

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  
ADMINISTRATIVE REVIEW CASE NO. 24-028**

**APPLICATION:** Application of Cesar Giron Mendez and Sophia Mendoza for an administrative review to establish a farm stand on a 2.50-acre parcel and a 0.9-acre parcel in an EFU (Exclusive Farm Use) zone located at 10730 Portland Rd NE, Salem (T6S; R2W; Section 3C; Tax Lots 2200 & 2300).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Administrative Review, subject to certain conditions.

**EXPIRATION DATE:** This decision is valid only when exercised by **January 10<sup>th</sup>, 2027** (two years), unless an extension is granted. The effective period may be extended for two years subject to approval of an extension. Request for an extension must be submitted to the Planning Division prior to the expiration of the approval (form available from the Planning Division).

**WARNING:** A decision approving the proposal 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 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:**

1. The applicants shall obtain all permits, including subsurface sewage disposal, required by the Marion County Building Inspection Division.
2. Prior to issuance of any building permit, the applicants 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. (Declaratory Statement enclosed).
3. A minimum of 75% of the annual agricultural sales from the farm stand shall be fresh or processed agricultural crops and or livestock grown or raised in the state of Oregon.
4. The sale of incidental retail items, prepared items, agricultural crops produced outside the State of Oregon and fee-based activities to promote the sale of farm crops or livestock sold at the farm stand is permitted provided the annual sales of these items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand
5. No activities other than the sale of farm crops, livestock, and certain incidental food products are permitted. This approval does not allow for or include banquets, public gatherings, events, rentals of space, services, or public entertainment.
6. Adequate off-street parking shall be provided, and all vehicle maneuvering will be conducted on site. No vehicle backing or maneuvering shall occur within adjacent roads, streets, or highways.
7. Roadways, driveway aprons, driveways and parking surfaces shall be surfaces that prevent dust, and may include paving, gravel, cinders, or bark/wood chips.
8. Approval is required from the county public works department regarding adequate egress and access including compliance with vision clearance standards. All egress and access points shall be clearly marked.

9. All outdoor light fixtures shall be directed downward and into the subject property to minimize excessive light spillover onto adjacent properties, roads, and highways.
10. Signs are permitted consistent with Chapter 17 .191 MCC.
11. All required permits shall be obtained from the Marion County Health Department or the Department of Agriculture, as required.
12. When requested by the planning director, the farm stand operator/landowner shall submit a statement demonstrating how the farm stand complies with this policy, certified by the landowner's/operator's accountant or attorney as being accurate and complete.
13. The farm stand shall be established and operated in accordance with Marion County Code Chapter 17.136.040(A), as outlined in Finding #7.
14. ***Failure to continuously comply with the conditions of approval may result in this approval being revoked.*** Any revocation can be appealed to a county hearings officer for a public hearing.

**OTHER PERMITS, FEES AND RESTRICTIONS:** This approval does not remove or affect any 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 #6 below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

15. The applicants should contact the 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. Fire District access standards may be more restrictive than County standards.
16. The applicants should contact Marion County Building Inspection (503-588-5147) to speak with a plans examiner for additional information regarding requirements listed in Finding #6 below.
17. The applicants should contact Marion County Land Development and Engineering (503-584-7714) regarding Engineering Requirements as found in Finding #6 below.

**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 the Marion County Hearings Officer. The applicant may also request reconsideration (one time only and a \$250.00 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 **January 10<sup>th</sup>, 2025**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 13<sup>th</sup>, 2025**, 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 and zoned EFU (Exclusive Farm Use). The intent of both designation and zone is to promote and protect commercial agricultural operations.
2. This property is located on the northeast corner of the intersection of Waconda Road NE and Portland Road NE. The property contains a house, shop building with an office, several accessory structures, well and septic system. The subject property consists of two legal parcels that have existed in their current configuration since at least 1975. The properties also have a history of legal building permits and land use determinations. The applicants are currently

running a farm labor contracting business that provides portable toilets as part of the service. See land use cases CU20-003 and CU21-042. The parcels are considered legal for land use purposes.

