



# Marion County OREGON

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## MEMORANDUM

**TO:** Marion County Hearings Officer  
**FROM:** Marion County Planning Division/Lindsey King  
**DATE:** January 29, 2021  
**SUBJECT:** Comprehensive Plan/Zone Change/ Property Line Adjustment 21-001/Wing Properties, LLC and Shane and Terry Meyerhofer

The Marion County Planning Division has reviewed the above-named case and offers the following comments:

### FACTS

1. Application of Wing Properties, LLC, and Shane and Terry Meyerhofer, to change the zone from EFU (Exclusive Farm Use) to I (Industrial), and to change the comprehensive plan designation from Primary Agriculture to Industrial, with an exception to statewide planning Goal 3 (Agricultural Land) on a 3 acre portion of a 5 acre parcel, and then to adjust the property lines on a 2.71 acre parcel, a 5 acre parcel, and 5.43 acre parcel to create a 4.71 acre parcel and an 8.43 acre parcel on properties zoned EFU and Industrial located at 17802 and 17874 Shank Road NE and 13306 Whiskey Hill Road NE, Hubbard. (T4S; R1W; Section 34D; tax lots 400, 600, and 800).
2. The property is located on the east side of Shank Road NE at the intersection with Whiskey Hill Rd NE, approximately .86 miles east of Highway 99E. The properties have been described by Marion County Zoning Maps and are considered legal for the purposes of land use.
3. Property directly to the south is zoned I (Industrial; changed via ZC/CP86-8), properties to the north, west and east are zoned EFU (Exclusive Farm Use).
4. Marion County Public Works Land Development and Engineering Permits (MCPW) provided the following comments:

### ENGINEERING CONDITIONS

**Condition A** – Obtain final inspection approval for stormwater system improvements on existing TL 400 issued under Permit ST16-008. Also, design, permit, and construct additional stormwater system improvements, as may be required, for already conducted surfacing on TL 600.

**Condition B** – Design, permit, and construct stormwater system improvements for TL 800 proposed building expansion and including already conducted surfacing on TL 600.

→ Conditions A and B, above, are in accordance with MCC 17.110.833.

**Condition C** – Obtain an access permit to document and make any required modifications, such as paving, to access approach work already conducted in front of TL 600 as part of the TL 800 operation expansion. Access work is obligated under MCC 11.10.

**Condition D** – Dedicate right-of-way half-width width on Shank Road expanded frontages of TL 400 and 800 to meet the Local road standard of 30 feet.

## **ENGINEERING REQUIREMENTS**

- A. Stormwater system improvements will require submission of civil engineering plans and calculations. Grading elements must be addressed.
- B. Transportation System Development Charges (TSDCs) are assessed upon application for building permits and/or change-in-use.
- C. Utility permits are required for service connections and extensions within the public right-of-way.

**The Marion County Surveyor's Office** made the following comments regarding the Property Line Adjustment:

1. Must be surveyed per ORS 92.060 (7) and the survey submitted for review.
2. Survey checking fee required at the time of review.
3. 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 the original recorded documents and signatures of all parties with proper acknowledgement. [See Marion County Zoning Code MCC 16.33.140(E) and MCC 17.172.120(E)]

Additionally, The Marion County Surveyor's Office had questions regarding the recently recorded septic easement; see email in file.

**Marion County Onsite Wastewater** commented

- A single family dwelling appears to exist on tax lot 600, served by an onsite wastewater treatment system that is not documented in Marion County records. The application seems to state that this septic system is located on tax lot 800, which would require an easement unless these lots constitute one lot of record. The applicant should clarify if the single family dwelling will continue to be occupied. If it will be demolished, the existing septic system must be decommissioned per OAR 340-071-0185.
- There is a recently permitted (555-20-004730) commercial septic system serving tax lot 800 that is located on tax lot 600 by way of an easement. This easement was written to encompass the entirety of tax lot 600, and thus directly conflicts the proposed property line adjustment. This is a single-owner easement conveyed to the state of Oregon for the express purpose of housing the septic system. Only the state of Oregon DEQ can release the owner from this easement, and that action is dependent on the decommissioning of the system located on tax lot 600 due to the availability and connection to a public sewer or connection to an alternate system located outside of the easement.
- After speaking with the applicant's representative it is my understanding that they wish to encompass the commercial septic system within the limits of the proposed new property line so that the easement will no longer be necessary. The applicant's site plan should be updated to demonstrate that the proposed property line will meet all required setbacks to the system.
- The following future requirements should be considered :
  - According to the DEQ, the easement cannot be released before a certificate of satisfactory completion for the septic system is issued
  - Per OAR 340-071-130(a) the existing easement may be released no sooner than recording of title transfer documents with the Marion County Clerk.

