

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. 19-019

APPLICATION: Application of Victor Manuel Flores Rodriguez for a conditional use to operate a landscape contracting business in association with a nursery on a 5.12 acre parcel in an EFU (Exclusive Farm Use) zone located at 5233 Sunnyview Rd. NE, Salem (T7S; R2W; Section 17D; tax lot 800).

DECISION: The Planning Director for Marion County has **DENIED** the above-described Conditional Use.

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 deny the application. Anyone who disagrees with the Director's decision may appeal the decision to a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 fee) 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. Appeals 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 **July 1, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **July 2, 2019** unless appealed.

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.
2. The subject property is located on the north side of Sunnyview Road NE, approximately 970 feet east of its intersection with Cordon Road NE. The property contains a dwelling, agricultural buildings, accessory buildings, well and septic system. The property was the subject of a previous land use case, Administrative Review 14-12 (AR14-12), which approved the operation of a farm stand. The property was described by deed as far back as July 3, 1973 (Volume 787, Page 454) and is therefore considered a legal parcel for land use purposes.
3. Surrounding properties in all directions are zoned EFU and consist of properties in farm use.
4. Soil Survey of Marion County Oregon indicates 99.7% of the property is composed of high-value farm soils.
5. The applicant is proposing a landscaping business in conjunction with a nursery on the subject property.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following condition be included in the land use decision:

“Condition A – If the land use action is approved, within 90 calendar days of receiving a Planning Department affirmative Notice of Decision, apply for a Work in Right-of-Way Permit with Marion County Public Works for the removal of portions of asphalt along the subject property’s frontage on either side of the driveway in front of the fence within the right-of-way.

Nexus for the above Condition is to deter parking in the public right-of-way along the subject property frontage as a matter of public safety. Per Marion County Code 17.118.050 all business parking shall be provided entirely on private property. A licensed contractor having appropriate general liability insurance meeting MCPW criteria would need to perform the work.

LDEP also requested that the following Requirement be included in the decision:

- B. The County requires any development having 0.5 acre or more of impervious/semi-impervious (hard) surfaces to provide storm water detention. As such, the applicant may need to provide storm-water detention systems that detain enough of the storm-water runoff on site so that there is no net rate increase in storm-water flow from the subject property. The land use application stated intent to convert 1 acre of blueberry field area to parking. Prior to conducting this work, the applicant is required to submit a General Land Development and Event Permit Application (attached) with, at minimum, sections 1, 2, 3, 6, and 10 completed, and signature and date on the last page, for application of an On-site Stormwater Drainage Permit. A digital copy of the Application can be found on our website at <https://www.co.marion.or.us/pw/engineering/permit> titled "General Land Development and Event Permit Application". The Application shall be accompanied by a confirming site plan, and implement any required improvements in conjunction with the parking expansion. Applicant is advised to acquire the services of a civil engineer to assist with the design process."

Marion County Building Inspection commented that a building permit is required for a change in use or occupancy.

Marion County Building Inspection Onsite Wastewater Specialist commented that septic authorization may be required depending on employee count.

Marion County Code Enforcement commented that there is an active code enforcement case on the property regarding unlawful habitation of an accessory structure.

7. Chapter 17.136.050 (D) (6) of the Marion County Code (MCC) permits, in an EFU zone, a landscape contracting business as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

ORS 671.520 (2) defines a "Landscape contracting business" as a business that for compensation or with the intent to be compensated arranges, submits a bid, or otherwise offers or contracts, for the performance of activities described in subsection (1) of this section. Subsection (1) defines a (1) "Landscape construction professional" means an individual who for compensation or with the intent to be compensated performs or supervises activities requiring the art, ability, experience, knowledge, science and skill to:

- (a) Plan or install lawns, shrubs, vines, trees or nursery stock;
- (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;
- (c) Construct or repair ornamental water features, drainage systems or irrigation systems;
- (d) Maintain irrigation systems with the use of compressed air; or
- (e) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls.

8. The applicant provided a copy of both the Landscape Contractor's Board license for a Landscape Contracting Business and Oregon Department of Agriculture's nursery stock grower's license. The applicant also provided photographs of four acres of mature blue berry plants grown on the subject property. However, the applicant failed to describe how the landscape business will be pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use. For this reason, this criterion does not appear to be met.
9. 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 proposal will remove one acre of blue berry plants from the property to be replaced with one acre of land for storage of landscaping equipment and parking of vehicles associated with the landscaping business. No additional

land will be taken out of production from farming because of this use. The use is not expected to raise the cost of farming in the area. This criterion is met.

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

The property is served by the Marion County Fire District #1 and law enforcement is provided by Marion County. This criterion is met.

(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 area on the property that will be used for storage of landscaping equipment and parking of vehicles associated with the landscaping business is near the east property line. There are no identified wetlands, streams, wildlife habitat area, or geological hazards identified on the property. Therefore, the proposal will have little or no impact on these resources. The scale of the landscaping business should not affect air quality. For these reasons, this criterion is met.

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

There is no evidence indicating that noise generated by the proposal will be heard off the property or have any impact on surrounding 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.*

The surrounding area is not identified as a potential water impoundment area in the Comprehensive Plan, and there are no current or proposed significant mineral and aggregate sites in the area. The proposal meets this criterion.

10. The property is currently under enforcement for possible land use violations. Section 110.680 states the following:

“No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, or is being used or has been divided in violation of the provisions of this ordinance unless issuance of the permit would correct the violation.”

According to Marion County Code Enforcement, there is an active code enforcement case on the property regarding unlawful habitation of an accessory structure without land use approval. As stated above, all violations on the property must be resolved before final approval of the requested landscaping business.

11. Based on the above findings, it has been determined that the applicant's request does not meet all of the criteria for operating a landscaping business in conjunction with a nursery and is, therefore, **DENIED**.

Joe Fennimore
Planning Director

Date: June 14, 2019

If you have any questions regarding this decision contact Seth Thompson (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.