3. Surrounding properties in all directions are zoned EFU and are in small acreage home sites near the intersection of Portland RD NE and Waconda RD NE, with properties further out in large commercial farming tracts.
4. Soil Survey of Marion County Oregon indicates that approximately 100% of the subject property soils are high value.
5. The applicant is proposing to establish and operate a nursery plant sales business as a farm stand on the subject property. They are proposing to source nursery stock from local farms and nursery operations and resell the plants in bulk or as individual potted plants after they have improved the health and quality of the stock. The applicants are also proposing to sell other related items such as seeds, fertilizers, compost and mulch, landscaping materials such as stones and topsoil. They are also proposing to sell some incidental items such as plant pots, and gardening tools. The applicants are proposing to use the accessory building on site that has previously been approved for use as a farm labor contracting business (land use case CU20-003) as the sales office for the farm stand sales.
6. Marion County Building Inspection commented: *“Prior to opening the business to the public for sales of nursery product at the site address, permit(s) would be required to be obtained to change the occupancy or use of the intended building. Adherence to Marion County Building Inspection Policy P117 Farm Stand Buildings may satisfy these requirements.”*

Marion County Septic commented: *“If any part of the farm stand will utilize the existing plumbing or if any additional plumbing is proposed, an authorization is required to connect to the existing system or establish a change of use of the septic system.”*

Marion County Land Development, Engineering, and Permits commented:

### **ENGINEERING REQUIREMENT**

- A. *An Access Permit will be required for an approach connection to Waconda Road. The approach must be paved with asphalt.*
- B. *The subject property may be assessed Transportation System Development Charges (SDCs) for the proposed use.*
- C. *Placement of one-half acre or more of impervious material, including compacted crushed rock subject to regular vehicular traffic, may require stormwater detention.*

### **ENGINEERING ADVISORIES**

- D. *The property is bisected by Carnes Creek, a named seasonal waterway that may be classified as Waters of the State. Department of State Lands (DSL) and Army Corp of Engineers (ACOE) has joint permitting authority for any crossing improvements over Waters of the State.*
- E. *ODOT has jurisdiction over Portland Road for driveway access and stormwater drainage.*

Woodburn Fire Department commented: *“Based on the application, no structural changes, there are no issues with the Woodburn Fire District. Access appears to be acceptable.”*

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

7. The farm stand criteria are listed in Section 17.136.040(A) of the Marion County Code (MCC). Criteria are as follows:

1. *The structures shall be designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the state of Oregon, including processed food items, and the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand; and*

The applicants state that the farm stand will be used to resell nursery stock from local farms and nursery operations in bulk or as individual potted plants. They further state that the plants sold will be sourced from local growers. They also plan to sell incidental supplies related to planting and gardening. Based on this information the criterion is met.

2. *Annual sales of the incidental items and fees from promotional activity, sales of farm crops produced outside the state of Oregon, and sales of prepared food items together cannot make up more than 25 percent of the total annual sales of the farm stand; and*

According to the applicant's statement, they intend to sell incidental items, including fertilizers, mulch, landscaping materials, and gardening tools. They stated that 75% of sales are intended to come from trees "in their raw form or in standard plastic pot used by wholesale nurseries." They are not proposing any fee-based activities. The applicant has acknowledged the requirement that the sale of incidental items, processed and packaged products, fees for activities, and the sale of farm crops produced outside of Oregon, cannot make up more than 25 percent of the total annual sales of the farm stand; this will be a condition of approval. Therefore, the criterion is met.

3. *The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment;*

The applicant has stated that the proposed farm stand will use one of the accessory structures where they currently run their farm labor contracting business out of as the store front for the farm stand. Marion County Building Inspection is requiring permits to ensure compliance with Policy 117 prior to the building being open to the public. Approval shall be conditioned that the applicants obtain appropriate permits from the county and pass inspections, as well as conditions that the farm stand shall not be used for banquets, public gatherings, or public entertainment. This criterion is met.

4. *As used in this section, "processed food items" means farm crops and livestock that have been converted into other products through canning, drying, baking, freezing, pressing, butchering or other similar means of adding value to the farm product, such as jams, syrups, apple cider, and similar animal products, but not prepared food items*

Per the applicants' statement they have understood and acknowledged this definition and will not be selling processed foods; rather they will be selling incidental items related to landscaping and gardening. Therefore, this criterion is met.

5. *As used in this section, "prepared food items" means food products that are prepared for immediate consumption, such as pies, shortcake, milk shakes, smoothies, and baked goods;*

Per the applicants' statement they have understood and acknowledged this definition and will not be selling processed foods; rather they will be selling incidental items related to landscaping and gardening. Therefore, this criterion is met.