**Marion County Tax Assessor** made comments that are located in the planning file.

At the time of this staff report all other contacted agencies contacted either failed to respond or stated no objection to the proposal.

## **STAFF FINDINGS AND ANALYSIS**

5. In land use action of this type, the applicant has the burden of proving compliance with all applicable criteria. This report will outline the criteria that must be satisfied in order for an approval to be granted. If the applicant supplied argument or evidence to address specific criteria, the response will be summarized. The comprehensive plan criteria will be addressed first, second by the zone change criteria, and followed by the property line adjustment criteria.

## **GOAL EXCEPTION**

6. Land use applications of this nature must be consistent with Statewide Planning Goals. In this specific case, the subject parcel is covered by Statewide Goal 3 (Agriculture Land). There is a mechanism, however, for not applying the Goal to areas with certain characteristics. This mechanism is the Goal exception process that requires specific findings justifying why such lands are not available for resource use. There are three types of exceptions to Statewide Goals that may be granted. The first two are based on the concept that the subject property is “physically developed” or “irrevocably committed” to a certain use. The third is a “reasons” exception where there is a demonstrated need for the proposed use or activity. In this case, the applicant indicated that the proposal qualifies for an irrevocably committed and physically developed exception.
7. OAR 660-004-0018 (2) requires that “physically developed” and “irrevocably committed” exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
  - A. *That are the same as the existing land uses on the exception site;*
  - B. *That meet the following requirements:*
    - i. *The rural uses, density, and public facilities and services will maintain the land as “Rural Land” as defined by the goals and are consistent with all other applicable Goal requirements; and*
    - ii. *The rural uses, density, and public facilities and services will not commit adjacent or nearby resource uses to non-resource use as defined in OAR 660-004-0028; and*
    - iii. *The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;*
  - C. *For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, ‘Planning and Zoning of Unincorporated Communities’, if applicable, or*
  - D. *That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.*
8. All of the subject properties are currently developed with existing buildings as well as large graveled areas for parking. The subject properties are adjacent to other commercial farm properties and located less than a mile from Hubbard’s UGB. These properties have been in commercial and industrial uses for a number of years, and the applicant submitted aerial photos of the developed property dated 1974. The subject property is not in an unincorporated community and was not zoned for industrial use on January 1, 2004. Marion County has adopted a rural industrial zone which has been acknowledged as complying with Goal 14, Urbanization. The zone ensures that rural uses will not exceed density limitations on rural land and will not commit rural uses to requiring an urban level of public facilities. The industrial uses which would be allowed under the county’s Industrial zone would be able to be supported on solely a rural level of public services, including rural septic service, and would be similar to the types of uses found in the surrounding land to the south, which is zoned Industrial. The property cannot be farmed in conjunction with any other parcels in the area, as it has been developed in a way that physically covers the soils on the property. No urban public services will be needed to serve the site. Some parcels in the area already consist of properties in commercial, industrial, or residential use. Based on the evidence and findings provided by the applicant and summarized here, the proposal appears to meet the criteria for a goal exception outlined in Finding 15.
9. OAR 660-004-028 specifies that a local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make the uses allowed by the applicable goal impracticable. It further stipulates that whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent. The findings for a committed exception therefore, must address the following:

- A. *The characteristics of the exception area;*
- B. *The characteristics of the adjacent area and the lands adjacent to it; and*
- C. *The relationship between the exception area and the lands adjacent to it; and*
- D. *The other relevant factors set forth in OAR 660-04-028(6).*

OAR 660-004-028(6) referenced above indicates that findings of fact for a committed exception shall address the following factors:

- A. *Existing adjacent uses;*
- B. *Existing public facilities and services (water and sewer lines, etc.);*
- C. *Parcel size and ownership patterns of the exception area and adjacent lands:*
  - (i) *Consideration of parcel size and ownership patterns shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground utilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and non-resource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for non-farm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels.*
  - (ii) *Existing parcel sizes and contiguous ownership shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.*
- D. *Neighborhood and regional characteristics;*
- E. *Natural or manmade features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;*
- F. *Physical Development according to OAR 660-004-025; and*
- G. *Other relevant factors.*

10. The applicant argues that the exception area is adjacent to other lands in commercial and industrial use. The properties to the east and west are in agriculture use. The property to the south of the subject property is in industrial use and is developed with an office and a graveled parking area for storage. The property to the north of the subject property is in commercial use and is developed with a farm equipment repair business. Staff finds that the applicant has addressed the necessary criteria and concludes that the criteria is met and recommends that the goal exception be granted.

