

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/PROPERTY LINE ADJUSTMENT NO. 22-018**

APPLICATION: Application of Gareth Davis on behalf of the property owners Helena Agri-Enterprises, LLC and Doerfler Farms Inc. for a combined conditional use permit and property line adjustment to expand an existing fertilizer facility and to adjust the property lines on a 206.69-acre parcel and a 1.51-acre parcel to create a 190.22-acre parcel and a 17.98-acre parcel in an EFU (Exclusive Farm Use) zone located at 13163 Silver Falls Highway SE, Sublimity. (T8S, R1W, Section 15, Tax Lots 401 and 800).

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

EXPIRATION DATE: This conditional use permit is valid only when exercised by **May 31, 2024**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain all required permits from the Marion County Building Inspection Division.
2. **Property line adjustment deeds shall be recorded with the county clerk meeting requirements identified in ORS 92.190(4).** The deeds shall contain the names of the parties, the description of the adjusted lines, references to original recorded documents and signatures of all parties with proper acknowledgment. The deeds shall include a perimeter description of each resulting parcel. **This property line adjustment is not complete until the title transfer instruments accomplishing the property adjustments is recorded by the applicants with the Marion County Clerk.**
3. **Prior to recording the deeds,** the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
4. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.
5. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

***Condition A** – – Prior to PLA survey approval and/or issuance of building permits, including any such agricultural exemptions, dedicate Cascade Hwy public right-of-way to meet the rural Arterial standard of 33 feet over the expanded property frontage, plus reinscribed best-fit tangential corner radius.*

Nexus is the proposed business expansion, and the need to spatially accommodate future roadway safety and drainage improvements, and potentially relocated utilities, of which is generally authorized under MCC 17.119.060.

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

6. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
7. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying restrictions or conditions thereon. It is recommended that agencies mentioned in Finding # below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

8. The applicants should contact the Sublimity Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
9. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 150-day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **May 31, 2022**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective on **June 1, 2022**, 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 at the intersection State HWY 214 and Cascade HWY SE on the north western side of the intersection. The property contains 3 buildings associated with the fertilizer operation currently, and associated tanks and storage areas. The property is flat and graveled and contains no streams, wetlands, unstable soils or geohazards. The parcel is described in Volume 368 Page 49 on April 21st, 1947 and has also been the subject of 6 other conditional use permits for expansion and is therefore considered a legal parcel for land use purposes.
3. Surrounding uses are farm uses in all directions. All parcels are large commercial farm operations that primarily grow grass seed and grains, with the smallest surrounding parcel being 86 acres and the largest at 238 acres.
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 expand an existing fertilizer facility and to adjust the property lines on a 206.69-acre parcel and a 1.51-acre parcel to create a 190.22-acre parcel and a 17.98-acre parcel. The PLA is being done to accommodate the expansion of the fertilizer operation.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING CONDITION

Condition A – Prior to PLA survey approval and/or issuance of building permits, including any such agricultural exemptions, dedicate Cascade Hwy public right-of-way to meet the rural Arterial standard of 33 feet over the expanded property frontage, plus reinscribed best-fit tangential corner radius.

Nexus is the proposed business expansion, and the need to spatially accommodate future roadway safety and drainage improvements, and potentially relocated utilities, of which is generally authorized under MCC 17.119.060.

ENGINEERING REQUIREMENTS

- A. An Access Permit is required to establish a new, relocated Cascade Hwy access approach. The existing access on Cascade Hwy will need to be closed, including roadside ditch cross-section restored.
- B. At this level of development, stormwater detention will be required in association with site area expansion and proposed buildings.
- C. Transportation System Development Charges (SDCs) will be assessed upon application for building permits for the proposed office and warehouse.
- D. Utility service extension work in the public right-of-way requires permits from Land Development Engineering.

ENGINEERING ADVISORIES

- A. DEQ has jurisdiction for erosion control over ground disturbances of 1.0-acre plus.
- B. ODOT has jurisdiction over Silver Falls Hwy SE (SR214).

Marion County Survey Department commented:

1. No survey required. The resultant properties are greater than ten acres.
2. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office prior to submitting the property line adjustment survey. Deed recording reference numbers shall be noted on the survey map. Per ORS 92.190 (4): The deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment. [See Marion County Zoning Code MCC 16.33.140(E) and MCC 17.172.120(E)] Marion County Planning requires perimeter descriptions of the resultant properties.

Oregon Department of Transportation (ODOT) commented "The property at 13163 Silver Falls Hwy SE near Sublimity has an existing highway approach at MP 15.56 which was permitted in 1987 (attached). ODOT has no comments on the proposed conditional use and property line adjustment. The existing permit can continue to be used."

