

**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. 21-054**

**APPLICATION:** Application of Arturo Alvarez for a conditional use permit to establish a landscaping contracting business on an 8.04 acre parcel in an Exclusive Farm Use (EFU) zone located at 8831 Little Road SE, Aumsville. (T8S, R2W, Section 36C, Tax Lot 300).

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

**EXPIRATION DATE:** This permit is valid only when exercised by **December 11, 2023**. 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 proposal is for land use purposes only. Due to septic, well, and drainfield replacement areas, these parcels 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:** The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain all required permits from the Marion County Building Inspection Division, including any permits required for the unpermitted structures built at the rear of the home. Please contact Marion County Building at 503-588-5147 for more information.
2. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
3. The applicant shall permit or remove the unpermitted guest facility located in the accessory structure. If removing, an inspection must be completed through Marion County Building Inspection. This may require a permit to be obtained. Please contact Marion County Building at 503-588-5147 for more information.
4. The applicant shall operate the business in compliance with the allowed activities contained in ORS 671.520 in conjunction with the growth and marketing of nursery stock grown on the property. These uses are detailed further in Finding #7.
5. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the 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 restrictions or conditions thereon. It is recommended that agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

6. The applicants should contact Aumsville 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.

7. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding # 6 below, that may be required.
8. The applicants should contact the Oregon Water Resources Department at 503-986-0900 for further information regarding limitations associated with the Stayton Sublimity Groundwater Limited Area.

**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 **December 11, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **December 13, 2021** 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. The major purpose of this designation and the corresponding Exclusive Farm Use (EFU) zone is to promote the continuation of commercial agricultural operations.
2. The property is approximately 8.04 acres in size and located on the north side of Little Road SE, approximately 0.24 miles west of the intersection of Little Road SE and West Stayton Road SE. The property was created by Partition 6-13, under the provisions of Measure 37 (Marion County Claim 05-79) and is considered legal for the purposes of land use.
3. Surrounding properties in all directions are zoned EFU which are in a mix of small residential parcels and large commercial farms.
4. Soil Survey for Marion County, Oregon indicates 100% of the subject property soils are High-Value Farmland with soils consisting of Clackamas gravelly loam and Courtney gravelly silty clay loam.
5. The applicant is proposing to operate a landscape contracting business in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use (17.136.050(D)(6)).
6. Marion County Land Development and Engineering provided the following comments:

#### **ENGINEERING REQUIREMENT**

- A. Transportation System Development Charges may be assessed at the time of application for building permits and/or for change-in-use on existing buildings.

Marion County Building commented that "if any structures will be open to the public, a change of use or occupancy permit would be required. Upon review of this application, other requirements may have to be met in order for any structures to be open to the public. Permits are required for the proposed installation of utilities on private property. Upon review of the property history, it appears a structure was built without permits at the rear of the home, between the home and accessory structure. If this structure exceeds 200 sq. ft. in area, a building permit would be required. We suggest the applicants consult with Building Inspection regarding obtaining this permit.

Marion County Code Enforcement commented that there is an open violation on the property for operating a construction business on the property; however, Code Enforcement believes that a landscaping business is being operated from the property after investigating. Code Enforcement states that the Conditional Use permit would address the existing code violations.

All other parties notified either had no comment or no response was received.

7. The applicant is applying to operate 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 as stated in MCC 17.136.050(D)(6).

Based on information provided by the applicant, they are applying to operate a landscape contracting business. The applicant provided evidence to the satisfaction of Staff that Arturo Alvarez, the business operator, maintains a current license for a Landscape Contracting Business with the State of Oregon Landscape Contractors Board. The applicant also states that they grow the nursery stock used by the Landscape Contracting Business on site. Pursuant to ORS 671.520(1)(a-f), a 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) Install, maintain or repair ornamental water features and landscape drainage systems;
- (d) Maintain irrigation systems with the use of compressed air and as otherwise provided by the State Landscape Contractors Board by rule;
- (e) Install or repair landscape irrigation systems as provided by the board by rule; or
- (f) Plan, install, maintain or repair fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls.

All uses listed above are allowed to be performed by the applicant provided the Landscape Contracting Business License remains active. The applicant shall provide evidence of an active license upon request by the Planning Director. Based on these facts, the applicant's proposal meets the definition of a landscape contracting business.

8. In addition to the standards above, the proposal must also satisfy the conditional use criteria in Marion County Code (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.*
- (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (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.*
- (d) *Any noise associated with the use will not have a significant adverse impact on nearby land 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.*

9. The business proposes to provide landscape contracting in conjunction with growing nursery stock on the subject property. The applicant states that the proposed use will not force a notable change in or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use but it may be the least impactful farming practice within the immediate area as some industrial uses in conjunction with farm use exist in the vicinity. Applicant states that an outbuilding located to the north of the dwelling is used as "guest quarters". Applicant is advised that upon review of permit records, the structure was approved as a "rec room & bath". Pursuant to MCC 17.126.020(A)(9), there are standards that a guest facility must meet. Prior to operating the

business, the applicant shall bring the structure into compliance with these standards or decommission the guest quarters. This must be completed as the standards regarding residential development in resource areas are in place in order to protect farm and forest uses. Based on these facts and compliance with conditions of approval the proposal meets #9(a).

The Aumsville Fire District serves the parcel and all other needed services are currently available to the site. The proposal satisfies the criterion in #9(b).

The property is not within a wildlife habitat area, floodplain, wetland, or geologically hazardous area. There is no evidence of significant odors or noxious matter emitted from the premises that would affect air or water quality. Noise generated by the proposed activity should be comparable to agricultural activities and is noise generated by traffic would be minimal. The property is located in a Sensitive Groundwater Overlay and the applicant is warned that there are water restrictions that may apply. There is no evidence in the record that the landscape contracting business will have a significant adverse impact on nearby land uses. The proposal meets #9(c) and (d).

There are no potential water impoundments, or significant mineral and aggregate sites identified by the Comprehensive Plan in the area. The criterion in #9(e) is met.

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

Brandon Reich,  
Planning Director

Date: November 26, 2021

If you have any questions regarding this decision contact Alyssa Schrems 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.