



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: September 13, 2023

Department: Public Works Agenda Planning Date: August 31, 2023 Time required: 10 min.

Audio/Visual aids: None

Contact: Austin Barnes Phone: 503-566-4174

Department Head Signature: [Handwritten Signature]

Form with fields: TITLE, Issue, Description & Background, Financial Impacts, Impacts to Department & External Agencies, Options for Consideration, Recommendation, List of attachments, Presenter.

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Austin Barnes, Brandon Reich

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the	)	Case No. ZC/CP 23-001
	)	
Application of:	)	<b>COMPREHENSIVE PLAN</b>
	)	<b>AMENDMENT / ZONE CHANGE</b>
PACIFIC-BEAVERTON LAND	)	
COMPANY, LLC	)	

**RECOMMENDATION**

**I. Nature of the Application**

This matter comes before the Hearings Officer on the Application of Pacific-Beaverton Land Company, LLC 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 2.16-acre portion of a 20.16-acre parcel located at 10590 Donald Road NE, Donald. (T4S; R1W; Section 17CB; Tax Lot 4500).

**II. Relevant Criteria**

The standards and criteria relevant to this Application are found in the Marion County Comprehensive Plan (Rural Development Policies), and the Marion County Code (MCC) Title 17, especially MCC 17.123.060. Policies relevant to this Application are also found in the State of Oregon Statewide Planning Goals, and Oregon Administrative Rules (OAR 660-004-018 and OAR 660-004-028).

**III. Public Hearing**

A public hearing was held on this matter on May 11, 2023. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the Application:

- |    |               |                                 |
|----|---------------|---------------------------------|
| 1. | Austin Barnes | Marion County Planning Division |
| 2. | Steve Kay     | Representative for Applicant    |

No documents were presented, marked, or entered into the record as exhibits. No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing.

**IV. Executive Summary**

The Applicant seeks 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 2.16-acre portion of a 20.16-

acre parcel located at 10590 Donald Road NE, Donald. (T4S; R1W; Section 17CB; Tax Lot 4500). The Applicant intends to use the subject area for storage of vehicle and equipment for its operations, and such use is consistent with current use. The Applicant has established compliance with all applicable criteria, and the Hearings Officer recommends **APPROVAL** of the Application.

## V. Findings of Fact

The Hearings Officer, after careful consideration of the testimony and evidence in the record, issues the following finding of fact:

1. The subject property consists of a 2.16-acre portion of a 20.16-acre parcel located at 10590 Donald Road NE, Donald, Oregon. The Applicant seeks 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.
2. The property is located on the south side of Donald Rd NE at its intersection with Butteville Rd NE. The parcel is located partially within the city limits of Donald. The properties have been described by Marion County Zoning Maps and are considered legal for the purposes of land use.
3. The Property directly to the east is within the city limits of Donald and zoned commercial, residential, and industrial, properties to the north, south and east are zoned EFU (Exclusive Farm Use).
4. The Planning Division requested comments from various governmental agencies:

**The Department of Land Conservation and Development** made comments regarding the goal exception. These comments discuss the exception to Goal 3 and that only rural uses may be allowed pursuant to a Goal 3 exception. The entirety of the comments can be found in the file.

**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.

5. The Applicant states that the area was committed to an industrial use when it was improved with a gravel surface. Applicant will be able to fully utilize all existing industrial facilities on the site. Applicant states that the subject area is irrevocably committed to a non-resource use, and that the quality of the land has been degraded by mechanically compacted gravel. The Applicant states that an analysis of the availability of other sites supports a determination that other sites are not well suited for the proposed use.
6. Applicant states that its proposed use is consistent with the current use and the estimated daily deliveries are also equal to the number of daily trips for current use.

## VI. Additional Findings of Fact and Conclusions of Law

1. The Applicant has the burden of proving compliance with all applicable standards and criteria.

### GOAL EXCEPTION

2. 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). However, 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, with an amended applicant statement the applicant indicated that the proposal qualifies for an “irrevocably committed” goal exception.

