tax lot 1600 contains a dwelling, accessory structures and four RV's at the time of the 2023 aerial imagery.
3. Surrounding uses are farm uses in all directions. All surrounding properties are in row crop, grass seed or nursery production with the exception of the property to the northeast, addressed 13857 HWY 99E which is also zoned EFU but only developed with a single-family dwelling. Most properties have dwellings in this area.
4. Soil Survey of Marion County Oregon indicates 100% of the subject property is composed of high-value farm soils.
5. The applicant is proposing to establish a recreational vehicle park for farm worker housing as a commercial operation in conjunction with farm use.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING REQUIREMENTS

- A. Upon application for building permits, Transportation System Development Charges (TSDCs) and Parks fee will be assessed for each RV space.
- B. Evidence of ODOT concurrence regarding access to Portland Road for the proposed RV park is required prior to issuance of building permits.

Marion County Code Enforcement commented:

“I have had a Code case (23-000003) for over a year now regarding multiple RVs being inhabited, solid waste, misuse of a septic system and an illegal septic system. Septic also has a case (23-000170) for the misuse of a septic system and an illegal septic system. This has been going on for well over a year and the owners have done nothing to rectify the violations.”

Oregon Department of Transportation (ODOT) commented:

“The proposal for a 15-space RV park will not trigger any requirements from ODOT and based on the site plan the applicant is not proposing to modify the existing highway approach. If they end up needing to work in the highway right-of-way for utility work or construction access, they will need to contact the ODOT District 3 Permits office at 503-986-2900.”

Marion County Building Department commented:

“Permits are required to be obtained for any structures and/or utilities installation on private property. Consultation with Marion County Building Inspection is recommended.”

Woodburn Fire District commented:

“Either proposed RV housing area will need a hammerhead turnaround for fire district to have access and ability to turnaround because both areas are more than 150 foot dead-end driveways. All driveways and hammerhead turnaround must support up to 75,000lbs weight load, be 20 foot wide, and meet turning radius. We would need at least 10 feet separation from each RV.”

Friends of Marion County commented requesting denial of the application due to the open code violation and the assertion that commercial uses in conjunction with farm use cannot be applied to housing. They also submitted LUBA case No. 94-104 SANDY v. CLACKAMAS COUNTY and LUBA case No. 94-075 as additional evidence.

All other commenting agencies stated no objection to the proposal.

- 7. It’s likely this application cannot be considered as proposed because the request is for a residential use as a commercial activity in conjunction with farm use. While ‘commercial activities in conjunction with farm’ use is a broad term which can encompass many different uses of land, Marion County Code provides specific criteria for approving residential uses on farmland. Specific criteria apply to residential use of farmland and, since they are specific to the use, they must be applied when considering applications for residential uses, not the more broad commercial activity in conjunction with farm use. For instance, the EFU zone provides for similar farm worker housing as multi-unit residential structures (MCC 17.137.030(B)(3)(d)). Even though it does not appear this request can be considered for a commercial activity in conjunction with farm use, the criteria for that use will be reviewed below.
- 8. 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.*

The proposed commercial activity is that of a recreational vehicle park, which provides housing for farm workers. The request is for a residential use, not a commercial use. This use is not a customer of farm uses as its primary function is not to buy crops, raise animals or produce farm income. Rather, the

primary function of this use is to house farm workers, which is regulated by MCC 17.136.030. The use is also not a supplier of farm uses, as housing and the supply of laborers is a common need for all professions, not just farming. Essentially, housing is not exclusive enough to farming to be considered primarily a supplier of farm uses. The criterion is not met.

