

THE MARION COUNTY HEARINGS OFFICER

In the Matter of the ) Case No. CU 18-002  
 )  
Application of: ) Clerk's File No. 5742  
 )  
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 to establish a hemp processing facility as a home occupation on a 6.72-acre parcel in an SA (SPECIAL AGRICULTURE) zone located 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**

January 31<sup>st</sup> 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 did not submit additional documents to the record. Objections were not raised to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at hearing. A submission from Marralene 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 (the Board) may, at their discretion, unseal the envelope and consider its contents.

On March 20, 2018, Hearings Officer issued an Order denying approval of the conditional use permit.

#### Board of Commissioners Meeting

Applicant filed a timely appeal of the denial of the application by Hearings Officer on April 3, 2018, and submitted new evidence. The Board met to consider the application on April 25, 2018, and remanded the application to Hearings Officer for further consideration after a public hearing by Order #18-043.

At the Board meeting, the Board authorized Hearings Officer to hear new evidence on any aspect of the application and directed Hearings Officer to review the intent and scope of authority to allow a resident of a dwelling to operate a home occupation.

#### May 8<sup>th</sup> Public Hearing

Another public hearing was held on this matter on May 8, 2018. Hearings Officer summarized the contents of the Planning Division file and announced that those contents and the file in CU 17-033 were 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. | Martha Lind        | Proponent         |
| 3. | Steven N. Lind     | Proponent         |
| 4. | Perry Quiring      | Opponent          |
| 5. | Rodney Oullette    | Opponent          |
| 6. | Marralene Oullette | Opponent          |

Before the hearing commenced, Marralene Oulette approached the dais and submitted a document with photographs and two annotated site plans attached. The document was made a part of the record as Exhibit 3, and a copy was made and provided to Applicant during the hearing.

Because the Board ordered Hearings Officer to receive new evidence, Hearings Officer unsealed the submission (received after

5:00 p.m. on February 7, 2018, from Marralene Mennis Oullette) on May 4, 2018. The document is made a part of the record as Exhibit 4, and a copy was made and provided to Applicant during the hearing.

With its "Letter appealing the denial of conditional use permit," Applicant submitted an affidavit signed by Martha Lind and Stephen N. Lind as Secretary and President, respectively of L&L Extractions, Inc. The affidavit states:

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.

Objections were not raised to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing.

After the close of the hearing and the record, Mr. Perry Quiring approached the dais and attempted to hand Hearings Officer a half-sheet of yellow-lined paper. Hearings Officer refused to take it, stated that the record is closed.

#### **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 Order of Hearings Officer dated March 20, 2018, is incorporated into this Order by reference and its Findings of Fact and Additional Finding of Facts and Conclusions of Law are adopted in full.
2. In that Order, Hearings Officer denied the application because:

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. (Emphasis in original.)

3. On appeal, Martha Lind and Stephen N. Lind submitted new evidence to the effect that Martha Lind had been made an officer of L&L Extractions, Inc. Ms. Lind argues that the change in her status related to the corporation that would operate the home

occupation satisfies the requirement that a resident of the property operate the home occupation.

4. In response to a question from Hearings Officer, Mr. Lind testified that Stephen N. Lind and Martha Lind are the two directors on the board of directors of L&L Extractions, Inc., with equal voting rights in the operation of the corporation.

#### V. Additional Findings of Fact and Conclusions of Law

##### The Lind Conditional Use Application

1. Martha Lind is a resident of a dwelling on the subject property.
2. Stephen N. Lind is not a resident of a dwelling on the subject property.
3. Under MCC 17.137.060(C)(1), a home occupation "shall be operated by a resident of the dwelling on the property on which the business is located."
4. In the Order dated March 20, 2018, Hearings Officer discussed the definition of "operate" from Webster's Third New International Dictionary of the English Language, unabridged (2002).<sup>1</sup>
5. Hearings Officer concludes that, for the purpose of the authorization for a resident of a dwelling to operate a home occupation under MCC 17.137.060, control is an essential element of the meaning of the verb "operated." The ordinance authorizes a resident of a dwelling to operate a home occupation. The ordinance does not authorize a resident and a nonresident to cooperate a home occupation.
6. Because Martha Lind shares "equal control and involvement with the day to day operation and management of [the legal entity that engages in] the business" with Stephen N. Lind, a non-resident, Hearings Officer finds that Martha Lind does not exercise sufficient control over the operation of the legal entity that would engage in the business of the home occupation. **The application will be denied.**<sup>2</sup>

