

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
FLOODPLAIN DEVELOPMENT PERMIT CASE NO. 23-001**

APPLICATION: Application of Brand Land Use, LLC on behalf of Sunshine Shed Holdings, LLC for a floodplain development permit to place fill in the 100-year floodplain on an Exclusive Farm Use (EFU) zone located at 3735 Chemawa Road NE (T6S; R2W; Section 31B; Tax Lot 600).

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

EXPIRATION DATE: This Floodplain Development Permit is valid only when exercised by **April 15, 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 this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposal the applicant should contact the Building Inspection Division, (503) 588-5147.

All development in the floodplain is subject to federal, local and state regulations and standards at the time development is begun. These regulations and standards are in the process of being revised and the development proposed in this application may be subject to additional regulations and standards at the time construction of structures or placement of fill on the property begins.

Based on preliminary information provided by the National Marine Fisheries Service on April 14, 2016, federal law might only recognize as legal under the county current floodplain ordinance building permits that are issued prior to September 15, 2016, and where the work is begun prior to March 15, 2017. Permits issued after September 15, 2016, or not begun until after March 15, 2017, may be in violation of federal law and thus invalidate this local permit.

Construction related to this permit is approved only within the existing developed area of the property. Construction of new structures, fill or other development of the property should not occur outside the existing developed area without prior consultation with the Marion County Planning Division. Federal regulations may require additional approvals for development outside the existing developed area of the property.

Applicants are further advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade).

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 a geotechnical assessment of the fill prior to obtaining building permits as required by the Marion County Building Inspection Division.
2. The proposal is not for structural development, any additional development shall obtain a floodplain permit.

3. A registered civil engineer or architect shall certify the proposal meets the applicable requirements of MCC 17.178.050 and 17.178.060.
4. The applicant shall sign and submit to the Planning Division a Declaratory Statement (enclosed) acknowledging that the property and the approved development are located within a floodplain. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
5. Applicant shall submit documentation showing that the fill is clean. Fill shall be composed of clean granular or earthen material and certified by a registered professional engineer.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect any 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 any restrictions or conditions thereon.

6. The applicants should contact the Marion County Fire District No 1 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. Materials that are buoyant, flammable, obnoxious, toxic, or otherwise injurious to persons or property, if transported by floodwaters, are prohibited unless stored within a structure or on land elevated above the base flood level. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the 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 and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **April 16, 2023**. If you have any questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **April 17, 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 and correspondingly zoned Exclusive Farm Use. The purpose of the EFU (exclusive farm use) zone is to provide areas for continued practice of commercial agriculture. It is also located within the identified 100-year floodplain of Lake Labish, Marion County Firm Panel 41047C.
2. The subject property is located at 3735 Chemawa Rd NE, 0.40 miles east of its intersection with State Highway 99E and Interstate-5. The parcel is in farm use and has recently been the subject of Conditional Use Case CU21-033 for a conditional use to operate an agricultural sale and service facility as a commercial activity in conjunction with farm use. The parcel is considered legal for land use purposes.
3. Surrounding lands to the north and east are zoned EFU and located within the 100-year floodplain of Lake Labish. Lands to the south and west are located within the City of Salem and in large scale farm use.

4.	<u>Soil</u>	<u>% of Parcel</u>	<u>SCS Soil Class</u>	<u>High Value?</u>
	So	64.9%	III	Yes
	Wc	0.2%	III	Yes
	WuA	12.4%	II	Yes
	WuD	9.8%	III	Yes
	WuC	12.6%	II	Yes

5. The applicant(s) propose to place fill within the 100-year floodplain of Lake Labish. This permit is the result of a code violation for placement of fill in the 100-year floodplain.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Requirements: Delineate 100-yr floodplain demarcation line on site civil engineering plans pertaining to site redevelopment that includes proposed replacement buildings. Also, depict areas within 100-yr floodplain that may have already been inadvertently filled, and if so, to approximate elevation(s).

Marion County Building Division commented: No Building Inspection concerns. If any structures are proposed over the site of fill soils, permits would be required and a geotechnical assessment of the soils beneath the building or structure would be required to obtain the permit.

City of Salem commented: The applicants plan shows connection to City of Salem stormwater infrastructure in Chemawa Road NE. The portion of Chemawa Road NE abutting the subject property is City of Salem jurisdiction. The applicant shall contact Public Works Development Services to determine if any city permits are required for connection to the stormwater infrastructure in Chemawa Road NE.

Department of Land Conservation and Development (DLCD) made comments that can be found in the file.

All other contacted agencies failed to comment or stated no objection to proposal.

