

Attention Property Owner: A land use proposal has been submitted for property near where you live or property you own elsewhere. State law requires the county notify property owners within a certain distance from this property. The proposal and address is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION
CONDITIONAL USE CASE NO. 19-014**

APPLICATION: Application of John and Annie Henninger for a conditional use to expand an existing dog kennel on a 45.40 acre property in an EFU (Exclusive Farm Use) zone located at 889 Ankeny Hill Rd SE, Jefferson (T9S; R3W; Section 22; tax lot 100).

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 28, 2021**. 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. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

***Condition A** - In conjunction with building permit issuance, obtain an Access Permit to pave back 20 feet from the edge of pavement with hot mix asphalt. Access Work must be completed prior to final building inspection.*

***Condition B** - Prior to building permit issuance, Applicant shall provide evidence of permit coverage and/or work acceptance from Division of State Lands / Army Corp. of Engineers for the culvert installation and stream crossing of Mill Creek on the subject property.*

3. Prior to building permits, the applicant shall provide evidence to the Planning Director of meeting the requirements of the "Oregon Fire Code Section 507" as required by Jefferson Fire District.
4. Prior to building permits, the applicant shall sign and submit a Declaratory/Farm-Forest Statement (enclosed) 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.

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

5. 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.
6. 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. The applicant is advised of the following:

7. The applicants should contact the Jefferson 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. Contact Scott Shepherd at (541)-327-2822 extension 202.
8. The applicants should contact Marion County Land Development and Engineering (503)584-7714 for additional Engineering Requirements and Advisories, listed in Finding #5 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 28, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 29, 2019** unless further consideration is requested.

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

1. The subject parcels are 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. Kennels may be expanded subject to the criteria in the zone.
2. The subject property is located on the northwest corner of Ankeny Hill Rd SE and I-5. The property identified as tax lot 100 contains a dwelling, kennel, accessory structures, well and septic system. These uses were approved by Variance/Farm Dwelling 91-1 (V/FD91-1) and is considered a legal parcel for land use purposes.
3. Surrounding properties in all directions are zoned EFU and in farm use.
4. The applicants are proposing to expand their existing kennel operation by constructing an additional building to be used for indoor play areas for the dogs and up to an additional 30 kennels to be located adjacent to the existing kennel. The building will be used by staff only and will not have any public access.
5. Public Works Land Development and Engineering Permits (LDEP) requested that the following conditions be included in the land use case:

“Condition A - In conjunction with building permit issuance, obtain an Access Permit to pave back 20 feet from the edge of pavement with hot mix asphalt. Access Work must be completed prior to final building inspection.

Access work is typically a Requirement, but has been elevated to a Condition as a matter of timing. Nexus for the above Condition is a proposed intensification of use, and is in general accordance with Marion County Code Sections 11.10 and 17.118.070 whereby driveways must meet sight distance, design, spacing, and safety standards. Per Marion County records a change in use for the access was approved in 2017 from Farming/Other: Dog Training to Residential use. If this land use action is approved the access will need to be approved for Commercial use.

Condition B – *Prior to building permit issuance, Applicant shall provide evidence of permit coverage and/or work acceptance from Division of State Lands / Army Corp. of Engineers for the culvert installation and stream crossing of Mill Creek on the subject property.*

Construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner.”

LDEP also requested that the following Requirements included:

“C. 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, per Marion County Ordinances #00-10R. The Applicant’s Architectural Representative was incorrectly informed that there is no rate for a kennel established and was quoted at \$62 per kennel (equated to horse stalls) via email on March 8, 2019. This is not the appropriate SDC rate as, currently, dog kennels are \$112 per dog per the 2008 Rural Transportation SDC update, and horse stalls are \$63 per stall. We will honor the use of the most up to date, adopted horse stall SDC rate at the time of building permit application for this expansion. Please note that future expansions will be assessed at the appropriate SDC rate(s) as set at that time.”

Marion County Building Inspection commented that permits will be required.

Marion County On-Site Sewage commented that septic approval/authorization may be required from Oregon Department of Agriculture.

Jefferson Fire District commented that Oregon Fire Code Section 507 requires that the owner install a dry hydrant system from their pond that holds greater than 4000 gallons of water with an unobstructed access for fire apparatus.

6. In order to approve an expansion of the existing dog kennel the applicant must demonstrate compliance with the specific criteria listed in MCC Chapter 17.136.050(D)(3):

Expansion of a lawfully established dog kennel with filing of the declaratory statement in MCC 17.136.100(C).

MCC Chapter 17.136.100(C) requires a Declaratory Statement:

The owner of property for which a dwelling, structure or other specified use has been approved shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the subject lots or parcels:

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 which 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 or 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.

This can be made a condition of any approval.

7. 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.

- (b) The use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.*
- (c) Adequate fire protection and other rural services are or will be available when the use is established.*
- (d) The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
- (e) Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- (f) 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.*

The proposed building will contain indoor play areas for the dogs and up to an additional 30 kennels, to be located adjacent to the existing kennels located on the property. The applicant states the indoor play area and additional kennels will have little impact on farm uses in the area. It can be made a condition of any approval that the property owner files a declaratory statement that serves to notify the applicant that there are farm or timber operations in the area which could have an impact on the proposed use. Jefferson Fire District provides fire protection and is requesting that the owner install a dry hydrant system from their pond that holds greater than 4000 gallons of water with an unobstructed access for fire apparatus. Marion County provides law enforcement to the property. Other rural services, such as a septic system and well, are available to the property. There is no evidence to indicate that the use will have a negative impact on nearby lands devoted to farm use. The property is not within a wildlife habitat area or geologically hazardous area. There is no evidence of significant odors or noxious matter emitted from the premises that would affect air or water quality. Noise generated by the proposed activity should be comparable to agricultural activities. The proposal meets 7(a), (b),(c),(d), (e) and (f).

8. Based on the above findings it has been determined that the applicants' request to expand an existing kennel meets all applicable criteria and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: May 13, 2019

If you have any questions regarding this decision contact Patty Dorr 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.