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<sup>1</sup> Webster's Third New International Dictionary of the English Language, unabridged (2002) is the dictionary used by the Oregon Appellate Courts to construe statutory language. Webster's Collegiate Dictionary (Tenth and previous editions) and Webster's Third New International Dictionary of the English Language, unabridged (2002 and previous editions) are used by the Office of the Legislative Counsel to draft bills.

<sup>2</sup> The conclusion in this paragraph constitutes the basis for the denial of this application. The review of the intent and scope of the authority to allow home occupations is for the use of the Board when analyzing the public policy considerations raised by home occupation applications.

Authorization of Home Occupations under ORS 215.448 (1)

7. Hearings Officer construes the intent and scope of ORS 215.448 (1) to consider whether - specifically in resource zones<sup>3</sup> - the authority for a resident of the subject property to operate a home occupation includes authority to control the operation of a corporation - a separate legal entity - that would engage in the business of the home occupation.
8. ORS 215.448 provides a limited authorization for commercial use of any zone that allows residential use, subject to conditional approval of the county. In the context of resource zones, the statute requires the home occupation to "be operated by a resident or employee of a resident of the property on which the business is located." ORS 215.448 provides, in part:

The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone or a mixed farm and forest zone that allows residential uses, the following standards apply to the **home occupation**:

- (a) It shall be operated by a resident or employee of a resident of the property **on which the business is located**;
- (b) It shall employ on the site no more than five full-time or part-time persons;
- (c) 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; and
- (d) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located. (**Emphasis added.**)

9. In interpreting a statute, our task is to discern the intent of the legislature.<sup>4</sup>

Among those that guide our construction of the statutes at issue in this case is the essential principle that the best evidence of what the legislature intended a statute to mean is the wording of the statute that it adopted into law.<sup>5</sup>

At the first level of analysis, we examine the text and context of the statute.<sup>6</sup> If the legislature's intent is clear from those

<sup>3</sup> The term "resource zones" is used as a reference to exclusive farm zones, forest zones, and mixed farm and forest zones.

<sup>4</sup> ORS 174.020; *PGE v. Bureau of Labor and Industries*, 317 OR 606, 610, 859 P.2d 1143 (1993).

<sup>5</sup> *Brown v. SAIF Corp. (In re Brown)*, 361 OR 241, 249, 391 P.3d 773 (2017) (Quoting, *State v. Gaines*, 346 OR 160, 171, 206 P.3d 1042 (2009)).

<sup>6</sup> *Portland General Elec. Co. v. Bureau of Labor and Industries*, 317 OR 606, 611, 859 P.2d 1143 (1993).

inquiries, further inquiry is unnecessary.<sup>7</sup> If not, we turn next to legislative history.<sup>8</sup> ORS 174.010 contains the first statutory rule of construction:

In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.

10. Hearings Officer is not aware of a rule of statutory construction designed to remedy the harm caused by an in artfully drafted statute, and this statute gives several indications of having been in artfully drafted. Two examples follow.

First, ORS 215.448 refers to "the governing body of a county or its designate..." Designate is a verb, or an adjective sometimes, but the noun form of the word is designee.

Second, ORS 215.448 uses a personal pronoun - it - to refer to "home occupation" and, in the same sentence, appears to use "business" as a synonym, also referring to "home occupation."<sup>9</sup> But, if "business" is construed as a synonym for "home occupation", that portion of the sentence does not add any meaningful semantic content. That is, if a "home occupation" is allowed to operate substantially in the dwelling of a resident, or other buildings, on the subject property, where else could "the business" be located but on the property? Under ORS 174.010, Hearings Officer is obliged, if possible, to adopt a construction that gives effect to all provisions.

