

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

**NOTICE OF DECISION
CONDITIONAL USE CASE NO. 19-022**

APPLICATION: Application of Dale Wurdinger, on property owned by Mel P. Sherbourne, for a conditional use to operate a hemp processing facility as a commercial activity in conjunction with farm use on a 81.25 acre parcel in an EFU (Exclusive Farm Use) zone located at 10825 Waypark Drive NE, Salem (T6S; R1W; Section 5; tax lot 800).

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

EXPIRATION DATE: This permit is valid only when exercised by **July 31, 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 drainfield 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 condition has been satisfied:

Condition A – Prior to beginning the business or within 90 calendar days from the date of an approval, Applicant shall apply for and obtain an Access permit and complete any improvements necessary to bring the access(es) in conformance with Marion County Standards.

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

3. 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.
4. The industrial hemp processed at the facility must be grown in the state of Oregon.
5. 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 #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

6. The applicants should contact the Mt. Angel 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.
7. 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 **July 31, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 1, 2019** 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 north side of Waypark Road NE in the 10,800 block. The property contains an existing dwelling, garage, farm structures, and well. The property was subject of a previous land use case, Property Line Adjustment 17-023, which approved the property in its current configuration. The property is a legal parcel for land use purposes.
3. Surrounding properties in all directions are zoned EFU and in farm use.
4. Soil Survey for Marion County, Oregon indicates 90% of the subject property soils are high-value farmland.
5. The applicant is proposing to establish an industrial hemp processing facility as a commercial activity in conjunction with farm use in an existing building.
6. Public Works Land Development and Engineering Permits (LDEP) requested the following be included in the land use decision:

“Condition A – Prior to beginning the business or within 90 calendar days from the date of an approval, Applicant shall apply for and obtain an Access permit and complete any improvements necessary to bring the access(es) in conformance with Marion County Standards.

Access is typically an Engineering Requirement but has been elevated to a Condition as a matter of timing. In accordance with Marion County Code 11.10, driveway permits will be required for any new access or change in use (in this instance from Residential/Farming to Commercial) of the existing access to the public right-of-way. Driveways must meet sight distance, design, spacing, and safety standards. It appears a pole was placed at the location of the southern driveway where it connects to Waypark Drive as a means of closure sometime between 2012 and 2014; this is not an acceptable mean of access closure and constitutes a hazard to the traveling public. If permanent closure of this access is preferable indicate as such on the Permit Application.”

“B. Unnamed drainageways traverse the property per Marion County GIS records. 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.

C. Per Marion County GIS records a National Wetlands Inventory (NWI) wetland exists near the center of the property.

D. Application for the Access Permit can be found on our website at:
<https://www.co.marion.or.us/PW/Engineering/permit/Pages/default.aspx>”

Marion County Building Inspection commented that a building permit is required for a change in use or a change in occupancy.

Marion County Building Inspection Onsite Wastewater Specialist commented that septic authorization most likely required.

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.*
 - (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*
 - (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*
 - (d) *The products and services provided must be essential to the practice of agriculture.*
8. Hemp was approved to be grown as an agricultural crop by H.R. 525 during the 113th U.S. Congress in 2013. H.R. 525 defines "industrial hemp" to mean the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-nine tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. The Oregon Department of Agriculture regulates the growing of industrial hemp and handling of hemp seed in the state of Oregon and requires registration of businesses that grow and/or process industrial hemp as well as periodic testing of the crop to ensure that THC levels do not exceed 0.3%.
- The applicant is proposing to process industrial hemp for its oil. The hemp processed at the facility will be grown on the property and may also be grown elsewhere in the state of Oregon. The proposal is for processing an agricultural crop grown in the state of Oregon, which is considered to be the local area and is essential to the practice of agriculture. The commercial activity meets the criteria for operating in conjunction with farm use.
9. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in Marion County Code (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) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
 - (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.*
 - (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
 - (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.*

10. Since the use has been determined to be in conjunction with farm use, it is not expected to have a negative impact on nearby lands devoted to farm use. The proposal meets #9(a). The Mt. Angel Fire District serves the parcel and all other needed services are currently available to the site. The proposal satisfies the criterion in #9(b). The property is not within a wildlife habitat area, groundwater limited area, or geologically hazardous area. Portions of the property are within the 100 year floodplain of the Pudding River. However, there are no structures within the floodplain. 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 #9(c) and (d). There are no potential water impoundments, identified wetlands, or significant mineral and aggregate sites identified by the Comprehensive Plan in the area. The criterion in #9(e) is met.

11. Based on the above findings it has been determined that the applicant's request meets all applicable criteria to establish a hemp processing facility as a commercial activity in conjunction with farm use and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: July 16, 2019

If you have any questions regarding this decision contact Brandon Reich 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.