

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION
PROPERTY LINE ADJUSTMENT CASE NO.21-046**

APPLICATION: Application of Mountain View Dairy, LLC to adjust the property lines on a 130-acre parcel, 55-acre parcel and a 67-acre parcel to create a 109-acre parcel, a 36-acre parcel and a 107-acre parcel in an EFU (Exclusive Farm Use) zone located at 3292, 3062 and 2962 Wintel Rd S, Jefferson (T9S; R3W; Section 19; Tax Lots 700, 800, 900, and 1100).

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 **October 19, 2023** (two years). 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. No survey is required. The areas of the resulting properties are greater than ten acres.
3. 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.
4. Tax lot 700 and Tax Lot 800 must be a minimum of 80 acres after the proposed adjustment.
5. The property owner must demonstrate to Marion County Planning that building permits were obtained to place the manufactured home on Tax Lot 700, 3292 Wintel Road S. If proof of permits is not provided, the property owner must obtain all building permits required for placement of a manufactured home by Marion County Building Division; this includes, but is not limited to, permits from the Marion County Septic Division.

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.

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 **October 19, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **October 20, 2021** 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 Wintel Road S, approximately one-half mile west of the intersection of Wintel Road S and Marlatt Road S.

Tax Lot 700 was the subject of Conditional Use/Variance Case No. 10-073. This property is described separately in the deed records of Marion County dating back to at least April 29, 1977 (Reel 79, Page 937). The deed submitted with the application continues to show the property described as one unit of land (Reel 1378; Page 455). It is therefore legal for land-use purposes. Tax Lot 700 has a dwelling from 1935. It also contains a manufactured home that the Marion County Tax Assessor indicates is from 2006. Aerial imagery from Google Earth shows the structure appear between 2018 and 2020. Marion County aerial evidence from 1976 shows a manufactured structure on the property along with the stick-built dwelling. Marion County Planning was not able to locate a placement permit for the new manufactured structure. It will be made a condition of approval that the property owner demonstrate to Marion County Planning that all required permits were obtained to place the structure; or, if the required permits were not obtained, the property owner must obtain all required permits from the Marion County Building Division.

Deed research revealed a deed for Tax Lot 800 that was recorded May 23 of 1973 (Reel 752; Page 503). This deed describes the lot as a separate unit of land. The parcel continues to be described separately in the deed submitted by the applicant (Reel 1362; Page 452). It is therefore considered legal for land-use purposes. Tax Lot 800 contains a dwelling from 1920, a manufactured home from 1975, and an accessory structure. Marion County Planning was not able to locate a placement permit for the manufactured structure; acknowledgement of the existence of a manufactured home does not indicate it was legally placed. In order to replace the structure, the property owner would need to go through the administrative review process to determine legality.

The deed submitted for Tax Lots 900 and 1100 by the applicant show the properties described together as one single legal lot of record (Reel 1362; Page 453). A deed from July 17 1967 (Volume 634; Page 212) shows the

two tax lots described as one legal lot of record and there is no land-use case associated with the property that shows an approved division of land. These two tax lots are therefore considered one legal lot of record for land-use purposes. The applicant originally provided an application narrative and site plan showing these two tax lots as separate units of land; upon learning they were described together, the applicant resubmitted the site plan showing the two tax lots as one legal unit of land. Tax Lot 1100 is developed with an accessory structure.

3. Adjacent properties are zoned EFU in all directions and contain dwellings, large scale agriculture operations. Additionally, the Ankeny National Wildlife Refuge is located to the north across Wintel Road S.
4. Soil Survey for Marion County, Oregon, indicates approximately 54.2% of the soils on the tract are classified as High Value Soils for agricultural production.
5. The applicants originally proposed to adjust the property lines on a 130-acre parcel, a 55-acre parcel, and a 67 acre parcel to create a 109-acre parcel, a 36-acre parcel, and a 107-acre parcel. After learning that Tax Lots 900 and 1100 were described together as one legal lot of record, the applicant revised the proposal to adjust the property lines on a 130-acre parcel, a 55-acres parcel, and a 101-acre parcel to create a 109-acre parcel, a 107-acre parcel, and a 71-acre parcel.
6. Marion County Surveyor's Office commented:
 1. No survey required on the resultant property that is greater than ten acres.
 2. Property line adjustment deeds shall be recorded with the Marion County Clerk's Office prior to submitting the property line adjustment survey. Deed recording reference numbers shall be noted on the survey map. 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. [See Marion County Zoning Code MCC 16.33.140(E) and MCC 17.172.120(E)] Marion County Planning requires perimeter descriptions of the resultant properties.

Marion County Assessor's Office provided information regarding taxes on the subject properties.

Marion County Building provided comments that there might be concerns with the proposed property lines due to the location of existing structures.

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

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.*

The minimum parcel size as calculated pursuant to MCC17.136.090 (A) (1) is 140 acres. The largest parcel involved in the property line adjustment is 130.00 acres in size. Based on these facts, the criterion does not apply.
 - (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.*

The proposal involves three legal lots of record, two of which (Tax Lot 700 and Tax Lots 900, 1100) are larger than 80-acres. After the property lines are adjusted, two of the three lots will still be larger than 80-acres. The term is met.

- (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.*

The property line adjustment is being done to better manage the farming operation. The new configuration will group together farm fields that are currently farmed and irrigated as one tract of land. This criterion is met.

- (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.*

No parcel of land will be able to qualify for a dwelling based solely on an acreage standard after the adjustment and no dwelling approval is sought with this application. The term is satisfied.

- (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.*

The property line adjustment will not result in any dwelling being located on a different parcel. The term is satisfied.

8. Under MCC 17.172.120(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.
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, the applicants' proposal meets the criteria for a property line adjustment in an EFU zone. The property line adjustment request is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director

Date: October 4, 2021

If you have any questions regarding this decision contact Ryan Dyar 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.