



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: May 5, 2021

Department: Public Works

Agenda Planning Date: April 29, 2021

Time required: None

☐ Audio/Visual aids

Contact: Lindsey King

Phone: 503-566-4162

Department Head Signature:

Brian Stuhl

TITLE

Schedule final consideration to adopt an administrative ordinance granting Zone Change/ Comprehensive Plan Amendment/Property Line Adjustment(ZC/CP/PLA) Case 21-001/Wing Properties LLC and Shane & Tracy Meyerhofer

Issue, Description & Background

The Marion County Hearings Officer held a duly noticed public hearing on this application on March 4, 2021. On March 8, 2021, the Hearings Officer issued a report recommending the board approve the request. The board held a duly noticed public hearing on the application on April 21, 2021, considered all the evidence in the record, and approved the request. The ordinance and findings have been prepared and the matter needs to be scheduled for final consideration and adoption.

Financial Impacts:

None

Impacts to Department & External Agencies

None

Options for Consideration:

1. Schedule adoption of the ordinance at the next board session, May 12, 2021.
2. Direct staff to prepare a modified ordinance.
3. Choose not to proceed with adopting an ordinance at this time.

Recommendation:

Staff recommends the board schedule final consideration and adoption of the attached ordinance at the next regular board session on May 12, 2021.

List of attachments:

Ordinance

Presenter:

Lindsey King

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

Joe Fennimore gfennimore@co.marion.or.us

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the application of:
Wing Properties, LLC and Shane and
Tracy Meyerhofer

)
)
)

Case No. ZC/CP/PLA21-001

Clerk's File No. 5814

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. ____

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS
FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Wing Properties, LLC to change the Comprehensive Plan designation from Primary Agriculture to Industrial, with an Exception to Goal 3 (Agricultural Lands), and to change the zone from Exclusive Farm Use (EFU) to Industrial on a 3-acre portion of a 5-acre parcel, and an application by Wing Properties, LLC and Shane and Tracy Meyerhofer to adjust the property line on the 5-acre parcel, a 2.71-acre parcel, and a 5.43-acre parcel to create a 4.71-acre EFU parcel and an 8.71 acre Industrial parcel located at 17802 and 17874 Shank Rd NE and 13306 Whiskey Hill Rd. NE, Hubbard. (T4S, R1W, Section 34D, Tax Lot 400, 600 and 800).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on March 4, 2021. On March 8, 2021, the Hearings Officer issued a report recommending the Board approve the request. The Board held a duly noticed public hearing on the application on March 21, 2021, and considered the Planning Division file, the Hearings Officer's recommendation, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Facts and Discussion contained in Section V and VI of the Hearings Officer's decision March 8, 2021, contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan designation change from Primary Agriculture to Industrial is hereby **GRANTED**. The requested zone change from EFU (Exclusive Farm Use) zone to I

(Industrial) zone is hereby **GRANTED**, subject to conditions identified in Exhibit B, attached hereto, and by this reference incorporated herein.

The property rezoned by this Ordinance is described in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to the Marion County Zone Code 17.110.660 to reflect the new zoning.

SECTION V. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this _____ day of _____ ,
2021, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

EXHIBIT A
BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:)	Case No. CP/ZC/PLA 21-001
Wing Properties, LLC and Shane and)	COMPREHENSIVE PLAN
Tracy Meyerhofer)	AMENDMENT/ZONE CHANGE/
)	PROPERTY LINE ADJUSTMENT

RECOMMENDATION

I. Nature of the Application

This matter came before the Marion County hearings officer on the application of Wing Properties, LLC to change the Comprehensive Plan designation from Primary Agriculture to Industrial, with an Exception to Goal 3 (Agricultural Lands), change the zone from Exclusive Farm Use (EFU) to Industrial on a 3-acre portion of a 5-acre parcel, and an application by Wing Properties, LLC and Shane and Tracy Meyerhofer to adjust the property line on the 5-acre parcel, a 2.71-acre parcel, and a 5.43-acre parcel to create a 4.71-acre EFU parcel and an 8.71-acre Industrial parcel located at 17802 and 17874 Shank Road NE and 13306 Whiskey Hill Road NE, Hubbard, OR 97032. (T4S, R1W, Section 34D, Tax Lots 400, 600, and 800).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code (MCC), title 17, especially MCC 17.123, 17.136, 17.165, and 17.172; the Marion County Comprehensive Plan (MCCP), especially the Agricultural Lands Policies and the Rural Industrial Policies; the Statewide Land Use Planning Goals, particularly Goal 2 (Land Use Planning) and Goal 3 (Agricultural Lands); and Oregon Administrative Rules Chapter 660, Division 4.

III. Hearing

A public hearing was held on the application on March 4, 2021. At the hearing, the Planning Division file was made part of the record. The following persons appeared in person and provided testimony:

- | | | |
|----|----------------|-------------------|
| 1. | Lindsey King | Planning Division |
| 2. | John Rasmussen | Public Works |

3. Douglas White Applicant's Representative
4. Adam Pedracini For Applicant

The hearings officer made the declaration required by ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The hearings officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums. No objections were raised to notice, jurisdiction, bias, *ex parte* contacts, conflict of interest, or to evidence or testimony presented at the hearing. At the conclusion of the public hearing, the record was closed.

IV. Executive Summary

The Applicant requests a Comprehensive Plan designation change from Primary Agriculture to Industrial, a Zone Change from Exclusive Farm Use (EFU) to Industrial on a 3-acre portion of a 5-acre parcel, and to adjust the property line to add 3 acres to an adjacent parcel zoned Industrial and add 2 acres to an adjacent parcel zoned EFU located near the corner of Shank Road NE and Whiskey Hill Road NE. The staff report finds that all of the applicable approval criteria have been satisfied. There is no opposition to the application or any disputed issues. The Applicant has satisfied the relevant approval criteria, including the requirements for an exception to Goal 3, a comprehensive plan amendment, a zone change, a property line adjustment, and the hearings officer recommends **APPROVAL** of the proposal.

