

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. 25-019

APPLICATION: Application of John G. Leggett and Johnlee Noblitt for a conditional use permit to operate a landscaping business in conjunction with a nursery on a 3.10-acre parcel on an EFU (Exclusive Farm Use) zone located at 22902 Schultz Rd NE, Aurora (T4S; R1W; Section 4C; Tax lot 1300).

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

EXPIRATION DATE: This Conditional Use Permit is valid only when exercised by **May 20th, 2027**. 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, including any required septic permits. The applicant shall confirm with the Building Division whether the existing structures need to be upgraded to meet building code standards.
2. The applicant shall provide evidence to Marion County Planning that any code violations regarding solid waste or otherwise have been resolved with Marion County Code Enforcement.
3. The applicant shall, if deemed necessary by the Oregon Department of Agriculture, obtain a nursery license.
4. The applicant shall install a 3-foot silt fence on the northside of the gravel area.
5. Existing structures on the property may be maintained, enhanced or expanded on the same tract within the limits of MCC 17.136.60(I).
6. The applicant shall record a Farm/Forest Declaratory Statement (enclosed) with Marion County Clerks Office.

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

7. The applicant shall continue to utilize the property in compliance with the Exclusive Farm Use (EFU) zone code. This includes the continued operation of the nursery farm use in conjunction with the landscaping business. This also includes continued operation in such a way that does not create significant adverse impacts on surrounding farm operations, watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and/or water quality.

8. The applicant shall allow for future site visits to confirm that land use regulations are being met. If the requirements of the Exclusive Farm Use zone code and this conditional use permit are not continually satisfied, this permit may be revoked by the Marion County Planning Director.

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. The applicant is advised of the following:

9. The applicants should contact the Aurora 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.

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 **May 20th, 2025**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 21st, 2025**, unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The subject properties are designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The subject property is located southeast of the Butteville community, on the east side of Shultz Rd NE. The property is addressed off Shultz Rd NE but accessed off an unnamed public non-county road (3001). The property is entirely surrounded by EFU zoned farmland with associated farm dwellings.
3. The 3.1-acre subject property is developed with a home built in 1901, a couple small sheds, and an approximately 4,000 square-foot agricultural structure. Just over 1-acre of the property is graveled and apparently in use for parking vehicles in association with the business onsite. The parcel is specially assessed for farm use. The subject parcel has been described as a single parcel since prior to September 1, 1977. The parcel was described by deed in 1976 recorded on Reel 42, Page 344 of the Book of Land Records for Marion County, and has existed in the same configuration ever since. Therefore, this parcel is considered legal for land use purposes.
4. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Building Division commented: No Building Inspection concerns. If the storage and/or use of plastics or fertilizers exceed the maximum allowable quantities from OSSC Section 307 within a structure regulated by the state building code, then a permit may be required to address fire safety systems. Consultation with the local fire district to determine these quantities is recommended as Building Inspection has no authority over these existing structures unless a permit is applied for.

Marion County Septic commented: A septic authorization will be required due to a change of use from a residence to a residence with an office serving a business. If plumbing will be proposed in the shop, and adequate fall can be met, an authorization will be required to connect to the existing septic system.

Marion County Code Enforcement submitted comments explaining that they support the approval of the application if the paving equipment is kept off site.

Friends of French Prairie commented: “Regarding the application for Conditional Use referenced above on EFU land located at 22902 Schultz Rd NE in Marion County, Friends of French Prairie applauds the Applicants’ decision to seek this permit in order to come into compliance with County Code in order to operate a nursery stock and landscape contracting business.

We support the application with the following comments and expectations:

1. Given the intent to separating the paving business from the landscape/nursery business, a specific timeline be established for off-site relocation of the paving equipment.
2. To minimize potential adverse impacts on watersheds and groundwater a corresponding timeline be established for removal of the piled waste asphalt and/or road material from the property.
3. Given the existence both of a residence and a farm building on this 3.10 acre property, that no additional building related to the conduct of the landscape/nursery business will be erected.

We concur that the application is consistent with the farm impact test as described, the operation of a landscape contracting business as a conditional use, and that it will not have adverse impacts on traffic or local farming practices.”

