

Attention Property Owner: A land use proposal has been submitted for property near where you live or 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. 21-038**

**APPLICATION:** Application of Natasha, Daniel, Jacob and Mariya Hozen to adjust the property lines on a 19.95 acre parcel and a 3.06 acre parcel to create an 11.5 acre parcel and an 11.5 acre parcel in a FT (Farm Timber) zone located at 17403 Powers Creek Loop Road NE, Silverton (T7S, R1E, Section 09A, tax lots 1200 and 1300).

**DECISION:** Notice is hereby given that the Planning Director for Marion County has **APPROVED** the above-described 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 **August 6, 2023**. The effective period may be extended for an additional year subject to approval of an 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 request is for land use purposes only. Due to septic, well and drainfield replacement areas, this parcel may not be able to support the proposal. To be sure the subject property can accommodate the proposal the applicant should contact 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. **Property line adjustment deeds shall be recorded with the Marion 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. 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.

**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. It is recommended that the agencies mentioned in Finding #6 be contacted to identify restrictions or necessary permits.

4. Prior to recording the deeds all taxes due must be paid to the Marion County Tax Office (at 503-588-5215 for verification of payments).

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (Appeal 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 **August 6, 2021**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **August 7, 2021** unless further consideration is requested.

**FINDINGS AND CONCLUSIONS:** The findings and conclusions on which the decision was based are noted below.

1. The subject property is comprised of two parcels both of which are designated Farm Timber in the Marion County Comprehensive Plan and zoned FT (Farm/Timber). The purpose of the Farm/Timber zone is to maintain properties for farm and timber use.
2. The subject parcels are located on the north side of Power's Creek Loop NE, approximately 950 feet west of the intersection of Power's Creek Loop NE and Timber Trail Rd NE. Tax Lot 1300 (17403 Powers Creek Loop NE) is developed with a single-family-home approved as a non-timber-dwelling through CU86-029. Tax Lot 1200 is managed for forest use; the property is currently undeveloped, but was previously approved for a template dwelling pursuant to AR01-058. This approval expired before being implemented and the property was again approved for a dwelling through AR21-003. Each parcel was determined at that time the decisions were issued to be legal for the purposes of land use.
3. Properties on all sides are zoned FT (Farm/Timber) and are either in farm use or devoted to timber production.

<u>Soil Name</u>	<u>Total Acreage</u>	<u>CU.FT/AC/YR</u>	<u>Total Cu. FT./YR</u>
<i><u>Parcel 1</u></i>			
McAlpin (MaA)	4.2	184	772.8
McCully (McD)	0.60	171	102.6
Nekia (NeD)	1.3	163	211.9
Nekia (NeF)	13.8	158	2,180.4
<i><u>Parcel 2</u></i>			
McCully (McD)	2.2	171	376.2
Nekia (NeF)	0.9	158	142.2

5. The applicants are proposing to adjust the property lines on a 19.95 acre parcel and a 3.06 acre parcel to create two parcels that are each roughly 11.5 acres.
6. Marion County Surveyors Office commented: No survey required. The resultant properties are greater than ten acres.

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 original recorded documents and signatures of all parties with proper acknowledgment.[See Marion County Zoning Code MCC 16.33.140(E) and MCC 17.172.120(E)] . Marion County Planning requires perimeter descriptions of the resultant properties.

Marion County Tax Office provided information regarding taxes on the subject properties. All other contacted agencies either failed to comment or stated no objection to proposal.

7. The criteria for reviewing property line adjustments within an FT zone are listed in Section 17.139.090(E) of the Marion County Code (MCC). These criteria are as follows:

*Property Line Adjustments if the land was predominantly devoted to forest use on January 1, 1993:*

1. *Parcels larger than 80 acres may not be reduced to below 80 acres.*
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 17.139.030(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 17.139.030(A) or (B).*
  - b. *Except as provided in subsection (E)(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 17.139.020 or 17.139.050 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 as defined in MCC 17.139.130(H).*
  - 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; or*
    - 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.*

8. The existing parcels are less than 80 acres in size prior to the adjustment. Tax Lot 1300 is already developed with a non-timber dwelling and Tax Lot 1200 is approved for a dwelling pursuant to Marion MCC 17.139.030(B). Because of the existing development and approval, the reconfiguration would not qualify either parcel for a dwelling under MCC 17.139.030 (A) or (B) and the criteria in MCC 17.139.090(E)(2)(a) is satisfied.

The reconfiguration will not result in the removal of any land from timber production and the applicant stated in the application that the reconfiguration will be more suitable to manage the property for timber production and to help the property owners reduce the risk of wildfire on the property. Daniel Hozen elaborated on his written narrative during a phone conversation with Marion County Planning on July 15, 2021; he explained that the property will be easier to manage because evenly dividing the property will more evenly divide the timber management workload between the two property owners. Additionally, because of the topographical character of the property, the northwestern portion of what is currently Tax Lot 1200 is more accessible from Tax Lot 1300. Reconfiguring the lots so that this portion is a part of Tax Lot 1300 will enable the property owner with better access to that portion of the property to take ownership and management responsibilities. According to the soils report findings in #4 above, the property is not capable of producing more than 5,000 cubic feet per year of commercial tree species as defined in MCC 17.139.130(H). Cumulatively, these findings suggest the proposed

reconfiguration will result in more effective management of the parcels for the property owners. MCC 17.139.090(E)(2)(b) is satisfied.

As mentioned, one parcel is currently developed with a dwelling and another is currently approved for a dwelling pursuant to MCC 17.139.030(B). Consequently, the criteria in MCC 17.139.090(E)(2)(c) and (d) are not relevant.

9. 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.
10. Based on the above findings and conclusions, the proposal meets the criteria for a property line adjustment in an FT zone and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore  
Director - Planning Division

Date: July 22, 2021

If you have any questions please contact Ryan Dyar 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.