V. Facts

The subject property is located near the intersection of Shank Road NE (Shank Road) and Whiskey Hill Road NE (Whiskey Hill Road) near the City of Hubbard. There are three separate parcels involved in this application. Tax Lot 400 is the northernmost parcel, which fronts Whiskey Hill Road to the north and is owned by Shane and Tracy Meyerhofer. The Meyerhofers' parcel is 2.71 acres, is zoned EFU, and contains their

residence and a farm vehicle and equipment repair business (Metrofab). Tax Lot 600 is directly south of Tax Lot 400, is owned by Wing Properties, LLC (Wing), and fronts Shank Road to the west. Tax Lot 600 is 5 acres, zoned EFU, and was previously used as a poultry business with numerous structures, coops, and graveled areas throughout the parcel. Wing recently purchased the property and is in the process of cleaning up and rehabilitating the site. Tax Lot 800 is directly south of Tax Lot 600 and is also owned by Wing. Tax Lot 800 is 5.43 acres, zoned Industrial, and is the location of Wing's contractor business. A physically developed exception to Goal 3 (Agricultural Lands) was previously taken to change the plan and zone designation on Tax Lot 800 to Industrial.

The properties involved in this application are essentially tucked into the corner between Shank Road and Whiskey Hill Road. There are two 1-acre EFU parcels to the east and west of Tax Lot 400 that are also directly north of Tax Lot 600 and contain residences. Across Whiskey Hill Road to the north are large EFU parcels in farm use. A large EFU parcel used to grow grass seed by Hubbard Seed & Supply Company (Hubbard Seed) is located to the east of the properties from Whiskey Creek Road to well south of Tax Lot 800. While the grass seed operation adjoins Tax Lot 600 and 800, there is a large berm, a row of tall Redwoods, a drainage ditch, and a farm access road that separates the grass seed operation from the subject properties. There is a large EFU parcel in farm use to the south of Tax Lot 800 also farmed by Hubbard Seed and a 1-acre EFU parcel with a residence to the southwest of Tax Lot 600 along Shank Road. Across Shank Road to the west are larger EFU parcels in farm use by Hubbard Seed as well as one smaller EFU parcel with a residence.

Wing seeks an irrevocably committed exception to Goal 3 to change the plan designation on the southern 3 acres of Tax Lot 600 from Primary Agriculture to Industrial and the zoning designation from EFU to Industrial. Wing and the Meyerhofers seek a property line adjustment that would result in the elimination of Tax Lot 600 and have the

southern 3 acres become part of Wing's Industrial parcel Tax Lot 800 to the south, while having the northern 2 acres of Tax Lot 600 become part of the Meyerhofers' EFU parcel Tax Lot 400 to the north. If the entire application is approved, the result would be two parcels where there were once three – the Meyerhofers' 4.71-acre EFU parcel Tax Lot 400 to the north and Wing's 8.71-acre Industrial parcel Tax Lot 800 to the south.

An applicant has the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“Preponderance of the evidence’ means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests.” (Citation omitted.)

An applicant must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, an applicant has not met its burden and the application must be denied. If the evidence for every criterion is in an applicant's favor, then the burden of proof is met and the application must be approved.

This is a recommendation to the Marion County Board of Commissioners (the Board). The Board is the final decision-making authority.

VI. DISCUSSION

This application seeks an irrevocably committed exception to Goal 3, a comprehensive plan amendment, a zone change, and a property line adjustment. The staff report finds that all of the applicable approval criteria are satisfied. There is no opposition to the application or disputed issues. I agree with the staff report that all of the applicable approval criteria are satisfied. This type of application requires extensive findings. The

following analysis goes through all of the applicable approval criteria and provides the required findings.

A. Goal 3 Exception

The applicant is seeking both a comprehensive plan amendment and a zone change. The zone change is dependent upon obtaining the comprehensive plan amendment. In other words, if the applicant fails to obtain a comprehensive plan amendment then it cannot obtain the proposed zone change. The property is designated Primary Agriculture, which means the property is agricultural land. Therefore, in order to change the plan and zone designation to allow for industrial use the applicant must obtain an exception to Goal 3.

Under ORS 197.732(2), there are three types of goal exceptions that may be taken: physically developed, irrevocably committed, and reasons exceptions. The applicant is seeking an irrevocably committed exception. OAR 660-004-0028(1) provides that an irrevocably committed exception may be taken "when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable[.]" OAR 660-004-0028(2) provides:

"Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

- "(a) The characteristics of the exception area;
- "(b) The characteristics of the adjacent lands;
- "(c) The relationship between the exception area and the lands adjacent to it; and
- "(d) The other relevant factors set forth in OAR 660-004-0028(6)."

OAR 660-004-0028(2)(a) requires a description of the characteristics of the proposed exception area. The proposed exception area is a 3-acre portion of a parcel of

vacant land, zoned EFU, that would be located south of a new property line being created through a property line adjustment involving the subject 5-acre parcel Tax Lot 600.¹ The remaining 2 acres located north of the new property line would be combined with Tax Lot 400, a 2-71 EFU parcel directly to the north. The 3-acre proposed exception area would be combined with Tax Lot 800, a 5.43-acre Industrial parcel directly to the south. Both Tax Lots 600 and 800 are in common ownership. The zone implementing the proposed goal exception is the Industrial zone, which is also is zoning for Tax Lot 800.

The size of the subject property is a rectangular 5-acre parcel that is fairly typical to the size of many of the tax lots in the area. Several of the larger farm parcels in the area, such as Tax Lot 900 to the south even have these 5-acre plots shown on the assessor's map.

There is an existing sealed agricultural drain tile that extends west through the northern 1-acre portion of the subject 5-acre parcel (north of the proposed exception area). The drain tile is used to transport storm water from the farm field west of Shank Road, under the road and subject property, to the farm parcel east of the proposed exception area on Tax Lot 100. None of the subject property is currently drained by this or any other agricultural tile.

The use of the subject property prior to the current owner was a poultry business and residence. From a view of County GIS images and according to the landowner, several other accessory structures, storage areas, chicken coops, and assorted waste piles were scattered throughout the property and used for raising and harvesting chickens.

According to the applicant's soil survey, except for .3% of Class III soil, almost all five acres of the subject property are made up Class II Woodburn Soils. The proposed 3-acre exception area is all Class II Woodburn Soils.

