

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/VARIANCE CASE NO. 24-021**

APPLICATION: Application of the City of Aurora for an administrative review to expand a waste water treatment facility and for a variance to build an effluent storage lagoon on a 13.64-acre parcel, 0.38-acre parcel, 3.56-acre parcel, and a 5.35-acre parcel in the EFU (Exclusive Farm Use) zone located in the 21494 Mill Race Ln NE, Aurora (T4S; R1W; Section 13B; Tax Lot 201, 700, 800, 1400).

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 **October 7th, 2026** (two years) unless an extension is granted. The effective period may be extended for one year 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 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 applicant shall obtain any and all permits, including any subsurface sewage disposal, as required by the Marion County Building Inspection Division.
2. The development shall significantly conform to the site plan submitted. Minor changes are allowed after review and approval by the 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 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 the agencies mentioned in Finding # below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

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 a Marion County hearings officer. The applicant may also request reconsideration (one time only and a \$200.00 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 **October 7th, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 8th, 2024**, 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 Exclusive Farm Use (EFU). Utility facilities necessary for public service are a use permitted subject to standards in the EFU zone.
2. The subject property is located on the western side of the Union Pacific Rail Road right-of-way, at the terminus of Mill Race Ln NE. Tax lot 800 contains the bulk of the operation, with most of the current lagoon and multiple accessory structures located on it. The lagoon is also located partially on tax lot 201 and 700. All lots were subject to a prior Administrative Review to establish the waste water facility. Therefore, the parcels are legal for land use purposes.
3. Surrounding uses are farm uses in all directions except east. The pudding river flows past the lots to the west and the City of Aurora is across the rail road to the east and developed with residential and commercial uses.
4. The applicants are proposing to expand and existing wastewater treatment plant that is owned and operated by the City of Aurora.
5. The subject property is comprised of approximately 99.5% high value soils.
6. Marion County Building Department commented:

“Permits are required to be obtained, as identified in the state building code, prior to development and/or utilities installation.”

Oregon Department of Aviation (ODAV) commented:

“ODAV has no comments on the application for the new wastewater basin. It’s far enough from the Aurora State Airport’s runway (per ORS 836.623) and not underneath the approach surface, so there’s no major concerns on our end.”

All other commenting agencies stated no objection to the proposal.

7. Communications towers are a “Utility Facility Necessary for Public Use” as found in MCC 17.136.040. the approval criteria are found below:

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;

The site is already developed with an existing wastewater plant making the most sense on a technical level to site the expansion on the same parcel. The applicants have submitted a list of improvement that they will be making to the site that need to be made to the existing site:

- a. New sequencing batch reactor and blower building
- b. Additional storage lagoon
- c. Lagoon pump station
- d. Relocation of the headworks screen
- e. Update to chlorination system
- f. Upgrade supervisory control and data acquisition

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;*

The site is already existing on EFU land and sits adjacent to Aurora, making it locationally dependent on its current location. The criterion is met.

3. *Lack of available urban and nonresource lands;*

The City of Aurora does not contain lands inside its City Limits to accommodate the expansion. The criterion is met.

4. *Availability of existing right-of-way;*

The property is land locked and does not abut any rights-of-way. The criterion is met.

5. *Public health and safety; and*

This project serves to protect the public's health and safety as it treats wastewater that is toxic to humans and the environment. The criterion is met.

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.*

The cost to build these facilities are the same regardless of zoning. The City will save money by siting this next to an existing wastewater plant. The criterion is met.

- 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.*

It is expected that this parcel will be used for wastewater treatment for as long as the City of Aurora is a city and has a sanitary sewer. It is impractical to return a site of this use and scale to agricultural use when the parcel is not large enough to sustain commercial farm use. The criterion does not apply.

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

MCC 17.136.060(A) (1) reads:

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.*

There will be no cost to the property owner nor will there be for any adjacent property owner. The construction of this expansion will disturb the least amount of land possible and is not expected to affect any adjacent farm

operations. The criterion is met.

d. In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

No sewer system is proposed. The criterion does not apply.

e. The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

The facility is not a natural gas pipeline. The criterion does not apply.

f. If the criteria contained in this subsection (I) for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a transmission line, the utility provider shall, after the route is approved by the siting authorities and before construction of the transmission line begins, consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult. The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process. For the purposes of this subsection:

i. "Consult" means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.

ii. "Transmission line" means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users.

The facility does not contain a transmission line. The criterion does not apply.

7. An associated transmission line shall be considered necessary for public service solely based on the criteria below:

a. "Associated transmission line" means a new transmission line constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

b. An associated transmission line is necessary for public service if it is demonstrated to meet either subsection (I)(7)(b)(i) or (ii) of this section:

i. An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

(A) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;

(B) The associated transmission line is co-located with an existing transmission line;

(C) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or

(D) The associated transmission line is located within an existing right-of-way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.

ii. After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to subsections (I)(7)(b)(iii) and (iv) of this section, two or more of the following criteria:

(A) Technical and engineering feasibility;

(B) The associated transmission line is locationally dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land, to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of an available existing right-of-way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;

(D) Public health and safety; or

(E) Other requirements of state or federal agencies.

iii. As pertains to subsection (I)(7)(b)(ii) of this section, the applicant shall present findings to the governing body of the county or its designee on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.

iv. The governing body of a county or its designee may consider costs associated with any of the factors listed in subsection (I)(7)(b)(ii) of this section, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.

The facility does not contain a transmission line. The criterion does not apply.

8. This application also requires a variance to address MCC 17.177.030(b)(1) which states:

b. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.

The lagoon is located closer than 10,000 feet from the Aurora Airport runway. The runway currently sits 6,000 feet away. The variance criteria are as follows:

A. The director, planning commission, hearings officer, or board may permit and authorize a variance when it appears from the application and the facts presented that:

1. There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of this title; and

The location of this wastewater plant has been pre-determined and there is no reasonable way to move this far enough away to not require the variance. The criterion is met.

2. There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and

The parcel is bordered on one side by the 100-year floodplain and the Pudding River, while on the other it is bordered by the Union Pacific Railroad. This is an unusual circumstance that applies to this land that constrains development to this exact parcel. The criterion is met.

3. The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and

This is the minimum degree of variance as it is the only parcel that this treatment plant can be expanded on. The criterion is met.

4. The variance will not have a significant adverse effect on property or improvements in the neighborhood of the subject property; and

The variance would likely have a positive effect on the neighborhood as this expansion would mean there is a long-term viable wastewater treatment plant that can serve more residents as the town grows and preserve environmental quality by property treating effluent waste. The criterion is met.

5. The variance will not have a significant adverse effect upon the health or safety of persons working or residing in the vicinity; and

The variance would likely have a positive effect on the health and safety of persons as this expansion would mean there is a long-term viable wastewater treatment plant that can serve more residents as the town grows and preserve environmental quality by properly treating effluent waste. The criterion is met.

6. *The variance will maintain the intent and purpose of the provision being varied.*

The variance maintains the intent of the zone by considering all the above safety factors. Additionally, ODAV commented that they have no concerns this the closeness of the lagoon and it meets ORS 836.623. The criterion is met.

9. Based on the above findings, it has been determined that the request satisfies all applicable criteria and is, therefore, **APPROVED**.

Based on the above findings, it has been determined that the existing dwelling was legally established and may be altered, restored and/or replaced.

Brandon Reich
Planning Director/Zoning Administrator

Date: September 19, 2024

If you have any questions regarding this decision contact Austin Barnes 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.