

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. 24-028

APPLICATION: Application of Marvin Klopfenstein for a conditional use permit to operate a mulching service as a commercial activity in conjunction with farm use on a 9.72-acre parcel in an EFU (Exclusive Farm Use) zone located at 5711 Brooklake Rd NE, Salem (T6S; R2W; Section 16; Tax lot 2100).

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 **November 25th, 2026**. 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 any required permits from the Marion County Building Inspection Division.
2. The sales of mulch produced and stored on the property shall be for agricultural use in the local area.
3. All activities and storage for the commercial mulching shall be contained within the area identified on the site plan submitted by the applicant and the storage of logs and debris for uses other than turning into mulch shall not take up more than 25% of the total area dedicated to commercial use.
4. The applicants shall maintain a minimum 20-foot setback from neighboring parcels in agricultural use for any mulch and debris storage piles or areas. Vehicles and equipment are allowed to be parked within this setback.
5. The applicants shall establish and maintain a contiguous vegetative or man-made wind buffer which at the time of planting must be at least 4 feet in height, and then grow to at least 12 feet tall around the perimeter of the area proposed area for commercial use on the applicant's site plan to mitigate airborne pests and diseases.

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

6. 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.
7. 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. It is recommended that agencies mentioned in Finding #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

8. The applicants should contact the Marion County No. 1 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.
9. 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 **November 25th, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 26th, 2024** 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 (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations. The zoning does also allow for certain commercial activities conducted in conjunction with agriculture subject to certain conditions and criteria.
2. The property is located at 5711 Brooklake Rd NE on the north side of Brooklake Rd. It is roughly a half mile east of the intersection of Brooklake Rd and Hwy 99E. The property contains a dwelling, a couple accessory structures and on the 2023 aerial imagery there is a substantial amount of tree debris and heavy machinery located on the property. Further review of available street imagery shows large logs stored on the property visible from the road and behind a mound of dirt separating the Outside of the homesite area is a farm field that encompasses the remainder of the parcel.
3. Surrounding uses are predominantly agricultural operations located on all sides except for the northern half of the west property line, which is next to residential parcels zoned Acreage Residential within the Brooks-Hopmere community. Commercial uses within Brooks-Hopmere are located half a mile down Brooklake Rd where it intersects with Hwy 99E. Additionally, a dedicated right-of-way for 57th Ave NE (a non-county road) runs along the full extent of the western property line, but most of this right-of-way is not actively used for a roadway.
4. Soil Survey of Marion County Oregon indicates 100% of the subject property is composed of high-value farm soils.
5. The applicant is proposing to establish a mulching business as a commercial use in conjunction with agriculture on the subject property. The business operations would include the storage of woody debris to be turned into mulch, the production of the mulch on-site, and the storage of mulch.
6. Various agencies were contacted with the proposal and given an opportunity to comment.

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Requirements:

- A. Within 30 calendar days from the date of full land use approval, obtain an Access Permit to permanently close the private driveway approach to Brooklake Road in favor of taking all access off 57th Avenue. Rationale is that the property already has two accesses from 57th Avenue, which is considered reasonable access, and furthermore, the Brooklake Road approaches measuring only 25 feet apart from each other do not meet spacing criteria for a Major Collector. Also under the Permit, widen the 57th Avenue approach with hot mix asphalt including broadening the radius flares since evidence indicates wide vehicle turns are dragging gravel onto the edge of Brooklake Road. Note: it will not be required to re-address the property to 57th Avenue.

Marion County Building commented: "No Building Inspection concerns. Permit(s) are required to be obtained prior to any development of structures and/or utilities installation on private property, if applicable."

Marion County Septic commented: "An authorization is required if there is any proposed connection to the existing system."

Marion County Code Enforcement commented that the application is to help resolve a code enforcement violation on the property.

Marion County No 1 Fire District provided comments with fire code requirements for the proposed commercial option. See enclosed comments.

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.*

The applicant states in their proposal that they are the proprietor and operator of Mountain View Tree Service (MVTS), and the subject property is where they store various forms of woody material from these various products. The materials include both logs that are sold to mills for making lumber and smaller debris that are turned into woodchip mulch. The applicants state that the mulch is sold to local farms for various applications, and the applicants provided supplemental information showing specific agricultural applications for mulch on agricultural operations.