### **STATEWIDE PLANNING GOALS**

11. Proposals to amend the comprehensive plan must be consistent with the Statewide Planning Goals:
- **Goal 1: Citizen Involvement.** The notice and hearings process provides an opportunity for citizen involvement.
  - **Goal 2: Land use Planning.** The subject application to amend the Comprehensive Plan is considered under the regulations for this goal.
  - **Goal 3: Agricultural Lands.** The applicant is proposing an exception to this goal. If approved this goal does not apply.
  - **Goal 4: Forest Lands.** The subject property has not been determined to be forest land. This goal does not apply.

- **Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources.** The Marion County Comprehensive Plan does not identify any significant open spaces, scenic and historic areas and natural resources on the subject property. This goal does not apply.
- **Goal 6: Air, Water and Land Resources Quality.** The subject property is not within an identified air quality area. The property is not located in the Sensitive Groundwater Overlay Zone. No activities have been proposed on the property that would use significant amounts of groundwater. Any single commercial use of water using less than 5,000 gallons per day is exempt from water right permitting requirements of the Oregon Department of Water Resources, as long as the water is used for a “beneficial purpose without waste” and may be subject to regulation in times of water shortage.
- **Goal 7: Areas Subject to Natural Disasters and Hazards.** The subject property is not within an identified floodplain or geologic hazards area. This goal is not applicable.
- **Goal 8: Recreation Needs.** No Goal 8 resources are identified on the property. This goal does not apply.
- **Goal 9: Economic Development.** Because this goal focuses on commercial and industrial development, primarily within an urban growth boundary, it does not apply to this proposal.
- **Goal 10: Housing.** This goal applies to housing within an urban growth boundary and, thus, does not apply to this proposal.
- **Goal 11: Public Facilities and Services.** The subject parcels do not require an extension of services with an I (Industrial) zone use. This goal is met.
- **Goal 12: Transportation.** Were the rezone granted to Industrial, the existing development will not have a significant impact on the roadway system in this area because of the minimal number of trips associated with the existing uses and the adequacy of the roadway to accommodate the probable level of additional traffic.
- **Goal 13: Energy Conservation.** There is no indication of energy use increase or decrease based on the proposed zone change and comprehensive plan change. This goal does not apply.
- **Goal 14: Urbanization.** The applicant is proposing to rezone agricultural land to industrial outside of the urban growth boundary. Therefore, the proposal complies with Goal 14 and does not require an exception to Goal 14.

## **COMPREHENSIVE PLAN AMENDMENT**

12. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by State Law and did not comment prior to this report being prepared.
13. The Marion County Comprehensive Plan (MCCP) establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer property owners will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in MCC17.123. A plan amendment of this type may be processed simultaneously with a zone change request with the zone change procedure outlined in Chapter 123 of the MCRZO. The subject property is comprised of one tax lot with one property owner; the proposal can therefore be considered under the quasi-judicial amendment process.
14. The MCCP does not contain specific review criteria for plan amendments; however, any amendment must be consistent with its applicable goals and policies. The goals and policies that apply in this case are located in the Rural Development Chapter and include policies for areas designated Industrial:
  1. *Industrial uses in conjunction with farm or forest uses shall be evaluated to determine if they need to be located on resource lands or whether an equally suitable location is available in an urban area or on non-resource lands in a rural area.*
  2. *Rural industries should be compatible with existing development and farm or forest uses in the vicinity, should not involve a large number of employees, should not require heavy truck traffic through residential areas or on unimproved roads, and should not have the potential to exceed the environmental capacity of the site or require urban services.*

3. *A non-resource-related industrial use should not be permitted on resource lands unless an evaluation of the relevant County and State goals and the feasibility of locating the proposed use in an urban growth boundary or rural non-resource lands show that the proposed site on resource lands is the most suitable.*

15. The applicant states that the industrial use associate with the zone change is not in conjunction with farm or forest uses and is not located on commercial agricultural land. The applicant also states the site is an isolated field not practicable for use as farmland. There are no equally suitable lands in the vicinity either in a local urban area or on available non-resource lands. Expanding the industrial use currently located on Tax Lot 800 to an equally suitable location on any other nearby land involves the conversion of the commercial agriculture occurring on Tax Lots 100, 900, 1900 and 200 that surrounds this tax lot. To further address Policy 1, the applicant states that there appears to be no industrial sites available within the Hubbard UGB that are of a size that are suitable and available to serve the current use as well as the proposed expansion (approval pending).

