

## NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-2017-7866  
**Permit:** Design Review  
**Location:** 18 NE Evans Road  
Tax Lot 1000, Section 34D, Township 1 North, Range 4 East, W.M.  
Tax Account #R944340890 Property ID #R32266  
**Applicants:** Charles and Kathleen O'Neil  
**Owners:** Charles and Kathleen O'Neil  
**Base Zone:** Multiple Use Agriculture – 20 (MUA-20)  
**Overlays:** None

**Summary:** Applicant is requesting a Design Review permit relating to land use case #T3-2016-5412 that established a facility for the commercial processing of agricultural products (marijuana).

**Decision:** Approved with Conditions

Unless appealed, this decision is effective Wednesday, November 15, 2017 at 4:00 PM.

Issued by:

By:   
Rithy Khut, Planner

For: Michael Cerbone, AICP  
Planning Director

Date: Wednesday, November 1, 2017

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**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

Copies of the referenced Multnomah County Code (MCC) can be obtained by visiting our website at <https://www.multco.us/landuse/> or by contacting our office at (503) 988-3043.

## **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. Pursuant to MCC 37.0690(B) as applicable, this land use permit shall expire as follows:
  - When construction has not commenced within two (2) years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development, or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.
  - When the structure has not been completed within four (4) years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

**Note:** The land use application T3-2016-5412 authorizing the Conditional Use expires prior to this application expiring. Expiration of land use case T3-2016-5412 may impact the validity of this permit pursuant to MCC 37.0690

3. All conditions of approval from the Conditional Use land use case, T3-2016-5412 are applicable and must be satisfied as part of this application.
4. As an on-going condition, the property owner or their representatives shall:
  - Continuously maintain the landscaping (i.e. trees and other vegetation) that are located between the Evans Road and the Barn.
  - Water planting areas and landscaping, if required for the survival of the landscaping. [35.7055(C)(4) & (5)]

**Note:** Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, Rithy Khut, at (503) 988-0176, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

### **Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### **1.00 Project Description:**

**Staff:** The applicant is requesting a Design Review permit that is required as part of land use case #T3-2016-5412, which was a Conditional Use Permit establishing a facility for commercial processing of agricultural products (marijuana) primarily raised or grown in the region. The subject property is located within the Multiple Use Agriculture – 20 (MUA-20) zoning district in the East of the Sandy River Rural area.

### **2.00 Property Description & History:**

**Staff:** The subject property is 8.20 acres and is located on Evans Road. The property is located within the Multiple Use Agriculture – 20 (MUA-20) zoning district in the East of the Sandy River Rural area. The property has no environmental overlays.

Originally owned by James Ward Evans and Marlon Keith Evans, Jr., the property was eventually bought on June 12, 1980 by the current owners, Charles R. O’Neil and Kathleen M. O’Neil. Multnomah County Assessment, Records, and Taxation (DART) records and building permit records indicate that the property currently has a single-family dwelling assessed in 1981 and a farm building assessed in 1988. Below are land use and building permits that are on record:

- 04/03/1975 – Building Permit 750436 – Construction of a new single-family dwelling
- 07/10/1980 – Building Permit 801391 – Placement of a temporary mobile home
- 07/17/1980 – Building Permit 801447 – Construction of a new single-family dwelling
- 12/11/1986 – Building Permit – Construction of a building with daylight basement and 2 above ground floors in a wood frame
- 08/10/2006 – Building Permit — Addition to single-family dwelling
- 04/12/2016 – Building Permit #BP-2016-4918 – Zoning Verification for Oregon Health Authority Medical Marijuana Business
- 04/14/2016 – Building Permit #BP-2016-4927 – Oregon Liquor Control Commission Land Use Compatibility Statement for Marijuana
- 07/21/2016 – Land Use Case #T3-2016-5412 – Conditional Use Permit for Marijuana Processing Facility and Marijuana Business Registration
- 10/25/2016 – Building Permit #BP-2016-6180 – Department of Environmental Quality Land Use Compatibility Statement for On-site Sanitation
- 01/18/2017 – Building Permit #BP-2017-6684 - Oregon Liquor Control Commission Land Use Compatibility Statement for Marijuana Production (Indoor)
- 03/01/2017 – Building Permit #BP-2017-7159 - Oregon Liquor Control Commission Land Use Compatibility Statement for Marijuana Production (Indoor and Outdoor)
- 03/24/2017 – Building Permit #BP-2017-7366 - Oregon Liquor Control Commission Land Use Compatibility Statement for Marijuana Processing
- 04/06/2017 – Building Permit #BP-2017-7432 – Alteration to Accessory Building to add a bathroom on the main floor