11. Hearings Officer concludes that ORS 215.448 is unclear and inherently ambiguous in the statute's use of the words and phrases, including "resident," "business" and "home occupation." A review of the legislative history of Enrolled House Bill 2625 (1983), provides support for Hearings Officer's conclusions about the intent and scope of the text of ORS 215.448.
12. House Bill 2625 was titled "relating to cottage industries." The bill was introduced by Representative Verger Anderson, co-sponsored by Representatives Peg Jolin and Bill Markham and supported by several Chambers of Commerce in Southern Oregon.<sup>10</sup>

On April 27<sup>th</sup>, while explaining the need for the bill in

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 611-12, 859 P.2d 1143.

<sup>9</sup> See the emphasized portion of the text of ORS 215.448 (1)(a), above.

<sup>10</sup> Written exhibits were submitted by the Sutherlin, Roseburg and Douglas County Chambers of Commerce before the House committee on April 27, 1983, and before the Senate committee on June 27, 1983.

testimony before the House Environment and Energy Committee, Rep. Anderson testified that the issue had become acute when a carriage works business in a resource zone employed a non-relative [apparently in violation of the local zoning ordinance allowing only residents and relatives to be employed by the business]. Rep. Jolin testified that many local zones limit the employment of nonrelatives. When Rep. Throop asked Rep. Anderson about the meaning of accessory use, Rep. Anderson testified that the types of cottage industries he had already described were accessory uses, but that a "large corporation" would not meet the definition. Exhibit E in the House Committee file includes an article from the Oregonian dated April 20, 1983, about the Oregon Small Business Persons of the Year. The article recounts the story of a husband and wife who established a corporation in California before relocating their residence to Eugene and the company into the garage. The issue of employment, and the limit on non-relative employees, was discussed extensively, in an attempt to identify consensus as to the number of employees that distinguish a home occupation from a "regular small business" that could only be located in a commercial or industrial zone.<sup>11</sup>

At the May 20<sup>th</sup> committee meeting, Rep. Priestly asked how many "incorporated businesses" have five or fewer employees. Rep. Priestly did not say, or imply, whether he thought that the bill allowed corporations to engage in home occupations. From the phrasing of the question, Hearings Officer inferred that the question reflected recognition that better statistics would likely be available for corporations from the Office of the Secretary of State.

13. Based on the text in context, after reviewing the legislative history of Enrolled House Bill 2625 (1983), Hearings Officer concludes that it is more likely than not that the Oregon Legislature understood and intended the reference to "business" in ORS 215.448 (1)(a) to authorize a human inhabitant of a dwelling to operate a home occupation, including by exercising control over a corporation that engages in a lawful business purpose of the home occupation.

Having recognized that existing cottage industries had been driven underground by the recent enactment of a statewide land use system and the establishment of resource zones, the Legislature intended, in part, to address unintended consequences of the then-new statewide land use planning system. The Legislature found that rural communities, with large amounts of lands now locked in resource zones, provided insufficient opportunities for the human inhabitants of those communities to

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<sup>11</sup> ORS 215.448 was amended once, in 1995. The statutory limitations in subsection (1), which formerly applied to home occupations in all zones, were limited to exclusive farm zones, forest zones, and mixed farm and forest zones.

develop cottage industries without the substantial investment of capital required to open a facility in a commercial or industrial zone. The Legislature intended to provide an incubator environment in which the growth of "Cottage Industries" could be fostered - as home occupations - in a low-cost environment and relocated, as required effectively for compliance with subsection (1)(d) of ORS 215.448, to a zone more appropriate for large-scale commercial or industrial uses when growth of a business located in a resource zone would begin to unreasonably interfere with the resource uses that Oregon's public policy prefers in resource zones.

