

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. 23-022**

APPLICATION: Application of the Will & Lucy McGill Limited Trust for a property line adjustment to adjust the property lines on a 9.03, 7.6, 3.1 and 110.27 acre parcel to create a 19.73, 11.8, 94.2, and 4-acre parcel in an EFU (Exclusive Farm Use) zone located at 5244 Jefferson Marion Rd SE, and 15333 & 15633 Pletzer Rd SE, Turner, (T10S; R2W; Section 5A; Tax Lots 600, 800 & 900; and Section 5; Tax Lot 1000).

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, 2025** (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 drain field 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. 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.
2. Per Marion County Surveyor's Office: No survey is required for properties greater than ten acres per ORS 92.060(8), properties ten acres or less must be surveyed per ORS 92.060(7) and the survey shall be submitted for review. There will be a Survey checking fee required at the time of review and property line adjustment deeds shall be recorded with the Marion County Clerk's Office. 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 acknowledgement.
3. All new deeds shall contain perimeter descriptions of the parcels.
4. The applicant shall obtain approval for all required permits from the Marion County Building Inspection Division.

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

5. 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 the Findings and Conclusions section below be contacted to identify restrictions or necessary permits.

6. Prior to recording the deeds all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department 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 **October 19, 2023**. 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, 2023**, unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the 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 farm operations.
2. The subject properties are small and large-size farm parcels located southwest of the intersection of Marion Rd SE and Pletzer Rd SE, and west of Pletzer Rd SE approximately 1,700 feet south of the intersection of Colgan Rd SE and Pletzer Rd SE. The subject properties have perennial and intermittent streams along with an identified wetland area that Edgar Slough runs through. The subject properties fall within the Santiam Water Control District. Tax lot 600 is divided by Jefferson Marion Rd SE, with a small sliver north of the road and vast majority to the south.
3. Tax lot 600 contains one legal dwelling, a 1993 Fleetwood double wide manufactured home. Per Laserfiche permit 555-98-09439, MANF-1530601, this 1993 manufactured home was a replacement dwelling for a pre-1977 mobile home and the replacement was allowed per Administrative Review 98-079. Tax lot 600 also has farm/accessory structures. It has been described in its present configuration since at least Vol. 609 Page 813 recorded on November 29, 1965.

Tax lot 800 contains one legal dwelling built in 1974 and a several farm/accessory structures. It has existed in its current configuration since at least Feb. 29, 1968, as recorded in Vol. 643 Page 517.

Tax lot 900 is bare land and has existed in its current configuration since at least Vol. 613 Page 46, which was a correction deed for Vol. 611 Page 333 (recorded Jan. 4, 1966).

Tax lot 1000 has three legal dwellings on it along with multiple farm/accessory structures. One of the three dwellings was built in 1951, and another in 1952. The third dwelling is a manufactured home that was permitted in August of 1977, prior to the State's adoption of planning and zoning law on September 1, 1977. Therefore, even though the manufactured home was built/placed in 1978, Staff deems it a legal dwelling with no conditions or restrictions, which could have been imposed for homes established after planning and zoning law was adopted. Tax lot 1000 was the subject of an approved Land Use Case (PLA22-047).

Therefore, per the definitions in Marion County Code 17.110.427 and 17.110.680, these parcels are considered legal for land use purposes.

4. Properties in all directions are zoned EFU (Exclusive Farm Use). The majority of the existing land use pattern is a mixture of medium to large commercial farms with some homesites. The exception is a couple small acreage homesites to the west of tax lot 600. These are also zoned EFU.
5. The applicant originally applied with the goal of altering property lines so that each parcel had at least one legal dwelling. However, MCC 17.136.090(C)(5) prohibits land which has not previously qualified for a home to gain a homesite via a property line adjustment. The applicant amended their application to include tax lot 10-2W-05A-00600 and to adjust the property lines in such a way that one resulting parcel remain bare.
6. The Soil Survey tool for Marion County, Oregon, indicates that approximately 99.8% of tax lot 600, 99.6% of tax lot 800, and 100% of tax lots 900 and 1000 have soils which are classified as high value.
7. Various agencies were contacted about the proposal and given an opportunity to comment.

