

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 RECONSIDERATION  
FLOODPLAIN DEVELOPMENT CONDITIONAL USE CASE NO.24-002**

**APPLICATION:** Application of Roy and Allison Houck for a conditional use permit to establish a construction contractor shop and associated storage buildings within the 100-year floodplain of Mill Creek on a 7.19-acre parcel in the UT-10 (Urban Transition, 10-acre minimum) zone located in the 5300 block of Eastland Ave SE, Salem (T8S; R2W; Section 18B; Tax lot 1300).

**DECISION:** The Zoning Administrator for Marion County has **RECONSIDERED** and **APPROVED** the above-described Conditional Use application subject to certain conditions

**EXPIRATION DATE:** This conditional use permit is valid only when exercised by **July 18, 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 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 proposal. To ensure the subject property can accommodate the proposal the applicant should contact the Building Inspection Division, (503) 588-5147.

**All development in the floodplain is subject to federal, local, and state regulations and standards at the time development is begun. These regulations and standards are in the process of being revised and the development proposed in this application may be subject to additional regulations and standards at the time construction of structures or placement of fill on the property begins.**

**Based on preliminary information provided by the National Marine Fisheries Service on April 14, 2016, federal law might only recognize as legal under the county current floodplain ordinance building permits that are issued prior to September 15, 2016, and where the work is begun prior to March 15, 2017. Permits issued after September 15, 2016, or not begun until after March 15, 2017, may be in violation of federal law and thus invalidate this local permit.**

**Construction related to this permit is approved only within the existing developed area of the property. Construction of new structures, fill or other development of the property should not occur outside the existing developed area without prior consultation with the Marion County Planning Division. Federal regulations may require additional approvals for development outside the existing developed area of the property.**

**Applicants are further advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade).**

**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 approval for all permits required by the Marion County Building Inspection Division.
2. Prior to issuance of building permits, the applicant shall sign and submit to the Planning Division a Floodplain Declaratory Statement (enclosed) acknowledging that the property and the approved development are located within a floodplain. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

3. Prior to development of the property the applicant shall submit, for review and approval by the Zoning Administrator, a detailed site plan showing how the development will comply with all applicable development standards.
4. Prior to issuance of building permits, the applicant shall develop Base Flood Elevations for the developments on the property.
5. Prior to issuance of building permits, a registered civil engineer shall certify the proposed structures meet the requirements of Marion County Code: 16.19.130(D) and MCC 16.19.140(C), (D), (E), and (F).
6. An Elevation Certificate shall be supplied at the following times during the permitting process:
  - (a) Prior to construction (based on construction drawings)
  - (b) Once the floor elevation can be determined (based on the building under construction)
  - (c) Prior to occupancy (based on finished construction)
7. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

*Condition A – Prior to issuance of a Building Certificate of Occupancy for the proposed office/shop, provide the public R/W half-width of minimum 25 feet along Kashmir Way and Eastland Avenue frontages, and similarly an anticipated 25-foot SE property corner radius at the intersection.*
8. 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.
9. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to a 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 any restrictions or conditions thereon. The applicant is advised of the following:

10. The applicants should contact the Turner 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.
11. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited unless stored within a structure or on land elevated above the base flood level. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.
12. All or a portion of this property has been identified as wetland on the statewide wetland's inventory. If the site is a jurisdictional wetland, this proposal may require a permit from the Division of State Lands and/or the Army Corps of Engineers. You must obtain any necessary state or federal permits before beginning your project. Marion County is not liable for any delays in the processing of a state or federal permit.
13. 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 Zoning Administrator. If there is any doubt that the application conforms with adopted land use policies and regulations the Zoning Administrator must condition or deny the application. Anyone who disagrees with the decision may request that the application be considered by a 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 120-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 Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **July 18, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 19, 2024**, unless further consideration is requested.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which the decision was based are noted below.

