



Marion County
OREGON

CONDITIONAL USE APPLICATION

RECEIVED

AUG 12 2024

Marion County
Planning

Do not double-side or spiral bind any documents being submitted

Fee: Please check the appropriate box:

- ☒ Conditional Use - \$1450
- ☐ Conditional Use Hardship - \$450
- ☐ Conditional Use Hardship Change of Occupant - \$120
- ☐ Non-Farm Dwelling \$1930
- ☐ UT Zone Replacement Dwelling - \$450
- ☐ Conditional Use Home Occupation - \$770
- ☐ Amend Conditions/Permit - \$600
- ☐ Aggregate Site (non Goal 5) - \$3000+\$80/acre
- ☐ Agri-Tourism Single Event - \$375
- ☐ Agri-Tourism Max 6 Events - \$640
- ☐ Agri-Tourism Max. 18 Events/Longer Duration-\$640

PROPERTY OWNER(S): Marvin Klopfenstein	ADDRESS, CITY, STATE, AND ZIP: [REDACTED]
PROPERTY OWNER(S) (if more than one):	ADDRESS, CITY, STATE, AND ZIP
APPLICANT REPRESENTATIVE: Mark D. Shipman, Attorney, Saalfeld Griggs PC	ADDRESS, CITY, STATE, ZIP [REDACTED]
DAYTIME PHONE (if staff has questions about this application): [REDACTED]	E-MAIL (if any): [REDACTED]
ADDRESS OF SUBJECT PROPERTY: 5711 Brooklake Rd. NE, Salem	SIZE OF SUBJECT PROPERTY: 9.72 acres
THE PROPERTY OWNERS OF THE SUBJECT PROPERTY REQUEST TO (summarize here; explain in detail on the "Applicant's Statement"):	
To establish a commercial activity in conjunction with farm use as described in the attached narrative.	
Type text here	

FOR OFFICE USE ONLY:			
Township 06	Range 2W	Section 16	Application elements submitted:
Tax lot number(s) 2100			<input checked="" type="checkbox"/> Title transfer instrument
Zone: EFV			<input checked="" type="checkbox"/> Site plan
Zone map number: 27			<input checked="" type="checkbox"/> Applicant statement
<input type="checkbox"/> TPA/header			<input checked="" type="checkbox"/> Filing Fee
Case Number: CV24-028			<input type="checkbox"/> GeoHazard Peer Review (if applicable) N/A
<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural			<input type="checkbox"/> Physician's Certificate (if applicable) N/A
Signs given:			<input type="checkbox"/> Home Occupation Supplemental (if applicable) N/A
Date determined complete:			<input type="checkbox"/> Agri-Tourism Supplemental (if applicable) N/A
			Application accepted by: ACS
			Date: 8/13/24

IF THIS IS FOR A CONDITIONAL USE HARDSHIP:

WILL THE TEMPORARY DWELLING BE () MANUFACTURED HOME OR () RV? Check one.

IF USING AN RV, DO YOU INTEND TO:

() CONNECT TO THE EXISTING SEPTIC SYSTEM OR () USE THE RV HOLDING TANK? Check one.

NAME OF PERSON(S) WITH MEDICAL HARDSHIP:

HE/SHE/THEY WILL RESIDE IN: () PRIMARY DWELLING OR () TEMPORARY DWELLING

NAME OF CAREGIVER:

HE/SHE WILL RESIDE IN: () PRIMARY DWELLING OR () TEMPORARY DWELLING

RELATIONSHIP OF CAREGIVER TO PERSON(S) WITH MEDICAL HARDSHIP:

WHAT TYPE OF ASSISTANCE WILL CAREGIVER PROVIDE:

IF THERE ARE OTHER ADULTS THAT RESIDE OR WILL RESIDE IN THE DWELLING WITH THE PERSON(S) NEEDING CARE, PLEASE EXPLAIN WHY HE/SHE CANNOT BE THE CAREGIVER:

THE APPLICANT(S) SHALL CERTIFY THAT:

- A. If the application is granted the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
- B. I/We hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements and the statements in the plot plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.
- C. I/We hereby grant permission for and consent to Marion County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.
- D. The applicants have read the entire contents of the application, including the policies and criteria, and understand the requirements for approving or denying the application.

PRINTED NAME AND SIGNATURE of each owner of the subject property.

Print Name

Signature

Print Name

Signature

Print Name

Signature

Print Name

Signature

DATED this _____ day of _____, 20____

August 12, 2024

VIA HAND DELIVERY:

Brandon Reich, Planning Director
Marion County Planning Division
5155 Silverton Rd. NE
Salem, OR 97305



RE: CUP Application Submittal (5711 Brooklake Rd NE)
MCSO Citation Notice No: 235765 | Case No: 22-000007
MCJC Case No: 235765
Our File No: 41157-00001

Brandon:

In response to Marion County's ongoing enforcement Case No. 22-000007, enclosed please find a Conditional Use Permit Application on behalf of my client, Marvin W. Klopfenstein, for the above-referenced property, which includes the following:

- 1) Check in the amount of \$1,450;
- 2) Executed Application Form;
- 3) Vesting Deed;
- 4) Site Plan; and
- 5) Written Statement, including Exhibits.