14. While the concept of residency applies to legal entities with corporate personhood, in the context of home occupations allowable in resource zones, Hearings Officer construes the "residents of a dwelling" to be the human inhabitants of the dwelling. The residency of a corporation<sup>12</sup> is determined by the jurisdiction in which it is incorporated and the location of the principal place of business.<sup>13</sup> Corporate residency is unrelated to the residential addresses of directors or shareholders.<sup>14</sup> If one were to construe "resident of the property" to include corporate persons, it is easy to envision a scenario in which the directors or shareholders who operate the home occupation are non-residents of the subject property.
15. Because the phrase "on which the **business** is located" in subsection (1)(a) of ORS 215.448, would appear to be semantically null if "business" is construed to be a synonym of "home occupation," Hearings Officer construes the inclusion of that language to reflect the legislature's intent to authorize a resident of a dwelling to operate a home occupation by exercising control over a corporation that engages in the business of the home occupation.
16. When considering an application for a conditional use permit to operate a home occupation, the governing body of a county, or a designate (sic), may be required to analyze the articles of incorporation to determine whether a resident controls the operation of a corporation that engages in the business of a home occupation.

Private corporations (and other business entities established under law), are construed to have corporate personhood separate from the individuals who organize the entities, serve as

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<sup>12</sup> Hearings Officer cites authority for organizing a private corporation organized under ORS chapter 60 as examples. Similar provisions can be identified with respect to the organization of limited liability companies, nonprofit corporations and other business entities.

<sup>13</sup> *State ex rel. Willamette National Lumber Co. v. Circuit Court for Multnomah County*, 187 OR 591, 603, 211 P.2d 994 (1949).

<sup>14</sup> *Id.* See also: ORS 60.304 explicitly allows individual directors to reside out of state. ORS 60.201 (2) allows an annual shareholders' meeting to be held in or out of this state.

directors or are employed as officials serving the directors.<sup>15</sup> A corporation may be established by one or more individuals 18 years of age or older acting as incorporators under ORS 60.044. A corporation must state a lawful business purpose under ORS 60.047 (1) and 60.074. Subject to any limitations in the articles of incorporation, ORS 60.301 requires that "all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the board of directors." If the corporation issues shares with associated voting rights under ORS 60.131, a shareholder may exercise de facto control of the business of the corporation.

17. When HB 2625 A-Engrossed was introduced in the Senate Energy and Environment Committee on June 27<sup>th</sup>, staff introduced the bill as allowing up to five non-relative employees. The text does not specify non-relative employees and, apparently, never did. Rather, the introduction by staff is consistent with testimony in the House committee that existing local zoning ordinances tended to allow relatives to participate in home occupations. Despite the apparent intention of legislators who spoke to the bill, including the sponsors, to retain some aspects of the public policy of local ordinances that were limiting by the bill, Hearings Officer construes the original text as clearly limiting employment by a home occupation to five or fewer individuals.
18. In 1983, when enacted, testimony of the bill's sponsors in the House Committee suggests an intention to set a hard limit on employment generated by a home occupation, notwithstanding the issue of relative versus non-relative employment. That is, when a business operated as a home occupation grows beyond a need for a specified number of employees, the business would be deemed a "regular small business" suitable for relocation to a commercial or industrial zone. When the authority to allow home occupations was modified by Enrolled House Bill 2561 in 1995, the text limiting employment was modified by the phrase "on the site," and the text requiring the business to operate in the dwelling, or other buildings, was modified by the word "substantially." As enacted, the text of ORS 215.448 suggests that the Legislature has not limited the number of employees that a home occupation may employ "off the site" and has not provided a standard, or any criteria, for a county to use in determining the number of employees that a home occupation can employ "off the site," and still be operated "substantially in the dwelling," or other buildings on the subject property, as required for compliance with subsection (1)(c) of ORS 215.448.<sup>16</sup>

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<sup>15</sup> *State ex rel. Willamette National Lumber Co.* at 603, 211 P.2d 994.

<sup>16</sup> Hearings Officer did not perform extensive research into the 1995 amendments.

Legislative history is permitted to resolve ambiguities in a bill. The limit on employment may be considered ambiguous as a result of the addition of the phrase "on the site." However, the office of a judge is "to ascertain and declare what is, in terms or in substance, and not to insert what has been omitted, or to omit what has been inserted." Hearings Officer does not find a provision in the original or amended text of ORS 215.448 upon which to distinguish relative employees from other employees.