1. The property is designated Industrial in the Salem Area Comprehensive Plan. It is currently zoned UT-10 (Urban Transition) by Marion County. The purpose of this zone is to retain and protect for future urban use properties which are undeveloped or underdeveloped and do not have available urban facilities. The zone allows the establishment of uses compatible with the plan designation. The comprehensive plan designation of Industrial is intended for industrial activities such as manufacturing, distribution, and warehousing.
2. The property is located on the north side of Kashmir Way SE at the corner where Kashmir meets Eastland Avenue SE. Most of the property is within the 100-year floodplain of the East Fork of Pringle Creek as shown by FEMA maps that were updated in 2019 by the Letter of Map Revision (LOMR) 18-10-1215P (eff. 5/9/2019). The parcel is bordered on the west by a drainage ditch (East Fork of Pringle Creek) that also borders the western quarter of the southern property line before crossing under Kashmir way. The parcel is generally flat and mostly graveled. It is currently in use for storage of vehicles, trailers and building supplies.

The parcel is lot 11 of Hanshaw Fruit Farms. The plat was recorded on July 11, 1910, and is therefore legal for land use purposes. The parcel has been the subject of other Floodplain development permits (FP02-019, & FP14-001) as well as a Zone Change in 1995 (ZC95-012). Prior Floodplain Development Permits were related to fill on the property.

3. The north adjacent parcel is vacant and currently split-zoned IG (Industrial General) and UT-10. The west and south adjacent parcels are zoned UT-10. Two of these are in use for warehousing and trucking businesses, and the other contains a residence and 6-acre grass field. Across Eastland Avenue is a railroad and a 390.5-acre parcel within the City of Salem's planning jurisdiction zoned PH (Public Health) that formerly housed a reform school and rehabilitation center. There are plans to develop this parcel for residential purposes.
4. The applicant proposes to establish a construction contractor shop and associated storage buildings.
5. Marion County Planning requested comments from various agencies, those that provided comments are:

City of Salem Community Planning and Development, Planning Division commented: "Development should meet standards of the IG (General Industrial, IP (Industrial Park) or IBC (Industrial Business Campus in order to meet standards upon annexation."

Marion County Building Inspection commented: "Permit(s) are required to be obtained prior to development of structures and/or utilities installation on private property. Floodplain construction requirements will be determined during plan review of the structure(s)."

Marion County Septic commented: "A site Evaluation is required to establish an approved initial and replacement drainfield area. A narrative is also required describing the proposed use of the system. How many employees will there be? Will there be a break room? Kitchen? Showers? Floor drains?"

Turner Fire District provided information about fire apparatus access and fire protection water supply requirements.

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

### **ENGINEERING CONDITION**

*Condition A* – Prior to issuance of a Building Certificate of Occupancy for the proposed office/shop, provide the public R/W half-width of minimum 25 feet along Kashmir Way and Eastland Avenue frontages, and similarly an anticipated 25-foot SE property corner radius at the intersection.

### **ENGINEERING REQUIREMENTS**

- C. An Access Permit is required for any new or modified access. Please note that the Planning land use process itself does not authorize access work.
- D. Stormwater detention may be required for 0.5-acre or more of development and stormwater Water Quality Treatment at 0.25-acre plus.
- E. A Marion County construction erosion permit may be required at 0.25-acre up to just under 5 acres of development.
- F. Utility work conducted within the public right-of-way requires a permit from Public Works.
- G. The subject property will be assessed Transportation System Development Charges (SDCs) upon application for building permits.

### **ENGINEERING ADVISORY**

- H. Future land use applications may require additional right of way dedication to meet the 30' R/W half-width applicable to both Kashmir Way and Eastland Avenue.

All other contacted agencies either failed to comment or stated no objection to the proposal.

6. All conditional uses are subject to the general criteria in MCC 16.40.020, these include:

- (a) *The use is listed as a conditional use in the zone, or is otherwise identified as a conditional use and is consistent with the intent and purpose of the zone and the provisions that authorized consideration as a conditional use.*

MCC 16.30.020 (Q) reads: “Uses allowed outright or conditionally in the most restrictive zone, other than a medical marijuana processor\* or medical marijuana producer\*, consistent with the land use designation.” The applicant is proposing a use allowed in the most restrictive Marion County zone designation that is consistent with the City of Salem’s underlying Comprehensive Plan designation of Industrial. This zone designation is the IC (Industrial Commercial) zone. Permitted uses in this zone are listed in MCC 16.09.010 and include, under (A)(6) of section, “Construction contractor’s offices and related outdoor storage, SIC 15, 16, and 17”. The proposal meets this definition and is therefore a permitted use in the most restrictive zone consistent with the land use designation. The criterion is met.