¹ The findings regarding OAR 660-004-0028 are taken largely from the applicant's narrative.

The proposed 3-acre exception area is located within a 6-acre groundwater right, with a 1945 priority date. The question of irrigation is important as it would be necessary to grow all of the high-value crops, such as blueberries, listed in the Marion County Comprehensive Plan (MCCP) for the region. However, in order to irrigate the subject property a new pump and well system, along with irrigation distribution system, would be required.

OAR 660-004-0028(2)(b) requires a description of the characteristics of adjacent lands. The adjacent lands include the five parcels surrounding the three properties at issue, the northern two acres of the 5-acre property that would remain zoned EFU, and the portion of Shank Road located to the west of the proposed exception. The applicant provides a table which describes the adjacent lands. As discussed earlier the properties to the north – Tax Lots 200, 400, 500 – include two approximately 1-acre EFU parcels developed with residences and the Meyerhofers' 2.71-acre EFU parcel that is proposed to expand to include the two acres north of the new proposed property line. The property to the east is a large EFU parcel in use for grass seed production. The property to the south of the proposed exception area is Wing's 5.71-acre Industrial parcel with the existing contractor business that would expand to include the exception area. South of Wing's existing Industrial parcel is a large EFU parcel in farm use. There is an approximately .5-acre EFU parcel to the southwest of the proposed exception area developed with a residence. Shank Road is to the west of the proposed exception area separating the property from primarily larger EFU parcels in farm use. The applicant also provides a table describing the farm uses beyond the immediately adjacent lands.

OAR 660-004-0028(2)(c) requires a description of the relationship between the exception area and the lands adjacent to it. The three parcels to the north and Whiskey Hill Road physically separate the proposed exception area from the farm use occurring directly north of Whiskey Hill Road. The northern 2 acres of the 5-acre property would be combined with Tax Lot 400, which is currently being used for farm vehicle and

equipment repair as allowed under EFU zoning. Approximately half of this 2 acres is made up of a swale and is tiled, which makes use of the area for development restricted. This 2 acres of land adds an additional 130 feet of distance between the proposed exception area and commercial agriculture north of Whiskey Hill Road. No access or other physical means appears available to lease or use these tax lots for purposes of accessing the proposed exception area for farming as part of the farm operation further to the north.

The approximately .5-acre developed parcel located east of Shank Road is tucked in between Tax Lot 800 and the 5-acre property. A considerable dividing feature is formed by this parcel and Shank Road that contributes to separating the proposed exception area from nearby farm uses west of Shank Road.

The Wing (Tax Lot 800) Industrial zoned 5.43-acre parcel to the south is a fully developed base of operations for Wing's contractor business and under common ownership with the 5-acre parcel (Tax Lot 600). Being immediately south of the exception area, this industrially developed parcel provides a physical barrier between the proposed exception area and the commercial agriculture occurring further south on Tax Lot 900. A distance of 386 feet (the length of Tax Lot 800) is between the proposed exception area and the commercial agriculture to the south.

OAR 660-004-0028(2)(d) also requires a description of the other relevant factors set forth in OAR 660-004-0028(6), which are:

"Findings of fact for a committed exception shall address the following factors:

"(a) Existing adjacent uses;

"(b) Existing public facilities and services (water and sewer lines, etc.);

"(c) Parcel size and ownership patterns of the exception area and adjacent lands:

- “(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.
- “(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;
- “(d) Neighborhood and regional characteristics;
- “(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-

way that effectively impede practicable resource use of all or part of the exception area;

“(f) Physical development according to OAR 660-004-0025; and

“(g) Other relevant factors.”

OAR 660-004-0028(6)(a) concerns existing adjacent uses. Those uses have already been discussed.

OAR 660-004-0028(6)(b) concerns existing public facilities and services, which include the County road system, sheriff and fire protection, schools, and overhead PGE electrical service. With the exception of Shank Road (discussed later), none of these public facilities and services have any direct relevance to the proposed exception. Sewage disposal is provided on-site and domestic water is provided by individual wells.

OAR 660-004-0028(6)(c) concerns parcel size and ownership patterns. The parcel sizes include one approximately .5-acre parcel (Tax Lot 700), two approximately 1-acre parcels (Tax Lots 200 and 500), one 2.41-acre parcel (Tax Lot 400), the 5-acre parcel that includes the proposed exception area (Tax Lot 600), and one 5.43-acre parcel (Tax Lot 800). These parcels are located in the southeast corner of the intersection of Whiskey Hill Road and Shank Road forming a rectangular square of approximately 16 acres. The rule requires an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. The applicant examined the existing block of developed parcels and determined that the current level of development essentially existed prior to the land use goals being implemented. The applicant submitted a 1972 aerial photo image that demonstrates that the majority of the existing development pattern existed prior to adoption of the statewide planning goals. Thus, no parcels created pursuant to the goals are being relied upon to justify the proposed exception.

OAR 660-004-0028(6)(d) concerns neighborhood and regional characteristics. The applicant states that development of the proposed exception area would be consistent with neighborhood and regional characteristics. The farm and nonfarm uses just off Shank Road from Whiskey Hill Road are well established, along with the current contractor business on Tax Lot 800. Use of the exception area would be a continuation and modest expansion of the current established rural industrial use. According to the applicant, location of the new property line that would form the northern border of the proposed exception area would be best for the neighborhood characteristics by providing Tax Lot 400 with an additional 2 acres of land.

OAR 660-004-0028(6)(e) concerns natural or man-made features or other impediments separating the exception area from adjacent resource land. In addition to the existing parcel pattern separating the proposed exception from adjacent resource land, Shank Road separates the proposed exception area from farm uses to the west. The only commercial farm use adjacent to the proposed exception area is the large commercial grass seed parcel to the east (Tax Lot 100). In addition to a berm and row of planted Redwood trees, there is a drainage ditch and farm access road along the border that separates the proposed exception area from the commercial farm use.

OAR 660-004-0028(6)(f) concerns physical development. Although the parcel to the south (Tax Lot 800) was the subject of a physically developed exception, the subject 5-acre property is not currently physically developed.

