



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 19, 2025

Department: Public Works

Title:

Consider accepting appeal of Hearings Officer decision denying Conditional Use 24-034/Jensen Living Trust

Management Update/Work Session Date: N/A

Audio/Visual aids ☐

Time Required: 5 min

Contact: Austin Barnes

Phone: 503-566-4174

Requested Action:

Staff recommended motion: Deny the appeal of Hearings Officer's decision denying Conditional Use 24-034/Jensen Living Trust, and uphold the hearings officer's decision.

Other motion options for consideration are:

1. Accept the appeal and hold a hearing on the matter at a date to be determined..
2. Remand the matter back to the hearings officer.

Issue, Description
& Background:

Conditional Use Case 24-034 was for operation of a machine and equipment assembly business on a 1.58 acre parcel in a Community Commercial (CC) zone located at 8186 River Rd NE. On September 24, 2024 the Planning Director approved the request, which was subsequently appealed. On December 12, 2024 the Hearings Officer held a hearing. and the record remained open until January 16, 2025. The Hearings Officer issued a decision on February 18, 2025, denying CU24-034. On March 3, 2025, the applicant appealed the Hearings Officer's decision to the Board of County Commissioners. Staff reviewed the information submitted with the appeal and determined that there is no new evidence being provide, no new argument, and the board is not being asked to make any policy decisions. Staff recommends the board not accept the appeal.

Financial Impacts:

None

Impacts to Department
& External Agencies:

None

List of attachments:

Appeal, Hearings Officer Decision

Presenter:

Austin Barnes

Department Head
Signature:

for Brandon Reel

MARION COUNTY
BILL BURGESS
MARION COUNTY CLERK

Receipt #: 50879

Receipt Date: 03/03/2025 10:53 AM

Station: 1

Cashier: SKM

Receipt Name: JENSEN LIVING TRUST

Comments:

Thank You!

BILL BURGESS, MARION COUNTY CLERK

Please retain this receipt for your records.

Documents are recorded as submitted. The Marion County Clerk's Office assumes no liability for sufficiency, validity, or accuracy.

Miscellaneous Fees		
Appeal Fee	YES	\$500.00

Receipt Total	\$500.00
CASH	\$500.00

To County clerk
3-3-25
please accept
this as my
Appeal of the
Hearing officers
Decision on
CU-24-034

Thank you
Rosa Jensen
Rosa Jensen Trustee

Another Printer

Free Pick-up & Delivery - (503) 378-7754 - Fax: (503) 585-3219
Letterhead - Envelopes - Business Cards - Business Forms
Flyers - Brochures - Newsletters & More
Lowest Prices & Your Satisfaction Guaranteed
anotherprinter@comcast.net

BEFORE THE LAND USE HEARINGS OFFICER
OF MARION COUNTY, OREGON

In the matter of an appeal of the Director's
Decision approving Jensen Living Trust's
Conditional Use Permit (CUP) to continue
operation of a machine and equipment
assembly business known as Oquamax

Applicant: Jensen Living Trust

Appellant(s): Jeff and Tamara Mullins, RaeAnn
McDonald, on behalf of Quinaby
Neighborhood Concerned Citizens

FINAL ORDER

Case No. CU 24-034

APPEAL GRANTED/DIRECTOR'S DECISION
RESCINDED

This matter comes before the Marion County Hearings Officer on appeal of the Director's decision approving the Jensen Living Trust's application for conditional use permit (CUP), for the operation of a machinery and equipment assembly business on a 1.58-acre parcel in the Community Commercial zone, located at 8186 River Rd. NE, Salem (T6S; R3W; Section 24AC; Tax lot 200). The business is known as Oquamax. This decision primarily focuses on the appeal issues set forth by the Appellants. However, pursuant to Marion County Code (MCC) Section 17.119.150 and ORS 215.416(11)(a)(D), the appeal hearing was a *de novo* proceeding. As such, the Hearings Officer addresses all of the approval criteria in this Order.

I. Background

The subject property is located on River Rd NE, approximately 1,200 feet north of Quinaby Rd NE, in the Community Commercial (CC) zone, and is 1.58 acres in size. The property, according to the applicant, consists of a single-story dwelling, several utility buildings, and two 4,000 square-foot general purpose buildings. The subject property is located within the Quinaby Community Plan area, and is surrounded on all sides by the Acreage Residential (AR) zone.

On September 24, 2024, the Director issued a decision approving the application for a CUP. A copy of that decision is in the record. The Notice of Decision was mailed on September 25, 2024, to all parties on the interested parties list.

The appellant filed a timely appeal on October 10, 2024, and the appeal narrative and supporting documents are in the record. In accordance with MCC Section 17.119.150, the Hearings Officer's review of the Director's decision is *de novo*. Therefore, this Order addresses all of the Code criteria identified in the Director's decision and code sections the Hearings Officer found to be relevant. The specific appeal issues raised by the Appellants are addressed throughout.

CU 24-034 – ORDER
Jensen Living Trust
Page 1

Letters were received from Marion County Sheriff Code Enforcement, Marion County Public Works Building & Planning Division, Marion County Land Development Engineering & Permits, Marion County Public Works Onsite Wastewater Specialist, and the Marion County Tax Office. These letters are all in the record.

Processing timelines for the application are as follows:

Application submitted:	September 5, 2024
Application Deemed Complete:	September 24, 2024
150-day deadline with extension(s):	July 2, 2025

The public hearing notice was mailed as required on November 21, 2024. The public hearing was held on December 12, 2024. The Planning Division file was inventoried and made part of the record. The applicant and appellants testified, in addition to members of the public. The following persons appeared and provided testimony on the application:

1. Rex Mullins
2. Tamara Mullins
3. RaeAnn McDonald
4. Kelly Bushman
5. Kimberly Rayburn
6. Timothy Rayburn
7. Kelly Stewart
8. Jeff Mullins
9. Jeremy Jensen
10. Roger Jensen – Owner
11. Andres Martinez – Owner

Numerous pieces of written testimony and evidence were provided before, during, and after the hearing. All have been included in the record.

No objections were raised to notice, bias, conflicts of interest, or jurisdiction. At the conclusion of the hearing, the record was left open as follows: Open Record 1 ended on January 2, 2025, Open Record 2 ended on January 9, 2025, and the applicant's final argument was due January 16, 2025. All of the documents submitted during these periods are included in the record.

The Applicant's testimony referenced a civil suit and settlement between certain Appellants and Applicant. The Hearings Officer finds this suit has no bearing on the present case, and as such will not consider it in this Order.

Appeal

The appeal consists of four areas of contention:

- Appeal Issue 1: The decision on appeal did not contain a full or accurate record of the history of the site and its continuing code violations.

Although not directly relevant to the present case, it should be noted that the record on appeal now includes information on the history of the site and alleged continuing code violations.