Following your preliminary review please do not hesitate to contact myself (mshipman@sglaw.com) or my Paralegal, Hannah Stevenson (hstevenson@sglaw.com), if you have any questions or concerns. Once this CUP request has been assigned to a Planner, we will gladly provide an electronic copy of this submittal upon request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark D. Shipman", written over a blue diagonal line.

MARK D. SHIPMAN
mshipman@sglaw.com
Voice Message #310

MDS:hst
Enclosures
cc:

CONDITIONAL USE PERMIT WRITTEN STATEMENT

APPLICANT AND OWNER:
Marvin W. Klopfenstein
5711 Brooklake Rd. NE
Salem, OR 97305

APPLICANT'S REPRESENTATIVE:
Mark D. Shipman, Attorney
Saalfeld Griggs PC
PO Box 470
Salem, OR 97308
503-399-1070
mshipman@sglaw.com



I. SUBJECT PROPERTY INFORMATION:

Marvin W. Klopfenstein (herein "***Applicant***") is the owner of that certain real property located at 5711 Brooklake Road Northeast, in Salem, Oregon, which is designated by the Marion County Assessor as Tax Lot 2100, in Township 6 South, Range 2 West, Section 16 (the "***Subject Property***"). The Subject Property was first described in Marion County Deed Records on July 7th, 1965, Volume 604; Page 107, which predates the requirement for land use action to divide parcels and therefore is considered legal for land use purposes. A copy of the deeds (and vesting deed) that together describe the legal description for the Subject Property, are attached hereto and incorporated herein as ***Exhibit "A."*** The Subject Property is approximately 9.72 Acres in size, is zoned Exclusive Farm Use (EFU), and is designated as Primary Agriculture under the Marion County Comprehensive Plan, as shown on the Marion County Zoning and Comprehensive Plan Maps collectively attached hereto as ***Exhibit "B."***

The Subject Property is located outside of the urban growth boundary and is not within a sensitive groundwater overlay or geological hazard area. The Subject Property is currently developed with a residence and several outbuildings, which is further depicted on Applicant's Site Plan that is attached hereto and incorporated herein as ***Exhibit "C."*** The Subject Property has frontage on Brooklake Road Northeast where it intersects with 57th Avenue NE.

II. SURROUNDING PROPERTY INFORMATION:

The properties surrounding the Subject Property are zoned as follows:

PROPERTY	ZONING	DESIGNATION
North	EFU	Primary Agriculture
South	EFU	Primary Agriculture
West	EFU	Primary Agriculture
East	EFU	Primary Agriculture

To the north and east of the Subject Property feature a variety of farm uses interspersed around dwellings all of which are located a substantial distance from the residence and buildings on the Subject Property. The surrounding properties to the south are comprised of larger sized farm parcels that are an active flower farm. The property to the west contains a filbert farm and does not have any structures on site. The property to the northwest (approximately 445 feet of the west fence line) is a single-family home on a rural residential lot which is concurrently zoned Acreage Residential. The western property line is buffered by a 50 foot right of way that is described as 57th Avenue NE, however, 57th Avenue NE is not fully developed and does not connect from north to south. There is a sufficient vegetative buffer between the Subject Property and the residentially zoned parcel to the northwest.

III. REQUEST:

Applicant requests a Conditional Use Permit for a commercial activity in conjunction with farm use as allowed under Marion County Code (MCC) Section 17.136.050(D)(2), as fully described below.

IV. PROPOSED PROJECT DESCRIPTION:

The Applicant is the proprietor and operator of Mountain View Tree Service, an Oregon corporation, (herein, "**MVTS**") that provides comprehensive services, including tree removal, stump grinding, pruning, and emergency assistance. Situated on Silverton Rd NE, MVTS office is conveniently positioned opposite the Marion County Fair Grounds. MVTS manages diverse timber and timber products sourced from various removal projects, temporarily storing them on the Subject Property before forwarding marketable timber to lumber mills and setting aside remnants for chip and mulch. The remnant woody debris undergoes mulching into chips, which are then distributed to local farms for various agricultural applications. The Applicant also brings in wood chips from MVTS tree service jobs and adds them to the woody debris stockpiles to be mixed in and distributed with the mulch. These applications include, but are not limited to, livestock bedding, winter pasture cover, and tree and shrub covering.

