

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. 23-023**

APPLICATION: Application of Mark Kiernes for an administrative review to irrigate tree nursery crops with treated wastewater from the City of Donald on a 15.58-acre parcel in the EFU (Exclusive Farm Use) zone located at 10634 Ehlen Rd NE, Aurora (T4S; R1W; Section 17; Tax Lot 400 & 500).

DECISION: PLEASE READ ALL CONDITIONS. The Planning Director for Marion County has **APPROVED** the above-described application subject to certain conditions.

EXPIRATION DATE: This decision is valid only when exercised by **September 28, 2025** (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 expiration of the approval (form available from the Planning Division).

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 applicants shall follow all application procedures provided by the Oregon Department of Environmental Quality (DEQ).
2. The applicant shall have Marion County Planning review and sign off on any required Land Use Compatibility Statements.
3. The applicant shall submit evidence of the approval from DEQ to apply biosolids on the subject property.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or another 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 the Findings and Conclusions section below be contacted to identify restrictions or necessary permits.

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 Road NE, Salem, by 5:00 p.m. on **September 28, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 29, 2023**, 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 Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both these designations and zones is to promote and protect commercial agricultural operations.
2. The property is located at the southwest side of the intersection of Butteville Road NE and Ehlen Road NE, just northwest of the City of Donald city limits. Access to the property appears to be located 900 feet west of the aforementioned intersection. The property contains a dwelling and multiple accessory structures per tax assessor records. All properties immediately adjacent are also zoned Exclusive Farm Use. The development pattern consists of medium- to large-scale farms surrounding the City of Donald.
3. The subject property consists of two tax lots. The property may consist of multiple legal parcels per the definition of MCC 17.110.427, but there appear to be conflicting legal descriptions, and such a determination would be outside of the scope of this land use decision. Regardless, the subject property has existed since prior to September 1, 1977, per a warranty deed recorded in Volume 663, Page 471 of the Deed Records of Marion County, Oregon.
4. Soil Survey of Marion County Oregon indicates that approximately 100.0% of the subject property soils are high value.
5. Various agencies were contacted about the proposal and given an opportunity to comment. All contacted agencies either had no comment or failed to comment.
6. The applicants are proposing to apply biosolids as fertilizer for agricultural purposes on portions of the two subject parcels. This kind of land use is considered a “use permitted subject to standards” per Marion County Code 17.136 (EFU zone). In this application, the treated wastewater will come from the City of Donald treatment facility.
7. The criteria for biosolids application in the EFU zone are found in section 17.136.040(N) of the Marion County Code (MCC):
 - N. *Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids, or the on-site treatment of septage prior to the land application for biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter. For the purposes of this section, on-site treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary, and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.*

The applicant states that they will apply treated wastewater to a nursery crop on the farm. The applicant representative states that the wastewater treatment facility is regulated by the Oregon Department of Environmental Quality (DEQ) and has a Water Pollution Control Facility (WPCF) permit. The permit stipulates effluent quality and conditions of discharge. The city also follows an approved Recycled Water Use Plan (RWUP). The applicant states that they will follow DEQ requirements. This section will be made a condition of approval.

8. Based on the above findings, it has been determined that the criteria to apply biosolids for farm use in an EFU zone have been met, and therefore this application is **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: September 13, 2023

If you have any questions regarding this decision contact Daniel Jansen 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.