

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

NOTICE OF DECISION CONDITIONAL USE CASE NO.23-005

APPLICATION: Application of Thomas and Linda Samek for a conditional use to operate a tractor repair business as a commercial use in conjunction with farm use on a 43.42-acre property in an EFU (Exclusive Farm Use) zone located at 14008 Triumph Rd SE, Sublimity (T8S; R1W; Section 26; Tax Lot 1600).

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

EXPIRATION DATE: This conditional use permit is valid only when exercised by **March 10, 2025**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support the proposal. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain all required permits from the Marion County Building Inspection Division.
2. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition(s) have been satisfied:

Condition A – Within ninety (90) calendar days from the date of final Planning approval, acquire an Access Permit, and under the Permit pave the Boedigheimer Road shared access approach with hot mix asphalt
3. The applicant shall perform all repairs on a hard surface such as concrete or other non-penetrable surface as to prevent oil and chemical runoff.

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

4. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
5. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the county hearings officer for a public hearing.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying restrictions or conditions thereon. The applicant is advised of the following:

6. The applicants should contact the Sublimity Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards
7. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 150-day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **March 10, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 11, 2023**, unless further consideration is requested.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located at the end of an easement that continues east from the intersection of Triumph Rd SE and Boedighemer Rd SE. The property is currently in commercial farm use and contains a 1920 built dwelling and four accessory structures related to farm use. The property is described by vol 150, page 39, on March 18th, 1919. This deed describes approximately 161.60 acres of land, which comprises two of the Samek's tax lots, tax lots 1600 and 300, directly to the southwest. The parcel is legal for land use purposes.
3. Surrounding uses are farm uses in all directions. All adjacent parcels are zoned EFU and are in commercial farm use.
4. Soil Survey of Marion County Oregon indicates 69% of the subject property is composed of high-value farm soils.
5. The applicant is proposing to operate a tractor repair business as a commercial use in conjunction with farm use.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING CONDITION

***Condition A** – Within ninety (90) calendar days from the date of final Planning approval, acquire an Access Permit, and under the Permit pave the Boedighemer Road shared access approach with hot mix asphalt.*

ENGINEERING REQUIREMENT

- B. Transportation System Development Charges may be assessed for a portion of the existing shop that will be utilized for the proposed commercial use, which is based on allocated square footage.

Marion County Building Inspection commented:

“If the agricultural machinery repair shop building will be open to the public, then a change of use or occupancy permit would be required and the existing structure and/or facilities may require upgrades for public access. Otherwise, no building inspection department concerns.”

All other commenting agencies stated no objection to the proposal.

7. In order to approve a commercial activity in conjunction with farm use the applicant must demonstrate compliance with the specific criteria listed in Chapter 17.136.060(D) of the Marion County Code (MCC). These include:
- (a) *The commercial activity must be primarily a customer or supplier of farm uses.*

JLS Repair owned by Jeremiah Samek primarily services farm equipment through a mobile service in Marion, Polk and Linn Counties. When Mr. Samek needs shop space to perform certain repairs, he uses the subject property which is owned by his parents, Thomas and Linda Samek. He also farms adjacent property and repairs his own equipment onsite. The criterion is met.
 - (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*

JLS Repair enhances the farming enterprises of the area by providing efficient onsite repair work when moving farm equipment can be costly and difficult. He also aides the community by providing repair work in a local shop so that equipment does not need to be transported farm from the farming areas. The criterion is met.
 - (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*

Jeremiah farm adjacent to the subject property and his father farms the subject property. JLS Repairs services agriculture equipment used in the immediate agricultural economy and therefore the activities occur together. The criterion is met.
 - (d) *The products and services provided must be essential to the practice of agriculture.*

Without timely repairs and onsite visit, many farms would not be able to operate their fleet of farm equipment. JLS Repair offers a local solution to farm equipment that needs repairs. The criterion is met.
8. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:
- (a) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*

The use, as explained above, enhances the farm practices in the area and services them. The applicants own the farms around the subject parcel and this use is not expected to increase any costs of farming in the area. The criterion is met.
 - (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The property is served by the Sublimity Fire District. The criterion is met.

- (c) *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*

The use is conditioned to take place on an impenetrable surface as to not allow contamination with groundwater or any wildlife habitat. These are repairs and services that happen regularly in EFU zones on all farm equipment. The criterion is met.

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

Noise associated with the repairs is not unlike regular farm noises created by equipment on a daily basis. This will not have an adverse effect on adjacent lands. The criterion is met.

- (e) *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

The use is conditioned to take place on an impenetrable surface as to not allow contamination with groundwater or any wildlife habitat. These are repairs and services that happen regularly in EFU zones on all farm equipment. The applicant has shown based on the location of the services that this will not affect water impoundments. The criterion is met.

9. Based on the above findings it has been determined that the applicant's request meets all applicable criteria for a and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: February 23, 2023

If you have any questions regarding this decision contact Austin Barnes at (503) 588-5038

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.