

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 / PARTITION NO. 24-008**

APPLICATION: Application of Frank Timber Resources Inc and Point Man Canyon Out Post for a conditional use permit to establish a Private Park on a 4.78-acre portion of a 116.50-acre parcel and a subsequent partition of said 116.50-acre parcel into two parcels consisting of the 4.78-acres and 111.72-acres in an TC (Timber Conservation) zone located in the 34000 block of North Santiam Hwy SE, Gates, (T9S; R4E; Section 30; Tax lot 400).

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

EXPIRATION DATE: This conditional use permit is valid only when exercised by **May 29, 2026** (two years). 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 proposed use is for land use purposes only. Due to septic, well and drain field replacement areas, this parcel may not be able to support the proposed use. To ensure 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 building permits from the Marion County Building Department.
2. The applicant shall submit evidence of a recorded access easement providing access to the site before establishing the park.
3. Survey comments if a survey is determined to be necessary:
 - a) Per ORS 92.055 – Parcels outside an urban growth boundary and greater than 10 acres can be un-surveyed.
 - b) Parcels ten acres and less must be surveyed.
 - c) Per ORS 92.050, plat must be submitted for review.
 - d) Checking fee and recording fees required.
 - e) A title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional updated reports.
4. If no survey is deemed to be necessary, the applicant shall submit evidence of an accurate, recorded legal description, for the portion of the parcel lying south of HWY 22.
5. Prior to issuance of any building permit, the applicant shall sign and submit a Declaratory/Farm-Forest Statement to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
6. Any sign shall meet the standards in Chapter 17.191 of the MCC.
7. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.

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. The applicant is advised of the following:

8. The applicants should contact the Gates 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 #5 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 **May 29, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 30, 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 Forest in the Marion County Comprehensive Plan. The intent of this designation and the corresponding TC (Timber Conservation) zone is to promote the continuation of resource uses in the area.
2. The subject property is located on the northern and southern sides of HWY 22 in the Santiam Canyon, approximately 700 feet east of its intersection with Railroad Ave SE. the property is vacant land which saw its timber burn in the 2020 Labor Day fires. There are three mapped streams on the subject property which drain the hillside. The property is described by deed in Volume 669, Page 11 and is therefore considered legal for land use purposes.

HWY 22 runs through the property and may already legally divide the two pieces of land. The County Surveyor could not locate a specific, separate legal description of the land lying south of HWY 22. Due to this, the survey conditions are worded in such a way that there are two options the applicant may choose:

If the applicant does not have a separate legal description of the land lying south of HWY 22, then they will need to partition the parcel, survey it and create a new legal description.

If the land lying south of HWY 22 has a recorded legal description, then no partition survey is necessary.

This is reflected in the case conditions.

3. Properties in all directions are zoned TC and are either in timber production or have small homesites. Further to the west there is a portion of Acreage Residential zoned land along the Santiam River which has approximately 25 lots zoned for residential use off Railroad Ave SE.
4. The applicant is proposing to establish a private park with a Veterans Memorial on the partition of the land which lies south of HWY 22.

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

ENGINEERING REQUIREMENTS

- A. A County Access Permit will be required if taking indirect access to the subject property from Railroad Avenue. A prerequisite to issuance of a county access permit is evidence of authorization to construct a driveway within TL 900 owned by the State of Oregon that parallels North Santiam Hwy.
- B. Upon application for building permits, Transportation System Development Charges (TSDCs) fee will be assessed based on Park acreage.

ENGINEERING ADVISORIES

- C. Access from North Santiam Hwy is under ODOT jurisdiction that would also necessitate authorization from the State to cross TL 900.
- D. Cumulative ground disturbances of 1.0 acre or more require registration with DEQ under their NPDES 1200-C Construction Stormwater Erosion program.

Marion County Building Department commented:

“Structural permits are not required for the proposed flagpoles or other features of the park since the property is outside a UGB and according to the Marion County Code. However, if any electrical and/or plumbing systems are to be installed, separate permits for these is required to be obtained prior to construction. Accessibility would be required from parking areas, along accessible routes such as sidewalks and curb ramps, to areas for “picknicking” according to OAR 918-650. Please refer to this Oregon Administrative Rule for more information.”

Marion County Tax Assessor submitted comments related to the subject properties property taxes.”

ODOT (Oregon Department of Transportation) commented:

“Access to this property appears to be proposed to Railroad Ave SE which is a Marion County facility and therefore an ODOT access permit would not be required. The proposed approach road appears to cross and use tax lot 900 to be able to access the development site, lot 400. Tax lot 400 is owned by the State of Oregon and so an access easement may be needed. The applicant is advised to contact the ODOT Property Management unit (ODOTPropertyManagement@odot.oregon.gov) for more information. If the proposal involves any work in the ODOT right of way, then the applicant will need a Miscellaneous Permit through our District 3 Maintenance office.”