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

5. The applicant is proposing to operate a landscape contracting business, as defined in ORS 671.520, in conjunction with the growing and marketing of nursery stock that constitutes farm use as stated in MCC 17.136.050(D)(6).

The applicant provided information that shows they meet the definition of a landscape contracting business described in ORS 671.520. Prior to this application, the applicant was storing paving related equipment on the subject parcel and as an aspect of the landscaping business which led to a code enforcement complaint. The applicant has stated they are dividing the business up and moving the paving related equipment to a new location. The subject parcel will therefore be utilized for the growth of nursery stock, the storing of landscaping equipment, and the assembly and dispatch of employees. The application statement attests that there are currently four employees of the landscaping business.

The applicant asserts that they will comply with the requirement for the growth of nursery stock in conjunction with operation of the landscape business. Continued compliance with this requirement will be confirmed through future site visits. Conditions of approval will be applied to maintain compliance with other applicable criteria. Therefore, the proposal is consistent with the conditional use described in MCC 17.136.050(D)(6).

6. The following criteria found in MCC 17.136.060(A) apply to all conditional uses in the EFU zone.

1. *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.*

This criterion implements ORS 215.296(1), otherwise known as the “Farm Impacts Test”. Due to recent updates to that statute, the Farm Impacts Test is addressed in the following section (7) of this staff decision. As per the findings in that section, the criterion is met.

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

The property is located within the Aurora Fire District and served by Marion County Sheriff’s Office. A well with pump on the property exists as a water source to the existing dwelling. Portable toilets are utilized for the employees of the business. Marion County septic indicated in their comments that a septic authorization will

be necessary. The applicant is not proposing any additional structures. All existing structures, and the use, appear to have adequate rural services. The criterion is met.

3. *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 applicant states that the landscaping business would not require further permanent development of the land and that no operations would negatively impact these elements of the land, air, and water. There is an unnamed perennial tributary of Deer Creek that abuts the northeastern corner of the subject property and runs along the property adjacent to the north. The applicant offered a condition of approval to install a 3-foot silt fence along the northside of the gravel area to ensure that the creek is not affected by dust on site. Staff finds this condition sufficient to avoid potential impacts on the creek. Marion County Building Inspection noted that if the storage and/or use of plastics or fertilizers exceed the maximum allowable quantities from OSSC Section 307 within a structure regulated by the state building code, then a permit may be required to address fire safety systems. This permitting, if required, will ensure mitigation of potentially adverse or oblitative impacts of these chemicals. No other potential impacts to watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and/or water quality have been identified. Landscaping businesses can be operated with limited impacts on the land. The installation of the silt fence, and otherwise continuous compliance with this criterion shall be conditions of approval. The criterion is met.

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

The applicant states that the landscaping business is operated in a manner that limits noise. The landscaping services provided are performed off site, therefore the majority of the noise associated with the use is occurring off site. Equipment is moved during daytime business hours but is otherwise left unused at other times and does not create noise. Maintenance of equipment will be performed in the agricultural building. The growing of nursery stock (a farm use) will not create significant adverse noise impacts. The criterion is met.

5. *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 water impoundments, mineral or aggregate sites identified in the comprehensive plan near this property. The criterion is met.

7. In addition to the above conditional use criteria out of Marion County Code, the proposal must satisfy the Farm Impacts Test which is being applied directly from Oregon Revised Statutes (ORS 215.296(1)).
 - (a) *Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
 - (b) *Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*
 - (c) *For purposes of subsection (a) and (b), a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:*
 - (A) *Identification and description of the surrounding lands, the farm and forest operations on those lands, and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;*

The applicant provided analysis of all parcels within a quarter-mile of the subject parcel. The primary farm operations in this area are for corn and other row crop production. There are a couple parcels engaged in livestock and nursery stock. There is also a single compost operation. There are no forest uses in the immediate area.

