

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 MODIFIED DECISION
PROPERTY LINE ADJUSTMENT CASE NO. 17-042**

APPLICATION: Application of Loren, Marlene, Kevin, and Jill Dettwyler, and the Myron and Diane Kuenzi Family Farm LLC to adjust the property lines on a 35.5 acre parcel and a 46.57 acre parcel to create an 54 acre parcel and a 32 acre parcel in an EFU (Exclusive Farm Use) zone located at 4076 and 4306 Desart Rd. NE, Silverton. (T7S; R1W; Section 6; tax lots 2100, 2200 and 2600 and Section 7; tax lot 400).

DECISION: Notice is hereby given that the Planning Director for Marion County has **MODIFIED** and **APPROVED** the adjustment of the property lines on a 35.5 acre parcel, an 18.13 acre parcel, and a 28.2 acre parcel to create a 54 acre parcel, a 10.13 acre parcel, and a 17.2 acre parcel, subject to conditions.

EXPIRATION DATE: Title transfer instruments accomplishing the property adjustments shall be recorded by the applicants with the Marion County Clerk by **January 25, 2020**. 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 request is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposal 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. **Property line adjustment deeds shall be recorded with the Marion County Clerk meeting requirements identified in ORS 92.190(4).** The deeds shall contain the names of the parties, the description of the adjusted lines, references to original recorded documents and signatures of all parties with proper acknowledgment. The deeds shall include a perimeter description of each resulting parcel. **This property line adjustment is not complete until the title transfer instruments accomplishing the property adjustments are recorded by the applicants with the Marion County Clerk.**
2. Deed recording reference numbers shall be noted on the required survey.
3. **Prior to recording the deeds,** the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
4. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the property line adjustment until the following conditions have been satisfied:

Condition A – Prior to PLA survey approval, obtain an Access Permit, and under the Permit, add compacted crushed rock to the #4306 Desart Road field access

Condition B – Prior to PLA survey approval, either remove concrete curbing located in the public right-of-way fronting #4306 Desart Road or record a Removal Agreement with Marion County

5. The resulting lots shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.

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

6. After the property line adjustment has been completed, no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect any 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 any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 be contacted to identify restrictions or necessary permits.

7. Prior to recording the plat all taxes due must be paid to the Marion County Tax Office. Call 503-588-5215 for verification of payments.

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 (Appeal 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 **January 25, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 26, 2018** unless further consideration is requested.

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

1. The subject property is designated Exclusive Farm Use in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The purpose of the Exclusive Farm Use zone is to promote and protect commercial agricultural operations. Both properties are entirely in the floodplain of the Santiam River.
2. The properties are located on the east side of Desart Road NE and on the north side of the Union Pacific Railroad right-of-way. Tax lots 2100 and 2200 were lawfully created as separate lots a result of Minor Partition Case #78-96. Tax lot 2100 contains a dwelling, well, septic system, and farm structures. Tax lot 400 is described in deeds going back as far as December 17, 1968 and is considered a legal lot for land use purposes. Tax lot 400 contains a dwelling, well, septic system, accessory buildings and farm structures. Because tax lots 2100 and 2200 are separate legal lots, the request has been modified to allow these lots, as adjusted, to remain separate.
3. Adjacent properties in all directions are zoned EFU and contain rural residences and properties being farmed.
4. Soil Conservation Service Soil Survey of Marion County indicates approximately 100% of the properties are composed of non-high-value farmland soils.
5. The applicants propose to adjust the property lines on a 35.5 acre parcel and a 46.57 acre parcel to create a 54 acre parcel and a 32 acre parcel.
6. **Public Works Land Development Engineering and Permits Division (LDEP)** will not approve the property line adjustment until the following conditions have been satisfied:

“Condition A – Prior to PLA survey approval, obtain an Access Permit, and under the Permit, add compacted crushed rock to the #4306 Desart Road field access

In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing, and safety standards by authority under Marion County Driveway Ordinance #651. Access work, which is typically given as an Engineering Requirement, is being elevated to Condition status relative to its timing for completion.

Condition B – Prior to PLA survey approval, either remove concrete curbing located in the public right-of-way fronting #4306 Desert Road or record a Removal Agreement with Marion County.

Curbing is a non-standard feature along a rural roadway, such that it may create vehicular safety, drainage and other undesirable issues. A Removal Agreement stipulates property owner removal of the object within 45 calendar days should the County determine the need to do so. An Application is enclosed should this option be elected by the Applicant.”

Marion County Surveyors Office commented: “No survey required. The resultant properties are greater than ten acres. Property line adjustment deeds shall be recorded with the Marion County Clerk’s Office. Marion County Planning requires perimeter descriptions of the resultant properties. Per ORS 92.190 (4): The deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment.”

Marion County Tax Office provided information regarding taxes on the subject properties.

Marion County Building Inspection commented that septic permit are required. Contact Building Inspection at 503-588-5147 for information.

7. The criteria for reviewing property line adjustments within an EFU zone are listed in Section 17.136.090(C) of the Marion County Code (MCC). These criteria are as follows:
- (a) *When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to MCC 17.136.090(A)(1), the same number of lots or parcels shall be as large or larger than the minimum parcel size after the adjustment. When all lots or parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no lot or parcel shall be reduced below the applicable minimum parcel size. If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.*
 - (b) *If the minimum parcel size in MCC 17.136.090(A)(1) is larger than 80 acres, and a lot or parcel subject to property line adjustment is smaller than the minimum parcel size but larger than 80 acres, the lot or parcel shall not be reduced in size through property line adjustment to less than 80 acres.*
 - (c) *Any property line adjustment shall result in a configuration of lots or parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.*
 - (d) *A property line adjustment may not be used to:*
 - 1. *Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;*
 - 2. *Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or*
 - 3. *Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.*
 - (e) *Any property line adjustment that results in an existing dwelling being located on a different parcel shall not be subject to the standards in MCC 17.136.030(A) so long as the adjustment:*
 - 1. *Does not increase the any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and*
 - 2. *Does not increase the potential number of dwellings on the resulting parcels.*
8. The existing parcels are less than 80 acres in size prior to the adjustment; the criteria in #7(a) and (b) are met. All three parcels are being farmed. The reconfiguration will result in approximately 18.5 acres of farmed land being transferred from one farm operation to another and will remain in production. The proposal will not result in the removal of any land from agriculture production. Each of the resulting parcels will contain a dwelling and the

adjustment is not being done in such a way as to qualify a parcel for a dwelling. The criteria in #7(c),(d), and (e) are met.

9. The resulting lots shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
10. Based on the above findings and conclusions, the proposal meets the criteria for a property line adjustment in an EFU zone and is, therefore, **MODIFIED** to **APPROVE** the adjustment of the property lines on a 35.5 acre parcel, an 18.13 acre parcel, and a 28.2 acre parcel to create a 54 acre parcel, a 10.13 acre parcel, and a 17.2 acre parcel, subject to conditions.

Joe Fennimore
Director-Planning Division

Date: January 10, 2018

If you have any questions please contact Lisa Milliman 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.