

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. 21-034

APPLICATION: Application of Barnett Express, on property owned by Jesse Lucas, for a conditional use to operate an agricultural equipment sales and service facility as a commercial activity in conjunction with farm use on a 12.25 acre parcel in an EFU (Exclusive Farm Use) zone located in the 4100 block of Interstate Pl. NE, Brooks (T6S; R2W; Section 18D; tax lot 605).

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

EXPIRATION DATE: This permit is valid only when exercised by **August 20, 2023**. 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 drainfield 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. 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.
3. Prior to issuance of a Building Department Certificate of Occupancy for the tentatively proposed warehouse, remit a proportional share payment an amount commensurate with the verified traffic impact to the Brooklake Road / Huff Avenue intersection and I-5 Interchange ramps.
4. 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 #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

5. The applicants should contact 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. Paula Smith is the best contact for Marion County Fire District #1. She can be reached at: 503-588-6513.
6. 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 **August 20, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 21, 2021** 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 Exclusive Farm Use (EFU) zone is to promote the continuation of commercial agricultural operations.
2. The property is approximately 12.25 acres in size and located on the west side of Interstate 5 and along the southerly boundary of Interstate Place NE in Salem. The property was lawfully created as Parcel 1 of Partition Plat No. 97-100 and then modified into its current configuration as part of Property Line Adjustment 99-12. It is therefore considered legal for land-use purposes. The property is currently undeveloped with the exception of a small well house on the northern portion of the property.
3. Surrounding properties to the north are part of the Huff Industrial Park and area zoned Industrial. These properties are developed with warehouses, trucking businesses, and a Pilot gas station. The property to the south is zoned EFU, contains a dwelling and other accessory structures, and is being used for farming. The property to the west is currently in farm use. To the east, the property is bordered by Interstate 5.
4. Soil Survey for Marion County, Oregon indicates 99.9% of the subject property soils are High-Value Farmland with soils consisting of Amity Silt and Concord Silt Loam.
5. The applicant is proposing a conditional use to allow for a commercial operation in conjunction with farm use that leases and sells used and new large scale farm equipment to farmers; the applicant also proposes providing maintenance and repair services for farm equipment.
6. Marion County Land Development and Engineering provided the following comments:

ENGINEERING CONDITION

Condition A – Prior to issuance of a Building Department Certificate of Occupancy for the tentatively proposed warehouse, remit a proportional share payment an amount commensurate with the verified traffic impact to the Brooklake Road / Huff Avenue intersection and I-5 Interchange ramps.

The proposed development will add traffic to the above-noted intersection and interchange, which each exceed Marion County and ODOT operating standards. A discussion of these intersections is included in a sub-area plan in the Marion County Rural Transportation System Plan (RTSP). The assessment is based upon the Applicant's statement contained within the land use application specifying that a 12,000 square-foot commercial building will be built for the proposed business. Nexus for this requirement is the anticipated additional traffic associated with the proposed agricultural heavy equipment sales/service and the identified need to make public road improvements.

ENGINEERING REQUIREMENTS

- B. At the time of application for building permits, an Access Permit will be required to document legal access from Huff Avenue to Interstate Place private easement for the proposed building.
- C. Transportation System Development Charges will be assessed upon application for building permits.
- D. Stormwater detention is required for development of 0.5-acres or greater. However, water quality treatment is not required in this particular area of the county. In conjunction with stormwater management, a civil engineered site plan including grading plan is required. The stormwater facility should be routed to a legal outfall.

ENGINEERING ADVISORIES

- E. The property appears to be located adjacent to but not within the Brooks Sanitary Sewer Service District.
- F. DEQ requires a NPDES 1200-C Construction Stormwater Erosion Permit for ground disturbances of 1.0-acre or greater.
- G. In accordance with ORS 175.175, private access easements are to be collectively maintained by adjacent users of the easement. This pertains to Interstate Place.

Marion County Tax Assessor provided information related to taxes on the subject property.

All other parties notified either had no comment or no response was received.

- 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.*
 - (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*
 - (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*
 - (d) *The products and services provided must be essential to the practice of agriculture.*
- 8. The applicant is proposing to operate a business that sells, leases, and repairs farm equipment within a 12,000 square foot proposed metal building located in the North Central portion of a property located in the 4100 block of Interstate Place NE Brooks, OR. The application narrative states that the customers will be local farmers. The businesses is new, but the applicant is advised that Marion County Planning considers 7(a) to be satisfied when $\frac{3}{4}$ of revenue generated comes from sales or services provided to local farmers. It appears that the intent of the business is consistent with the criterion in 7(a) and that the criterion can be satisfied once the business is established.

The business will provide mobile harvest equipment repair services, provide rental equipment, and sell new equipment to local farmers. The repair services will necessarily be local and are expected to enhance the area's farming enterprises by reducing the amount of time farmers are delayed by equipment failure and providing new farming equipment to local farmers. It appears that the intent of the business is consistent with the criterion in 7(b) and that the criterion can be satisfied once the business is established.

The company has identified the property in Salem because of its central location within the Willamette Valley, making it easier to serve local farmers; however, the business does intend to serve the state as a whole. The criterion in 7(c) does not preclude commercial activities in conjunction with farm use to from servicing a broader geography, only that it serve the local farming community. It appears that the intent of the business is consistent with the criterion in 7(c) and that the criterion can be satisfied once the business is established.

Farm equipment is essential to the operation of commercial farms within the region. Providing new equipment, temporary rental equipment, and repair services is expected to contribute to the local industry. It appears that the intent of the business is consistent with the criterion in 7(d) and that the criterion can be satisfied once the business is established.

9. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in Marion County Code (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.*
 - (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
 - (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.*
 - (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
 - (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.*
10. Since the use has been determined to be in conjunction with farm use, it is not expected to have a negative impact on nearby lands devoted to farm use. As the applicant points out, the use might enhance nearby farming operations through the provision of services necessary for farming. The proposal meets #9(a).

The Marion County Fire District No. 1 serves the parcel and all other needed services are currently available to the site. The proposal satisfies the criterion in #9(b).

The property is not within a wildlife habitat area; groundwater limited area, floodplain or geologically hazardous area. The property does contain concord silt loam, however, which is identified as a predominantly hydric soil by the Natural Resources Conservation Service, an agency of the United States Department of Agriculture. In accordance with the requirements under Oregon Revised Statutes 215.418, the Oregon Department of State Lands has been notified of the proposal using the Department's Wetland Land Use Notification Form. There is no evidence of significant odors or noxious matter emitted from the premises that would affect air or water quality. Noise generated by the proposed activity should be comparable to agricultural activities and is unlikely to exceed the noise generated by Interstate 5. The proposal meets #9(c) and (d).

There are no potential water impoundments, or significant mineral and aggregate sites identified by the Comprehensive Plan in the area. The criterion in #9(e) is met.

11. Based on the above findings it has been determined that the applicant's request meets all applicable criteria to operate a farm equipment sales, leasing, and repair business as a commercial activity in conjunction with farm use and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: August 5, 2021

If you have any questions regarding this decision contact Ryan Dyar 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.