- Appeal Issue 2: Findings in the decision referenced Case No. 78-024, which included conditions of approval which have not been met and improperly were not incorporated into the decision at issue.

Compliance with conditions of approval in a prior case are beyond the scope of this proceeding.

- Appeal Issue 3: Parking, loading, ADA requirements, and traffic concerns were not addressed in the decision and continue to be significant issues for neighbors and people using River Road and Quinaby/Clearlake Rd.

ADA requirements are beyond the scope of this proceeding. Parking, loading, and traffic concerns are addressed in detail below.

- Appeal Issue 4: The decision substantially misrepresented the nature and scope of the activities being conducted on the site; includes concerns about carrying capacity of the soil, noise, stormwater, environmental contamination, etc.

These concerns are addressed in detail below.

II. Relevant Criteria and Findings

Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Accordingly, applicants must prove, by substantial evidence in the record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, applicants

have not met their burden and the application must be denied. If the evidence for every criterion is in applicants' favor, the burden of proof is met and the application approved.

A. Marion County Code Title 17, Rural Zoning, Chapter 17.119, Conditional Uses

Relevant criteria for this application are found in Chapter 17.119 as follow:

17.119.010 General Concept

A conditional use is an activity which is basically similar to other uses permitted in the zone, but due to some of the characteristics of the conditional use, which are not entirely compatible with the zone, such use could not otherwise be permitted in the zone. Review of the proposed conditional use by the director, planning commission or hearings officer will ensure that the use will be in consonance with the purpose and intent of the zone.

The purpose of this proceeding is to ensure that the proposed conditional use will be in consonance with the purpose and intent of the zone.

17.119.020 Application

An application for a conditional use may be filed by the following only:

A. The owner of the property that is the subject of the application;

Under MCC 17.119.20, a conditional use application may only be filed by certain people, including the owner of the property subject to the application. This application was filed by Jensen Living Trust, the owner of the subject property. This criterion is satisfied.

17.119.025 Required signatures

A. Applications shall include the following signatures:

1. Signatures of all owners of the subject property;

B. Prima Facie Proof of Ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any owner, or when any person states that he or she is buying the property under contract, the director, planning commission, hearings officer and the board may accept these statements to be true, unless the contrary be proved, and except where otherwise in this title more definite and complete proof is required. Nothing herein shall prevent the director, planning commission, hearings officer or board from demanding proof that the signer is the owner, officer, attorney in fact, or agent.

Under MCC 17.119.025, a conditional use application shall include signatures of certain people, including all owners of the subject property. The owner of the subject property

is Jensen Living Trust. The application was signed by Roger Jensen as trustee. No party to the proceeding has contested this issue and the Hearings Officer accepts this signature as meeting the requirements of MCC 17.119.025.

17.119.060 Conditions

The director, planning commission or hearings officer may prescribe restrictions or limitations for the proposed conditional use but may not reduce any requirement or standard specified by this title as a condition to the use. [...]The director, planning commission or hearings officer shall impose conditions only after it has determined that such conditions are necessary for the public health, safety or general welfare, or to protect persons working or residing in the area, or the protection of property or improvements in the area. The director, planning commission or hearings officer may prescribe such conditions it deems necessary to fulfill the purpose and intent of this title.

Because the Director's decision is rescinded, this section is not applicable.

17.119.070 Findings of the Hearings Officer

Before granting a conditional use, the director, planning commission or hearings officer shall determine:

A. That it has the power to grant the conditional use;

Under MCC 17.119.030, the Hearings Officer may hear and decide those applications for conditional uses that are listed in Title 17.

B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;

The Hearings Officer finds that many of the criteria in MCC 17.143.040 are intended to implement and provide more specificity to this general requirement that the proposed conditional use be in harmony with the purpose and intent of the zone. For the reasons discussed in the analysis of the MCC 17.143.040 criteria, the Hearings Officer finds that this criterion is not met.

C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

As discussed above, conditions of approval are not required.

17.119.110 Decision review

The director shall decide whether to approve or deny the conditional use based on the Marion County Comprehensive Plan and applicable criteria in this title. The decision should be made and notice thereof sent within 30 days of an application being determined to be complete. This administrative decision shall be final unless an appeal is taken as provided below.

As discussed above, the decision at issue is the Director's decision from September 2024, which granted conditional use approval. That decision was appealed and this Order follows.

17.119.120 Information from Affected Agencies

Upon receipt of an application under MCC 17.119.100, a summary of the application shall be distributed to the public works department, assessor's office, building inspector, other affected agencies and the recognized area advisory committee with a request for comments or suggestions regarding those features that come within the scope of their activities.

Comments from affected agencies are in the record.

17.119.130 Notification of Decision

Notice of the decision and information on the appeal process shall be sent to the applicant, the owner(s) of the subject property, the co-tenants of the subject property if the property is owned by tenants in common, affected agencies and members of the recognized area advisory committee requesting information, others requesting notification, and all landowners within the required notification area.

This procedure was followed in this case, as discussed above.

17.119.140 Appeal

After the director's final action on the application, interested persons may appeal the decision no later than 15 days after the decision is mailed.

As provided above, the appeal was timely filed.

17.119.150 Public Hearing and Decision on Appeals

If the director's decision is appealed, the hearings officer or planning commission shall conduct a public hearing in accordance with Chapter 17.111 MCC. Notice of an appeal of the director's decision shall be mailed to the applicant, those requesting notice of a hearing and all landowners within the required notification area at least 20 days prior to the hearing date. The notice shall be consistent with the requirements in ORS 197.763(3). Failure to

receive such notice by mail shall not affect the validity of the proceedings. The public hearing before the hearings officer or planning commission shall be de novo.

As provided above, this standard is met.

17.119.160 Appeal to the Board

A. An appeal may be taken to the board by any person, firm, or corporation, or by an officer, department, board or commission of any public corporation or political subdivision of the state of Oregon, aggrieved or affected by the decision of the planning commission or hearings officer on an application for a conditional use. An appeal must be filed with the county clerk within 15 days from the date of mailing of notice of the decision of the planning commission or hearings officer.

The appeal shall be filed in duplicate and one copy thereof shall be forwarded immediately by the clerk to the board. The appeal shall state wherein the planning commission or hearings officer failed to conform to the provisions of this title.

B. When an appeal is filed it shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of such appeal by the board.

C. The board shall review the action of the planning commission or hearings officer and may refer the matter back to the planning commission or hearings officer for further consideration, in which case the planning commission or hearings officer shall conduct such further investigation if it is deemed advisable and report its findings to the board. The board may summarily, after considering the application and appeal and finding that the facts therein stated do not warrant any further hearings, affirm the action of the planning commission or hearings officer and deny the appeal. If the board is of the opinion that the facts in the case warrant further action, the board shall give notice of the time and place of such hearing in the same manner as set forth in MCC 17.111.030. After the hearing, the board may reverse or affirm or may impose such conditions as the facts warrant and may grant a conditional use, and its decision or determination shall be final. Any hearing may be continued to a time and day certain or as otherwise provided for by re-noticing the hearing.