- (B) An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices. This assessment applies practice by practice and farm by farm; and*

The applicant determined the potential impacts of the proposed landscaping in conjunction with nursery crop production business and provided assessments of the individual impacts. These potential impacts include dust, noise, and traffic impacts. The potential for dust production is for reasons common to the existing farm uses in the area. The dust production will be a result of farming the nursery crops and driving vehicles over the gravel parking lot. The applicant plans to employ standard dust mitigation efforts such as watering the gravel area as needed. The noise created will be entirely congruous with existing farm uses in the area. These noises will be related to the planting and movement of nursery crops, the assembly of employees, and maintenance of vehicles and equipment within the existing Agricultural structure. The potential traffic will result from employees traveling to and from the subject parcel. No customers will visit the property. The applicant notes that the business is somewhat seasonal, being busiest from May through September, when there will be between four to six vehicles traveling to and from the subject parcel through the day. The traffic impact is not unlike traffic generated by a farm operation and cannot be said to have significant influence or effect on those farm operations around the subject parcel.

- (C) An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.*

The identified impacts of dust production, noise, and traffic impacts have been described individually by the applicant and are all impacts that are standard impacts from farming. Even when considered together, these impacts will not have a significant impact on any of the farm operations in the surrounding area.

- (D) For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.*

The applicant considered these impacts and addressed those that were applicable the subject parcel and area within ¼ mile of the subject parcel. Those impacts, as addressed above, are dust, noise, and traffic.

- (E) For purposes of subsection (a) and (b), potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under subsection (a) and (b).*

The applicant is not proposing any construction or installation required for the landscaping aspect of the proposed use. The planting, maintenance, and harvest of nursery crops is an outright permitted farm use. The existing graveled area and agricultural structure will be used for the storage of landscaping and farm equipment related to the use. The previous construction of the structure on the property would not be dissimilar to the construction of pole barns on farm properties in the area, and no evidence suggests that the construction created impacts on surrounding farm practices.

- (F) In the consideration of potentially mitigating conditions of approval under ORS215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in subsection (a) and (b).*

The county recognizes this requirement. No conditions of approval are being imposed on affected farm or forest landowners, nor are any landowners being compelled to accept payment as compensation for significant changes to, or significant increases in costs of, accepted farm and forest practices in the area.

The applicant provided, and staff has reviewed, the above analysis of the proposal subject to the Farm Impacts Test in ORS 215.296(1) subsection (a) and (b) via the process outlined in subsection (c)(A-F), which shows that the proposal to establish a landscaping business in conjunction with nursery crop production on the subject parcel

will not force a significant change in, nor significantly increase the cost of accepted farm practices in the area. No forest practices exist in the area. The Farm Impacts Test is met.

8. In addition to the conditional use criteria in the EFU zone, uses identified in MCC 17.136.050 are subject to the following criteria in MCC 17.136.060(I).
 1. *No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved within three miles of an urban growth boundary unless an exception is approved pursuant to OAR Chapter 660, Division 004.*

The subject parcel is less than three miles north of urban growth boundary of Donald. However, the applicant is not requesting a structure, or group of structures, with a design capacity of greater than 100 people. The criterion does not apply.

2. *Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract. For the purposes of this subsection, "tract" means a tract as defined in MCC 17.136.140(F) in existence on May 5, 2010.*

The applicant is not proposing any new enclosed structures as a part of this application. The subject property is just under 550-feet long at its largest dimension. Therefore, any new enclosed structure that could potentially be constructed would comply with this requirement. The criterion is met.

3. *Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, but existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits of this subsection.*

This shall be a condition of approval.