Marion County Surveyor’s Office commented:

1. Per ORS 92.055 – Parcels outside an urban growth boundary and greater than 10 acres can be un-surveyed.
2. Parcels ten acres and less must be surveyed.
3. Per ORS 92.050, plat must be submitted for review.
4. Checking fee and recording fees required.
5. A title report must be submitted at the time of review. Title reports shall be no more than 15 days old at the time of approval of the plat by the Surveyor’s Office, which may require additional updated reports.
6. *Note: Access may be an issue and if so would need to be resolved prior to plat approval.*

All other agencies stated not objection to the proposal.

6. In order to approve a private park in a TC zone, the applicant must demonstrate compliance with the specific criteria listed in MCC 17.138.050(C). These include:

C. Private Parks and Campgrounds. Private parks and campgrounds shall meet the following criteria:

1. *Campgrounds in private parks shall only be those allowed by this subsection.*

No camping is proposed. The criterion does not apply.

2. *Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.71 and OAR Chapter 660, Division 004.*

No camping is proposed. The criterion does not apply.

2. *Campgrounds shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes, and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.*

No camping is proposed. The criterion does not apply.

4. *A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation and other natural features between campsites.*

No camping is proposed. The criterion does not apply.

5. *A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:*

- a. *No more than one-third or a maximum of 10 campsites, whichever is smaller, may include yurts;*

- b. *The yurt shall be located on the ground or on a wood floor with no permanent foundation.*

6. *Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.*

7. *It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.*

8. *Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.*

No camping is proposed. The criterion does not apply.

7. The TC zone, in MCC 17.138.050(A), contains general criteria that apply to all conditional use proposals. Those requirements are:

- (a) *The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming 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 in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*

The use is separated from any farm or forest uses by HWY 22 and the Santiam River. It is also next to the existing Packsaddle Park to the east. The use of a park in this area is already established and any conflicts would have been realized at this point. There is no indication that the park would force a change in accepted agriculture practices in the area. The criterion is met.

- (b) *The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.*

The area is served by the Gates Fire District and does not provide for camping or cooking opportunities, thereby reducing the potential for fire hazards. Located next to an existing park which has not caused fires in the area, the use is not expected to increase fire hazards. The criterion is met.

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

Stated above, the use is served by the Gates Fire District and Marion County Sheriff's Office. The criterion is met.

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

There is no proposed septic or water systems, or heavily developed commercial uses or other uses that typically create pollutants. The use will be that of a private park with a Veterans memorial for people to stop at and enjoy. The criterion is met.

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

The use is not expected to generate excessive noise as there are not any amphitheaters or event centers proposed and noise will be buffered by HWY 22. The criterion is met.

- (f) *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 is not expected to be any conflicts with the Santiam River as no access is proposed and the river is publicly accessible to the east at Packsaddle Park and no adverse impacts have been found thus far. There are no mineral or aggregate sites in the vicinity. The criterion is met.

8. In order to approve a partition in the TC zone, the specific criteria in 17.138.080 (A) must be met. These include:

A. Minimum Parcel Sizes for Newly Created Parcels.

- 1. The minimum parcel size is 80 acres, except as provided in subsection (A)(2) of this section.*

- 2. A new parcel less than 80 acres may be approved as follows:*

- a. For a permitted use listed in MCC 17.138.020(R), (S) and (T); or*
b. For a conditional use listed in MCC 17.138.040(C)(1) and (2); (D)(1); (E)(1) through (4); (G)(1) and (3); (H); (I); (J); (L) and (M).

The use is that of a private park which is conditional use G(1) above. The parent parcel will stay above 80 acres. The criterion is met.

- c. Criteria applicable to the use shall apply to the parcel.*

The conditional use criteria have been reviewed against this proposal and found to be compliant with them.

- d. The parcel shall not be approved before the use is approved.*

This applicant approves the use and creation of the parcel will come after.

- e. The parcel containing the use described in subsection (A)(2)(a) or (b) of this section shall be the minimum size necessary to accommodate the use.*

They are dividing the parcel along the roadway which is the minimum needed for the use and most logical, considering the circumstances.

- f. The original parcel was less than 80 acres.*

This standard is proposed to be varied as it was codified by the county and not through state law. The purpose and intent of the code is maintained as the parcel is already physically divided by the right-of-way

of HWY 22. The criterion is met.

9. Based on the above findings it has been determined that the proposed Conditional Use complies with the criteria in the TC zone and is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: 5/14/2024

If you have any questions regarding this decision contact Austin Barnes 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.