D. If the board exercises its authority, pursuant to MCC 17.110.765, to make the initial determination on a land use application, the decision of the board is final and appealable only to the Oregon Land Use Board of Appeals.

A party may further appeal this Order to the Board of Commissioners. More detailed appeal information can be found at the end of this Order.

17.119.180 Effective date of conditional use

Conditional uses granted by the director, planning commission or hearings officer under the provisions of this title shall not be effective until 15 days after the mailing of the notice of decision; provided, however, in case call up of the proceedings has been requested by the board or an appeal has been taken as herein provided, the conditional use shall not be effective until the planning commission, hearings officer or board has acted on the call up or appeal.

The conditional use is not granted and therefore this section is not applicable.

17.119.220 Resubmission of CU application

No application which has been denied wholly or in part by the director, planning commission, hearings officer or by the board shall be resubmitted for a period of one year from such denial, unless consent for resubmission be given by the director, two-thirds of the members of the planning commission, the hearings officer or the board.

The denial of the applicant's conditional use permit in this appeal means the application cannot be re-submitted for a period of one year from the date of this Order, unless consent to do so is provided by a review authority.

B. Marion County Code Title 17, Rural Zoning, Chapter 17.143, CC (Community Commercial) Zone

Relevant criteria for this application are found in Chapter 17.143 as follow:

17.143 Community Commercial Zone

17.143.010 Purpose

The purpose of the CC (community commercial) zone is to implement the rural development policies of the Comprehensive Plan. This zone is applied to land committed to or intended for commercial uses within urban unincorporated communities, rural communities, and rural service centers, as those terms are defined in the Comprehensive Plan and Oregon Administrative Rules. The uses within the CC zone are functionally classified by description of the particular activity or by reference to a category in the "Standard Industrial Classification Manual, 1987" (SIC). The SIC index number is referenced as an aid to interpretation of uses. Where the term used to describe a use is defined in Chapter 17.110 MCC, the definition takes precedence over any SIC classification.

17.143.020 Permitted uses.

Within any CC community commercial zone no building, structure, or premises shall be used, or arranged, except as permitted by this title. Only the following uses may be permitted in

the specified unincorporated community, as those communities are defined in the Comprehensive Plan:

A. All Communities. The following uses are permitted in an existing building or a new or expanded building up to 4,000 square feet in a rural community or in a new or expanded building up to 8,000 square feet in an urban community, subject to MCC 17.143.060(D):

- 1. Automobile repair (SIC 7532 and 7538);*
- 2. Restaurant (SIC 5812);*
- 3. Tavern (SIC 5813);*
- 4. Office for professional services;*
- 5. Nursery, lawn and garden supply store (SIC 5261);*
- 6. Used merchandise store (SIC 5932);*
- 7. Hardware store (SIC 5251);*
- 8. Meat and fish markets (SIC 5421);*
- 9. Fruit and vegetable market (SIC 5431);*
- 10. Candy, nut, and confectionery store (SIC 5441);*
- 11. Retail bakery (SIC 5461);*
- 12. Gift and souvenir shop (SIC 5947);*
- 13. Retail art dealer;*
- 14. Service station (SIC 5541);*
- 15. Household appliance store (SIC 5722);*
- 16. Radio, television, and consumer electronics store (SIC 5731);*
- 17. Sporting goods store (SIC 5941);*
- 18. Book store (SIC 5942);*
- 19. Florist (SIC 5992);*
- 20. Coin-operated laundry and dry cleaning (SIC 7215);*
- 21. Photographic studio (SIC 7221);*
- 22. Beauty and barber shop (SIC 7231 and 7241);*
- 23. Shoe repair shop (SIC 7251);*
- 24. Repair services, including electrical; watch, clock and jewelry; reupholstery and furniture (SIC 76);*
- 25. Watch, clock and jewelry repair (SIC 763);*
- 26. Video tape rental (SIC 7841);*
- 27. Gunsmith;*
- 28. Special trade contractors (SIC 17).*

B. All Communities. The following uses are permitted without size limitations, unless specified in an unincorporated community designated in the Comprehensive Plan:

- 1. Grocery store, limited to a maximum of 8,000 square feet of floor space in an urban community and a maximum of 4,000 square feet of floor space in a rural community (SIC 5411 and 5499);*
- 2. Agricultural equipment repair;*

3. *Agricultural services (SIC 07);*
4. *Caretaker's dwelling;*
5. *Uses legally established and existing on July 19, 2000. Such uses are permitted pursuant to this section only on the lot(s) or parcel(s) where they existed on July 19, 2000;*
6. *Wireless communication facilities attached, subject to MCC 17.125.110 and pursuant to MCC 17.115.110;*
7. *Expansion of an existing commercial use under the following circumstances:*
 - a. *The use will have a maximum floor space of 4,000 square feet in a rural community or 8,000 square feet in an urban community after the expansion; or*
 - b. *The use is intended to serve the community and surrounding rural area or the travel needs of people passing through the area;*
8. *Fire station;*
9. *Public and private utility facilities and buildings including cooperatives necessary for public service.*

F. Quinaby.

Public warehousing and storage (SIC 422) with a maximum of 4,000 square feet of floor space.

The use proposed by the Applicant (SIC 5084, establishments primarily engaged in the whole sale distribution of industrial machinery and equipment) is not an allowed use within the CC zone.

17.143.030 Conditional uses

When authorized under the procedure provided for conditional uses in this title, the following uses will be permitted in a CC zone, subject to MCC 17.143.040:

- A. Home occupations, subject to MCC 17.120.075;*
- B. Retail and service uses not listed in MCC 17.143.020 and not exceeding 4,000 square feet of floor space in a rural community nor 8,000 square feet of floor space in an urban community (SIC 50 through 89 except 70 and 88);*
- C. Wireless communications facilities subject to MCC 17.120.080.*
- D. Medical marijuana dispensary (see MCC 17.110.374), subject to MCC 17.120.120 and not exceeding 4,000 square feet of floor space in a rural community nor 8,000 square feet of floor space in an urban community.*

The Applicant has applied for a conditional use permit under 17.143.030(B), citing SIC 5084¹, which is within the specified SIC range. The Hearings Officer understands the proposal to be

¹ The Hearings Officer notes that there is some question whether the proposed use in fact qualifies under SIC 5084 (Wholesale Trade – Industrial Machinery and Equipment). Because the result of this Order is to deny the requested conditional use permit, resolving the question of qualifying under SIC 5084 is not necessary

limited to what is referred to as "Building A" on the property, which is 4,000 square feet in size. These criteria are met.