#### 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 13<sup>th</sup> day of June 2018. **Except as otherwise provided in this paragraph**, 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. **The Board has waived the payment of a second appeal fee for Applicant.**

DATED at Salem, Oregon, this 29<sup>th</sup> day of May 2018.



B. Harrison Conley  
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: <a href="mailto:gfennimore@co.marion.or.us">gfennimore@co.marion.or.us</a> ) (via email: <a href="mailto:lmilliman@co.marion.or.us">lmilliman@co.marion.or.us</a> ) PW Engineering (via email: <a href="mailto:jasmussen@co.marion.or.us">jasmussen@co.marion.or.us</a> ) Building Inspection (via email: <a href="mailto:twheeler@co.marion.or.us">twheeler@co.marion.or.us</a> ) (via email: <a href="mailto:deubanks@co.marion.or.us">deubanks@co.marion.or.us</a> )
Steven Norman Lind L & L Extractions 3221 Croisan Creek Rd S Salem, OR 97306	Assessor's Office (via email: <a href="mailto:assessor@co.marion.or.us">assessor@co.marion.or.us</a> ) Tax Office (via email: <a href="mailto:adhillon@co.marion.or.us">adhillon@co.marion.or.us</a> ) Code Enforcement (via email: <a href="mailto:bdickson@co.marion.or.us">bdickson@co.marion.or.us</a> ) AAC Member No. 1
Rodney & Marralene Oullette 6685 Orville Rd S Salem, OR 97306	Aileen Kaye 10095 Parrish Gap Rd SE Turner, OR 97392
Perry Quiring 6904 Orville Rd S Salem, OR 97306	Laurel Hines 10371 Lake Dr SE Salem, OR 97306
1000 Friends of Oregon 133 SW 2 <sup>nd</sup> Avenue, Suite 201 Portland, OR 97204 <a href="mailto:meriel@friends.org">meriel@friends.org</a>	

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 21<sup>st</sup> day of May 2018, and that the postage thereon was prepaid.



Joanna Ritchie  
Secretary to Hearings Officer

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:

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| 1. | Brandon Reich      | Planning Division |
| 2. | Steven N. Lind     | Proponent         |
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(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:

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| 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 M CCP 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 CO<sub>2</sub>, 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 (CO<sub>2</sub>) rather than flammable butane or ethanol is used in the extraction process. Still, CO<sub>2</sub> 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 (CO<sub>2</sub>) rather than more flammable butane or ethanol is used in the extraction process. Still, CO<sub>2</sub> 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 4<sup>th</sup> 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 20<sup>th</sup> day of March 2018.

A handwritten signature in black ink, appearing to read 'Ann M. Gasser', written over a horizontal line.

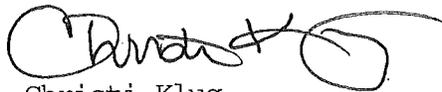
Ann M. Gasser  
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

	<u>Agencies Notified</u>
Martha Lind 6965 Orville Rd S Salem, OR 97306	Planning Division (via email: <u>gfennimore@co.marion.or.us</u> ) (via email: <u>lmilliman@co.marion.or.us</u> ) PW Engineering (via email: <u>jasmussen@co.marion.or.us</u> ) Building Inspection (via email: <u>twheeler@co.marion.or.us</u> ) (via email: <u>deubanks@co.marion.or.us</u> )
Steven Norman Lind L & L Extractions 3221 Croisan Creek Rd S Salem, OR 97306	Assessor's Office (via email: <u>assessor@co.marion.or.us</u> ) Tax Office (via email: <u>adhillon@co.marion.or.us</u> ) Code Enforcement (via email: <u>bdickson@co.marion.or.us</u> ) AAC Member No. 1
Rodney & Marralene Oullette 6685 Orville Rd S Salem, OR 97306	Aileen Kaye 10095 Parrish Gap Rd SE 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 20<sup>th</sup> day of March 2018, and that the postage thereon was prepaid.



Christi Klug  
Secretary to Hearings Officer