- 06/09/2017 – Land Use Case #T1-2017-7867 – Marijuana Business Registration (Indoor and Outdoor Production)
- 09/01/2017 - Oregon Liquor Control Commission Land Use Compatibility Statement for Marijuana Processing

In addition to the single-family dwelling and farm building, the property has a mixture of open and forested areas. The forested areas are located mainly to the eastern portion of the property with the residential structures located on the western portion of the property closer to Evans Road.

### **3.00 Code Compliance and Applications Criteria:**

#### **3.01 37.0560 CODE COMPLIANCE AND APPLICATIONS.**

**Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.**

**(A) A permit or other approval, including building permit applications, may be authorized if:**

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

**(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.**

**Staff:** There are no active code compliance issues associated with the property, nor are there any known violations and as such, the County has the authority to issue this land use decision. *This criterion is met.*

### **4.00 Lot of Record Criteria**

#### **4.01 § 35.0005 Definitions**

**Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 35.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.**

(a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) "Satisfied all applicable land division laws" shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.
2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

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#### **§ 35.3170 LOT OF RECORD**

(A) In addition to the Lot of Record definition standards in MCC 35.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;
- (2) July 10, 1958, F-2 zone applied;
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (4) October 6, 1977, RR zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;

(7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 35.3185, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 35.3160, 35.3175, and 35.4300 through 35.4360, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be a lot of record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;
- (2) An area of land created by the foreclosure of a security interest.
- (3) An area of land created by court decree.

**Staff:** The subject property for this land use case, tax lot 1000, 1 North, 4 East, Section 34 was found to be a Lot of Record in land use case #T3-2016-5412 (Exhibit B.3).

The subject property was created as part of a Lot of Exception in land use case LE 3-79 and LD 33-79 on May 10, 1979. On June 12, 1980, a warranty deed from Book 1447, Page 1364, was recorded to reflect creation of the two lots of exception as approved in LD 33-79. The warranty deed from Book 1447, Page 1364 conveyed what is now known as tax lot 1000 from Lawrence Evans, the applicant for LD 33-79, to Charles and Kathleen O'Neil, the current property owners. Additionally, the current Bargain and Sale deed recorded as 2010-010896 on January 21, 2010 matches the description from land use case LD 33-79 that created to two lots of exception. Therefore, the property, Tax lot 1000, 1 North, 4 East, Section 34 continues to be Lot of Record.

*This criterion is met.*

## **5.00 Multiple Use Agriculture MUA-20 Criteria**

### **5.01 § 35.2830 CONDITIONAL USES**

The following uses may be permitted when found by the approval authority to satisfy the applicable ordinance standards:

(B) The following Conditional Uses pursuant to the provisions of MCC 35.6300 through 35.6660:

- (2) Commercial processing of agricultural products primarily raised or grown in the region;

**Staff:** The applicant has previously applied for a Conditional Use in land use case #T3-2016-5412. The Hearings Officer approved the Conditional Use permit with conditions. As required by MCC 35.6300 through 35.6660, the use is subject to Design Review approval. Therefore,

the applicant is seeking a Design Review Permit that is associated with the Conditional Use Permit, T3-2016-5412.

## **6.00 Design Review Criteria**

### **6.01 § 35.7020 APPLICATION OF REGULATIONS**

**(A) Except those exempted by MCC 35.7015, the provisions of MCC 35.7000 through 35.7060 shall apply to all conditional and community service uses, and to specified uses, in any district.**

**Staff:** The applicant has previously applied for a Conditional Use in land use case #T3-2016-5412. The Hearings Officer approved the Conditional Use permit with conditions. One of those conditions required that, "Within six months of the approval date of these permits, the property owner, or their representatives shall apply for Design Review Permit that includes addressing the requirements of MCC 35.4100 through MCC 35.4215, as applicable, for Off-Street Parking and Loading [MCC 35.2880, MCC 35.4105, MCC 35.4120, and MCC 35.6325]." The applicant is now applying for a Design Review Permit that is associated with the Conditional Use Permit in land use case #T3-2016-5412.

