

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. 24-007**

**APPLICATION:** Application of the City of Aurora for an administrative review to establish a drinking water utility facility for public service outside the UGB (Urban Growth Boundary) on a 3.34-acre parcel in the EFU (Exclusive Farm Use) zone located at 21901 Cole Ln NE, Aurora (T4S; R1W; Section 11D; Tax lot 100; Section 12CB; Tax lot 1500).

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

**EXPIRATION DATE:** This decision is valid only when exercised by **May 1, 2026** (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 applicant shall obtain all permits required by the Marion County Building Inspection Division. Please see comments provided by the Building Division listed in findings and conclusions #7.

2. **ENGINEERING CONDITION**

*Condition A – Prior to issuance of a building permits for the proposed facility, submit a suitable survey sketch and legal description to PW Engineering for a 20-foot public half-width R/W dedication along the subject property west side alley frontage.*

3. The applicant shall comply with Marion County Code 17.136.040(I)(6)(b) by restoring the site to its “former condition as nearly as possible any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing upon a contractor the responsibility for restoration.”

**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:

4. 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 1, 2024**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 2, 2024**, 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 properties are located at the end of Cole Ln NE, which is north off of Ehlen Rd NE. The subject properties are bare land and have perennial creeks across the north end. They are also located within the Primary Horizontal Surface of the Aurora State Airport.
3. Tax lot 04-1W-11D-00100 and 04-1W-12CB-01400 have both been described in their current configuration as far back as Vol. 567 Page 659, recorded on Jan. 15, 1963. In addition to this tax lot 100 was subject to an approved Administrative Review land use case, 10-015. Therefore, both parcels are considered legal for planning purposes.

Tax lot 04-1W-12CB-01500 has a complicated history. It was part of a larger parcel which was described in Vol. 79 Page 608, recorded on Nov. 22, 1902. On Dec. 22, 1969, there were a series of quit claim deeds for a portion of this larger parcel (Vol. 676 Page 242-246). These quit claim deeds were then re-recorded at a later date to correct the legal description used (correcting from Range 2 West to Range 1 West) in deed volume 678 pages 544-547 and page 613.

Next, an additional portion of this larger parcel was conveyed out in Vol. 680 Page 36 as recorded on March 19, 1970. This was followed by a sheriff's deed on April 7, 1972, as approved by the Circuit Court of the State of Oregon for Marion County, as a foreclosure for tax liens against the parcel.

Finally, on Feb. 27, 1981, Marion County then sold the parcel in Reel 242 Page 913. Unfortunately, they used the original legal description from Vol. 79 Page 608. A re-recording was done in Reel 244 Page 1310 to correct the legal description so that it accurately reflected what the remnant of the original parcel was. Based on the balance of the evidence, planning staff determines this to be a legal lot for planning purposes.

4. Surrounding parcels to the north, west and south are small to medium sized and are zoned EFU. Many have homesites and the majority are in active farm production. Properties to the east are either within the City of Aurora proper or its Urban Growth Boundary. Zoning on these properties are R1 (Low-Density Residential) and UT-20 (Urban Transition, 20 acre minimum). The underlying Comprehensive Plan for the UT-20 zoned properties is Low-Density Residential. These properties are a mixture between developed and active farm use.
5. Soil Survey of Marion County, Oregon indicates that approximately 64.8% of tax lot 100 and 39.7% of tax lot 1500 are classified as high value soils.
6. The applicant is proposing to place a new utility facility, in the form of a new well, reservoir and booster station, for the City of Aurora's water supply.
7. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Land Development Engineering & Permits (LDEP) commented:

### **ENGINEERING CONDITION**

*Condition A – Prior to issuance of a building permits for the proposed facility, submit a suitable survey sketch and legal description to PW Engineering for a 20-foot public half-width R/W dedication along the subject property west side alley frontage.*

### **ENGINEERING REQUIREMENTS**

- A. An Access Permit will be required upon application for building permits. The alley drive isle access will need to consist of a structural section suitable for very low volume public travel since it will be situated within public R/W.
- B. The subject property will be assessed Transportation System Development Charges (TSDCs) upon application for building permits.
- C. Utility service extensions in the public right-of-way generally require a permit from PW Engineering for each service.
- D. Stormwater detention may be required for 0.5-acre or more of development.
- E. It is the responsibility of the Applicant to preserve and protect the current Pavement Condition Index (or PCI) rating and the structural integrity of adjacent county roads to the satisfaction of Marion County Public Works during transport of materials and construction activities. Failure to preserve and protect the road may result in the Applicant being responsible for replacing or reconstructing the damaged road at his/her own expense.

