

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/PARTITION CASE NO. 22-035**

APPLICATION: Application of Shannon Davidson on behalf of Joanne H. Anderson, LLC for a conditional use permit to build a seed cleaner as a commercial activity in conjunction with farm use on a 31.76-acre parcel and to partition a 31.76-acre parcel into two parcels totaling 20.4 acres and 11.36 acres in an EFU (Exclusive Farm Use) zone located at 18906 Butteville Road NE, Aurora. (T4S, R1W, Section 30, Tax Lot 700).

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 **October 27, 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. The applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036). Following plat approval, it shall be recorded with the Marion County Clerk (plat instructions enclosed).
3. The partition plat shall be recorded.
4. **The new parcel and seed cleaning business shall use the address of 18916 Butteville Rd NE, Aurora, OR 97002.**
5. The applicant shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
6. 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 partition plat approval and/or in conjunction with issuance of a building permit / agricultural exemption certificate, whichever occurs first, apply for an access permit to formally inspect, and modify if required, the driveway approach re-paving at the Butteville Road southern flag connection that appears to have been recently done without a required permit.*

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

7. 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.
8. 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.
9. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

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:

10. The applicants should contact the Woodburn Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
11. A portion of this property has been identified as wetland on the statewide wetland's inventory. If the site is a jurisdictional wetland, this proposal may require a permit from the Division of State Lands and/or the Army Corps of Engineers. You must obtain any necessary state or federal permits before beginning your project. Marion County is not liable for any delays in the processing of a state or federal permit.
12. 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 **October 27, 2022**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 28, 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 (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the east side of Butteville Rd NE, approximately 1000 feet south of its intersection with St. Paul HWY NE. The property contains a dwelling built in 1930, accessory farm structures, a small solar farm and land in current grass seed production. The property was first described by deed volume 317, page 1, on January 26, 1945. The parcel is considered legal for land use purposes.
3. Surrounding uses are farm uses in all directions. The area is surrounded by parcels in grass seed and hay production, with an existing seed laboratory on tax lot 100, directly west of the property. All adjacent properties are zoned EFU.

4. Soil Survey of Marion County Oregon indicates 55.1% of the subject property is composed of high-value farm soils.
5. The applicant is proposing to build a seed cleaner as a commercial activity in conjunction with farm use on a 31.76-acre parcel and to partition a 31.76-acre parcel into two parcels totaling 20.4 acres and 11.36 acres so that the existing dwelling and seed cleaning business will be on separate parcels.
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 partition plat approval and/or in conjunction with issuance of a building permit / agricultural exemption certificate, whichever occurs first, apply for an access permit to formally inspect, and modify if required, the driveway approach re-paving at the Butteville Road southern flag connection that appears to have been recently done without a required permit.*

ENGINEERING REQUIREMENTS

- B. *On the partition plat show an access easement over the southern flag lot connection from Butteville Road to the proposed north parcel. The reason for this is that the north flag lot strip is roughly 1500 feet in length, yet only 16 feet in width, which may not meet fire district standards for a Fire Apparatus Access Road as a sole access relative to acquisition of future building approvals. Furthermore, the north flag connection crosses an unprotected, at-grade rail crossing.*
- C. *Transportation System Development Charges will be assessed for the proposed seed cleaner building and any future dwelling.*

Marion County Survey commented:

1. Per ORS 92.055 – Parcels over 10 acres can be unsurveyed.
2. Per ORS 92.050, plat must be submitted for review.
3. Checking fee and recording fees required.
4. A current or updated title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.

Marion County Septic commented:

A site evaluation approval and construction-installation permit will be required for the seed cleaning facility office. Seed cleaning wastewater may not be disposed of into a septic system, the applicant will be required to describe how this wastewater will be treated and/or disposed of. A record review with a site plan showing the existing septic system serving the dwelling and a future repair area is required for the partition.

Marion County Building Inspection commented:

Permit(s) would be required for the construction of the seed cleaning building and storage buildings. Recommend applicant(s) consult with an Oregon licensed architect or engineer for the design of the building and systems for structural, energy, and fire/life safety purposes. Lastly, if the proposed property line is located less than 3ft from any residential building, and 10ft from any commercial use building, additional fire resistive construction alterations may be needed to the structures.

Woodburn Fire District commented:

Need to see the fire access road to cleaner (width, length of access road). Also need to know if cleaner building falls under ag-building per state statute or a process as a business.

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 both in this case. The seed cleaning facility relies on un-cleaned seeds to operate and will grow much of the seeds onsite, in the current fields on the property. The main part of the business, however, is the sale of cleaned seeds to various companies who then distribute them to the market. The proposed use has been found to primarily be a customer/supplier of farm uses. 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 farming community by offering locally cleaned seeds at a location close to many grass seed farms. The use will also provide jobs to the area and a greater capacity for seed cleaning in northern Marion County, where the predominant crop is grass seed/hay. The criterion is met.

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

The commercial act of seed cleaning relies on the growth and eventual planting of grass seed, they must happen together in the local community. Without one of these parts, there would be no need for seed cleaning. The criterion is met.

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

Professional cleaned grass seed is essential to agriculture as the seeds must be free from contaminants to provide a robust crop and high-quality crop. The service is only viable because commercial agriculture relies on it. 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.*

The use is complimentary to farm use and creates a necessary product for farms across Marion County and Oregon. The use may decrease farm costs as this would reduce the miles traveled for buyers of seed in the area. The criterion is met.

MCC 17.136.050(B) requires that a declaratory statement meeting the requirements of MCC 17.136.100(C) be filed and this serves to notify the applicant and subsequent owners that there are farm or timber operations in the area.

(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 District and Marion County Sheriff's Office. 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.*

The use will be in a new building, built to meet applicable building codes and is not expected to impact watersheds or groundwater as the building and foundation will control run off. The applicant also states they have purchased high quality air filters to control for dust and air quality. Portions of this project may be regulated by DEQ and ODA for additional water and air quality standards. The criterion is met.

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

Nosie is expected to be in line with accepted noises generated from commercial farm operations and shall meet Marion County Nosie Ordinances. The noise will also be buffered by the proposed building. 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 water impoundments on the subject property or adjacent to the property. There is a stream that runs along the southern edge of the property. The stream is not expected to be impacted as the seed cleaning happens inside a controlled building and the building will have adequate septic and is proposed to be placed over 200 feet from the stream. The criterion is met.

9. In order to approve a partition for a commercial use in conjunction with farm use, the applicant must demonstrate compliance with the partition requirements for the EFU zone listed in MCC 17.136.090 (B). These include:

B. Requirements for Creation of New Non-Farm Parcels.

1. A new non-farm parcel may be created for uses listed in MCC 17.136.040(C) and (K) and MCC 17.136.050, except the residential uses in MCC 17.136.050(A) and (B).

The parcel is being created for a Commercial Use in Conjunction with Farm Use 17.136.050 D(2). The criterion is met.

2. The criteria in MCC 17.136.060 applicable to the use shall apply to the parcel.

The use has been reviewed against these criteria and has been found to meet them, discussion is in finding (8). The criterion is met.

3. A non-farm parcel shall not be approved before the non-farm use is approved.

The use is being approved through this concurrent application. The criterion is met.

4. A division of land for non-farm use shall not be approved unless any additional tax imposed for the change has been paid, or payment of any tax imposed is made a condition of approval.

Marion County Tax Assessor has commented that all taxes are paid, and the parcel will still remain in farm use after the division. Grass seed will still be grown commercially on the parcel. 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: October 12, 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.