Marion County Surveyor's Office commented:

- A) No survey required for properties greater than ten acres per ORS 92.060 (8).
- B) Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review.
- C) Survey checking fee required at the time of review.
- D) Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. 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 acknowledgement.

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

Marion County Building Inspection Division commented: "No Building Inspection concerns according to the application and site plan submitted. If property lines are established less than 3 feet to existing structures, those structures may require additional fire resistive construction be installed. Permits are required to be obtained prior to development and/or utilities installation on private property."

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

8. 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:
 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.*

The minimum parcel size listed in MCC 17.136.090(A)(1) for EFU parcels is 80 acres except when the average size of all parcels wholly or in part within 500 feet of the subject parcel(s) is greater than 80 acres. After performing an analysis of parcels that are both greater than 40 acres, and within a 500-foot buffer of the subject parcels, the mean (average) parcel size was determined to be 102.69 acres. This is larger than 80 acres, and rounded to the nearest 10 acres, this minimum parcel size becomes 100 acres. However, land use case Variance 23-010 has approved a reduction in the minimum parcel size for this property line adjustment. The reduction granted allows for a minimum parcel size of 90 acres. The criterion is met.

2. *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 minimum parcel size for this specific, individual case, as granted in V23-010, is 90 acres. One parcel is currently greater than the 90-acre minimum and is proposed to be approximately 94.2 acres after the property line adjustment. All other parcels are less than 80 acres in size and will remain so after the adjustments are complete. The criterion is met.

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.*

This property line adjustment proposes to shift the property lines in such a way that current parcels 600, 800 and 900 would become one lot. This “combination,” in essence, is dissolving property boundaries to create a larger parcel.

The next portion of the proposal is to move the old property lines to encompass the northeast corner of tax lot 1000. This proposed adjustment would result in a parcel that is bounded by roadways and perennial and intermittent streams. This new configuration follows existing farm field lines.

The final proposed adjustment would be to move property lines so that the southeast corner of tax lot 1000 becomes one of the reconfigured parcels. Again, this proposed change in property lines follows established farming lines on the subject properties.

The final parcel configuration proposed is for the remainder of tax lot 1000, after the northeast and southeast corners are adjusted for. This resulting parcel will be the largest and maintains access for farm equipment and personnel with plenty of frontage on public roads.

Staff has determined that all proposed parcels will be at least as suitable for commercial agriculture as they were prior to the adjustment. The criterion is met.

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; or*
- 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.*
- 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.*

Subsections (4)(a) and (b) are met as no parcel is being adjusted in a way that would allow the adjacent parcel to qualify for a dwelling based on size/tract acreage. Subsection (4)(c) does not apply as all homes existed prior to Oregon statewide land use goals and therefore were not based on an acreage or income standard. Subsection 4(d) does not apply as there are no Measure 37/49 claims on the subject parcels. Therefore, the criteria have been met.

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; and*
 - b. *Does not increase the potential number of dwellings on the resulting parcels.*
 - 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.*

Dwellings will be located on different parcels through this property line adjustment. The 19.73-acre proposed parcel will have two legal dwellings on it. The 11.8-acre parcel shall have no dwelling, while the 94.2-acre parcel will have two dwellings. The remaining dwelling will be located on the 4-acre parcel. However, these changes do not impact the commercial farm practices for the resultant subject properties or any surrounding properties, none of the existing dwellings were granted via an acreage or income standard as all pre-date planning and zoning law, and there is no increase in the potential number of dwellings for any of the resultant properties. The criteria are met.

9. Based on the above findings, the applicants' proposal meets the criteria for a property line adjustment. The property line adjustment request is, therefore, **APPROVED**.

Brandon Reich
Planning Director/Zoning Administrator

Date: October 4, 2023

If you have any questions regarding this decision contact Nicole Inman 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.