17.143.040 Approval standards for conditional uses

Conditional use requests in the CC zone are subject to all the following criteria:

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;

The subject property does not abut lands devoted to farm or forest use and there is no evidence in the record suggesting that this proposal would force a significant change in, or significantly increase the cost of, accepted farm or forest practices on the EFU lands located further to the east. This criterion is met.

B. The proposed use will not, by itself or in combination with existing uses in the community, result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations;

There is some conflicting evidence in the record regarding public health hazards and adverse environmental impacts. Many of the issues raised on this subject are not relevant to this proceeding because they do not directly pertain to the proposed use, e.g. proximity of the site's septic field to a nearby well.

As relevant here, the Appellants have provided photos of a container of Xylol (a toxic chemical) onsite, and argued that it represents a public health or environmental hazard. The Applicant has responded that there was no evidence in the photo of any leak or spillage, that the container was located outside for pickup and disposal off site, and that the Xylol was being used as paint thinner and did not pose any public health or environmental hazard. The Hearings Officer finds that the photo and presence of Xylol on site, without more, does not constitute a public health or environmental hazard.

To the extent the noise issues raised by Appellants could be construed as a public health hazard, they are addressed below.

Based on the foregoing, this criterion is met.

C. The proposed use will not, by itself or in combination with existing uses in the community, exceed the carrying capacity of the soil or of existing water supply resources and sewer services;

There is some evidence in the record that suggests the carrying capacity of the soil in the area of the subject property may be exceeded. However, there is no evidence in the record that the present proposal has any bearing on that issue. There is also no evidence that the proposal

would exceed existing water supply resources, and there are no sewer services in the area. This criterion is met.

D. The traffic generated by the proposed use is consistent with the identified function, capacity, and level of service of transportation facilities serving the community; and

Compliance with this criterion is a close question. The evidence in the record shows that the *volume* of traffic generated by the proposed use is relatively low and therefore consistent with the identified function, capacity, and level of service of transportation facilities serving the community. However, there is significant evidence in the record that the *nature* of the traffic generated by the proposed use is problematic in this area. Specifically, the cranes and oversized vehicles needed to transport equipment to and from this site cause significant negative usability and safety impacts on the abutting transportation facilities (e.g. River Rd NE) by blocking traffic on a 55 mph road. These impacts are amplified by the limited access to this site.

Ultimately, the burden of proof lies with the Applicant. The Hearings Officer finds that the Appellants have raised significant and credible concerns regarding—and provided substantial evidence of—inconsistencies between the traffic generated by the proposed use and the identified function, capacity, and level of service of transportation facilities serving the community, and that the Applicant has failed to show by a preponderance of the evidence that this criterion has been met. Therefore, the Hearings Officer finds that this criterion is not met.

E. The proposed use will not create significant adverse effects on existing uses or permitted uses on adjacent land, considering such factors as noise, dust and odors.

There is conflicting evidence in the record relating to noise associated with the proposed use and whether it causes significant adverse effects on existing uses on adjacent land.

The Appellants and others have testified that the proposed use (which is already occurring on the property) results in loud noise for extended durations, which adversely impacts the neighboring residential uses. This testimony appears credible. The Appellants have also provided noise meter readings that appear to support these claims, but the accuracy of these readings is questionable because they were not performed by a trained technician and the calibration of the equipment is not known.

The Applicant has provided noise data from a monitoring service located on site. However, the data presented poses numerous issues relating to its configuration and assumptions, as well as credibility.

For one, the volume threshold settings for the monitoring do not appear to be set appropriately or consistently. From the data provided, it is evident that the thresholds are sometimes set at 65 dBA and sometimes at 75 dBA. Any noises below these thresholds would not trigger a report. It is difficult to tell from the data provided why or when the thresholds change during a given day. The Hearings Officer also notes that the volume limits in the County's noise

ordinance, found in MCC 8.45.050, are 55 dBA at night and 65 dBA during the day. Although not specifically referenced in MCC 17.143.040, these regulations provide some guidance for what may be considered an adverse impact due to noise and would be a more reasonable threshold for monitoring.

More importantly, the monitoring service reports demonstrate that the monitoring is “offline” for extended periods of time, which appear to consistently occur during daytime business hours when sound levels could reasonably be expected to be the highest.

Considering all of the evidence in the record, the Hearings Officer finds that the Applicant has not met its burden of proof to show that the proposed use will not create noise with significant adverse effects on existing use on adjacent land. This criterion is not met.

The Applicant has made some reference to efforts to contain or limit noise, and the Hearings Officer considered whether conditions of approval could be used to meet this criterion. However, it appears to the Hearings Officer that loud noises are inherent to the proposed use—including metal impact, grinding, and vehicular (cranes and other large vehicles) noises cited by Appellants. Additionally, while some of the work can be performed inside of buildings, some of it necessarily must be performed outdoors. The Hearings Officer therefore finds that the Applicant has not shown that control of noise to the extent that it would not create significant adverse impacts on existing uses is feasible. Therefore, a condition of approval would not be appropriate.

C. Other Criteria

Appellants and others have cited some additional criteria they believe to be relevant to this proceeding, including MCC 17.143.060 (Property development standards) and MCC 17.143.070 (Landscaping). These provisions are not included as criteria for approval or denial of a conditional use permit under Chapter 17.143 and, moreover, relate to the physical development of the site, rather than the type of use on the site. Therefore, the Hearings Officer finds that they do not apply and that the only relevant criteria are those discussed above.

III. Conclusion

For the foregoing reasons, the Hearings Officer finds that Applicant has not met its burden of proving the applicable standards and criteria for approval of a conditional use permit have been met. Therefore, the conditional use application is DENIED and the original Director’s decision is rescinded.

IV. Appeal Rights

In accordance with MCC 17.119.160, an appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555

Court St. NE, Suite 2130, Salem, OR 97301) by 5:00 p.m. within 15 days from the date of mailing of notice of the decision of the hearings officer.

The appeal shall be filed in duplicate and shall state wherein the hearings officer failed to conform to the provisions of Title 17.

When an appeal is filed, it shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of such appeal by the Board of Commissioners.

The Board shall review the action of the hearings officer and may:

- Refer the matter back to the hearings officer for further consideration,
- Summarily affirm the action of the hearings officer and deny the appeal,
- Conduct a hearing and reverse or affirm or impose such conditions as the facts warrant.

The decision of the Board will be final, and appealable only to the Land Use Board of Appeals.

DATED this 18th day of February, 2025.



