

**NOTICE OF DECISION
CONDITIONAL USE CASE NO. 19-030**

APPLICATION: Application of Brock and Kathryn Ludlow for a conditional use to operate a landscape contracting business in conjunction with a nursery on a 24 acre parcel in an EFU (Exclusive Farm Use) zone located in the 11,200 block of Ehlen Road NE, Aurora (T4S; R1W; Section 8; tax lot 600).

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

EXPIRATION DATE: This Conditional Use Permit is valid only when exercised by **October 15, 2021**. 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 approval for all required permits from the Marion County Building Inspection Division.
2. Prior to issuance of a building permit, the applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) 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.

ADDITIONAL CONDITIONS: Once the approved use is established the following conditions must be continually satisfied:

3. The applicant shall continuously operate the landscape contracting business in conjunction with the growing and marketing of nursery stock on the subject property and shall maintain current licenses to operate a nursery and landscape contracting business.
4. Failure to continuously comply with the Conditions of Approval may result in this approval being revoked. Any revocation can be appealed to a Marion 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. It is recommended that the 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 the Aurora Fire District to obtain a copy of the District's Recommended Building Access, water supply and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
6. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements 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 **October 15, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 16, 2019** 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 Primary Agriculture in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote and protect commercial agricultural operations.
2. The property is located on the north side of Ehlen Road NE approximately 2,100 feet east of the intersection with Butteville Road. The property contains a shop and greenhouse. The property was described as a separately deeded parcel (Volume 719, Page 236) as far back as December 23, 1971. There were no requirements for this kind of land division at this time; therefore, the property was lawfully created.
3. Adjacent property in all directions is zoned EFU and consists of property being commercially farmed.
4. Soil Survey of Marion County Oregon indicates 100% of the property is composed of high-value farm soils.
5. The applicant proposes to operate a landscape contracting business from the property with a nursery.
6. Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision: "In accordance with Marion County Code (MCC) 11.10, driveways must meet sight distance, design, spacing, and safety standards. Ehlen Road is a high-volume / high-speed Arterial road, and the proposed business will intensify traffic to/from the property. Prior to establishment, apply for an Access Permit to widen, pave and install a drainage culvert pipe at the Ehlen Road driveway approach. The subject property is within the unincorporated area of Marion County and will be assessed Transportation System Development Charges (SDCs) per Marion County Ordinance #00-10R upon application for building permits and/or change-in-use of one or both of the two existing outbuildings currently used for farming equipment storage only to also operate the landscaping business."

Marion County Building Inspection commented that permits for a Change in Use or Occupancy may be required.

Marion County Onsite Wastewater Specialist commented that a septic authorization may be required.

7. Chapter 17.136.050 (D) (6) of the Marion County Code (MCC) permits 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 stated he intends to sell and install nursery stock and landscaping supplies as part of a landscape/nursery business consistent with the description in ORS 671.520. The applicant provided documentation that a nursery license has been obtained from the Oregon Department of Agriculture and a landscape contracting business license has been obtained from the State of Oregon Landscape Contractors Board. MCC requires that the landscape business be in conjunction with a nursery on the property and, according to a recent aerial photograph, it appears there is nursery stock in place growing on the property. The proposal meets the criteria in 7.

9. In addition to the specific criteria, MCC 17.136.060(A) contains general criteria that apply to any conditional use:

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 is being done in conjunction with the growing of nursery stock on the property, which is a farm use. No additional land will be taken out of production from farming because of this use. The use will not 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 Aurora Fire District and law enforcement is provided by Marion County. Other rural services, well as a well and septic system are available to the property. 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.*

There are no streams, wildlife habitat area, or geological hazards identified on the property and, therefore, the proposal will have little or no impact on these resources. The scale of the landscaping business should not affect air quality. This criterion can be met with a condition of approval.

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.*

There are no identified potential water impoundments or mineral and aggregate sites on the property or nearby that would be affected by this proposed use. These criteria are met by the proposal.

10. Based on the above findings it has been determined the applicant's request meets, or can be conditioned to meet, all applicable criteria to operate a landscape contracting business in conjunction with the growing and marketing of nursery stock and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: September 30, 2019

If you have any questions regarding this decision contact Brandon Reich 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.