OAR 660-004-0028(6)(e) concerns other relevant factors. Although the proposed exception area is made up of Class II soils, the applicant explains that it would be a significant challenge to get the property ready for farming. As discussed later, the applicant retained the Oregon State University (OSU) Extension Service to conduct a review of the soils for potential farming use. The OSU Extension Service report explains

that it would be difficult to return the property to growing farm crops customarily produced in the area.

The applicant addressed all of the required characteristics and factors. Once there are findings of fact regarding all of the applicable factors, an applicant must demonstrate that those "facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area." OAR 660-004-0028(4). An applicant need not demonstrate that every potential use permissible on EFU land is impracticable. OAR 660-004-0028(3) provides in pertinent part:

"It shall not be required that local governments demonstrate that every use allowed by the applicable goal is 'impossible.' For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

- "(a) Farm use as defined in ORS 215.203;
- "(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and
- "(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a)."

There are no forest lands or uses on or nearby the subject property, so only OAR 660-004-0028(3)(a) is applicable. Therefore, the applicant must demonstrate that farm use of the property is impracticable.² As the applicant explains, the Land Use Element of the MCCP provides that in north and central Marion County the typical agricultural uses and crops are: "Hops, vegetables, tree fruits and nuts, berries, grass and legume seed, hay, grain, nursery stock, sugar beet seed, livestock and dairying." The applicant submitted a

² ORS 215.203(2) defines "farm use" as "the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. * * * [and] the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use."

table that addresses the potential for growing all of the listed crops.³³ Table C explains the difficulties of trying to produce all of the listed farm crops. The table is very persuasive and there is no contrary evidence. Rather than repeat all of the information in Table C, I adopt and incorporate Table C in this recommendation.

The applicant has addressed all of the applicable factors that bear on whether an irrevocably committed exception should be granted. The crux of the issue is whether considering all of these factors farm use of the proposed exception area is impracticable. OAR 660-004-0028(4) provides:

“A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.”

The applicant has demonstrated that it is impracticable to grow hops, vegetables, tree fruits and nuts, berries, grass and legume seed, hay, grain, nursery stock, sugar beet and seed, or run livestock or run a dairying operation. As discussed, these are the types of farm uses that the MCCP envisions for the area. There is no evidence that any other types of farm uses are practicable on the proposed exception area. The applicant has demonstrated that farm use is impracticable on the proposed exception area due to the surrounding parcels that are not in farm use.

These parcels surround the proposed exception area, with the exception of the west and east border at a width of 190 feet. The Shank Road right-of-way effectively separates the use of the proposed exception area for farming by the farm use to the west, as it would not be practicable for farm vehicles and other large equipment to cross the county road at this location in order to raise and harvest such a small crop in a confined area. A man-made dividing feature to the east of the proposed exception area physically separates

³³ Table C – Farm Use by Crop Type, Crops Requiring Irrigation and Commercial Farm Operations, Non-Commercial Farm Operations & Other Farming Limitations. Applicant's Narrative Page 17-18.

the area from the commercial farm use to the east. The existing berm, row of large Redwoods, farm road, and drainage ditch make it impracticable to combine the proposed exception area with the existing grass seed operation. Any doubt regarding the potential to combine the proposed exception area with the grass seed operation to the east is removed by testimony received from Hubbard Seed which states:

“[The applicant’s representative] asked if we ever considered, or would consider, owning or leasing the five-acres for farming as part of our large commercial operation in the area.

“Its location being sandwiched between nonfarm uses, along with the amount of weed control required makes cultivating this ground not profitable or realistic. That’s one of the reasons our perimeter farm road and row of Redwoods, along with a storm drainage ditch separate our farm from this 5-acres.

“We’ve even considered purchasing the ground just for the purpose of keeping the weeds from spreading to our adjacent fields. We considered this knowing that even good return on the harvested seed wouldn’t help much to off-set the cost to control the weeds. Fortunately, Mr. Wing purchased the ground and are good stewards cleaning up the property and controlling the weeds.”

Farming the proposed exception area, even at a non-commercial level, is impracticable. Similar to commercial seed crops being grown on a variety of parcels and field sizes that make up this area, the nature of the existing adjacent uses can be relied upon equally to show that the growing of small-acreage high-value crops are also impracticable. Other crops listed in the MCCP for use in this geographic area, such as blueberries, tree fruits and nuts, nursery stock, and other farm uses all require irrigation. While the property has a water right, to pump ground water and irrigate the 5 acres would involve considerable cost and expense. In addition to the irrigation costs are the unknown costs associated with soil testing, preparation, and enhancement needed for such sensitive crops, especially if soil residues from the poultry operation are still present. The applicant requested an objective independent review of the property from the OSU Extension Service, which states:

"My sense is that this piece would be difficult to return to the farm crops customarily grown in the area (wheat; seed crops including grass, oil, vegetable, flower, and other seeds; vegetable crops for both processing and fresh market; berries for fresh and processing; hazelnuts; and nursery stock) without tremendous effort and expense to remove the physical remnants of the poultry operation that occupied the site since at least the early 1970's. Its best use is probably to expand the two operations surrounding it, both of which serve the agricultural community."

While the characteristics of the proposed exception site are not enough in themselves to justify an exception, in this case they further demonstrate that farm use is impracticable. The applicant has demonstrated that farm use is impracticable on the proposed exception area.

Once an irrevocable committed developed exception has been established, OAR 660-004-0018(2) provides:

"For 'physically developed' and 'irrevocably committed' exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):

"(a) That are the same as the existing land uses on the exception site;

"(b) That meet the following requirements:

"(A) The rural uses, density, and public facilities and services will maintain the land as 'Rural Land' as defined by the goals, and are consistent with all other applicable goal requirements;

"(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and

"(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

- “(c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, ‘Planning and Zoning of Unincorporated Communities’, if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22;
- “(d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.”

Under OAR 660-004-0018(2), all plan and zone designations “shall limit uses, density, and public facilities and services” to either satisfy OAR 660-004-0018(2)(a, b or c).⁴ The proposed exception area would change 3 acres from farm use to industrial use, so 660-004-0018(a) is not applicable. OAR 660-004-0018(2)(c) applies to uses in unincorporated communities, so it is not applicable. Therefore, the applicant must satisfy OAR 660-004-0018(2)(b).