- (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*

The subject parcel is surrounded by farms and lies just south of Woodburn, in an area comprised of large-scale farms and nurseries. The proposed use would allow a small supply (15-20) of local farm laborers to live on the property. It is not likely this proposal would enhance the local agricultural community. Less than a mile to the north is the City of Woodburn, which has many housing options such as multi-family dwellings, single family dwellings, mobile home parks and legally established RV parks. Locating 15-20 farm workers in RV's just outside of city limits, without proper septic facilities or utility hookups, would be a detriment to the health of the local agricultural community. The development currently poses health risks to the occupants and neighbors and the applicant has not addressed the septic issues onsite nor shown it is feasible to permit an onsite septic system sufficient for 15-20 RV's. Based on the evidence in the record, the criterion is not met.

- (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*

The parcel where the workers will be living has no active farm use and, at just over six acres, does not appear large enough to support agricultural uses on a commercial scale. Because staff views this as a residential use that is called out more specifically in code (MCC 17.136.030) there is no commercial use occurring together with agriculture. Furthermore, there is no way to ensure that the people living there are working for local farms. There is no enforcement mechanism that can be used to certify that each RV inhabitant primarily works for local farms. Based on this, there is no way to determine if the activity is occurring together with farm use nor to condition the proposal to meet this criterion. The criterion is not met.

- (d) *The products and services provided must be essential to the practice of agriculture.*

The service provided is housing. While housing is needed for farm workers, it is also needed for all types of workers and people in general. This is very similar to Land Use Board of Appeals (LUBA) case No. 94-104 SANDY v. CLACKAMAS COUNTY. In this case, a permit was submitted for commercial use in conjunction with farm use to establish trailer rentals, truck sales, portable storage buildings and mailbox, shipping and fax services. LUBA found that these uses were not essential to the practice of agriculture and lacked a relationship to farm use: "Although it may be true that these services are needed and would be used by migrant farm workers in the area, such services do not possess the required connection to the 'essential practice of agriculture.' They are more like the sale of gasoline and food...It is true that such items could be used by farm uses, however, they are all purchased and rented by a variety of other commercial and non-commercial uses as well." Based on this decision, the applicant's proposal is not essential the practice of agriculture and cannot be considered a commercial activity in conjunction with farm use. The criterion is not met.

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.*

Residential uses on farm property could change the way farming occurs in the area which would significantly increase the cost of farm practices in the area. This case arose from a Code Enforcement complaint, which includes unpermitted septic hookups, open burning of trash and solid waste. This use has already generated complaints to the county. Placing 15-20 RV's on a property in a farm zone has a high likelihood of increasing conflicts with farm uses and the property is currently affecting nearby farm uses by burning trash and leaving solid waste out that can blow into neighboring fields. There is also a concern about the septic system being used at over its capacity, which can contaminate domestic wells and neighboring soils. The applicant has not specifically addressed how they will rectify this. The criterion is not met.

- (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The property is served by the Woodburn Fire Department and Marion County Sheriff. However, the applicants have not demonstrated that the property would be able to be served by other rural services, such as a septic system and potable well water. The criterion is not met.

- (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.*

Currently the use and property have septic, solid waste and trash burning issues, all of which have a significant impact on water and soil quality and wildlife habitat. The applicant states they will obtain the proper septic permits, but does not provide a plan to comply with the required permitting, identify what permits are needed or provide evidence whether it is even feasible to locate a commercial septic on the property. They also do not provide information regarding the water provided to the occupants, other than stating they will obtain permits. Because there is no evidence in the record to show how the applicant is able to address these existing problems, the criterion is not met.

- (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

The number of RV's are expected to generate considerably more noise than a typical single-family dwelling. There are four dwellings located within 600 feet of the subject parcel, more noise than what would typically be expected from a rural property would be generated by this use. The applicant does not propose measures to mitigate noise or further reduce conflicts with the neighboring farm parcels. The criterion is not met.

- (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.*

There are no water impoundments or significant mineral and aggregate sites on the subject property. The criterion is met.

10. Based on the above findings it has been determined that the applicant's request does not meet all applicable criteria for a commercial use in conjunction with farm use and is, therefore, **DENIED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: March 14, 2024

If you have any questions regarding this decision contact Austin Barnes 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.