Joshua P. Soper
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Jensen Living Trust

Roger & Debora Jensen

5434 River Rd N., #323

Salem, OR 97303

Rex, Jeff & Tamara Mullins

2992 Aubrey Lane NE

Keizer, OR 97303

Raeann McDonald

2962 Aubrey Lane N

Salem, OR 97303

Timothy & Kimbrly Rayburn

8136 River Rd. NE

Salem, OR 97303

Andres Martinez

2989 Buena Crest Lane

Keizer, OR 97303

Roger Kaye

Friends of Marion County

P.O. Box 3274

Salem, OR 97302

Area Advisory Committee # 4

County Agencies Notified:

Assessor's Office (via email)

assessor@co.marion.or.us

Tax Collector (via email)

NMcVey@co.marion.or.us

ADhillon@co.marion.or.us

Surveyor's Office (via email)

KInman@co.marion.or.us

Fire District (via email)

Marion County Fire District 1

300 Cordon Rd. NE

Salem, OR 97301

paulas@mcfd1.com

Planning Division (via email)

breich@co.marion.or.us

abarnes@co.marion.or.us

ediaz@co.marion.or.us

Building Inspection (via email)

pwolterman@co.marion.or.us

Kaldrich@co.marion.or.us

ABammes@co.marion.or.us

CTate@co.marion.or.us

Public Works LDEP Section (via email)

jrasmussen@co.marion.or.us

meldep@co.marion.or.us

JShanahan@co.marion.or.us

School District (via email)

Gervais School District

PO Box 100

Gervais, OR 97026

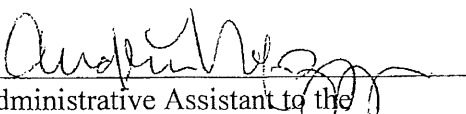
Sandra_segura@gervais.k12.or.us

Code Enforcement (via email)

CGoffin@co.marion.or.us

JTaylor@co.marion.or.us

By mailing them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 18th day of February, 2025 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer

BEFORE THE LAND USE HEARINGS OFFICER
OF MARION COUNTY, OREGON

In the matter of an appeal of the Director's Decision approving Jensen Living Trust's Conditional Use Permit (CUP) to continue operation of a machine and equipment assembly business known as Oquamax

Applicant: Jensen Living Trust

Appellant(s): Jeff and Tamara Mullins, RaeAnn McDonald, on behalf of Quinaby Neighborhood Concerned Citizens

FINAL ORDER

Case No. CU 24-034

APPEAL GRANTED/DIRECTOR'S DECISION
RESCINDED

This matter comes before the Marion County Hearings Officer on appeal of the Director's decision approving the Jensen Living Trust's application for conditional use permit (CUP), for the operation of a machinery and equipment assembly business on a 1.58-acre parcel in the Community Commercial zone, located at 8186 River Rd. NE, Salem (T6S; R3W; Section 24AC; Tax lot 200). The business is known as Oquamax. This decision primarily focuses on the appeal issues set forth by the Appellants. However, pursuant to Marion County Code (MCC) Section 17.119.150 and ORS 215.416(11)(a)(D), the appeal hearing was a *de novo* proceeding. As such, the Hearings Officer addresses all of the approval criteria in this Order.

I. Background

The subject property is located on River Rd NE, approximately 1,200 feet north of Quinaby Rd NE, in the Community Commercial (CC) zone, and is 1.58 acres in size. The property, according to the applicant, consists of a single-story dwelling, several utility buildings, and two 4,000 square-foot general purpose buildings. The subject property is located within the Quinaby Community Plan area, and is surrounded on all sides by the Acreage Residential (AR) zone.

On September 24, 2024, the Director issued a decision approving the application for a CUP. A copy of that decision is in the record. The Notice of Decision was mailed on September 25, 2024, to all parties on the interested parties list.

The appellant filed a timely appeal on October 10, 2024, and the appeal narrative and supporting documents are in the record. In accordance with MCC Section 17.119.150, the Hearings Officer's review of the Director's decision is *de novo*. Therefore, this Order addresses all of the Code criteria identified in the Director's decision and code sections the Hearings Officer found to be relevant. The specific appeal issues raised by the Appellants are addressed throughout.

Letters were received from Marion County Sheriff Code Enforcement, Marion County Public Works Building & Planning Division, Marion County Land Development Engineering & Permits, Marion County Public Works Onsite Wastewater Specialist, and the Marion County Tax Office. These letters are all in the record.

Processing timelines for the application are as follows:

Application submitted: September 5, 2024
Application Deemed Complete: September 24, 2024
150-day deadline with extension(s): July 2, 2025

The public hearing notice was mailed as required on November 21, 2024. The public hearing was held on December 12, 2024. The Planning Division file was inventoried and made part of the record. The applicant and appellants testified, in addition to members of the public. The following persons appeared and provided testimony on the application:

1. Rex Mullins
2. Tamara Mullins
3. RaeAnn McDonald
4. Kelly Bushman
5. Kimberly Rayburn
6. Timothy Rayburn
7. Kelly Stewart
8. Jeff Mullins
9. Jeremy Jensen
10. Roger Jensen – Owner
11. Andres Martinez – Owner

Numerous pieces of written testimony and evidence were provided before, during, and after the hearing. All have been included in the record.

No objections were raised to notice, bias, conflicts of interest, or jurisdiction. At the conclusion of the hearing, the record was left open as follows: Open Record 1 ended on January 2, 2025, Open Record 2 ended on January 9, 2025, and the applicant's final argument was due January 16, 2025. All of the documents submitted during these periods are included in the record.

The Applicant's testimony referenced a civil suit and settlement between certain Appellants and Applicant. The Hearings Officer finds this suit has no bearing on the present case, and as such will not consider it in this Order.

Appeal

The appeal consists of four areas of contention:

- Appeal Issue 1: The decision on appeal did not contain a full or accurate record of the history of the site and its continuing code violations.

Although not directly relevant to the present case, it should be noted that the record on appeal now includes information on the history of the site and alleged continuing code violations.

- Appeal Issue 2: Findings in the decision referenced Case No. 78-024, which included conditions of approval which have not been met and improperly were not incorporated into the decision at issue.

Compliance with conditions of approval in a prior case are beyond the scope of this proceeding.

- Appeal Issue 3: Parking, loading, ADA requirements, and traffic concerns were not addressed in the decision and continue to be significant issues for neighbors and people using River Road and Quinaby/Clearlake Rd.

ADA requirements are beyond the scope of this proceeding. Parking, loading, and traffic concerns are addressed in detail below.

- Appeal Issue 4: The decision substantially misrepresented the nature and scope of the activities being conducted on the site; includes concerns about carrying capacity of the soil, noise, stormwater, environmental contamination, etc.

These concerns are addressed in detail below.

II. Relevant Criteria and Findings

Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Accordingly, applicants must prove, by substantial evidence in the record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, applicants

have not met their burden and the application must be denied. If the evidence for every criterion is in applicants' favor, the burden of proof is met and the application approved.

A. Marion County Code Title 17, Rural Zoning, Chapter 17.119, Conditional Uses

Relevant criteria for this application are found in Chapter 17.119 as follow:

17.119.010 General Concept

A conditional use is an activity which is basically similar to other uses permitted in the zone, but due to some of the characteristics of the conditional use, which are not entirely compatible with the zone, such use could not otherwise be permitted in the zone. Review of the proposed conditional use by the director, planning commission or hearings officer will ensure that the use will be in consonance with the purpose and intent of the zone.