- (b) *The parcel is suitable for the proposed use considering such factors as size, shape, location, topography, soils, slope stability, drainage and natural features.*

The parcel has been in use for storage of construction-related equipment and appears to be suitable for this use. The proposed development is within an identified Special Flood Hazard Area, so a floodplain development permit is required. So long as the applicable floodplain development approval conditions are met, the parcel will be suitable for the proposed use. The criterion is met.

- (c) *The proposed use, as conditioned, will not substantially limit, impair, or preclude the use of surrounding properties for the uses permitted in the applicable zone.*

The proposed use is consistent with the underlying designation in Salem's Comprehensive Plan and the current use on adjacent parcels. This use will not limit, impair, or preclude the permitted uses of the surrounding parcels. The criterion is met.

- (d) *The proposed use, as conditioned, will not have a significant adverse effect on air or water quality.*

Floodplain development related conditions will be required for approval of this application which will ensure the use does not adversely affect water quality when the property floods. The only effect on air quality will be due to vehicles making trips to the site, trips which will not be significantly increased by the proposed use. The criterion is met.

- (e) *Adequate public and utility facilities and services to serve the use are available or will be made available prior to establishment of the use.*

The subject parcel is served by public roads. All utilities other than sewer are available at the site. A septic system will be required. The applicant has contacted the City of Salem about connecting to the city water main near Kashmir and 36<sup>th</sup> prior to annexation. If they are unable to connect, a well or other water source will be required to provide water on the property. The criterion is met.

7. In addition to these general criteria, in order to approve a Conditional Use in a UT zone the specific criteria in MCC 16.13.030 must be satisfied:

- (a) *The use will not increase traffic beyond the capacity of existing roads.*

The applicant states that trips to the site will not significantly increase trips beyond those currently occurring. Neither Eastland nor Kashmir are high traffic roads. A slight increase in trips on these roads will not result in traffic beyond their capacity. The criterion is met.

- (b) *If the use will remain after the area is urbanized it will be located in such a manner that any significant unused portion of the property has adequate development options.*

The current use of this 7.19-acre parcel for storage uses the entire parcel. The proposed use is the siting of an 11,700 square foot shop near the center of the southern half of the property, and the construction of building pads for eventual additional structures of 4,000 and 8,000 square feet on the western and southern sides of the property. The northern side will continue to be used for storage, but in the event of a change of ownership and use this area will provide adequate additional development options. The use will be consistent with the zoning applied upon annexation and staff has no reason to suspect this use will not remain. The criterion is met.

- (c) *The use and related structures and improvements meet the development standards of the most restrictive zone consistent with the applicable comprehensive plan designation; or the city concurs and, if the city requests, conditions are imposed that require the structures and improvements to be brought into conformance with city zoning regulations upon annexation.*

The proposed use is permitted in the most restrictive zone consistent with the applicable comprehensive plan. The structures are consistent with that use, and their design will be reviewed by Marion County building during the permit process. Acquiring building permits for the proposed development is a condition of approval. Improvement requirements have been made conditions of approval by MC LDEP. The City of Salem commented that the proposed development should meet standards of the IG (General Industrial), IP (Industrial Park) or IBC (Industrial Business Campus) in order to meet their standards upon annexation. The criterion is met.

- (d) *The most restrictive zone used in the applicable Comprehensive Plan designation lists the proposed use as a permitted or conditional use; or the city concurs and, if the city requests, conditions are imposed which require that the use be brought into conformance with city zoning regulations upon annexation.*

The proposed use is permitted in the most restrictive Marion County Urban Industrial zone IC (Industrial Commercial) as per MCC 16.09.010 (A)(6) "Construction contractor's offices and related outdoor storage, SIC 15, 16, and 17". Standards requested by the City of Salem are provided to the applicant by this staff decision and were not requested to be made conditions of approval. The criterion is met.