**(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 35.4205 shall only be subject to the following Design Review approval criteria: MCC 35.7050(A)(1)(a) and (1)(c), (4) and (7), except when located in the SRC zone districts.**

**(C) All other uses are subject to all of the Design Review Approval Criteria listed in MCC 35.7050 and 35.7055.**

**(D) Alteration or modification of the physical development previously reviewed through the Design Review process shall be subject to the Design Review Approval Criteria listed in MCC 35.7050 and 35.7055**

**Staff:** Pursuant to MCC 35.4205(E), the number of off-street parking spaces required for the proposed processing facility is two spaces. The proposed processing facility will utilize 560 square feet of the previously permitted barn. The applicant stated in land use case T3-2016-5412, that at any given time, there would be a maximum of three employees (Exhibit B.3). Therefore, the applicant will need to provide a minimum of two parking spaces. Based on the site plan, two parking spaces will be available adjacent to the previously permitted barn and there is adequate turning and maneuvering areas for those spaces.

*The applicant is required to provide two parking spaces and will be subject to MCC 35.7050(A)(1)(a) and (1)(c), (4) and (7), which is discussed below.*

### **6.02 § 35.7050 DESIGN REVIEW CRITERIA**

**(A) Approval of a final design review plan shall be based on the following criteria:**

**(1) Relation of Design Review Plan Elements to Environment.**

**(a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.**



**Staff:** The previously permitted barn that will be used for the marijuana business is currently located 175 feet from the front of the property. As can be seen from Google Street View, the Barn is hardly noticeable from Evans Road because the majority of the barn is located behind the single-family dwelling (Exhibit B.5). The front of the property contains multiple large trees that help blend the natural environment and existing structures on the site. The applicant has also provided photos of the barn as part of their submittal in T3-2016-5412, which provides photos the barn on the subject property and other outbuildings within the area (Exhibit B.4). The barn being utilized for the conditional use is red and comparable in size to other outbuildings on adjacent properties. *This criterion is met.*

**(c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.**

**Staff:** The design of the barn is red and comparable in size to other outbuildings on adjacent properties. The parking areas are located adjacent to the barn and vehicular accessways are gravel, which is common as a pavement substrate. The overall design of these elements is human scale and is common within a rural setting. The design of the barn and use on the property is designed to serve its function and is indistinguishable from other rural properties. *This criterion is met.*

**(4) Preservation of Natural Landscape – The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.**

**Staff:** The applicant is not proposing any landscape alterations to the property. Additionally because the barn being used for the Conditional Use was previously permitted, trees or shrubs shall be disturbed. *This criterion is met.*

**(7) Buffering and Screening – Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.**

**Staff:** The previously permitted barn that will be used for the marijuana business is currently located 175 feet from the front of the property. As can be seen from Google Street View, the Barn is hardly noticeable from Evans Road because the majority of the barn is located behind the single-family dwelling (Exhibit B.5). The front of the property contains multiple large trees that help buffer and screen the Conditional Use established on the site. The applicant has also provided photos of the barn as part of their submittal in T3-2016-5412, which provides photos the barn on the subject property and other outbuildings within the area (Exhibit B.4). The barn being utilized for the conditional use is red and comparable in size to other outbuildings on adjacent properties. The location, size, and design of the barn help minimize adverse impacts on the site and neighboring properties. *This criterion is met.*

## **6.03 § 35.7055 REQUIRED MINIMUM STANDARDS**

**(A) Private and Shared Outdoor Recreation Areas in Residential Developments:**

**(1) Private Areas – Each ground level living unit in a residential development subject to design review plan approval shall have an accessible outdoor private space of not less than 48 square feet in area. The area shall be enclosed, screened or otherwise designed to provide privacy for unit residents and their guests.**

**(2) Shared Areas – Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development, as follows:**

**(a) One or two-bedroom units: 200 square feet per unit.**

**(b) Three or more bed-room units: 300 square feet per unit.**

**Staff:** Residential development is not being proposed, nor will the site contain any recreational areas or facilities. Therefore, these criteria do not apply. *These criteria are met.*

**(B) Storage**

**Residential Developments – Convenient areas shall be provided in residential developments for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc. These areas shall be entirely enclosed.**

**Staff:** Residential development is not being proposed; therefore, this criterion does not apply. *This criterion is met.*

**(C) Required Landscape Areas**

**The following landscape requirements are established for developments subject to design review plan approval:**

**(1) A minimum of 15% of the development area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.**

**Staff:** The development approved as land use case T3-2016-5412 permitted a conditional use that allowed for the conversion of 560 square feet of existing accessory building to be used for the processing of agricultural products. The Barn being used for the Conditional Use was established in 1986. There is no net change in the developed area and thus no additional landscaping requirement. *This criterion is met.*

**(2) All areas subject to the final design review plan and not otherwise improved shall be landscaped.**

**Staff:** The characteristics of the site are typical of many rural properties with mixed areas of farmland and forestland. The Barn being used for the Conditional Use was established in 1986. *This criterion is met.*

**(3) The following landscape requirements shall apply to parking and loading areas:**

**(a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totaling no less than 25 square feet per parking space.**

**Staff:** The Barn being used for the Conditional Use was established in 1986. Pursuant to MCC 35.4205(E), the number of off-street parking spaces required for the proposed processing facility is two spaces. Since the applicant is proposing less than 10 parking spaces, these requirements do not apply. *This criterion is met.*

**(b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.**

**Staff:** The parking and loading areas are approximately 200 feet from the front property line adjacent to Evans Road, over 100 feet from the side property line to the north and south, and over 600 feet from the rear property line (Exhibit A.2). The parking and loading areas exceed the minimum requirement distances and the area is landscaped with trees and other vegetation. *This criterion is met.*

**(c) A landscaped strip separating a parking or loading area from a street shall contain:**

- 1. Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;**
- 2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and**
- 3. Vegetative ground cover.**

**(d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.**

**(e) A parking landscape area shall have a width of not less than 5 feet.**

**Staff:** As can be seen from Google Street View, the Barn is not noticeable from Evans Road because the majority of the barn is located behind the single-family dwelling (Exhibit B.5). The front of the property contains multiple large trees that help buffer and screen the Conditional Use established on the site. These trees are located between the parking areas and the street. The trees are larger deciduous trees that are spaced appropriately for their species. *These criteria are met.*

**(4) Provision shall be made for watering planting areas where such care is required.**

**Staff:** This requirement will be met with a condition of approval. *As conditioned, this criterion is met.*

**(5) Required landscaping shall be continuously maintained.**

**Staff:** This requirement will be met with a condition of approval. *As conditioned, this criterion is met.*

**(6) Maximum height of tree species shall be considered when planting under overhead utility lines.**

**Staff:** No overhead utility lines are located on the subject property or landscaped area. *This criterion is met.*

## 7.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Design Review of the Conditional Use approved in T3-2016-5412 in the Multiple Use Agriculture – 20 zone. This approval is subject to the conditions of approval established in this report.

## 8.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits with a “\*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2017-7866 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	06/09/2017
A.2	1	Site Plan	06/09/2017
A.3	1	Letter of Authorization from Kathleen O’Neil	07/07/2017
‘B’	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1N4E34D -01000 (R944340890)	06/09/2017
B.2	1	Department of Assessment, Records and Taxation (DART): Map for 1N4E34D -01000 (R944340890)	06/09/2017
B.3	20	Land use case #T3-2016-5412	10/02/2017
B.4	6	Photos of subject property submitted at Hearing for T3-2016-5412 on March 10, 2017	10/02/2017
B.5	1	Google Street View Image of Subject Property	10/02/2017
‘C’	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	07/07/2017
C.2	5	Opportunity to comment & mailing list	10/11/2017
C.3		Administrative decision & mailing list	