The purpose of this proceeding is to ensure that the proposed conditional use will be in consonance with the purpose and intent of the zone.

17.119.020 Application

An application for a conditional use may be filed by the following only:

A. The owner of the property that is the subject of the application;

Under MCC 17.119.20, a conditional use application may only be filed by certain people, including the owner of the property subject to the application. This application was filed by Jensen Living Trust, the owner of the subject property. This criterion is satisfied.

17.119.025 Required signatures

A. Applications shall include the following signatures:

1. Signatures of all owners of the subject property;

B. Prima Facie Proof of Ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any owner, or when any person states that he or she is buying the property under contract, the director, planning commission, hearings officer and the board may accept these statements to be true, unless the contrary be proved, and except where otherwise in this title more definite and complete proof is required. Nothing herein shall prevent the director, planning commission, hearings officer or board from demanding proof that the signer is the owner, officer, attorney in fact, or agent.

Under MCC 17.119.025, a conditional use application shall include signatures of certain people, including all owners of the subject property. The owner of the subject property

is Jensen Living Trust. The application was signed by Roger Jensen as trustee. No party to the proceeding has contested this issue and the Hearings Officer accepts this signature as meeting the requirements of MCC 17.119.025.

17.119.060 Conditions

The director, planning commission or hearings officer may prescribe restrictions or limitations for the proposed conditional use but may not reduce any requirement or standard specified by this title as a condition to the use. [...]The director, planning commission or hearings officer shall impose conditions only after it has determined that such conditions are necessary for the public health, safety or general welfare, or to protect persons working or residing in the area, or the protection of property or improvements in the area. The director, planning commission or hearings officer may prescribe such conditions it deems necessary to fulfill the purpose and intent of this title.

Because the Director's decision is rescinded, this section is not applicable.

17.119.070 Findings of the Hearings Officer

Before granting a conditional use, the director, planning commission or hearings officer shall determine:

A. That it has the power to grant the conditional use;

Under MCC 17.119.030, the Hearings Officer may hear and decide those applications for conditional uses that are listed in Title 17.

B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;

The Hearings Officer finds that many of the criteria in MCC 17.143.040 are intended to implement and provide more specificity to this general requirement that the proposed conditional use be in harmony with the purpose and intent of the zone. For the reasons discussed in the analysis of the MCC 17.143.040 criteria, the Hearings Officer finds that this criterion is not met.

C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

As discussed above, conditions of approval are not required.

17.119.110 Decision review

The director shall decide whether to approve or deny the conditional use based on the Marion County Comprehensive Plan and applicable criteria in this title. The decision should be made and notice thereof sent within 30 days of an application being determined to be complete. This administrative decision shall be final unless an appeal is taken as provided below.

As discussed above, the decision at issue is the Director's decision from September 2024, which granted conditional use approval. That decision was appealed and this Order follows.

17.119.120 Information from Affected Agencies

Upon receipt of an application under MCC [17.119.100](#), a summary of the application shall be distributed to the public works department, assessor's office, building inspector, other affected agencies and the recognized area advisory committee with a request for comments or suggestions regarding those features that come within the scope of their activities.

Comments from affected agencies are in the record.

17.119.130 Notification of Decision

Notice of the decision and information on the appeal process shall be sent to the applicant, the owner(s) of the subject property, the co-tenants of the subject property if the property is owned by tenants in common, affected agencies and members of the recognized area advisory committee requesting information, others requesting notification, and all landowners within the required notification area.

This procedure was followed in this case, as discussed above.

17.119.140 Appeal

After the director's final action on the application, interested persons may appeal the decision no later than 15 days after the decision is mailed.

As provided above, the appeal was timely filed.

17.119.150 Public Hearing and Decision on Appeals

If the director's decision is appealed, the hearings officer or planning commission shall conduct a public hearing in accordance with Chapter [17.111](#) MCC. Notice of an appeal of the director's decision shall be mailed to the applicant, those requesting notice of a hearing and all landowners within the required notification area at least 20 days prior to the hearing date. The notice shall be consistent with the requirements in ORS [197.763](#)(3). Failure to

receive such notice by mail shall not affect the validity of the proceedings. The public hearing before the hearings officer or planning commission shall be de novo.

As provided above, this standard is met.

17.119.160 Appeal to the Board

A. An appeal may be taken to the board by any person, firm, or corporation, or by an officer, department, board or commission of any public corporation or political subdivision of the state of Oregon, aggrieved or affected by the decision of the planning commission or hearings officer on an application for a conditional use. An appeal must be filed with the county clerk within 15 days from the date of mailing of notice of the decision of the planning commission or hearings officer.

The appeal shall be filed in duplicate and one copy thereof shall be forwarded immediately by the clerk to the board. The appeal shall state wherein the planning commission or hearings officer failed to conform to the provisions of this title.

B. When an appeal is filed it shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of such appeal by the board.

C. The board shall review the action of the planning commission or hearings officer and may refer the matter back to the planning commission or hearings officer for further consideration, in which case the planning commission or hearings officer shall conduct such further investigation if it is deemed advisable and report its findings to the board. The board may summarily, after considering the application and appeal and finding that the facts therein stated do not warrant any further hearings, affirm the action of the planning commission or hearings officer and deny the appeal. If the board is of the opinion that the facts in the case warrant further action, the board shall give notice of the time and place of such hearing in the same manner as set forth in MCC [17.111.030](#). After the hearing, the board may reverse or affirm or may impose such conditions as the facts warrant and may grant a conditional use, and its decision or determination shall be final. Any hearing may be continued to a time and day certain or as otherwise provided for by re-noticing the hearing.

D. If the board exercises its authority, pursuant to MCC [17.110.765](#), to make the initial determination on a land use application, the decision of the board is final and appealable only to the Oregon Land Use Board of Appeals.

A party may further appeal this Order to the Board of Commissioners. More detailed appeal information can be found at the end of this Order.

17.119.180 Effective date of conditional use

Conditional uses granted by the director, planning commission or hearings officer under the provisions of this title shall not be effective until 15 days after the mailing of the notice of decision; provided, however, in case call up of the proceedings has been requested by the board or an appeal has been taken as herein provided, the conditional use shall not be effective until the planning commission, hearings officer or board has acted on the call up or appeal.

The conditional use is not granted and therefore this section is not applicable.

17.119.220 Resubmission of CU application

No application which has been denied wholly or in part by the director, planning commission, hearings officer or by the board shall be resubmitted for a period of one year from such denial, unless consent for resubmission be given by the director, two-thirds of the members of the planning commission, the hearings officer or the board.