8. The purpose of the Floodplain Overlay Zone is to promote public health, safety and general welfare to minimize public and private losses due to flood conditions. In order to ensure that the development is reasonably safe from flooding, the County requires the development to comply with the criteria and standards listed in Section 16.19.130 and 16.19.140 of the Marion County Code (MCC).
9. Marion County Flood Insurance Rate Map #41047C0363H indicates that the development site is in an AE zone. Base Flood Elevations (BFEs) are provided in this zone but vary across the subject parcel. The applicant will be required to develop BFEs at the proposed sites of development.
10. Marion County Code 16.19.130 requires the following prior to any development in the floodplain:

- (C) *Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest, acknowledging that the property and the approved development are located in a floodplain.*

The recording of this declaratory statement shall be a condition of approval.

- (D) *Prior to obtaining a building permit, commencing development or placing fill in the floodplain, the applicant shall submit a certification from a registered civil engineer demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.*

The provision of this certification can be made a condition of any approval.

- (E) *The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations (in relation to mean sea level) of the lowest floor (including basement) and all attendant utilities of all new or substantially improved residential structures including manufactured dwellings meet the requirements of MCC [16.19.140\(A\)](#), (B) and (C) where applicable, as follows:*

1. *Prior to construction (based on construction drawings); and*
2. *Once the floor elevation can be determined (based on the building under construction); and*
3. *Prior to occupancy (based on finished construction).*

Elevation certificates provided to Marion County Planning at these stages shall be a condition of approval.

11. Marion County Code 16.19.140 requires the following flood protection standards for development in the Special Flood Hazard Area:

- (C) *Nonresidential Development.*
1. *New construction and substantial improvement of any commercial, industrial or other nonresidential structures shall either have the lowest floor, including basement, elevated to two feet above the level of the base flood elevation, and where the base flood elevation is not available, the lowest floor, including basement, shall be elevated to two feet above the highest*

*adjacent natural grade (within five feet) of the building site; or together with attendant utility and sanitary facilities, shall:*

- a. Be floodproofed to an elevation of two feet above base flood elevation or, where base flood elevation has not been established, two feet above the highest adjacent grade, so that the structure is watertight with walls substantially impermeable to the passage of water.*
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.*
- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. This certificate shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed and shall be provided to the floodplain administrator.*

*Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (A)(5) of this section.*

*Applicants floodproofing nonresidential buildings shall be notified by the zoning administrator that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).*

The elevation of the lowest floor, or floodproofing, to two feet above the BFE can be made a condition of any approval.

*(D) Anchoring.*

- 1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.*

The provision of this certification can be made a condition of any approval.

*(E) Construction Materials and Methods.*

- 1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*
- 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.*

The provision of this certification can be made a condition of any approval.

*(F) Utilities.*

- 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system as approved by the State Health Division.*
- 2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.*
- 3. On-site waste disposal systems shall be designed and located to avoid impairment to them or contamination from them during flooding consistent with the requirements of the Oregon State Department of Environmental Quality.*
- 4. Electrical, heating, ventilation, plumbing, duct systems, air conditioning, and other equipment and service facilities not installed so as to prevent water from entering or accumulating within the components during conditions of the base flood shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air conditioning equipment shall be elevated to one foot above the*

*highest adjacent natural grade (within five feet) of the building site. If replaced as part of a substantial improvement the utility equipment and service facilities shall meet all the requirements of this subsection.*

The provision of this certification can be made a condition of any approval.

*(H) Storage of Materials and Equipment. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.*

This shall be a condition of approval.

12. Based on the above findings, it has been determined that the proposal satisfies all applicable criteria and is, therefore, **APPROVED**.
13. The applicant requested reconsideration of LDEP requirements. After consideration, LDEP removed the condition requiring street improvements along Kashmir, future street improvements along Eastland Avenue, coordination with Santiam Water Control District (SWCD) related to improvements, suggestion of Development Deferral Agreement related to improvements, and the requirement to preserve and protect the current PCI rating and structural integrity of 36<sup>th</sup> Avenue, Kashmir Avenue, and Eastland Avenue. The condition requiring public right of way commitment was modified from 30ft to 25ft. This reconsideration is being issued to implement these changes.

Brandon Reich  
Planning Director/Zoning Administrator

Date: July 3, 2024

If you have any questions regarding this decision contact John Speckman 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.