6. *Adequate off-street parking shall be provided, and all vehicle maneuvering will be conducted on site. No vehicle backing or maneuvering shall occur within adjacent roads, streets or highways;*

The site plan indicates two off-street parking areas with room for vehicles to maneuver on the property prior to re-entering the roadway. The criterion is met.

7. *No farm stand building or parking is permitted within the right-of-way;*

Per the applicant's site plan and aerial photographs, the farm stand is not within the right-of-way. The criterion is met.

8. *Roadways, driveway aprons, driveways and parking surfaces shall be surfaces that prevent dust, and may include paving, gravel, cinders, or bark/wood chips;*

Satellite imagery suggests that the driveway along Portland Rd has an apron that has been improved and paved. This includes imagery from publicly accessible online mapping and imagery services which indicate that the driveway apron is asphalt as of August 2023 imagery and as far back as October 2007. The proposed parking areas appear to mainly consist of grass and/or bare dirt. The improvements to the parking areas shall be a condition of approval. The criterion is met.

9. *Approval is required from the county public works department regarding adequate egress and access including compliance with vision clearance standards. All egress and access points shall be clearly marked;*

LDEP has made a requirement that the applicants shall obtain an Access Permit and gave directions on paving the approach. The applicants have applied for an access permit for the proposed new access point on Waconda Rd NE. The applicants shall address LDEP's Engineering Requirements and Advisories as listed in #6 above. The criterion is met.

10. *All outdoor light fixtures shall be directed downward, and have full cutoff and full shielding to preserve views of the night sky and to minimize excessive light spillover onto adjacent properties, roads and highways;*

The applicants did not specifically address these requirements; however, they were made aware of these conditions by planning staff and shall be a condition of approval. The criterion is met.

11. *Signs are permitted consistent with Chapter 17.191 MCC;*

The applicants did not state their intentions to add signage. These requirements and setbacks and other provisions of MCC 17.191 will be a condition of approval. The criterion is met.

12. *All required permits shall be obtained from the Marion County health department or the Department of Agriculture, as required;*

The applicants made no statement in regard to contacting the Department of Agriculture nor the Marion County Health Department; planning staff did advise the applicants of this requirement. Approval shall be conditioned on the applicants contacting and receiving any applicable permits from the Department of Agriculture and the Marion County Health Department. The criterion is met.

13. *When requested by the planning director, the farm stand operator/landowner shall submit a statement demonstrating how the farm stand complies with this policy, certified by the landowner's/operator's accountant or attorney as being accurate and complete;*

This will be a condition of approval. The criterion is met.

14. *A farm stand may not be used for the sale of marijuana products or to promote the sale of marijuana products or extracts.*

The applicant has not acknowledged this condition nor stated that the farm stand will not be used in the sale of marijuana products or the promotion of the sale of marijuana products or extracts. This shall be a condition of approval. Therefore, this criterion is met.

8. The applicants have submitted an application to operate a farm stand in the EFU zone. In their application they have stated that it is their intention to sell nursery trees from neighboring nurseries and farms with incidental sales of gardening and landscaping tools and supplies. The applicants stated that they intend that 75% of sales will be raw trees. They are proposing to use the previously permitted accessory structure as the sales office. This building is currently being used as the office for their farm labor contracting office. The applicants further state that the reason for the presence of portable toilets on the property is that those units are deployed to their customers' farm sites to support the contract laborers.

The approval of this Administrative Review for a farm stand on EFU zoned property is conditional of the applicants addressing all the requirements and conditions outlined in section 7 of this staff decision.

9. Based on the above findings, it has been determined that the proposal complies, or can be conditioned to comply with the criteria in the Marion County Code and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich  
Planning Division Director/Zoning Administrator

Date: December 26<sup>th</sup>, 2024

If you have any questions regarding this decision contact George Brandt at (503) 566-3981.

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.



# ZONING MAP

**Input Taxlot(s):** 062W03C002200, 062W03C002300

**Owner Name:** MENDEZ, CESAR GIRON & MENDOZA, SOPHIA



**Situs Address:** 10730 PORTLAND RD NE

**City/State/Zip:** SALEM, OR, 97305

**Land Use Zone:** EFU

**School District:** GERVAIS

**Fire District:** WOODBURN

<p><b>Legend</b></p> <ul style="list-style-type: none"> <li> Input Taxlots</li> <li> Lakes &amp; Rivers</li> <li> Highways</li> <li> Cities</li> </ul>		
<p>N</p>  <p>scale: 1 in = 243 ft</p>	<p><small>DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.</small></p>	