OAR 660-004-0018(2)(b)(i) requires that the “rural uses, density, and public facilities and services will maintain the land as ‘Rural Land.’” Marion County has adopted a rural industrial zone which has been acknowledged as complying with Goal 14 (Urbanization). The zone ensures that rural uses will not exceed density limitations on rural land and will not commit rural uses to requiring an urban level of public facilities. As discussed later, the application is consistent with the remaining statewide planning goals. OAR 660-004-0018(2)(b)(i) is satisfied.

OAR 660-004-0018(2)(b)(ii) requires that the “rural uses, density, and public facilities and services will not commit adjacent or nearby resource use to nonresource use.” The proposed exception would only expand the existing industrial use, while the density would decrease as one parcel would essentially be eliminated, and the public

⁴ In addition to satisfying one of the first three subsections of OAR 660-004-0018(2)(d), an applicant must also satisfy OAR 660-004-0018(2)(d) if it is applicable. As the property was not planned and zoned for industrial use on January 1, 2004, OAR 660-004-0018(2)(d) is not applicable.

facilities and services would remain the same. As discussed later, although there might be some increase in traffic generated by the expanded industrial use it would not be to the extent to significantly affect the area. The current use has occurred for some time and has not committed adjacent or nearby resource use to nonresource use. The largest adjacent fame use submitted a letter in support of the application, as it believes the applicant's proposed use of the exception area would actually benefit the existing grass seed operation by reducing the possibility of weeds spreading to the grass fields. OAR 660-004-0018(2)(ii) is satisfied.

OAR 660-004-0018(2)(b)(iii) requires that "rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses." As discussed, the existing industrial use has operated for some time without any adverse effect on adjacent or nearby resource uses. There is no reason to think the modest expansion of that industrial use would have adverse effects on such uses. The density would decrease, so that would not have any adverse effects on adjacent or nearby resource use. The public facilities and services would remain the same, so that would not have any adverse effect on adjacent or nearby resource uses. OAR 660-004-0018(2)(b)(iii) is satisfied.

OAR 660-004-0018 is satisfied.

In addition to obtaining an exception to Goal 3, the application must satisfy the remaining goals. The staff report explains that the other goals are satisfied, and the findings are not challenged. The staff report findings are repeated for convenience

Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement.

Goal 2: Land Use Planning. The subject application to amend the Comprehensive Plan is considered under the regulations for this goal.

Goal 4: Forest Lands. The subject property has not been determined to be forest land. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources. The MCCC does not identify any significant open spaces, scenic and historic area, or natural resources on the subject property. This goal does not apply.

Goal 6: Air, Water and Land Resources Quality. The subject property is not within an identified air quality area. The property is not in the sensitive groundwater overlay zone. No activities have been proposed on the property that would use significant amounts of groundwater. Any single commercial use of water using less than 5,000 gallons per day is exempt from water right permitting requirements of the Oregon Department of Water Resources, as long as the water is used for a "beneficial purpose without waste" and may be subject to regulation in times of water shortage.

Goal 7: Areas Subject to Natural Disasters and Hazards. The subject property is not within an identified floodplain or geologic hazards area. This goal is not applicable.

Goal 8: Recreation Needs. No Goal 8 resources are identified on the property. This goal does not apply.

Goal 9: Economic Development. The proposed rezone will add 3 acres to an existing business that is contributing to the economy of Marion County, its cities, and surrounding communities. This land is available and adjacent to this existing business reducing the cost to provide additional services and without having an adverse impact on surrounding farms.⁵

Goal 10: Housing. This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal.

⁵ The staff report findings appear to be cut and pasted from another case. The Goal 9 findings in the body of the decision are taken from the applicant's narrative.

Goal 11: Public Facilities and Services. The subject parcel does not require an extension of services with Industrial Zone use, this goal is met.

Goal 12: Transportation. The applicant provided a traffic impact analysis (TIA) from its traffic engineer. As discussed later, the application satisfies the Transportation Planning Rule and Goal 12.

Goal 13: Energy Conservation. There is no indication of energy use increase or decrease based on the proposed zone change and comprehensive plan change. This goal does not apply.

Goal 14: Urbanization. The applicant is proposing to rezone EFU land to Industrial land outside of the urban growth boundary. Therefore, the proposal complies with Goal 14 and does not require an exception to Goal 14.⁶

In conclusion, the applicant has satisfied the requirements for an irrevocably committed exception to Goal 3.

B. Comprehensive Plan Amendment

The MCCP does not contain any specific approval criteria for a comprehensive plan amendment, but the proposed amendment must be consistent with the applicable goals and policies of the MCCP.

The applicant identifies two Agricultural Lands Policies that potentially apply to the application.

Agricultural Lands Policy 2 provides:

“Maintain primary agricultural lands in the largest areas with large tract to encourage larger scale commercial agricultural production.”

⁶ The staff report does not address Goals 15-19, but those Goals do not apply as they concern respectively: the Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

As discussed under the goal exception analysis, the proposed exception area is not needed to maintain or encourage agricultural production nor is it a large tract of land that could be used for large scale commercial agricultural production. The application is consistent with Agricultural Lands policy 2.

Agricultural Lands Policy 3 provides:

“Discourage development of non-farm uses on high-value farmland and ensure that if such uses are allowed that they do no[t] cause adverse impacts on farm uses.”

While the proposed exception area consists of high-value farmland, the proposed expansion of the industrial use would not cause adverse impacts on farm use. The existing industrial use has been in operation for some time and has not caused any adverse impacts on farm use, so I do not see that a modest expansion would cause any adverse impacts. As discussed earlier, the proposed exception area is largely separated from adjacent farm uses and would not adversely affect them. The application is consistent with Agricultural Lands Policy 3.

There are three Rural Industrial Policies that potentially apply to the application.

Rural Industrial Policy 1 provides:

“Industrial uses in conjunction with farm or forest uses shall be evaluated to determine if they need to be located on resource lands or whether an equally suitable location is available in an urban area or on non-resource lands in a rural area.”

The applicant states that the existing industrial use and the proposed expansion of that use is not in conjunction with farm or forest uses. As the proposed use would not be “in conjunction with farm or forest uses,” Rural Industrial Policy 1 does not appear to be applicable.⁷

⁷ As discussed later under Rural Industrial Policy 3, the applicant still must demonstrate that equally suitable locations are not available inside an urban growth boundary or on nonresource rural lands.

Rural Industrial Policy 2 provides:

“Rural industries should be compatible with existing development and farm or forest uses in the vicinity, should not involve a large number of employees, should not require heavy truck traffic through residential areas or unimproved roads, and should not have the potential to exceed the environmental capacity of the site or require urban services.”

As discussed under the goal exception analysis, the proposed exception area would be compatible with existing development and farm and forest uses in the vicinity. The existing industrial use does not have a large number of employees, and even with a modest expansion it would still not have a large number of employees. The industrial use does not require heavy truck traffic through residential areas or unimproved roads as the business does not significantly employ or use large trucks and there are no residential areas or unimproved roads in the immediate vicinity of the property. Finally, the proposed use would not require an urban level of services or exceed the environmental capacity of the site as a well and on-site septic system would be adequate to serve the property. The application is consistent with Rural Industrial Policy 2.

Rural Industrial Policy 3 provides:

“A non-resource related industrial use should not be permitted on resource lands unless an evaluation of the relevant County and State goals and the feasibility of locating the proposed use in an urban growth boundary or rural non-resource lands show that the proposed site on resource lands is most suitable.”

The relevant County and state goals, in particular Goal 3, have already been addressed. The applicant must also show that it is not feasible to locate the proposed use inside an urban growth boundary or on rural nonresource lands. The applicant explains that expanding the existing use to a suitable location in the City of Hubbard urban growth

boundary (UGB) or nonresource rural land is not economically feasible or possible. The applicant further explains that the City of Hubbard's UGB contains approximately 53 acres of Industrial land, and there is only one vacant industrial parcel that is larger than 3 acres and that parcel is not big enough to serve the existing use, let alone an expansion. Accordingly, there are no vacant industrial parcels that are suitable and available to serve the current use as well as a modest expansion. The application is consistent with Rural Industrial Policy 3.

The applicant has satisfied the requirements for a comprehensive plan amendment from Primary Agriculture to Industrial.⁸

C. Zone Change

MCC 17.123.060 provides the approval criteria for zone changes outside of UGBs:

"Approval of a zone change application or initiated zone change shall include findings that the change meets the following criteria:

- "A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and
- "B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and
- "C. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and

⁸ The applicant identifies a number of other potentially applicable MCCP policies. The staff report only identifies the Rural Industrial policies as applicable. To the extent any of the other policies addressed by the applicant are deemed applicable, I agree with the applicant's analysis.

- “D. The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and
- “E. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.”

MCC 17.123.060(A) requires that the proposed zone change be appropriate for the MCCP designation of the property and be consistent with the applicable goals and policies of the MCCP. The Industrial zone is the only zone that implements the Industrial plan designation, and the applicable MCCP policies were addressed earlier in order to obtain the comprehensive plan amendment. MCC 17.123.060(A) is satisfied.

MCC 17.123.060(B) requires that the proposed zone change be “appropriate considering the surrounding land uses and the density and pattern of development in the area.” The surrounding land uses include industrial, commercial farm use, farm equipment repair and storage, and residences on EFU zoned parcels. The proposed zone change would merely expand the existing Industrial parcel north and expand the existing EFU parcel south while continuing the same uses. The proposed zone change would result in density and pattern of development similar to the existing area. MCC 17.123.060(B) is satisfied.

MCC 17.123.060(C) requires that adequate public facilities, services, and transportation networks be in place to serve the property. The proposed use does not require extensive facilities and services. A well and septic system would be adequate to serve the property. As the property is located at the intersection of Whiskey Hill Road and Shank Road, there is a more than adequate transportation network to serve the property. MCC 17.123.060(C) is satisfied.

MCC 17.123.060(D) requires that "other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors." As discussed earlier under Rural Industrial Policy 3, the applicant analyzed whether other properties were available for the proposed use but determined that there were no other suitable properties. MCC 17.123.060(D) is satisfied.

MCC 17.123.060(E) requires that if "the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive use." As the Industrial zone is the only zone that implements the Industrial plan designation, the proposed zone does not allow uses more intensive than uses in other zones appropriate for the plan designation. Even if it did, as discussed earlier, the proposed use would not adversely affect adjacent properties. MCC 17.123.060(E) is satisfied.

Because the applicant seeks a comprehensive plan and zone change, it must comply with the Transportation Planning Rule (TPR). OAR 660-012-0060(1) provides:

"(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

"(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

"(b) Change standards implementing a functional classification system; or

"(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of

evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

- “(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
- “(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
- “(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

If a proposed zone change would “significantly affect an existing or planned transportation facility” then certain measures must be put in place to approve the zone change. The applicant’s traffic engineer provided a transportation analysis that determined that the proposed zone change would not significantly affect an existing or planned transportation facility. The applicant’s traffic engineer explained that a worst-case scenario for the existing EFU zoning of the proposed exception area would be a church, which would generate 28 average daily trips (ADT) with 1 A.M and 1 P.M peak hour trip.⁹ The worst-case scenario for the proposed exception area when zoned Industrial would be a specialty trade contractor, which would generate 358 ADT with 58 A.M peak hour trip and 69 P.M. peak hour trips. The applicant’s traffic expert explains:

⁹ Worst-case scenario means the type of development that would generate the most traffic, it is not a pejorative reflection upon the use itself.

"After evaluating the reasonable worst-case development potential of both the existing (EFU) and proposed (I) zoning, the proposed zone change will result in a maximum net increase of 330 trips per day.

"The definition of a significant effect varies by jurisdiction and no such definition is provided in the Marion County code. According to the Oregon Highway Plan (OHP), a net increase of 400 daily trips qualifies as a significant effect. While the OHP is not applicable to local roadways, it provides a reasonable estimate of a significant effect for TPR analysis purposes.