The Applicant does not allow for wooded debris to be dropped off by anyone other than MVTS employees. The actual mulching of woody debris onsite is only executed four (4) times a year, and at no time during the summer months due to fire risks. The Applicant does not engage in active advertisement of his services.

MVTS operates between the hours of 7:00 a.m. and 7:00 p.m. and has many full-time employees. At any given time, there are no more than two (2) employees on the Subject Property during drop-off, and the employees are there for a minimal amount of time; enough to drop off and sort the material.

Applicant requests a Conditional Use Permit for a Commercial Activity in Conjunction with Farm Use as allowed in MCC Section 17.136.050 (D) to allow for the operation of wood mulching to provide for farm uses under the code.

V. CONDITIONAL USE REVIEW CRITERIA AND PROPOSED FINDINGS:

The Subject Property is zoned EFU. As such, listed conditional uses are subject to obtaining a Conditional Use Permit and satisfying the criteria in MCC Section 17.136.060 (A) and (D) as well as any additional criteria requirements and standards for the use.

17.136.060 Conditional use review criteria.

The uses identified in MCC 17.136.050 shall satisfy criteria in the applicable subsections below:

A. The following criteria apply to all conditional uses in the EFU zone:

- 1. 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.***

PROPOSED FINDING: 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, forest, and residential uses. As proposed, the continued operation of the Commercial Use will not have an adverse impact on farm or forest uses in the area.

As stated above, the Subject Property has simultaneously been used as the site for Commercial Use and as active farmland for many years. The area that the commercial business is occupying has not been actively farmed since at least May of 1994 via Google Earth View (which is attached hereto and incorporated herein as ***Exhibit "D."***) indicating that operation of the commercial use can coexist successfully with farm uses without requiring a change in accepted farm practices or costs.

Commercial utilization of the property does not entail the requirement for multiple daily visits. Woody debris and other timber materials are transported and deposited as necessary, in accordance with current demand levels. As a result, the Commercial Use will not create a substantial increase in traffic in the area. Other impacts from the commercial use are also limited because the operation is contained to the 1.5 acres as depicted on the site plan. The continued operation of the commercial use would not require any adjustments to farm, or forest uses in the area. This criterion is met.

- 2. Adequate fire protection and other rural services are, or will be, available when the use is established.***

PROPOSED FINDING: Adequate fire protection and other rural services are available. The Subject Property

is served by Marion County Fire District No. 1. The Applicant also provides two methods to prevent fire incidents. The first method is utilizing a watering truck at the time of mulching, this helps prevent dust and small wood particles from escaping the Subject Property. The second method is a water storage truck that is ready and available for any fire instances at the time of mulching. Police service is provided by the Marion County Sheriff's Department. As shown on the Site Plan, the Subject Property is currently served by a well on the property and a septic tank, both of which are in working order. The rural services are adequate for the Commercial Use. This criterion is satisfied.

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

PROPOSED FINDING: The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, or air and water quality. The operation of the Commercial Use is confined to the dedicated space depicted on the site plan and does not impact the surrounding property beyond the customary impact that would be expected for the productive use of a property of this type within the EFU Zone. Any remnant mulch will have a positive effect on the soil and water quality due to the high nutrient contents upon decomposition. This criterion is satisfied.

4. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

PROPOSED FINDING: Any noise associated with the use will not have a significant adverse impact on nearby land uses. As stated above, the commercial use operates the mulching process on average 4 times a year, and never during the summer months due to fire risk. Almost no noise from the Commercial Use is audible at the property lines of the Subject Property except during the quarterly mulching which is slightly more audible than the average farm processing equipment. The traffic noise on Brooklake Road NE which is a Major Collector (See Marion County Rural Roadway Inventory) dampens any sound coming from the operation of the Commercial Use. The noise produced by the Commercial Use does not exceed the type of noise ordinarily permitted in the EFU zone. The residential structures on the properties to the north and northwest are at a distance that noise from the Commercial Use is unlikely to reach them. The nearest residential structure is approximately four hundred fifty (450') feet and heavily buffered by vegetation. This criterion is satisfied.

5. *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.*

PROPOSED FINDING: The use will not have a significant adverse impact on potential water impoundments identified in the MCCP and will not create significant conflicts with operations included in the MCCP inventory of significant mineral and aggregate sites. The Subject Property is not located within any mapped aggregate or mineral sites and does now fall into the mapped Sensitive Groundwater Overlay. This criterion is satisfied.

D. Commercial Activities in Conjunction with Farm Use.

1. *The commercial activity must be primarily a customer or supplier of farm uses.*

PROPOSED FINDING: The Applicant's proposed commercial service involves supplying farms and ranches

with clean and economically sustainable mulch material on a regular weekly basis. This service positions the Applicant as a primary supplier for agricultural needs. The Applicant's tree business generates a significant amount of wood product that cannot be sent to the mill and would otherwise be sent to the landfill. These timber products are transported from current job sites to the Subject Property, where they are sorted and subsequently distributed to the appropriate mill. Timber suitable for milling is stored on the Subject Property for up to two weeks, as indicated on the site plan submitted. Wood products that cannot be milled are stored within the designated 1.5-acre Commercial Use area on the eastern side of the Subject Property. Due to fluctuating quantities of wood product, the Applicant stores it until quarterly mulching cycles, accumulating approximately 1,000 to 1,500 yards of wooded debris prior to mulching.