7. The purpose of the Floodplain Overlay Zone is to promote public health, safety, and general welfare to minimize public and private losses due to flood conditions. The criteria and standards which must be satisfied are listed in Section 17.178.060 of the Marion County Code (MCC).
8. Flood Insurance Rate Map # 41047C0213G indicates that the floodplain elevation is not called out and providing that elevation will be made a condition of approval.
9. MCC chapter 17.178.050 A- D pertain to this permit:

17.178.050 Conditional use procedures and requirements. Revised 3/19 Revised 10/19

A. *Except as provided in MCC [17.178.040](#) a conditional use permit (floodplain development permit) shall be obtained before construction or development begins within any area horizontally within the floodplain overlay zone (which includes the area of special flood hazard). The floodplain development permit shall be required for all structures, including manufactured dwellings, and for all other development, as defined in MCC [17.178.020](#). The conditional use permit shall include conditions ensuring that the flood protection standards in MCC [17.178.060](#) are met.*

The applicant has provided all requirements for the floodplain development permit. This criterion is met.

B. *When base flood elevation data and floodway data have not been provided in accordance with MCC [17.178.030](#), the applicant, with the assistance of the floodplain administrator, shall obtain and reasonably utilize any base flood elevation data or evidence available from a federal, state or other source in order to determine compliance with the flood protection standards. If data are insufficient, the floodplain administrator may require that the applicant provide data derived by standard engineering methods.*

The applicant has not provided a base flood elevation. This will be made a condition of approval. This criterion is met.

- C. Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest, acknowledging that the property and the approved development are located in a floodplain.*

The applicant is not proposing any structural development, but the signing of a declaratory statement will still be made a condition of approval. This criterion is met.

- D. Prior to obtaining a building permit, commencing development or placing fill in the floodplain the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.*

The applicant has submitted a certification from J. Erik McCarthy, PE, Senior Hydraulic Engineer, that the proposal complies with this criteria. The analysis can be found in the application narrative. This criterion is met.

- E. The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations (in relation to mean sea level) of the lowest floor (including basement) and all attendant utilities of all new or substantially improved residential structures including manufactured dwellings meet the requirements of MCC [17.178.060](#)(A), (B) and (C), where applicable, as follows:*
- 1. Prior to construction (based on construction drawings); and*
 - 2. Once the floor elevation can be determined (based on the building under construction); and*
 - 3. Prior to occupancy (based on finished construction).*

Elevation certificates shall not be required for the following uses:

- 1. Functionally dependent uses, such as boat ramps, docks, wells and well covers.*
- 2. Improvements resulting from cut or fill operations, such as berms, bank improvements, ponds and dams.*
- 3. Grading, such as for roadways, even where alteration of topography occurs.*

This proposal is not for any structures. This criterion is not applicable.

- F. Repealed by Ord. 1397.*

- G. In addition to other information required in a conditional use application, the application shall include:*
- 1. Land elevation in mean sea level data at development site and topographic characteristics of the site.*
 - 2. Base flood level expressed in mean sea level data on the site, if available.*
 - 3. Plot plan showing property location, floodplain and floodway boundaries where applicable, boundaries and the location and floor elevations of existing and proposed development, or the location of grading or filling where ground surface modifications are to be undertaken.*
 - 4. Any additional statements and maps providing information demonstrating existing or historical flooding conditions or characteristics which may aid in determining compliance with the flood protection standards of this overlay zone.*
 - 5. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed.*
 - 6. Certification by a registered professional engineer or architect licensed in the state of Oregon that the floodproofing methods proposed for any nonresidential structure meet the floodproofing criteria for nonresidential structures in this chapter.*
 - 7. A description of the extent to which any watercourse will be altered or relocated.*
 - 8. Base flood elevation data for any subdivision proposals or other development when required per MCC [17.178.060](#)(G).*

9. *Substantial improvement calculation(s) for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.*
10. *The amount and location of any fill or excavation activities proposed.*

The applicant has provided information related to the above criteria and can be found in the application narrative. This criterion is met.

10. MCC chapter 17.178.060, specifically C - L pertain to this project and compliance will be made a condition of approval.

A. Residential Structures, Including Manufactured Dwellings and Related Structures (1-8).

The proposal is not for the placement of a residential structure. This criterion is not applicable.

B. Recreational vehicles used as a hardship dwelling consistent with MCC 17.120.040 may be placed in the floodplain consistent with the following standards:

1. *When placed on solid foundation walls shall be constructed with openings that comply with MCC 16.19.140(A).*
2. *Shall be elevated in compliance with MCC 16.19.140(A).*
3. *Shall be anchored in compliance with MCC 16.19.140 (D)(2).*
4. *Electrical crossover connections shall be a minimum of 12 inches above the base flood elevation.*

The proposal is not for the placement of a recreational vehicle. This criterion is not applicable.

