

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. 21-042

APPLICATION: Application of Cesar Mendez & Sophia Mendoza for a conditional use to operate a portable toilet company for rental, storage and sale as a commercial activity in conjunction with farm use on a 3.40 acre parcel in an EFU (Exclusive Farm Use) zone located at 10730 Portland Road NE, Salem. (T6S, R2W, Section 03C, Tax Lot 2200 and 2300).

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 **October 14, 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. The applicant shall permit or remove the unpermitted guest house located in the shop building. If removing, an inspection must be completed through Marion County Building Inspection. This may require a permit to be obtained. Please contact Marion County Building at 503-588-5147 for more information.
4. For the first three years of operation, the business shall submit a written statement prepared by a certified public accountant that certifies both total revenue generated by service to farmers as well as total revenue of the business. The certified public accountant must also certify that this information has been verified based on receipts or other documentation. A written statement that does not include information regarding verification is not sufficient. After the first three years of operation, the Planning Director may request verification of compliance as needed.
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. It is recommended that agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

6. The applicants should contact Woodburn 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.
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.
8. The applicants should contact Oregon Department of Transportation District 3 (503-986-2900) for any additional permits that may be required, listed in Finding #6 below.
9. The applicants should contact the Department of State Lands (DSL) if any ground disturbing activity is proposed to occur in or near the identified wetland on tax lot 2300. DSL can be contacted at 503-378-4844.

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 **October 14, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 15, 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 3.40 acres in size and located on the east side of Portland Road NE and the north side of Waconda Road NE. Tax lots 2200 and 2300 together are one unit of land, as verified in CU20-003, which determined the parcels together are lawfully created.
3. Surrounding properties in all directions are zoned EFU and are in small acreage homesites near the intersection of Portland Road and Waconda Road, with properties further out in large commercial farming tracts.
4. Soil Survey for Marion County, Oregon indicates 100% of the subject property soils are High-Value Farmland with soils consisting of Dayton Silt Loam and Woodburn Silt Loam (0-3% slopes)
5. The applicant is proposing a conditional use to allow for a commercial operation in conjunction with farm use to operate a portable toilet company to allow for storage, sale and rental of the portable toilets to farmers.
6. Marion County Land Development and Engineering provided the following comments:

ENGINEERING REQUIREMENT

- A. The subject property is within the unincorporated area of Marion County and may be assessed Transportation System Development Charges (SDCs) for the change-in-use utilizing dedicated office space inside the existing personal use accessory structure, per Marion County Ordinance #00-10R.

ENGINEERING ADVISORY

B. Portland Road / SR99E driveway access is under ODOT

Marion County Septic says that an authorization notice is required for the change in use. There are no records of the guest house shown on the site plan being connected to the existing septic system via an authorization notice or the permitting and installation of a separate system. This will need to be addressed during the authorization process. The portable toilet business must comply with OAR 340-71-0600.

Oregon Department of Transportation (ODOT) commented that the request does not trigger any requirements from ODOT. If any work in the highway right-of-way is required, applicants should call the ODOT District 3 Permits office at 503-986-2900.

Woodburn Fire District commented that the office meets Oregon Fire Code for B Occupancy and Egress is maintained on the property for access of Fire Apparatus.

Marion County Building commented that permits are required for any future structures and/or utilities on private property.

Friends of Marion County commented that the permit should be denied as the subject property is not being farmed and operating a portable toilet company does not enhance the farming enterprises of 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 stores portable toilets for agricultural operations. The application narrative states that the customers will exclusively be local farmers. Comments received from Friends of Marion County state that the application should be denied as there is no way for the county to restrict who the business serves. Marion County has required written statements verifying the source of income for other commercial activities in conjunction with farm use in order to show that they are primarily serving the agricultural community. As a condition of approval to address concerns that were raised, the applicants shall be required to have a statement prepared by a Certified Public Accountant for the first three years indicating the percentage of business that serves the agricultural community, as well as the revenue of services to farmers, and total revenue. After the first three years, the Director reserves the right to request written verification of compliance as needed. The business 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 portable toilets to be used at farms in the local area. Comments from Friends of Marion County state that the application should be denied as the sale and servicing of portable toilets does not enhance the farming practice on the applicant's property. Friends of Marion County also cites ORS 215.283(2)(a) and ORS 215.203 to support that the commercial activity must enhance the farming operation on the subject property. The State of Oregon has not required that the property a commercial activity in conjunction is approved on be farmed or forested in order to be approved. Rather, the commercial activity must support farming or foresting practices in the local area. The portable toilets will allow farmers to provide bathroom facilities to workers in the

field, which is a basic level of human dignity and benefits the agricultural operation by not creating a human waste issue. Based on the information provided by the applicant, 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 applicant states that they will serve the local agricultural community. Friends of Marion County comment that the permit should be denied as “there is no method that the county can use to guarantee that sales and servicing of the portable toilets will be restricted to these customers. As discussed above, in order to assure compliance with serving the local agricultural community the applicants shall be required to submit a statement prepared by a certified public accountant verifying that over 75% of the revenue of the operation is generated by serving the farming sector . 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 in conjunction with the conditions of approval.

The applicant states that the products and services provided will be essential to agriculture practices because it will help farmers provide clean toilets for their workers and visitors. Comments submitted by Friends of Marion County state that the application should be denied as the sale and service of portable toilets can be made available from properties zoned commercial or industrial. The state does not hold that commercial business that support farm uses can only be located on commercial or industrial properties. Provided the use conforms to the criteria and standards described for a commercial activity in conjunction with farm use, a commercial business can be approved in the EFU zone. Based on the evidence provided, the business is consistent with the criterion in 7(d).

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. The business proposes to provide storage, rental, and sale of portable toilets to farmers. As the applicant points out, the use might enhance nearby farming operations through the provision of services necessary for farming. Through the course of reviewing the permit, staff became aware that there may be an unpermitted guest house on the subject property. In order to assure that there are no significant effects to farmland, the applicants shall be required to either permit or remove the guest house area located in the outbuilding. Based on these facts and compliance with conditions of approval the proposal meets #9(a).

The Woodburn Fire District 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 a wetland located on tax lot 2300 that crosses east to west and bisects the property. The applicant is advised that any ground disturbing activity in this area may require a permit and the Department of State Lands should be consulted ahead of time. 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.

Brandon Reich,
Planning Director

Date: September 29, 2021

If you have any questions regarding this decision contact Alyssa Schrems 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.