Marion County Building Division commented: “Permit(s) are required to be obtained prior to development and/or utilities installation. Marion County Building Inspection recommends discussion with a Building Plans Examiner to determine which permits are required according to the provisions of the state building code and the 2022 Oregon Structural Specialty Code and those scopes of work adopted in the Marion County Code.”

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

8. The criteria for “utility facilities” in the EFU zone can be found in section 17.136.040(I) of the Marion County Code (MCC):
- (I) *Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is “necessary” if it must be situated in the EFU zone in order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more of the following factors as found in OAR 660-033-0130(16):*

*(1) Technical and engineering feasibility;*

A Geotechnical Engineering Report was completed as well as a Siting Study. The results of these are discussed further in the next section. The criterion is met.

*(2) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*

*(3) Lack of available urban and nonresource lands;*

*(4) Availability of existing right-of-way;*

*(5) Public health and safety; and*

Per the applicant’s statement the City of Aurora’s current water supply comes from two main wells located in the southern end of the city. However, these wells have various issues, one of the issues being a public health and

safety concern of water quality from Well No. 4. A new well in the northern section of the city will replace Well No. 4, as well as improve fire flows and create a measure of redundancy. Therefore, subsection (5) is met and the beginning framework of locational restrictions (subsection (2)) are established.

The city looked for land within the Urban Growth Boundary (UGB) but the already limited supply of available parcels at the north end of the city was further reduced by existing development and the results of a geotechnical evaluation, which revealed liquefaction risk. A site with good elevation is also necessary to aid in improving water system pressure and to help alleviate any potential disruptions to water supply in the event of an emergency. As the undeveloped parcels available in the northern section of the city's UGB did not meet these requirements the city was forced to look at resource lands nearby. Therefore subsection (3) is met, and subsection (2) is further edified.

The city ultimately located and bought several properties at the end of Cole Ln NE. One of these parcels is within the UGB and is zoned UT-20. However, it was disqualified for use by the liquefaction risk identified in the geotechnical evaluation. The other two parcels are outside, but contiguous with, the UGB and are zoned EFU. Cole Ln NE is a dedicated right of way which the subject parcels have direct access from. The level of travel expected for the utility facility is not such that it will over burden the capacity of the roadway. With this subsection (4) is met and the totality of subsection (2) is now complete and met as well.

In conclusion, a geotechnical evaluation was completed, the findings of which ruled out the few potential parcels which were located within the UGB. Parcels which were as close to the north end of the city as possible, contiguous with the UGB, geotechnically feasible, and had high elevation and road access were identified. The identified parcels also have existing pipe infrastructure within 1,700 feet which the city can tie into.

*(6) Other requirements of state and federal agencies.*

- (a) Costs associated with any of the factors listed above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.*

Cost was not given as a factor and therefore this criterion does not apply.

- (b) The owner of a utility facility approved under this section shall be responsible for restoring to its former condition as nearly as possible any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing upon a contractor the responsibility for restoration.*

This shall be made a condition of approval, the criterion is met.

- (c) The applicant shall address the requirements of MCC 17.136.060(A)(1).*

Marion County Code 17.136.060(A)(1) states that *"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."*

Per the applicant statement this will be a utility facility site for storing and pumping water to the City of Aurora. Any dust, noise, fumes, odors, or traffic from this use will have minimal if any impact on neighboring farms. The criterion is met.

(d) The provisions in subsections (d) through (f) are related to other types of utility facilities outside of what is being proposed. Therefore, these subsections do not apply.

(7) Subsection (7) contains criteria regarding transmission lines, which do not apply to this case.

9. The applicant also owns the contiguous 1.26-acre neighboring property directly east. This parcel is Map Tax Lot 04-1W-12CB-01400 and is zoned UT-20. The application and site plan do not reference any future build upon this parcel, but should they decide to expand or modify their plans to include the utility facility on said parcel it is a use that is permitted outright under MCC 16.13.010(H), with Public Utilities as defined in MCC 16.49.212 including water.
10. Based on the above findings, it has been determined that the criteria to develop a utility facility necessary for public service in the EFU zone have been met, and therefore this application is **APPROVED**.

Brandon Reich  
Planning Director/Zoning Administrator

Date: April 16, 2024

If you have any questions regarding this decision contact Nicole Inman 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.