The applicant cannot justify the “physically developed” goal exception because the previous Conditional Use Permit (CU/PLA05-029) allowed for the creation of the proposed storage and repair area for farm equipment. Because the proposed comprehensive plan/zone change area was previously approved as a commercial in conjunction with farm use, which is allowed under Goal 3, OAR 660-004-0025(2) does not allow the applicant to request a goal exception using the “physically developed” goal exception. Therefore, only the “irrevocably committed” and “reasons” goal exceptions to Goal 3 can be considered.

3. 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.*

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. The applicant states that within the exception area there is at minimum 15" of base rock and gravel compacted, precluding the exception area from being farmed. No urban public services will be needed to serve the site. There are 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 meets the criteria for a goal exception outlined herein.

4. 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).*

5. 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.*

The properties to the south and west are in agriculture use, the southern parcel being the new location of the prior occupant of the exception area. The property to the north of the subject property is in both farm and public utility use, the City of Donald owns that parcel and is the Donald Sewage treatment facility and wastewater treatment ponds. Parcels to the east are developed with higher density residential uses and are mostly developed out. All abutting parcels except the parcels to the east are more than 100 acres in size.

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

- 6. 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. Additionally, the proposed zone change can be appealed. This ensures that the public can participate in the process of deciding whether or not to grant the proposed zone change.

**Goal 2: Land Use Planning.** The process of potentially changing the Marion County Comprehensive Plan and zoning, is part of an established land use planning process.

This process also includes involving the citizens of Marion County who may have the potential to be affected by the land use decision, agencies within Marion County, and various state agencies by notifying those stakeholders of the decision and giving them a chance to comment and or appeal. The subject application is considered under the regulations for this goal.

**Goal 3: Agricultural Lands.** The Applicant is proposing an exception to this Goal. If approved, Goal 3 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. Goal 5 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. Areas that are designated as being in a floodplain or as a geological hazard are not near the subject parcel. Goal 7 does not apply.

**Goal 8: Recreation Needs.** No recreational uses of the property are proposed in conjunction with this application and no Goal 8 resources are identified on this property. Goal 8 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 parcel does not require an extension of services with an I (Industrial) zone use. This goal is met.

**Goal 12: Transportation.** Though the subject parcel is zoned EFU, the parcel that is associated with it is zoned industrial inside the City of Donald. According to the applicant, the subject parcel will only be used for storage of materials and parking for company vehicles. The anticipated number of deliveries will range from 25 to 75 per day. Additionally, the anticipated number of materials delivered to the applicant’s business will be an average of five. The applicant is also anticipating that the number of employees on-site will be up to 110. To access the subject parcels,

it is anticipated that most employees, deliveries to customers, and deliveries to the business will come from I-5 which will then use Ehlen Road NE, Butteville Road NE, and a small portion of Donald Road NE. Some of the roads used will be within Marion County's jurisdiction while portions of Butteville Road NE and Donald Road NE will be with the City of Donald. Ehlen Road NE and Butteville Road NE are frequently used by a variety of vehicle traffic, including cars and trucks. It is not anticipated that use of the subject parcel will result in a use that will hinder the safety, convenience, and economics of the transportation system because that type of traffic capacity currently. Therefore, the proposal complies with Goal 12.

**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 a rural industrial zone outside of the urban growth boundary. Therefore, the proposal complies with Goal 14 and does not require an exception to Goal 14.

7. All Comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). DLCD was notified as required by State Law and did not comment prior to this report being prepared.
8. The MCCP establishes procedures to be used when considering plan amendments. Plan changes directly involving 5 or fewer properties will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedures established in Marion County Code Chapter 17.123. 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.
9. 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.*

The applicant states that the industrial use associated 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. 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).

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.*



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.

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.*

To address Policy 3, the applicant has requested an exception to Goal 3 under “Irrevocably Committed” 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.

Based on the evidence and findings provided, the proposal appears to comply with Industrial Policies 1-3.

