

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. 24-039**

APPLICATION: Application of the Jan H Enterprise and Jan/Cindy Hupp Trust to adjust the property lines on a 27.75-acre parcel a 20.38-acre to create a 44.73-acre parcel a 3.40-acre parcel in FT (Farm/Timber) and TC (Timber Conservation) zone located at 17753 Powers Creek Loop NE, Silverton (T7S; R1E; Section 10, Tax Lot 500 &; Section 10C; Tax Lot 100 & 400).

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. Marion County Surveyor's Office commented:
 - No survey required on the resultant property that is greater than ten acres.
 - Property line adjustment deeds shall be recorded with the Marion County Clerk's Office per ORS92.190(4).
 - Survey checking fee required at the time of review.
 - Property line adjustment deeds shall be recorded with the Marion County Clerk's Office. Per ORS 92.190 (4).
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.

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 Forest and Farm/Timber in the Marion County Comprehensive Plan and correspondingly zoned TC (Timber Conservation) and FT (Farm/Timber). The primary intent of both this designation and zone is to promote and protect commercial agricultural operations and conserve forest lands by maintaining the forest land base and to protect the forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use of forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.
2. The properties are located on the northern side of Powers Creek Loop NE in the 17700 block approximately 4 miles east of Silverton. These parcels are used in conjunction for agricultural production.

Tax lots 100 & 400 of Section 10C comprise a single 27.75-acre parcel that contains a dwelling and land in Christmas tree and nursery stock production. Tax lot 100 is bordered on the eastern side by Martin Ln NE, a private lane. Tax lots 100 & 400 together comprise a parcel that was created by property line adjustment in 1987 (LLA87-010) and approved for a primary farm dwelling in 1999 by AR99-007. The resulting farm dwelling was built in 2001. Having been created in a land use case, this parcel is legal for land use purposes.

Tax lot 500 of Section 10 is 20.38-acres and contains a 1973 dwelling, and three accessory shop structures. The land around the homesite on tax lot 500 is in nursery stock production. The parcel is described in its current configuration in deeds from 1971. Having existed in the same configuring since being created by deed prior to September 1st, 1977, this parcel is legal for land use purposes.

3. Adjacent properties are all zoned either TC or FT and are in various stages of farm and forest use.
4. Soil Survey for Marion County, Oregon, indicates approximately 76.2% of the soils on tax lot 500, 79.9% on of the soils on tax lot 100, and 0% of the soils on tax lot 400 are classified as high value.
5. The applicants are proposing to adjust the property lines on a 27.75-acre parcel a 20.38-acre to create a 44.73-acre parcel a 3.40-acre parcel.
6. Various agencies were contacted with requests for comment.

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 per ORS92.190(4).
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 Department commented:

“No Building Inspection concerns with property line adjustment. Permit(s) would be required for potential development and/or utilities installation on private property, if applicable.”

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 a TC zone are listed in chapter 17.138.080(B) of the MCC. These criteria are as follows:

1. *Parcels larger than 80 acres may not be reduced to below 80 acres.*

No parcels are over 80 acres. This criterion does not apply.

2. *Parcels smaller than 80 acres may be reduced or enlarged provided:*

- a. *If the tract does not include a dwelling and does not qualify for a dwelling under MCC 17.138.030(A) or (B), any reconfiguration after November 4, 1993, cannot in any way enable the lot or parcel to meet the criteria for a new dwelling under MCC 17.138.030(A) or (B).*
- b. *Except as provided in subsection (B)(2)(c) of this section, a lot or parcel that is reduced will be better suited for management as part of a commercial forest; and if capable of producing 5,000 cubic feet per year of commercial tree species will not be reconfigured so that the cubic feet per year capability of the lot or parcel is reduced.*
- c. *A lot or parcel may be reduced to the minimum size necessary for the use if the lot or parcel:*
 - i. *Was approved as a non-farm or non-forest parcel; or*
 - ii. *Is occupied by an approved non-farm or non-forest dwelling; or*
 - iii. *More than half of the parcel is occupied by a use in MCC 17.138.020 or 17.138.040 other than a dwelling or farm or forest use; or*
 - iv. *The lot or parcel is occupied by a dwelling established before January 1, 1994, and is not capable of producing 5,000 cubic feet per year of commercial tree species (see MCC 17.138.120(B) for definition).*

Both of the subject parcels contain dwellings. The proposal is to reduce tax lot 500 to 3.4-acres around the existing homesite and consolidate the agricultural land on the other parcel comprised on tax lot 100 & 400.

The dwelling on tax lot 500 was established in 1973. This parcel is made up almost entirely of McCully Clay Loam soils with slopes ranging from 2-70%. All slope values of McCully Clay Loam are capable of producing 171 cubic feet of per acre, per year of commercial tree species. Tax lot 500 is 20.1-acres and could therefore produce a maximum of 3,437 cubic board feet per year. This calculation ignores the acreage already dedicated to the homesite, but it is still below the standard production capacity of 5,000 cubic feet per year which would limit reduction of the parcel size in the TC zone. Therefore, the reduction of tax lot 500 complies with MCC 17.138.030(B)(2)(c)(iv). The criterion is met.

- d. *A property line adjustment may not be used to:*

- i. *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;*
- ii. *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;*
- iii. *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*
 - iv. *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. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1168 § 5, 2002; Ord. 1125 § 10, 2000. RZ Ord. § 138.080.]*

The subject parcel (tax lots 100 & 400) that will grow larger is not a vacant tract. Therefore, the decreasing size of tax lot 500 will not allow for the qualification of any other lands for another dwelling. Neither of the subject parcels were created as a result of a Measure 49 order. The criterion is met.

8. The criteria for reviewing lot line adjustments within a FT zone are listed in chapter 17.139.090(D)/(E) of the MCC. This parcel has been determined to have been primarily devoted to Christmas tree production, which is a farm use, on January 1, 1993. Therefore 17.139.090(E) will not apply. The criteria of 17.139.090(D) 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 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.*

Neither subject parcel is larger than 80-acres, the criterion does not apply.

- 2. *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.*

The subject parcel (tax lots 100 & 400) that will grow larger is not a vacant tract. Therefore, the decreasing size of tax lot 500 will not allow for the qualification of any other lands for another dwelling. The criterion is met.

- 3. *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 17.139.030(E) 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.*

Both subject parcels contain dwellings, and the proposed property line adjustment will not result in either dwelling being located on a different parcel. The criterion does not apply.

- 9. 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.
- 10. 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.
- 11. 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/Zoning Administrator

Date: October 17th, 2024

If you have any questions regarding this decision contact John Speckman 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.