The denial of the applicant's conditional use permit in this appeal means the application cannot be re-submitted for a period of one year from the date of this Order, unless consent to do so is provided by a review authority.

B. Marion County Code Title 17, Rural Zoning, Chapter 17.143, CC (Community Commercial) Zone

Relevant criteria for this application are found in Chapter 17.143 as follow:

17.143 Community Commercial Zone

17.143.010 Purpose

The purpose of the CC (community commercial) zone is to implement the rural development policies of the Comprehensive Plan. This zone is applied to land committed to or intended for commercial uses within urban unincorporated communities, rural communities, and rural service centers, as those terms are defined in the Comprehensive Plan and Oregon Administrative Rules. The uses within the CC zone are functionally classified by description of the particular activity or by reference to a category in the "Standard Industrial Classification Manual, 1987" (SIC). The SIC index number is referenced as an aid to interpretation of uses. Where the term used to describe a use is defined in Chapter [17.110](#) MCC, the definition takes precedence over any SIC classification.

17.143.020 Permitted uses.

Within any CC community commercial zone no building, structure, or premises shall be used, or arranged, except as permitted by this title. Only the following uses may be permitted in

the specified unincorporated community, as those communities are defined in the Comprehensive Plan:

A. All Communities. The following uses are permitted in an existing building or a new or expanded building up to 4,000 square feet in a rural community or in a new or expanded building up to 8,000 square feet in an urban community, subject to MCC [17.143.060\(D\)](#):

- 1. Automobile repair (SIC 7532 and 7538);*
- 2. Restaurant (SIC 5812);*
- 3. Tavern (SIC 5813);*
- 4. Office for professional services;*
- 5. Nursery, lawn and garden supply store (SIC 5261);*
- 6. Used merchandise store (SIC 5932);*
- 7. Hardware store (SIC 5251);*
- 8. Meat and fish markets (SIC 5421);*
- 9. Fruit and vegetable market (SIC 5431);*
- 10. Candy, nut, and confectionery store (SIC 5441);*
- 11. Retail bakery (SIC 5461);*
- 12. Gift and souvenir shop (SIC 5947);*
- 13. Retail art dealer;*
- 14. Service station (SIC 5541);*
- 15. Household appliance store (SIC 5722);*
- 16. Radio, television, and consumer electronics store (SIC 5731);*
- 17. Sporting goods store (SIC 5941);*
- 18. Book store (SIC 5942);*
- 19. Florist (SIC 5992);*
- 20. Coin-operated laundry and dry cleaning (SIC 7215);*
- 21. Photographic studio (SIC 7221);*
- 22. Beauty and barber shop (SIC 7231 and 7241);*
- 23. Shoe repair shop (SIC 7251);*
- 24. Repair services, including electrical; watch, clock and jewelry; reupholstery and furniture (SIC 76);*
- 25. Watch, clock and jewelry repair (SIC 763);*
- 26. Video tape rental (SIC 7841);*
- 27. Gunsmith;*
- 28. Special trade contractors (SIC 17).*

B. All Communities. The following uses are permitted without size limitations, unless specified in an unincorporated community designated in the Comprehensive Plan:

- 1. Grocery store, limited to a maximum of 8,000 square feet of floor space in an urban community and a maximum of 4,000 square feet of floor space in a rural community (SIC 5411 and 5499);*
- 2. Agricultural equipment repair;*

3. Agricultural services (SIC 07);
4. Caretaker's dwelling;
5. Uses legally established and existing on July 19, 2000. Such uses are permitted pursuant to this section only on the lot(s) or parcel(s) where they existed on July 19, 2000;
6. Wireless communication facilities attached, subject to MCC [17.125.110](#) and pursuant to MCC [17.115.110](#);
7. Expansion of an existing commercial use under the following circumstances:
 - a. The use will have a maximum floor space of 4,000 square feet in a rural community or 8,000 square feet in an urban community after the expansion; or
 - b. The use is intended to serve the community and surrounding rural area or the travel needs of people passing through the area;
8. Fire station;
9. Public and private utility facilities and buildings including cooperatives necessary for public service.

F. Quinaby.

Public warehousing and storage (SIC 422) with a maximum of 4,000 square feet of floor space.

The use proposed by the Applicant (SIC 5084, establishments primarily engaged in the whole sale distribution of industrial machinery and equipment) is not an allowed use within the CC zone.

17.143.030 Conditional uses

When authorized under the procedure provided for conditional uses in this title, the following uses will be permitted in a CC zone, subject to MCC [17.143.040](#):

- A. Home occupations, subject to MCC [17.120.075](#);*
- B. Retail and service uses not listed in MCC [17.143.020](#) and not exceeding 4,000 square feet of floor space in a rural community nor 8,000 square feet of floor space in an urban community (SIC 50 through 89 except 70 and 88);*
- C. Wireless communications facilities subject to MCC [17.120.080](#).*
- D. Medical marijuana dispensary (see MCC [17.110.374](#)), subject to MCC [17.120.120](#) and not exceeding 4,000 square feet of floor space in a rural community nor 8,000 square feet of floor space in an urban community.*

The Applicant has applied for a conditional use permit under 17.143.030(B), citing SIC 5084¹, which is within the specified SIC range. The Hearings Officer understands the proposal to be

¹ The Hearings Officer notes that there is some question whether the proposed use in fact qualifies under SIC 5084 (Wholesale Trade – Industrial Machinery and Equipment). Because the result of this Order is to deny the requested conditional use permit, resolving the question of qualifying under SIC 5084 is not necessary

limited to what is referred to as “Building A” on the property, which is 4,000 square feet in size. These criteria are met.

17.143.040 Approval standards for conditional uses

Conditional use requests in the CC zone are subject to all the following criteria:

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;

The subject property does not abut lands devoted to farm or forest use and there is no evidence in the record suggesting that this proposal would force a significant change in, or significantly increase the cost of, accepted farm or forest practices on the EFU lands located further to the east. This criterion is met.

B. The proposed use will not, by itself or in combination with existing uses in the community, result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations;

There is some conflicting evidence in the record regarding public health hazards and adverse environmental impacts. Many of the issues raised on this subject are not relevant to this proceeding because they do not directly pertain to the proposed use, e.g. proximity of the site’s septic field to a nearby well.

As relevant here, the Appellants have provided photos of a container of Xylol (a toxic chemical) onsite, and argued that it represents a public health or environmental hazard. The Applicant has responded that there was no evidence in the photo of any leak or spillage, that the container was located outside for pickup and disposal off site, and that the Xylol was being used as paint thinner and did not pose any public health or environmental hazard. The Hearings Officer finds that the photo and presence of Xylol on site, without more, does not constitute a public health or environmental hazard.

To the extent the noise issues raised by Appellants could be construed as a public health hazard, they are addressed below.

Based on the foregoing, this criterion is met.