10. Comprehensive plan amendment approval is recommended.

#### ZONE CHANGE

11. The criteria for a zone change are found in the Marion County Code Chapter 17.123.060:

- 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*

The Applicant is requesting a concurrent Comprehensive Plan Amendment from EFU to Industrial so that the proposed Industrial zoning is consistent with the Comprehensive Plan land designation, and has addressed the applicable goals and policies of the Comprehensive Plan herein.

- B. *The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and*

The map amendment is located within a fenced yard which is adjacent to a manufacturing facility that will be operated by Applicant. The 2.16 acre area is currently used as a yard for materials and vehicles, and Applicant intends to use the gravel yard for the same purpose. The gravel storage yard within the EFU zone is an established use, and the continued use for material and vehicle storage is compatible with existing land uses.

- 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*

Existing public water and sewer services from the city of Donald and the city transportation facilities are currently in place and can continue to serve the proposed zoning. No development is proposed and the site will not generate additional employees or create increased transportation impacts. Public facilities and services are adequate for the proposed zone change.

- 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*

Applicant intends to relocate from their property site in Beaverton. Applicant reviewed available industrial designated properties in Marion County and concluded that no parcels meet the minimum site area and all the other suitability factors of the subject site the subject property has been improved for a proposed industrial use and exists with a service building, large gravel yard for storage of materials and vehicles, and a local transportation system that is currently developed to accommodate industrial use.

- 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.*

Applicant intends to use the 2.16 acre map amendment area at the same intensity as the current use of the site. The storage yard where the industrial designation is proposed was developed with a gravel surface after the current user was granted approval of a conditional use property line adjustment in a prior case #12-024 consistent with the existing vehicle parking and equipment storage, applicant intends to utilize the gravel yard for vehicle parking and equipment storage. Applicant is not proposing more intensive industrial uses with the proposed zone change and increased impacts to adjacent farm and residential properties will not occur.

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.

12. The proposed zone change is recommended.

## VII. Recommendation

It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval of the amendment of a comprehensive plan designation from Primary Agriculture to Industrial and to change the zoning from Exclusive Farm Use to Industrial. Therefore, the Hearing Officer recommends that the Marion County Board of Commissioners **GRANT** the Application and the associated property line adjustment should be approved subject to the following conditions that are necessary for the public health, safety, and welfare:

1. The applicant shall not utilize the remaining Exclusive Farm Use lands for industrial use.
2. Industrial uses shall maintain compliance with development standards contained in MCC 17.165.

## VIII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this Application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 21<sup>st</sup> day of July, 2023.

  
\_\_\_\_\_  
Jill F. Foster  
Marion County Hearings Officer

## CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Steve Kay  
Cascadia Planning  
PO Box 1920  
Silverton, Oregon 97381

Mitch and Jim Morse  
668 McVey Ave Unit# 51  
Lake Oswego Oregon 97034

City of Donald  
(via email: [hbyram@mwvcog.org](mailto:hbyram@mwvcog.org))

Area Advisory Committee: Area 6  
(via email: [fofp99@gmail.com](mailto:fofp99@gmail.com))

Neighborhood Associations:

Roger Kaye  
Friends of Marion County  
P.O. Box 3274  
Salem, OR 97302

1000 Friends of Oregon  
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Portland, Oregon 97204-2597  
(via email: [permits@friends.org](mailto:permits@friends.org))

Pudding River Watershed Council  
(via email: [cleanpuddingriver@gmail.com](mailto:cleanpuddingriver@gmail.com))  
(via email: [anna@puddingriverwatershed.org](mailto:anna@puddingriverwatershed.org))

County Agencies Notified:

Assessor's Office  
(via email: [assessor@co.marion.or.us](mailto:assessor@co.marion.or.us))

Tax Collector  
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(via email: [NMcVey@co.marion.or.us](mailto:NMcVey@co.marion.or.us))  
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(via email: [ABammes@co.marion.or.us](mailto:ABammes@co.marion.or.us))  
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N. Marion School District  
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Marion County Farm Bureau  
(via email: [info@marioncofarm.com](mailto:info@marioncofarm.com))

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 21<sup>st</sup> day of July, 2023 and that the postage thereon was prepaid.



Administrative Assistant to the  
Hearings Officer