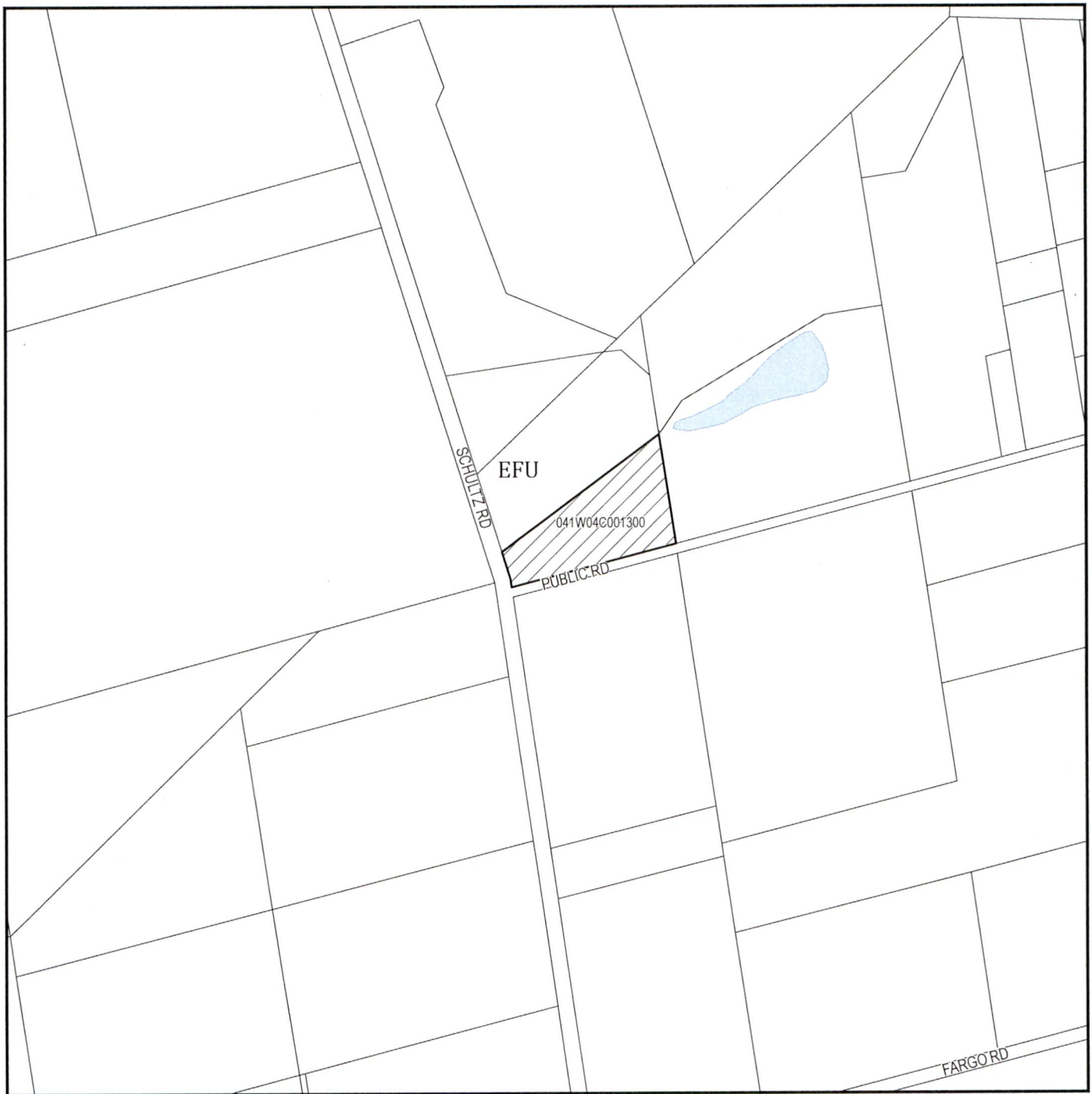
9. MCC 17.136.050(B) requires that a declaratory statement meeting the requirements of MCC 17.136.100(C) be filed and this serves to notify the applicant and subsequent owners that there are farm or timber operations in the area.
10. Based on the above findings, the applicant's proposal meets the criteria for establishing a conditional use landscape contracting business in conjunction with nursery crop production in an EFU zone. The conditional use request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: May 5th, 2025

If you have any questions regarding this decision contact John Speckman 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.



ZONING MAP

Input Taxlot(s): 041W04C001300

Owner Name: LEGGETT, JOHN NOBLITT, JOHNLEE

Situs Address: 22902 SCHULTZ RD NE

City/State/Zip: AURORA, OR, 97002

Land Use Zone: EFU

School District: NORTH MARION

Fire District: AURORA

Legend

 Input Taxlots

 Lakes & Rivers

 Highways

 Cities



scale: 1 in = 447 ft

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.