C. The proposed use will not, by itself or in combination with existing uses in the community, exceed the carrying capacity of the soil or of existing water supply resources and sewer services;

There is some evidence in the record that suggests the carrying capacity of the soil in the area of the subject property may be exceeded. However, there is no evidence in the record that the present proposal has any bearing on that issue. There is also no evidence that the proposal

would exceed existing water supply resources, and there are no sewer services in the area. This criterion is met.

D. The traffic generated by the proposed use is consistent with the identified function, capacity, and level of service of transportation facilities serving the community; and

Compliance with this criterion is a close question. The evidence in the record shows that the *volume* of traffic generated by the proposed use is relatively low and therefore consistent with the identified function, capacity, and level of service of transportation facilities serving the community. However, there is significant evidence in the record that the *nature* of the traffic generated by the proposed use is problematic in this area. Specifically, the cranes and oversized vehicles needed to transport equipment to and from this site cause significant negative usability and safety impacts on the abutting transportation facilities (e.g. River Rd NE) by blocking traffic on a 55 mph road. These impacts are amplified by the limited access to this site.

Ultimately, the burden of proof lies with the Applicant. The Hearings Officer finds that the Appellants have raised significant and credible concerns regarding—and provided substantial evidence of—inconsistencies between the traffic generated by the proposed use and the identified function, capacity, and level of service of transportation facilities serving the community, and that the Applicant has failed to show by a preponderance of the evidence that this criterion has been met. Therefore, the Hearings Officer finds that this criterion is not met.

E. The proposed use will not create significant adverse effects on existing uses or permitted uses on adjacent land, considering such factors as noise, dust and odors.

There is conflicting evidence in the record relating to noise associated with the proposed use and whether it causes significant adverse effects on existing uses on adjacent land.

The Appellants and others have testified that the proposed use (which is already occurring on the property) results in loud noise for extended durations, which adversely impacts the neighboring residential uses. This testimony appears credible. The Appellants have also provided noise meter readings that appear to support these claims, but the accuracy of these readings is questionable because they were not performed by a trained technician and the calibration of the equipment is not known.

The Applicant has provided noise data from a monitoring service located on site. However, the data presented poses numerous issues relating to its configuration and assumptions, as well as credibility.

For one, the volume threshold settings for the monitoring do not appear to be set appropriately or consistently. From the data provided, it is evident that the thresholds are sometimes set at 65 dBA and sometimes at 75 dBA. Any noises below these thresholds would not trigger a report. It is difficult to tell from the data provided why or when the thresholds change during a given day. The Hearings Officer also notes that the volume limits in the County's noise

ordinance, found in MCC 8.45.050, are 55 dBA at night and 65 dBA during the day. Although not specifically referenced in MCC 17.143.040, these regulations provide some guidance for what may be considered an adverse impact due to noise and would be a more reasonable threshold for monitoring.

More importantly, the monitoring service reports demonstrate that the monitoring is “offline” for extended periods of time, which appear to consistently occur during daytime business hours when sound levels could reasonably be expected to be the highest.

Considering all of the evidence in the record, the Hearings Officer finds that the Applicant has not met its burden of proof to show that the proposed use will not create noise with significant adverse effects on existing use on adjacent land. This criterion is not met.

The Applicant has made some reference to efforts to contain or limit noise, and the Hearings Officer considered whether conditions of approval could be used to meet this criterion. However, it appears to the Hearings Officer that loud noises are inherent to the proposed use—including metal impact, grinding, and vehicular (cranes and other large vehicles) noises cited by Appellants. Additionally, while some of the work can be performed inside of buildings, some of it necessarily must be performed outdoors. The Hearings Officer therefore finds that the Applicant has not shown that control of noise to the extent that it would not create significant adverse impacts on existing uses is feasible. Therefore, a condition of approval would not be appropriate.

C. Other Criteria

Appellants and others have cited some additional criteria they believe to be relevant to this proceeding, including MCC 17.143.060 (Property development standards) and MCC 17.143.070 (Landscaping). These provisions are not included as criteria for approval or denial of a conditional use permit under Chapter 17.143 and, moreover, relate to the physical development of the site, rather than the type of use on the site. Therefore, the Hearings Officer finds that they do not apply and that the only relevant criteria are those discussed above.

III. Conclusion

For the foregoing reasons, the Hearings Officer finds that Applicant has not met its burden of proving the applicable standards and criteria for approval of a conditional use permit have been met. Therefore, the conditional use application is DENIED and the original Director’s decision is rescinded.

IV. Appeal Rights

In accordance with MCC 17.119.160, an appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555

Court St. NE, Suite 2130, Salem, OR 97301) by 5:00 p.m. within 15 days from the date of mailing of notice of the decision of the hearings officer.

The appeal shall be filed in duplicate and shall state wherein the hearings officer failed to conform to the provisions of Title 17.

When an appeal is filed, it shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of such appeal by the Board of Commissioners.

The Board shall review the action of the hearings officer and may:

- Refer the matter back to the hearings officer for further consideration,
- Summarily affirm the action of the hearings officer and deny the appeal,
- Conduct a hearing and reverse or affirm or impose such conditions as the facts warrant.

The decision of the Board will be final, and appealable only to the Land Use Board of Appeals.

DATED this 18th day of February, 2025.



Joshua P. Soper
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Jensen Living Trust
Roger & Debora Jensen
5434 River Rd N., #323
Salem, OR 97303

Rex, Jeff & Tamara Mullins
2992 Aubrey Lane NE
Keizer, OR 97303

Raeann McDonald
2962 Aubrey Lane N
Salem, OR 97303

Timothy & Kimbrly Rayburn
8136 River Rd. NE
Salem, OR 97303

Andres Martinez
2989 Buena Crest Lane
Keizer, OR 97303

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

Area Advisory Committee # 4

County Agencies Notified:
Assessor's Office (via email)
assessor@co.marion.or.us

Tax Collector (via email)
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us

Surveyor's Office (via email)
KInman@co.marion.or.us

Fire District (via email)
Marion County Fire District 1
300 Cordon Rd. NE
Salem, OR 97301
paulas@mcfd1.com

Planning Division (via email)
breich@co.marion.or.us
abarnes@co.marion.or.us
ediaz@co.marion.or.us

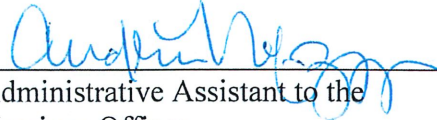
Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
ABammes@co.marion.or.us
CTate@co.marion.or.us

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mclddep@co.marion.or.us
JShanahan@co.marion.or.us

School District (via email)
Gervais School District
PO Box 100
Gervais, OR 97026
Sandra_segura@gervais.k12.or.us

Code Enforcement (via email)
CGoffin@co.marion.or.us
JTaylor@co.marion.or.us

By mailing them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 18th day of February, 2025 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer