

**NOTICE OF DECISION
PROPERTY LINE ADJUSTMENT CASE NO. 19-023**

APPLICATION: Application of CMP Roth Farms LLC and MDD Holdings LLC to adjust the property lines on a 113.71 acre parcel and a 19.54 acre parcel to create a 98.71 acre parcel and a 34.58 acre parcel in an EFU (Exclusive Farm Use) zone located at 9272 Silverton Road NE, Silverton. (T7S; R1W; Section 06; tax lot 1700) and (T7S; R2W; Section 01; tax lot 500).

DECISION: The Planning Director for Marion County has **APPROVED** the above-listed Property Line Adjustment application subject to certain conditions.

EXPIRATION DATE: Title transfer instruments accomplishing the property adjustments shall be recorded by the applicants with the Marion County Clerk by **August 30, 2021**. The effective period of an approved application may be extended for an additional year subject to approval of an extension (Extension form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposed uses is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposed activities. To be sure the subject property can accommodate the proposed use the applicant needs to check with 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 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 is recorded by the applicants with the Marion County Clerk.**
2. 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.

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

3. 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 below be contacted to identify restrictions or necessary permits.

4. Prior to recording the deed all taxes due must be paid to the Marion County Assessor Tax Section (contact them at (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 (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 **August 30, 2019**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 31, 2019** unless further consideration is requested.

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

1. The subject properties are designated Primary Agriculture in the Marion County Comprehensive Plan and correspondingly zoned EFU (Exclusive Farm Use). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations.
2. The properties are located on the south side of Silverton Road NE and on the east side of Howell Prairie Road NE. The larger parcel was the subject of Special Exception 72-1, which created the larger parcel in its current configuration. Deed research confirms that the smaller property has been separately described since at least September 1, 1977. Both parcels are considered legal separate parcels for land use purposes. The larger parcel contains a dwelling, agricultural structures, well, and septic system.
3. A 0.85 acre parcel zoned Commercial lies to the northwest of the larger parcel and contains a business. A 3.69 acre parcel lies to the west of the Commercial-zoned property in the southwest corner of the intersection of Silverton Road NE and Howell Prairie Road NE and contains a public school. All other adjacent properties are zoned Exclusive Farm Use (EFU) and in residential or farm and forest use.
4. Soil Survey for Marion County, Oregon, indicates 100% of the soils on the subject properties are high value.
5. The applicants are proposing to adjust the property lines on a 113.71 acre parcel and a 19.54 acre parcel to create a 98.71 acre parcel and a 34.58 acre parcel. The larger resulting parcel will contain the existing dwelling and other improvements.
6. 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."
Marion County Assessor commented on the taxes on the subject property.
7. The criteria for reviewing lot line adjustments within an EFU zone are listed in Chapter 17.136.090(C) 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. According to MCC 17.136.090(A)(1) the minimum lot size for a parcel in an EFU zone is calculated as follows:

- (a) *All parcels wholly or in part within 500 feet of the subject parcel shall be identified.*
- (b) *The average (mean) size of all parcels larger than 40 acres identified in paragraph (a) of this subsection shall be determined.*
- (c) *The acreage size calculated in paragraph (b) of this subsection, rounded to the nearest 10 acres, is the minimum parcel size, unless such parcel size is less than 80 acres, in which case the minimum parcel size is 80 acres.*

There are four tax lots within 500 feet of the subject parcels that exceed 40 acres in size, with an average lot size of 51.64 (206.56/4) acres. Therefore, minimum parcel size in this instance is 80 acres.

9. One of the existing parcels is larger than the minimum lot size of 80 acres. After the adjustment the larger of the resulting parcels will exceed the 80 acre minimum and the smaller parcel will remain smaller than the standard minimum of 80 acres. The applicant indicates that there will be no change in the farm and forest uses taking place on the reconfigured parcels. The smaller, undeveloped parcel is not being increased in size enough to qualify for a dwelling based on parcel size alone, and will contain the land east of the seasonal stream that passes through the property. The criteria in 7 are satisfied.
10. MCC 17.172.120(E) requires property line adjustment deeds to be recorded with the Marion County Clerk. Each resulting property shall be described by a perimeter description on the recorded deed. This can be made a condition of any approval.
11. 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.
12. Based on the above findings, the applicants' proposal meets the criteria for a property line adjustment in an EFU zone. The property line adjustment request is, therefore, **APPROVED**.

Joe Fennimore
Director-Planning Division

Date: August 15, 2019

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.