While the applicants have shown how their mulching operation is a primary supplier of farm uses, the coinciding use of the property as a storage space for logs sold for lumber production does not primarily supply farming operations. The applicant's justification of this use is that the logs sent to lumber mills spend up to two weeks on the property in storage, but that they do not spend much time beyond this on the property. Further, upon request for more information, the applicants identified the staging area dedicated to storage of logs for lumber and stated it would take up no more than 6,000 square feet of the area dedicated to the proposed use (which the applicant calculated as 9% of the total area). The combination of both the limited area and timeframe logs for lumber spend on the property is sufficient to demonstrate the use as a timber storage yard is incidental in comparison to the mulching operation. Therefore, 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.*

In their application the applicants provide supplemental information discussing the role and uses of mulch in agricultural operations, including the retention of moisture and as padding for animals. When the mulching products are sold to local farmers these uses will enhance their operations in various ways. Additionally, the applicant supplied additional information in the form of attestations by local farming operations which receive

mulch from the applicant. This combination of information is sufficient to show how the commercial activity enhances local farming enterprises. The criterion is met.

- (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*

The subject property for this proposal is located just outside the Brooks-Hopmere community in an area otherwise surrounded by commercial agriculture operations. As described in criterion *b* above, the applicants provided statements by four of the agricultural operations that received mulch from the applicant in the past. Three operations were located in Marion County and one in the neighboring Polk County, so they are all located within the central Willamette Valley around Salem. The criterion is met.

- (d) *The products and services provided must be essential to the practice of agriculture.*

The applicants provided information regarding the uses and benefits of mulch in agricultural operations to show how the service is essential for the practice of agriculture. Such examples were moisture retention, natural weed suppression, and the protection of soil erosion by mitigating the impact of rainfall and runoff. 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 applicants claim that the proposed commercial use would not force a significant change in accepted agricultural practices in the local area because the location is on a portion of the parcel that was not previously dedicated to farming, the traffic impact will be limited as debris will be picked up and dropped off on an as-needed basis, and the use will be confined to the roughly 1.5-acre area identified on the site plan. The applicant also claims the site has been in commercial use for “many years”. While this last claim is not substantiated by aerial imagery even as recent as 2021, the other three claims are generally substantiated by the available imagery and description of the business process in the application. That said, the proposed use as a site for commercial mulch generation brings has the potential to introduce tree diseases or insect pests into the local area that could significantly damage local agricultural operations (such as the hazelnut orchard on the adjacent western property) by acting as an introduction point and breeding ground for diseases and pests on a property where the impacted adjacent farmers cannot apply their fungicides or pesticides to combat these threats. While the level of pest introduction is not simple to predict, the proposed activity is capable of critically damaging the economic viability and force a change in local farming practices through the introduction of new pests or diseases that destroy crops grown in the local area.

As such, mitigation measures against this significant threat shall be taken to protect the existing agricultural practices and ensure the proposed use remains compliant with this criterion. Setbacks from neighboring agricultural uses and screening to mitigate the airborne spread of diseases shall be made a condition of approval and the applicant is encouraged to develop a strategy for further mitigation beyond the conditions of this case.

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

The Marion County No. 1 fire district provides the subject parcel with fire protection services and provided comments with their requirements for meeting fire safety code. Other rural services such as a well and septic are already present on site and the Marion County Sheriff provides police services to the site. All other necessary rural services are either present or will be available when the use is established. The criterion is met and meeting the requirements of the Marion County No. 1 fire district shall be made a condition of approval.

- (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 proposed activity is not anticipated to have an adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability or water quality, as the activity would be contained to the roughly 1.5-acre area proposed on the site plan. Air quality is a concern, as the proposed use will be conducted out in the open and the dust from the mulching activity can reduce air quality in the local area. However, the applicant states that they use a watering truck during the mulching activity to prevent dust and small wood particles from escaping the property, which sufficiently addresses air quality concerns. The criterion is met.

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

The applicant states that the actual mulching of the woody debris occurs on a limited bases, happening 4 times a year on average and never in the summer to mitigate fire risk. All other activities would generate noise typical within the farm zone, such as engine noise from trucks and tractors. Additionally, the vegetative screening made a condition of approval to mitigate the concerns of criterion 8(a) above will further reduce the impact of noise on nearby land uses. 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.*

There are no nearby water impoundments or mineral and aggregate sites identified in the Comprehensive Plan which would conflict or be adversely impacted by the proposed use. 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: November 8th, 2024

If you have any questions regarding this decision contact Alexander Seifer 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.