"The expected worst-case net increase in daily trips is less than 400, which is a reasonable estimate of the threshold for a 'significant effect.' As such, the proposed zone change is not expected to have a significant effect on the surrounding transportation system and the Transportation Planning Rule requirements [are] satisfied.

"* * * * *

"Based on the reasonable worst-case trip generation evaluation, the proposed zone change would result in a daily increase of less than 400 trips on each parcel. Therefore, even under the most conservative assumptions of potential development, it can be concluded that the proposed zone change will not significantly impact and would cause 'no further degradation' to the Marion County transportation system. The number of additional daily and peak hour trips due to the proposed zone change is not anticipated to significantly impact transportation facilities near the project site and therefore, this application complies with TPR requirements."

LDEP had the opportunity to review the applicant's traffic engineer's analysis and did not provide any comments. There is no contrary evidence in the record to refute the applicant's traffic engineer's analysis. I find the applicant's traffic engineer's analysis to be persuasive. Therefore, I agree that the proposed zone change will not significantly affect any existing or planned transportation facilities and the TPR is satisfied.

The applicant has satisfied the requirements for a zone change from EFU to Industrial.

D. Property Line Adjustment

The applicant proposes to move the north property line of Tax Lot 800 north and the south property line of Tax Lot 400 south so they meet at the boundary between the exception area and the EFU land to the north. This would have the result of eliminating Tax Lot 600. MCC 17.172.120 applies to all property line adjustments:

- “A. Regardless of the size of the adjustment, when a property line to be adjusted is part of a division of land previously approved by Marion County it shall be subject to the approval of the planning director.
- “B. Except as provided in subsection (A) of this section, no approval is necessary for property line adjustments in the RM (multiple-family residential), C (commercial), CC (community commercial), ID (interchange district), I (industrial), or IUC (unincorporated community industrial) zones.
- “C. Except as provided in subsections (A) and (B) of this section, all property line adjustments shall require approval under the partitioning procedure if the adjustment exceeds 10 percent of the total land area of the smallest affected parcel.
- “D. Any adjustment or removal of a property line or public easement involving a parcel in a recorded partition plat or lot line in a recorded subdivision shall be performed by means of the replat process specified in ORS 92.180 through 92.190.
- “E. Property line adjustment deeds shall be recorded with the Marion County clerk’s office prior to submitting the property line adjustment survey, if a survey is required. Deed recording reference numbers shall be noted on the required survey.”

MCC 17.172.120(A) provides that property line adjustments are subject to the approval of the planning director. MCC 17.172.050, however, provides that the planning director “shall also have the power to forward an application for a property line adjustment * * * to the hearings officer * * * for the initial decision.” As the application also involves a proposed comprehensive plan and zone change, the planning director

forwarded the property line adjustment to the hearings officer so that all three applications could be reviewed concurrently. MCC 17.172.120(A) is satisfied.

MCC 17.172.120(B) provides that property in certain zones do not require approval for a property line adjustment. The EFU zone, however, is one of the zones that does require approval. The applicant accordingly filed this application for a property line adjustment. MCC 17.172.120(B) is satisfied.

MCC 17.172.120(C) requires that certain property line adjustments must go through the partitioning procedure except as provided by MCC 17.172(A or B). The property line adjustment is being processed under the MCC 17.172.120(A) exception. MCC 17.172.120(C) is satisfied.

MCC 17.172.120(D) requires that adjustment or removal of property lines involving a parcel in a recorded partition or a lot in a recorded subdivision must use the replat process of ORS 92.180-190. The applicant explains that the proposed property line adjustment includes the removal of two private property lines and the creation of one new property line; no removal of a public easement; and that the applicant will meet all the requirements specified for a property line adjustment under ORS 92.180-190. MCC 17.172.120(D) is satisfied.

MCC 17.172.120(E) requires that property line adjustment deeds shall be recorded with the Marion County clerk's office prior to submitting the property line adjustment survey, if a survey is required. The proposed conditions of approval require the applicant to record the property line adjustment deeds before submitting the survey, which is required. MCC 17.172.120(E) is satisfied.

MCC 17.172.120 is satisfied.

As the property line adjustment involves land in an EFU zone, the applicant must also satisfy the requirements of MCC 17.136.090(C), which provides:

"Property Line Adjustments.

- "1. When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to subsection

(A)(1) of this section, 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.

- “2. If the minimum parcel size in subsection (A)(1) of this section 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.
- “3. 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.
- “4. A property line adjustment may not be used to:
 - “a. 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;
 - “b. 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;
 - “c. 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; or
 - “d. Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established

unit of land affected by the property line adjustment is larger than the size granted by the waiver.

- “5. 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:
- “a. Does not increase any adverse impacts on the continued practice of commercial agriculture on the resulting parcels;
 - “b. Does not increase the potential number of dwellings on the resulting parcels; and
 - “c. Does not 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.”

MCC 17.136.090(C)(1) distinguishes between situations when one or more, all, or none of the parcels involved in the property line adjustment meet the minimum lot size. As all of the parcels involved in the property line adjustment are below the minimum lot size, the minimum parcel size does not apply to the property line adjustment. MCC 17.136.090(C)(1) is satisfied.

MCC 17.136.090(C)(2) applies to situations where the minimum lot size is more than 80 acres and one of the lots involved in the property line adjustment is more than 80 acres but less than the minimum lot size. That situation is not present in this case as all of the parcels involved are below 80 acres. MCC 17.136.090(C)(2) is not applicable.

MCC 17.136.090(C)(3) requires that the property line adjustment will result in a configuration that is at least as suitable for commercial agriculture as before the property line adjustment. The proposed property line adjustment will result in a configuration that is no less suitable for commercial agriculture than before the proposed property line adjustment as the parcel is not currently suitable for commercial agriculture. Adding two

acres to the EFU farm business of Tax Lot 400 will actually put more land to productive EFU use than the present situation. MCC 17.136.090(C)(3) is satisfied.

MCC 17.136.090(C)(4)(a) precludes decreasing the size of a parcel already below the minimum lot size with an existing dwelling to make a vacant tract large enough to meet the minimum lot size to qualify for a dwelling. No vacant tracts would be increased above the minimum tract size for a dwelling. MCC 17.136.090(C)(4)(a) is satisfied.