The use of mulch, specifically arborist wood chips, is widely favored and deemed essential for farm practices. According to Dr. Linda Chalker-Scott, a Master Gardener™ from Washington State University, "arborist wood chips represent one of the best mulch choices for trees and shrubs." (See, *Exhibit "E"*). Beyond arboriculture, mulch serves critical roles in protecting livestock winter feeding areas, safeguarding pastures, and providing bedding for animal enclosures, as noted by Joshua Faulkner from the University of Vermont Extension Center for Sustainable Agriculture (See, *Exhibit "F"*). Given these points, the clear connection between the Applicant's proposal and agricultural use solidifies their role as a primary supplier for farming needs. This criterion is satisfied.

2. *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*

PROPOSED FINDING: The proposed commercial service of supplying farms and ranches with clean and economically sustainable mulch material offers significant enhancements to farming practices across various critical aspects. Firstly, mulch, particularly arborist wood chips, plays a pivotal role in improving soil health by gradually decomposing and enriching the soil with organic matter. This enhancement of soil structure promotes better water retention, nutrient availability, and overall fertility, which are essential for robust crop growth and yield. Secondly, mulch acts as a natural weed suppressant, reducing the need for chemical herbicides and manual weeding efforts. By blocking sunlight and hindering weed germination, mulch helps farmers maintain cleaner and more productive fields, thereby supporting sustainable agricultural practices.

In addition to its soil-related benefits, mulch provides effective erosion control by minimizing the impact of rainfall and runoff on agricultural land, especially on slopes. This protective role helps prevent soil degradation and loss of valuable topsoil, which are vital for maintaining long-term soil productivity and agricultural sustainability. Furthermore, as mulch decomposes over time, it releases nutrients back into the soil, acting as a natural fertilizer. This nutrient cycling process reduces dependency on synthetic fertilizers, lowers input costs, and supports ecological balance within farming systems.

Wood chips and mulching also play a crucial role in enhancing the management practices and welfare of cattle and other livestock. Whether used for bedding, moisture control, thermal insulation, or environmental enrichment, wood chips provide practical benefits that contribute to a healthier and more sustainable approach to livestock farming. Their versatility underscores their value in optimizing animal comfort, hygiene, and overall agricultural productivity. Based on the information provided, the proposed commercial use significantly enhances farming practices, this criterion is satisfied.

3. *The agricultural and commercial activities must occur together in the local community.*

PROPOSED FINDING: The Subject Property is within the EFU zone. As stated above, the Commercial Use operates entirely within the EFU Zone and within the farming community. The Subject Property (1.5-acres) is a non-farmed section of the greater parcel where approximately 7.0-acres are currently leased for crop production. Because the Commercial Use is contained within the designated area and heavily buffered by berms and vegetation the proposal does not interfere with additional farm uses within the zone. The surrounding properties are used primarily for residential and agricultural uses which can continue without substantial interference from Commercial Use. This criterion is satisfied.

4. *The products and services provided must be essential to the practice of agriculture.*

PROPOSED FINDING: The commercial use of mulch chips is crucial to agriculture due to their extensive benefits and necessity. For crops, mulch chips improve soil health by adding organic matter, which enhances soil structure, water retention, and nutrient availability, resulting in better plant growth and higher yields. They also act as a natural weed suppressant by blocking sunlight, reducing the reliance on chemical herbicides and manual weeding. Additionally, mulch chips help retain soil moisture, which is vital in dry conditions, and regulate soil temperature to protect plant roots from extreme temperatures. They also prevent soil erosion by mitigating the impact of rainfall and runoff. By supplying mulch products to local farms and ranches and repurposing wood that would otherwise end up in landfills, the Applicant demonstrates that this commercial use is not only essential for agricultural practices but also serves as an eco-friendly alternative to increasing landfill waste. This criterion is satisfied.

VI. CONCLUSION

Applicant's request complies with the relevant criteria as set forth above. As such, the Applicant respectfully requests that this Conditional Use Permit for a Commercial Use in Conjunction with Farm Use request be approved as submitted.

EXHIBIT LIST:

- Exhibit A – Vesting Deed & Historical Configuration Deeds
- Exhibit B – Zoning and Comprehensive Plan Maps
- Exhibit C – Site Plan
- Exhibit D – 1994 Google Earth Image
- Exhibit E – WSU Article
- Exhibit F – UOV Article