C. Nonresidential Development.

1. New construction and substantial improvement of any commercial, industrial or other nonresidential structures shall either have the lowest floor, including basement, elevated to two feet above the level of the base flood elevation, and where the base flood elevation is not available, the lowest floor, including basement, shall be elevated to two feet above the highest adjacent natural grade (within five feet) of the building site, or together with attendant utility and sanitary facilities shall:

- a. Be floodproofed to an elevation of two feet above base flood elevation or, where base flood elevation has not been established, two feet above the highest adjacent grade, so that the structure is watertight with walls substantially impermeable to the passage of water.*
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.*
- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. This certificate shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed and shall be provided to the floodplain administrator.*
- d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsections (A)(5) and (6) of this section.*
- e. Applicants floodproofing nonresidential buildings shall be notified by the zoning administrator that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).*

The proposal is not for the placement of any structures, any placement of structures will require additional floodplain permitting. This will be made a condition of approval. This criterion is met.

2. New construction of any commercial, industrial or other nonresidential structures is prohibited in the floodway. An exception to this prohibition may be granted if a floodplain development permit and variance consistent with MCC [17.178.080](#) are obtained. This prohibition does not apply to functionally dependent uses.

The proposal is not located in the floodway. This criterion is not applicable.

3. *An agricultural structure may be constructed to wet floodproofing standards; provided, that:*

- a. The structure shall meet the criteria for a variance in MCC [17.178.090](#);*
- b. The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;*
- c. The structure shall be constructed with unfinished materials, acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;*
- d. The structure shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must comply with the following standards:*
 - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;*
 - ii. The bottom of all openings shall be no higher than one foot above grade;*
 - iii. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters;*
- e. Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site;*
- f. The structure shall be used solely for agricultural purposes, for which the use is exclusively in conjunction with the production, harvesting, storage, drying, or raising of agricultural commodities, the raising of livestock, and the storage of farm machinery and equipment;*
- g. The structure shall not be used for human habitation;*
- h. A declaratory statement shall be recorded requiring compliance with the standards in subsections (C)(3)(c) through (g) of this section.*

The proposal is not for the placement of any structures, any placement of structures will require additional floodplain permitting. This will be made a condition of approval. This criterion is met.

D. Anchoring.

- 1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.*
- 2. All manufactured dwellings must likewise be anchored to prevent flotation, collapse or lateral movements, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. Anchoring methods shall be consistent with the standards contained in the Oregon Manufactured Dwelling Installation Specialty Code.*

E. Construction Materials and Methods.

- 1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*
- 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.*

The applicant states that this can and has been implemented. This criterion is met.

F. Utilities.

- 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system as approved by the State Health Division.*

- 2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters in the systems and discharge from the systems into floodwaters.*
- 3. On-site waste disposal systems shall be designed and located to avoid impairment to them or contamination from them during flooding consistent with the requirements of the Oregon State Department of Environmental Quality.*
- 4. Electrical, heating, ventilation, plumbing, duct systems, air-conditioning and other equipment and service facilities shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site. If replaced as part of a substantial improvement the utility equipment and service facilities shall meet all the requirements of this subsection.*

The proposal is not for the placement of any utilities, any placement of utilities may require additional floodplain permitting. This can be made a condition of approval. This criterion is met.

G. Developments Generally. Residential developments involving more than one single-family residential structure including subdivisions, manufactured dwelling parks, multiple-family residential structures and planned developments, and other proposed developments including development regulated under subsections (A) and (C) of this section shall meet the following requirements:

- 1. Be designed to minimize flood damage.*
- 2. Have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.*
- 3. Have adequate drainage provided to reduce exposure to flood hazards.*
- 4. Base flood elevation data shall be provided by the developer. In cases where no base flood elevation data is available analysis by standard engineering methods will be required to develop base flood elevation data.*

The proposal is not for the placement of any multi-family development, any proposal for may require additional floodplain permitting. This can be made a condition of approval. This criterion is met.

H. Storage of Materials and Equipment. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.

The proposal is not for the placement of any structures, any placement of structures will require additional floodplain permitting. This will be made a condition of approval. This criterion is met.

11. Based on the above findings, it has been determined that the proposal complies with the criteria in the Marion County Code and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: March 30, 2023

If you have any questions regarding this decision contact Lindsey King, CFM 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.