

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. 24-032**

APPLICATION: Application of Joshua Kuenzi and Tyler Kuenzi for a property line adjustment to adjust the property lines on a 40.1-acre parcel and a 93.25-acre parcel to create a 2.0-acre parcel and a 131.26-acre parcel in an EFU (Exclusive Farm Use) zone located at 8954 Hazelgreen Rd NE, Silverton (T6S; R2W; Section 36; Tax lots 100 & 600).

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 **November 1st, 2026** (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. Per the Marion County Surveyor's office: No surveys are required for properties greater than ten acres per ORS 92.060 (8), however, properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review. Survey checking fees are required at the time of review. Finally, property line adjustment deeds shall be recorded with the Marion County Clerk's Office per ORS 92.190 (4).
2. 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.
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.

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

4. 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.

5. 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).

6. The applicants should contact the Silverton Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
7. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

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 **November 1st, 2024**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **November 4th, 2024**, 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 subject properties are located on the eastern side of the intersection between Howell Prairie Rd NE and Hazelgreen Rd NE. Tax lot 100 is located on the north side of Hazelgreen Rd and is 94.42-acres. It contains several farm related structures and formerly contained a 1901 dwelling, which was removed from the property sometime in 2019 and has not yet been replaced. The rest of the parcel consists of agricultural fields involved in turf grass production and a small, forested area next to the Howell Prairie creek, which runs north-south through both parcels involved in this proposal. Tax lot 100 was the subject of Administrative Review AR19-019, which determined that the 1901 house was legally established and could be replaced. The property remains in the same configuration that it was at the time of case AR19-019 and is therefore legal for land use purposes.

Tax lot 600 is located on the southern side of Hazelgreen Rd and contains a 1916 dwelling, a well and septic, a farm structure and farm irrigation pump all in the northwest corner of the lot. The remainder of the lot consists of farm fields currently established as a hazelnut orchard. At one time, the area of tax lot 600 appears to have consisted of two separate legal lots. However, the entire area of tax lot 600 has been described as **one parcel**, and maintained this configuration, since at least March 9th, 1963, when it was described in a warranty deed (Vol. 569, Page 633). As such, the parcel is legal for land use purposes.

While the Hazelgreen Rd right-of-way currently runs between the two parcels, the legal descriptions in the deeds of both parcels specify that they are measured to the middle of Hazelgreen Rd and are therefore adjacent parcels and can be property line adjusted.

3. Adjacent properties in all directions are engaged in commercial agriculture, other than the church, school, and commercial lots at the Silverton Rd-Howell Prairie Rd intersection over a mile to the south.
4. Soil Survey for Marion County, Oregon, indicates approximately 100% of the soils on the subject tax lots are classified as high value.

5. The applicants are proposing to adjust the property lines on a 94.42-acre parcel and a 38.37-acre parcel to create a 131.26-acre parcel and a 2.00-acre parcel. The intension is to transfer the farmable land on tax lot 600 to tax lot 100, so the owners can sell the homesite they do not need while retaining the fields for their farming operation.
6. Various agencies were contacted about the proposal and given an opportunity to comment.

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

Requirements:

- A. The parcel reconfiguration will leave the southernly expansion of TL 100 on the south side of Hazelgreen Road without direct access. Unless there were to be an access easement granted over TL 600 or permissive use for TL 100 at the existing driveway, then an Access Permit would be required to install a new driveway approach on Hazelgreen Road or Howell Prairie Road property frontage.

Marion County Surveyor's Office commented:

- 1) No survey required for properties greater than ten acres per ORS 92.060 (8).
- 2) Properties 10 acres or less must be surveyed per ORS 92.060 (7) and the survey submitted for review.
- 3) Survey checking fee required at the time of review.
- 4) Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4).

Marion County Building commented:

“According to the proposed site plan with proposed property lines identified, if the property maintains the same farm deferral according to Marion County Assessor, the state building code does not apply to the existing farm building adjacent to the proposed south property line. If the property loses the farm deferral designation, then the state building code will apply to the existing structure, and any new property line established less than 3 feet to the existing structure may require the existing structure to be updated with fire resistive materials on the exterior wall closest to the new established property line. Discussion with a building plans examiner is recommended.”

Marion County Septic commented: An existing system evaluation is required to verify that the septic system meets a 10' setback to all proposed property lines.

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

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:

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.*

One lot involved in the proposal is larger than the minimum parcel size of 80-acres. The applicants proposal would result in the parcel that is already larger than the minimum lot size gaining more land while the parcel that is

currently smaller than the minimum lot size would remain smaller than 80-acres. The end result is the same number of parcels below the minimum lot size as prior to the adjustment. The criterion is met.

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.*

The local minimum lot size is not larger than 80-acres. The criterion does not apply.

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.*

The intention of the property line adjustment is to separate a homesite that is no longer the primary residence of the farm operator so that it can be sold independently from the farmable land. The current owners of both properties are involved in the same farming operation and primarily purchased the property for the fields to expand their operation. The farmed area within both parcels is expected and intended to remain the same, so the end result is a configuration that is just as suitable for commercial agriculture as before, albeit with one less operation than before. 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;*
- 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.*

Both lots involved in the proposed property line adjustment either have a currently standing dwelling or an approval for a replacement dwelling, and therefore are not “vacant” lots. The adjustment would not qualify either lot a dwelling based off an acreage standard, and none of the land on either parcel have been used to qualify a lot for a dwelling or were involved in a Measure 49 waiver. Therefore, the criteria above are 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;*
- 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.*

The proposal would not result in an existing dwelling being located on a different lot or parcel. The criteria under section 5 do not apply.

8. 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.
9. 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**.

Brandon Reich
Planning Director/Zoning Administrator

Date: October 17, 2024

If you have any questions regarding this decision contact Alexander Seifer 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.