MCC 17.136.090(C)(4)(b) precludes decreasing the size of parcel below the minimum lot size with an existing dwelling to make a vacant tract large enough to meet the minimum lot size to qualify for a dwelling. No vacant tracts would be increased above the minimum tract size for a dwelling. MCC 17.136.090(C)(4)(b) is satisfied.

MCC 17.136.090(C)(4)(c) precludes allowing 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 using the acreage standard. No tracts using an acreage standard would be used to qualify for a dwelling using the acreage standard. MCC 17.136.090(C)(4)(c) is satisfied.

MCC 17.136.090(C)(4)(d) applies to property lines resulting from a Measure 49 waiver. The proposed property line adjustment does not involve any Measure 49 waivers. MCC 17.136.090(C)(4)(d) is not applicable.

MCC 17.136.090(C)(5) involves situations where a property line adjustment results in an existing dwelling being located on a different parcel. That situation is not present in this case as no dwellings would be located on a different parcel. MCC 17.136.090(C)(5) is not applicable.

MCC 17.136.090(C) is satisfied.

E. Setbacks

As the application involves the creation of a new property line, consideration of the setbacks from existing structures is required. MCC 17.36.100(B)(1-3) requires 20-foot rear, side, and front setbacks for structures in an EFU zone. The proposed new property

line would increase the setbacks from the EFU parcels (Tax Lots 200, 400, and 500) by 190 feet. MCC 17.36.100(B) is satisfied.

MCC 17.165.080(B)(1-2) requires a 20-foot front yard setback from public rights-of-way and 10-foot side and rear yard setbacks. The new proposed property line would only encroach on one structure – the structure located on Tax Lot 800. The new property line would be over 200 feet from the structure on Tax Lot 800. MCC 17.165.080(B) is satisfied.

All of the applicable approval criteria are satisfied.

F. Conclusion

The applicant seeks an irrevocably committed exception to Goal 3, a comprehensive plan amendment from Primary Agriculture to Industrial, a zone change from EFU to Industrial, and a property line adjustment. The staff report found that all of the applicable approval criteria are satisfied. There is no opposition to the application. I agree with the staff report that all of the approval criteria for the goal exception, comprehensive plan amendment, zone change, and property line adjustment are satisfied.

VII. Recommendation

It is hereby found that the applicant has met the burden of proving that the approval criteria for an irrevocably committed developed exception to Goal 3, a Comprehensive Plan designation amendment from Primary Agriculture to Industrial, a zone change from EFU to Industrial, and a property line adjustment have been met. The hearings officer recommends **APPROVAL** of the proposal with following conditions of approval.

VIII. Conditions of Approval

Planning Conditions:

1. Property line adjustment deeds shall be recorded with the county clerk meeting requirements 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 acknowledgement. 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. Prior to recording the property line adjustment deeds, the applicant shall have the parcels surveyed per ORS 92.060(7). The survey shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Zone Change/Comprehensive Plan Amendment/Property Line Adjustment Case 21-001.
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. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director.

Engineering Conditions:

1. Obtain final inspection approval for stormwater system improvements on existing TL 400 issued under Permit ST16-008. Also, design, permit, and construct additional stormwater system improvements, as may be required for already constructed surfacing on TL 600. The applicant must provide designs within 90 days of final approval and complete improvements within 180 days of final improvement, or as agreed to by Marion County Public Works.
2. Design, permit, and construct stormwater system improvements for TL 800 proposed building expansion, and including already conducted surfacing on TL 600. The applicant must provide designs within 90 days of final approval and

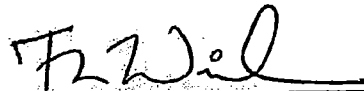
complete improvements within 180 days of final improvement, or as agreed to by Marion County Public Works.

3. Obtain an Access Permit to document and make any required modifications, such as paving, to access approach work already conducted in front of TL 600 as part of the TL 800 operation expansion.
4. Dedicate right-of-way half-width on Shank Road expanded frontages of TL 400 and 800 to meet the local standard of 30 feet. The dedication must be made in conjunction with the property line adjustment.

IX. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The planning division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 8th day of March, 2021.



Fred Wilson
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Douglas White
Oregon Planning Solutions
60762 River Bend Drive
Bend, OR 97702

Shane and Tracy Meyerhofer
13306 Whiskey Hill Road NE
Hubbard, OR 97032

Wing Properties, LLC
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Hubbard, OR 97032

Gordon and Sharon Jones
Hubbard Seed & Supply
Company, Inc.
P.O. Box 310
Hubbard, OR 97032-0310

Adam Pedracini
Wing Properties, LLC
P.O. Box 238
Hubbard, OR 97032

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

Agencies Notified:

Planning Division

(via email: gfennimore@co.marion.or.us)

(via email: lking@co.marion.or.us)

Code Enforcement

(via email: lpekarek@co.marion.or.us)

(via email: lrobinson@co.marion.or.us)

Building Inspection

(via email: deubanks@co.marion.or.us)

(via email: kaldrich@co.marion.or.us)

(via email: dgoodwin@co.marion.or.us)

Assessor

(via email: assessor@co.marion.or.us)

Survey:

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PW Engineering

(via email: jrasmussen@co.marion.or.us)

Hubbard Fire District

(via email: m.kahrmann@hubbardfire.com)

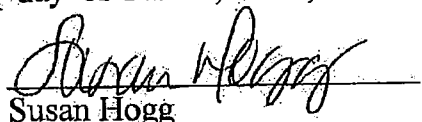
DLCD:

(via email: plingard@dlcd.state.or.us)

(via email: hilary.foote@state.or.us)

AAC Member No. 6 (no members)

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 8th day of March, 2021, and that the postage thereon was prepaid.


Susan Hogg

Administrative Assistant to the
Hearings Officer

EXHIBIT C

The following described property is rezoned from EFU (Exclusive Farm Use) to
I (Industrial). ZC/CP/PLA21-001/Wing Properties LLC and Shane & Tracy Meyerhofer