Sublimity Fire District commented "proposed project needs to meet access and water supplier requirements as outlined within the currently adopted Oregon fire code."

Marion County Tax Assessor provided comments related to the subject property's property taxes.

Marion County Building Department commented “Permits may be required for the proposed structures and/or utilities on private property. The storage and processing of fertilizers can create a large fire and life safety concern and consultation with the local fire district is highly recommended.”

All other commenting agencies stated no objection to the proposal.

7. In order to approve a commercial activity in conjunction with farm use the applicant must demonstrate compliance with the specific criteria listed in Chapter 17.136.060(D) of the Marion County Code (MCC). These include:
 - (a) *The commercial activity must be primarily a customer or supplier of farm uses.*

The use is that of a fertilizer manufacturer and delivery service. This is almost exclusively a supplier of farm supplies. This facility provides a vital input of farming for the surrounding farms. The criterion is 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 use enhances the local farming enterprises by offering local manufacturing and delivery of fertilizer and crop protectant. By being such a local service, they aim to reduce prices and improve service to farmers in the area. The criterion is met.
 - (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*

The commercial activity of manufacturing and delivering fertilizer could not happen without the presence of farming in the area, as farmers are almost the exclusive buyer of this fertilizer and crop protectant. Without farming, this business would not be able to be supported here. The criterion is met.
 - (d) *The products and services provided must be essential to the practice of agriculture.*

Fertilizer and crop protectants are standard and essential inputs into commercial farms and the ability for this business to deliver their product off site allows farmers without large trucks to haul fertilizer to be able to receive shipments. The criterion is met.
8. 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.*

As explained in their applicant statement, the expansion of this use will allow them to scale their business in such a way that allows for reduced costs for the supplier and buyer of the product. It will allow them to be more efficient and responsive during peak demand. The criterion is 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 Sublimity Fire District. The criterion is 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.*

As the use is not located near any significant streams, drains, water sheds, unstable soils it can be determined it will not have an adverse effect on these. Additionally, the air quality portions are regulated by DEQ and any required permits would be administered by them, Marion County has no record of air quality concerns at this site. The criterion is met.

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

The applicant states that noise levels should stay constant with this expansion as the use stays the same and is not materially different from commonly accepted farm noise. The criterion is 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 identified water impoundments or mineral aggregate sites on the subject properties. The criterion is met.

9. The criteria for reviewing lot line adjustments within an EFU zone are listed in Chapter 17.136.090(C) MCC. These criteria are as follows:

- (a) *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to MCC 17.136.090(A)(1), the same number of lots or parcels shall be as large or larger than the minimum parcel size after the adjustment. When all lots or parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no lot or parcel shall be reduced below the applicable minimum parcel size. If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.*

The minimum parcel size in this area is calculated to be 120 acres. Tax lot 401 (Parcel A) is currently 206.69 acres and will remain over the minimum parcel size as it will only be reduced to 190.22 acres. Tax lot 800 is already under the minimum parcel size at 1.51 acres will remain under the minimum parcel size as it is being increased to 17.98 acres. The criterion is met.

- (b) *If the minimum parcel size in MCC 17.136.090(A)(1) is larger than 80 acres, and a lot or parcel subject to property line adjustment is smaller than the minimum parcel size but larger than 80 acres, the lot or parcel shall not be reduced in size through property line adjustment to less than 80 acres.*

No parcel is smaller than the minimum parcel size but larger than 80 acres. The criterion does not apply.

- (c) *Any property line adjustment shall result in a configuration of lots or parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.*

This lot line adjustment will keep the vast majority of the Doerfler Farms tract in active farm use, and half of the area to be included in the commercial expansion will remain in grass seed production until a second expansion is needed. This will be in line with the current configuration of the fertilizer operation. The criterion is met.

- (d) *A property line adjustment may not be used to:*

- 1. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;*
- 2. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting*

- vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or*
3. *Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.*

Neither parcel has a dwelling currently and no dwellings are being proposed as part of this property line adjustment. The criterion does not apply.

- (e) *Any property line adjustment that results in an existing dwelling being located on a different parcel shall not be subject to the standards in MCC 17.136.030(A) so long as the adjustment:*
 1. *Does not increase the any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and*
 2. *Does not increase the potential number of dwellings on the resulting parcels.*

Neither parcel has a dwelling currently and no dwellings are being proposed as part of this property line adjustment. The criterion does not apply.

10. Based on the above findings it has been determined that the applicant's request meets all applicable criteria for a and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: May 16, 2022

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.