To address Policy 2, the applicant states that the proposed use will be compatible with surrounding uses as many of the surrounding properties to the west have been developed with commercial or industrial uses. The applicant states that the re-zone is compatible with existing development and farm uses in the vicinity and does not involve a large number of employees, nor does it require heavy truck traffic through residential areas or on unimproved roads. The applicant states that the proposed use will not exceed the carrying capacity of the site as the necessary facilities are already in place or not applicable as there is no new development requiring them proposed. The site is free of other environmental amenities, such as wetlands or floodplains, and it not located within a sensitive groundwater area identified by the MCCP.

To address Policy 3, the applicant has requested an exception to Goal 3 under “as developed” exceptions. The applicant also submitted a review of available industrial lands in the county to demonstrate that there are no areas in the urban growth boundary or rural non-resource lands available that could support the proposed use. The applicant will have the opportunity to discuss this study in more detail. Based on the evidence and findings provided, the proposal appears to comply with Industrial Policies 1-3.

16. The requirements for zone changes are found in MCC (Marion County Code) 17.123.060 and include:
  - A. *The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and*
  - B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*
  - C. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and*
  - D. *The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and*
  - E. *If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*
17. The Industrial zone is the only zone that implements the rural Industrial designation in the Marion County Comprehensive Plan (MCCP). The MCCP policies that address designating property as Industrial were addressed earlier and the proposal is in compliance based on the evidence presented in the goal exception section of this report. The proposal is consistent with surrounding uses that comprise commercial, residential, and agricultural uses on surrounding lands. Based on the information submitted by the applicant, it appears the criteria for a zone change are satisfied by the proposal.

### **PROPERTY LINE ADJUSTMENT**

The proposed property line adjustment will result in the new property lines running along the new zone boundary, pending approval of the Comprehensive Plan Amendment and Zone Change. 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 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.*

- 18. The parcels are under the minimum parcel size of 80 acres and will remain so after adjustment. No parcel meets the definition in (b). The adjustment will keep all previously farmed lands in farm use and will consolidate the non-farm land into one parcel. The criteria in (d) do not apply. The dwellings will remain on their original parcels. The proposal meets the criterion in #7 (a), (b), (c), (d), and (e).
- 19. Per MCC 17.165.080, there are no minimum lot size or lot coverage areas required. All existing structures will meet required setbacks.
- 20. 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.
- 21. 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.

**CONCLUSION**

Based on the above discussion, staff recommends that if the goal exception criteria are satisfied, the proposed Comprehensive Plan designation change from Primary Agriculture to Industrial. The zone change from Exclusive Farm Use to Industrial and the associated property line adjustment should be approved subject to the following conditions:

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 are recorded by the applicants with the Marion County Clerk.**
2. **Prior to recording the property line adjustment deeds,** the applicants shall have the parcels surveyed per ORS 92.060 (7). The survey shall be filed with the County Surveyor and shall contain the notation that the survey is the result of Zone Change/Comprehensive Plan Amendment/Property Line Adjustment Case 21-001.
3. **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.
4. 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.

5. **ENGINEERING CONDITIONS**

**Condition A** – *Obtain final inspection approval for stormwater system improvements on existing TL 400 issued under Permit ST16-008. Also, design, permit, and construct additional stormwater system improvements, as may be required for already conducted surfacing on TL 600.*

**Condition B** – *Design, permit, and construct stormwater system improvements for TL 800 proposed building expansion, and including already conducted surfacing on TL 600.*

**Condition C** – *Obtain an Access Permit to document and make any required modifications, such as paving, to access approach work already conducted in front of TL 600 as part of the TL 800 operation expansion.*

**Condition D** – *Dedicate right-of-way half-width on Shank Road expanded frontages of TL 400 and 800 to meet the Local road standard of 30 feet.*